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POCSO ACT, 2012

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EXTRAORDINARY

भाग II — खण्ड I

PART II — Section 1

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 20th June, 2012/Jyaistha 30, 1934 (Saka)

The following Act of Parliament received the assent of the President on the 19th June, 2012, and is hereby published for general information:—

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 therewith 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 I

PRELIMINARY

Short title,
extent and
commencement.

1. (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.

Definitions.

2. (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 (f) 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.

43 of 2005.

41 of 1988.

45 of 1860.
2 of 1974.
56 of 2000.
21 of 2000.

CHAPTER II

SEXUAL OFFENCES AGAINST CHILDREN

A.—PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Penetrative
sexual assault.

3. 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. 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.

Punishment
for
penetrative
sexual assault.

B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

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

Aggravated
penetrative
sexual assault.

(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.

Punishment for aggravated penetrative sexual assault.

6. 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 THEREFOR

Sexual assault.

7. 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. 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. Punishment for sexual assault.

D.—AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR

9. (a) Whoever, being a police officer, commits sexual assault on a child— Aggravated sexual assault.
- (i) within the limits of the police station or premises where he is appointed; or
 - (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where he is known as, or identified as a police officer; or
- (b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—
- (i) within the limits of the area to which the person is deployed; or
 - (ii) in any areas under the command of the security or armed forces; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where he is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or
- (e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or
- (f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or
- (g) whoever commits gang sexual assault on a child.
- Explanation.*—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or
- (h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- (i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- (j) whoever commits sexual assault on a child, which—
- (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
 - (ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

14 of 1987.

(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 shared 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.

Punishment for aggravated sexual assault.

10. 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

Sexual harassment.

11. 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.

Punishment for sexual harassment.

12. 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 also be liable to fine.

CHAPTER III

USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

Use of child for pornographic purposes.

13. 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. (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.

Punishment for using child for pornographic purposes.

(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. 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.

Punishment for storage of pornographic material involving child.

CHAPTER IV

ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

16. 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 wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

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

Explanation III.—Whoever 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. 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.

Punishment for abetment.

Explanation.—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. 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

Punishment for attempt to commit an offence.

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 term of imprisonment provided for that offence or with fine or with both.

CHAPTER V

PROCEDURE FOR REPORTING OF CASES

Reporting of offences.

19. (1) 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.

- (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).

Obligation of media, studio and photographic facilities to report cases.

20. 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.

Punishment for failure to report or record a case.

21. (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.

Punishment for false complaint or false information.

22. (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 victimising 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. (1) No person shall make any report or present comments on any child from any 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. Procedure for media.

(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. (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. Recording of statement of a child.

(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.

2 of 1974.

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

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 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 that Code.

26. (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. Additional provisions regarding statement to be recorded.

(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.

Medical examination of a child.

27. (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 of 1974.

(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

Designation of Special Courts.

28. (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 offences 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.

4 of 2006.

(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.

2 of 1974.

(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 conduct or manner or facilitates abuse of children online.

21 of 2000.

Presumption as to certain offences.

29. Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 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.

Presumption of culpable mental state.

30. (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.

Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.

31. 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.

2 of 1974.

32. (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.

Special Public Prosecutors.

(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 and provision of that Code shall have effect accordingly.

2 of 1974.

CHAPTER VIII

PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

33. (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.

Procedure and powers of Special Court.

(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 for trial before a Court of Session.

2 of 1974.

34. (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.

Procedure in case of commission of offence by child and determination of age by Special Court.

(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.

Period for recording of evidence of child and disposal of case.

35. (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.

Child not to see accused at the time of testifying.

36. (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 utilising single visibility mirrors or curtains or any other device.

Trials to be conducted *in camera*.

37. 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.

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

38. (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

Guidelines for child to take assistance of experts, etc.

39. Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for 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.

Right of child to take assistance of legal practitioner.

40. Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 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:

2 of 1974.

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.

Provisions of sections 3 to 13 not to apply in certain cases.

41. 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.

Alternative punishment.

42. Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, 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.

43. The Central Government and every State Government, shall take all measures to ensure that—

Public awareness about Act.

(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.

4 of 2006.

44. (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, 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.

Monitoring of implementation of Act.

4 of 2006.

(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. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(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 child or 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 (1) 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. (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:

Power to remove difficulties.

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).

V. K. BHASIN,
Secretary to the Govt. of India.

POCSO Rules 2020

रजिस्ट्री सं. डी.एल.- 33004/99

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**महिला और बाल विकास मंत्रालय
अधिसूचना**

नई दिल्ली, 9 मार्च, 2020

सा.का.नि. 165(अ)—केंद्रीय सरकार, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (2012 का 32) की धारा 45 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित नियम बनाती है, अर्थात्:

1. (1) **संक्षिप्त नाम और प्रारंभ-** इन नियमों का संक्षिप्त नाम लैंगिक अपराधों से बालकों का संरक्षण नियम, 2020 है।

(2) ये नियम राजपत्र में उनके प्रकाशन की तारीख से प्रवृत्त होंगे।

2. **परिभाषाएं-** (1) इन नियमों में, जब तक कि संदर्भ में अन्यथा अपेक्षित न हो,-

- (क) "अधिनियम" से लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (2012 का 32) अभिप्रेत है;
- (ख) "जिला बालक संरक्षण एकक" (डीसीपीयू) से किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम 2015 (2016 का 2) की धारा 106 के अधीन राज्य सरकार द्वारा स्थापित जिला बालक संरक्षण एकक अभिप्रेत है।
- (ग) "विशेषज्ञ" से अभिप्रेत मानसिक स्वास्थ्य, चिकित्सा, बाल विकास या अन्य सुसंगत विषय में प्रशिक्षित व्यक्ति, जिसकी संप्रेषण क्षमता अभिघात, निःशक्ता या किसी अन्य भेद्यता से प्रभावित ऐसे बालकों के साथ संप्रेषण को सुकर बनाने की आवश्यकता है।
- (घ) "विशेष शिक्षक" से सीखने और संवाद की चुनौतियों, भावनात्मक और व्यावहारिक मुद्दों, शारीरिक निःशक्तताओं और विकासपरक मुद्दों सहित तरीकों से बालक की व्यक्तिगत योग्यताओं और आवश्यकताओं का समाधान करके निःशक्त बालकों से संप्रेषण करने में प्रशिक्षित व्यक्ति अभिप्रेत है।

स्पष्टीकरण- इस खंड के प्रयोजनों के लिए निःशक्तता पद का वही अर्थ होगा जैसा दिव्यांगजन अधिकार अधिनियम, 2016 (2016 का 49) की धारा 2 के खंड(घ) में परिभाषित किया गया है;

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(1)

- (ड) "बालक के संप्रेषण के तरीके से परिचित व्यक्ति" का अर्थ है बालक के माता-पिता या परिवार का सदस्य या बालक के साझा परिवार का सदस्य या कोई भी व्यक्ति जिसमें बालक विश्वास और भरोसा रखता है, जो उस बालक के संप्रेषण के विशिष्ट तरीके से परिचित है, और जिनकी उपस्थिति बालक के साथ अधिक प्रभावी संप्रेषण के लिए आवश्यक होती है या हो सकती है;
- (च) "सहायक व्यक्ति" से नियम 4 के उप-नियम (7) के अनुसार बालक कल्याण समिति द्वारा जांच और परीक्षण की प्रक्रिया के माध्यम से बालक को सहायता प्रदान करने के लिए नियत व्यक्ति, या अधिनियम के अधीन अपराध के संबंध में पूर्व-परीक्षण या परीक्षण प्रक्रिया में बालक की सहायता करने वाला कोई अन्य व्यक्ति अभिप्रेत है;

(2) उन शब्दों और पदों के, जो इसमें प्रयुक्त हैं और इन नियमों में परिभाषित नहीं हैं, किंतु अधिनियम में परिभाषित हैं, वहीं अर्थ होंगे जो अधिनियम में है।

3. जानकारी का सृजन और क्षमता निर्माण- (1) केंद्रीय सरकार, या जैसा भी मामला हो, राज्य सरकार बालकों के लिए व्यक्तिगत सुरक्षा के विभिन्न पहलुओं की जानकारी देते हुए आयु-अनुकूल शैक्षिक सामग्री और पाठ्यक्रम तैयार करेगी, जिसमें निम्नलिखित शामिल है-

- (i) उनकी शारीरिक और आभासी पहचान की सुरक्षा; और उनकी भावनात्मक तथा मानसिक भलाई की रक्षा करने के लिए उपाय;
- (ii) लैंगिक अपराधों से निवारण और संरक्षण;
- (iii) चाइल्ड हेल्पलाइन -1098 सेवाओं सहित रिपोर्टिंग तंत्र;
- (iv) अधिनियम के अधीन अपराधों की प्रभावी निवारण के लिए लैंगिक संवेदनशीलता, लैंगिक समानता और लैंगिक साम्या को अंतरनिविष्ट करना।

(2) सभी सार्वजनिक स्थानों जैसे पंचायत भवनों, सामुदायिक केंद्रों, स्कूलों और महाविद्यालयों, बस टर्मिनलों, रेलवे स्टेशनों, सभा स्थलों, हवाई अड्डों, टैक्सी स्टैंडों, सिनेमा हॉलों और ऐसे अन्य प्रमुख स्थानों पर संबंधित सरकारों द्वारा उपयुक्त सामग्री और सूचना प्रसारित की जा सकेगी तथा इंटरनेट और सोशल मीडिया जैसे आभासी स्थानों में उपयुक्त रूप में भी प्रसारित की जा सकेगी।

(3) केंद्रीय सरकार और प्रत्येक राज्य सरकार संभावित जोखिम और भेद्यताओं, दुर्व्यवहार के संकेतों, अधिनियम के अधीन बालकों के अधिकारों के बारे में जानकारी के साथ ही बालकों के लिए उपलब्ध सेवाओं के उपयोग के बारे में जानकारी फैलाने के लिए सभी उपयुक्त उपाय करेगी।

(4) बालकों के आवास वाली या स्कूलों, क्लबों, खेल अकादमियों या बालकों के लिए किसी अन्य सुविधा सहित बालकों के नियमित संपर्क में आने वाली किसी भी संस्था को बालकों के संपर्क में आने वाले प्रत्येक कर्मचारी, शिक्षण या गैर-शिक्षण, नियमित या संविदात्मक, या ऐसे संस्थान का कर्मचारी होने के नाते किसी अन्य व्यक्ति की समय-समय पर पुलिस सत्यापन और पृष्ठभूमि की जांच सुनिश्चित करनी चाहिए। ऐसे संस्थान यह भी सुनिश्चित करेंगे कि बालक सुरक्षा और संरक्षण पर उन्हें संवेदनशील बनाने के लिए आवधिक प्रशिक्षण आयोजित किया जाए।

(5) संबंधित सरकारें बालकों के विरुद्ध हिंसा के प्रति शून्य-सहिष्णुता के सिद्धांत के आधार पर एक बालक संरक्षण नीति तैयार करेंगी, जिसका बालकों के लिए कार्य करने वाले या संपर्क में आने वाले सभी संस्थानों, संगठनों या किसी अन्य एजेंसी द्वारा पालन किया जाएगा।

(6) केंद्रीय सरकार और प्रत्येक राज्य सरकार बालकों के संपर्क में आने वाले सभी व्यक्तियों को चाहे वे नियमित हों या संविदात्मक, समय-समय पर बालक सुरक्षा और संरक्षण के बारे में जागरूक करने और अधिनियम के अधीन उनकी जिम्मेदारी के बारे में शिक्षित करने के लिए अभिविन्यास कार्यक्रम, संवेदीकरण कार्यशालाएं और पुनश्चर्या पाठ्यक्रम सहित प्रशिक्षण प्रदान करेगी। पुलिस कार्मिकों और फॉरेंसिक विशेषज्ञों की संबंधित भूमिकाओं में उनकी क्षमता के निर्माण हेतु नियमित आधार पर अभिविन्यास कार्यक्रम और गहन पाठ्यक्रम भी आयोजित किए जा सकेंगे।

4. बालक की देखभाल और संरक्षण के बारे में प्रक्रिया- (1) जहां किसी विशेष किशोर पुलिस एकक (इसे इसमें इसके पश्चात् "एसजेपीयू" कहा गया है) या स्थानीय पुलिस को अधिनियम की धारा 19 की उप-धारा (1) के अधीन बालक सहित किसी भी व्यक्ति से सूचना प्राप्त होती है, ऐसी सूचना की रिपोर्ट प्राप्त करने वाली एसजेपीयू या स्थानीय पुलिस, रिपोर्ट करने वाले व्यक्ति को तुरंत निम्नलिखित व्यौरा प्रकटित करेगी:-

- (i) अपना नाम और पदनाम;
- (ii) पता और टेलीफोन नंबर;

(iii) सूचना प्राप्त करने वाले अधिकारी के पर्यवेक्षक अधिकारी का नाम, पदनाम और संपर्क का ब्यौरा।

(2) यदि अधिनियम के उपबंधों के अधीन अपराध होने के बारे में ऐसी कोई सूचना चाइल्ड हेल्पलाइन-1098 को प्राप्त होती है, तो चाइल्ड हेल्पलाइन ऐसी सूचना की तुरंत एसजेपीयू या स्थानीय पुलिस को रिपोर्ट करेगी।

(3) जब किसी एसजेपीयू या स्थानीय पुलिस, जैसा भी मामला हो, को अधिनियम की धारा 19 की उप-धारा (1) के अधीन अंतर्विष्ट उपबंधों के अनुसार कोई अपराध जो किया गया हो या करने का प्रयत्न किया गया हो या किए जाने की संभावना हो, के संबंध में सूचना प्राप्त होती है, तो संबंधित प्राधिकारी करेगा, जहां लागू हो :

(क) दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 154 के उपबंधों के अनुसार प्रथम सूचना रिपोर्ट रिकॉर्ड और दर्ज करने की कार्यवाही, और ऐसी रिपोर्ट करने वाले व्यक्ति को उक्त संहिता की धारा 154 की उप-धारा (2) के अनुसार उसकी एक प्रति निःशुल्क प्रतिलिपि देना;

(ख) जहां बालक को अधिनियम की धारा 19 की उप-धारा (5) या इन नियमों के अधीन आपातकालीन चिकित्सा देखभाल की आवश्यकता हो, तो नियम 6 के अनुसार, बालक की ऐसी देखभाल की पहुंच की व्यवस्था करना;

(ग) अधिनियम की धारा 27 के अनुसार बालक को चिकित्सीय परीक्षा हेतु अस्पताल ले जाना;

(घ) यह सुनिश्चित करना कि फॉरेंसिक परीक्षणों के प्रयोजनों के लिए एकत्र किए गए नमूनों को तुरंत फॉरेंसिक प्रयोगशाला में भेजा जाए;

(ङ) बालक और बालक के माता-पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक को भरोसा और विश्वास है को परामर्श सहित सहायक सेवाओं की उपलब्धता की सूचना देना और इन सेवाओं और अनुतोष प्रदान करने वाले लोगों से संपर्क करने में उनकी सहायता करना;

(च) बालक और बालक के माता-पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक को भरोसा और विश्वास है को अधिनियम की धारा 40 के अनुसार बालक के विधिक सलाह और वकील के अधिकार तथा वकील द्वारा प्रतिनिधित्व किए जाने के अधिकार के बारे में सूचित करना।

(4) जहां एसजेपीयू या स्थानीय पुलिस को अधिनियम की धारा 19 की उप-धारा (1) के अधीन सूचना प्राप्त होती है और उसे यह युक्तियुक्त आशंका है कि अपराध बालक के या उसके साझे घर में रहने वाले व्यक्ति द्वारा किया गया या प्रयत्न किया गया या किए जाने की संभावना है, या बालक किसी बाल देखरेख संस्थान में और माता-पिता के बिना रह रहा है, या बालक बेघर या माता-पिता के बिना पाया जाता है, तो संबंधित एसजेपीयू या स्थानीय पुलिस ऐसी रिपोर्ट प्राप्त होने के 24 घंटे के भीतर बालक को संबंधित बालक कल्याण समिति (इसे इसमें इसके पश्चात "सीडब्ल्यूसी" कहा गया है) के समक्ष लिखित कारणों में कि क्या बालक को अधिनियम की धारा 19 की उप-धारा (5) के अधीन देखभाल और सुरक्षा की अपेक्षा है और सीडब्ल्यूसी द्वारा विस्तृत आकलन के अनुरोध सहित प्रस्तुत करेगी।

(5) उप-नियम (3) के अधीन कोई रिपोर्ट प्राप्त होने पर, संबंधित सीडब्ल्यूसी किशोर न्याय अधिनियम, 2015 (2016 का 2) की धारा 31 की उप-धारा (1) के अधीन अपनी शक्तियों के अनुसार, तीन दिनों के भीतर, या तो स्वयं या किसी सामाजिक कार्यकर्ता की सहायता से, यह निर्धारित करेगा, कि क्या बालक को बालक के परिवार या साझा घर की अभिरक्षा से बाहर निकालना और बालक गृह या आश्रय गृह में रखा जाना आवश्यक है।

(6) उप-नियम (4) के अधीन निर्धारण करते समय, सीडब्ल्यूसी निम्नलिखित विचारों के संबंध में बालक के सर्वोत्तम हितों के साथ मामले पर बालक द्वारा व्यक्त की गई किसी प्राथमिकता या राय पर को ध्यान में रखेगा, अर्थात्: -

(i) माता-पिता, या दोनों में से एक, या कोई अन्य व्यक्ति जिस पर बालक को भरोसा और विश्वास है, की बालक को चिकित्सा जरूरतों और परामर्श सहित तत्काल देखभाल और संरक्षण आवश्यकता को प्रदान करने की क्षमता;

(ii) बालक के माता-पिता, परिवार और विस्तारित परिवार की देखभाल में रहने और उनके साथ संबंध बनाए रखने की आवश्यकता;

(iii) बालक की उम्र और परिपक्वता का स्तर, लिंग और सामाजिक तथा आर्थिक पृष्ठभूमि;

(iv) बालक की निःशक्तता, यदि कोई हो;

(v) कोई पुरानी बीमारी, जिससे बालक पीड़ित हो सकता है;

(vi) बालक या बालक के परिवार के सदस्य सहित पारिवारिक हिंसा का कोई इतिहास; और,

(vii) कोई अन्य सुसंगत कारक जो बालक के सर्वोत्तम हितों पर असर डाल सकते हैं:

परंतु ऐसा निर्धारण करने से पूर्व, इस तरह से जांच की जाएगी कि बालक को अनावश्यक रूप से चोट या असुविधा न पहुंचे।

(7) बालक और बालक के माता-पिता या संरक्षक या कोई अन्य व्यक्ति जिस पर बालक को भरोसा और विश्वास है और जिसके साथ बालक रह रहा है, जो ऐसे निर्धारण से प्रभावित होता है, को सूचित किया जाएगा कि ऐसे निर्धारण पर विचार किया जा रहा है।

(8) सीडब्ल्यूसी, अधिनियम की धारा 19 की उप-धारा (6) के अधीन रिपोर्ट प्राप्त करने पर या उप-नियम (5) के अधीन किए गए उसके निर्धारण के आधार पर, बालक और बालक के माता-पिता या संरक्षक या वह व्यक्ति जिस पर बालक का भरोसा और विश्वास है की सहमति से जांच और परीक्षण की प्रक्रिया के दौरान बालक को हरसंभव तरीके से सहायता प्रदान करने के लिए एक सहायक व्यक्ति उपलब्ध करा सकता है, और बालक को एक सहायक व्यक्ति उपलब्ध कराने के बारे में एसजेपीयू या स्थानीय पुलिस को तुरंत सूचित करेगा।

(9) सहायक व्यक्ति हर समय उस बालक से संबंधित सभी सूचनाओं, जिन तक उसकी पहुंच है की गोपनीयता बनाए रखेगा और वह बालक और बालक के माता-पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक को भरोसा और विश्वास है, को उपलब्ध सहायता, न्यायिक प्रक्रियाओं और संभावित परिणामों सहित मामले की कार्यवाही के बारे में सूचित करेगा। सहायक व्यक्ति बालक को न्यायिक प्रक्रिया में सहायक व्यक्ति की भूमिका के बारे में भी सूचित करेगा और यह सुनिश्चित करेगा कि अभियुक्त के संबंध में बालक की सुरक्षा के बारे में बालक को होने वाली किसी भी चिंता और सहायक व्यक्ति द्वारा बालक की गवाही देने के तरीके से संबंधित अधिकारियों को सूचित किया जाए।

(10) जहां बालक को कोई सहायक व्यक्ति उपलब्ध कराया जाता है, तो एसजेपीयू या स्थानीय पुलिस ऐसा दायित्व सौंपने के 24 घंटे के भीतर विशेष अदालत को लिखित में सूचित करेगी।

(11) बालक और बालक के माता-पिता या संरक्षक या वह व्यक्ति जिस पर बालक को भरोसा और विश्वास है, के अनुरोध पर सीडब्ल्यूसी द्वारा सहायक व्यक्ति की सेवाएं समाप्त की जा सकती हैं, और समाप्ति का अनुरोध करने वाले बालक को ऐसे अनुरोध का कोई कारण बताना आवश्यक नहीं होगा। विशेष अदालत को ऐसी सूचना लिखित में दी जाएगी।

(12) सीडब्ल्यूसी जांच के पूरा होने तक सहायक व्यक्ति से शारीरिक, भावनात्मक और मानसिक स्वास्थ्य पर केंद्रित पारिवारिक स्थिति और आघात से बचाव की दिशा में प्रगति सहित बालक की स्थिति और देखभाल के संबंध में मासिक रिपोर्ट मांगेगा; मनोवैज्ञानिक देखभाल और परामर्श सहित बालक को आवश्यकता-आधारित निरंतर चिकित्सा सहायता सुनिश्चित करने के लिए, सहायक व्यक्ति के समन्वय से, चिकित्सा देखभाल सुविधाओं के साथ संलग्न करेगा; और बालक की शिक्षा को पुनः चालू करना, या जारी रखना, या अपेक्षित होने पर बालक को नए स्कूल में शिफ्ट करना सुनिश्चित करेगा।

(13) बालक और बालक के माता-पिता या संरक्षक या अन्य व्यक्ति जिसमें बालक को भरोसा और विश्वास है, और सहायक व्यक्ति नियुक्त किए जाने पर ऐसे व्यक्ति को, अभियुक्त की गिरफ्तारी, फाईल आवेदनों और न्यायालय की अन्य कार्यवाहियों सहित, घटनाक्रम के बारे में सूचित करना एसजेपीयू, या स्थानीय पुलिस की जिम्मेदारी होगी।

(14) एसजेपीयू या स्थानीय पुलिस भी बालक और बालक के माता-पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक को भरोसा और विश्वास है को अधिनियम या तत्समय लागू किसी अन्य विधि के अधीन उपलब्ध उनकी हकदारियों और सेवाओं के बारे में प्रारंभिक निर्धारण रिपोर्ट को पूरा करेगा और इसे सीडब्ल्यूसी को प्रस्तुत करेगी।

(15) बालक और बालक के माता-पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक को भरोसा और विश्वास है, को एसजेपीयू, स्थानीय पुलिस, या सहायक व्यक्ति द्वारा प्रदान की जाने वाली सूचना सम्मिलित है, किंतु निम्नलिखित तक सीमित नहीं है :-

- (i) सार्वजनिक और निजी आपातकालीन और संकटकालीन सेवाओं की उपलब्धता;
- (ii) आपराधिक अभियोजन में शामिल प्रक्रियात्मक कदम;
- (iii) पीड़ित के प्रतिकर लाभों की उपलब्धता;
- (iv) पीड़ित को सूचित करने के औचित्य और अंवेक्षण में हस्तक्षेप नहीं करेगा, के विस्तार तक अपराध के अंवेक्षण की प्रास्थिति;
- (v) संदिग्ध अपराधी की गिरफ्तारी;
- (vi) संदिग्ध अपराधी के विरुद्ध आरोप फाईल करना;

- (vii) न्यायालय की कार्यवाहियों की अनुसूची जिसमें बालक का या तो उपस्थित होना अपेक्षित है या तो वह भाग लेने का हकदार है;
- (viii) अपराधी या संदिग्ध अपराधी की जमानत, निर्मुक्ति या निरोध की प्रास्थिति;
- (ix) परीक्षण के पश्चात अधिमत का प्रतिपादन; और
- (x) अपराधी को अधिरोपित दंडादेश।

5. दुभाषिया, अनुवादक, विशेष शिक्षक, विशेषज्ञ और सहायक व्यक्ति- (1) प्रत्येक जिले में, डीसीपीयू अधिनियम के प्रयोजनों के लिए, दुभाषियों, अनुवादकों, विशेषज्ञों, विशेष शिक्षकों और सहायक व्यक्तियों के नाम, पते और अन्य संपर्क विवरणों का एक रजिस्टर रखेगा और एसजेपीयू, स्थानीय पुलिस, मजिस्ट्रेट या विशेष न्यायालय को, आवश्यक होने पर, यह रजिस्टर उपलब्ध कराया जाएगा।

(2) अधिनियम की धारा 19 की उप-धारा (4) और धारा 26 की उप-धारा (3) और उप-धारा (4) तथा धारा 38 और नियम 4 के प्रयोजनों के लिए नियुक्त दुभाषियों, अनुवादकों, विशेष शिक्षकों, विशेषज्ञों और सहायक व्यक्तियों की योग्यता और अनुभव क्रमशः इन नियमों में इंगित किए जाएंगे।

(3) जहां एक दुभाषिया, अनुवादक, या विशेष शिक्षक डीसीपीयू द्वारा नियम (1) के अधीन रखी गई सूची से अन्यथा नियुक्त हैं, इस नियम के उप-नियम (4) और उप-नियम (5) के अधीन निर्धारित अपेक्षाओं में डीसीपीयू, विशेष न्यायालय या अन्य संबंधित प्राधिकरण की संतुष्टि के अधीन, प्रासंगिक अनुभव या औपचारिक शिक्षा या प्रशिक्षण या दुभाषिए, अनुवादक, या विशेष शिक्षक द्वारा संबंधित भाषाओं में धाराप्रवाह होने के साक्ष्य पर शिथिलता दी जा सकती है।

(4) उप-नियम (1) के अधीन नियुक्त दुभाषियों और अनुवादकों का बालक द्वारा बोली जाने वाली भाषा, बालक की मातृभाषा या स्कूल में कम से कम प्राथमिक स्कूल स्तर तक शिक्षा का माध्यम होने या दुभाषिए या अनुवादक द्वारा बालक के व्यवसाय, वृत्ति, या ऐसी भाषा बोले जाने वाले क्षेत्र में निवास के माध्यम से ऐसी भाषा का ज्ञान प्राप्त करने से, के साथ ही राज्य की आधिकारिक भाषा से कार्यात्मक परिचय होना चाहिए।

