



USER HANDBOOK ON PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS (NCPCR)

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GOVERNMENT OF INDIA
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FOREWORD

India is committed to establish an effective protection system for her children, including laws, policies, procedures and practices intended to prevent and address issues that could be detrimental to a child's well being.

The 'Directive Principles of State Policy' enshrined in the Constitution of India make it important for the State to ensure that the tender age of children are not abused and they are not forced by economic necessity to enter vocations unsuited to their age or strength and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Besides, India being a party to the 'UN Convention on the Rights of the Child' is also under legal obligation to protect its children from all forms of sexual exploitation and sexual abuse.

India has the largest child population in the world. As per the 2011 Census of India, there are 472 million children below the age of eighteen including 225 million girls. Nearly 160 million children are in the age group of 0-6 years. They constitute 39% of our population

Children are soft targets of sexual violence and therefore are extremely vulnerable. As per Crime in India report, published by the National Crime Records Bureau, reporting of crime against children has steadily shown an increase against children especially child sexual abuse. According to a government study conducted in 2007, it revealed that 53 per cent children had suffered sexual abuse and half of these were at the hands of persons in the position of trust.

The Protection of Children from Sexual Offences (POCSO) Act, 2012 was enacted by the Government of India to provide an extremely strong legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process, by incorporating child friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The National Commission for Protection of Child Rights (NCPDR) has been mandated to monitor the implementation of POCSO Act, 2012.

While the Government is making all out efforts to ensure a safe and protected environment for our children, it is the collective responsibility of all of us as a community and citizens and parents to enable children to live with dignity, free from violence and fear. As rightly stated by **Nelson Mandela** – 'Safety and security don't just happen, they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear'.

(i)



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This '**User Handbook for Implementation of the POCSO Act**' is another major initiative taken by the Commission. The Handbook is intended to explain various provisions of the Act in a simple language and is expected to be a useful guide for effective functioning of all stakeholders.

We acknowledge the efforts of Ms Uma Subramanian and Mr. Siddharth Pillai, Aarambh India Initiative-, Supporting Communities to Safeguard Children who have provided the basic format and inputs for preparing and developing this Handbook for NCPDR and of Dr. Geeta Sekhon who has willingly edited it and all who have contributed to its production. Acknowledgement is also due to Dr. Geetanjali Goel who has provided their valuable inputs.

NCPDR would be happy to receive the valuable suggestions for updating and improving next edition of this Handbook.

New Delhi
Dated: September, 2017


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Child rights, like human rights, come from the idea that all people have fundamental rights that they are born with, and these rights are inalienable and inviolable. They cannot be taken away because of a person's gender, age, religion, race, ethnicity, or other factors. It is recognized that special protection must be given to children to ensure full, happy, and healthy development without fear of harm or exploitation.

Everyone has a role to play in protecting children. Parents, schools, communities, police, courts, medical professionals, NGOs, Child Welfare Committees, District Child Protection Units, the media among others are responsible for creating an ecosystem safeguards children and enables them to live their childhood fearlessly.

The Protection of Children from Sexual Offences (POCSO) Act provides a legal framework under which children are protected from sexual abuse and - offenders are brought to justice. However, the best-written laws need both - the willingness of the system and a comprehensive understanding of the law itself for effective implementation.

For POCSO to work and for children in India to be protected, the approach taken by all the stakeholders must be one of collaboration and support. Taking a child-centric approach, each stakeholder must have a comprehensive understanding of their own role and those of others as well. - The highest collective priority of every stakeholder must be - the best interest and well-being of the child.

In order to clarify the POCSO Act, 2012 in simple language with the help of visuals / pictorials, statistical information and descriptions, the National Commission for Protection of Child Rights (NCPCR) decided to get this Users' Manual developed by 'The Aarambh India Initiative' of Mumbai based NGO Prerana. The objective of the manual was to enhance knowledge about the provisions of the Act and to engender a rights-based perspective and understanding among all stakeholders dealing with POCSO. It is hoped that this Manual for Implementation of POCSO Act, 2012 would prove to be a useful document to all stakeholders.

It aims to be a comprehensive manual that focuses on a practical, hands-on approach, rather than a more theoretical description. It also seeks to establish systematic guidelines and guide the users to deal with POCSO cases in a holistic manner, through various pictorial charts/flow diagrams, which are placed appropriately in different chapters/sections for better understanding of the various facets of the POCSO Act, 2012 and to make it a user -friendly document.

I express my gratitude to Ms Stuti Kacker, Hon'ble Chairperson, National Commission for Protection of Child Rights (NCPCR), for her guidance and support.

Acknowledgements are also due to my colleagues Smt. Rupta Kapoor, Member Child Health and Nutrition, Shri Priyank Kanoongo, Member Education, Shri Kulbir Krishan, Adviser (JJ & POCSO), Dr. Dhani Ram, Senior Consultant (JJ & POCSO) and Ms Nidhi Sharma, Consultant (Legal), NCPCR for their continued support and valuable inputs for preparing this User Handbook.

New Delhi
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Abbreviations

ACR = Age of Criminal Responsibility
CCI= Child Care Institution
CCL= Children in Conflict with Law
CNCP= Children in Need of Care and Protection
Cr.P.C.= Criminal Procedure Code
CSA= Child Sexual Abuse
CSEC= Commercial Sexual Exploitation of Children
CWC= Child Welfare Committee
DCPU=District Child Protection Unit
DLSA= District Legal Services Authority
ICPS=Integrated Child Protection Scheme
IPC= Indian Penal Code
CCL = Child in Conflict with Law
JJA=Juvenile Justice (Care and Protection of Children) Act, 2015
JWO=Juvenile Welfare Officer
MLC= Medico Legal Case
NCPCR= National Commission for Protection of Child Rights
NCRB= National Crime Records Bureau
NGO= Non-Governmental Organization
POCSO=Protection of Children from Sexual Offences
SJPU=Special Juvenile Police Unit
SCPCR= State Commission for Protection of Child Rights
SCPS= State Child Protection Society
SPP= Special Public Prosecutor
UN= United Nations
UNCRC= United Nations Convention on the Rights of the Child
VCS=Victim Compensation Scheme

Chapter-I

UNDERSTANDING CHILD SEXUAL ABUSE

1.0. INTRODUCTION

Child Sexual Abuse (CSA) is a broad term used to describe sexual offences against children. To put it simply, Child Sexual Abuse occurs when a person involves the child in sexual activities for his/her sexual gratification, commercial gain or both. Section- 2(1) (d) defines a “child” - as any person below the age of 18 years.

Child Protection Mechanisms – A Need

STOPPING Child Sexual Abuse is essential. The Indian community should make concerted efforts to stop child sexual abuse in the country. It is not only the responsibility of the Government to keep children safe and secure but it is also the responsibility of all of us to ensure a safe and protected environment for our children to enable them to live with dignity and free from any form of violence.

One needs to consider the following factors when attempting to understand and assess cases of child sexual abuse:

1.1. Power and Trust Dynamics

In most cases of child sexual abuse, the offender holds a position of trust and/ or power vis-à-vis the child and is often known to the child victim. Statistics of the past few years from the Crime in India Report of National Crime Records Bureau (NCRB) suggests that in 80-90% of the cases, the offender is ‘known’ to the victim. However, there may be many cases where the offender is a total stranger.

1.2. Age of the Offender

The offender can be either young or old i.e. above 18 years of age or below 18 years of age. *e.g., there are several reported cases in which extremely minor girls aged 4 and 5 years have been sexually assaulted by senior citizens including grandfathers etc. Similarly, there are several cases in which 13 or 14 year olds have abused their own classmates or other children.*

However, it is important to understand that children do sometimes indulge in/ experiment with some kind of sexual activity. Caregivers and protectors must be aware of age and developmentally appropriate sexual activity among children before they label any child as a sex offender.

A simple reading of POCSO Act suggests that:

- Any person (including a child) can be prosecuted for engaging in a sexual act with a child irrespective of whether the latter consented to it.
- The Act does not recognize consensual sexual acts among children or between a child and an adult.
- The Act is gender neutral.

1.3. Gender and Profile of the Offender

The offender can be of any gender – male, female, third gender, etc. Majority of the offenders are men but not exclusively so. There may be occasionally cases in which women have been the main accused or have abetted the crime. The gender and outward appearance of a person has no implication on whether the person is a child sex offender or not. Further they may belong to any, social, economic, religious, cultural or educational background. They may or may not be married. They may or may not be mentally stable. In short, a perfectly regular, average person like you or me could be a child sex offender.

1.4. Dynamics Between Offender and Child

In the majority of cases, the child knows the offender. In reports/ researches and surveys conducted by NGOs, it is seen that in a large majority of cases of sexual violence against women and children, the accused is a known person/ acquaintance of victim and family/ close family members including fathers, step-fathers, grandfathers, uncles, cousins, etc.

It is one of the biggest myths about child sexual abuse is that strangers, in a park or on a lonely street, are more likely to abuse children. In fact, the situations we need to safeguard our child against, occur inside or close to our homes, schools, playgrounds etc.

1.5. Gender and Profile of the Victim Child

The victim may be a child of any gender. Boys are as susceptible to sexual abuse as girls, if not more. According to the World Health Organization, one in every 4 girls and one in every 7 boys is sexually abused across the world. However, there are higher chances of boys trying to hide or deny the fact that they have been abused. The 2007, national survey conducted by the Ministry of Women & Child Development clearly shows that of 57% of children who said that they have experienced one or more forms of sexual abuse, were boys.

All children are at the risk of being abused despite of their social, economic, religious, cultural or educational background. However, some children are more at risk than the others such as:

- Children with disabilities
- Children from lower socio-economic backgrounds. *e.g.:- living in very close proximity increasing chances of access to the child by a potential offender, lack of adult supervision when mothers are at work, etc.*
- Children with low self esteem
- Children who are questioning their sexuality
- Children who are isolated and have limited peer support/friend circle
- Children who have an unhealthy or dysfunctional home atmosphere. *E.g.:- children from families where fights are common place; children from families that do not give the child enough love and attention at home, etc.*

1.6. 'Physical Contact' Forms of Abuse

In some cases, there will be clear physical contact between the offender and the child such as penetrative sex, fondling of the child's genitals or making the child touch the offender's genitals, touching any part of the child's body with sexual intent, kissing with sexual intent, etc.

1.7. 'Non-Physical Contact' Forms of Abuse

Child Sexual Abuse can also occur without contact between the offender and the child such as showing pornographic videos or pictures to the child, using the child in pornographic material, verbal abuse, making lewd gestures to the child, playing sexualized games, stalking the child or chatting with sexual intent with the child over the Internet, etc.

The POCSO Act would still apply where the offence is committed by a child, the only difference is that the procedure would be as per the Juvenile Justice (Care and Protection of Children) Act, 2015.

1.8. Linkages between the Juvenile Justice (Care and Protection of Children) Act, 2015 and the POCSO Act, 2012.

(a) **Child victims under the POCSO Act can also be children in need of care and protection.**

- (i) Section 30 (xiii) of the Juvenile Justice Act, 2015 requires the CWCs to take action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by SJPU or local police under the POCSO Act, 2012.
- (ii) Under Section 19 (6) of the POCSO Act, the local police or the SJPU should report the commission of a sexual offence against a child to the CWC within 24 hours of receiving information and should also indicate if the child is in need of care and protection; and steps taken by them in this regard. Rule 4 (3) of the POCSO Rules, 2012 specifies 3 situations in which a child must be produced before a CWC viz. a) there is a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household; b) child is without parental support; c) the child is found to be without any home and parental support.
- (iii) Upon production, as per Rule 4 (4), POCSO Rules, the CWC should determine within 3 days whether the child needs to be taken out of the custody of the family or shared household and placed in a Children's Home or Shelter Home. CWC can take the assistance of a social worker to make this determination.
- (iv) Rule 4 (5), POCSO Rules specifies 7 factors that should be considered by the CWC along with preferences and the best interests of the child while deciding whether or not the child should be removed from the custody of the family or shared household. CWC should ensure that the child is not inconvenienced or exposed to injury during this inquiry.

(b) **Support Person to Child Victims to be provided by the Child Welfare Committee (CWC).**

- (i) Based on the report CWC receives from the local police or SJPU or its assessment, when a child victim is produced before it, u/Rule 4 (7), POCSO Rule, the CWC can provide a Support Person to assist the child and family during the investigation and trial of the case.
- (ii) The SJPU or local police should inform the Special Court in writing, within 24 hours of the assignment of Support Person, provided by the CWC. {Section 19 (6)}
- (iii) Under Rule 4 (8), the Support Person is required to maintain confidentiality and keep the child and the parent/guardian or other person whom the child trusts informed about the proceedings of the case, including available assistance, judicial procedures and potential outcomes and such other support necessary for the child.
- (iv) The CWC can terminate the services of Support Person based on such a request by the child or his parent/guardian etc whom the child trusts and no reasons need to be provided for seeking such termination. {Rule 4 (10)}

(c) **JJBs should adhere to the child-friendly procedures prescribed under the POCSO Act, 2012**

Section 34 (1), POCSO Act states that the JJ Act would apply if a child commits any offence under the POCSO Act. Proceedings of the JJBs should be held *in-camera*, the child victim should not be

exposed to the child alleged to be in conflict with law during the inquiry and procedures laid down in POCSO Act for child victim should be followed strictly for ensuring protection of the child victim.

(d) Role of JJ functionaries under the POCSO Act.

(i) **SJPU or local police** on receiving information relating to an offence that has been or likely to be committed, should take following steps:

- Record the complaint; {Section 19 (2) (a)}
- Assess whether the child is in need of care and protection; {Section 19 (5)}
- Facilitate Emergency Medical Care; {Rule 5 & Section 19 (5)}
- Facilitate Medical Examination; {Rule 4 (2) (c) & Section 19 (5)}
- Facilitate Recording of Statement by Magistrate (Section 25)
- Report to the Special Court and Child Welfare Committee; {Section 19 (6)}-
- Provide information to the informant and victim.

(ii) **District Child Protection Unit (DCPU)** shall maintain a register containing contact details of interpreters, translators and special educators in their district under Rule 3 (1), POCSO Rules and should share the same with SJPU, local police, magistrate and Special Court to enable them to make available such services as and when required.

(e) Age determination

Section 34 (2), POCSO Act requires the Special Court to determine whether a person is a child or not, if the question arises in the course of the proceedings. The Special Court should satisfy itself about the age of the person and record its reasons in writing. Section 94 of JJ Act, 2015 prescribes the process of age determination.

(f) Legal representation

Section 40, POCSO Act recognizes the right of the child victim to receive the assistance of free legal counsel during trial.

2.0. SOME IMPORTANT TERMINOLOGIES

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

2.1. 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.

2.2. 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.

2.3. 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 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)

2.4. Child Sexual Abuse Imagery: Online Sexual Abuse:

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.

3.0. SEXUAL OFFENCES AGAINST CHILDREN IN INDIA

Are Indian Children at Risk from Sexual Offences?

Not long ago, the question would be met with either a hushed, confused silence or a tacit answer that acknowledges that it while it exists, it is too little, too less and too far away to be a priority. But in 2007, The Ministry of Women and Child Development released the results of a nation-wide survey on Child Abuse, in which 12,500 children had participated across 13 States. More than half, 53% said that they had been subjected to one or more forms of sexual abuse. If that can be extrapolated it would mean that one in every two children have been victims of sexual abuse. Over 20 percent of those interviewed said they were subjected to severe forms of sexual abuse. Of those who said they were sexually abused, 57 percent were boys.

According to Crime in India, 2014 of National Crime Records Bureau (NCRB), crimes committed against children were observed as 20.1 per one lakh population of children (up to 18 years of age). A total of 10,854 cases of child rape were reported in the country during 2015 as compared to 13,766 in 2014 accounting for a decrease of 26.8 percent during the year 2015. However, the number of cases of child sexual abuse under the POCSO Act has increased.

4.0. CAUSES OF CHILD SEXUAL ABUSE IN INDIA

Child sexual abuse happens in all societies around the world and the causes vary greatly. Some of the probable causative factors could be:

4.1. Taboo around discussing sex and sexuality

In India, there is reluctance and cultural shying from discussing matters related to sex and sexuality, particularly with children. Adults find it difficult and embarrassing to talk about the subject with children because often they themselves have not received and have no idea how to have 'the talk'. In the absence of teaching and appropriate knowledge, ignorance and myths around sexuality pervade, thus leaving children, especially adolescents, uninformed and at risk. The taboos lead to a culture of shame and silence around any issue related to sexuality, including child sexual abuse, which is shrouded in silence and often goes unreported.