(5) उप-नियम (1) के अधीन रजिस्टर में प्रविष्टि किए गए संकेत भाषी दुभाषियों, विशेष शिक्षकों और विशेषज्ञों के पास भारतीय पुनर्वास परिषद द्वारा मान्यताप्राप्त विश्वविद्यालय या मान्यताप्राप्त संस्थान से संकेत भाषा या विशेष शिक्षा में या विशेषज्ञ के मामले में सुसंगत विषय में प्रासंगिक योग्यता होनी चाहिए।

(6) सहायक व्यक्ति बालक अधिकारों या बालक संरक्षण के क्षेत्र में काम करने वाला व्यक्ति या संगठन, या बालक की अभिरक्षा वाले बालक गृह या आश्रय गृह का अधिकारी या डीसीपीयू द्वारा नियुक्त व्यक्ति हो सकता है:

परंतु इन नियमों की कोई बात बालक और बालक के माता-पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक को भरोसा और विश्वास है को अधिनियम के अधीन कार्यवाही के लिए किसी व्यक्ति या संगठन की सहायता लेने से नहीं रोका जाएगा।

(7) दुभाषिए, अनुवादक, विशेष शिक्षक, विशेषज्ञ या सहयोगी व्यक्ति जिसका नाम उप-नियम (1) के अधीन बनाए गए रजिस्टर में या अन्यथा नामांकित है, की सेवाओं के लिए भुगतान राज्य सरकार द्वारा किशोर न्याय अधिनियम, 2015 (2016 का 2) की धारा 105 के अधीन रखे गए निधियों या डीसीपीयू के पास रखे गए अन्य निधियों से किया जाएगा।

(8) इस अधिनियम के अधीन बालक की सहायता के प्रयोजन से नियुक्त किसी दुभाषिए, अनुवादक, विशेष शिक्षक, विशेषज्ञ या सहयोगी व्यक्ति को, राज्य सरकार द्वारा विहित फीस का भुगतान किया जाएगा किंतु जो न्यूनतम मजदूरी अधिनियम, 1948 (1948 का 11) के अधीन एक कुशल कर्मकार के लिए विहित रकम से कम नहीं होगा।

(9) अधिनियम की धारा 19 की उप-धारा (1) के अधीन सूचना प्राप्त होने के बाद बालक द्वारा किसी भी स्तर पर दुभाषिए, अनुवादक, विशेष शिक्षक, विशेषज्ञ या सहायक व्यक्ति के लिंग के बारे में व्यक्त की गई कोई भी प्राथमिकता पर ध्यान रखा जाए, और जहां आवश्यक हो, बालक से संवाद की सुविधा के लिए ऐसे एक से अधिक व्यक्ति नियुक्त किए जा सकते हैं।

(10) दुभाषिया, अनुवादक, विशेष शिक्षक, विशेषज्ञ, सहयोगी व्यक्ति या अधिनियम के प्रयोजनों से सेवाएं प्रदान करने के लिए नियुक्त किया गया है बालक के संवाद के तरीके से परिचित व्यक्ति, पूर्वाग्रह रहित और निष्पक्ष होंगे और उनके वास्तविक या कथित हित संघर्ष का खुलासा करेंगे और बिना किसी लाग लपेट के दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 282 के अनुसार पूर्ण और सटीक व्याख्या या अनुवाद प्रस्तुत करेगा।

(11) धारा 38 के अधीन कार्यवाही में, विशेष अदालत यह अभिनिश्चित करेगी कि क्या बालक पर्याप्त रूप से अदालत की भाषा बोलता है, और किसी भी दुभाषिए, अनुवादक, विशेष शिक्षक, विशेषज्ञ, सहायक व्यक्ति या बालक

के संवाद के तरीके से परिचित अन्य व्यक्ति, जिसे बालक के साथ संवाद को सुविधाजनक बनाने के लिए नियुक्त किया गया है, किसी हित संघर्ष में शामिल नहीं है।

(12) अधिनियम के अधीन नियुक्त कोई भी दुभाषिया, अनुवादक, विशेष शिक्षक, विशेषज्ञ या सहयोगी व्यक्ति गोपनीयता के नियमों से बाध्य होगा, जैसा कि भारतीय साक्ष्य अधिनियम, 1872 (1872 का 1) की धारा 126 के साथ पठित धारा 127 के अधीन वर्णित है।

6. चिकित्सीय सहायता और देखरेख - (1) जब भी कोई एसजेपीयू, या स्थानीय पुलिस अधिकारी द्वारा अधिनियम की धारा 19 के अधीन यह सूचना प्राप्त की जाती है कि अधिनियम के अधीन अपराध किया गया है और उसका यह समाधान हो जाता है कि जिस बालक के खिलाफ अपराध किया गया है उसे तत्काल चिकित्सीय देखरेख और सुरक्षा की आवश्यकता है, तो जैसा भी मामला हो, वह अधिकारी या स्थानीय पुलिस, ऐसी सूचना प्राप्त होने के 24 घंटे के भीतर, ऐसे बालक को सबसे निकट के अस्पताल या चिकित्सीय सेवा सुविधा केन्द्र में उसके चिकित्सीय देखभाल के लिए ले जाने का प्रबंध करेगी:

परंतु यदि अधिनियम की धारा 3,5,7, या 9 के अधीन अगर अपराध किया गया हो, तो पीड़ित को आपातकालीन चिकित्सा सेवा के लिए भेजा जाएगा।

(2) माता-पिता या संरक्षक या जिस पर बालक को विश्वास हो की उपस्थिति में आपातकालीन चिकित्सीय सेवा इस तरह प्रदान की जाएगी कि बालक की निजता सुरक्षित रहे।

(3) बालक को आपातकालीन सेवा प्रदान करने वाला कोई भी चिकित्सक, अस्पताल या अन्य चिकित्सीय सुविधा केन्द्र ऐसी सेवा प्रदान करने के पूर्व आवश्यक दस्तावेज के रूप में कानूनी या मजिस्ट्रेट की अनुमति या अन्य दस्तावेजों की मांग नहीं करेगा।

(4) सेवा प्रदान करने वाला रजिस्ट्रीकृत चिकित्सक बालक की जांच करने के साथ निम्नलिखित सेवाएं प्रदान करेगा:

- (क) अन्य जननांग चोटों सहित कटने-फटने और चोटों के लिए उपचार, यदि कोई हो;
- (ख) पहचान किए गए एसटीडी के लिए प्रोफिलैक्सिस सहित यौन संचारित रोगों (एसटीडी) के संपर्क में आने का उपचार;
- (ग) संक्रामक रोग विशेषज्ञों से आवश्यक परामर्श के बाद एचआईवी के लिए प्रोफिलैक्सिस सहित ह्यूमन इम्यूनो डेफिशिएंसी वायरस (एचआईवी) के संपर्क में आने का उपचार;
- (घ) प्यूबर्टल (तरुण अवस्था प्राप्त योग्य) बालक और उसके माता-पिता या किसी अन्य व्यक्ति के जिसमें बालक को भरोसा और आत्मविश्वास हो के साथ संभावित गर्भावस्था और आपातकालीन गर्भ निरोधकों के बारे में चर्चा की जानी चाहिए; और
- (ङ.) जब कभी आवश्यक हो, मानसिक या मनोवैज्ञानिक स्वास्थ्य आवश्यकताओं, या अन्य परामर्श, या नशीली दवाओं की लत छुड़ाने की सेवा और कार्यक्रमों के लिए एक रेफरल या परामर्श किया जाना चाहिए।

(5) रजिस्ट्रीकृत चिकित्सक एसजेपीयू या स्थानीय पुलिस को बालक की स्थिति के बारे में 24 घंटे के भीतर रिपोर्ट दे सकता है।

(6) आपातकालीन चिकित्सीय सेवा प्रदान किए जाने के दौरान संग्रह किए गए कोई भी फॉरेंसिक प्रमाण आवश्यक रूप से अधिनियम की धारा 27 के अधीन संग्रह किए जाने चाहिए।

(7) अगर बच्ची गर्भवती पाई जाती है तो रजिस्ट्रीकृत चिकित्सक बालक और बालक के माता-पिता या संरक्षक उसकी सहायता करने वाले व्यक्ति को गर्भ का चिकित्सीय समापन अधिनियम, 1971 और किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 के अनुसार विभिन्न विधिपूर्ण विकल्पों के बारे में परामर्श देगा।

(8) अगर बच्चा ड्रग्स या अन्य नशीले पदार्थों के सेवन करने का शिकार पाया गया है तो बालक की नशा मुक्ति कार्यक्रम तक पहुंच सुनिश्चित की जाएगी।

(9) यदि बालक (विकलांग जन) दिव्यांग है तो दिव्यांगजन का अधिकार अधिनियम, 2016 (2016 का 49) के उपबंधों के अधीन उसकी समुचित उपाय और देखरेख की जाएगी।

7. विधिक सहायता और मदद - (1) विधिक सहायता और मदद के लिए सीडब्ल्यूसी जिला विधिक सेवा प्राधिकरण (जिसे इसमें इसके पश्चात "डीएलएस" कहा गया है) को सिफारिश करेगा।

(2) बालक को विधिक सहायता और मदद विधिक सेवा प्राधिकरण अधिनियम, 1987 (1987 का 39) के उपबंधों के अधीन प्रदान किया जाएगा।

8. विशेष राहत - (1) विशेष राहत के लिए, भोजन, कपड़ा, परिवहन और अन्य आकस्मिक आवश्यकता, यदि हो तो, सीडब्ल्यूसी उस स्थिति में अपेक्षित आंकलित रकम के तुरंत भुगतान के लिए निम्नलिखित के अधीन सिफारिश कर सकता है :-

- (i) धारा 357 के अधीन डीएलएसए; या;
- (ii) राज्य द्वारा उनके निपटारे के लिए रखी गई ऐसी निधि में से डीसीपीयू या;
- (iii) किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2) के अधीन रखी गई निधि

(2) इस तरह की आकस्मिक रकम का भुगतान शीघ्र सीडब्ल्यूसी से प्राप्त सिफारिश की प्राप्ति से एक सप्ताह के भीतर किया जाएगा।

9. मुआवजा- (1) प्राथमिकी (प्रथम सूचना रिपोर्ट) रजिस्ट्रीकृत होने के बाद किसी भी स्तर पर बालकों के राहत और पुनर्वास के लिए, विशेष न्यायालय, उचित मामलों में, स्वयं या बालकों द्वारा या उसके लिए फाईल किए गए आवेदन पर अंतरिम मुआवजे के लिए आदेश पारित कर सकता है। बालकों को भुगतान किए गए इस अंतरिम मुआवजे को अंतिम मुआवजा, यदि कोई हो तो, के साथ समंजित किया जाएगा।

(2) दोषी ठहराया जाता है, या जब मामले में अभिक्त निर्दोष करार दिया जाता है या रिहा कर दिया जाता है, या अभियुक्त का पता नहीं चल पाता या उसकी पहचान नहीं हो पाती, और विशेष न्यायालय के विचार में अपराध के कारण बालक को हानि या चोट पहुंचा हो, तो विशेष न्यायालय, स्वयं या बालक द्वारा या उसके लिए दायर आवेदन पर मुआवजा देने की सिफारिश कर सकता है।

(3) जहां विशेष न्यायालय दंड प्रक्रिया संहिता 1973(1974 का 2) की धारा 357क की उपधारा (2) और उपधारा(3) के साथ पठित, अधिनियम की धारा 33 की उपधारा (8) के अधीन निम्नलिखित सहित पीड़ित पहुंचे नुकसान या चोट से संबंधित सभी प्रासंगिक कारकों को ध्यान में रखकर पीड़ित के लिए मुआवजा देने का निदेश देगा:

- (i) दुर्व्यवहार का प्रकार, अपराध की गंभीरता और बालक को हुई मानसिक या शारीरिक हानि या चोट की गंभीरता;
- (ii) बालक के शारीरिक या मानसिक स्वास्थ्य या दोनों पर हुए खर्च या होने वाले संभावित चिकित्सा उपचार पर व्यय;
- (iii) अपराध के परिणाम स्वरूप मानसिक आघात के कारण स्कूल से अनुपस्थिति, शारीरिक चोट, चिकित्सा उपचार, अपराध की जांच और परीक्षण, या किसी अन्य कारण सहित शैक्षिक अवसर की हानि;
- (iv) अपराध के परिणाम स्वरूप रोजगार का नुकसान, मानसिक आघात, शारीरिक चोट, चिकित्सा उपचार, अपराध की जांच और परीक्षण, या किसी अन्य कारण सहित रोजगार की हानि;
- (v) अपराधी का बालक से संबंध, यदि कोई हो;
- (vi) क्या दुर्व्यवहार एक अलग-थलग घटना थी या क्या समय के साथ दुर्व्यवहार हुआ था;
- (vii) क्या अपराध के परिणाम स्वरूप बच्ची गर्भवती हो गई;
- (viii) क्या अपराध के परिणाम स्वरूप बालक यौन संचारित बीमारी (एसटीडी) के संपर्क में आया;
- (ix) क्या अपराध के परिणाम स्वरूप बालक मानव इम्यूनोडिफेंसिबिलिटी वायरस (एचआईवी) से संपर्क में आया ;
- (x) अपराध के परिणाम स्वरूप बालक में आई कोई दिव्यांगता;
- (xi) पुनर्वास की आवश्यकता अवधारित करने के लिए बालक की वित्तीय दशा जिसके विरुद्ध अपराध किया गया हो;
- (xii) अन्य कोई भी कारक जिसे विशेष न्यायालय प्रासंगिक समझ सकता है।

(4) विशेष न्यायालय द्वारा दिए गए मुआवजा का भुगतान राज्य सरकार द्वारा पीड़ितों के लिए क्षतिपूर्ति निधि, या अन्य स्कीम या उसके द्वारा पीड़ितों को मुआवजा देने और पुनर्वास करने हेतु दंड प्रक्रिया संहिता, 1973 की धारा 357क या जहां इस तरह की स्कीम और निधि नहीं है, वहां तत्समय प्रवृत्त किसी अन्य विधि के अधीन इस प्रयोजन के लिए स्थापित राज्य सरकार की निधि या स्कीम से किया जाएगा।

(5) विशेष न्यायालय द्वारा दिए गए आदेश की प्राप्ति के 30 दिन के भीतर राज्य सरकार मुआवजे का भुगतान करेगी।

(6) इन नियमों की कोई बात बालक या बालक के माता-पिता या ऐसा बालक जो किसी अन्य व्यक्ति पर भरोसा करता हो और उसे उस पर आत्म विश्वास है, को केन्द्रीय सरकार या राज्य सरकार के किसी अन्य नियमों या स्कीम के अधीन राहत की मांग के लिए आवेदन करने से नहीं रोकेगा।

10. जुर्माना अधिरोपण और इसके भुगतान की प्रक्रिया- (1) विशेष न्यायालय द्वारा अधिनियम के अधीन अधिरोपित जुर्माने का रकम जिसे पीड़ित को भुगतान किया जाना है, वास्तव में बालक को ही भुगतान हो, इसको सुनिश्चित करने के लिए सीडब्ल्यूसी डीएलएसए के साथ समन्वय करेगा।

(2) डीसीपीयू और मददगार व्यक्ति की सहायता से सीडब्ल्यूसी बैंक खाता खुलवाने की किसी भी प्रक्रिया के लिए पहचान की सबूत, आदि की सुविधा प्रदान करेगा।

11. बालक को सम्मिलित करने वाली अश्लील सामग्री की रिपोर्टिंग- (1) कोई भी व्यक्ति जिसे बालक को सम्मिलित करने वाली कोई अश्लील सामग्री मिली है, या ऐसी किसी भी अश्लील सामग्री के बारे में जानकारी संग्रहित, वितरित, परिचालित, प्रसारित, प्रचार-प्रसार की सुविधा प्रदान करने, या प्रचारित या प्रदर्शित करने, या वितरित होने, सुगम होने या किसी भी तरीके से प्रसारित होने की सूचना मिलती है, वह एसजेपीयू या स्थानीय पुलिस को, या जैसा भी मामला हो, साइबर क्राइम पोर्टल (cybercrime.gov.in) पर सामग्री की रिपोर्ट करेगा और इस तरह की रिपोर्ट प्राप्त होने पर, समय-समय पर जारी किए गए सरकार के निर्देशों के अनुसार एसजेपीयू या स्थानीय पुलिस या साइबर क्राइम पोर्टल आवश्यक कार्रवाई करेगा।

(2) यदि उप-नियम (1) में वर्णित "व्यक्ति" एक "मध्यस्थ" है जैसा कि सूचना प्रौद्योगिकी अधिनियम, 2000 की धारा 2 की उप-धारा (1) के उपबंध (डब्ल्यू) में परिभाषित है, तो ऐसा व्यक्ति साथ में रिपोर्टिंग के अतिरिक्त, जैसा कि उप-नियम (1) में उपबंध किया गया है, ऐसी सामग्री तैयार होने के सृजन स्रोत सहित आवश्यक सामग्री को एसजेपीयू या स्थानीय पुलिस, या जैसा कि मामला हो, साइबर-क्राइम पोर्टल (cybercrime.gov.in) को सौंपेगा और उक्त सामग्री की प्राप्ति पर, एसजेपीयू या स्थानीय पुलिस या साइबर-क्राइम पोर्टल समय-समय पर जारी सरकार के निर्देशों के अनुसार आवश्यक कार्रवाई करेगा।

(3) रिपोर्ट में उस आकृति का विवरण शामिल होगा जिसमें उस प्लेटफॉर्म सहित ऐसी अश्लील सामग्री देखी गई थी और वह संदिग्ध आकृति जिससे सामग्री प्रदर्शित की गई थी और संदिग्ध सामग्री प्राप्त हुई थी।

(4) केन्द्रीय सरकार और प्रत्येक राज्य सरकार समय-समय पर इस तरह की रिपोर्ट बनाने की प्रक्रियाओं के बारे में व्यापक जागरूकता पैदा करने के सभी प्रयास करेगी।

12. अधिनियम का कार्यान्वयन और निगरानी- (1) बाल अधिकार संरक्षण अधिनियम, 2005 (2006 के 4) के राष्ट्रीय बाल अधिकार संरक्षण आयोग (जिसे इसके पश्चात् "एनसीपीसीआर" कहा गया है) या राज्य बाल अधिकार संरक्षण आयोग (जिसे इसके पश्चात् "एससीपीसीआर" कहा गया है), जैसा भी मामला हो उन्हें सौंपे गए कार्यों के अतिरिक्त अधिनियम के उपबंधों के कार्यान्वयन करने के लिए निम्नलिखित कार्य करेंगे :-

- (क) राज्य सरकारों द्वारा विशेष न्यायालयों की अभिहित की निगरानी;
- (ख) राज्य सरकारों द्वारा विशेष लोक अभियोजकों की नियुक्ति की निगरानी;
- (ग) गैर-सरकारी संगठनों, वृत्तिकों और विशेषज्ञों या बालक की सहायता करने के लिए पूर्व परीक्षण और परीक्षण चरण और इन मार्गदर्शक सिद्धांतों के उपयोग की निगरानी के लिए मनोविज्ञान, सामाजिक कार्य, शारीरिक स्वास्थ्य, मानसिक स्वास्थ्य और बालकों के विकास से जुड़े संबंधित ज्ञान वाले व्यक्तियों के उपयोग के लिए राज्य सरकारों द्वारा अधिनियम की धारा 39 में वर्णित मार्गदर्शक सिद्धांतों के निरूपण की निगरानी;
- (घ) अधिनियम के अधीन अपने कार्यों के प्रभावी निर्वहन के लिए केन्द्रीय और राज्य सरकारों के अधिकारियों सहित पुलिस कर्मियों और अन्य संबंधित व्यक्तियों के लिए प्रशिक्षण मॉड्यूल की डिजाइन तैयार करने और कार्यान्वयन की निगरानी;
- (ङ.) केन्द्रीय सरकार और राज्य सरकारों द्वारा टेलीविजन, रेडियो और प्रिंट मीडिया सहित मीडिया के माध्यम से नियमित अंतराल पर अधिनियम के उपबंधों से संबंधित सूचना के प्रसार की निगरानी और समर्थन करना, ताकि आम लोग, बालकों के साथ-साथ उनके माता-पिता और अभिभावक अधिनियम के उपबंधों से अवगत हो सकें।
- (च) सीडब्ल्यूसी के अधिकार क्षेत्र में आने वाले बाल यौन शोषण के किसी विशेष मामले की रिपोर्ट मंगाना।

- (छ) निम्नलिखित से संबंधित जानकारी सहित अधिनियम के अधीन की प्रक्रियाओं के अधीन यौन दुर्व्यवहार के मामलों और उनके निपटान के बारे में संबंधित एजेंसियों या स्वयं से जानकारी या आंकड़ा संग्रह करना: -
- अधिनियम के अधीन रिपोर्ट किए गए अपराधों की संख्या और विवरण;
 - क्या प्रक्रियाओं में शामिल टाइमफ्रेम सहित अधिनियम और नियमों के अधीन विहित प्रक्रियाओं का पालन किया गया था;
 - इस अधिनियम के अधीन अपराधों के पीड़ितों की देखरेख और आपातकालीन चिकित्सा देखभाल और चिकित्सा परीक्षा की व्यवस्था सहित सुरक्षा की व्यवस्था का विवरण, और,
 - किसी भी विशिष्ट मामले में संबंधित सीडब्ल्यूसी द्वारा बालकों की देखभाल और सुरक्षा की आवश्यकता के आकलन के बारे में विवरण;
- (ज) अधिनियम के उपबंधों के कार्यान्वयन का आकलन करने के लिए एकत्रित जानकारी का उपयोग करना। अधिनियम की निगरानी की रिपोर्ट को एनसीपीसीआर या एससीपीसीआर की वार्षिक रिपोर्ट में एक अलग अध्याय में शामिल किया जाएगा।

(2) संबंधित अधिकारियों को अधिनियम के अधीन डेटा एकत्र करने, इस तरह के डेटा को केंद्रीय सरकार और प्रत्येक राज्य सरकार, एनसीपीसीआर और एससीपीसीआर के साथ साझा करने का अधिदेश प्राप्त है।

13. निरसन- इस निरसन से पहले की गई कोई बात या किए जाने वाले लोप के सिवाय लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 इसके द्वारा निरसित किया जाता है।

प्ररूप-क

सूचना और सेवाएं प्राप्त करने के लिए यौन शोषण पीड़ित बालकों का अधिकार

- एफआईआर की प्रति प्राप्त करना।
- पुलिस द्वारा पर्याप्त सुरक्षा और संरक्षण प्राप्त करना।
- सिविल अस्पताल /पीएचसी, आदि से शीघ्र और निःशुल्क चिकित्सीय परीक्षण प्राप्त करना।
- मानसिक और मनोवैज्ञानिक कुशलता के लिए परामर्श और सलाह प्राप्त करना।
- महिला पुलिस अधिकारी द्वारा बालक के बयान की रिकॉर्डिंग के लिए बालक के घर या बालक के लिए सुविधाजनक किसी अन्य स्थान प्राप्त करना।
- जब अपराध घर या संयुक्त परिवार में हुआ हो जहां बालक का किसी व्यक्ति की निगरानी से भरोसा उठ गया हो, वहां से बाल देखरेख संस्थान में स्थानांतरित होना।
- सीडब्ल्यूसी की सिफारिश पर तत्काल सहायता और मदद पाना।
- मुकदमे के दौरान और अन्यथा आरोपियों से दूर रखा जाना।
- जहां आवश्यक हो, दुभाषिये या अनुवादक प्राप्त करना।
- अक्षम बालक या अन्य विशिष्ट बालक के लिए विशेष शिक्षक पाना।
- निःशुल्क विधिक सहायता पाना।
- बाल कल्याण समिति द्वारा समर्थन व्यक्ति को नियुक्त किया जाना
- शिक्षा जारी रखना।
- निजता और गोपनीयता।
- जिला मजिस्ट्रेट और पुलिस अधीक्षक सहित महत्वपूर्ण संपर्क नंबरों की सूची पाना

ड्यूटी अधिकारी

तारीख :

(नाम और पद का उल्लिखित किया जाए)

मैंने 'प्ररूप- क' की एक प्रति प्राप्त की है।

(पीड़ित /माता-पिता /संरक्षक का हस्ताक्षर)

(टिप्पण: प्ररूप का अनुवाद स्थानीय सरल और बाल सुलभ भाषा में किया जा सकता है।)

प्रारंभिक आंकलन रिपोर्ट

	मापदंड	टिप्पणी
1	पीडित की उम्र	
2	अपराधी से बालक का संबंध	
3	अपराध का प्रकार और उसकी गंभीरता	
4	बालक की चोट की गंभीरता, मानसिक और शारीरिक नुकसान का विवरण	
5	क्या बच्चा विकलांग (शारीरिक, मानसिक या बौद्धिक) है।	
6	पीडित के माता-पिता की आर्थिक स्थिति, बालक के परिवार के सदस्यों की कुल संख्या, बालक के माता-पिता का व्यवसाय और परिवार की मासिक आय के बारे में विवरण	
7	क्या पीडित की मृत्यु हो गई है या वर्तमान मामले की घटना के कारण किसी चिकित्सा उपचार से गुजर रहा है या अपराध के कारण चिकित्सा उपचार की आवश्यकता है	
8	क्या मानसिक आघात, शारीरिक चोट, चिकित्सा उपचार, जांच और परीक्षण या अन्य कारणों से स्कूल से अनुपस्थिति सहित अपराध के परिणामस्वरूप शैक्षिक अवसर का नुकसान हुआ है?	
9	क्या दुर्व्यवहार एक अलग-थलग घटना थी या क्या यह दुर्व्यवहार समय के साथ हुआ था?	
10	क्या पीडित के माता-पिता का किसी प्रकार का इलाज चल रहा है या उन्हें कोई स्वास्थ्य संबंधी समस्या है ?	
11	अगर उपलब्ध हो, तो बालक का आधार संख्या	

तारीख :

थाना अध्यक्ष

[फा. सं. 30/1/2019/Cw-I]

आस्था सक्सेना खटवानी, संयुक्त सचिव

MINISTRY OF WOMEN AND CHILD DEVELOPMENT

NOTIFICATION

New Delhi, the 9th March, 2020

G.S.R. 165(E).—In exercise of the powers conferred by 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. (1) Short title and commencement.—These rules may be called the Protection of Children from Sexual Offences Rules, 2020.

(2) They 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 106 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016);

- (c) “expert” means a person trained in mental health, medicine, child development or other relevant 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 disabilities in a way that addresses the child’s individual abilities and needs, which include challenges with learning and communication, emotional and behavioral issues, physical disabilities, and developmental issues.

Explanation.—For the purposes of this clause, the expression “disabilities”, shall carry the same meaning as defined in clause (s) of section 2 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016);

- (e) “Person familiar with the manner of communication of the child” means a parent or family member of a child or a member of child’s 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 the Child Welfare Committee, in accordance with sub-rule (7) 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. Awareness generation and capacity building.—(1) The Central Government, or as the case may be, the State Government shall prepare age-appropriate educational material and curriculum for children, informing them about various aspects of personal safety, including—

- (i) measures to protect their physical, and virtual identity; and to safeguard their emotional and mental wellbeing;
- (ii) prevention and protection from sexual offences;
- (iii) reporting mechanisms, including Child helpline-1098 services;
- (iv) inculcating gender sensitivity, gender equality and gender equity for effective prevention of offences under the Act.

(2) Suitable material and information may be disseminated by the respective Governments in all public places such as panchayatbhavans, community centers, schools and colleges, bus terminals, railway stations, places of congregation, airports, taxi stands, cinema halls and such other prominent places and also be disseminated in suitable form in virtual spaces such as internet and social media.

(3) The Central Government and every State Government shall take all suitable measures to spread awareness about possible risks and vulnerabilities, signs of abuse, information about rights of children under the Act along with access to support and services available for children.

(4) Any institution housing children or coming in regular contact with children including schools, creches, sports academies or any other facility for children must ensure a police verification and background check on periodic basis, of every staff, teaching or non-teaching, regular or contractual, or any other person being an employee of such Institution coming in contact with the child. Such Institution shall also ensure that periodic training is organised for sensitising them on child safety and protection.

(5) The respective Governments shall formulate a child protection policy based on the principle of zero-tolerance to violence against children, which shall be adopted by all institutions, organizations, or any other agency working with, or coming in contact with children.

(6) The Central Government and every State Government shall provide periodic trainings including orientation programmes, sensitization workshops and refresher courses to all persons, whether regular or contractual, coming in contact with the children, to sensitize them about child safety and protection and educate them regarding their responsibility under the Act. Orientation programme and intensive courses may also be organized for police personnel and forensic experts for building their capacities in their respective roles on a regular basis.

4. Procedure regarding care and protection of child.— (1) Where any Special Juvenile Police Unit (hereafter referred to as “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 the report of such information shall forthwith disclose to the person making the report, the following details:-

- (i) his or her 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) If any such information regarding the commission of an offence under the provisions of the Act is received by the child helpline-1098, the child helpline shall immediately report such information to SJPU or Local Police.
- (3) 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 (2 of 1974), and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of that 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 6;
 - (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 immediately;
 - (e) inform the child and child's 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 child's 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.
- (4) 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.
- (5) 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, 2015 (2 of 2016), 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 child's family or shared household and placed in a children's home or a shelter home.
- (6) 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, namely:—
- (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 counseling;
 - (ii) the need for the child to remain in the care of parent's, 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.
- (7) The child and child's 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.

(8) The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and child's 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 in all possible manner throughout the process of investigation and trial, and shall immediately inform the SJPU or Local Police about providing a support person to the child.

(9) The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he or she has access and shall keep the child and child's parent or guardian or other person in whom the child has trust and confidence, informed regarding the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. The Support person shall also inform the child of the role the Support person may play in the judicial process and ensure that any concerns that the child may have, regarding child's safety in relation to the accused and the manner in which the Support person would like to provide child's testimony, are conveyed to the relevant authorities.

(10) 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.

(11) The services of the support person may be terminated by the CWC upon request by the child and child's 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.

(12) The CWC shall also Seek monthly reports from support person till the completion of trial, with respect to condition and care of child, including the family situation focusing on the physical, emotional and mental wellbeing, and progress towards healing from trauma; engage with medical care facilities, in coordination with the support person, to ensure need-based continued medical support to the child, including psychological care and counseling; and shall ensure resumption of education of the child, or continued education of the child, or shifting of the child to a new school, if required.

(13) It shall be the responsibility of the SJPU, or the local police to keep the child and child's 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.

(14) SJPU or the local police shall also inform the child and child's parents or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act or any other law for the time being applicable as per **Form-A**. It shall also complete the Preliminary Assessment Report in **Form B** within 24 hours of the registration of the First Information Report and submit it to the CWC.

(15) The information to be provided by the SJPU, local police, or support person, to the child and child's 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 victim's 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. Interpreters, translators, special educators, experts and support persons.—(1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators, experts, special educators and support persons for the purposes of the Act, and this register shall be made available to the SJPU, local police, magistrate or Special Court, as and when required.

(2) The qualifications and experience of the interpreters, translators, special educators, experts and support persons 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, and rule 4 respectively 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 child's 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 child's 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 recognised University or an institution recognised by the Rehabilitation Council of India.

(6) 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 child's 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.

(7) Payment for the services of an interpreter, translator, special educator, expert or support person 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 105 of the Juvenile Justice Act, 2015 (2 of 2016), or from other funds placed at the disposal of the DCPU.

(8) Any interpreter, translator, special educator, expert or support person engaged for the purpose of assisting a child under this Act, shall be paid a fee which shall be prescribed by the State Government, but which, shall not be less than the amount prescribed for a skilled worker under the Minimum Wages Act, 1948 (11 of 1948).

(9) 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, expert or support person, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child.

(10) The interpreter, translator, special educator, expert, support person 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 and 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 (2 of 1974).

(11) 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, support person 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.

(12) Any interpreter, translator, special educator, expert or support person appointed under the Act shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872 (1 of 1872).

6. Medical aid and 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, such officer, or as the case may be, the local police shall, within 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility center 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 center 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 medical care shall attend to the needs of the child, including:

- (a) treatment for cuts, bruises, and other injuries including genital injuries, if any;

- (b) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;
- (c) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;
- (d) 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,
- (e) wherever necessary, a referral or consultation for mental or psychological health needs, or other counseling, or drug de-addiction services and programmes should be made.

(5) The registered medical practitioner shall submit the report on the condition of the child within 24 hrs to the SJPU or Local Police.

(6) Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act.

(7) If the child is found to be pregnant, then the registered medical practitioner shall counsel the child, and her parents or guardians, or support person, regarding the various lawful options available to the child as per the Medical Termination of Pregnancy Act 1971 and the Juvenile Justice (Care and Protection of Children) Act 2015 (2 of 2016).

(8) If the child is found to have been administered any drugs or other intoxicating substances, access to drug de-addiction programme shall be ensured.

(9) If the Child is a divyang (person with disability), suitable measure and care shall be taken as per the provisions of The Rights of Persons with Disabilities Act, 2016 (49 of 2016).

7. Legal aid and assistance.—(1) The CWC shall make a recommendation to District Legal Services Authority (hereafter referred to as “DLSA”) for legal aid and assistance.

(2) The legal aid and assistance shall be provided to the child in accordance with the provisions of the *Legal Services Authorities Act, 1987* (39 of 1987).

8. Special relief.—(1) For special relief, if any, to be provided for contingencies such as food, clothes, transport and other essential needs, CWC may recommend immediate payment of such amount as it may assess to be required at that stage, to any of the following:-

- (i) the DLSA under Section 357A; or;
- (ii) the DCPU out of such funds placed at their disposal by state or;
- (iii) funds maintained under section 105 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016);

(2) Such immediate payment shall be made within a week of receipt of recommendation from the CWC.

9. 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 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, 1973 (2 of 1974) 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 child’s medical treatment for physical or mental health or on both;
- (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 such child's 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, 1973 or any other law 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 child's 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.

10. Procedure for imposition of fine and payment thereof.—(1) The CWC shall coordinate with the DLSA to ensure that any amount of fine imposed by the Special Court under the Act which is to be paid to the victim, is in fact paid to the child.

(2) The CWC will also facilitate any procedure for opening a bank account, arranging for identity proofs, etc., with the assistance of DCPU and support person.

11. Reporting of pornographic material involving a child.—(1) Any person who has received any pornographic material involving a child or any information regarding such pornographic material being stored, possessed, distributed, circulated, transmitted, facilitated, propagated or displayed, or is likely to be distributed, facilitated or transmitted in any manner shall report the contents to the SJPU or local police, or as the case may be, cyber-crime portal (cybercrime.gov.in) and upon such receipt of the report, the SJPU or local police or the cyber-crime portal take necessary action as per the directions of the Government issued from time to time.

(2) In case the "person" as mentioned in sub-rule (1) is an "intermediary" as defined in clause (w) of sub-section (1) of section 2 of the Information Technology Act, 2000, such person shall in addition to reporting, as provided under sub-rule(1), also hand over the necessary material including the source from which such material may have originated to the SJPU or local police, or as the case may be, cyber-crime portal (cybercrime.gov.in) and upon such receipt of the said material, the SJPU or local police or the cyber-crime portal take necessary action as per the directions of the Government issued from time to time.

(3) The report shall include the details of the device in which such pornographic content was noticed and the suspected device from which such content was received including the platform on which the content was displayed.

(4) The Central Government and every State Government shall make all endeavors to create widespread awareness about the procedures of making such reports from time to time.

12. 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 (4 of 2006), perform the following functions for implementation of the provisions of the Act—

- (a) monitor the designation of Special Courts by State Governments;
- (b) monitor the appointment of the Special Public Prosecutors by the State Governments;
- (c) 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) monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Centre and State Governments, for the effective discharge of their functions under the Act;
- (e) 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.
- (f) call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.
- (g) collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes provided 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;
- (h) 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.

(2) The concerned authorities mandated to collect data, under the Act, shall share such data with the Central Government and every State Government, NCPCR and SCPCRs.

13. Repeal.—The Protection of Children from Sexual Offences Rules, 2012 are hereby repealed, except as respects things done or omitted to be done before such repeal.

FORM -A

Entitlement of children who have suffered sexual abuse to receive information and services

1. To receive a copy of the FIR.
2. To receive adequate security and protection by Police.
3. To receive immediate and free medical examination by civil hospital/PHC etc.
4. To receive Counseling and consultation for mental and psychological well being
5. For Recording of statement of child by woman police officer at child's home or any other place convenient to child
6. To be moved to a Child Care Institution where offence was at home or in a shared household, to the custody of a person whom child reposes faith.
7. For Immediate aid and assistance on the recommendation of CWC.
8. For being kept away from accused at all times, during trial and otherwise.
9. To have an interpreter or translator, where needed.
10. To have special educator for the child or other specialized person where child is disabled.
11. For Free Legal Aid.
12. For Support Person to be appointed by Child Welfare Committee.
13. To continue with education.
14. To privacy and confidentiality.
15. For list of Important Contact No.'s including that of the District Magistrate and the Superintendent of Police.

Duty Officer

(Name & Designation to be mentioned)

Date:

I have received a copy of 'Form-A'

(Signature of Victim/Parent/Guardian)

(Note :The form may be converted in local and simple Child friendly language)

FORM-B

PRELIMINARY ASSESSMENT REPORT

PARAMETERS	COMMENT
1. Age of the victim	
2. Relationship of child to the offender	
3. Type of abuse and gravity of the offence	
4. Available details and severity of mental and physical harm/injury suffered by the child	
5. Whether the child is disabled (physical, mental or intellectual)	
6. Details regarding economic status of victim's parents, total number of child's family members, occupation of child's parents and monthly family income.	
7. Whether the victim has undergone or is undergoing any medical treatment due to incident of the present case or needs medical treatment on account of offence.	
8. Whether there has been 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 or other reason?	
9. Whether the abuse was a single isolated incident or whether the abuse took place over a period of time?	
10. Whether the parents of victim are undergoing any treatment or have any health issues?	
11. Aadhar No. of the child, if available.	

Date:

Station House Officer

[F. No. 30/1/2019-Cw-I]

AASTHA S. KHATWANI, Jt. Secy.


सत्यमेव जयते

भारत का राजपत्र The Gazette of India

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MINISTRY OF WOMEN AND CHILD DEVELOPMENT

CORRIGENDUM

New Delhi, the 17th March, 2020

G.S.R. 188(E).—In exercise of the powers conferred by Section 45 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), Ministry of Women & Child Development vide G.S.R. 165(E) dated 09.03.2020 had notified the Protection of Children from Sexual Offences Rules, 2020. In the Hindi version of said Rules, in clause-13, page-9, the words “संरक्षण अधिनियम, 2012” may be read as “संरक्षण नियम, 2012” and the words “नाम और पद का उल्लिखित किया जाए” in Form-A, page-9, may be read as “नाम और पद का उल्लेख किया जाए”.

[F. No. CW-I-30/1/2019-CW-I]

AASTHA SAXENA KHATWANI, Jt. Secy.

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LANDMARK JUDGMENTS UNDER POCSO ACT

Special Courts and Procedures for Trial under POCSO Act, 2012

Need for POCSO Act, 2012

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) is a special enactment which provides punishment for penetrative, touch, and non-touch based sexual offences against children and also mandates the establishment of Special Courts and procedures for trial of offences involving children as the statute was enacted to protect children from offences arising out of sexual assault, sexual harassment and pornography and provides for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto. The Act 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".

The objective of enacting the POCSO Act, 2012 is to protect the children from various types of sexual offences and to establish Special Court for providing speedy disposal of cases.

Before this Act, most of the sexual offences were covered under IPC, 1860. But IPC provisions were general in nature and it was felt that they were inadequate to deal with sexual offences against children.

Sexual offence against a boy is also covered under POCSO Act. The Act is gender neutral as it does not distinguish between boy and girl.

Jurisdiction of Special Courts

At the outset it will be relevant to note the circumstance in which the special courts shall have the jurisdiction in matters of sexual offences against a child. The Act emphatically lays down the provisions for its age determination, cognizance of offences and the special procedure for trial in such cases. The Jurisdiction, as is stated above of Special Court constituted in terms of section 28 of the Act arises when the victim is a child, either boy or a girl of sexual offence fully defined under sections 3 to 22.

The Special Court designated under the POCSO Act will have the jurisdiction to try offences in addition to those under the POCSO Act with which the accused has been charged under the I. P.C at the same trial as stated here in above. Where the accused has been charged under the Atrocities Act along with the POCSO Act, the matter will be tried by the Special Court under the POCSO Act and not the Special Court under the Atrocities Act.

As per the provisions contained under section 28(3) of the POCSO Act the court will also have the jurisdiction to try offences relating to publication or transmission of sexually explicit material depicting children in any act or conduct or manner that facilitates abuse of children online under Section 67B, Information Technology Act, 2000. The aim and object of the Act as set out in the preamble makes it a complete code with respect to all species of sexual offences with respect to a child. The incidental matter with regard to such offences has also been covered under this Act. The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) is the core law

relating to 'children in need of care and protection' and children in conflict with the law, providing for care, protection, development, treatment, social re-integration, and rehabilitation through a child-friendly approach. Every child who, is a victim under the POCSO Act 2015 is concerned, is undoubtedly a child in need of care and protection as defined under the JJ Act.

Definition of Child as per POCSO Act

POCSO Act defines child as any person below 18 years of age. (Section 2)

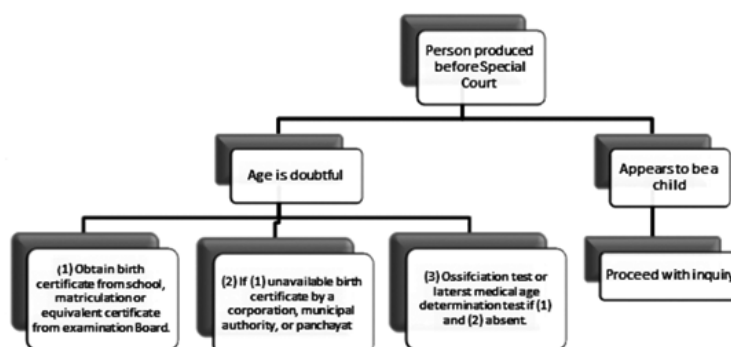
How to Assess Age of a Child Victim?

Jurisdiction of Special Court turns on the age of victim child. It does not matter whether victim belongs to SC or ST category and the offence also comes under The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989), if he or she is a child under 18 years of age. The power of age determination has therefore been vested in the Special Court under Section 34 of the Act.

A parent may walk in with a child to lodge a FIR alleging sexual abuse. A child victim of a brutal sexual assault may be found abandoned on the roadside by a patrolling police vehicle. After institution of FIR and receipt of the same in the court for the purpose of trial as well as for the purpose of disposal of other interlocutory applications including bail applications involving the issues relating to age of the victim the court may have to prima facie determine the age of the child, particularly to determine whether the victim is indeed a child under the POCSO Act, 2012, or other relevant laws. There is no doubt that when the age of the victim is to be assessed or ascertained the provisions of Section 94 of JJ Act are applicable. The provision of the Juvenile Justice Act become relevant and are to be read along with the provisions of the THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO ACT) so far as the determination of the age of the victim too is concerned.

This is crucial because certain child-friendly procedures need to be followed and legal provisions applied if the victim is a child. For instance, if the child is a victim of penetrative sexual assault or sexual assault and is below 12 years, the offence will be aggravated under the POCSO Act and the relevant provisions will have to be mentioned in the FIR.

It may be difficult to assess the age when the child appears to be on the borderline. Erring on the side of caution, the police may treat such a person as a child and produce him/her before the CWC or the Special Court under the POCSO Act, as the case may be. This is because these bodies have the authority under the JJ Act, 2015 Section 94 and the POCSO Act Section 34(2), respectively, to determine age.



The above process can be followed by any court before which the age of a person either the victim or the accused is in question. The moot question is what steps are to be followed in case age of a minor or child is to be ascertained.

If the person alleged to have committed a sexual offence looks clearly above 18, but the defence produces document to show he is under 18, what should be done?

Under Section 94(1), JJ Act, 2015, appearance of a person can be relied upon only to conclude that the person is a child. It cannot be the basis to conclude that the person was an adult. According to Section 94(2), JJ Act, 2015, the birth certificate from school, matriculation or evaluation certificates will be considered to determine if the person is a child. If these documents are not available, the birth certificate by a corporation municipal authority, or a Local Body will be considered. If these are also unavailable, the JJB or CWC can order an ossification test or latest medical age determination test. The Special Court under the POCSO Act could also adhere to the procedure prescribed under the JJ Act, 2015 for age-determination as in *Jarnail Singh v. State of Haryana*, (2013) 7 SCC 263 the Supreme Court has held that the procedure to determine age of a child in conflict with the law can be used to determine age of a child victim.

Important Case Laws on Determination of Age.

1. **Jarnail Singh v. State of Haryana, (AIR 2013 SC 3467)**

The Supreme Court held that Rule 12 of the erstwhile Juvenile Justice (Care and Protection of Children) Rules, 2007, which detailed the age determination process for children in conflict with the law should be applied to determine the age of a child victim. It was held that: "Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime."

2. **State of M.P. v. Anoop Singh ((2015) 7 SCC 773)**

The Apex Court in this case, observed as follows:

We believe that the present case involves only one issue for this Court to be considered, which is regarding the determination of the age of the prosecutrix.

In the present case, the central question is whether the prosecutrix was below 16 years of age at the time of the incident? The prosecution in support of their case adduced two certificates, which were the birth certificate and the Middle School Certificate. The date of birth of the prosecutrix has been shown as 29-8-1987 in the birth certificate (Ext. P-5), while the date of birth is shown as 27-8-1987 in the Middle School Examination Certificate. There is a difference of just two days in the dates mentioned in the above mentioned exhibits. The trial court has rightly observed that the birth certificate, Ext. P-5 clearly shows that the registration regarding the birth was made on 30-10-1987 and keeping in view the fact that registration was made within 2 months of the birth, it could not be guessed that the prosecutrix was shown as under aged in view of the possibility of the incident in question. We are of the view that the discrepancy of two days in the two documents adduced by the

prosecution is immaterial and the High Court was wrong in presuming that the documents could not be relied upon in determining the age of the prosecutrix.

This Court in *Mahadeo v. State of Maharashtra* [(2013) 14 SCC 637 : (2014) 4 SCC (Cri) 306] has held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is applicable in determining the age of the victim of rape. Rule 12(3) reads as under:

“12.(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
- (ii) the date of birth certificate from the school first attended (other than a play school); and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.” 15. This Court further held in para 12 of *Mahadeo* [(2013) 14 SCC 637 : (2014) 4 SCC (Cri) 306] , as under: (SCC p. 641)

This Court further held in para 12 of *Mahadeo* [(2013) 14 SCC 637 : (2014) 4 SCC (Cri) 306], as under: (SCC p. 641)

“12. ... Under Rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rules 12(3)(a)(i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of the juvenile in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well.” (emphasis supplied)

This Court therefore relied on the certificates issued by the school in determining the age of the prosecutrix. In para 13, this Court observed: (*Mahadeo case* [(2013) 14 SCC 637 : (2014) 4 SCC (Cri) 306] , SCC p. 641

“13. In light of our above reasoning, in the case on hand, there were certificates issued by the school in which the prosecutrix did her Vth standard and in the school leaving certificate issued by the school under Ext. 54, the date of birth of the prosecutrix has been clearly noted as 20-5-1990, and this document was also proved by PW 11. Apart from that the transfer certificate as well as the admission form maintained by the

Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20-5-1990. The reliance placed upon the said evidence by the courts below to arrive at the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of the occurrence was perfectly justified and we do not find any grounds to interfere with the same.”

16. In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rule 12(3)(b). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence in the form of Exts. P-5 and P-6 cannot be discarded. Therefore, the trial court was correct in relying on the documents.
17. The High Court also relied on the statement of PW 11 Dr A.K. Saraf who took the x-ray of the prosecutrix and on the basis of the ossification test, came to the conclusion that the age of the prosecutrix was more than 15 years but less than 18 years. Considering this the High Court presumed that the girl was more than 18 years of age at the time of the incident. With respect to this finding of the High Court, we are of the opinion that the High Court should have relied firstly on the documents as stipulated under Rule 12(3)(b) and only in the absence, the medical opinion should have been sought. We find that the trial court has also dealt with this aspect of the ossification test. The trial court noted that the respondent had cited *Lakhanlal v. State of M.P.* [2004 SCC OnLine MP 16 : 2004 Cri LJ 3962] , wherein the High Court of Madhya Pradesh said that where the doctor having examined the prosecutrix and found her to be below 18½ years, then keeping in mind the variation of two years, the accused should be given the benefit of doubt. Thereafter, the trial court rightly held that in the present case the ossification test is not the sole criterion for determination of the date of birth of the prosecutrix as her certificate of birth and also the certificate of her medical examination had been enclosed.
18. Thus, keeping in view the medical examination reports, the statements of the prosecution witnesses which inspire confidence and the certificates proving the age of the prosecutrix to be below 16 years of age on the date of the incident, we set aside the impugned judgment [*Anoop Singh v. State of M.P., Criminal Appeal No. 924 of 2006, order dated 10-7-2008 (MP)*] passed by the High Court and uphold the judgment and order dated 24-4-2006 passed by the Third Additional Sessions Judge, Satna in Special Case No. 123 of 2003.”

3. Ashwani Kumar Saxena v. State of Madhya Pradesh, AIR 2013 SC 553

The Supreme Court held:

“Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, JJ Board

or a Committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the JJ Board or the Committee need to go for medical report for age determination.”

1. **Shah Nawaz v. State of Uttar Pradesh, (2011) 13 SCC 751**

The Supreme Court observed that in accordance with the erstwhile JJ Model Rules, 2007

“...the medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any Panchayat or municipality is not available.”

2. **Birad Mal Singhvi v. AnandPurohit, AIR 1988 SC 1796**

In this case, the Supreme Court held that the basis on which the entry pertaining to date of birth in a school register was recorded needs to be established for it to have evidentiary value. It held: “To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.”

3. **Eera through Manjula Krippendorf v. State (Govt. of NCT of Delhi) and Ors (2017)15 SCC 133**

The issue before the apex court in this case was whether Section 2(d) of the POCSO Act which defines the term “child” should be interpreted to include the mental age of a person so that a mentally retarded person or extremely intellectually challenged person above the biological age of 18 years would come within its ambit. A two-judge bench of the Supreme Court held that such an interpretation would not be tenable because of the purpose of the legislation and the intention of Parliament. The court held “we would be doing violence both to the intent and the language of Parliament if we were to read the word "mental" into Section 2(1)(d) of the 2012 Act. Given the fact that it is a beneficial/ penal legislation, we as Judges can extend it only as far as Parliament intended and no further.”

4. **Mahadeo v. State of Maharashtra, (2013) 14 SCC 637**

The Court observed as follows:

11. Though the learned counsel for the appellant attempted to find fault with the said conclusion by making reference to the evidence of PW 8, the doctor, who examined the prosecutrix and who in her evidence stated that on her examination she could state that the age of the prosecutrix could have been between 17 to 25 years, it will have to be held that the rejection of the said submission even by the trial court was perfectly in order and justified. The trial court has found that to rely upon the said version of

PW 8, the doctor, scientific examination of the prosecutrix such as ossification test to ascertain the exact age should have been conducted which was not done in the present case and, therefore, merely based on the opinion of PW 8, the age of the prosecutrix could not be acted upon.

12. We can also in this connection make reference to a statutory provision contained in the Juvenile Justice (Care and Protection of Children) Rules, 2007, where under Rule 12, the procedure to be followed in determining the age of a juvenile has been set out. We can usefully refer to the said provision in this context, inasmuch as under Rule 12(3) of the said Rules, it is stated that: “12. (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, by the Committee by seeking evidence by obtaining— (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a Panchayat;” Under Rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rules 12(3)(a)(i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of a juvenile, in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well.
13. In the light of our above reasoning, in the case on hand, there were certificates issued by the school in which the prosecutrix did her Vth standard and in the school leaving certificate issued by the said school under Exhibit 54, the date of birth of the prosecutrix has been clearly noted as 20-5-1990, and this document was also proved by PW 11. Apart from that the transfer certificate as well as the admission form maintained by the Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20-5-1990. The reliance placed upon the said evidence by the courts below to arrive at the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of the occurrence was perfectly justified and we do not find any good grounds to interfere with the same.

8. Jabbar v. State 2018 SCC Online Delhi 9327

The court relied on ADHAR card for determining the age of the prosecutrix “We have perused the Aadhar Card (Ex.PW-11/H) and find that, in the said Card, the age of ‘S’ is, indeed, reflected as six years. We may also note that the veracity of the said Aadhar Card has not been questioned by the defence, at any stage of proceedings.”