4.2. Tolerance to Gender-Based Violence

There has always been ignorance and at times certain level of acceptance and tolerance to gender based violence against women and children in India. We assume that certain things are bound to happen and will happen to women and children if they cross the "line of morality" put forth by our patriarchal society. Representation of women in popular media and the stereotypes perpetrated by popular films play a role in desensitizing our population towards gender-based violence against women and young girls.

4.3. A Culture that Believes and Values Adults Over Children

Children are viewed as not yet fully developed citizens. Their values and voices are mostly absent in public discourses on issues that directly have an implication on them. They are taught to 'respect' the absolute authority of adults without even the slightest critical engagement. Their opinion may be regarded as 'disrespectful.' Thus, a child who is a victim of sexual abuse is often never believed that an adult could do this to him/her. Often parents and community consider it the 'child's fault' if sexual abuse happens.

4.4. Impact of Reporting Child Sexual Abuse

(i) *Victim Blaming*

In cases of many sexual assaults against women and children, the media and society at large have been quick to blame the victim, especially if the child is a girl, often with regressive statements implying that 'the victim brought it on to herself'. A clear perspective on who is the victim and who is the offender is lost in the details, while there is too much focus on peripherals like what the victim was wearing, what time of the night it was when she went out, who was accompanying her, did she give consent to the sexual activity etc.

(ii) *Real and Perceived Threat to Victim and Family*

When we put a culture of sexual taboos together with one of victim blaming it becomes clear why most victims are reluctant to report. They fear being stigmatized by the community. Even as society passes a moral judgment on the character and dignity of the victim, the offender who may be occupying a position of power vis-à-vis the victim, will threaten the victim and/or family with (sometimes violent and life threatening) consequences if the offence is reported. There is also possibility that the real and perceived loss of "honour" and shame entraps victims and families in a vicious cycle of blackmail and further abuse. In a culture that prides traditional notions of masculinity, boys are afraid that they will be labeled 'unmanly' and ridiculed if they disclose about the abuse.

There are many cases in which the offender takes an obscene photo or video of the victim during the sexual activity. He silences and coerces the victim to further abuse by threatening to release the photo/video on the Internet if the victim breaks his/her silence. Thus, the cycle of abuse continues.

7 Reasons Why Children Don't Speak Up About Abuse

1. Children are afraid that they may be disbelieved.
2. Children feel a sense of guilt that perhaps it is indeed 'their own fault' that the abuse occurred.
3. Every time a child talks about the incident of abuse they may be remembering and reliving the trauma; and children don't want to remember the abuse.
4. Children are afraid that the person who groomed and abused them will stop loving them or get in trouble because of them. This is because of manipulations during the 'grooming' process and is also true in cases where the offender is a family member.
5. The child may have been manipulated by the offender into believing that their relationship is normal. Sometimes the child does not realize that it is being abused.
6. Fear of retaliation and further abuse also forces a child to keep silent.
7. Generally, children are not encouraged to talk about their feelings and when they do... adults do not listen or believe.

Chapter-II

The POCSO Act, 2012 - A Comprehensive Law to Protect Children from Sexual Offences

1.0. POCSO ACT, 2012 – A COMPREHENSIVE LEGISLATIVE FRAMEWORK

POCSO is in line with Article 15(3) of the Constitution of India, which permits the State to make special provisions for children. POCSO is the acronym for '**Protection of Children against Sexual Offences Act**' of 2012. With its enactment, India now has one of the most comprehensive law that not only allows justice for children who are victims of sexual offences but also takes into account the best interests and well-being of the child. It is a landmark legislation in the area of child protection.

In fact, before 2012, there were no specific laws in India that addressed sexual crimes against children. Sexual offences against children were booked under the Indian Penal Code (IPC). Further, many forms of sexual abuse, like showing pornography to children could not be prosecuted; unless there was penetrative sexual assault. There were no provisions that could prosecute sexual offences against boys.

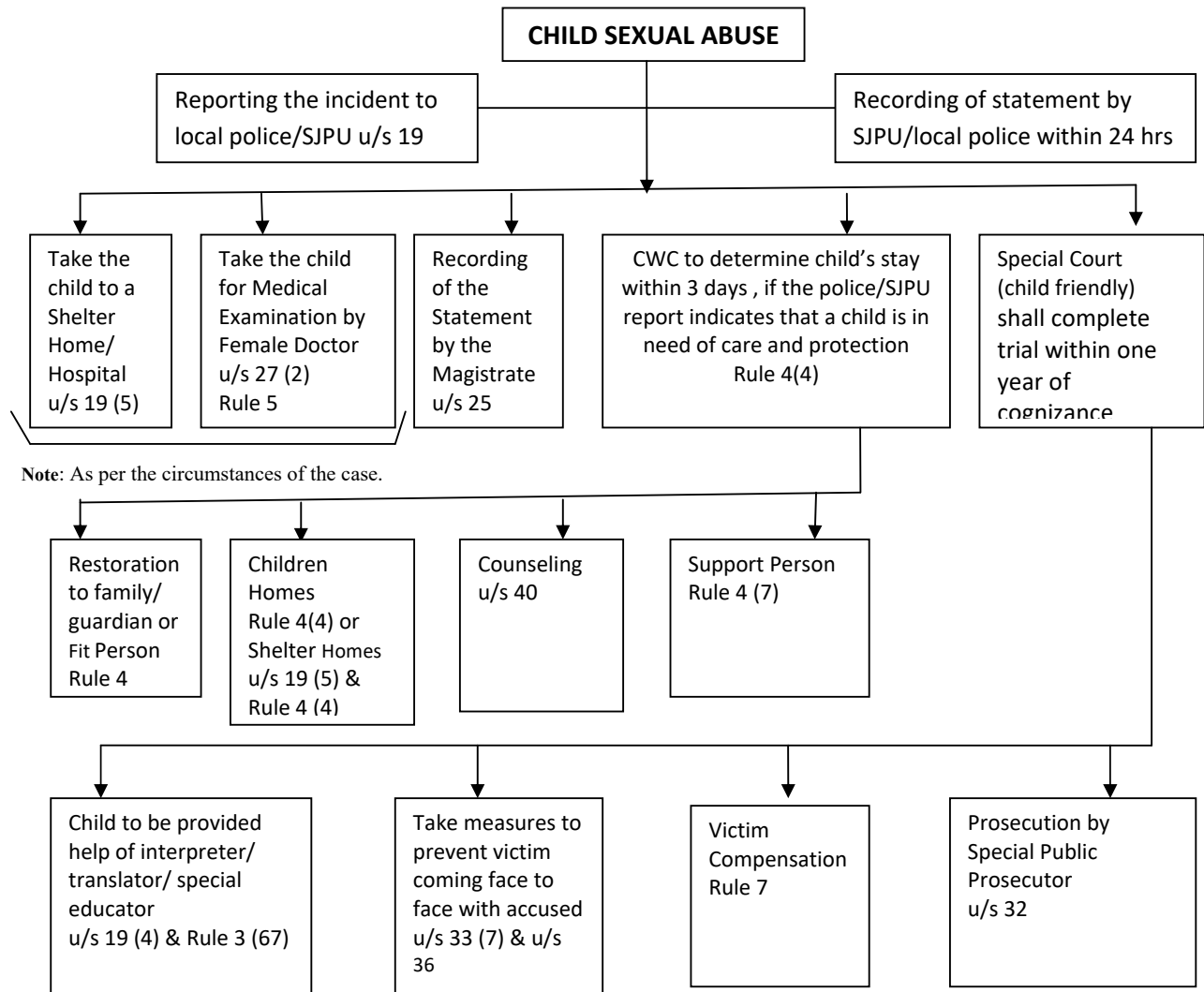
Journeying through the judicial system was a daunting proposition for victims and families. Intense questioning of the child victim by the defence counsel in courts and the possibility of media coverage around the case meant that there was a grave risk of the child revisiting the trauma of the incident. Victims and families experienced general fatigue with the complexity and delays of the judicial system. Further, merely securing justice from the courts did not ensure that the victim was able to move on from the incident. Other rehabilitative and compensatory measures were lacking. The justice system itself was insensitive to the victims. Hard-line, judgmental questioning of the victim and constant demands on them to revisit and recall the crime during investigation, and trial would re-traumatize the victim child. The inordinate delays in justice delivery would disrupt the life of the child and their family. The burden of proof was solely on the victim and not on the offender.

Thus numbers of cases reported were very few compared to the scale at which the offences took place. Many of the victims in reported cases would turn hostile during the investigation and trial. Further, If the victim decided to speak out, they were left vulnerable to social stigma as there were no institutional safeguards.

1.1. Reporting of a Child Sexual Abuse case

Under Section 19 of the POCSO Act, 'Reporting of offences' by any person including the child has been made mandatory. Section 21 of the Act provides punishment for failure to report or record a child sexual abuse case. However, a child cannot be punished for failure to report {S.21 (2)}.

PROCESSES UNDER POCSO ACT



1.2. Salient Features of POCSO Act, 2012

(i) *Burden of Proof on the Accused*

What makes POCSO Act special is that it asks us to trust our children. Rather, it places the onus squarely on the accused to prove that he/she is innocent. Section 29 of the Act provides that 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, unless the contrary is proved. The law ensures that the pressure is not on the child to prove that the crime took place.

Objectives of the POCSO Act, 2012:

- ❖ To protect children from the offences of –
 - Sexual assault;
 - Sexual harassment; and
 - Pornography.
- ❖ To establish Special Courts for speedy trial of such offences.

The Court presumes “culpable mental state” (intention, motive, etc.) of the accused [Section 30 (1)].

(ii) POCSO Act is gender-neutral law, wherein the law takes cognizance of sexual crimes committed against both girls and boys under the age of 18 years.

(iii) POCSO Act ensures punishment for all perpetrators irrespective of age and gender.

(iv) *Calibration of Offences*

POCSO Act addresses a wide range of sexual offences which include anything from **complete and partial penetration; non-penetrative sexual assault; stalking of a child; showing children pornography; using the child for pornography; exhibitionism etc.** The law protects children from both physical and or non-physical contact forms of abuse.

(v) *Severer Punishment when Protectors are Perpetrators*

POCSO Act provides for more severe punishment, when the sexual offence is committed by a person in a position of trust or authority such as police officer or a member of security forces or public servant etc. (Sections 5 and 9).

(vi) *Introduction of Child Friendly Measures*

POCSO Act calls for people, systems and procedures to be sensitive and respond to the needs of children. For instance, it clearly mentions that the child need not be taken to the police station to report a case of sexual offence. Rather it directs the police (to be not in uniform and as far as practicable a woman officer not below the rank of Sub-inspector) to reach out to the child, based on the child’s preference and convenience (Section 24).

(vii) Support to the Child and Family in the form of Support Person

POCSO Act takes into account that handling a sexual offence is not easy for the child and family. So it makes provisions for experienced and professional individuals to be associated with the pre-trial and trial stage to assist the child (Sections 39 and 40). Under Rule 4 (7) of POCSO Rules, 2012, Child Welfare Committee is to appoint Support Person to render assistance to the child through the process of investigation and trial.

(viii) Accountability of every citizen towards Child Protection

POCSO Act makes it mandatory for every citizen to report cases of sexual offences against children to the police (Section 19).

(ix) Punishment for failure to report or record a case

Failing to report the commission of an offence u/s 19 (1) or u/s 20 or failing to record such offence u/s 19(2) shall be punishable u/s 21.

(x) No Discretionary Jurisdiction

Courts cannot exercise their discretionary powers in POCSO cases. They cannot reduce the term of imprisonment to a term less than the minimum term stipulated under the Act.

(xi) Confidentiality of the Child and the Family

Media has to secure the identity and privacy of the child. Disclosing or publishing the identity of the child victim by mentioning name, address, neighbourhood, school name and other particulars is punishable with imprisonment of not less than six months but extendable to one year or with fine or with both. It also prohibits making of negative reports that cause harm to the child's reputation. 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 (Section 23).

Do's and Don'ts for Media while covering cases of Sexual offences against Children

DO	DON'T
Be exact when describing the nature of the offence – use the right terminologies	Use ambiguous or minimizing language (e.g. "sexual relationship with a child" or "affair with a minor" etc
Be clear that ' consent is immaterial '	Blame the victim. It is NOT his or her fault. The abuser is solely responsible for this crime
Use terms like "victim" and "survivor"	Refer to victims as "alleged accusers." They are not "alleged"
Hold institutions or individuals in position of power accountable	Refer to abuse as an "affair" or "sex scandal," or in any way imply consent.
Report on relevance of CSA in society; look beyond the story as it unfolds in the criminal justice system	Assume the victim is alone; often it takes one person coming forward for others to share like experiences
Include information about the social and cultural impact of CSA cases	Downplay the severity of this crime, the long-term effects of which can be devastating
Focus on multiple aspects of the case including rehabilitation, prevention. Source experts in the field, such as child advocates, lawyers, and psychologists. Always check your facts with credible organizations	Only focus on the role of police and judiciary.
Seek help of a support Person/NGO or a person known to the victim and the family before interviewing	Directly approach the victim and family on your own with all the questions
Read the case file (if available) or the copy of the FIR before approaching the victim and families with specific questions	Ask them questions directly on the offence and its nature or publish the FIR in your article
Take consent of the parent or the trusted adult/organization before talking to the victim	Directly approach the victim without parental consent
Focus on the modus operandi of the offender and grooming process to create larger awareness	Focus only on the nature of sexual offence e.g. Rape etc
Highlight cases from different socio economic strata and high profile pedophiles	Label this as a problem pertaining to poor and uneducated communities

2.0. DEFINITIONS UNDER THE POCSO ACT, 2012

2.1. Relevant definitions from the Act paraphrased from the original text are as follows: -

- (i) **Child {Section 2 (d)}**: Any person below the age of 18 years.
- (ii) **Penetrative sexual assault (Section 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

Any form of penetration in private parts or other body parts or application of the mouth to the private parts of a child or forcing the child to penetrate the offender or someone else.

The penetration can be performed with a penis, other parts of the body or even objects. Manipulating the body of the child so as to cause penetration is also included.

- (iii) **Aggravated Penetrative Sexual Assault (Section 5)**: (a) Whoever, being a police officer, commits penetrative sexual assault on a child —
- (i) within the limits of the police station or premises at which he is appointed; or
 - (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where he is known as, or identified as, a police officer; or
- (b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a .
- (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 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

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

(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 14 of 1987

(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.

When penetrative sexual assault is committed by a person in a position of trust or authority such as police officer or a member of security forces or public servant etc. Sexual Assault on a child during extraordinary circumstances like a communal or sectarian violence –is also an aggravated crime.

(iv) Sexual assault (Section 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.

All acts of physical nature without penetration. For example, stalking a child, showing dirty pictures, touching private parts of a child or making a child touch the private parts of someone else etc.

It also includes any other act committed with sexual intent, which involves physical contact without penetration.

(v) Aggravated Sexual Assault (Section 9): (a) Whoever, being a police officer, commits sexual assault on a child—

- (i) within the limits of the police station or premises where he is appointed; or
- (ii) in the premises of any station house whether or not situated in the police station to which 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 14 of 1987

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

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

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

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

Offences of sexual assault if committed by a person in a position of power, authority and trust or in certain circumstances. When penetrative sexual assault is committed by a person in a position of trust or authority such as police officer or a member of security forces or public servant etc.

(vi) Sexual harassment (Section 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.

It also includes constantly following or watching the child either directly or through digital or any other means and also showing any object to the child in any form or enticing the child for pornographic purposes.

(vii) Abetment (Section 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.

Intentionally instigates, aids by any act or illegal omission, the doing of that offence or be part of a conspiracy with others.

(viii) Punishment for attempt to commit an offence(Section 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 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.

3.0. CHILD FRIENDLY PROCEDURES UNDER THE POCSO ACT, 2012

POCSO Act safeguards the rights and dignity of the child at every stage of the legal process.

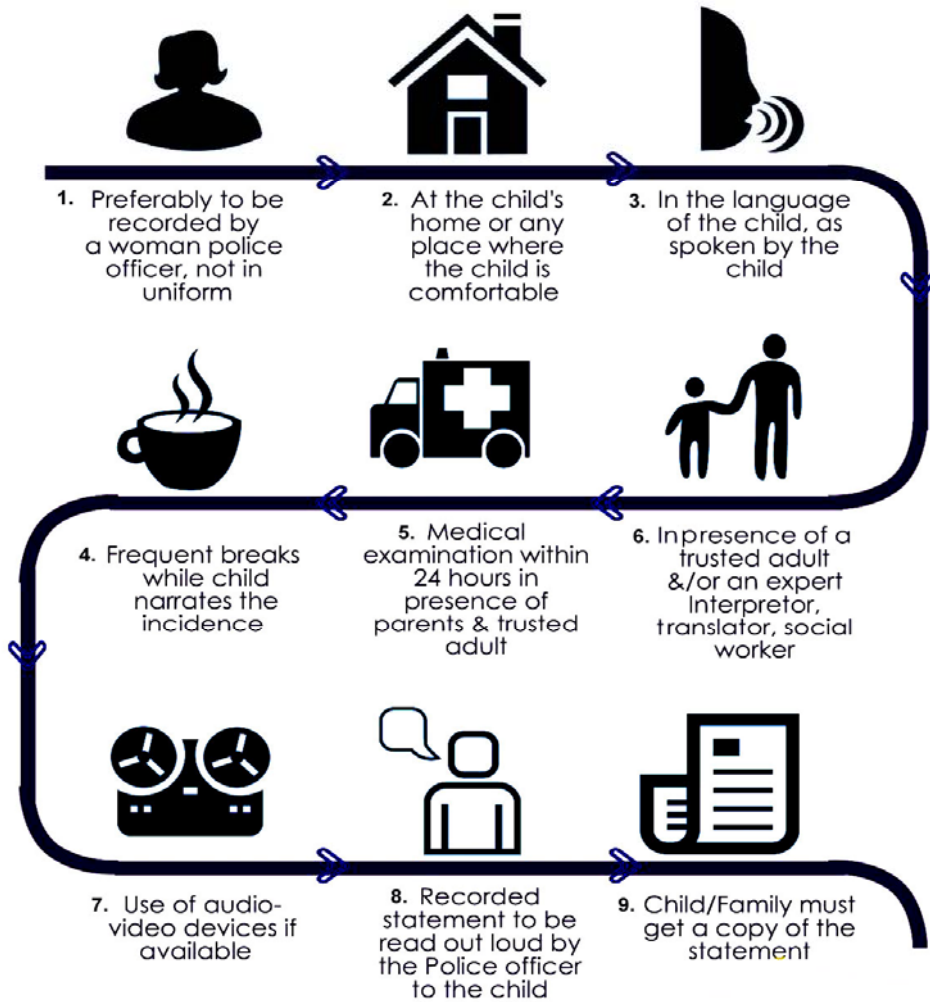
It provides for child-friendly procedures for medical examination; recording the statement of the child by the police and magistrate; as well as during the examination of the child in court.

- (i) The Act also mandates Establishment of child-friendly Special Courts in every district (Section 28).
- (ii) Appointment of a Special Public Prosecutor (Special PP) for every Special Court for conducting cases only under the provisions of POCSO Act (Section 32).
- (iii) The Special Court shall create a child-friendly atmosphere and allow the child to be accompanied by a family member, guardian, friend or relative in whom the child has trust or confidence to be present in the court(Section 33).
- (iv) The child must not be brought face to face with the accused while giving her/his statement to the Police or the Magistrate, or while testifying (Sections 24 and 36).

Recording of Statement of a child by Police (u/s24)

Recording the statement of a child

9 things to Remember



4.0. EMERGENCY MEDICAL CARE AND COUNSELLING

The child victim who is in need of urgent medical care and protection, SJPU/local police shall within 24 hours of receiving information about the crime, arrange to take such child to the nearest hospital or medical care facility centre for emergency medical care {Rule 5 (1)}. The medical examination of child shall be conducted whether FIR or complaint is registered or not, by a women doctor, if the victim is girl. In case parent is not available for any reason, medical examination of child shall be conducted in the presence of a women nominated by the head of the medical institution (Section 27).

Child Victim shall be provided translator or an interpreter, having such qualification, experience to understand the content and language of FIR (u/s 19 (4)). Child may take help of interpreter/ Translator/ Special Educators under Rule 3 (7) at any stage after information is received u/s 19. 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 the Act. They are also entitled for free legal counsel from Legal Services Authority (u/s 40).

Care and Protection of child victim

- If the SJPU or local police has reasonable grounds to believe that the child is in need of care and protection, then, it shall after recording the reasons in writing, make arrangements to give the child such care and protection (including admitting the child into shelter home or to the nearest hospital) within 24 hours of the report {Section 19 (5)}.
- The SJPU or local police shall report the matter to the Child Welfare Committee (CWC) and the Special Court within 24 hours including need of the child for care and protection and steps taken in this regard {Section 19 (6)}.
- CWC may provide a Support Person to render assistance to the child through the process of investigation and trial {Rule 4 (7)}.
- In certain cases, children have to be mandatorily produced before CWC as per Rule 4 (3) of the POCSO Rules.
- CWC can also order that the child be taken out of the custody of her/his family if she/he has been or is likely to be sexually abused there (Rule 4 of POCSO Rules).

5.0. SPEEDY PROCEDURES

The POCSO Act requires that the evidence of the child be recorded by the Special Court within 30 days of taking cognizance of the offence. Any delay shall be recorded in writing. As far as possible, the trial shall be completed within a period of one year from the date of taking cognizance of the offence (Section 35).

6.0. COMPENSATION

The Special Court may pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage of the FIR. Such interim compensation paid to the child shall be adjusted against the final compensation, if any. The Special Court may recommend 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. (Rule 7 of POCSO Rules, 2012).

Chapter – III

ROLE OF KEY STAKEHOLDERS UNDER POCSO ACT, 2012

1.0. ROLE OF PARENTS

Parents are the child's first guide and guru and it's not always easy as some lessons are harder to impart than the others. One of the most important and invaluable lessons you can teach your child is to understand their own bodies. This not only includes simple biological facts like knowledge of all the body parts and sexuality but also common sense information about maintaining boundaries and handling relationships.

(Note:- While this page is intended to speak directly to parents, it would benefit any trusted adult around the child. It covers the basics of personal safety.)

1.1. Teach Your Child the Correct Names for All the Parts of the Body

This is the logical starting point for all conversations on body and safety. Most parents prefer using vague euphemisms and baby-isms rather than addressing some of the body parts especially the genitals, breasts and buttocks by their correct biological names. It is kind of like calling an apple an 'elephant' when you could just call it an apple. It is not easy because of the way we all have been socialized, but correct information has to be given and can be given to the child in an age appropriate manner. You will realize that once you disassociate the sexual functions of these body parts they are easier to convey.

While teaching your children, confidently try telling your child the penis is used for urination. The buttocks are an essential cushion without which you would not be able to sit. Breasts are for feeding a small baby. Say it the way you would tell them other things such as hands are used for holding things; legs are used for walking and running, etc.

You will find that once you get over the shame that YOU associate with it and make a start, it sets the tone for free and open conversations in the future. You earn the trust and respect of your child. You will be surprised to see how positively your children react to this information.

1.2. Teach Your Child About Boundaries

When it comes to drawing boundaries, most parents focus on private body parts. This is a bit skewed and operates on the narrow principle of shame.

As a parent, you need to tell your child to take ownership for their entire body. The emphasis should be on personal space

Tell Your kids: Counselling

It is not all right for someone older or more powerful than them to touch their genitals, or violate their personal space to ask them to touch their genitals, or to take pictures of them and their genitals.

and not just on private body parts. "Your entire body and the space around it belongs to you" is the message that needs to be given. You must support children to understand that they have a valid say in deciding who touches them and who does not. Even in simple acts like holding hands and hugging, they have a right to say NO.

Set clear family guidelines for personal privacy and behavior and discuss them with all members of your family, your friends for respecting these guidelines. Remember that boundaries must be age appropriate and must change with time.

1.3. Kinds of Touch

Educate your children on safe, unsafe and confusing touch. Some touches (like mother hugging a child) are clearly safe; some (like an uncomfortable hug or kiss or touching private parts) are clearly unsafe.

'Confusing touch' is when the child is unsure about what they feel when they are touched. Talking to them about confusing touch will help them articulate about what they feel. Next time they feel confused or queasy or unsure when someone is touching them or looking at them or showing them something, ask them to approach you fearlessly. Once again, trust and openness is key.

1.4. Teach Your Child To Say 'No'

We mostly teach a child to follow what an adult says or instructs. In saying that we are making a sweeping generalization that all adults are trustworthy, when the truth is far from it.

Also, teach your child to say 'NO'. Teach them that if someone tries to touch their body in a way that they are not comfortable with or asks them to touch others in an uncomfortable way or wants to take a picture, or violates their personal space – to say "NO". Also, teach the kid to run away from the uncomfortable scenario and tell a trusted adult about the incident.

1.5. The Trust Circle

This is an exercise that needs to start early in the life of a child. It is one that you should keep updating as the child grows.

Ask your child to draw or name or write the names of the people they trust the most. This is the child's trust circle, the individuals who are closest to them.

This exercise will not just keep you aware of your child's social life but also tell you the people you need to most reach out to in times of need. This is your child's first line of protection.

1.6. Never Keep a Secret About Breaking the Touching Rules

Teach your child that keeping secrets if a Touching Rule is broken is a strict 'no-no'. You are also to tell the child that it is not their fault if a touching rule is violated. And that if it ever comes to pass, they have to tell it to you at once.

1.7. Work on Building Your Child's Self Esteem

Your child self-esteem determines how willing they are to explore new challenges and to persist when they face difficulty. Children with strong self-esteem are better equipped to protect themselves from abuse and the trauma of abuse. Giving your child a choice among options (e.g:- asking them to choose their clothes, their opinion about things in the family) is the first step towards building their self-esteem. Encourage their interests and hobbies positively. Gradually and age-appropriately ask them to shoulder small responsibilities (cleaning the plate they ate their food in; keeping their books in order; making their bed) around the house. Neither over-praises the child nor be too critical about their failures.

1.8. Do Not Be Judgmental About What Your Child Tells You (especially if its about their feelings)

Reacting with shock, anger or disbelief to your child's questions about body or sexuality will only turn them away from you. You need to be empathetic, trusting and capable of seeing the issue from your child's point of view. You need to learn to listen to your child's questions and value their opinion. Do not silence your child when they come to you with a question about sex or sexuality that makes you uncomfortable. If you do not know the answer to your child's questions, you must be able to tell them that you don't but that you will find out and get back to them. Don't forget to thank the child for sharing their questions and experience with you. It isn't easy for them either.

1.9. Educate Not Just Yourself but Everyone in the family

It is not just your child who needs their questions answered on body and sexuality. It is also a learning period for you. There are high chances that you yourself have never received accurate information on these issues. So educate yourself first, the family next and then the child. As child sexual abuse often is committed by near relatives, children may be warned against intimacy with them.

10. What to Do When Your Child Tells You about Abuse

It is natural for parents to feel shock or denial or confusion, when a child tells you that they were abused. But remember that when your child discloses about abuse, your first reaction is key to your child's recovery.

Some Symptoms of Sexual Abuse



Child has frequent unexplained injuries especially in private body parts



The child walks and sits with difficulty



Fatigue and sleeping difficulties



Poor attendance of child in school



Unexpected behavioural changes in a child such as social withdrawal or unjustified/inappropriate aggression



Regressive behaviour such as bed wetting and thumb sucking



Sudden dislike/withdrawal from certain specific people or places he/she was comfortable with earlier



Sudden accumulation of money or gifts



The child starts paying too much or too little attention to his/her appearance

Note: The above symptoms are only indicative of abuse but there may be others which are not so obvious and therefore, parental attention is required.

Important:

Listen to children reporting sexual abuse

Believe the child

Tell the child that he/she is brave

Tell the child it is not his/her fault that he/she has been abused

✓ Do's

Adopt supportive behaviour towards child victims



Listen to the case with patience when the child complains about a person or an incident or a physical discomfort



Raise your concern with people close to the child



Call CHILDLINE at 1098



Ensure the child has undergone medical examination immediately after reporting the incident



Report incident of abuse at the nearest Police Station



Be sensitive while discussing the incident or its details with the child

✗ Do Not

Do not adopt unsupportive behaviour towards child victims



Blaming the child



Ignoring when the child complains about a person or an incident or a physical discomfort



Reacting in extremes when the incident is reported



Sending the child back to the person/ place where the abuse happened



Asking the child not to seek help from others



Disclosing the child's identity to other people or to the media



Not providing medical attention to the child



Not taking action even when one is aware of the abuse being taking place



Not reporting the incident at the Police Station

OTHER WARNING SIGNS

- Has nightmares or other sleep problems without an explanation.
- Seems distracted or distant at odd times.
- Has a sudden change in eating habits – Refuses to eat or losses or drastically increases appetite.
- Writes, draws, plays or dreams of sexual or frightening images.
- Develops new or unusual fear of certain people or places.
- Suddenly has money, toys or other gifts without reason.
- Thinks of self or body as repulsive, dirty or bad.
- Exhibits adult-like sexual behaviours, language and knowledge.
- Self-injury (cutting, burning).
- Inadequate personal hygiene.
- Drug and alcohol abuse.
- Suicide attempts.
- Fear of intimacy or closeness.
- Compulsive eating or dieting.

1.11. Learn the Law on Child Protection

India has one of the finest and most comprehensive legislation in the world on child protection, staying updated can help you protect not just your own child but children around you. You don't need to learn the entire law. Just a little information can go a long way. Parents who are empowered with the knowledge of the law are much more empowered to navigate the system.

1.12. Learn about the Agencies in your Area.

Know whom to contact to make a report if you know or suspect that a child has been sexually abused. Make a list of resources you can call for advice, information and help and include the phone numbers.

1.13. SERVICES AVAILABLE TO CHILDREN THAT YOU NEED TO KNOW

(a) 1098: The Childline Helpline can put you in touch with a social worker who can provide you with assistance and information. However, we still recommend doing your own homework even as you consult with Childline.

(b) Police FIR: You must inform the child before reporting to the police. You need to ensure that the child is comfortable with the idea and prepared for meeting with the police. You need to reassure the child that you will be with them every step of the way but also inform them that they will have to be prepared to recount the incident.

Once the child is prepared, do not take the child to the police station. Instead, the child may choose the place they find most comfortable to meet the police who will come in plain clothes and not in uniform.

The Police cannot refuse to register an FIR (Section 19 and 20).

1.14. Medical Care: A child victim of sexual offences receives free medical care and treatment at any private or government hospital {Section 19 (5), Section 27 and Rule 5}.

1.15. Counselling to child: Professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development are to be associated with the pre-trial and trial stage to assist the child (Section 39).

1.16. Free Legal Counsel: The family or the guardian of the child victim shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act. The Legal Service Authority shall provide a legal counsel to the child victim free of cost (Section 40).

1.17. Compensation: Various States in the country have different compensatory schemes for child victims of sexual offences. {Section 33 (8) and Rule 7}. The police are supposed to inform you of the scheme. Additionally you may seek information from Childline or other local NGOs.

1.18. Shelter: If the child victim continues to remain unsafe or at-risk at home, especially in cases involving incest, the child may be transferred to a Shelter Home where all needs of the child will be taken care of.

1.19. Education: Post the incident of abuse, it is essential that the child’s life is gradually returned to normal. Enrolling in schools and resuming their education is an important step towards rehabilitation of the child. Under the Right to Education Act, 2009, the child can receive free and compulsory education till the age of fourteen years.

1.20. Support Person: The CWC can provide a Support Person to assist the child victim and family during the investigation and trial of the case {Rule 4 (7)}.