The sexual offences which are recognized under the POCSO Act and their punishment

Penetrative and aggravated penetrative sexual assault, sexual and aggravated sexual assault, sexual harassment, and child harassment including using of child for pornographic purposes are the five offences against children that are covered by this act. This act envisages punishing even for abetment or for 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 and the various penal provisions in the act may be summarised in a tabular form for easy reference as below:

Description of offences	Relevant sections Under POCSO	Minimum sentence	Maximum sentence
Penetrative sexual assault	Sec-4	Seven years	Imprisonment for life
Aggravated Penetrative sexual assault	Sec-6	Ten years (R/I)	Imprisonment for life
Sexual assault	Sec-8	Three years	Five years
Aggravated sexual assault	Sec-10	Five years	Seven years
Sexual harassment	Sec-12		Three years
Using Child for pornographic purposes	Sec -14(1)		5 years & up to 7 years for subsequent offence
	Sec -14(2)	Ten years	Imprisonment for life
	Sec -14(3)	Rigorous Imprisonment for life	
	Sec -14(4)	Six years	Eight years
	Sec -14(5)	Eight years	Ten years
Storage of pornographic material involving child	Sec -15		Three years &/or Fine
Abatement of offence	Sec- 17	Provided for the offence	
Attempt to commit offence	Sec -18	Half of the longest term	
Failure to Report or Record Complaint	Sec-21		6 Months to 1 year &/or Fine
False Complaint or False Information	Sec - 22		6 Months to 1 year &/or Fine

All the above offences shall be punished with imprisonment for either description but aggravated penetrative sexual assault shall be punished with rigorous imprisonment. Imprisonment for life is always rigorous imprisonment. All the above offences shall also be liable to fine if not otherwise provided. Section 42 and 42 A provides that if the same act is an offence under IPC the stringent punishment of the two shall be awarded as the act is though overriding but not in derogation.

There are five types of sexual offences against children defined under Chapter II of POCSO Act. These are:

1. Penetrative sexual assault; (Sections 3)
2. Aggravated penetrative sexual assault; (Sections 5)
3. Sexual assault; (Sections 7)
4. Aggravated sexual assault; (Sections 9),
5. and Sexual harassment (Sections 11)
6. Using a child for pornographic purposes such as representation of the sexual organ of a child, usage of a child engaged in real or stimulated sexual acts, the indecent or obscene representation of a child is an offence under POCSO Act and is punishable (Section 13)
7. Abetment of an offence or an attempt to commit an offence is also punishable under the Act. (Section 16)

9. Persons with the mental age of a child do not fall within the purview of POCSO, holds SC

In the case of *Era v. State of NCT of Delhi*, the Supreme Court has held that an adult person with the mental age of a child cannot be treated as a victim under the Protection of Children from Sexual Offences Act. In this case, the victim/survivor aged 38 years had the mental age of a 6-8 year old child, and it was argued that the person accused of physically assaulting her must also be booked under POCSO Act, not only to recognize the severity of the offence committed by him, but also to ensure that the provisions of child-friendly procedural safeguards could be utilized by her, and to enable her to seek compensation under the POCSO Act. This appeal was dismissed by the Supreme Court on the ground that the language of the Act was clear, and its scope could not be unduly widened by the Court, as that would amount to judicial legislation.

Era v. State (Govt. of NCT of Delhi), 2017 SCC Online SC 787, 21-07-2017.

Special Courts under POCSO

A Special Court is a court to be set up under section 28 of the POCSO Act for providing speedy trial and to try the case in a child friendly atmosphere.

JJ Act, 2015, Section 2(15) defines the term “child-friendly” to mean “any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child.” This Act provides for setting up of institutional mechanisms to adjudicate and provide services to children in a comprehensive and holistic manner. It also specifies certain offences against children.

The Preamble of JJ Act, 2015 highlights the objectives of a ‘child-friendly’ approach and ‘best interest of the child’ principle in their care, protection, development, treatment, and social re-integration. The Principles underlined in Section 3, JJ Act, 2015, for guiding the juvenile justice system are as follows –

- Principle of presumption of innocence – Any child, who is a ‘child in conflict with law’ shall be presumed to be innocent of any mala fide or criminal intent up to the age of eighteen years.
- Principle of dignity and worth – All children, whether a child victim or a child in conflict with law shall be treated with equal dignity by the police, without showing any bias or prejudice, towards the situation that the child is facing. For example, a child seen begging on the road junction cannot be treated as a ‘beggar’ at par with an adult. The child shall be treated as a person who was made to beg by somebody.
- Principle of participation – The police shall hear the child and pay due respect to the wishes of the child – such as, when the child wants the police interview to discontinue, or the child expresses a desire to go home instead of to a Child Care Institution. Having heard the child’s views, the police should take them consideration in the totality of the situation and take decisions accordingly, with due regard to the age and maturity of the child. For example, a trafficked child or a child subjected to sexual abuse may change his statement a few times, depending on its capacity to recall the events. This is natural and cannot be construed as concoction or ‘padding’ as one would attribute to an adult victim.

- Principle of best interest – “All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.” The child, and the child alone should be the focal point of all decision making, vis-à-vis the other adults who might be affected by those decisions. For example, the police cannot insist on the institutionalization of a child victim of a sexual offence only because her family members may pressurize her to turn hostile. This is because separating her from her family when she has undergone abuse and needs their support may not be in her best interest. Separation, may however, be considered by the Child Welfare Committee (CWC) where the perpetrator is a family member.
- Principle of family responsibility – The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be. For instance, if a child begging on the street is living with the parents/ relatives who also work on the street, it may probably not be prudent to separate and immediately produce the child before the CWC. Action in this case could also involve an NGO who could counsel the family and take the child off the street from begging and into a school, whilst continuing to live with the family.
- Principle of safety – “All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.” Children are sometimes re-victimised in the child care institutions by the staff, or by other senior children. The police should ensure the child’s safety, within this care and protection system. It would also entail ensuring their safety and protection from the accused during an on-going investigation or trial.
- Positive measures – “All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.” Through community policing, by mapping the vulnerable populations and communities within cities, towns and villages, the police can prevent the occurrences of crimes against children and also of children committing offences.
- Principle of non-stigmatizing semantics – “Adversarial or accusatory words are not to be used in the processes pertaining to a child.” During interviewing a child victim, especially in cases of sexual offences, the police should not use language that attributes blame to the child for the crime. Similarly, when a child is alleged to have committed an offence, the police should not use language which, labels the child as a criminal. For example, a child rescued from a brothel can never be called a “child prostitute” as she was never one, whereas the fact is that she has been prostituted and victimized.
- Principle of non-waiver of rights – The child should get the benefit of all provisions of the JJ Act, and other fundamental rights as laid down in the Constitution. No authority, which is statutorily bound to take a decision for the child, can claim that these procedures need not be undertaken or be deemed to have been waived either by the child/ or the family/ guardians.

- Principle of equality and non-discrimination – There shall be no discrimination by the police against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child. For instance, the police should not automatically assume that a child from a rich family would be more intelligent and can participate in the justice process, but a child who lives with the parents on the street, need not be asked for his/ her opinion with respect to decisions affecting the child.
- Principle of right to privacy and confidentiality – The police should for instance, ensure that the child’s identity is never disclosed to the media, by the media or by anyone so as to identify the child – either as a victim or as a child in conflict with the law. The police should also maintain the confidentiality of their records with respect to processes under the JJ Act, for every child.
- Principle of institutionalization as a measure of last resort – Although it is for the CWC or the Juvenile Justice Board (JJB) to order for institutionalization of the child brought before them, the police may also remember that taking the child away from the family and placing it in an institution may not always be the best course of action.
- Principle of repatriation and restoration – Again, this is a point to be decided by the CWC or the JJB respectively, and is the ultimate responsibility of the Child Care Institution where the child is staying, but the police should be aware of this principle that the child has a right to be re-united with his/ her family at the earliest, if it is in the best interest of the child.
- Principle of fresh start – All past records of any child under the Juvenile Justice system should be erased except in special circumstances, as is provided for under the law. The police should not disclose records of children for character certificates in cases that are closed or disposed of.
- Principle of diversion – Measures for dealing with children in conflict with law without resorting to judicial proceedings are to be promoted by the JJB, unless it is in the best interest of the child or the society as a whole.
- Principles of natural justice – Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act. The Juvenile Justice Model Rules of 2016 provides that non-compliance with the Act and the Rules by any officer/institution, statutory body, etc., can invite action by the State Government against such officer/institution, statutory body etc., after due inquiry and simultaneously make alternative arrangements for discharge of functions for effective implementation of the Act (Rule 93).

Norms of a Child-friendly Trial

A parent or guardian should accompany the child at all times. In case they are accused of the offence against the child, another suitable person chosen by the child, or a representative of a fit institution as defined in the JJ Act, 2015, or a Support Person appointed by a CWC or a court should accompany the child.

Where the parents or guardians or someone living in the same shared house is the perpetrator or are involved in the commission of an offence or the child is living at a place where there is a risk of further trauma, the child should be produced before the CWC and the CWC may direct the child to be taken out of their custody or care, or out of such situation. In the context of a sexual offence against a child, the decision to take the child out of the custody of a parent, guardian, or childcare institution can be taken only by the Child Welfare Committee as per the provisions of Rule 4(3) and 4(4) of POCSO Rules. Courts before whom such children are produced should direct the police to present the child before the jurisdictional CWC.

- Age determination must be conducted as per the procedures laid out in Section 94, JJ Act, 2015.
- The language used in the court must be familiar to the child and where needed translators, interpreters, and special educators must be made available.
- The court must ensure beforehand that the child is capable of giving a voluntary statement.
- No statement of the child should be disregarded as evidence in the trial solely on the basis of the age of the child.
- Images or statements admissible in the interview of the child should not be detrimental to the mental or physical well-being of the child.
- Length and questions admissible at the interview should not be taxing and must be suitable to the attention span of the child.
- In case of young children, or otherwise incapacitated child, alternative methods of interaction and evidence collection that is less intimidating to be adopted.
- The Court should ensure that at no stage during trial, the child comes face to face with the accused.
- Special permission from school and arrangement for remedial classes for days lost to be ensured by the school authorities.
- Identity of the child should be protected from the media

Roles of Special Court under POCSO Act during the trial

Child-friendly atmosphere

- Special Courts should create a child-friendly atmosphere by allowing a family member, guardian, friend, or relative whom the child trusts or has confidence in to be present. (Section 33(4), POCSO Act).
- They should ensure that the child is not repeatedly called to testify in court. (Section 33(5), POCSO Act)
- They should ensure that identity of the child is not disclosed at any time during investigation or trial unless the disclosure is in the interest of the child. Reasons should be recorded in writing if disclosure is allowed. (Section 33(7), POCSO Act)

- Special Courts should determine the age of the child when the question arises before the court and adhere to the provisions of the JJ Act, 2015 on age-determination.(Section 34(2), POCSO Act)
- They should ensure that the child is not exposed to the accused at the time of recording the evidence and that the accused is able to hear the statement of the child and communicate with his advocate. Video conferencing, single visibility mirrors, curtains, or any other device should be used to facilitate this.(Section 36, POCSO Act)
- They should conduct the trial in camera and in the presence of parents of the child or any other person in whom the child has trust or confidence. (Section 37, POCSO Act)
- Special Courts should examine the child in a place other than the courtroom if the situation requires it.(Section 37, POCSO Act)
- The Special Court shall complete the trial within a period of one year from the date of taking cognizance of the offence (Section 35). The apex court has issued guidelines in the case of **Alakh Alok Srivastava v. Union of India and Ors.** 2018 SCC Online SC 478 in following words:

24. It is submitted by Mr. Srivastava that in both the States, the cases are pending at the evidence stage beyond one year. We are absolutely conscious that Section 35(2) of the Act says "as far as possible". Be that as it may, regard being had to the spirit of the Act, we think it appropriate to issue the following directions:— (i) The High Courts shall ensure that the cases registered under the POCSO Act are tried and disposed of by the Special Courts and the presiding officers of the said courts are sensitized in the matters of child protection and psychological response. (ii) The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under the POCSO Act. (iii) The instructions should be issued to the Special Courts to fast track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act and thus complete the trial in a time-bound manner or within a specific time frame under the Act. (iv) The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the POCSO Act. The High Courts where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee. (v) The Director General of Police or the officer of equivalent rank of the States shall constitute a Special Task Force which shall ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts. (vi) Adequate steps shall be taken by the High Courts to provide child friendly atmosphere in the Special Courts keeping in view the provisions of the POCSO Act so that the spirit of the Act is observed."

Procedures of the Special Court

Under the POCSO Act Section 28(1), the State Government in consultation with the Chief Justice of the High Court, should designate a Sessions Court to be a Special Court in every district to try offences under the Act. As per the provisions contained in POCSO Act, Section 28(2) the Special Court can try offences under the POCSO Act and offences with which the accused is charged under the I.P.C. at the same trial.

Cognizance and Disposal

Special Courts can take cognizance directly without committal.(Section 33(1), POCSO Act). The

police should thus submit the charge-sheet to the Special Court under the POCSO Act. They must record the evidence of the child within 30 days of taking cognizance and record reasons for the delay.(Section 35(1), POCSO Act)

They must complete the trial within one year of taking cognizance, as far as possible.(Section 35(2), POCSO Act.

How to Ascertain if a Child Witness Understands the Difference between Truth and Lie

In **State v. Sujeet Kumar** 2014 SCC Online Del 1952, the Delhi High Court was critical of the inappropriate questions posed by a Magistrate to assess the competence of a two-and-a-half year old child victim of a brutal rape before recording her statement under Section 164, Cr. P.C. It found the questions to the child about the school she went to and the class she studied in highly inappropriate as the child lived in a slum and did not attend any school. The Magistrate then asked her if she understood the term “truth” and the difference between truth and lie. The High Court observed: “How could a two and half year old child explain the meaning of word “truth” and state difference between truth and lie. It is very difficult, even for adults, to respond to abstract questions asking them to explain the conceptual difference between truth and lie. What to talk of a two and half year old child.”

The Delhi High Court cited an article “Child Witness Competency: When Should the Issue be Raised” and highlighted the key points as follows–

- Asking, "What does it mean to tell the truth?" and "What does it mean to tell a lie?" are more developmentally appropriate for young children than asking, "What is the difference between the truth and a lie?"
- Very young children often are unable to answer even these easier questions in a narrative form due to their underdeveloped language skills. Situationally relevant multiple-choice questions can be posed to assess the child’s competency.
- Examples of such questions are:
 - * If I told your mom that you just yelled at me, would that be the truth or a lie?
 - * If you told your mom that I hit you, would that be the truth or a lie?
 - * If you told your teacher that something bad happened to you, but it really didn't happen-you were making it up-would you be telling the truth or a lie?
- Competent children should be able to consistently provide correct answers to these multiple-choice questions

Presumptions under the POCSO Act

The POCSO Act provides for two presumptions – presumption as to certain offences(Section 29) and presumption of culpable mental state (Section 30). A person prosecuted for committing, abetting or attempting to commit penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, or aggravated sexual assault will be presumed to have committed the offence unless the contrary is proved. If an offence requires presence of a culpable mental state, the Special Court should presume its existence and the burden is on the defence to establish that the accused did not have the mental state. The phrase “culpable mental state” includes “intention, motive,

knowledge of a fact and the belief in, or reason to believe, a fact” as per the Explanation to Section 30, POCSO Act The offences of sexual assault, aggravated sexual assault, and sexual harassment require the presence of sexual intent. The presumption of culpable mental state can be applied to these offences.

Questioning Children

- Special Courts should ensure that the Special Public Prosecutor and defence lawyer do not question the child directly. The questions to be put to the child have to be communicated to the Special Court, who should put the questions to the child.(Section 33(2), POCSO Act)
- They should permit frequent breaks to the child during trial, if necessary. (Section 33(3), POCSO Act)
- They should not allow aggressive questioning or character assassination of the child and ensure that dignity is maintained (Section 33(6), POCSO Act)
- Special Courts should take the assistance, if necessary, of a qualified and experienced translator or interpreter on payment of prescribed fees when recording the statement of a child. (Section 38(1), POCSO Act).
- They should take the assistance, if necessary, of a qualified and experienced special educator or person familiar with the manner of communication of the child or an expert, when recording the statement of a child with mental or physical disability.(Section 38(2), POCSO Act)

Sexual offences which may relate to children under the IPC along with the offence under the POCSO Act are:

- Outraging the modesty of a woman, which entails the assault or use of criminal force with the intention to outrage or knowing it to be likely that her modesty will be outraged. (Section 354) • Sexual harassment, which includes unwelcome physical contact and advances and explicit sexual overtures, demand or request for sexual favours, showing pornography against will of a woman, or making sexually coloured remarks by a man. (Section 354-A)
- Using criminal force with intent to disrobe a woman or compel her to be naked and the abetment of such an act. (Section 354-B)
- Voyeurism which criminalizes the following acts by a man – watching, capturing, or disseminating the image of a woman engaging in a private act where her genitals, posterior or breasts are exposed or covered only in underwear or where the victim is using a lavatory or doing a sexual act that is not ordinarily done in public, and where she would usually expect not being observed. (Section 354-C)
- Stalking which entails following, contacting, or attempting to contact a woman by a man to foster personal interaction repeatedly despite a clear indication of disinterest by the woman or monitoring the use of internet, email or any other form of electronic communication. (Section 354-D)

- Kidnapping, abducting or inducing woman to compel her marriage against her will, or so that she may be forced or seduced to illicit intercourse, or knowing it is likely that she will be forced or seduced to illicit intercourse. (Section 366)
- Procuration of a minor girl which entails inducing a girl below 18 years to go from any place or do any act with the intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person. (Section 366-A)
- Importation of a girl below 21 years from a foreign country or from Jammu & Kashmir with the intent that she may be or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person. (Section 366-B)
- Trafficking which entails recruitment, transportation, harbouring, transferring, or receiving a person for the purpose of exploitation by using threats, force or any form of coercion, abduction, practicing fraud or deception, abuse of power, or inducement including the giving or receiving of payments or benefits to achieve consent of the person having control over the person trafficked. (Section 370) This provision is gender neutral vis-à-vis the offender and the victim. For details, please refer to Chapter 2.
- Rape by a man of woman below 18 years, with or without her consent. (Section 375) The Criminal Law (Amendment) Act, 2013 has expanded the concept of penetration and rape now includes penetration of the penis, to any extent, into the vagina, mouth, urethra or anus of woman; inserting, to any extent, any object or body part other than the penis, into the vagina, urethra or anus of a woman; manipulating any body part of woman so as to cause penetration into the vagina, urethra, anus, or any part of the body of a woman; application of the mouth to the vagina, anus or urethra of the woman. Making the woman do any of the above acts with the man or any other person will fall under the ambit of rape if any of the seven descriptions under Section 375, IPC are met. In the context of the girl child, the sixth description which states “With or without her consent, when she is under eighteen years of age” will apply.
- Causing death or resulting in persistent vegetative state of a woman during rape or aggravated rape. (Section 376-A)
- Sexual intercourse by husband upon his wife during separation without her consent. (Section 376- B)
- Sexual intercourse by a person in authority or fiduciary relationship, public servant, or superintendent of a custodial institution, or management or staff of a hospital who abuses the authority to induce or seduce any woman under his custody or charge or present in the premises to have sexual intercourse with him. (Section 376-C)
- Gang rape i.e., rape by one or more persons constituting a group or acting in furtherance of a common intention. (Section 376-D)

The following grounds constitute aggravated rape under the IPC:

- Rape on a woman below the age of 16 years; IPC, Section 376(2)(i) .
- Rape on a woman suffering from mental or physical disability;IPC, Section 376(2)(l).

- Rape by a relative, guardian, teacher, or person in a position of trust or authority; IPC, Section 376(2) (f).
- Rape by a person on the management or staff of a jail, remand home, place of custody, women's or children's institution on any inmate within that institution; IPC, Section 376(2) (d). • Rape by a person on the management or staff of hospital on a woman in the hospital; IPC, Section 376(2)(e)
- Rape by a person in a position of control or dominance over the woman; IPC, Section 376(2) (k).
- Rape by a police officer within the limits of the police station, premises of any station house, or on a woman in his or his subordinate officer's custody; IPC, Section 376(2)(a) by a public servant on a woman in his or his subordinate officer's custody IPC, Section 376(2)(b); by a member of the armed forces in the area in which he is deployed IPC, Section 376(2)(c);
- Rape committed during communal or sectarian violence IPC, Section 376(2)(g);
- Rape committed on a woman knowing her to be pregnant IPC, Section 376(2)(h);
- Causing grievous bodily harm, maiming, disfiguring or endangering the life of a woman IPC, Section 376(2)(m);
- Repeatedly raping the same woman IPC, Section 376(2)(n);

Facilitation of Recording of Statement under Section 164, Cr.P.C., by the Magistrate

The POCSO Act does not mandate that a statement under Section 164, Cr.P.C. be recorded in every case. However, pursuant to the Criminal Law (Amendment) Act, 2013, Section 164(5-A)(a), the statement of victim against whom offences has been committed under Sections 354, 354-A, 354-B, 354-C, 354- D, 376(1), 376(2), 376-A, 376-B, 376-C, 376-D, 376-E or 509 of the IPC shall be recorded by a Judicial Magistrate. As per the provisions of Section 164(5-A)(a) Cr.P.C., The statement should be recorded as soon as the commission is brought to the notice of the police. In cases of rape, the IO should take the victim within 24 hours to any Metropolitan/preferably Judicial Magistrate for recording the 164 statement and preferably to a Lady Magistrate (**State of Karnataka v. Shivanna, (2014) 8 SCC 913.**)

- Child victim to be brought immediately: In case of sexual offences under the IPC, the IO should bring the child victim to the Magistrate immediately. [Section 164(5-A)(a)] In cases of rape, the IO should take the victim within 24 hours to any Metropolitan/preferably Judicial Magistrate for recording the 164 statement.
- Reasons for delay: The reasons for delay in bringing the victim of rape within 24 hours should be recorded in the case diary and the copy of the same should be handed to the Magistrate. For instance, if the child is traumatized or in no state to be physically taken for the 164 statement, this reason should be cited to the Magistrate to explain the delay.
- Medical examination report: The IO should also hand over to the Magistrate a copy of the medical examination report.
- Unavailability of lady Magistrate: The POCSO Act does not mandate that the child should be taken to a lady Magistrate. The Supreme Court has also indicated that this is a preference

and not a mandatory requirement. The priority should be on ensuring that the statement is recorded at the earliest. If a lady Magistrate is unavailable, the IO should not delay matters and take the child to any Metropolitan or preferably Judicial Magistrate.

Some Important Terminologies

Some important terminologies that will help us understand Sexual Offences against children are:

Incest: The term incest means a forbidden sexual relationship between close relatives in a family, e.g. between brother and sister or parent and child. As per Section 5 (n) of the POCSO Act, 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, is punishable for aggravated penetrative sexual assault with rigorous imprisonment, which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine (Section 6)

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 [Section 2 (k)]. However, cases involving sexual offences against children by close family members are difficult and tricky to handle. The following are as some of the factors that need considering when dealing with cases of incest:- The accused may be the sole breadwinner of the household. In such cases, incarcerating the person may put the family in financial stress and leave them vulnerable. Families are therefore, reluctant to report such matters to the police. Other family members tend to disbelieve the child and refuse to co-operate with the case. They may side with the accused and put pressure on the child to retract his/ her story or become uncooperative in the case. The child has extremely conflicting feelings about the abuser. This results in delayed reporting of cases. It has also been observed that the child's home is no longer a secure space for them.

Commercial Sexual Exploitation of Children (CSEC): Commercial sexual exploitation of children is defined as the "sexual abuse by the adult along with remuneration in cash or kind to the child or a third person or persons". It is a process through which the child is treated as a sexual object and as a commercial object. The main forms of CSEC are child prostitution (including child sex tourism), child sexual abuse images and trafficking of children for sexual purposes.

Child Sex Tourism: Child sex tourism is the sexual exploitation of children by a person or persons who travel from their home district or home country in order to have sexual contact with children. Child sex tourists would be domestic travellers or they can be international tourists. It often involves the use of accommodation, transportation and other tourism-related services that facilitate contact with children and enable the perpetrator to remain fairly inconspicuous in the surrounding population and environment. Child sex tourism involves the exchange of cash, clothes, food or some other form of consideration to a child or to a third party for sexual contact. Child Sex Tourists may be married or single, male or female (though the majority are male), foreign or local, wealthy or budget tourists or from a high socio-economic or even disadvantaged background. Although they have no distinguishing physical features, patterns of social behaviour or particular mannerisms, it is possible to separate them into three distinct categories:

- Situational Child Sex Tourist: The situational child sex offender abuses children by way of experimentation or through the anonymity and impunity afforded by virtue of being a tourist.
- Preferential Child Sex Tourist: The preferential child sex tourist displays an active sexual preference for children, mostly pubescent and adolescent.
- Paedophile: The paedophile manifests an exclusive sexual inclination for pre-pubescent children.

Child Sexual Abuse Imagery and Online Sexual Abuse: Child Sexual Abuse Imagery is any visual depiction of sexually explicit conduct involving a minor (child under 18 years of age). Visual depictions include photographs, videos, digital or computer generated image, production, distribution, possession and even seeking Child Sexual Images are illegal. (Section 67 (B)(b) of the Information Technology Act, 2000 and Sections 13/14 of the POCSIO Act, 2012).

Online abuse is any type of abuse that happens on the web, whether through social networks, playing online games or using mobile phones. Children and young people may experience cyber bullying, grooming, sexual abuse, sexual exploitation or emotional abuse. Children can be at risk of online abuse from people they know, as well as from strangers. Online abuse may be part of abuse that is taking place in the real world (for example bullying or grooming) or, it may be that the abuse only happens online (for example persuading children to take part in sexual activity online). Children may feel like there is no escape from online abuse – abusers can contact them at any time of the day or night, the abuse can come into safe places like their bedrooms, and images and videos can be stored and shared with other people.

Compensation

Special Courts should direct payment of compensation (interim and final) for physical or mental trauma caused to the child or for the child's immediate rehabilitation. They should determine quantum and direct the State Government to pay the compensation within 30 days. (Section 33(8), POCSO Act read with Rule 7, POCSO Rules)

In order for the Special Court to order for interim or final compensation, it is not pre-requisite for the child to file an application. The Special Court may order on his/her own accord where it is found to be appropriate.

A record of conviction is not mandatory for the provision of compensation. Where the Special Court is satisfied that a child has been a victim of sexual abuse, the judge may direct compensation to be paid in cases where the accused has been acquitted or even in cases where the accused has not identified or traced POCSO Rules, Rule 7(2) Interim compensation can be paid at any stage and is not linked to the child's testimony.

The compensation ordered must be disbursed by the State Government within 30 days from the order POCSO Rules, Rule 7(4) and 7(5) The State Government may pay the sum from the Victims Compensation Fund or any other scheme or fund which has been established under section 357A of the Code of Criminal Procedure.

The quantum of compensation is not specified in the POCSO Act and it is based on the discretion of the judge deciding the matter. The POCSO Rules provides that while deciding the quantum of

compensation, the judge must take into consideration the type, nature and severity of abuse, the extent of physical and mental harm caused to the child, expenditure incurred for medical treatment for physical and/or mental health, financial condition of the child, etc. POCSO Rules, Rule 7(3)

Support Persons

They should recognize the support persons appointed by the CWC or the family directly and allow them to be present during the child's evidence. They should also allow them to also convey the child's questions and fears about the evidence recording process. (Rule 4(8), POCSO Rules)

Legal Counsel on Behalf of Victim

Special Courts should recognize the right of the child to take assistance of a legal practitioner. (Section 40, POCSO Act)

Significant Court Rulings

1. On institution of F.I.R

LalitaKumari v. Govt. of U.P. and Ors.,AIR 2014 SC 187

The following directions were laid down by a Constitutional Bench of the Supreme Court:

- (i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
- (ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
- (iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
- (iv) The police officer cannot avoid its duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
- (v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
- (vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
 - (a) Matrimonial disputes/family disputes
 - (b) Commercial offences

- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

- (vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.
- (viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

2. Role of the Police in investigation and facilitating statement under Section 164, Cr.P.C State of Karnataka v. Shivanna @ Tarkari Shivanna (2014) 8 SCC 913:

Fast track procedures and Trial By Fast Track Courts Scheme - In cases of rape, IO should take the victim immediately, as far as possible, to the nearest lady Metropolitan/preferably lady Judicial Magistrate for recording the statement under Section 164, Cr.P.C. The IO should record the date and time at which he learn about the commission of rape and the date and time at which the victim was taken to the Magistrate. Reasons for delay exceeding 24 hours should be recorded in the case diary and a copy should be handed to the Magistrate along with a copy of the medical examination report. The directions of the Apex may be reproduced as follows:

- 10. On considering the same, we have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the Police Stations-in-Charge in the entire country to follow the directions of this Court which are as follows:

“10.1 Upon receipt of information relating to the commission of offence of rape, the investigating officer shall make immediate steps to take the victim to any Metropolitan/ preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till chargesheet/report under Section 173 CrPC is filed.

- 10.2 The investigating officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.
- 10.3 The investigating officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.
- 10.4 If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the investigating officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
- 10.5 Medical examination of the victim: Section 164-A CrPC inserted by Act 25 of 2005 in CrPC imposes an obligation on the part of investigating officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC.

3. Jurisdiction of Special Courts

Kum.Shraddha Meghshyam Velhal v. State of Maharashtra, Cr. W. P. No.354/. 2013: In cases under the POCSO Act, police officers should produce the accused for remand before the Children’s Court and not before the Magistrates Court. **Prasad v. State of Kerala**, (2013) 2 KLT 942: The POCSO Act does not prevent Magistrates from ordering first remand of an accused under the Act, since Section 167, Cr.P.C. allows it. However, subsequent remand orders or bail applications should be made only before the Special Court under the POCSO Act.

4. Nature of Offences under the POCSO Act

Santosh Kumar Mandal v.State, Bail Appln No. 1763/2016, Delhi High Court (28 September 2016): “Considering the gravity of the offences and the special mechanism provided under POCSO Act to hold that the offences are bailable though cognizable and would fall in category 3 would be rendering an interpretation to the classification provided in second part of First Schedule of Cr.P.C contrary to the object of the special enactment. Thus offences punishable under POCSO Act including Section 12 are cognizable and non-bailable offences.”

5. Rape is non-compoundable

Shimbhu v. State of Haryana, (2013) 10 SCALE 595: “Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle.”

6. Use of Two-finger test unconstitutional

Lillu v. State of Haryana, AIR 2013 SC 1784:In this case, the Supreme Court held that the “two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity.”

7. Credibility of testimony of rape victims and child witnesses

State of Punjab v. Gurmit Singh, (1996) 2 SCC 384: “Corroborative evidence is not an imperative component of judicial credence in every case of rape. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a

victim of another persons' lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice."

Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341: "A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.

Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635: "The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused.

Balaji Sarjerao Kamble v. State of Maharashtra, Criminal Appeal No. 28 of 2016 decided by the Bombay High Court on 29.08.17: Bearing in mind the age of the child victim who was about 6 to 8 years at the time of the alleged rape, the Bombay High Court held that "merely because date of the incident is not stated by the victim, her evidence cannot be doubted. The [victim] is not expected to have such chronometric sense at the tender age.

Delay in lodging FIR State of Himachal Pradesh v. Shree Kant Shekari, AIR 2004 SC 4404 Setting aside the acquittal in a case under Sections 376 and 506 of the IPC on grounds of delay in lodging the FIR, the Supreme Court held: "Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactory explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case."

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Test-identification

In **Rakesh Kumar v. State 2014 SCC OnLine Del 3387** the Delhi High Court laid down the following guidelines for test identification parade (TIP) where children below 12 years of age had to identify an accused:

- a) In every case where witness is a child below the age of 12 years TIP proceedings shall be held in one of the court rooms attached with the main Tihar Jail so that the child does not enter the main Jail Complex to reach the Test Identification Parade room.
- b) Installation of semi reflective screen or any other screen or mechanism in a room where TIP proceedings will be conducted so that the child witness is not confronted face to face with the criminals participating in the TIP proceedings.
- c) A person accused of the offence and the others who may be participating in the TIP will be explained the procedure and the manner of TIP proceedings to be held in a case of child witness. d) No officer below the rank of Deputy Superintendent of Jail shall accompany the child witness at the time of TIP proceedings and endeavour shall also be made by the Jail Superintendent that, so far as possible only female officer is deployed wherever witness happens to be a girl child for the purposes of identifying the accused person.
- e) No police official shall be seen in a uniform right from the stage when the child enters the TIP Room and till he/she leaves the premises after the completion of TIP proceedings. The child witness shall be entitled to accompany his parents/guardians or any of his close relatives so as to make the child comfortable before participating for identifying the accused in the Test Identification Parade.
- f) Endeavour shall be made by Director General (Prisons)/Jail Superintendent that a lady officer who is more humane, sensitive and compassionate is given duty to accompany the child witness.
- g) The child friendly atmosphere will be created in a room where the child is brought first and the stay of the child will be made most comfortable so that the child finds the place to be attractive and conducive to his/her requirements.
- h) Necessary arrangements for light refreshment to the general liking of children below the age of 12 years shall also remain in place to keep the mood of the child upbeat.

Cross-examination of a child with disability

Chander Singh v. State, Crl. A. 751/2014 decided by the Delhi High Court on 03.06.2016

In this case, a 12-year-old deaf girl had been sexually assaulted by the accused. Her statement had been recorded through gestures and drawings, which were interpreted with the assistance

of a teacher working in a primary school for deaf children run by the Delhi Government. The defence argued that her testimony could not be read as evidence because she could not be cross-examined.

The Delhi High Court held, “A party cross-examining a deaf and dumb witness like any other witness is required to act within the bounds of law and cannot be permitted to cross-examine the witness all and sundry on irrelevant questions.” It further held that, “When a deaf and dumb witness is under cross-examination, the Court is required to take due care of the fact that vocabulary of such a person is limited as he or she speaks through sign language and it may not be possible for that witness to answer, or in detail explain every answer by sign language. This disability of a limited vocabulary of sign language does not affect either the competence or the credibility of such witness. The Court is required to exercise control over the cross-examination keeping in view the ability of the witness to answer the questions.”

The Delhi High Court concluded that the drawing of the victim in response to the cross-examination was sufficient compliance of the right to cross-examination of the accused and upheld the appellant’s conviction.

Section 228-A of the IPC also prohibits the publishing or printing of the name or any information which will disclose the identity of any person against whom an offence of rape as provided for in section 376, 376A, 376B, 376C or 376D of the IPC has been committed or alleged to have been committed.

Where an offence has been committed under section 23 of the POCSO Act described above, the publisher or owner of the media, studio or photographic facility will be held jointly and severally liable for the act/omission of his employee.

Dos and Don’ts

- The police must take great care to ensure that the victim is not re-victimised by sensitive handling of information and ensuring that private information of the child is not disclosed through the course of the investigation.
- The police should not disclose information about the case involving a child for the purpose of character certificate if the case has been closed or disposed.
- All relevant charges that may be applicable under section 228-A of the IPC or the POCSO Act must be added to the charge-sheet.

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Where an offence has been committed under section 23 of the POCSO Act described above, the publisher or owner of the media, studio or photographic facility will be held jointly and severally liable for the act/omission of his employee.

False complaint and False information under POCSO Act

The POCSO Act under section 22 prohibits any person from making a false complaint or providing

false information against a person in respect of an offence committed under section 3, 5, 7, and 9 of the POCSO Act dealing with penetrative sexual assault and sexual assault solely with the intention to humiliate, extort or threaten or defame him. No liability is incurred in respect of information given in good faith. POCSO Act, Section 19(7)

The POCSO Act prohibits the prosecution of a child for making a false complaint or providing false information regarding the commission of an offence under the POCSO Act.

Landmark Judgments on POCSO Act.

1. Independent Thought vs. Union of India and Anr., (2017) 10 SCC 800

- In the judgment, Supreme Court has criminalized the sexual intercourse with a minor wife whose age lies between 15 and 18 years. The Court opined that the exception 2 in section 375 is violative of Articles 14, 15 and 21 of the Indian Constitution which allows intrusive sexual intercourse with a girl who is below 18 and above 15 years on the ground of marriage. Such exception clause in Indian rape laws negates the very purpose of Prohibition of Child Marriage Act, it violates the provisions of Protection of Children from Sexual Offence Act (POCSO) in context of the age of consent and some other international conventions to which India is a signatory. In this landmark verdict, Supreme Court has struck down section 375, exception 2 of the Indian Penal Code. Now, the law cannot protect a man who is engaged in sexual relations with his wife where she is between 15 and 18 years because irrespective of the status of a child whether married or not, she will always remain a child

2. Virender v. State of NCT of Delhi, 2009 SCCOnline Del 3083

In this case, the High Court opined, “the court is required to be satisfied about the mental capacity of the child at the time of the occurrence concerning which he or she is to testify as well as an ability to receive an accurate impression thereof. The court must be satisfied that the child witness has sufficient memory to retain an independent recollection of the occurrence and a capacity to express in words or otherwise his or her memory of the same.”

Guidelines: In the cases of sexual offences where there is a child victim or a child witness, the Delhi High Court culled out several guidelines related to investigation, medical examination and trial which are as follows:

I. Recording of complaint and investigation by police

- (i) On a complaint of a cognisable offence involving a child victim being made, concerned police officer shall record the complaint promptly and accurately. (Ref: Court On Its Own Motion v. State &Anr.)
- (ii) Upon receipt of a complaint or registration of FIR for any of the aforesaid offences, immediate steps shall be taken to associate a scientist from Forensic Science Laboratory or some other Laboratory or department in the investigations. The Investigating Officer shall conduct investigations on the points suggested by him also under his guidance and advice. (Ref :Mahender Singh Chhabra v. State of N.C.T Of Delhi &Ors.)

- (iii) The investigation of the case shall be referred to an officer not below the rank of Sub- Inspector, preferably a lady officer, sensitized by imparting appropriate training to deal with child victims of sexual crime.(Ref: Court On Its Own Motion v. State &Anr.)
- (iv) The statement of the victim shall be recorded verbatim.(Ref: Court On Its Own Motion v. State &Anr.)
- (v) The officer recording the statement of the child victim should not be in police uniform. (Ref: Court on Its Own Motion v. State &Anr)
- (vi) The statement of the child victim shall be recorded at the residence of the victim or at any other place where the victim can make a statement freely without fear. (Ref: Court On Its Own Motion v. State &Anr.)
- (vii) The statement should be recorded promptly without any loss of time.(Ref: Court On Its Own Motion v. State &Anr.)
- (viii) The parents of the child or any other person in whom the child reposes trust and confidence will be allowed to remain present.(Ref: Court On Its Own Motion v. State &Anr.)
- (ix) The Investigating Officer to ensure that at no point should the child victim come in contact with the accused.(Ref: Court On Its Own Motion v. State &Anr.)
- (x) The child victim shall not be kept in the police station overnight on any pretext, whatsoever, including medical examination.(Ref: Court On Its Own Motion v. State &Anr.)
- (xi) The Investigating Officer recording the statement of the child victim shall ensure that the victim is made comfortable before proceeding to record the statement and that the statement carries accurate narration of the incident covering all relevant aspects of the case.(Ref: Court On Its Own Motion v. State &Anr.)
- (xii) In the event the Investigating Officer should so feel the necessity, he may take the assistance of a psychiatrist.(Ref: Court On Its Own Motion v. State &Anr.)
- (xiii) The Investigating Officer shall ensure that the child victim is medically examined at the earliest preferably within twenty four hours (in accordance with Section 164A Cr.P.C) at the nearest government hospital or hospital recognized by the government.(Ref: Court On Its Own Motion v. State &Anr.)
- (xiv) The Investigating Officer shall ensure that the investigating team visits the site of the crime at the earliest to secure and collect all incriminating evidence available.(Ref: Court On Its Own Motion v. State &Anr.)
- (xv) The Investigating Officer shall promptly refer for forensic examination, clothings and articles necessary to be examined, to the forensic laboratory which shall deal with such cases on priority basis to make its report available at an early date.(Ref: Court On Its Own Motion v. State &Anr.)

- (xvi) The investigation of the cases involving sexually abused child may be investigated on a priority basis and completed preferably within ninety days of the registration of the case. The investigation shall be periodically supervised by senior officer/s. (Ref: Court On Its Own Motion v. State &Anr.)
- (xvii) The Investigating Officer shall ensure that the identity of the child victim is protected from publicity.(Ref: Court On Its Own Motion v. State &Anr.)
- (xviii) To ensure that the complainant or victim of crime does not remain in dark about the investigations regarding his complaint/FIR, the complainant or victim shall be kept informed about the progress of investigations. In case the complainant gives anything in writing and requests the I.O, for investigations on any particular aspect of the matter, the same shall be adverted to by the I.O Proper entries shall be made by I.O in case diaries in regard to the steps taken on the basis of the request made by the complainant. The complainant, however, shall not be entitled to know the confidential matters, if any, the disclosure of which may jeopardize the investigations.(Ref :Mahender Singh Chhabra v. State of N.C.T Of Delhi &Ors.)
- (xix) Whenever the SDM/Magistrate is requested to record a dying declaration, video recording also shall be done with a view to obviate subsequent objections to the genuineness of the dying declaration. (Ref: Mahender Singh Chhabra v. State of N.C.T Of Delhi &Ors.)
- (xx) The investigations for the aforesaid offences shall be personally supervised by the ACP of the area. The concerned DCP shall also undertake fortnightly review thereof. (Ref: Mahender Singh Chhabra v. State of N.C.T Of Delhi &Ors.)
- (xxi) The material prosecution witnesses cited in any of the aforesaid offences shall be ensured safety and protection by the SHO concerned, who shall personally attend to their complaints, if any. (Ref: Mahender Singh Chhabra v. State of N.C.T of Delhi &Ors.)
- (xxii) Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded.(Ref: Court On Its Own Motion v. State &Anr.)

II Recording of statement before Magistrate

- (i) The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing.(Ref: Court On Its Own Motion v. State &Anr.)
- (ii) In the event of the child victim being in the hospital, the concerned Magistrate shall record the statement of the victim in the hospital. (Ref: Court On Its Own Motion v. State &Anr.)
- (iii) To create a child friendly environment separate rooms be provided within the Court precincts where the statement of the child victim can be recorded.(Ref: Court On Its Own Motion v. State &Anr.)

- (iv) The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of “Ascertaining voluntary nature of statement” unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice.(Ref: Court On Its Own Motion v. State &Anr.)
- (v) Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded.(Ref: Court On Its Own Motion v. State &Anr.)
- (vi) No Court shall detain a child in an institution meant for adults.(Ref: Court On Its Own Motion v. State &Anr.)

III Medical Examination

- (i) Orientation be given to the Doctors, who prepare MLCs or conduct post mortems to ensure that the MLCs as well as post mortem reports are up to the mark and stand judicial scrutiny in Courts.(Ref : Mahender Singh Chhabra v. State of N.C.T Of Delhi &Ors.)
- (ii) While conducting medical examination, child victim should be first made comfortable as it is difficult to make her understand as to why she is being subjected to a medical examination.
- (iii) In case of a girl child victim the medical examination shall be conducted preferably by a female doctor.(Ref: Court On Its Own Motion v. State &Anr.)
- (iv) In so far as it may be practical, psychiatrist help be made available to the child victim before medical examination at the hospital itself.(Ref: Court On Its Own Motion v. State &Anr.)
- (v) The report should be prepared expeditiously and signed by the doctor conducting the examination and a copy of medical report be provided to the parents/guardian of the child victim.(Ref: Court On Its Own Motion v. State &Anr.)
- (vi) In the event results of examination are likely to be delayed, the same should be clearly mentioned in the medical report.(Ref: Court On Its Own Motion v. State &Anr.)
- (vii) The parents/guardian/person in whom child have trust should be allowed to be present during the medical examination.(Ref: Court On Its Own Motion v. State &Anr.)
- (viii) Emergency medical treatment wherever necessary should be provided to the child victim. (Ref: Court On Its Own Motion v. State &Anr.)
- (ix) The child victim shall be afforded prophylactic medical treatment against STDs. (Ref: Court On Its Own Motion v. State &Anr.)
- (x) In the event the child victim is brought to a private/nursing home, the child shall be afforded immediate medical attention and the matter be reported to the nearest police station.(Ref: Court On Its Own Motion v. State &Anr.)

IV Proceedings in Court

- (i) To create a child friendly environment separate rooms be provided within the Court precincts where the statement of the child victim can be recorded. (Ref : Court On Its Own Motion v. State &Anr)
- (ii) In case of any disability of the victim or witness involving or impairing communication skills, assistance of an independent person who is in a position to relate to and communicate with such disability requires to be taken.
- (iii) The trials into allegations of commission of rape must invariably be “in camera”. No request in this behalf is necessary. (Ref: State of Punjab v. Gurmit Singh)
- (iv) The Committal Court shall commit such cases to the Court of Sessions preferably within fifteen days after the filing of the chargesheet. (Ref: (2007) (4) JCC 2680 Court On Its Own Motion v. State &Anr.)
- (v) The child witness should be permitted to testify from a place in the courtroom which is other than the one normally reserved for other witnesses.
- (vi) To minimise the trauma of a child victim or witness the testimony may be recorded through video conferencing or by way of a close circuit television. If this is not possible, a screen or some arrangement be made so that the victims or the child witness do not have to undergo seeing the body or face of the accused. The screen which should be used for the examination of the child witness or a victim should be effective and installed in such manner that the witness is visible to the trial judge to notice the demeanour of the witness. Single visibility mirrors may be utilised which while protecting the sensibilities of the child, shall ensure that the defendant's right to cross examination is not impaired. (Ref: Sakshi v. UOI).
- (vii) Competency of the child witness should be evaluated and order be recorded thereon.
- (viii) The trial court is required to be also satisfied and ought to record its satisfaction that the child witness understands the obligation to speak the truth in the witness box. In addition to the above, the court is required to be satisfied about the mental capacity of the child at the time of the occurrence concerning which he or she is to testify as well as an ability to receive an accurate impression thereof. The court must be satisfied that the child witness has sufficient memory to retain an independent recollection of the occurrence and a capacity to express in words or otherwise his or her memory of the same. The court has to be satisfied that the child witness has the capacity to understand simple questions which are put to it about the occurrence. There can be no manner of doubt that record of the evidence of the child witness must contain such satisfaction of the court.
- (ix) As far as possible avoid disclosing the name of the prosecutrix in the court orders to save further embarrassment to the victim of the crime; anonymity of the victim of the crime must be maintained as far as possible throughout.

- (x) The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing. (Ref : Court On Its Own Motion v. State of N.C.T Of Delhi)
- (xi) The court should be satisfied that the victim is not scared and is able to reveal what has happened to her when she is subjected to examination during the recording of her evidence. The court must ensure that the child is not concealing portions of the evidence for the reason that she has bashful or ashamed of what has happened to her.
- (xii) It should be ensured that the victim who is appearing as a witness is at ease so as to improve upon the quality of her evidence and enable her to shed hesitancy to depose frankly so that the truth is not camouflaged on account of embarrassment at detailing the occurrence and the shame being felt by the victim.
- (xiii) Questions should be put to a victim or to the child witness which are not connected to case to make him/her comfortable and to depose without any fear or pressure;
- (xiv) The trial judge may permit, if deemed desirable to have a social worker or other friendly, independent or neutral adult in whom the child has confidence to accompany the child who is testifying (Ref SudeshJakhu v. K.C.J &Ors). This may include an expert supportive of the victim or child witness in whom the witness is able to develop confidence should be permitted to be present and accessible to the child at all times during his/her testimony. Care should be taken that such person does not influence the child's testimony.
- (xv) Persons not necessary for proceedings including extra court staff be excluded from the courtroom during the hearing.
- (xvi) Unless absolutely imperative, repeated appearance of the child witness should be prevented.
- (xvii) It should be ensured that questions which are put in cross examination are not designed to embarrass or confuse victims of rape and sexual abuse (Ref :Sakshi v. UOI).
- (xviii) Questions to be put in cross examination on behalf of the accused, in so far as they relate directly to the offence, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing. (Ref :Sakshi v. UOI)
- (xix) The examination and cross examination of a child witness should be carefully monitored by the presiding judge to avoid any attempt to harass or intimidate the child witness.
- (xx) It is the duty of the court to arrive at the truth and subserve the ends of justice. The courts have to take a participatory role in the trial and not act as mere tape

recorders to record whatever is being stated by the witnesses. The judge has to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, the court can control the proceedings effectively so that the ultimate objective that is the truth is arrived at. The court must be conscious of serious pitfalls and dereliction of duty on the part of the prosecuting agency. Upon failure of the prosecuting agency showing indifference or adopting an attitude of aloofness, the judge must exercise the vast powers conferred under section 165 of the Evidence Act and section 311 of the CrPC to elicit all necessary materials by playing an active role in the evidence collecting process. (Ref : Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat &Ors.)

- (xxi) The judge is expected to actively participate in the trial, elicit necessary materials from the witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. The judge has uninhibited power to put questions to the witness either during chief examination or cross examination or even during re-examination for this purpose. If a judge feels that a witness has committed an error or slip, it is the duty of the judge to ascertain whether it was so for to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. (Ref: AIR 1997 SC 1023 (para 12) State of Rajasthan v. Ani alias Hanif & Ors.)
- (xxii) The court should ensure that the embarrassment and reservations of all those concerned with the proceedings which includes the prosecutrix, witnesses, counsels may result in camouflage of the ingredients of the offence. The judge has to be conscious of these factors and rise above any such reservations on account of embarrassment to ensure that they do not cloud the truth and the real actions which are attributable to the accused persons.
- (xxiii) The court should ascertain the spoken language of the witness as well as range of vocabulary before recording the deposition. In making the record of the evidence court should avoid use of innuendos or such expressions which may be variably construed. For instance “gandiharkatein” or “batamezein” have no definite meaning. Therefore, even if it is necessary to record the words of the prosecutrix, it is essential that what those words mean to her and what is intended to be conveyed are sensitively brought out.
- (xxiv) The court should ensure that there is no use of aggressive, sarcastic language or a gruelling or sexually explicit examination or cross examination of the victim or child witness. The court should come down with heavily to discourage efforts to promote specifics and/or illustration by any of the means offending acts which would traumatise the victim or child witness and effect their testimony. The court has to ensure that no element of vulgarity is introduced into the court room by any person or the record of the proceedings.
- (xxv) In order to elicit complete evidence, a child witness may use gestures. The courts must carefully translate such explanation or description into written record.

(xxvi) Cases of sexual assaults on females be placed before lady judges wherever available. (Ref: State of Punjab v. Gurmit Singh)

To the extent possible, efforts be made that the staff in the courtroom concerned with such cases is also of the same gender.

(xxvii) The judge should be balanced, humane and ensure protection of the dignity of the vulnerable victim. There should be no expression of gender bias in the proceedings. No humiliation of the witness should be permitted either in the examination in chief or the cross examination.

(xxviii) A case involving a child victim or child witness should be prioritised and appropriate action taken to ensure a speedy trial to minimise the length of the time for which the child must endure the stress of involvement in a court proceeding. While considering any request for an adjournment, it is imperative that the court considers and give weight to any adverse impact which the delay or the adjournment or continuance of the trial would have on the welfare of the child.

V. General

- (i) Effort should be made to ensure that there is continuity of persons who are handling all aspects of the case involving a child victim or witness including such proceedings which may be out of criminal justice system. This may involve all steps commencing from the investigation to the prosecutor to whom the case is assigned as well as the judge who is to conduct the trial.
- (ii) The police and the judge must ascertain the language with which the child is conversant and make every effort to put questions in such language. If the language is not known to the court, efforts to join an independent translator in the proceedings, especially at the stage of deposition, should be made.
- (iii) It must be ensured that the number of times that a child victim or witness is required to recount the occurrence is minimised to the absolutely essential. For this purpose, right at the inception, a multidisciplinary team involving the investigating officer and the police; social services resource personnel as well as the prosecutor should be created and utilised in the investigation and prosecution of such cases involving a child either as a victim or a witness. This would create and inspire a feeling of confidence and trust in the child.
- (iv) The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of "Ascertaining voluntary nature of statement" unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice. (Ref : Court On Its Own Motion v. State of N.C.T Of Delhi)
- (v) Courts in foreign countries have evolved several tools including anatomically correct illustrations and figures (as dolls). No instance of such assistance has been pointed out in this court. Extensive literature with regard to such aids being

used by foreign courts is available. Subject to assistance from experts, it requires to be scrutinised whether such tools can be utilised in this country during the recording of the testimony of a child victim witness so as to accommodate the difficulty and diffidence faced. This aspect deserves serious attention of all concerned as the same may be a valuable tool in the proceedings to ensure that the complete truth is brought out.

- (vi) No court shall detain a child in an institution meant for adults.(Ref : Court On Its Own Motion v. State of N.C.T Of Delhi). This would apply to investigating agencies as well.
- (vii) The judge should ensure that there is no media reporting of the camera proceedings. In any case, sensationalisation of such cases should not be permitted.