REMEMBER PARENTS

Do’s	Don’ts
A- INITIAL INTERACTION WITH THE CHILD AFTER DISCLOSURE	
Pay close attention to the child and what the child is saying. Trust your child, believe in them	Get upset when your child talks about the abuse/Neglect or blame the child for the disclosure
Assure your child that you love them and will protect them. Tell your child it’s not his/her fault	Tell your child to forget it ever happened /Blame the child or ask the child to keep quiet about the abuse
If the abuse has happened short while ago immediately take the child to a hospital for medical examination to ensure evidence is not lost	Wash the child or bathe the child if the abuse has happened short while ago. Throw the clothes and other crucial evidence away
Refer the child to a counselor or an expert NGO for his/her mental health needs	Ignore the trauma and mental health needs of your child
Seek help for yourself in case you have experienced trauma due to this incident	Ignore your needs and your fears when it comes to taking care of your child
B- REGISTRATION OF FIR	
Go to the nearest police station to complain about the incident	Take the child to the police station
Ask the police to take down the details and give you a copy of the FIR	Rely on just a verbal conversation with the police
Accompany your child for the medical examination if it happens post the registration of the FIR	Let the police take the child alone or in company of some other person
C- RECORDING THE STATEMENT OF THE CHILD	
Prepare your child for the statement recording. Be present during the statement recording if your child feels comfortable	Leave the child alone with the police during the statement recording unless the child has asked for the same
<p>Ensure The police informs you in advance when they are coming for recording of statement The statement is recorded at your residence or any other place where the child is comfortable The police do not come in uniform for the recording.</p>	

As far as practically possible, the child's statement should be recorded by a women police officer not below the rank of Sub-Inspector
 The statement is recorded in the language of your child as spoken by your child
 The statement is written/typed as the child is speaking
 The child get's frequent breaks and is comfortable during the recording
 If you have a special child or a disabled child ask the police for help from experts
 If they are recording it using a audio visual device, assess the quality of the equipment used and ensure your child is comfortable talking in front of the camera
 Once the statement is recorded, insist that the police has to read out the statement loud to the child and you. If there are any changes or corrections you can ask them to make it
 You take a copy of the statement from the police
 You take down the details of the Investigating Officer in the case

D- MEDICAL EXAMINATION

Dos	Don't
Ensure that the doctor takes consent of a person competent to give such consent on her behalf to conduct the medical examination (Section 164A of CrPC 1973)	Allow the doctor to start the medical examination without your consent
Ensure that the doctor conducts medical examination in the presence of the parent of the child or any other person in whom the child reposes trust or confidence {Section 27 (3)}.	Allow the doctor to start the medical examination without the consent of your child
	Force the child to undergo medical examination under any circumstances
Medical examination of girl child victim shall be conducted by a women doctor {Section 27 (2)}.	Be obliged to say yes if you or your child don't feel comfortable with the way the doctor is handling the case
Be present with your child through the history taking and medical examination if the child is comfortable having you around	Insist on being present if the child is uncomfortable in your presence
Collect a copy of all the medical reports and medical certificate	Pay for getting a copy of the medical certificate or the medical reports

E- SPOT IDENTIFICATION & IDENTIFICATION OF THE ACCUSED

Dos	Don't
Keep in touch with the Investigating officer to know in advance the dates for the procedures. Be present with your child throughout these procedures	Don't let your child go alone for spot identification or identification of the accused
File an NC – Non-Cognizable Offence with the nearest police station if you receive threats from the accused or his/her relatives or well wishers. Get a copy of the filed complaint from the police free of cost	Ignore threats or pressure from the accused and his/her family

Make sure that the child and the accused do not come in contact with each other after the registration of the complaint	Let police take you to the hospitals or courts along with the accused in the same vehicle
F- GIVING STATEMENT & EVIDENCE IN COURTS	
Dos	Don't
Ensure that the police inform you of all the court dates in advance. Check if they have filed the charge sheet in court within 90 days of registration of your complaint	Stop the communication with the police officers after the evidence has been collected and the statement is given
Be present with your child during the recording of the statement in front of the magistrate	Leave the courtroom unless you have been asked to leave. If you feel your child will be more comfortable with you around you can ask the judge for permission to be present
Talk to your lawyer and/or Special Public Prosecutor to ensure that the child is not directly questioned by the defense counsel – the questions have to be asked to the judge and the judge will ask the questions to your child	Let the child be asked questions by the defense lawyer and his counsel
Ensure that there are adequate measures taken by the police and the magistrate to ensure privacy and confidentiality of the case	Let the child be exposed to the accused or the details of the case be opened in front of a packed courtroom
G- COMPENSATION & REHABILITATION OF YOUR CHILD	
Dos	Don't
Ask the investigating officer, a local NGO or the lawyer about existence of a compensation scheme for your child	Assume that the child will or will not get compensation
Continue with the counseling sessions to deal with trauma	Stop the counseling sessions abruptly
Ensure that the child gets back to his/her normal routine as soon as possible post the incident	Unnecessarily relocate the child from the school or the community post the incident
Talk to your child on a regular basis and ensure him/her that you are there to protect them and love them	Ignore the child's needs once you feel the child has come back to the normal routine

2.0. ROLE OF SPECIAL JUVENILE POLICE UNIT (SJPU)/LOCAL POLICE

The police play an important role for protection of children. The POCSO Act, 2012 mandates police to adopt child friendly procedures while dealing with cases of child sexual abuse.

2.1. Steps to be taken by police on receiving a report of child sexual abuse are given in the subsequent paragraphs.

A police station that is aware of the various procedures can not only reduce the time taken to process a case but also ensure that the child does not have to go through any secondary trauma.

2.2. Recording the Statement

The statement of the child should be recorded at a place preferred by the child [Section 24 (1)]. This can be at the child's home or if a child feels more comfortable in a garden nearby, then the statement must be recorded at that spot.

As far as practically possible, the child's statement should be recorded by a woman police officer not below the rank of Sub-Inspector [Section 24 (1)]. The officer recording the statement of the child must be in plain clothes. They should not be wearing police uniform [Section 24 (2)].

The statement of the child must be recorded in the presence of the child's parent/s or in the presence of an adult whom the child trusts [Section 26 (1)]. However, if a parent is also the accused they must not be present during the statement recording of the child.

The police officer recording the statement must ensure that the child does not come in contact with accused during statement recording and also investigation [Section 24 (3)].

The child cannot remain at the police station at night for any reason cited [Section 24 (4)].

The magistrate or the police officer may take the assistance of a translator or an interpreter while recording the statement of the child [Section 26 (2)]. Further, the magistrate or the police officer may seek the assistance of special educator or any person familiar with the manner of communication of child having a mental or physical disability to record the statement of the child [Section 26 (3)]. The list of such personnel is to be available with the District Child Protection Unit (Rule 3 POCSO Rules, 2012).

As far as possible, the statement can be recorded by audio-video electronic means [Section 26 (4)]. However, before using this technology, the police needs to check if the device is functioning properly, there is enough battery back-up and that the information is stored securely. The police must maintain privacy and confidentiality of the child from public and media [Section 24 (5)].

Recording of the statement of the victim child is a time taking process and needs to be handled sensitively. Give the child adequate breaks. Ensure that they are not hungry. Don't force answers out of them by asking close-ended questions. Patience is the key.

2.3. Assessing the Child

If the police are convinced that the child is without support or, in case of is living with the abuser or is in a situation of extraordinary risk at home, they need to record the reasons in writing [Section 19 (5)].

They need to make immediate arrangements for the child's care and protection. This may include admitting the child to a hospital or shelter home within 24 hours of the report. If the child is living with the abuser, or is in an institution or is without a home and parental support, the police shall produce the child before the Child Welfare Committee within 24 hours [S. 19 (6) of Act and Rule 4 (3) POCSO Rules, 2012)].

If the police has assessed that the child needs emergency medical care, they must make immediate arrangement to take the child to the nearest hospital, either private or government [Section 19 (5)].

2.4. Medical examination

The police must take the child to the hospital for medical examination within 24 hours of having received the report in accordance with Rule 5. They must ensure that the samples received for forensic testing are sent to the Forensic Laboratory at the earliest. Ensure that the child and the accused do not come in contact during medical examination.

No police person should be in uniform (including the constable) while taking the child to the hospital.

Liaison with the doctors and social workers can reduce trauma of the child.

The extracts of the **Guidelines and Protocols: Medico-legal** care for survivors/victims of Sexual Violence, prepared by the Ministry of Health and Family Welfare, Government of India (19th March, 2014) are attached.

2.5. Recording of Statement by Magistrate

While recording the statement of the child under section 164 of the Code of Criminal Procedure, 1973, the Magistrate recording such statement 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. {Section 25 (1) & Section 26 (1)}

Provided that the provisions contained in the first proviso to Section 164 (1) of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case {Section 25 (1)}

The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under Section 27 of the Code of Criminal Procedure, 1973, upon the final report being filed by the police under section 173 of that Code {Section 25 (2)}.

The Investigating Officer should record the date and time at which they learnt about the offence taking place and the date and time at which they took the victim to the Magistrate.

In case of a child having a mental or physical disability, the Magistrate or the police officer may 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 to record the statement of the child {Section 26 (2)}.

Wherever possible, the Magistrate or the police officer shall ensure that the statement of the child is also recorded by audio-video electronic means {Section 26 (4)}.

2.6. Reporting to Special Court and Child Welfare Committee

The SJPU or local police shall report the Child Welfare Committee and the Special Court about every case of POCSO within a period of 24 hours. If the child was assessed as a child in need of care and protection, information of the steps taken to provide the same to the child must be sent along with the information about the case.

(Note: in the absence of a Special Court, the report must be submitted to the Session’s Court) [Section 19 (6)].

2.7. Information to Informant and Victim

The Police must inform the informant about their own name, designation, address, telephone number and also their supervisor’s {Rule 4 (1) (iii)} POCSO Rules, 2012). They must inform the child victim and family about:

- Right of the child to legal aid and representation and contact information of District Legal Services Authority (DLSA) [Section 40 of POCSO Act and Rule 4 (2) POCSO Rules, 2012)].
- Availability of private and public health services and emergency crisis services.
- Procedures related to the case.
- Status of investigation
- Status of arrest of accused and status of the bail application
- Availability of compensation,
- Filing of charge-sheet
- Schedule of Court proceedings including information about time, date and venue.
- Contents of judgment and its implications.

2.8. Do’s and Don’ts for Police

Do’s	Don’ts
A- REGISTRATION OF COMPLAINT	
Register every complaint regarding sexual offence committed against children	Refuse the registration of the complaint on any grounds
Believe the child and the family. Be sensitive towards them irrespective of religion, race,	Be judgmental of the child or the family. Blame the child or the family for the incident

caste, sex or place of birth or any of them.	
Take down the complaint in detail from the complainant	Insist on talking to the child or interviewing the child before registration of the complaint
Ascribe an entry number, read over the complaint to the informant and enter the complaint in a book to be maintained by the police unit	Make a random entry of the complaint in your records
Ensure you write the complaint in a simple language if the child is the complainant	Use legal language or jargons which the child cannot understand
Seek help from a local NGO or an expert in case you cannot understand the language or the mode of communication of the child	Try to do this yourself with a child with special needs or who doesn't understand your language
B- PROTECTION OF THE CHILD	
Do's	Don'ts
Make immediate arrangements for the care and protection of the child including health needs or need for a shelter home if required.	Ignore the needs of care & protection of the child.
Report the matter to the local Child Welfare Committee & the Special Court within 24 hours of registration of the complaint	Ignore reporting the matter to the Child Welfare Committee since it plays a crucial role in appointing support persons for the case and ensuring care & protection of the child
Provide the victim victim's family information regarding availability of free legal aid and other support services in the district	Assume that they would know of the procedures and services to help the child
C- RECORDING THE STATEMENT OF THE CHILD	
Do's	Don'ts
Record the statement of the child in a place of comfort and choice of the child	Insist on recording the statement of the child in the premises of the police station
Be sympathetic and patient towards the child during the process	Ask leading questions or make derogatory remarks about the child or the incident during your interaction.
Ensure <ul style="list-style-type: none"> • Inform the parents/guardians in advance of the date of recording of the statement • You are not in uniform • As far as practicable, statement of the child shall be recorded by women police officer not below the rank of Sub-Inspector at the residence of child or at a place where he usually resides or at the place of his choice. • Record the statement in the language of child and as spoken by the child • Allow the parents/guardians, support persons or any other trusted adults to be present during the recording 	

- Statement is written/typed as the child speaks
- Child get's frequent breaks and is comfortable during the recording of statement
- In a case of a special child or a disabled child seek help of experts
- While recording the statement using a audio-visual device, assess the quality of the equipment beforehand and ensure the child is comfortable speaking in front of the camera
- After statement is recorded, read out the statement loudly to the child and its parents/guardians. If there are any changes or corrections make it then and there.
- Provide a copy of the statement to the child and the family
- Provide them with your complete details especially your name, designation and telephone number
- Explain in brief the next steps that follow post the recording of the statement
- Provide full support and protection to the child
- Make sure that the child and the accused do not come in contact with each other after the registration of the complaint throughout the entire judicial process.

D- MEDICAL EXAMINATION

Do's	Don'ts
Make prior arrangements for the medical examination with the hospital and inform the parents/ guardians regarding the same	Take the child and the parent/guardian to the hospital without prior arrangements
Ensure adequate transport arrangements for the child and the family/guardian	Take them in a police van with the accused for medical examination
Ensure at no point do the accused and victim come in contact during medical examination	Let the accused and the victim come in contact during medical examination
Check the nature of the assault before insisting on complete medical examination	Insist on genital examination in case of sexual harassment
Provide full protection and confidentiality to the victim and to parents/guardian when you accompany them for medical examination	Disclose the case details to persons who have no role to play during medical examination
Be proactive in collecting all the evidence and documentation from the hospital timely	Leave it to the hospital to send you the medical evidence.

E- SPOT IDENTIFICATION & IDENTIFICATION OF THE ACCUSED

Do's	Don'ts
Inform the child and the parents/guardians in advance of these procedures. Explain the procedures to the child and its parents/guardians	Abruptly call child for spot identification or identification of the accused. The child might be traumatized and this might affect the investigation
Ensure parents/trusted adult the guardian is present with the child during the process.	Let anyone interfere with the process. If the spot identification is happening in a community, please ensure the child is protected from the community

	members.
PROCEDURE AT CWC & COURTS	
Do's	Don'ts
Produce the child in front of the Child Welfare Committee in cases where you need their inputs on ensuring adequate care and protection to the child.	Produce every single victim under POCSO in front of the CWC.
Inform the CWC that the detailed statement has been taken, provide them with the copy of the statement.	Let multiple stakeholders take repeated statement of the victim child
Take the child for a 164 Cr. PC statement wherever deemed necessary	Insist on 164 Cr. PC statement of every child victim under POCSO
Ensure that there are adequate measures taken to ensure privacy and confidentiality of the case	Let the child be exposed to the accused or the details of the case be opened in front of a packed courtroom

2.9. FURTHER MEASURES

- While recording the FIR include the sub-sections of punishment if any.
- Protection of victim from the accused's family - it is important for police to check from time to time and take appropriate measures to protect the victim and their family, especially in POCSO, since punishment is higher.
- Submit relevant documents for Compensation to DWCD/Social Welfare Department office (FIR, Medical).
- Information may also be given to District Legal Services Authority as at most places, the administering authorities in respect of compensation schemes are the DLSAs. The courts should be informed.

3.0. ROLE OF MEDICAL PROFESSIONALS

In many cases of sexual offences parents and caregivers prefer to take their children to a nearest hospital or a clinic even before they go to the police. A medical professional and hospitals response is key to the child's immediate well-being and long term recovery. The evidence collected in the course of medical examination of victims of sexual assault is core in most investigations in POCSO cases.

Rule 5 of the Protection of Children from Sexual Offences Rules, 2012 states that Emergency Medical Care is to be provided by any medical facility private or public. Sexual Assault is, therefore, a Medical Emergency.

3.1. Taking Medical History

The doctor has to take a detailed medical history of the child's experience before beginning the examination of the child. The history should be obtained in a facilitating, non-judgmental and empathetic manner. It is important for the doctor to remember that child sexual abuse is often a diagnosis based on medical history, rather than on physical findings. The medical history will guide the physical examination. Its objective is not to obtain information for forensic purposes but for treatment and diagnosis and to ensure the safety of the child.