3. Mahesh Yadav v. The State of Jharkhand 2017 SCC Online Jhar 923

- The Jharkhand High Court in this case directed to issue notice to all the POCSO Courts, Jharkhand, annexing a copy of the judgment in Virender v. The State of NCT of Delhi which has laid down the compulsory guidelines, steps and duty of the police officer and also the Magistrate and Special Court and called for the information from all the POCSO courts, Jharkhand regarding the steps taken in compliance of the judgment.
- Further, POCSO Courts were also directed to submit information as to whether the procedures prescribed in the provisions of Section 35, 36, 37 and 38 of the POCSO Act are being complied with or not.

4. Gaya Prasad Pal @ Mukesh Vs. State, 2016 SCC Online Del 6214

- The Court observed that “rape” (Section 375 IPC) may also constitute “penetrative sexual assault” (Section 3 POCSO Act) in case of a child. And acts constituting the offence of “penetrative sexual assault” against a girl child would also amount to rape. However, the Court held “a person may not be punished twice over for the same set of acts of commission or omission which collectively constitute an offence covered by two different provisions of law. Though the law permits trial on alternative charge to be held for both the offences, the punishment may be awarded only for one of them, the one which is graver in nature.”
- Further, the court held that the charge under section 4 of POCSO Act on which the appellant has been found guilty is in addition to his conviction for the offence under section 376 IPC. And the acts committed by the appellant attract section 376(2) which prescribes a punishment extendable to life imprisonment meaning thereby an imprisonment for the remainder of such person’s natural life and, fine, which is higher than punishment under section 4 of POCSO Act. In these circumstances, Section 42 of POCSO Act would come into play and the court is duty bound to punish the offender for the offence under Section 376(2)(f)(i) and (k) of IPC; which is greater in degree in comparison to the offence under Section 4 of POCSO Act.

(Deaf and Dumb Victim) Speech and Hearing Impaired

5. The State of Maharashtra v. Bandu @ Daulat, 2018 (11) S CC 163

- The Supreme Court restored the conviction of the accused under section 376 IPC and sentenced him to undergo rigorous imprisonment for seven years based on the fact that the victim immediately after the incident narrated the same to her mother with the help of gestures and the medical evidence confirmed rape.
- The Court directed the setting up of special centres for the examination of vulnerable witnesses in every district and at least two such centres in each High Court's jurisdiction to be set up within three months of the judgement.
- The Court also reiterated the directions issued in the case of Sakshi v. Union of India, (2004) 5
- SCC 518 which are as follows:
 1. The provisions of section 327(2) Crpc shall in addition to the offences mentioned in the subsection, also apply in inquiry or trial of offences under sections 354 and 377 of the IPC.
 2. In holding trial of child sex abuse or rape:
 - (i) a screen or some arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
 - (ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and not embarrassing;
 - (iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

Conviction based on sole deposition of Prosecutrix

6. Ganesan v. State, (2020) 10 SCC 573 : (2021) 1 SCC (Cri) 76

As per the settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy." (Para 10)

Further the Court held "On evaluating the deposition of PW 3 victim on the touchstone of the law laid down by this Court in the aforesaid decisions, we are of the opinion that the sole testimony of the PW 3 victim is absolutely trustworthy and unblemished and her evidence is of sterling quality." (Para 11)

LATEST JUDGMENTS RELATED TO POCSO ACT

1. Interpretation of 'aggravated sexual assault' (skin to skin contact) Attorney General for India and Ors. v. Respondent: Satish and Ors. (2021) 4 SCC 712

In the case the issue was whether High Court while disposing appeals erred in interpreting Section 7 of the POSCO Act? The Hon'ble Supreme Court of India made following observations:

- “The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialized or held insignificant or peripheral so as to exclude such act from the purview of "sexual assault" Under Section 7”. [Para 35]
- “The Court can not be oblivious to the fact that the impact of traumatic sexual assault committed on children of tender age could endure during their whole life, and may also have an adverse effect on their mental state. The suffering of the victims in certain cases may be immeasurable. Therefore, considering the objects of the POCSO Act, its provisions, more particularly pertaining to the sexual assault, sexual harassment etc. have to be construed vis-À-vis the other provisions, so as to make the objects of the Act more meaningful and effective.” [Para 37]
- High Court fell into error in case of the Accused-Satish in holding him guilty for the minor offences under Sections 342 and 354 of Indian Penal Code and acquitting him for the offence under Section 8 of the POCSO Act. The High Court while specifically accepting the consistent versions of the victim and her mother i.e. informant about the Accused having taken the victim to his house, having pressed the breast of the victim, having attempted to remove her salwar and pressing her mouth, had committed gross error in holding that the act of pressing of breast of the child aged 12 years in absence of any specific details as to whether the top was removed or whether he inserted his hands inside the top and pressed her breast, would not fall in the definition of sexual assault, and would fall within the definition of offence under Section 354 of the Indian Penal Code. The High Court further erred in holding that there was no offence since there was no direct physical contact i.e. "skin to skin" with sexual intent.[Para 40]. The interpretation of Section 7 at the instance of the High Court on the premise of the principle of "ejusdem generis" is also thoroughly misconceived. [Para 41]
- The prosecution had duly proved not only the sexual intent on the part of the Accused but had also proved the alleged acts that he had pressed the breast of the victim, attempted to remove her salwar and had also exercised force by pressing her mouth. All these acts were the acts of "sexual assault" as contemplated Under Section 7, punishable under Section 8 of the POCSO Act. [Para 42]
- In the case other Accused-Libnus, High Court while recording the finding that the prosecution had established that the Accused had entered into the house of the prosecutrix with the intention to outrage her modesty, also held that the acts "holding the hands of the prosecutrix" or "opened the zip of the pant" did not fit in the definition of sexual assault. High Court had fallen into a grave error in recording such findings. When the alleged acts of entering the house of the prosecutrix with sexual intent to

outrage her modesty, of holding her hands and opening the zip of his pant showing his penis, are held to be established by the prosecution, there was no reason for the High Court not to treat such acts as the acts of "sexual assault" within the meaning of Section 7 of the POCSO Act. [Para 43]

2. Use of child for pornographic purposes

Fathima v. State of Kerala, (2020) 4 KHC 239

In this case the issue before the court was whether the act of the mother to attract an offence under Section 13(c) of the POCSO Act, the essential element is that, there needs to be 'indecent or the obscene representation of the child'?

It was held by the Hon'ble Kerala High Court that, "Whoever uses a child in any form of media for the purpose of sexual gratification, it is punishable under Section 14 of the Act. The main ingredient of the Section is that, the child should be used in any form of medium for the purpose of sexual gratification. Section 13(c) says that, the offence includes the indecent or obscene representation of a child. Whether the action of the petitioner amounts to an offence under Section 13 is a question to be decided during the time of the investigation. What is now available is only an F.I.R. Whether an offence under Section 13 of the POCSO Act is attracted in this case, is a matter to be decided at the time of the investigation.

3. Ban on 'two- finger test'

State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai

Criminal Appeal No. 1441 of 2022; Decided on: October 31, 2022

Bench: Dr. Dhananjaya Y. Chandrachud; J., Hima Kohli; J.

In this case, the Medical board while examining the victim had conducted, 'two- finger test'. The Hon'ble Supreme Court observed that although the test in this case was conducted almost a decade ago, it is a regrettable fact that the test is still conducted today.

The Apex Court deprecated the use of this test and reiterated that the two-finger test should not be conducted. It has no scientific basis, neither does it disprove allegations of rape. It instead re-victimizes and re-traumatizes women who may have been sexually assaulted, and is an affront to their dignity. The Apex Court referred to the judgment in *Lillu v. State of Haryana* (2013) 14 SCC 643, where it was held that the, 'two- finger test' violates the right to privacy, integrity and dignity of woman.

Further, the probative value of a woman's testimony does not depend upon her sexual history. It is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active. The legislature explicitly recognized this fact when it enacted the Criminal Law (Amendment) Act 2013 which inter alia amended the Evidence Act to insert Section 53A. In terms of Section 53A of the Evidence Act, evidence of a victim's character or of her previous sexual experience with any person shall not be relevant to the issue of consent or the quality of consent, in prosecutions of sexual offences

The Apex Court cited the guidelines of Ministry of Health and Family Welfare for health providers in cases of sexual violence. These guidelines proscribe the application of the “two-finger test:

“Per-Vaginum examination commonly referred to by lay persons as 'two-finger test', must not be conducted for establishing rape/sexual violence and the size of the vaginal introitus has no bearing on a case of sexual violence. Per vaginum examination can be done only in adult women when medically indicated.

The status of hymen is irrelevant because the hymen can be torn due to several reasons such as cycling, riding or masturbation among other things. An intact hymen does not rule out sexual violence, and a torn hymen does not prove previous sexual intercourse. Hymen should therefore be treated like any other part of the genitals while documenting examination findings in cases of sexual violence. Only those that are relevant to the episode of assault (findings such as fresh tears, bleeding, edema etc.) are to be documented.”

The Apex Court thereafter issued directions to the Union Government as well as the State Governments to:

1. Ensure that the guidelines formulated by the Ministry of Health and Family Welfare are circulated to all government and private hospitals,
2. Conduct workshops for health providers to communicate the appropriate procedure to be adopted while examining survivors of sexual assault and rape,
3. Review the curriculum in medical schools with a view to ensuring that the "two-finger test" or per vaginum examination is not prescribed as one of the procedures to be adopted while examining survivors of sexual assault and rape.

4. Vulnerable Witness Deposition Scheme

Smruti Tukaram Badade v. State of Maharashtra and Ors.

Miscellaneous Application No. 1852 of 2019 in Criminal Appeal No. 1101 of 2019

Decided On: 11.01.2022

Bench: Dr. Dhananjaya Y. Chandrachud; J., Surya Kant; J.

In this case, the Hon'ble Supreme Court stressed on the need to ensure access to justice to all which can be done by taking positive steps to create a barrier-free environment where even vulnerable witnesses are able to depose freely. This requires not just creation of infrastructure but sensitizing all the stakeholders.

The Apex Court while highlighting upon the need for and importance of setting up facilities which cater to the need for creating a safe and barrier free environment for recording the evidence of vulnerable witnesses, laid down the following guidelines:

- (i) The definition of "vulnerable witness" contained in Clause 3(a) of the 'Guidelines for recording evidence of vulnerable witnesses in criminal matters'¹ of the High Court of

Delhi shall not be limited only to child witnesses who have attained the age of 18 years and should be expanded to include, inter alia, the following categories of vulnerable witnesses:

- (a) Age neutral victims of sexual assault read with Sections 273 and 327 of the Code of Criminal Procedure 1973 and Section 354 of the Indian Penal Code 1860 2;
 - (b) Gender neutral victims of sexual assault read with Section 2(d) of the Protection of Children from Sexual Offences Act 2012;
 - (c) Age and gender neutral victims of sexual assault Under Section 377 of the Indian Penal Code 1860 read with paragraph 34(1) of the decision in Sakshi (supra);
 - (d) Witnesses suffering from "mental illness" as defined Under Section 2(s) of the Mental Healthcare Act 2017 read with Section 118 of the Indian Evidence Act 1872;
 - (e) Any witness deemed to have a threat perception under the Witness Protection Scheme 2018 of the Union Government as approved by this Court in Mahender Chawla v. Union of India (2019) 14 SCC 615;
 - (f) Any speech or hearing impaired individual or a person suffering from any other disability who is considered to be a vulnerable witness by the competent court; and
 - (g) Any other witness deemed to be vulnerable by the concerned court
- (ii) The High Courts shall adopt and notify a Vulnerable Witnesses Deposition Centres 3 Scheme within a period of two months from the date of this order unless a scheme is already notified. The High Courts which already have existing VWDC Schemes in place may consider making suitable modifications in conformity with the guidelines which are indicated in the present order. In formulating the VWDC Scheme, the High Courts shall have due regard to the scheme which has been formulated by the High Court of Delhi, which has been duly approved in the judgment of this Court in Bandu (supra);
 - (iii) Every High Court should set up an in-house permanent VWDC Committee for continuously supervising the implementation of the present directions and making a periodic assessment of the number of VWDCs required in each district proportionate to the time required for recording evidence of vulnerable witnesses and to coordinate the conduct of periodic training programmes;
 - (iv) Every High Court is requested to make an estimation of costs towards manpower and infrastructure required to set up at least one permanent VWDC in every establishment of the District Court (or additional Sessions Court establishments) and estimate the optimal number of VWDCs required for the entire State within a period of three months;
 - (v) Having due regard to the importance of conducting periodic training programmes for manning and managing the VWDCs and sensitizing all stake holders, including judicial officers, members of the Bar and the staff of the court establishment, we constitute a Committee chaired by Justice Ms. Gita Mittal, former Chief Justice of the Jammu

and Kashmir High Court. The Committee shall devise and implement an All India VWDC Training Programme, besides engaging with the High Courts on the creation of infrastructure for VWDCs. The initial tenure of the Chairperson shall be for a period of two years. All High Courts or concerned role assignees shall facilitate and give full cooperation in conducting training programmes in terms of the module which may be prepared by the Chairperson;

- (vi) Upon the estimation of costs prepared by the VWDC Committee of each High Court, the State Government shall expeditiously sanction the requisite funds within a period of three months from the date of the submission of the proposal or the end of the financial year, whichever is earlier, and disburse the funds to the High Court in accordance with the project plan. The State Government shall nominate a nodal officer of the Finance Department who shall be associated ex officio with the work of the VWDC Committee of the High Court, to facilitate the implementation of the proposal submitted by the High Court in terms of these directions;
- (vii) The High Courts shall ensure that at least one permanent VWDC is set up in every District Court establishment (or additional Sessions Court establishments) within a period of four months. The Registrars General of the High Courts shall file compliance reports before this Court;
- (viii) In many States, ADR Centres have been set up by the High Courts in close proximity to the court establishments in the districts. Where such ADR Centres are in place, the High Courts would be at liberty to ensure that the VWDC is made available within the premises of the ADR Centre so as to secure a safe, conducive and barrier free environment for recording the depositions of vulnerable witnesses;
- (ix) The National Legal Services Authority 4 as well as the State Legal Services Authorities have a vital stake and role, particularly in devising and implementing sensitization and training programmes. The Chairperson of the Committee appointed by this Court is requested to engage with NALSA and SLSAs (subject to the directions which may be issued by the Hon'ble Executive Chairperson of NALSA) so as to provide an effective interface for implementing the scheme for training;
- (x) The Hon'ble Chief Justices of the High Courts would be at liberty to take all appropriate steps either on the administrative side or on the judicial side in furtherance of the present directions and to monitor compliance on a periodic basis;
- (xi) The Chief Justice of the High Court of Delhi is requested to make available a work space/room for the office of the VWDC Committee Training Centre and requisite staff, preferably personnel who have previously assisted in the development and implementation of the Training Modules of the Delhi High Court and to designate a Coordinator of the programme in consultation with the Chairperson. Appropriate secretarial and logistical support staff and equipment may be made available to the Committee on a reasonable remuneration as fixed by the Chairperson. The expenses in that regard, including the honorarium payable to the Chairperson shall be defrayed by the Ministry of Women and Child Development to the Director of the Delhi Judicial

Academy. The Chairperson may fix a reasonable honorarium for the work assigned to her under the terms of this order. In the event that any further directions are necessary, the Chairperson may seek them before this Court and any communication in that regard shall be placed for further directions; and

- (xii) The Ministry of Women and Child Development of the Union Government shall designate a nodal officer for coordinating the implementation of these directions and for providing all logistical support to Justice Ms. Gita Mittal, the Chairperson of the Committee appointed by this Court. This would include the payment of honorarium to the Chairperson in terms as fixed by the Chairperson and meeting the expenses, including those towards engaging domain experts for training programmes. The Union Ministry of Women and Child Development and all Ministries of Women and Child Development in the States shall coordinate with the Chairperson and extend logistical support. The High Courts shall, in consultation with the Chairperson of the Committee, enlist experts in the field to facilitate proper training and development of all stake holders.

5. Requirement of Prior Permission of Magistrate to investigate case under Section 23 of POCSO

Gangadhar Narayan Nayak v. State of Karnataka and Ors. Criminal Appeal No. 451 of 2022 (Arising out of SLP (Criminal) No. 8662 of 2021)

Decided On: 21.03.2022 Coram: Indira Banerjee and J.K. Maheshwari, JJ.

In this case, the issue before the court was whether Section 155(2) of the Code of Criminal Procedure applies to the investigation of an offence Under Section 23 of POCSO? Is the Special Court debarred from taking cognizance of an offence Under Section 23 of POCSO and obliged to discharge the Accused Under Section 227 of the Code of Criminal Procedure, only because of want of permission of the jurisdictional Magistrate to the police, to investigate into the offence?

The Hon'ble Supreme Court delivered a split verdict in this case. While, Hon'ble Ms. Justice Indira Banerjee held that Section 23 of POCSO was included in Section 19 of POCSO which overrides the procedure of Code of Criminal Procedure, 1973. Hon'ble Mr. Justice J.K. Maheshwari on the other hand opined that the prior-permission of Magistrate would be required to conduct investigation under Section 23 of POCSO which was a non-cognisable offence.

As per Justice Indira Banerjee;

“Section 5 of the Code of Criminal Procedure categorically states that nothing in the Code of Criminal Procedure shall, in the absence of a specific provision to the contrary, affect any special law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force. POCSO is a special law for protection of children against sexual abuse.

It is well settled that legislative intent is to be construed from the words used in the statute, as per their plain meaning. Had Legislature intended that the Code of Criminal

Procedure should apply to investigation of an offence under Section 23 of POCSO, would specifically have provided so. The expression "investigation" would, as in Section 4(1) or (2) of the Code of Criminal Procedure, have expressly been incorporated in Section 31 or Section 33(9) or elsewhere in POCSO.

Argument that Section 19 of POCSO does not include offence under Section 23 of POCSO is unsustainable in law and not supported by any cogent reasons."

As per Justice J. K. Maheshwari;

"The offence under Section 23 is noncognizable and Section 19 or other provisions of POCSO Act do not confer power for investigation except to specify the manner of reporting the offence.

However, as concluded as per Sub-section 2 of Section 4 and applying Section 5 savings Clause of Code of Criminal Procedure, in absence of having any provision in special enactment, the Code of Criminal Procedure would apply.

On perusal thereto, it is clear that the 'trial flows cognizance and cognizance is preceded by investigation', which is the basic scheme for the Court to cognizable cases. It is observed that, it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Then Court proceeded to decide the breach of mandatory provisions regulating the competence or procedure of the Court as regards cognizance or trial.

To investigate such an offence, the order as mandated under Section 155(2) of Code of Criminal Procedure is necessary, prior to investigating the offence. It is made clear here that, as per Section 155(2), for non-cognizable offence, the order is required to be taken from the Magistrate but in the light of Sections 2(1) and 28 of POCSO Act, the Special Courts are required to be designated to deal with offences under POCSO Act and they have been authorized under Section 33, conferring a power to such Special Courts to take cognizance. Therefore, the word used in Section 155(2) be read as "Special Courts" in place of "Magistrate", which may take cognizance of any offence under POCSO Act. Therefore, the procedure of Section 155(2) is required to be followed in an offence of POCSO Act under Section 23 which is non-cognizable and the Special Court is required to look into the procedure followed in the investigation."

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Synopsis of MoHFW Guidelines & Protocols related to Medico-Legal Care for Survivors/Victims of Sexual Violence

Dated 19 March 2014, New Delhi

Legal Obligations

- Examination shall be conducted
 - * By a registered medical practitioner (RMP) employed in a hospital run by the government or a local authority or a private RMP.
 - * Without delay and a reasoned report to be prepared by the RMP.
- Record informed consent obtained specifically for this examination.
- Exact time of start and close of examination to be recorded.
- RMP to forward report without delay to Investigating Officer (IO), and in turn IO to Magistrate.
- The Criminal Law Amendment Act 2013, in Section 357C CrPC says that both private and public health professionals are obligated to provide treatment.
- Non-treatment of rape survivors is punishable under Section 166 B IPC with imprisonment for a term which may extend to one year or with fine or with both.

Components of comprehensive response:

- Providing necessary medical support to the survivor of sexual violence.
- Informed consent for examination and evidence collection and informing the survivor of police procedures.
- Establishing a uniform method of examination, evidence collection by following the protocols (use of formats as provided in the guidelines issued by MoHFW)
- First contact psychological support and referral for further assistance (legal support, shelter etc).
- Maintaining a clear and fool-proof chain of custody of medical evidence collected.

Survivors/victims of sexual violence include:

- Women and children
- Marginalised groups are defined as those facing discrimination based on:
 - Gender identity where an individual's body doesn't fall in the rigid binary of male and female genitalia.
 - Sexual orientation they practice.
 - Engagement in sex work.
 - Physical, psycho social and / or intellectual disability. .
 - Religious minorities, castes or tribes.

Guiding Principles for Health Professionals while working with Special Groups

- Offer complete medico legal care along with psychosocial support
- Steer clear from demonstrating shock, disbelief, ridicule and ensure that such a conduct does not seep into the doctor- patient relationship.
- Acknowledge challenges and obstacles faced by marginalized groups in accessing health services and create an enabling atmosphere for them in the health facility.
- Enable survivors to feel at ease to be able to reveal the abuse that they have faced.
- There must be cultural sensitivity while carrying out medical procedures.
- Cultural sensitivity refers to a recognition of the caste, class, community, religion- determined behavior and perceptions of the patient. .
- Individuals belonging to marginalised communities are often mistreated and ridiculed by the police.
- In many instances, complaints from marginalised communities do not even get recorded.
- Therefore efforts must be made by health professionals to dialogue with the allied agencies such as police to record the complaint at the health facility if survivors express such a desire.
- Doing so at health institutions would be useful for survivors from marginalised groups as health institutions are perceived as less intimidating compared to police stations
- Ensure that information on referral institutions providing good quality services is available.

Dealing with children:

- Children may be accompanied by the abuser when they come for medical treatment, so be aware and screen when you suspect abuse.
- Do not assume that because the child is young he/she will not be able to provide a history. History seeking can be facilitated by use of dolls and body charts.
- Believe what is being reported by the child. There are misconceptions that children lie or that they are tutored by parents to make false complaints against others. Do not let such myths affect the manner in which you respond to cases of child sexual abuse.
- Doses of treatment will have to be adjusted as required in terms of medical treatment. For psychological support, it is imperative to speak with the care taker/s of the survivor in addition the survivor themselves.

Clinical enquiry for abuse:

- Health professionals must make a note of the following aspects while screening for sexual abuse.
 - * Assurance of confidentiality and provision of privacy are keys to enabling children to speak about the abuse. However genital and anal examination should not be conducted mechanically or routinely.

A few indicators for routine enquiry are -

- Pain on urination and /or defecation
- Abdominal pain/ generalized body ache
- Inability to sleep
- Sudden withdrawal from peers/ adults
- Feelings of anxiety, nervousness, helplessness
- Inability to sleep
- Weight loss
- Feelings of ending one's life

Facility preparedness:

Standard operating procedure at the facility level must provide the following –

- Comprehensive services.
- Carry out uniform practice across all doctors in the hospital vis a vis medico legal care for sexual violence survivors
- Smooth handling of the cases and clarity of roles of each staff.

The SOP must be printed and available to all staff of the hospital.

Basic Availability at the Hospital

- Trained doctors
- Define roles for doctors, nurses, administrative medical officer and medical records officer.
- Monitoring committee to review response to cases and adherence to SoP.
- Documentation of chain of custody: direction on managing, packing and dispatching medico legal evidence from the hospital to the FSL.

At the facility level

- Trained doctor designated for examination.
 - * In case of a girl or woman, every possible effort should be made to find a female doctor but absence of availability of lady doctor should not deny or delay the treatment and examination.
 - * In case a female doctor is not available for the examination of a female survivor, a male doctor should conduct the examination in the presence of a female attendant. In case of a minor/person with disability, his/her parent/guardian/any other person with whom the survivor is comfortable may be present.
- In the case of a transgender/intersex person, the survivor should be given a choice as to whether she/he wants to be examined by a female doctor, or a male doctor. In case a female doctor is not available, a male doctor may conduct the examination in the presence of a female attendant.

- Police personnel must not be allowed in the examination room during the consultation with the survivor. If the survivor requests, her relative may be present while the examination is done.
- There must be no delay in conducting an examination and collecting evidence.
- Admission, evidence collection or filing a police complaint is not mandatory for providing treatment.
- The history taking & examination should be carried out in complete privacy preferably in a designated room in the hospital for examination of sexual violence survivor. The room should have adequate space, sufficient lighting, a comfortable examination table, all the equipment required for a thorough examination,

Infrastructural requirements

Following should be available at each facility:

- Forms for documentation
- Large sheet of paper to undress over; Paper bags for clothing collection; Catchment paper; Sterile cotton swabs and swab guards for biological evidence collection; Comb; Nail Cutter; Wooden stick for finger nail scrapings; Small scissors; Urine sample container; Tubes/ vials/ vaccutainers for blood samples (EDTA, Plain, Sodium fluoride); Syringes and needle for drawing blood; Distilled water; Disposable Gloves; Glass slides;

Envelopes or boxes for individual evidence samples; Labels; Lac(sealing wax) Stick for sealing; Clean clothing, shower/hygiene items for survivors use after the examination

Other items for a forensic/medical examination and treatment that may be included are:

Woods Lamp/Good Torch; Vaginal Speculums; Drying rack for wet swabs &/or clothing; Patient gown, cover sheet, blanket, pillow; Post-It Notes to collect trace evidence; Microscope; Colposcope/ Magnifying glass; Toluidine blue dye; 1% Acetic acid diluted spray; Urine Pregnancy test kit; Surgilube; Medications

- The collected samples for evidence may be preserved in the hospital till such time that police are able to complete their paper work for dispatch to forensic lab test including DNA.
- After the examination is complete the survivor should be permitted to wash up, using the toiletries and the clothing provided by the hospital if her own clothing is taken as evidence.
- Admission should not be insisted upon unless the survivor requires indoor stay for observation/treatment.
- Survivors of sexual violence should receive all services completely free of cost.
- This includes OPD/inpatient registration, lab and radiology investigations, UPT and medicines.
- The casualty medical officer must label the case papers for any sexual violence case as “free”.
- Medicines should be prescribed from those available in the hospital.
- If certain investigations or medicines are not available, the social worker at the hospital should ensure that the survivor is compensated for investigations/ medicines from outside.

- A copy of all documentation (including that pertaining to medico-legal examination and treatment) must be provided to the survivor free of cost.

Psychosocial support

- Psychological first aid provision is the responsibility of each HCP. This should not be confused with counselling.
- HCP must demystify medical procedures related to examination, evidence collection and treatment. A core message that should be reiterated is that assault was not her fault.
- Acknowledge survivor's courage and encourage the person to express feelings
- Explain to the survivor that a range of emotions may be experienced and that support needs to be sought to help deal with those emotions
- Assess for physical safety as well as suicide ideation and assist her to plan for her safety.
- HCPs need to connect survivors to resources and also explain the available schemes for rehabilitation and compensation
- Communicating with the family of the survivor and involving them in the healing process of survivor is also important.

Psychological first aid:

- Explain to the survivor that this is a crime/violence and not an act of lust or for sexual pleasure.
- Emphasize that this is not a loss of honor, modesty or chastity but a violation of his/her rights and it is the perpetrator who should be ashamed.
- Take help of a counselor if required.

Facilitating procedures:

- The health worker should explain to the survivor in simple and understandable language the rationale for various procedures and details of how they will be performed.
- Specific steps when dealing with a survivor from marginalized groups such children, persons with disability, persons from LGBT, sex workers or persons from minority community, may be required as recommended in Chapter 3.
- Ensure confidentiality and explain to the survivor that s/he must reveal the entire history to health professional without fear and not hide anything
- The fact that genital examination may be uncomfortable but is necessary for legal purposes should be explained to the survivor. The survivor should be informed about the need to carry out additional procedures such as x-rays, etc which may require a visit to others departments.

Informed consent:

- The following information needs to be given:

- Purpose of medico-legal examination. Examination may involve an examination of the mouth, breasts, vagina, anus and rectum.
- Forensic evidence may be collected with the consent of the survivor. This may include removing and isolating clothing, scalp hair, foreign substances from the body, saliva, pubic hair, samples taken from the vagina, anus, rectum, mouth and collecting a blood sample.
- Right to refuse either a medico-legal examination or collection of evidence or both, but that refusal will not be used to deny treatment to survivor after sexual violence.
- Reporting to police: Police will be informed about the sexual offence. However, if the survivor does not wish to participate in the police investigation, it will not result in denial of treatment for sexual violence. Informed refusal will be documented in such cases.

History taking

- One should not feel awkward in asking for history of the sexual act.
- Information regarding attempted or completed penetration by penis/ finger/ object in vagina/ anus/ mouth should be properly recorded. There could also be other acts such as masturbation of the assailant by the survivor, masturbation of the survivor by the assailant, oral sex by the assailant on the survivor or sucking, licking, kissing of body parts.
- Information about emission of semen, use of condom, sucking or spitting along with the location should be clearly stated. Information about emission of semen outside the orifices should be elicited.
- Information regarding use of condom during the assault is relevant because in such cases, vaginal swabs and smears would be negative for sperm/semen
- In case of children, illustrative books, body charts or a doll can be used if available, to elicit the history of the assault. When it is difficult to elicit history from a child, please call an expert.
- Post assault Information should be collected on activities like changed clothes, cleaned clothes, bathed/ urinated/ defecated/ showered/ washed genitals (in all cases) and rinsing mouth, drinking, eating (in oral sexual violence)/ had sexual intercourse after the incident of sexual violence. This would have a bearing on the trace evidence collected from these sites.
- Information related to past abuse (physical/sexual/emotional) should be recorded in order to understand if there is any health consequence related to the assault. This information should be kept in mind during examination & interpretation of findings.
- Relevant Medical & Surgical History: Relevant medical history in relation to sexually transmitted infections (gonorrhoea, HIV, HBV etc.) can be elicited by asking about discharge per-urethra/per-anus, warts, ulcers, burning micturition, lower abdominal pain etc. Based on this information reexamination/ investigations can be done after incubation period of that disease. If there is vaginal discharge, record its type, i.e., texture, colour, odour, etc.
- Relevant surgical history in relation to treatment of fissures/injuries/scars of ano-genital area should be noted.

Per Vaginum examination:

- Per vaginum examination, commonly referred to by lay persons as ‘two-finger test’, must not be conducted for establishing an incident of sexual violence and no comment on the size of vaginal introitus, elasticity of the vagina or hymen or about past sexual experience or habituation to sexual intercourse should be made as it has no bearing on a case of sexual violence. No comment on shape, size, and/or elasticity of the anal opening or about previous sexual experience or habituation to anal intercourse should be made.

Injury documentation

- Examine the body parts for sexual violence related findings (such as injuries, bleeding, swelling, tenderness, discharge). This includes both micro mucosal injuries which may heal within short period to that of severe injuries which would take longer to heal. Please refer to section VI Point 17 of the Guidelines.
- Injuries must be recorded with details - size, site, shape, colour.
- If a past history of sexual violence is reported, then record relevant findings. Sexual violence is largely perpetrated against females, but it can also be perpetrated against males, transgender and intersex persons.

The nature of forensic evidence collected will be determined by three main factors-

- nature of sexual violence,
- time lapsed between incident of sexual violence and examination and
- whether survivor has bathed or washed herself.

Opinion

- Doctors should not, on the basis of the medical examination conclude whether rape/sexual assault had occurred or not. Only findings in relation to medical findings should be recorded in the medical report.
- Drafting of provisional opinion should be done immediately after examination of the survivor on the basis of history and findings of detailed clinical examination of the survivor.
- Absence of injuries may be due to:
 - * Inability of survivor to offer resistance to the assailant because of intoxication or threats
 - * Delay in reporting for examination
- It should be always kept in mind that normal examination findings neither refute nor confirm sexual violence. Hence circumstantial/other evidence may please be taken into consideration

Comprehensive medical care

- Urgent medical needs must be prioritized.

Sexually Transmitted Infections:

- If clinical signs are suggestive of STD, collect relevant swabs and start PEP. If there are

no clinical signs, wait for lab results. For non-pregnant women, the preferred choice is Azithromycin 1gm stat or Doxycycline 100mg bd for 7days, with Metronidazole 400 mg for 7days with antacid.

- For pregnant women, Amoxicillin/Azithromycin with Metronidazole is preferred. Metronidazole should NOT to be given in the 1st trimester of pregnancy.
- Hepatitis B. Draw a sample of blood for HBsAg and administer 0.06 ml/kg HB immune globulin immediately (anytime upto 72 hours after sexual act).

Pregnancy Prophylaxis (Emergency Contraception)

- The preferred choice of treatment is 2 tablets of Levonorgestrel 750 µg (Norlevo), within 72 hours. If vomiting occurs, repeat within 3 hours. OR 2 tablets COCs Ovral/ Mala D - 2 tablets stat, repeated 12 hours within 72 hours Novelon/Femilon/Ovral L - 4 tablets stat, repeated after 12 hours within 72 hours.
- Although emergency contraception is most efficacious if given within the first 72 hours, it can be given for up to 5 days after the assault.
- Pregnancy assessment must be done on follow up and the survivor must be advised to get tested for pregnancy in case she misses her next period.
- Lacerations: Clean with antiseptic (Savlon/Dettol) or soap and water. If the survivor is already immunized with Tetanus Toxoid or if no injuries, TT not required. If there are injuries and survivor is not immunized, administer ½ cc TT IM. If lacerations require repair and suturing, which is often the case in minor girls, refer to the nearest centre offering surgical treatment.
- Post Exposure Prophylaxis (PEP) for HIV should be given if a survivor reports within 72 hours of the assault. Before PEP is prescribed, HIV risk should be assessed.
- Follow-up: Please emphasize the importance of follow up to the survivor. It is ideal to call the survivor for re-examination 2 days after the assault to note the development of bruises and other injuries; thereafter at 3 and 6 weeks. All follow ups should be documented.
- Repeat test for gonorrhoea if possible.
- Test for pregnancy.
- Repeat after six weeks for VDRL.
- Assess for psychological sequelae and re-iterate need for psychological support as per section 5 of the guidelines.
- Psychosocial care: All survivors should be provided the first line support. The health professional must provide this support himself/herself or ensure that there is someone trained at the facility to provide this. Refer to section VII for details.

Interface with police:

- Police cannot enter the examination space
- They cannot provide consent for medico legal examination in survivors either unaccompanied or under 12 years and in the absence of a guardian

- Doctors should not answer any police requisition , they should only hand over a copy of the examination proforma findings to the police
- No questions such as whether rape occurred or not, is she capable of sexual intercourse , is she habituated to sexual intercourse should be answered

Interface with public prosecutor

- Before a court appearance, doctor should equip herself with the examination and documentation findings
- Doctor should speak to the public prosecutor in advance so that she can be well-versed with potential questions asked about the examination findings

Interface with judiciary:

- Doctor is called to the court as an expert witness .He/ she is expected to deliver a medical opinion , which means interpret the medical findings to the court
- As an expert witness the doctor must be equipped in explaining the lack of evidence to the judiciary
- It is the responsibility of the doctor to explain in the court that negative findings do not indicate that sexual violence did not occur. This is because it is only a doctor who can explain this fact on the basis of his documentation of circumstances of sexual assault
- Misconceptions about hymenal status, overemphasis on injuries has also percolated to the judiciary. Doctors must steer clear from commenting on these aspects even if the judiciary asks for such comments as a doctor is a man of science and has to bring to the court scientific evidence based on the findings of the assault.



Jharkhand Guidelines for Medical Officer/Hospital on POCSO



झारखण्ड सरकार

स्वास्थ्य, चिकित्सा शिक्षा एवं परिवार कल्याण विभाग
नेपाल हाउस, डोरण्डा, राँची - 834002



सं सं : 3/स्था0डी0-01-269/13

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राँची, दिनांक : 7/3/14

प्रेषक,

शुभ्रा वर्मा,
सरकार के संयुक्त सचिव।

डा. लालू
अपर निदेशक

सेवा में,

सभी क्षेत्रीय उप निदेशक, झारखण्ड, राँची।

सभी सिविल सर्जन, झारखण्ड।

DIC (ARHM)

14/3/14

स्वास्थ्य निदेशालय, झारखण्ड
जायसी संख्या - 2185
दिनांक - 14/3/14

909 (एम)
14/3/14

विषय : लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (Protection of Children from Sexual Offences Act, 2012) की धारा 39 के तहत निर्मित मार्गदर्शिका के संबंध में।

महोदय,

निदेशानुसार उपर्युक्त विषय के संबंध में कहना है कि लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (Protection of Children from Sexual Offences Act, 2012) की धारा 39 की तहत, चिकित्सकों एवं स्वास्थ्य कर्मियों के लिए निर्मित मार्गदर्शिका सूचना एवं आवश्यक कार्यार्थ संलग्न है।

अनुरोध है कि मार्गदर्शिका अधीनस्थ अस्पतालों/चिकित्सकों के बीच परिचारित किया जाना सुनिश्चित

Dr. Ajit
Child Health Officer

me
24/3/14 अनु०-यथोक्त।

विश्वासभाजन

शुभ्रा वर्मा

सरकार के संयुक्त सचिव

राँची, दिनांक : 7/3/14

ज्ञापक : 3/स्था0डी0-01-269/13 326(3)

प्रतिलिपि - निदेशक प्रमुख, स्वास्थ्य सेवाएं, झारखण्ड, राँची को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

अनुरोध है कि मार्गदर्शिका को विभागीय/एन0आर0एच0एम0 के Web Site पर अपलोड करने की कार्रवाई की जाय।

डा. नीतामणी का
निदेशक
कृपया
24/3/14

ज्ञापक - 854 (RLH)

दिनांक 24/3/14

शुभ्रा वर्मा

सरकार के संयुक्त सचिव

सभी निदेशक | अपर निदेशक | उपनिदेशक |
SPM/SPE/रिपेरो | MNcell | डा. सूचनाएं
Saurabh/ Ranjit/ S.O

राज्य प्रतिनिधि - Unicef, MEHP, WHO/SREHU

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Guidelines for Medical Officers/Hospitals regarding treatment and medical examination of child victims of sexual exploitation under POCSO Act, 2012

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.

As per section 39 of the Act state government are required to issue guidelines for use of professionals including doctors in dealing with offences under the Act.

Medical Examination

- 1) A medical examination of a child can be conducted even before a FIR is filed or a complaint is registered.
- 2) Joint examination by a team of doctors, wherever possible, team consisting of pediatrician, psychologist/counselor with required skills, knowledge and competency to deal with child victim will be of help, more so, in case of child victim with disability.
- 3) Medical examination must be conducted by 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.
- 4) If such practitioner is not available, the examination can be conducted by any other registered medical practitioner (not below MBBS) with the consent of the child or a person competent to give consent on his or her behalf within 24 hrs. from the time of receiving information relating to the commission of such offence.
- 5) In so far as it may be practical, psychiatric help is made available to the child victim before medical examination at the hospital itself.
- 6) As the victims of sexual assault are traumatized and their physical condition and state of mind are unstable, handling of their case requires sensitivity, empathy and compassion. Therefore, the examining doctor must remain re-assuring, empathetic and sensitive to the victim throughout and should also provide due privacy.
- 7) Provide a comfortable and relaxed atmosphere to the victim to seek his/her cooperation for the medical examination. Examining doctor must build "trust and confidence" with the victim.
- 8) The doctor examining the child must understand the mental and emotional trauma of the child victim and respond accordingly to ensure that the child is not further traumatized and self-esteem of the child is protected during the process of medical examination and treatment.
- 9) If the victim is a girl child, the examination must be conducted by a lady doctor.
- 10) In case a victim is a girl child and if lady doctor is not available at CHC, ambulance/any other vehicle available in the CHC should be arranged to send the victim along with



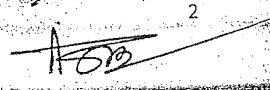
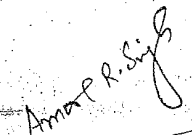

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parent/guardian/support person to the nearby Government hospital where lady doctor is available.

- 11) The medical examination must be conducted in the presence of the parent or any other person in whom the child reposes trust or confidence.
- 12) 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/facility.
- 13) If the medical examination was not conducted prior to reporting the case, it must be done in accordance with Section 164A of the Code of Criminal Procedure. Samples must be collected for the purpose of the forensic tests and sent to the forensic laboratory at the earliest.
- 14) The first doctor attending to the abused child should be fully convergent with the needs of the investigating agency of collecting evidence of the crime against the child and that evidence is not lost.
- 15) In cases of sexual assault the doctor is only required to look into sign of violence or resistance 'if any' upon the body of the victim for which the doctor would make a note of it by visible external examination.
- 16) The doctor is further required to report on the state of sexual organs of the victim to include information regarding puberty and attaining of sexual maturity of the victim. In case of assault or pregnancy the abdominal and vaginal examinations and thereafter the collection of samples from the clothes of the victim and the alleged attacker and from the vagina of the victim are required to establish the nature of assault and the identity of the attacker.
- 17) In case if the victim is unmarried, the Hymen Test is conducted to check if the hymen is intact and in case of use of force any signs of tearing or bruising, off or near the vagina are noted. After the aforesaid test no further examination is required.
- 18) The basic requirement to establish the offence of rape is that the sexual relations are made forcibly without the consent. In such cases the material aspect to be judged by way of medical examination is to judge the sign of violence and resistance, if any upon the body of the victim, which may be mentioned by the doctor by visible external examination. (Ref of Ms. Kamini Lau, ASJ-II/NW, Rohini Courts in the Judgment in case a FIR No. 513/07 u/s 342/376 (2),(f) IPC, P.S. Shalimar Bagh)
- 19) The P.V. examination which is normally called the finger test is carried out only to ascertain whether the alleged victim of rape is habitual to sex or used to sex. Use of PV examination in routine on victim of sexual offence even children should be avoided as the Supreme Court considers it a violation of fundamental Right of Privacy.
- 20) If due to any reason, it is felt essential or necessary by the investigating officer to get the P.V. examination conducted in order to collect evidence against the accused then this test being carried out exclusively by a lady Doctor with the consent of her guardians and

that too after taking due permission from the court and not otherwise. (Supreme court order)

- 21) Conduct the age determination test, whether requested or not by the investigating agency.
- 22) When the incidence of abuse is not recent and there is no likelihood of any forensic evidence like presence of semen stains, any bodily fluid, the utility of referral should be thought of and unnecessary referrals should be avoided to avoid delay in court procedures.

Medical Report

- 1) The medical examination report must be prepared immediately after examination. In the event results of examination are likely to be delayed, the same should be clearly mentioned in the medical report. The evidence of the child must be recorded within 30 days of the Special Court having taken cognizance of the offence. If it is delayed, reasons will have to be recorded by the Special Court explaining the delay.
- 2) Document the findings chronologically and with consistency. Maintain objectivity and avoid subjectivity. Authenticity of information should be ensured. Make sure that even minute detail of the examination is recorded in the Medico Legal Reports.
- 3) The doctor must correlate the medical evidence with the narration/child's version of the incident.
- 4) The registered medical practitioner, to whom such child is sent shall, without delay, examine her/him and prepare a report of his examination giving the following particulars, namely:-
 - (I) the name and address of the child and of the person by whom he/she was brought;
 - (II) The age, sex and caste of the child;
 - (III) The description of material taken from the person for DNA profiling;
 - (IV) marks of injury, if any;
 - (V) General mental condition of the child; and
 - (VI) Other material particulars in reasonable detail.
- 5) The report shall state precisely the reasons for each conclusion arrived at.
- 6) The report shall specifically record that the consent of the child or of the person competent to give such consent on her behalf to such examination had been obtained. The exact time of commencement and completion of the examination shall also be noted in the report.
- 7) The registered medical practitioner shall, without delay within ten days forward the report to the investigation officer who shall forward it to the Magistrate/ Special Court.
- 8) Write the report clearly and precisely. Give opinion at the very earliest, justice delayed is justice denied
- 9) The report should be prepared expeditiously and signed by the doctor conducting the examination and a copy of medical report be provided to the parents/guardian of the child victim free of cost.

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10) While recording an opinion in medico-legal cases the following four criteria must be incorporated.

- i. Evidence of recent sexual activity
- ii. Whether the victim has undergone continuous sexual intercourse
- iii. Sign of struggle / use of force
- iv. Presence of Sexually Transmitted Diseases

11) While recording opinion, the medical officer must specify whether the injuries are:

- Fresh (within 4 to 6 hours) / recent (within one day) / old (If more than one day, be specific if possible)

- Caused by sharp/ blunt objects / rough surface/ burning objects or smoldering objects like cigarettes, simple / grievous / dangerous in nature. Injuries are suggestive of impulsive or planned (systemic) physical torture.

Note: While giving opinion, multiple injuries if any, may be clubbed according to their nature. The nature of each injury such as, simple / grievous, should be specified both individually and collectively.

12) While recording Opinion about age, the medical officer should take into consideration all findings collectively and narrow down the range of the age of the victim as far as possible. The range should not be more than ± 6 months. This range of \pm is given only when opinion is expressed as a whole number for example, 14.6 years ± 6 months. Ideally the appropriate method is to express the age in range such as 14-15 years, which means that person is more than 14 years of age and less than 15 years of age.

Treatment of victim of sexual abuse

- 1) If the child is in need of urgent medical care and protection, she or he must be taken for emergency medical care to the nearest hospital or medical care facility centre. Such care should be administered in the presence of the parent/guardian/support person/other person in whom the child has trust and confidence. A medical practitioner, hospital or medical facility centre providing such emergency medical care cannot demand legal or magisterial requisition or documentation before providing such care.
- 2) Emergency medical treatment wherever necessary should be provided to the child victim.
- 3) The child victim shall be afforded prophylactic medical treatment against STDs.
- 4) Situation involving threat to life of a child victim should be provided treatment irrespective of the consent/non consent debate.
- 5) Any such victim brought to the hospital/nursing home either by the Police/public/relative/friend/or on their own, shall not be refused immediate medical treatment on any ground whatsoever, that may be required to stabilize the emergency medical condition of the victim

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Reporting

- 1) In the event the child victim of sexual assault is brought to any hospital/nursing home, the child shall be afforded immediate medical attention. The matter must be reported to the nearest police station by the concerned hospital/ nursing home.
- 2) Any personnel of the hospital on coming across information regarding commission of sexual offence (as stated under the Act) against any child, must report the same to Special Juvenile police Unit/Child Welfare officer or local police. (section 20).
- 3) On failing to report, personnel will be subject to imprisonment of six months / fine or both. Whereas the person-in-charge of the institution will be punished with imprisonment of one year /fine or both. {Sec 21 (1)(2)}
- 4) No information, disclosing the identity of the child victim, can be published in any reports/newspaper/media(JJ Act Sec 21)

Structural prerequisite

- 1) In order to provide privacy to the victim, a separate room should be identified by the Director/ Medical Superintendent/Deputy superintendent/Medical officer in-charge (MOIC) and marked in all hospitals where the victims can be examined by the attending doctor.
- 2) In district hospitals and medical colleges, two room unit (one room for examination and one room for counseling) with attached toilet facility must be made available for providing counseling services and conducting medical examination and treatment of the victim of sexual assault.
- 3) District hospital should be attached with/liason with professionals under District Mental Health program and take their services, as and when required.
- 4) In this regard, Director/ Medical Superintendent of the hospital will issue an order sending copies to all the HODs of the hospital and the casualty emergency for their information. The room number should be known to the doctors in emergency duty.
- 5) The room should have proper furniture required for medical examination. The basic equipments, adequate stock of sexual assault forensic evidence (SAFE) kit etc should be kept available in the room for collection of the forensic evidence. The room should be child friendly. There could be provision of some toys, color book/pencils etc
- 6) C.M.O/ M.O. In charge of Casualty & Emergency should be nominated as Nodal Officer for putting in place the desired system and carry out day to day supervision.
- 7) The Nodal officer will ensure that good practices on proper collection of Medical Legal Case (MLC) evidence/material are observed.
- 8) The nodal officer will ensure that the copies of protocol/ guidelines are readily available in examination room for reference.
- 9) The hospital should also provide clothing to the victim in case the victim's clothes are taken as evidence or action otherwise requires fresh clothes to be given.

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- 10) The hospital should also provide toiletries to the victim for washing up after the MLC examination has been concluded.
- 11) In case where counseling of the victim is required, the same should be provided by the hospital's own pool of doctors and if that is not available, then the Crisis Intervention Centers (CIC) which provides such counselor or lady doctors should be informed. For this purpose the name and contact numbers of the CIC should be kept available in the room.
- 12) The payment of honorarium to the doctors or counselors from the CIC rendering services to child victim by assisting in the medical examination can be made from Hospital management Committee fund as per CIC approved rates.

Capacity building

- 1) The Health Department /Director in chief will arrange for training of medical officers conducting medical examination of child victims of sexual assault on essential counseling skills and how to deal with children in trauma, guidelines for medical officers dealing with victims of sexual exploitation etc in collaboration with RINPAS, CIP, UNICEF and other agencies working on the issue.
- 2) Director/Medical Superintendent will arrange periodic training sessions to the doctors on the protocols and guideline on the MLC examinations/reporting in case of sexual assault victims.
- 3) The Director/Medical Superintendent will also organize sensitization workshop for hospital staff, medical & paramedical professional including nurses.
- 4) The Director/Medical Superintendent will maintain an update directory of the contact points and will intimate any change to the Health & family Welfare Department for updating directory on website.
- 5) The training of Counselors (HIV/AIDS)/Nurses can also be organized on counseling skills to deal with victims of sexual assault.
- 6) A session on POCSO Act/guidelines must be included in the curriculum of medical students and nursing students.

Don'ts for the examining doctor -

1. Don't ally with any individual involved in investigation.
2. Do not concur with traffickers, who may pressurize you to give false age determination report.
3. Do not get emotionally influenced by allegations.
4. Trial of the case has to be done by Court not by you.
5. Do not use ambiguous words, those that have more than one meaning, or which can be interpreted wrongly by either side. Do not write a very lengthy and irrational history in the report.
6. Do not disclose the identity of the victim and findings to any unauthorized persons.

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- 7. Do not try to become an investigator. Remain a person of science.
- 8. Do not venture a premature opinion.

Non-compliance of the aforementioned directions by defaulting hospitals/ nursing homes shall attract appropriate disciplinary/punitive action including cancellation of registration.

Directors and Medical Superintendents of all the hospitals operating in Jharkhand including autonomous societies there under, are hereby requested to implement the above said instructions in the guidelines diligently, in letter and spirit.

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for Women Victims/Survivors of Sexual Assault/other Crimes-2018 से अनाच्छादित पीड़ितों के लिए "झारखण्ड पीड़ित प्रतिकर (संशोधन) स्कीम-2016" विभागीय अधिसूचना संख्या-5190, दिनांक-29 सितंबर 2016 सह पठित "झारखण्ड पीड़ित प्रतिकर (संशोधन) स्कीम-2018" अधिसूचना संख्या-4941 दिनांक-31.08.2018 के प्रावधान प्रभावी होंगे।

3. उक्त स्कीम अधिसूचना निर्गत होने की तिथि से प्रभावी होगी।
4. उक्त अधिसूचनाओं के शेष प्रावधान यथावत् रहेंगे तथा अधिसूचना इस हद तक संशाधित समझा जाए।

झारखण्ड राज्यपाल के आदेश से,

(सतीश कुमार)

सरकार के संयुक्त सचिव।

ज्ञापांक-11/कोर्ट केस-31/2018-.....4052../राँची, दिनांक- 30/07/2019 ई०।

प्रतिलिपि- ई-गजट पदाधिकारी, गृह, कारा एवं आपदा प्रबंधन विभाग, झारखण्ड, राँची को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित है।

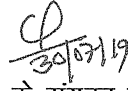
सरकार के संयुक्त सचिव।

अनुसूची- II
महिला पीड़ितों के लिए प्रतिकर की अनुसूची

S.No.	Particulars of loss or injury	Minimum Limit of Compensation	Upper Limit of Compensation
1	Loss of Life	Rs. 5 Lakh	Rs. 10 Lakh
2	Gange Rape	Rs. 5 Lakh	Rs. 10 Lakh
3	Rape	Rs. 4 Lakh	Rs. 7 Lakh
4	Unnatural Sexual Assault	Rs. 4 Lakh	Rs. 7 Lakh
5	Loss of any Limb or part of body resulting in 80% permanent disability or above	Rs. 2 Lakh	Rs. 5 Lakh
6	Loss of any Limb or part of body resulting in 40% and below 80% permanent disability or above	Rs. 2 Lakh	Rs. 4 Lakh
7	Loss of any Limb or part of body resulting in above 20% and below 40% permanent disability.	Rs. 1 Lakh	Rs. 3 Lakh
8	Loss of any Limb or part of body resulting in below 20% permanent disability.	Rs. 1 Lakh	Rs. 2 Lakh
9	Grievous physical injury or any mental injury requiring rehabilitation	Rs. 1 Lakh	Rs. 2 Lakh
10	Loss of Foetus i.e. Miscarriage as a result of Assault or loss of fertility	Rs. 2 Lakh	Rs. 3 Lakh
11	In case of Pregnancy on account of rape.	Rs. 3 Lakh	Rs. 4 Lakh
12	Victim of Burning :		
a.	In case of disfigurement of face	Rs. 7 Lakh	Rs. 8 Lakh
b.	In case of injury more than 50%	Rs. 5 Lakh	Rs. 8 Lakh
c.	In case of injury less than 50%	Rs. 3 Lakh	Rs. 7 Lakh
d.	In case of injury less than 20%	Rs. 2 Lakh	Rs. 3 Lakh
13	Victims of Acid attack		
a.	In case of disfigurement of face	Rs. 7 Lakh	Rs. 8 Lakh
b.	In case of injury more than 50%	Rs. 5 Lakh	Rs. 8 Lakh
c.	In case of injury less than 50%	Rs. 3 Lakh	Rs. 5 Lakh
d.	In case of injury less than 20%	Rs. 3 Lakh	Rs. 4 Lakh

Note:

- (1) If a woman victim of sexual assault/acid attack is covered under one or more category of the schedule, she shall be entitled to be considered for combined value of the compensation.
- (2) Nothing in this scheme shall prevent victims or their dependents from instituting any civil suit or claim against the perpetrator of offence or any other person indirectly responsible for the same.