3.2. Interviewing techniques

- The interview should begin by assessing the child's competence. This can be done by asking questions unrelated to the abuse, such as favourite colours, school activities, and likes and dislikes.
- The interview should not have an investigative tone. Relevant questions need to be asked to obtain a detailed pediatric history.
- Determine child's verbal and cognitive abilities, level of comfort, and attention.
- Document the questions asked and the child's responses verbatim, take a note of their body language, demeanour and emotional responses to questioning.
- Detailed medical history, past incidents of abuse or suspicious injuries, and menstrual history should be documented.
- Ask the child to identify body parts; including names for genitalia and anus (use an anatomically appreciate diagram). Write the findings on the diagram in detail.
- Ask about different types of touch; include kisses, hugs, tickles, spankings, and pinches or bites. Use the diagram to ask about all possible abusive touches and ask about any other times (places) it happened.

- It is best to avoid leading and suggestive questions; instead, maintain a “tell-me-more” or “and-then-what-happened” approach.
- Avoid showing strong emotions such as shock or disbelief.

3.3. Features of a child’s account

- The following are the features of a child’s account that increase its credibility:
- Explicit details of the nature of abuse
- Vocabulary and language consistent with the child’s age (which greatly minimizes the risk that the child has been tutored)
- Consistency in core elements of the child’s account
- Psychological response to abuse (e.g, fear, guilt, and low self-esteem)
- Absence of motivation or undue influence to indicate that the account may be fabricated
- Precocious knowledge of sexuality
- Sexualized themes in drawings and play
- Additional information to obtain includes changes in the child's behaviour, specifically sexualized behaviours, and—especially in young children—the names the child uses for body parts (e.g., breasts, vagina, penis, and anus).
- The child and the parent should be informed and reassured that the pediatric forensic examination is not invasive or painful and does not routinely include the use of internal instrumentation or speculum insertion.
- Essential details in case of inflicted trauma include the size and type of penetrating object, the degree of discomfort associated with the act, the number of episodes of contact, whether any treatment was sought and received, and the interval of time that has elapsed between the last incident of abuse and the examination.

3.4. Consent of the victim

Consent of parent or the guardian of the child victim may be asked for the following purposes: examination, sample collection for clinical and forensic examination, treatment and police intimidation.

(a) Informed consent

- Consent should be *informed*, i.e. the person giving the consent should be told about the purpose, expected risks, side effects, and benefits of the examination, and the amount of time it will take. This information should be given before the examination is conducted, in a form, language and manner that the child and his parent/ guardian can understand.
- A child victim and family may approach a health facility under three circumstances, and informed consent must be taken in all:
 - a) On his/her own only for treatment for effects of assault;
 - b) With a police requisition after police complaint; or

c) With a court directive.

- If a person has come directly to the hospital without the police requisition, the hospital is bound to provide treatment and conduct a medical examination with consent of the survivor/parent/guardian (depending on age) Rule 5 (3) POCSO Rules, 2012.

Note: Even if the child or parent doesn't give consent for medical examination you can still provide them with medical treatment.

- If a child victim has come on his/her own without FIR, but may require a medical examination and treatment, even in such cases the doctor is bound to inform the police under POCSO (Section 20).
- Police personnel should not be present during any part of the examination.

(b) Medical examination for legal purposes

After taking the consent, the examination needs to be conducted in the presence of a person trusted by the child (eg. parent / relative / social worker), in the absence of which, a woman nominated by the hospital, needs to be present during examination (Section 27).

3.5. Physical treatment

Under Rule 5 of the POCSO Act, 2012 emergency medical care is to be provided by any medical facility, private or public; and no magisterial requisition or other document is to be demanded as a precondition to providing emergency medical care. Such care includes treatment for cuts, bruises, and other injuries including genital injuries, if any. Inpatient care is recommended if the child's safety is in jeopardy or if the child has an acute traumatic injury requiring inpatient treatment.

(i) As often child victims become pregnant or contract STD, it is therefore, suggested that to prevent Pregnancy and STDs in sexually abused children

- Pregnancy test should be done on girls.
- Urine test is as sensitive and accurate as blood test, and easier for patient
- The doctor must provide information about emergency contraception, and, unless medically contraindicated, offer emergency contraception.
- Legally, the child can provide consent and must be given an assurance of confidentiality for reproductive health care. The patient must provide informed consent.
- If the patient is not able to give informed consent, consent must be obtained from parents, guardian, or surrogate decision-maker

(ii) What is the purpose of a forensic examination?

To ascertain:

- Whether a sexual act has been attempted or completed. Sexual acts include slightest genital, anal or oral penetration by the penis, fingers or other objects as well as any form of non-consensual sexual touching. However, the absence of injuries does not imply that no assault occurred or that the child had consented.
- Whether such a sexual act is recent.
- Whether any injury has been caused to the child's body.
- The age of the child, in the case of adolescent girls/boys.
- Whether alcohol or drugs have been administered to the child.

NOTE: Do not conduct “Two” finger test on victims of sexual assault. Past sexual experience has no bearing on the current case of sexual violence.

3.6. Collection and preservation of evidence

Collection and preservation of evidence using the SAFE Kit -

- Do a thorough medical and forensic examination, as valuable evidence is lost after repeated examinations.
- Preserve the clothes and other relevant material that the child was wearing at the time of the incident.
- Collect materials, swabs and samples for DNA profiling/ forensic evidence from hair, nails, body surfaces or orifices, any product of conception, before washing /cleaning / before the child urinates / defecates. Collect blood samples for intoxicants and blood group.
- Ensure proper labeling, storage, preservation and chain of custody is established for samples and materials being handed over for forensic examination. Critical forensic evidence, especially DNA, could be lost or contaminated unless care is taken.
- For a girl who has attained menarche, Emergency Contraception is advised.

The report has to be prepared as per guidelines, namely: -

- Demographic details of the child and the contact details of the person who brought the child.
- The approximate age of the child and two identifying marks.
- Materials taken from the child for DNA profiling / forensic evidence which includes:-
- Details about any injury, minor or major, on the body of the child. Absence of injuries, does not rule out sexual assault.
- Mental and emotional condition of the child.
- Any other useful information.

3.7. Medico-legal and ethical Issues

POCSO Act provides for mandatory reporting of sexual offences against children, so that any adult, including a doctor or other health care professional, who has knowledge that a child has been sexually abused is obliged to report the offence (Sections 19, 20, 21).

However, he or she is not expected to investigate the matter, or even know the name of the perpetrator. This should be left to the police and other investigative agencies. The report may be made to the Special Juvenile Police Unit, or to the local police station. Alternatively, a call can be made to the Childline Helpline at toll free number i.e.1098 and they can then assist the informant in making the report.

The Act does not lay down that a mandatory reporter has the obligation to inform the child and/or his parents or guardian about his duty to report. However, it is good practice to let parents/guardians know that action to report will be taken.

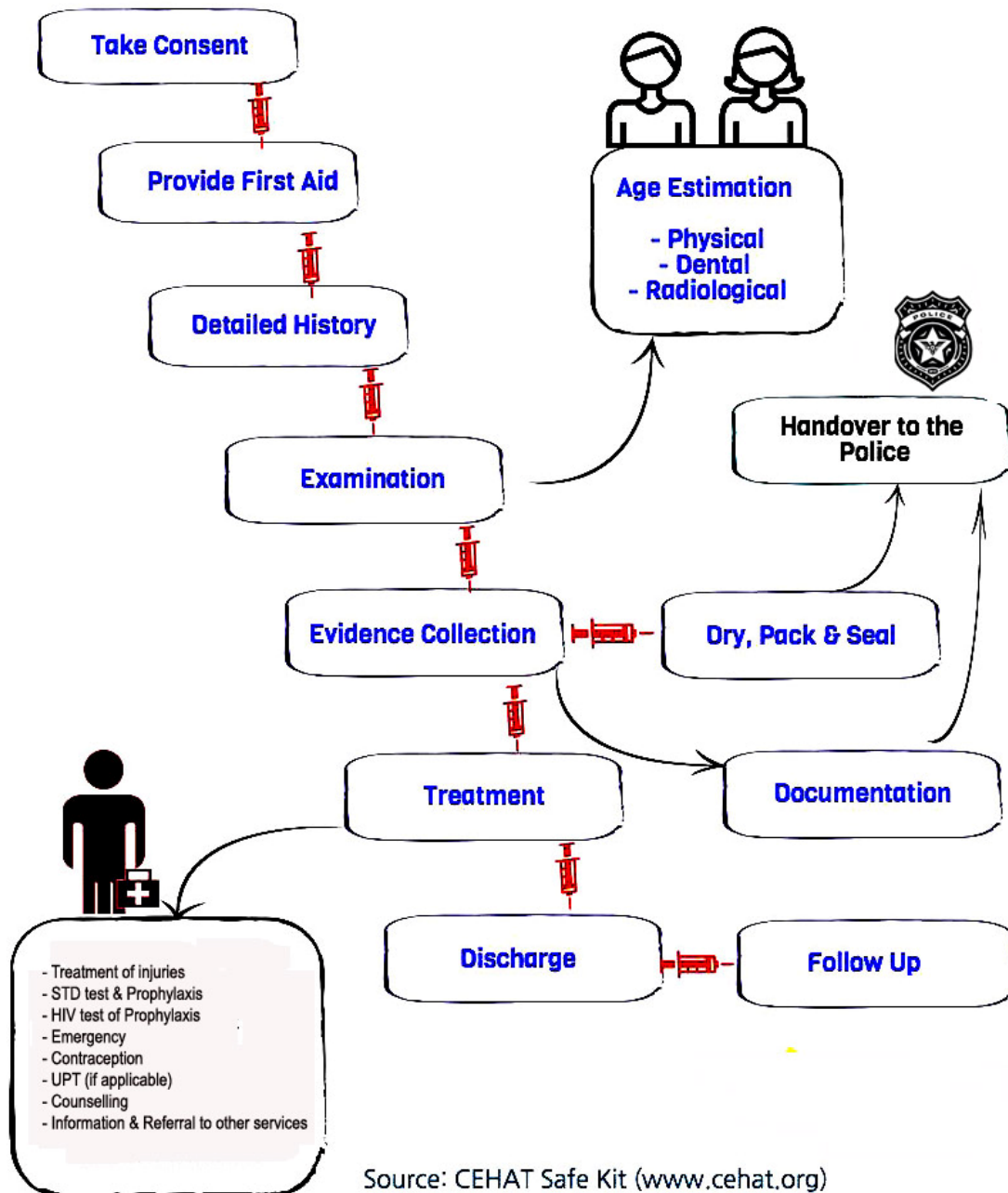
This will help establish an open relationship and minimize the child’s feelings of betrayal if a report needs to be made. When possible, the medical professional should discuss the need to make a child abuse report with the family and with the child if in his/her best interest, according to the age and maturity of the child. However, be aware that there are certain situations where if the family is warned about the assessment process, the child may be at risk for further abuse, or the family may leave with the child.

3.8. Do’s and Don’ts

Do’s	Don’ts
How to Act	
Be Patient and Calm	Don’t Pressurize the Victim for their Story. Don’t speak rapidly
Let the victim know you are listening. e.g:- Nod Your head	Don’t look at your watch or cell phone.
Attitude	
Acknowledge how the victim is feeling	Do not judge. Do not say “You should not feel this way”
Give the victim the opportunity to ask what they want. You may ask, “How can we help you.”	Do not assume what you think would be best for them.
Encourage victim to keep talking. You may ask, “Do you want to tell me more?”	Wait until victim has finished talking before asking questions.
Allow for silence.	Do not finish the victim’s thoughts.
Stay focused on the victim’s experience and offering them support.	Do not relate somebody else’s story or even your own experiences.

Procedure for Medical Professionals

A quick glance at steps to be followed during Medical examination of child victims of sexual violence



4.0. ROLE OF CHILD WELFARE COMMITTEE (CWC)

The Child Welfare Committee plays a key role in ensuring that child victims of sexual offences receive necessary care and protection (Section 30 of J Act, 2015).

4.1 Placement of the child

On receiving the report of a child victim of sexual offences from the SJPU/Police the CWC must determine, within 3 days, whether or not the child must be removed from his family or household and placed in a Children's Home under the JJ Act, 2015 (Rule 4 (4) of POCSO Rules, 2012).

4.2. Key points to remember while assessing a 'Child in Need of Care and Protection': -

- (a) Not every child who is a victim of sexual offences is a child in need of care and protection. If the child's family is supportive and fit to attend to his/ her care and protection needs, the child need not be removed or relocated from his/ her home.
- (b) Circumstances where the child is in need of care and protection are as follows:-
- (c) Child is living in the same house or shared household with the accused or with a person who is likely to commit the crime.
- (d) Child is residing in a childcare institution and does not have any parental support.
- (e) Child who is without home and parental support.
- (f) Child is at extreme risk or danger if they continue to live in their house or household.

4.3. Steps to Follow When Assessing the Child's Situation {Rule 4 (5) of POCSO Rules, 2012}:

- (a) Inform child and parent/guardian that an assessment is underway.
- (b) Take the preferences and opinions of the child into account.
- (c) Safety and confidentiality of the child should be maintained at all times.
- (d) Assess the capacity of parents to provide care and protection including counseling and medical needs.
- (e) Factor the age, maturity, gender, social and economic background of the child and family.
- (f) Check for history of violence and abuse.
- (g) Check for disability and/or chronic illness.
- (h) Check for other relevant factors.
- (i) Ensure that the assessment is completed within 3 days.

4.4. Appointing a Support Person

- If CWC feels that the child victim and family are in need of assistance during investigation and trial, it can appoint a Support Person. The child and his family/guardian can appoint a Support Person of their choice (Rule 4 (7) of POCSO Rules, 2012).
- The services of the Support Person can be terminated by the CWC if it receives a request for the same from the child and the family/guardian (Rule 4 (10) of POCSO Rules, 2012).

4.5. Tips to interact with Children

- While interviewing child victims of sexual abuse, Health Workers responsible for investigative interviewing of children in cases of alleged sexual abuse may find it useful to bear in mind the following: (based on WHO and UNICEF guidelines) -
- All children should be approached with extreme sensitivity and their vulnerability recognized and understood.
- Attempt to see things from the child survivor’s point of view and sharing that understanding with the child survivor.
- Empathy can be communicated through verbal and non-verbal communication. Negative, angry, accusatory reactions can further traumatize and harm a child who has disclosed sexual abuse, whereas a calm, affirming and supportive reaction can foster a child’s feeling of safety and acceptance - both of which help the process of recovery and healing.
- Try to establish a neutral environment and rapport with the child before beginning the interview.
- When gathering history directly from the child it may be worth starting with a number of general, non-threatening questions, for example, “What grade are you in at school?” and “How many brothers and sisters do you have?”, before moving on to cover the potentially more distressing issues.
- Try to establish the child’s developmental level in order to understand any limitations as well as appropriate interactions. It is important to realize that young children have little or no concept of numbers or time, and that they may use terminology differently to adults making interpretation of questions and answers a sensitive matter. Always identify yourself as a helping person.
- Ask the child if he/she knows why they have come to see you.
- Establish ground rules for the interview, including permission for the child to say he/she doesn’t know, permission to correct the interviewer, and the difference between truth and lies.
- Ask the child to describe what happened, or is happening, to them in their own words. Always begin with open-ended questions.
- Avoid the use of leading questions and use direct questioning only when open-ended questioning/free narrative has been exhausted. Structured interviewing protocols can reduce interviewer bias and preserve objectivity.
- When planning investigative strategies, consider other children (boys as well as girls) who may have had contact with the alleged perpetrator. For example, there may be an indication to examine the child’s siblings.
- Also consider interviewing the caretaker of the child, without the child being present.

4.6. Child Welfare Committee

A. Do’s	Don’ts
Take a note of every report that is reported under POCSO Act by the police to the CWC	Insist on the meeting/every child to be produced in front of the CWC after a case has been registered under POCSO Act
Read the documentation and statement of the child carefully before insisting on recording the statement of the child	Record the statement of every child victim who comes in contact with the CWC

Determine within 3 days, on your own or with the assistance of a social worker, whether the child needs to be taken out of the custody of his family or shared household and placed in a Children’s Home or a Shelter Home	Unnecessarily delay the process of assessment of the child
Ask an external agency for a thorough social investigation report of the child and the family in certain cases where deemed necessary.	Ask the external agency for a home investigation report without issuing them proper orders that state the purpose of the social investigation
Assess the options for long term rehabilitation of the child within the family or the community.	Institutionalize children unless and until there is a high risk for the child in the community or the family

B. FACTORS TO CONSIDER WHEN DECIDING ON THE CUSTODY OF THE CHILD

- Best interests of the child at all given points, the child is not subjected to any inconvenience or injury during the inquiry process;
- 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 to the child; and their capacity to cater to medical needs and counselling;
- The need for the child to remain in the care of parents, family and extended family and to maintain a connection with them;
- Child’s age and level of maturity, gender, and social and economic background;
- Disability of the child, if any;
- Any chronic illness from which a child may suffer;
- Any history of family violence involving the child or a family member of the child; and
- Any other relevant factors that may have a bearing on the best interests of the child.