सरकार के संयुक्त सचिव।

अनुसूची - 3

झारखण्ड सरकार

गृह, कारा एवं आपदा प्रबंधन विभाग

78.
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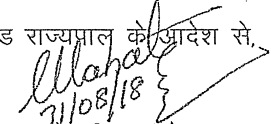
अधिसूचना

संख्या - 18/विविध (07) 08/2018 - 4941 / गृह, मंत्रालय भारत सरकार के पत्रांक -11034/ 54/ 2018 - IS. iv, दिनांक-23.07.2018 द्वारा माननीय सर्वोच्च न्यायालय द्वारा Writ petition (Civil) No. - 754 / 2016, Tehseen S. Poonawalla Vs Union of India and others में दिनांक - 17.07.2018 को महत्वपूर्ण निर्देश दिया गया है जिसके तहत देश के सभी राज्यों को Lynching / mob violence के पीड़ितों हेतु Cr.PC के धारा 357(A) के तहत प्रतिकर स्कीम का गठन किया जाना है।

उल्लेखनीय है कि झारखण्ड राज्य में Cr.PC के धारा 357(A) के तहत अधिसूचना संख्या-5190, दिनांक -29.09.2016 द्वारा "झारखण्ड पीड़ित प्रतिकर (संशोधन) स्कीम- 2016 गठित है। माननीय सर्वोच्च न्यायालय के निर्देश के तहत राज्य सरकार द्वारा सम्यक् विचारोपरान्त लिए गये निर्णय के आलोक में उक्त स्कीम में निम्न कंडिकाओं को अंतःस्थापित किया जाता है :-

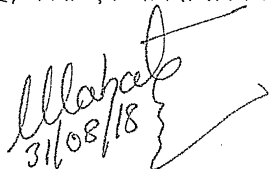
- (i) कंडिका 2 (छ) "मॉब लिंचिंग/ वायलेंस (Mob lynching /Violence)" से अभिप्रेत है जन समूह द्वारा किसी व्यक्ति या व्यक्तियों के विरुद्ध तथाकथित आरोप के आधार पर क्षति पहुँचाना या मृत्यु कारित करना।
- (ii) कंडिका 5 (ज) झारखण्ड पीड़ित प्रतिकर (संशोधन) स्कीम 2016 को अक्षुण्ण रखते हुए " मॉब लिंचिंग / वायलेंस (Mob lynching /Violence)" के पीड़ित या उसके उत्तराधिकारी /आश्रित को अंतरिम प्रतिकर घटना घटित होने के तीस (30) दिनों के अंदर प्रदान किया जायेगा।
- (iii) Lynching / mob violence के पीड़ितों / उसके आश्रितों को झारखण्ड पीड़ित प्रतिकर (संशोधन) स्कीम - 2016 के अनुसूची - 1 के अनुरूप क्षति आधारित प्रतिकर देय होगा।

उक्त अधिसूचना की शेष कंडिकाएँ यथावत रहेंगी।

झारखण्ड राज्यपाल के आदेश से,

31/08/18
(एस0के0जी0 रहाट)
सरकार के प्रधान सचिव।

ज्ञापांक - 18/विविध (07) 08/2018 - 4941 /, दिनांक - 31/08/2018 ई0।

प्रतिलिपि :- नोडल पदाधिकारी, ई-गजट / विभागीय पोर्टल, गृह, कारा एवं आपदा प्रबंधन विभाग, झारखण्ड, राँची को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।


31/08/18
सरकार के प्रधान सचिव।

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ज्ञापांक - 18/विविध (07) 08/2018-4941/, दिनांक - 31/08/2018 ई०।

प्रतिलिपि:- प्रधान महालेखाकार (लेखा एवं हक0), झारखण्ड, राँची को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

lllahat
31/08/18

सरकार के प्रधान सचिव।

ज्ञापांक - 18/विविध (07) 08/2018-4941/, दिनांक - 31/08/2018 ई०।

प्रतिलिपि:- सभी प्रधान सचिव / सचिव/ विभागाध्यक्ष/महानिदेशक एवं पुलिस महानिरीक्षक/ सभी अपर पुलिस महानिदेशक / सभी पुलिस महानिरीक्षक, झारखण्ड, राँची/सभी प्रमंडलीय आयुक्त / सभी प्रक्षेत्रीय पुलिस महानिरीक्षक/सभी क्षेत्रीय पुलिस उप महानिरीक्षक/सभी उपायुक्त / सभी पुलिस अधीक्षक (वरीय पुलिस अधीक्षक, राँची सहित), झारखण्ड/ सभी कोषागार पदाधिकारी, झारखण्ड, राज्य को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

lllahat
31/08/18

सरकार के प्रधान सचिव।

ज्ञापांक - 18/विविध (07) 08/2018-4941/, दिनांक - 31/08/2018 ई०।

प्रतिलिपि:- महामहिम राज्यपाल के प्रधान सचिव/माननीय मुख्यमंत्री के प्रधान सचिव एवं मुख्य सचिव के सचिव, झारखण्ड, राँची को सूचनार्थ प्रेषित।

lllahat
31/08/18

सरकार के प्रधान सचिव।

5/

अनुसूची- 2

29/09/16

झारखण्ड सरकार,
गृह, कारा एवं आपदा प्रबंधन विभाग।

अधिसूचना

राँची, दिनांक- 29/09/16.

18/भी.सी.(8)-02/2014.....5190...../दण्ड प्रक्रिया संहिता, 1973 (अधिनियम-2, 1974) की धारा-357 (क) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए झारखण्ड राज्यपाल किसी अपराध के कारण हुई हानि या क्षति से पीड़ित व्यक्ति या उसके आश्रित को अपेक्षित पुनर्वास के लिए प्रतिकर के प्रयोजनार्थ निधि उपलब्ध कराने हेतु एतद् द्वारा झारखण्ड पीड़ित प्रतिकर स्कीम, 2016 में संशोधन करते हैं:-

संक्षिप्त नाम:-

1. यह स्कीम झारखण्ड पीड़ित प्रतिकर (संशोधन) स्कीम, 2016 कहलाएगी।

परिभाषाएँ:-

2. जबतक कि संदर्भ में अन्यथा अपेक्षित न हो, इस स्कीम में:-

(क) "अधिनियम" से अभिप्रेत है दंड प्रक्रिया संहिता, 1973 (2, 1974) ;

(ख) "अनुसूची" से अभिप्रेत है इस स्कीम से संलग्न अनुसूची ;

(ग) "राज्य" से अभिप्रेत है झारखण्ड राज्य ;

(घ) "पीड़ित" से अभिप्रेत है किसी अपराध के कारण हुई हानि या क्षति से ग्रस्त स्वयं कोई व्यक्ति जिसका पुनर्वास अपेक्षित हो, इसमें उसके आश्रित पारिवारिक सदस्य भी शामिल हैं।

(ङ) "जिला विधिक सेवा प्राधिकार" से अभिप्रेत है विधिक सेवा प्राधिकार अधिनियम, 1987 के अधीन गठित जिला के प्रधान जिला एवं सत्र न्यायाधीश की अध्यक्षता में गठित प्राधिकार ;

(च) "राज्य समिति" से अभिप्रेत है राज्य सरकार द्वारा अधिसूचित राज्य के अभियोजन निदेशक की अध्यक्षता में गठित समिति।

3. पीड़ित प्रतिकर निधि:-

(क) पीड़ित प्रतिकर निधि नामक एक निधि गठित की जाएगी, जिससे इस स्कीम के अधीन प्रतिकर की रकम ऐसे पीड़ित व्यक्ति या उसके आश्रितों को भुगतान की जाएगी, जिसको किसी अपराध के फलस्वरूप हानि या क्षति हुई है तथा जिसका पुनर्वास अपेक्षित है।

(ख) राज्य सरकार प्रति वित्तीय वर्ष इस स्कीम के प्रयोजनार्थ अलग से बजट आवंटित करेगी।

(ग) निधि का संचालन झारखण्ड पीड़ित प्रतिकर स्कीम, 2016 की धारा-2(च) के अधीन यथा परिभाषित राज्य समिति द्वारा किया जाएगा।

(घ) जिला स्तर पर निधि की व्यवस्था राज्य समिति द्वारा की जाएगी तथा इसका संचालन सम्बद्ध जिला के जिला दंडाधिकारी द्वारा किया जाएगा।

प्रतिकर हेतु पात्रता:-

4. कोई पीड़ित व्यक्ति प्रतिकर प्राप्त करने का पात्र होगा, यदि:-

(क) अपराधी का पता नहीं चलता या पहचान नहीं हो पाती है किन्तु पीड़ित व्यक्ति की पहचान हो जाती है और जहाँ विचारण नहीं किया जाता है वहाँ ऐसा पीड़ित व्यक्ति भी अधिनियम की धारा-357(क) की उपधारा (4) के अधीन प्रतिकर अनुदान के लिए आवेदन कर सकता है ;

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Feb. 198

- (ख) पीड़ित/दावेदार अपराध की रिपोर्ट क्षेत्र के थाना प्रभारी अथवा वरीय पुलिस पदाधिकारी अथवा कार्यपालक दंडाधिकारी अथवा न्यायिक दंडाधिकारी को घटना घटित होने से 48 घंटे के भीतर करेगा ;
परन्तु यदि जिला विधिक सेवा प्राधिकार का समाधान हो जाता है तो वह कारणों को अभिलिखित करते हुए रिपोर्ट करने में हुए विलम्ब को माफ कर सकता है।
- (ग) पीड़ित/दावेदार व्यक्ति मामले के अन्वेषण एवं विचारण के दौरान पुलिस एवं अभियोजन को सहयोग करेगा।

प्रतिकर प्रदान करने की प्रक्रिया:-

5. (क) जब कभी अधिनियम की धारा-357-क की उप धारा (2) के अधीन जिला विधिक सेवा प्राधिकार को न्यायालय द्वारा अनुशंसा की जाती है अथवा पीड़ित या उसके आश्रित द्वारा आवेदन किया जाता है तब जिला विधिक सेवा प्राधिकार मामले की जाँच करेगा और पीड़ित व्यक्ति को हुई हानि या क्षति तथा रिपोर्ट की गयी आपराधिक गतिविधि से सम्बन्धित दावे का सत्यापन करेगा और आवश्यक होने पर प्रामाणिकता निर्धारण के लिए किसी अन्य सुसंगत जानकारी की माँग भी कर सकता है। दावा सत्यापन के पश्चात् जिला विधिक सेवा प्राधिकार सम्यक रूप से पूछ-ताछ करने के बाद इस स्कीम के उपबंधों के अनुसार दो माह के भीतर प्रतिकर प्रदान करेगा।
- (ख) इस स्कीम के अधीन प्रतिकर का भुगतान इस शर्त के अधीन किया जाएगा कि यदि विचारण न्यायालय बाद में निर्णय पारित करने के दौरान अभियुक्त व्यक्तियों को इस अधिनियम की धारा-357 की उप-धारा (3) के अधीन प्रतिकर के तौर पर कोई रकम भुगतान करने का आदेश देता है तो पीड़ित/दावेदार व्यक्ति को प्रतिकर के बराबर मिली रकम या उक्त अधिनियम की धारा-357 की उप-धारा (3) के अधीन भुगतान की जाने वाली रकम, जो भी कम हो, घटा दी जाएगी। प्रतिकर रकम के संवितरण के पूर्व पीड़ित/दावेदार व्यक्ति द्वारा इस आशय की वचनबद्धता दी जाएगी।
- (ग) जिला विधिक सेवा प्राधिकार द्वारा पीड़ित व्यक्ति या उसके आश्रितों को दिए जाने वाले प्रतिकर की मात्रा का विनिश्चय पीड़ित व्यक्ति को हुई हानि, उपचार में हुए चिकित्सीय खर्च, अन्त्येष्टि खर्च आदि के रूप में आनुषंगिक व्यय सहित पुनर्वास के लिए अपेक्षित न्यूनतम रकम के आधार पर किया जाएगा। मामले की प्रकृति एवं तथ्य के आधार पर प्रतिकर घट-बढ़ सकता है।
- (घ) पीड़ित व्यक्ति या उसके आश्रितों को दिए जाने वाले प्रतिकर की न्यूनतम रकम अनुसूची-1 के अनुसार होगी।
- (ङ) इस स्कीम के अधीन विनिश्चित प्रतिकर की रकम यथा स्थिति, पीड़ित व्यक्ति या उसके आश्रितों को आवंटित निधि से संवितरित की जाएगी।
- (च) पीड़ित व्यक्ति द्वारा प्रश्नगत अपराध से संबंधित राज्य से प्राप्त अर्थात् बीमा, अनुग्रह राशि और/अथवा कोई अन्य अधिनियम या राज्य स्कीम के अधीन प्राप्त भुगतान इस नियम के अधीन प्रतिकर की रकम का भाग माना जाएगा और यदि समुचित प्रतिकर की रकम पीड़ित व्यक्ति द्वारा उपर्युक्त साम्प्रार्श्विक स्रोतों से प्राप्त रकम से अधिक है तो शेष रकम का भुगतान आवंटित निधि से किया जाएगा।
- (छ) मोटर वाहन अधिनियम, 1988 (59, 1988) से आच्छादित मामले, जिसमें मोटर दुर्घटना दावा न्यायाधिकरण द्वारा प्रतिकर दिया जाता है इस स्कीम के अधीन नहीं आयेंगे।

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के.पी.प्र.नि. (केन्द्रीय पीड़ित प्रतिकर निधि) स्कीम से निधि प्राप्त करने हेतु आवश्यक अपेक्षाएँ एवं प्रक्रिया:-

6. (क) अधिसूचित प्रतिकर की मात्रा अनुसूची-1 में उल्लेखित रकम से कम नहीं होनी चाहिए।
- (ख) सर्व प्रथम राज्य अपराध से पीड़ित पात्र व्यक्ति को प्रतिकर की रकम का भुगतान अपनी पीड़ित प्रतिकर निधि से करेगा तदुपरान्त के.पी.प्र.नि. (सी.भी.सी.एफ.) से निधि प्रतिपूर्ति की माँग करेगा।
- (ग) पीड़ित व्यक्ति को सहायता करने के लिए राज्य पीड़ित प्रतिकर निधि से उपगत कोई व्यय प्रथम बार इस स्कीम की राज्य निधि में उपलब्ध गैर-बजटीय स्रोत से खर्च माना जाएगा। राज्य सरकार प्रशासन से प्राप्त बजटीय अनुदान का उपयोग केवल गैर-बजटीय स्रोत के उपभोग के बाद ही किया जाएगा।
- (घ) सी.सी.टी.एन. परियोजना के 'नागरिक पोर्टल पर 'पीड़ित प्रतिकर मोड्यूल' में प्रत्येक पीड़ित प्रतिकर के ब्यौरे का संधारण इलेक्ट्रॉनिक ढंग से किया जाना चाहिए।

अभिलेख पर आदेश का रखा जाना:-

7. इस स्कीम के अधीन पारित प्रतिकर के आदेश की प्रति विचारण न्यायालय के अभिलेख पर रखी जाएगी ताकि न्यायालय को इस अधिनियम की धारा-357 की उप-धारा (3) के अधीन प्रतिकर का आदेश पारित करने में सुविधा हो।

सीमा:-

8. अपराध होने के छह माह की अवधि के पश्चात् पीड़ित व्यक्ति या उसके आश्रितों द्वारा इस अधिनियम की धारा-357-क की उप-धारा (4) के अधीन कोई दावा नहीं किया जा सकता है :
परन्तु यदि जिला विधिक सेवा प्राधिकार का समाधान हो जाता है तो कारणों को अभिलिखित करते हुए दावा करने में हुए विलम्ब को माफ कर सकता है।

अपील:-

9. जिला विधिक सेवा प्राधिकार द्वारा प्रतिकर के इन्कार से व्यथित कोई पीड़ित व्यक्ति राज्य समिति के समक्ष नब्बे दिनों के भीतर अपील दायर कर सकता है :
परन्तु यदि राज्य समिति का समाधान हो जाता है तो वह कारणों को अभिलिखित करते हुए अपील करने में हुए विलम्ब को माफ कर सकता है।

अनुसूची-1


क्रमसं०	क्षति/हानि का विवरण	प्रतिकर की न्यूनतम रकम
1.	तेजाबी हमला	3 लाख रु०
2.	बलात्कार	3 लाख रु०
3.	नाबालिग का शारीरिक शोषण	2 लाख रु०
4.	मानव तस्करी से पीड़ित का पुनर्वास	1 लाख रु०
5.	यौन प्रताड़ना (बलात्कार नहीं)	50,000/- रु०
6.	मृत्यु	2 लाख रु०
7.	स्थायी विकलांगता (80% या अधिक)	2 लाख रु०
8.	आंशिक विकलांगता (40% से 80%)	1 लाख रु०
9.	शरीर का 25% से अधिक जलना (तेजाबी हमला के मामले को छोड़कर)	2 लाख रु०

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10.	भ्रूण हानि	50,000 / -रु०
11.	प्रजनन क्षमता की हानि	1.5 लाख रु०
12.	सीमा पर दो तरफा फायरिंग से पीड़ित महिला : (क) स्थायी विकलांगता के साथ मृत्यु (80% या अधिक) (ख) आंशिक विकलांगता (40% से 80%)	2 लाख रु० 1 लाख रु०
13.	शरीर के किसी भाग या अंग की हानि जिसके चलते 40% से कम विकलांगता	50,000 / -रु०
14.	बाल पीड़ित की साधारण हानि या क्षति	10,000 / -रु०
15.	कोई अन्य पीड़ित का पुनर्वास	50,000 / -रु०

नोट:- यदि पीड़ित व्यक्ति की उम्र 14 वर्षों से कम है तो प्रतिकर की रकम में उपर्युक्त विनिर्दिष्ट रकम से 50% अधिक की बढ़ोतरी होगी।


झारखण्ड राज्यपाल के आदेश से,


(एन०एन० पीण्डम)
अपर मुख्य सचिव, 29.9.16

गृह, कारा एवं आपदा प्रबंधन विभाग,
झारखण्ड सरकार, राँची।

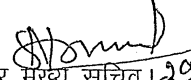
ज्ञापांक-18/भी.सी.(8)-02/2014.....5190...../दिनांक-29/09/2016

प्रतिलिपि:- अधीक्षक, राजकीय मुद्रणालय, डोरण्डा, राँची को राजपत्र के आगामी अंक में प्रकाशनार्थ तथा इसकी 200 प्रतियाँ अद्योहरस्ताक्षरी को भेजने के लिए अग्रसारित।


सरकार के अपर मुख्य सचिव, 29.9.16

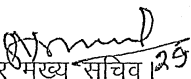
ज्ञापांक-18/भी.सी.(8)-02/2014.....5190...../दिनांक-29/09/2016

प्रतिलिपि:- महालेखाकार, झारखण्ड, राँची/राज्यपाल के प्रधान सचिव/मुख्यमंत्री के प्रधान सचिव/सभी प्रधान सचिव/सचिव/विभागाध्यक्ष/महानिबंधक, झारखण्ड उच्च न्यायालय, राँची/सभी प्रमण्डलीय आयुक्त, झारखण्ड/आरक्षी महानिदेशक एवं महानिरीक्षक, झारखण्ड, राँची/निदेशक अभियोजन/सहायक निदेशक, अभियोजन निदेशालय, झारखण्ड, राँची/सभी उपायुक्त/वरीय आरक्षी अधीक्षक/आरक्षी अधीक्षक को सूचनार्थ एवं आवश्यक कार्रवाई हेतु अग्रसारित।


सरकार के अपर मुख्य सचिव, 29.9.16

ज्ञापांक-18/भी.सी.(8)-02/2014.....5190...../दिनांक-29/09/2016

प्रतिलिपि:- अपर सचिव, गृह मंत्रालय (सी.एस.डिविजन), भारत सरकार, उत्तरी ब्लॉक, नई दिल्ली को सूचनार्थ अग्रसारित।


सरकार के अपर मुख्य सचिव, 29.9.16

अनुसूची - 1

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Government of Jharkhand
Home Department

Notification

The 3rd August, 2012

No. 5 Misc. (01)-81/2010/3735:- In exercise of the powers conferred by section 357A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Jharkhand hereby frames the following scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation, namely :-

Short title:-

1. This scheme may be called the Jharkhand Victim Compensation Scheme, 2012.

Definitions:-

2. In this scheme, unless the context otherwise requires:-
 - (a) "Act" means the Code of Criminal Procedure, 1973 (2 of 1974);
 - (b) "Schedule" means Schedule appended to this Scheme;
 - (c) "State" means State of Jharkhand;
 - (d) "Victim" means a person who himself has suffered loss or injury as a result of crime and require rehabilitation and includes dependent family members.
 - (e) "District Legal Services Authority" means a authority constituted under the Chairmanship of the Principal District and Session Judge of the District constituted under the Legal Services Authorities Act 1987.
 - (f) The "State committee" means a Committee constituted under the Chairmanship of the Director, Prosecution of the State to be notified by the State Government.

Victim Compensation Fund:-

3. (1) There shall be constituted a fund namely Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
- (2) The State Government shall allot a separate budget for the purpose of the scheme every year.
- (3) The Fund shall be operated by the Director, Prosecution, Government of Jharkhand.
- (d) The fund at the district level shall be placed by the Director, Prosecution and to be operated by the respective District Magistrates.

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Eligibility for compensation:-

4. A Victim shall be eligible for the grant of compensation if, -
- (a) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply grant of compensation under sub section (4) of section 357-A of the Act;
 - (b) the victim/claimant report the crime to the officer-in-charge of the police station within 48 hours of the occurrence : or any senior police officer or Executive Magistrate or Judicial Magistrate of the area provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting;
 - (c) the victim/claimant cooperate with the police and prosecution during the investigation and trial of the case.

Procedure for grant of compensation:-

- 5.
- (1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357-A of the Act to the District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity, and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Services Authority shall after due enquiry award compensation within two months, in accordance with provisions of this Scheme.
 - (2) Compensation under this Scheme shall be paid subject to the condition that if the Trial court while passing judgement at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation, or the amount order to be paid under the said sub-section (3) of section 357 of the Act, which ever is less. An undertaking to this effect shall be given by the victim/claimant before the disbursal of the compensation amount.
 - (3) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.
 - (4) The quantum of compensation to be awarded to the victim or his dependents shall not exceed the maximum limit as per schedule-I.

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(5) The amount of compensation decided under the scheme shall be disbursed to the victim or his dependents as the case may be, from the Fund.

(6) Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex-gratia and/or payment received under any other Act or State-run scheme, shall be considered as part of the compensation amount under these rule and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Fund.

(7) The cases covered under Motor Vehicle Act, 1988(59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.

(8) The District Legal Services Authority, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or Magistrate of the area concerned or any other interim relief as it may deem fit.

Order to be placed on record:-

6. Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to enable the court to pass order of compensation under sub-section(3) of section 357 of the Act.

Limitation:-

7. No claim made by the victim or his dependents under sub-section(4) of section 357A of the Act shall be entertained after a period of six months of the crime:

Provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

Appeal:-

8. Any victim aggrieved of the denial of compensation by the District Legal Services Authority may file an appeal before the State Committee within a period of ninety days:

Provided that the State Committee, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

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SCHEDULE-I

Sl. No.	Particular of Loss or Injury	Maximum limit of compensation
1	Loss of life	Rs. 2.00 lacs
2	Loss of any limb or part of body resulting 80% or above handicap	Rs. 50,000/-
3.	Loss of any limb or part of body resulting 40% & below 80% handicap	Rs.20,000/-
4.	Rape of Minor	Rs. 50,000/-
5.	Rape.	Rs.20,000/-
6.	Rehabilitation	Rs.20,000/-
7.	Loss of any limb or part of body resulting below 40% handicap	Rs.10,000/-
8.	Loss of injury causing severe mental agony to women and child victims in case like Human trafficking	Rs. 10,000/-
9.	Simple Loss or injury to Child victim	Rs. 10,000/-

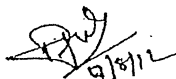
By the order of Governor, Jharkhand

Sd/-
(J.B. Tubid)
Principal Secretary.

Memo No. 3735 /

Ranchi, Dated 03/08/2012.

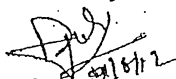
Copy forwarded to the Superintendent, Govt. Press, Doranda, Ranchi for publication in the next issue of Gazette and supply 200 copies to the undersigned.


Deputy Secretary to Govt.

Memo No. 3735 /

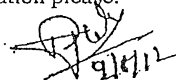
Ranchi, Dated 03/08/2012

Copy forwarded to the Accountant General, Jharkhand, Ranchi/Principal Secretary to Governor of Jharkhand/Principal Secretary to the Chief Minister of Jharkhand/ All Principal Secretaries/Secretaries/Head of Department, Jharkhand/Registrar General, Jharkhand, High Court, Ranchi/All Divisional Commissioner, Jharkhand/ Director General & Inspector General of Police, Jharkhand, Ranchi/Director/Asst. Director, Directorate of Prosecution, Jharkhand, Ranchi/All D.Cs/S.S.Ps/S.Ps., Jharkhand for information & necessary action please.


Deputy Secretary to Govt.
Ranchi, Dated 03/08/2012

Memo No. 3735 /

Copy forwarded to Addl. Secretary, Ministry of Home Affairs (CS Division) Government of India, North Block, New Delhi for information please.


Deputy Secretary to Govt.