C. Appointment of Support Persons & their assessment

Do’s	Don’ts
Issue a proper order appointing NGOs as Support Persons or Support Agencies to support the child throughout the process of investigation and trial	Get an NGO involved without issuing a proper order for the same
Ask the Support Agency/Support Person to give regular written updates about the status of the proceedings of the child’s case	Miss out on the regular updates on the rehabilitation and case proceedings
Terminate the services of the Support Agency/Support Person if you feel they are not performing their duties in the best interest of the child or if the child or their parents/guardians are requesting such termination	Continue to access the services of Support Agencies/Support Persons without a proper review and feedback from victims and families
Access the list of resources from the District	Duplicate or create a new list of experts if there

Child Protection Units – NGOs, special educators, translators, experts who can help children in POCSO cases	is already one available at the district
Summon the Investigating Officer incase you find the investigation is not proceeding according to the regular standards	Forget about the case after the initial social investigation and appointment of Support Person is made

Suggested Template: Appointment of Support Person

Date: _____

To,

Name of the person:

Organization:

As per rules, section 4 sub-Section (7) of the Protection Of Children from Sexual Offences Act, 2012 _____ has been appointed as a support person/support organisation for child _____ (name of the child) son/daughter/ward of _____ residing at _____ (in case the child is in a child care institution) currently living at _____

You are hereby requested to submit a monthly/quarterly progress/update report of the above mentioned child.

(Signature)

Child Welfare Committee Member

(Signature)

Child Welfare Committee Member

SUGGESTED CHECK LIST FOR CWCs

D. FOR CASES UNDER POCSO ACT

CWC plays a crucial role in ensuring support, care, protection and rehabilitation of victims of sexual offences:

- Take a note of every report made to you by the police under POCSO Act;
- Don't insist on every child being produced in front of the Bench;
- Don't record the statement of every child produced in front of you;
- Determine within 3 days whether the child need to be taken out of custody of institutionalized;
- Appoint an external agency for thorough Social Investigation Report when required;
- Issue a proper written order to the external agency for the visit and social investigation;
- Don't institutionalize the child without proper assessment of all options of Rehabilitation.

E. FOR DECIDING A CUSTODY

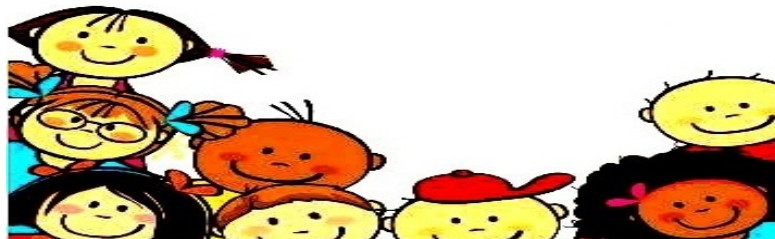
CWC has to thoroughly assess the following key factors before deciding on the custody of child victim

- Ensure best interest of the child and with no inconvenience to the child;
- Capacity of parents/guardians to provide immediate care and protection;
- Capacity of parents/guardians to cater to medical needs and counseling;
- Need of child to remain in care of his parents/extended family and maintain contact with them;
- Child's age, level of maturity, gender, social and economic background;
- Disability or any chronic illness from which the child may suffer;
- History of family violence involving a child or a family member of the child.

F. FOR APPOINTMENT OF SUPPORT PERSON

CWC has the authority to appoint a Support Person/Support Agency for helping a child victim through investigation and trial under the POCSO Act.

- Ask the District Child Protection Unit to provide a list of Support Agencies, experts, interpreters and translators;
- Issue a written order with signatures of two Members and stamp stating the name of the Person/Organization being appointed in the case;
- Seek regular monthly and quarterly updates on the status of the child and case proceedings;
- Assess the services of the Support Agency/Person through proper review;
- Seek feedback from the victim and their family/guardian on services of the Support Person;
- Terminate the services of Support Person/Support Agency if they are not performing their duties or when the child/parents/guardians demand such termination.



5.0. ROLE OF NGOs AND SUPPORT PERSONS

POCSO gives Non- Governmental Organizations (NGO), Social Workers, Special Educators, Counselors and other experts a legitimate role to support victims and families through the entire process starting from registration of a complaint to trial and long-term rehabilitation.

NGOs may play the roles of a “support person”, “expert”, “special educator”, [as defined under Rule 2 (c, d, f) & 3 of POCSO Rules, 2012] or as interpreters and translators. A person familiar with the manner of communication of the child or whose presence is conducive to communicating with the child has also been defined under the Rules [Rule 2 (e)].

“Support Persons” have a two-fold role in cases of sexual offences against children -

- Throughout the legal proceedings – from investigation to trial; and
- Ensuring long term rehabilitation and well being of the child.

The “Support Person” may be engaged during any of the following stages:

A: From the time of registration of the complaint (parents might approach or the Child Welfare Committee (CWC) might ask the Support Person to intervene)

Role at the time of registration of complaint
Accompany the parents/guardians to the police station to register the complaint (make sure you do not take the child to the police station)
Approach the nearest CWC to get an official order appointing you/your agency as a Support Person in the case
Be present through the statement recording of the child
Be present through the medical examination of the child
Conduct a thorough Needs Assessment/Home Study of the child with the prior permission of the CWC
Support the child throughout the process of investigation & trial in courts
Work towards a comprehensive care plan and long term rehabilitation of the child

B: After the complaint has been registered and the case comes to the notice of the CWC

Role after the complaint has been registered
Be present through the statement recording & medical examination (if it has not been done already)
Approach the nearest CWC to get an official order appointing you/your agency as a Support Person in the case
Conduct a thorough needs assessment/home study of the child with the prior permission of the CWC
Support the child throughout the process of investigation & trial in courts
Work towards a comprehensive care plan and long term rehabilitation of the child

5.1. Role of Person or Organization working in the field of child rights and Support Persons

Under POCSO Rule 4 (7), CWC, on the basis of its assessment and with the consent of child and his parent or guardian or other person in whom the child has trust and confidence, may appoint a person or organization 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, as a support person to render assistance to the child through the process of investigation and trial. Ensure you have a proper order (See Annexure template attached) from the CWC stating that you are a support person or a support organization assigned to the case. Carry the copy of the order with you at all times.

(i) Recording the Statement of the Child:

Ensure that the police do not come in uniform [Section 24 (2)]. They should come to a place of choice and comfort for the child [Section 24 (1)]. It could be the residence, a community centre or any other place where the child is comfortable.

As far as practicable a Woman Police Officer not below the rank of Sub-Inspector should record the statement of the child [Section 24 (1)].

Check if the police personnel are using any audio-video device to record the statement of the child [Section 26 (4)], if yes, take the consent of the child to speak on camera or recording.

Ask the child who can be present during the recording – you and any other person whom the child has trust and confidence in can be present throughout the statement of the child.

(ii) During registration of the complaint:

- Accompany the parents/guardians of the child to the police station (DO NOT TAKE THE CHILD TO THE POLICE STATION)
- Ensure that the police register an FIR, record the complaint the writing [Section 19 (2)]
- Read over the complaint to the informant/complainant [Section 19 (2)]
- Give them a copy of the complaint [Section 19 (2)].

Fix an appointment with the police for the next steps i.e. recording the statement of the child and medical examination. Inform them of the place of convenience for the child and ensure they agree to come to that place for recording the statement of the child.

(iii) Thorough needs assessment & rehabilitation of the child

As a support agency you must work with the Child Welfare Committee in ensuring that you conduct a thorough needs assessment of the child and the family. A few important aspects to be looked at while doing the needs assessment are:

- Mental health condition and need for counseling
- Medical needs (short term and long term)
- Educational needs of the child
- Socio-economic profile of the family
- Protective factors in the family and community

- Immediate and perceived threats
- What does the child feel about his/her future?
- What does the family feel about the child's future?

Based on the above a detailed care plan must be prepared by the agency and the child has to be supported through comprehensive long-term rehabilitation.

Make sure you submit regular reports to the Child Welfare Committee about the status of the child and your intervention.

5.2. Steps to be followed by Support Persons:

- Build rapport with the child, build the trust and confidence of the child and the family as you start interacting with them. Remember the abuser has broken the trust of the child, thus, it is going to take a while for the child to trust another adult who is potentially a stranger.
- Legal Proceedings: Inform the parents/guardians of the proceedings of the case with details of available assistance, judicial procedures and potential outcomes of the case.
- Inform the child of the role he/she may play in the judicial process.
- Constantly communicate and convey to the relevant authorities the concerns of the child/family, if any, regarding his/her safety.

Ensure:

- You get a written order from the local Child Welfare Committee stating your role as a Support Person in the case. Keep a copy of this order handy at all times.
- Inform the local police or the SJPU that they need to inform the Special Court in writing within 24 hours of your assignment as a Support Person in the case [Rule 4 (9) of POCSO Rules, 2012].
- Give a copy of the order to the child and the family and inform them of your role in supporting them in the case. Most importantly assure them of full guidance and support throughout the proceedings of the case.

5.3 Coordination with the police

Ensure that the police inform the parents/guardian of the child and yourself about the developments in the case:

- Arrest of the accused
- Applications filed
- Court Proceedings

The Police must give the child and the family information about:

- Availability of emergency services for the child and family. This includes crisis services
- Procedural steps involved in the criminal proceedings
- Availability of victim compensation benefits
- Status of the investigation of the crime (to an extent it is appropriate for the police to inform the victim and to the extent that it will not interfere with the investigation)
- Arrest of the suspected offender
- Filing of charges against the suspected offender
- Schedule of court proceedings that the child is required to attend
- Bail, release or detention of the offender
- Verdict of the trial and sentence imposed on an offender

5.4 Tips for preparing the child:

- Usually a statement recording can take anywhere between 2 to 6 hours. Inform the child and the parents about the same.
- Ensure that the child has eaten well, is not feeling sick or uncomfortable.
- Inform the child that the police play an important role in punishing the perpetrator. They are coming to ask the details of the case so that they can punish the perpetrators. Reinforce that you are there to help the child and the child need not feel uncomfortable.
- Most of the times children feel extremely uncomfortable and shy to talk about the nature of the sexual abuse and the details of the crime. Sometimes they might ask you, “Why do I need to give all these details?” Inform them that it is in their interest if the statement comes out in detail. The statement is used as an evidence to punish the perpetrator.
- Keep a bottle of water, some toys, and colouring paper handy for the child.
- Facilitate the interaction between the police and the child. Always remember to maintain a body language where the child feels that you are present to support him/her.
- Ensure that there is no aggressive questioning or leading questions posed to the child by the police. If they do so, politely ask them to stop.
- Ensure that the police take down the statement in the words of the child as described by the child. It is important to record the statement of the child in the language that the child is comfortable. E.g. If the child says “He touched me on the part from where I go to the bathroom” ensure that the police write this down as it is, they should not write it as “He touched me in my vagina/penis”
- Insist that the police should read over the statement to the child and the child approves of the statement.
- Throughout the entire process ensure that the child gets frequent breaks and rest.

Note: You might have to sign the document as a witness. Do share your proper details with the police.

(i) Regarding Medical examination

- Ensure that the child doesn't feel threatened or scared during the process of a medical examination, spot identification or identification of the accused.
- The medical examination of a girl child has to be done by a woman doctor in the presence of a trusted adult with the child [Section 27 (2)].
- Please note that it is important for the parents/guardians to give consent for medical examination if the child is below the age group of 12 years. If the child is above 12 years, the child can give consent.
- In case the parents/guardians or the child doesn't want the medical examination to be conducted, they can refuse the same. The doctor has to document informed refusal. However, the doctor has to provide medical treatment to the victim if he/she is in need of it.
- The child/parents must get a copy of the medical certificate free of cost.

Note: Medical examination is to be conducted as per the provisions of Section 27 of the POCSO Act, 2012 and Section 164A of the Cr. PC, 1973.

(ii) Regarding Spot identification & identification of the accused

Give enough time to prepare the child about the procedure and mention that he/she might have to see the accused only to tell the police who exactly is the person who did wrong to them. You or any other trusted adult should be allowed with the child during these procedures.

(iii) Regarding 164 Cr. PC statement & Evidence in Courts

As a Support Person/agency you must be allowed to be present with the child as the child's statement and evidence gets recorded in court. Please make sure that you are in touch with the Public Prosecutor in the case and work with them to ensure that the court proceedings go smoothly. It is also their duty to take the children to the court and drop them back, take the child to the court in advance and make the child meet the judge, if possible, familiarize the child with the court atmosphere.

Inform the child about the need to give this statement/ testimony in front of a judge during trial.

Make sure that the child gets frequent breaks, is fed well and feels comfortable while deposing before the judge during trial.

6.0. ROLE OF SCHOOL AUTHORITIES AND TEACHERS

As the child grows and develops, they begin spending as much time at school as they do at home. The recent spate of reports of child sexual abuse in school premises or by people working in schools has been a worrying trend. In almost every case, the trauma of child is aggravated because of the school's unpreparedness in the handling cases of the sexual abuse. The tragedy is not just that the abuse took place because of a lapse in the child protection system but it is doubled by the fact that schools are often trying to silence the incident to wash their hands off it; some schools even blame the child and the parents. As a caregiver or a teacher, children and parents trust school staff unconditionally. In many instances, children open up to them about their issues even before they talk to their parents. Safeguarding this trust is the responsibility of school authorities. It is crucial that the authorities act decisively, quickly and systematically in the face of a complaint of child sexual abuse.

A school that has not taken into account how it will protect its children and how it will respond to potential cases of sexual abuse is an **unsafe school**.

6.1. Child Protection Policy of the school

A school's Child Protection Policy is a statement that defines the school's commitment to safeguard children from harm and abuse. It specifies the staff and others' responsibilities and roles in the protection of children. The child protection policy has to be a strong reflection of the schools commitment to protect its children. It has to be implemented through every aspect of the school administration and management. Schools must specify how the policy will be put into action.

The policy must apply to all personnel and persons related to the school and who come in direct or indirect contact with children.

Direct Contact with Children: Those personnel who are with and in the physical presence of a child or children as part of their professional or school related work, be it regular, occasional, temporary or long term.

Indirect Contact with Children: Those personnel whose work does not require them to be in the physical presence of a child but encompasses access to personal details and information, data on children including photographs, case files etc.

Suggested Check List Child Protection Policy

Child Protection Policy (CPP) is a document that highlights organizational position on child protection and mechanism to protect children. District Child Protection Unit, while selecting group foster care setting, shall also consider existence of Child Protection Policy {Rule 23 (13) (iii) of JJ Rules, 2016}. Following checklist may help to self evaluate one's workplace and start the process.

Does your organization have?

- Child Protection Policy;
- Children Welfare Committee;
- Child Protection Officer;
- Background Information/Police clearance for staff, volunteers, visitors;
- Workshops with children and others (including staff) on Child Protection Policy;
- System to reinforce principles of Child Protection among your team members;
- System to evaluate and update your Child Protection Policy;
- Suggestions Box.

If you have ticked every box in the checklist your organizational policy is active and up-to-date.

If you have missed out on a few boxes your organizational needs to develop a CPP best suitable for your workplace.

6.2 Proactive measures to prevent child sexual abuse

- The Child Protection Policy must broadly cover the following actions:-
- Schools must conduct background check & police verification for all staff members including contract employees. In several cases of abuse that have occurred within schools, it has been observed that the abuser has had a previous history.
- All employees to sign a copy of the terms and conditions related to child protection after they join the school. They must be provided with ID cards.
- Clear boundaries need to be defined in interaction between staff and child. (e.g.:- No staff shall take the child to the bathroom alone without being accompanied by a helper, no teacher will lock the classrooms from inside).
- Install CCTVs in classrooms and in school premises and ensure that their feed is monitored.
- Lay down policies and safe boundaries around photographing children, using photographs of children, Internet and technology usage within the school premises.
- Arrange for regular sessions on personal safety with all children (this includes talking about body parts, online safety, and protection from abuse).
- Orient all staff members on detecting the warning signs of sexual abuse among children.
- Train all staff members and support staff on child protection norms and child sexual abuse prevention.
- Engage in active dialogue with parents and help ensure that parents are aware of the issues faced by children.
- Try and recruit a full time counselor or a visiting counselor to the school.
- Thorough monitoring of activities of all teachers, visiting faculty and strangers by their immediate supervisor; an internal vigilance committee may be constituted.
- Ensure children leave school only with parents or authorized personnel.

6.3. Complaints mechanisms

(i) How to Respond to Child Safety Violations?

A school needs to have a plan for handling crises within the school. The plan needs to assign roles and responsibilities for all stakeholders and lay down the system for reporting. The plan needs to pre-emptively assess and accommodate for any kind of crisis that can befall a child in their care - either within the school or outside the school. For example, situations when:

- ❖ *A child may disclose something that has upset or harmed them*
- ❖ *Someone else might report something that a child has told them, or that they believe that a child has been or is being harmed*
- ❖ *A child might show signs of physical injury for which there appears to be no explanation*
- ❖ *A child's behaviour may suggest he or she is being abused*
- ❖ *The behaviour or attitude of one of the workers towards a child may cause concern*
- ❖ *A child demonstrates worrying behavior towards other children.*
- ❖ *Have a Child Protection Committee and a Child Protection Officer who is a designated staff responsible for coordinating the Committee and the protection systems.*

- ❖ Ensure that an academically or emotionally troubled student is identified and given quick attention.
- ❖ Keep a clear, written record of any concern identified.
- ❖ Lay down clear guidelines on how to discuss the concern with the child and/or family – who will speak to the family, when should the family be involved, etc.
- ❖ Have a list of Organizations and “Support Persons” who can help the school handle cases of sexual abuse.

(ii) Disciplinary action for misconduct

Schools must have a strong system in place for taking swift action and reporting cases of sexual abuse. Allegations made against staff should trigger an investigation and formal disciplinary process (as appropriate). Immediate action must be taken to sever all contact between abuser and child and an inquiry must follow. Under the law, all cases of sexual offences against children need to be reported to the nearest police station [Section 19 (1)]. Holding an internal disciplinary inquiry cannot be a ground for not reporting the matter to the police. The process leading to decision making should be well documented and all facts or written allegations and responses kept on file.

(iii) Written Child Protection Policy

A Child Protection Policy should be clearly written, using words and phrases that will be easy to understand by the group or community concerned. The process of drafting the child protection policy should be collaborative and involve people working on different areas within the school. The process of drafting can include child participation also. When writing a child protection policy, it is useful to think about the ways that people in a school or group might raise a concern. The Child Protection Policy must be constantly revised and prominently displayed and always accessible.

6.4. Child Safe and Child Friendly School Environment

The school’s physical surroundings make the first impact on a student. A sense of cleanliness, order, inclusiveness and openness can stimulate a child’s interest and curiosity in studies. e.g.:- fresh coat of paint, well-lit and monitored classrooms, toilets and passages etc. Orient and engage students and parents on the ways in which they can help make the school a safe and welcoming place. It needs to be done early in the school year and repeated throughout the year. e.g.:- Ensure that the parents are aware of the school’s child protection policy. It is essential that they have a copy of it with them.

The foundation of co-operation between the home and the school is communication. Children learn best when the lessons provided in school are supported at home. e.g.:-Parents also too need to be oriented and engaged in issues like personal safety. This ensures that the school and the parent are on the same page and therefore, they are not confusing the child by contradicting each other. The simplest rules are the building blocks of school discipline. Enforcement of the rules, even those rules that seem least important towards learning, should be taken very seriously by all staff. It is therefore, important to have a Child Protection Policy for all organizations/ institutions.

7.0. SEXUAL ABUSE IN CHILD CARE INSTITUTIONS

A: Children are in danger of being abused by **INSIDERS**

i.e. Individuals who are a part of the institutions



Management & Employees
(Full time/Part time. Residential/Non residential. Visiting faculty and Administrative heads)



Interns, Volunteers, Donors (local and foreign) & Contract workers like gardeners, labourers



Another child studying or staying in that institution

and

OUTSIDERS

i.e. Individuals who are a part of the institutions

People outside the organisation like coaching staff, training staff or other coming in contact during transportation of the child etc.



Family members, relatives or members in the neighbourhood where the child lives

B. When a child share/complains about an incident of CSA to anybody in an Institution, adopt the following procedure:



Note: It is mandatory to report child sexual offence to the nearest police station. Individuals/institutions failing to do so are liable for punishable under the POCSO Act, 2012.

8.0.

ROLE OF SPECIAL COURT

To facilitate speedy trials, the State Governments have been given the mandate to designate a Sessions Court as a Special Court for trial of offences under POCSO [Section 28 (1)].

When a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7,9,12,13,14 & 15 of POCSO Act, 2012, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence unless the contrary is proved. Therefore, onus lies on the accused to prove innocence (Section 29). The Special Court will also presume culpable mental state of the accused unless it is proved contrary (Section 30).

8.1 Recording of the Statement

During the recording of statements under Section 164 of Cr. PC, the Magistrate shall record it verbatim (in the words of the child). The statement shall be recorded in the presence of the parents of the child or any other trusted adult (Sections 25 and 26). The assistance of a translator, interpreter, special educator, an expert or any person familiar with the manner of communication of the child may be taken wherever necessary [Section 26 (2)]. Magistrate shall ensure that statement of the child is recorded by audio-video electronic means, wherever possible [Section 26 (4)]. Neither the accused nor the advocate of the accused may be present during the recording [Proviso to Section 25 (1)].

The Magistrate will provide the child and his parents or his representative, a copy of the document upon the final report being filed by the police [Section 25 (2)].

8.2. POCSO Act provides procedure and powers of Special Court (Section 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.

(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.

9.0. ROLE OF SPECIAL PUBLIC PROSECUTOR

A Special Public Prosecutor (SPP) shall be appointed to every Special Court for conducting cases only under the provisions of the POCSO [Section 32 (1)].

A Public Prosecutor is believed to represent the public interest, and not to seek conviction of the accused. At the same time he is also expected to ensure that the real culprit should not escape conviction. Public Prosecutor's duty is to assist the court by placing the entire material collected during investigation before the court. A Public Prosecutor has to be impartial, fair and truthful while conducting the prosecution in the court.

(i) Remand

The first stage of the trial is the production of accused for judicial remand. The police must approach the Special Court directly for the purposes of judicial remand.

(ii) Bail

As per Section 2 (33) of the Juvenile Justice (Care and Protection of Children) Act, 2015, Heinous offences includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for 7 years or more. The offences committed against children under the POCSO Act and grant of bail to the accused should be considered carefully by all stakeholders keeping in view the safety and security of child victims and their families.

While considering the bail application for offences committed by accused under the POCSO Act, the Special Public Prosecutors should take into account all probable circumstances for fair trial. Advance notice of application for bail of the accused should be given to the child victim as also to the Investigating Officer to take suitable necessary steps in the case.

9.1. How a Child should be questioned in Court (Suggested Guidelines)

Acknowledging the child victims' rights and dignity and treating them with respect and sensitivity is the first step towards a fair trial. For child victims of sexual offences, testifying in court can be a stressful and upsetting experience and a traumatic courtroom experience can put not just the child's recovery in jeopardy but also the very idea of truth and justice.

Summary of Suggested Guidelines as to how a Child may be questioned in the Court. These guidelines are not exhaustive in nature.

- Substituting the word 'promise' for the word 'oath' when swearing in child witnesses has become increasingly more common and accepted throughout the legal system.
- It is essential to ascertain whether a child who is placed in the courtroom and asked questions about an event, they either witnessed or experienced, can distinguish what is the truth and what is a lie. All questions must be age appropriate.

- To ascertain whether the child can distinguish truth from lies, questions relevant to the situation should be asked. For instance, “If I told your mother that you shouted at me, would that be a truth or a lie?” or “If you told your teacher that something bad happened to you, but really it did not happen to you, would that be a truth or a lie?”
- Children should be asked what might happen to them and the other person if they say something occurred and it is not true. Examples of such questions are: “If you said that your sister hit you and it really did not happen, what would happen to you for telling a lie?” and “If you said that your sister hit you and it really did not happen, but your mother believed you, what could happen to your sister?”
- Young children are very literal in their use of language, so it is essential to find out what they mean when they use certain words and not assume that then words have the same meaning as an adult would give them.
- It takes children longer to process words, so it is essential to give them time to think and respond to the question. Pausing during questioning can be very productive.
- Children will not say they do not understand, whether because they do not realize that they do not understand or because they do not want to show ignorance; they may not be aware that this is an option unless expressly told that it is.
- Use one question for each idea and start the question with the main idea. For example, ask children, “Did the bell ring when you were eating?” rather than asking, “When you were eating, did the bell ring?”
- Avoid jumping from one topic to another during questioning.
- Do not use the word ‘any’ (including ‘anything’, ‘anyone’, ‘anywhere’) as these are not specific. For instance, a very young child will not know what ‘anyone’ means and if asked, “Did you see anyone” will answer “no”. Instead ask, “Who did you see?” or “Did you see X?”
- Avoid using ‘different’ or ‘the same’ while questioning children. Asking “Was it the same as this?” is confusing for the child. By age 5 or 6, children may be able to distinguish between “the same” toy – meaning the actual one they played with – and a similar one.
- The word ‘inside’ is problematic for children. In sex abuse cases involving suspected penetration, a child may need to be asked if an object was inserted ‘inside’ an orifice. This is fraught with difficulties. It is essential to find out what the child understands by ‘inside’. For example, anything between the legs could be perceived as ‘inside’ by the child and the question needs to be asked in an age-appropriate way.
- Avoid using either/or questions. Adults recognize that neither choice may be accurate but this is difficult for children to do.
- Avoid using how/why questions. In relation to ‘why’, this is seen by a child as requiring them to defend themselves to justify why something happened. ‘Why’ also requires a child to be able to look at motivations, reasoning from effect back to cause, which children cannot do until about ages 7 to 10. ‘How’ may require memory of concepts; “How many times did that happen?” may require the ability to recognize intention and flow of events. Instead of asking, “How did he do that?”, ask “What did he do?” or “Show me what he did?”
- Leading questions are confusing for children and result in them giving incorrect responses.
- Pronouns (‘he’, ‘she’, and ‘they’) confuse children. It is better to name the person being talked about or to ask the child to do so.

- For a young child, questions about family, school, counting, and knowledge of the alphabet and colours can provide a sense of the child's intelligence and memory.
- Examples of recent experiences that can be used as questions could include what the child ate or who the child saw that day. An example of past events could include what happened on the child's birthday or holiday. These questions should be put keeping in view the socio-economic background and literacy level of the child.

10.0. VICTIM COMPENSATION SCHEME

(i) Interim Compensation

Special Court may order compensation on an *interim* basis to meet immediate needs of the child for relief and rehabilitation at any stage after registration of FIR (Rule 7 (1) of the POCSO Rules, 2012).

(ii) Final Compensation

Courts must record reasons not only for providing compensation but also for denying it. Special Court may, in addition to the punishment, direct payment of compensation to the child for physical or mental trauma [Section 33 (8)].

The Special Court shall account for severity and gravity of the offence, medical expenditure, relationship with perpetrator, loss of education/employment, contraction of STDs/HIV, pregnancy, financial condition of victim and other relevant factors while awarding compensation (Rule 7 (3) of the POCSO Rules, 2012).

The compensation is payable by the State Government from the Victims Compensation Fund or other schemes or funds established for the purpose (Rule 7 (4) of the POCSO Rules, 2012).

The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order (Rule 7 (5) of the POCSO Rules, 2012). Each State government has its own Victim Compensation Scheme. For details, check with NCPCR website: www.ncpcr.gov.in.

11.0. REGISTERED CHILD CARE INSTITUTIONS (CCIs)

All Child Care Institutions whether run by government or voluntary or NGOs shall be registered under the JJ Act (Section 41).

11.1. Reception and placement of children

The reception and placement of children in Shelter Homes/Children Homes (CCIs) in respect of POCSO Act, has been laid down in Section 19 (5) and (6) of the Act. The SJPU or local police shall in cases where an offence has been committed is a CNCP, after having recording reasons, make the arrangements of care and protection of such child within a period of 24 hours which also includes bringing the child to a Shelter Home (CCI) or nearest hospital {Section 19 (5)}. Further, the SJPU/local police is mandated to report the need of the CNCP and steps taken to the CWC, as well as the Special Court within 24 hours.

POCSO Act, 2012 has made mandatory reporting of offences under the Act; further, the reporting of offences can be done by any person (including a child) who has the apprehension of any offence committed or likely to be committed under the Act {Section 19 (1)}. In doing so, the Act has tried to uncover heinous crimes against children, which would previously go unreported, such as, instances of incest, of sexual abuse of boys, sexual abuse in an institutional set-up, etc.

11.2. Steps to be followed

Rule 4 (3) of the POCSO Rules, 2012 pertaining to 'Care and Protection' contemplates that the SJPU/Local Police on receiving complaint of offence under the Act and with the reasonable apprehension of the same being perpetuated shall produce the child before the concerned CWC together with reasons and also a request for detailed assessment by CWC. The CWC is to make an assessment within 3 days either on its own or with the assistance of a social worker as to whether the child is to be removed from the family/household and placed in a Children's Home/Shelter Home (CCI) [Rule 4 (4) of POCSO Rules, 2012].

11.3. Key points to remember

The CWC while making an assessment to whether the child is to be removed from the family/household and placed in a Children's Home/ Shelter Home (CCI) shall vide Rule 4 (5) after having conducted an inquiry without inconvenience/injury to the child and with information to the parent/guardian take into account along with the preference/opinion of the child, the following:

- 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;
- need of the child to remain in the care of his parent, family and extended family and to maintain a connection with them;
- child's age and level of maturity, gender, and social and economic background;

- disability of the child, if any;
- chronic illness from which a child may suffer;
- history of family violence involving the child or a family member of the child; and,
- other relevant factors that may have a bearing on the best interests of the child.

11.4. Minimum standards of care of CCIs

The minimum standard of care for children received and placed in Shelter Homes/Children Homes (CCIs) in respect of POCSO Act, 2012 is commensurate with the standards of care and protection perceived in the Juvenile Justice (Care and Protection of Children) Act, 2015 and the rules to be framed therein. It may be noted that CCI's for the purpose of the POCSO Act, 2012 refers to Children Homes/Shelter Homes; in this context, Section 50 of the Juvenile Justice (Care and Protection of Children) Act, 2015 envisages the standard and nature of services to be provided based on the individual care plans of each child. Further, under Section 43 of the JJ Act, 2015, Open Shelters (established and maintained by the State) are to function as a community based facility for children in need of residential support on short-term basis.

12.0. Role of District Child Protection Units (DCPUs)

12.1. Role of DCPU under POCSO Act

The District Child Protection Society under the Integrated Child Protection Scheme (ICPS) and the District Child Protection Units (DCPUs) under the JJ Act, 2015 envisages a detailed role and responsibility for protection of rights of children.

The DCPU in each district shall coordinate and implement all child rights and protection activities at district level. Rule 85 of the JJ Rules 2016 provides following functions of the District Child Protection Unit:

- (i) maintain report of quarterly information sent by the Board about children in conflict with law produced before the Board and the quarterly report sent by the Committee;
- (ii) arrange for individual or group counselling and community service for children;
- (iii) conduct follow up of the individual care plan prepared on the direction of the Children's Court for children in the age group of sixteen to eighteen years found to be in conflict with law for committing heinous offence;
- (iv) conduct review of the child placed in the place of safety every year and forward the report to the Children's Court;
- (v) maintain a list of persons who can be engaged as monitoring authorities and send the list of such persons to the Children's Court along with bi-annual updates;
- (vi) maintain record of run- away children from Child Care Institutions;
- (vii) identify families at risk and children in need of care and protection;
- (viii) assess the number of children in difficult circumstances and create district-specific databases to monitor trends and patterns of children in difficult circumstances;
- (ix) periodic and regular mapping of all child related services at district for creating a resource directory and making the information available to the Committees and Boards from time to time;
- (x) facilitate the implementation of non-institutional programmes including sponsorship, foster care and after care as per the orders of the Board or the Committee or the Children's Court;
- (xi) facilitate transfer of children at all levels for their restoration to their families;
- (xii) ensure inter-departmental coordination and liaise with the relevant departments of the State Government and State Child Protection Society of the State and other District Child Protection Units in the State;
- (xiii) network and coordinate with civil society organisations working under the Act;
- (xiv) inquire into, seek reports and take action in cases of death or suicide in child care institutions and under other institutional care and submit the reports to the State Child Protection Society;
- (xv) look into the complaints and suggestions of the children as contained in the children's suggestion box and take appropriate action;
- (xvi) be represented on the Management Committees within the Child Care Institutions;
- (xvii) maintain a district level database of missing children in institutional care and uploading the same on designated portal and of children availing the facility of Open Shelter and of children placed in foster care;

- (xviii) maintain a database of child care institutions, specialised adoption agencies, open shelter, fit persons and fit facilities, registered foster parents, after care organisations and institutions etc. at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society, as the case may be;
 - (xix) maintain a database of medical and counselling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society;
 - (xx) maintain a database of special educators, mental health experts, translators, interpreters, counsellors, psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances at the district level and forward the same to the Boards and the Committees and the Children's Court and the State Child Protection Society;
 - (xxi) generate awareness and organise and conduct programmes for the implementation of the Act including training and capacity building of stakeholders under the Act;
 - (xxii) organise quarterly meeting with all stakeholders at district level to review the progress and implementation of the Act;
 - (xxiii) submit a monthly report to the State Child Protection Society;
 - (xxiv) notify the State Government about a vacancy in the Board or the Committee six months before such vacancy arises;
 - (xxv) review reports submitted by Inspection Committees and resolve the issues raised through coordination among the stakeholders;
 - (xxvi) provide secretarial staff to the Committees and the Boards;
 - (xxvii) all other functions necessary for effective implementation of the Act including liaising with community and corporate for improving the functioning of Child Care Institutions.
- (2) The District Child Protection Officer shall be the Nodal Officer in the district for the implementation of the Act and the rules.

12.2. REGISTER/LIST OF EXPERTS/INTERPRETERS/TRANSLATORS/SPECIAL EDUCATORS:

Under Rule 3 (1) of POCSO Rules, 2012, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators and special educators for the purposes of the POCSO Act, and this register shall made available to the Special Juvenile Police Unit (SJPU), local police, magistrate or Special Court, as and when required. Further, payment for the services of an interpreter, translator, special educator or expert whose name is enrolled in the register maintained under Rule 3 - or otherwise, shall be made by the State Government from the Fund maintained under Section 105 of the Juvenile Justice Act, 2015, or from other funds placed at the disposal of the DCPU, at the rates determined by them, and on receipt of the requisition in such format as the State Government may prescribe in this behalf.

12.3. AWARENESS GENERATION/TRAINING :

The ICPS envisages that State Child Protection Societies (SCPS) in association with District Child Protection Societies/ DCPU shall facilitate/help State Governments in organization of awareness programme and training to be conducted at district level as envisaged in Section 43 of POCSO Act, 2012.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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नई दिल्ली, बुधवार, जून 20, 2012/ ज्यैष्ठ 30, 1934 (शक)

No. 34] NEW DELHI, WEDNESDAY, JUNE 20, 2012/ JYAISTHA 30, 1934 (SAKA)

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.

43 of 2005.

41 of 1988.

(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.

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

(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.

Abetment of an 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.

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

56 of 2000.

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

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

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.

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.

4 of 2006.

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.

Amendment to the Protection of Children from Sexual Offences Act, 2012

The Criminal Law Amendment (CLA) Act, 2013 received the President's assent on 2nd April, 2013. The CLA Act repeals the Criminal Law Amendment Ordinance, 2013 and has come into force from 3rd February, 2013.

The CLA Act amends the Protection of Children from Sexual Offences Act, 2012, the Indian Penal Code, The Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872.

Section 29 of the CLA Act amends Section 42 of the POCSO Act and inserts a new Section 42A (See Page 16).

The link to the CLA Act, 2013 is given below.

<http://mha.nic.in/pdfs/TheCrimnalLaw030413.pdf>



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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अधिसूचना

नई दिल्ली, 9 नवम्बर, 2012

का.आ. 2705(अ).—केन्द्रीय सरकार, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (2012 का 32) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 14 नवम्बर, 2012 को उस तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के उपबंध प्रवृत्त होंगे।

[सं. 22-14/2012-सीडब्ल्यू-1]

डॉ. विवेक जोशी, संयुक्त सचिव

MINISTRY OF WOMEN AND CHILD
DEVELOPMENT
NOTIFICATION

New Delhi, the 9th November, 2012

S.O. 2705(E).—In exercise of the powers conferred by sub-section (3) of Section (1) of the Protection of Children from Sexual Offences Act, 2012 (No. 32 of 2012), the Central Government hereby appoints the 14th November, 2012, as the date on which the provisions of the said Act shall come into force.

[No. 22-14/2012-CW-1]

Dr. VIVEK JOSHI, Jt. Secy.



भारत का राजपत्र The Gazette of India

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अधिसूचना

नई दिल्ली, 14 नवम्बर, 2012

सा.का.नि. 823(अ).—केंद्रीय सरकार, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (2012 का 32) की धारा 45 की उपधारा (2) के खंड (क) से खंड (घ) के साथ पठित उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित नियम बनाती है, अर्थात् :—

1. संक्षिप्त नाम और प्रारंभ -- (1) इन नियमों का संक्षिप्त नाम लैंगिक अपराधों से बालकों का संरक्षण नियम, 2012 है।

(2) ये नियम राजपत्र में प्रकाशन तारीख को प्रवृत्त होंगे।

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

(क) “अधिनियम” से लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (2012 का 32) अभिप्रेत है ;

(ख) “जिला बाल संरक्षक एकक” से किशोर न्याय (बालकों की देखरेख और संरक्षण) संशोधन अधिनियम, 2006 की धारा 62क के अधीन राज्य सरकार द्वारा स्थापित जिला बाल संरक्षक एकक अभिप्रेत है ;

(ग) “विशेषज्ञ” से मानसिक स्वास्थ्य, औषधि, बाल विकास या अन्य संबंधित शाखा में प्रशिक्षित ऐसा व्यक्ति अभिप्रेत है, जिससे किसी ऐसे बालक के साथ, जिसकी उपाघात, निःशक्तता या किसी अन्य भेद्यता द्वारा संसूचित करने की योग्यता प्रभावित हो गई है, संपर्क को सुकर बनाने की अपेक्षा की जाए ;

(घ) “विशेष शिक्षक” से विशेष आवश्यकताओं वाले बालकों के साथ किसी बालक की व्यक्तिगत भिन्नताओं और आवश्यकताओं का, जिसके अंतर्गत विद्यता और संसूचना, भावात्मक और व्यवहारिक विकारों, शारीरिक निःशक्तता और विकासात्मक विकारों की चुनौतियां भी हैं, पता लगाने की दृष्टि से संपर्क करने में प्रशिक्षित व्यक्ति अभिप्रेत है ;

(ङ) “बालक के साथ संपर्क करने की रीति से सुपरिचित व्यक्ति” से किसी बालक के माता-पिता या कुटुंब का सदस्य या उसकी सांझी गृहस्थी का कोई सदस्य या कोई

ऐसा व्यक्ति अभिप्रेत है, जिसमें बालक भरोसा या विश्वास रखता है, जो बालक की अद्वितीय संपर्क रीति से सुपरिचित होता है और जिसकी उपस्थिति बालक के साथ अधिक प्रभावी संपर्क के लिए अपेक्षित या सहायक हो सकेगी ;

(च) “सहायक व्यक्ति” से बाल कल्याण समिति द्वारा नियम 4 के उपनियम (8) के अनुसार बालक को अन्वेषण और विचारण की प्रक्रिया के माध्यम से सहायता देने के लिए नियुक्त कोई व्यक्ति या अधिनियम के अधीन किसी अपराध की बाबत विचारण-पूर्व या विचारण प्रक्रिया में बालक को सहायता करने वाला कोई अन्य व्यक्ति अभिप्रेत है ।

(2) उन अन्य शब्दों या पदों के, जो इन नियमों में प्रयुक्त हैं और परिभाषित नहीं हैं, किंतु अधिनियम में परिभाषित हैं, वही अर्थ होंगे, जो अधिनियम में क्रमशः उनके हैं ।

3. दुभाषिया, अनुवादक और विशेष शिक्षक—(1) प्रत्येक जिले में जिला बाल संरक्षण एकक, अधिनियम के प्रयोजनों के लिए दुभाषियों, अनुवादकों और विशेष शिक्षकों के नाम, पते और अन्य संपर्क ब्यौरों के साथ एक रजिस्टर रखेगा और यह रजिस्टर विशेष किशोर पुलिस यूनिट (जिसे इसमें इसके पश्चात् ‘एस.जे.पी.यू.’ कहा गया है), स्थानीय पुलिस, मजिस्ट्रेट या विशेष न्यायालय के लिए, जब कभी अपेक्षित हो, उपलब्ध रहेगा ।

(2) अधिनियम की धारा 19 की उपधारा (4), धारा 26 की उपधारा (3) और उपधारा (4) और धारा 38 के प्रयोजनों के लिए नियुक्त दुभाषियों, अनुवादकों, विशेष शिक्षकों और विशेषज्ञों की अर्हताएं और अनुभव वह होगा, जो इन नियमों में उपदर्शित किया जाए ।

(3) जहां किसी दुभाषिए, अनुवादक या विशेष शिक्षक की उपनियम (1) के अधीन जिला बाल कल्याण एकक द्वारा अनुरक्षित सूची से भिन्न, नियुक्ति की जाती है, वहां इस नियम के उप नियम (4) और उप नियम (5) के अधीन विहित अपेक्षाओं को सुसंगत अनुभव के साथ या औपचारिक शिक्षा या प्रशिक्षण या दुभाषिए, अनुवादक या विशेष शिक्षक द्वारा सुसंगत भाषाओं में प्रदर्शित धारा प्रवाहिता के सबूत के आधार पर, जिला बाल कल्याण एकक, विशेष न्यायालय या अन्य संबंधित प्राधिकरण के समाधानप्रद रूप में शिथिल किया जा सकेगा ।

(4) उपनियम (1) के अधीन नियुक्त दुभाषिए या अनुवादक को किसी बालक द्वारा बोली जाने वाली भाषा और राज्य की राजभाषा से, या तो ऐसी भाषा उसकी मातृभाषा होने के परिणामस्वरूप या कम से कम प्राथमिक स्तर तक विद्यालय में शिक्षा का माध्यम होने के परिणामस्वरूप या दुभाषिए या अनुवादक द्वारा उसके व्यवसाय या वृत्ति या उस क्षेत्र में, जहां वह भाषा बोली जाती है, निवास स्थान होने के कारण अर्जित ज्ञान के परिणामस्वरूप कार्यात्मक रूप से सुपरिचित होना चाहिए ।

(5) उपधारा (1) के अधीन रजिस्टर में प्रविष्ट किए गए संकेतभाषा दुभाषियों, विशेष शिक्षकों और विशेषज्ञों के पास किसी मान्यताप्राप्त विश्वविद्यालय या भारतीय सुधार परिषद् द्वारा मान्यताप्राप्त किसी संस्था से संकेत भाषा या विशेष शिक्षा में अथवा किसी विशेषज्ञ की दशा में सुसंगत शाखा में सुसंगत अर्हताएं होनी चाहिए ।

(6) ऐसे दुभाषिए, अनुवादक, विशेष शिक्षक या विशेषज्ञ की सेवाओं के लिए, जिनका नाम उपधारा (1) के अधीन अनुरक्षित रजिस्टर में या अन्यथा प्रविष्ट किया जाता है, भुगतान, राज्य सरकार द्वारा किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 की धारा 61 के अधीन अनुरक्षित निधि से या जिला बाल संरक्षण एकक के नियंत्रणाधीन अन्य निधियों से, उनके द्वारा अवधारित दरों पर और ऐसे प्ररूप में, जो राज्य सरकार द्वारा इस निमित्त विहित करे, अध्यक्षता की प्राप्ति पर किया जाएगा ।

(7) अधिनियम की धारा 19 की उपधारा (1) के अधीन सूचना की तारीख के पश्चात्, दुभाषिए, अनुवादक, विशेष शिक्षक या विशेषज्ञ के लिंग के बारे में बालक द्वारा व्यक्त की गई किसी अधिमानता पर विचार किया जा सकेगा और जहां आवश्यक हो, वहां एक से अधिक ऐसे व्यक्ति को, बालक के साथ संपर्क को सुकर बनाने हेतु नियुक्त किया जा सकेगा।

(8) अधिनियम के प्रयोजनों के लिए सेवाएं उपलब्ध कराने हेतु नियुक्त दुभाषिए, अनुवादक, विशेष शिक्षक विशेषज्ञ या बालक के साथ संपर्क करने की रीति से सुपरिचित व्यक्ति निष्पक्ष और समदर्शी होगा और किसी वास्तविक या विदित हित विरोध को प्रकट करेगा। वह दंड प्रक्रिया संहिता, 1973 की धारा 282 के अनुसार किन्ही परिवर्धन या लोप के बिना पूर्ण और यथार्थ निर्वचन या अनुवाद करेगा।

(9) विशेष न्यायालय, धारा 38 के अधीन कार्यवाहियों में यह सुनिश्चित करेगा कि क्या बालक पर्याप्त रूप से न्यायालय की भाषा बोलता है या नहीं और किसी दुभाषिए, अनुवादक, विशेष शिक्षक या बालक के साथ संपर्क करने की रीति से सुपरिचित अन्य व्यक्ति, जिसे बालक के साथ संपर्क को सुकर बनाने के लिए नियुक्त किया गया है, जी नियुक्ति में कोई हित विरोध तो अंतर्वलित नहीं है।

(10) अधिनियम या उसके नियमों के उपबंधों के अधीन नियुक्त कोई दुभाषिया, अनुवादक, विशेष शिक्षक या विशेषज्ञ, भारतीय साक्ष्य अधिनियम, 1872 की धारा 126 के साथ पठित धारा 127 के अधीन यथा वर्णित गोपनीयता के नियम से आबद्ध होगा।

4. **देखरेख और संरक्षण - (1)** जहां किसी एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस को किसी व्यक्ति से जिसके अंतर्गत बालक भी है, अधिनियम की धारा 19 की उपधारा (1) के अधीन कोई भी सूचना प्राप्त होती है वहां ऐसी सूचना की रिपोर्ट प्राप्त करने वाली एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस रिपोर्ट करने वाले व्यक्ति को तुरंत निम्नलिखित ब्यौरे प्रकट करेगी :-

(i) उसका नाम और पदनाम ;

(ii) पता और दूरभाष नंबर ;

(iii) उस अधिकारी का नाम, पदनाम और संपर्क ब्यौरे जो सूचना प्राप्त करने वाले अधिकारी का पर्यवेक्षण करता है।

(2) जहां, यथास्थिति, किसी एसजेपीयू (विशेष किशोर पुलिस यूनिट) या, स्थानीय पुलिस को अधिनियम की धारा 19 की उपधारा (1) के अधीन अंतर्विष्ट उपबंधों के अनुसरण में किसी ऐसे अपराध की बाबत जो किया गया है या करने का प्रयत्न किया गया है या जिसका किया जाना संभाव्य है, की सूचना प्राप्त होती है वहां संबंधित प्राधिकारी, जहां लागू हों,-

(क) दंड प्रक्रिया संहिता, 1973 की धारा 154 के उपबंधों के अनुसार प्रथम इत्तला रिपोर्ट अभिलिखित और रजिस्ट्रीकृत करने के लिए जाएगा और संहिता की धारा 154 की उपधारा (2) के अनुसार ऐसी रिपोर्ट करने वाले व्यक्ति को उसकी एक प्रति मुफ्त देगा ;

(ख) जहां बालक को अधिनियम की धारा 19 की उपधारा (5) के अधीन या इन नियमों के अधीन यथावर्णित आपात चिकित्सा देखरेख की आवश्यकता है वहां बालक की नियम 5 के अनुसरण में ऐसी देखरेख करवाने की व्यवस्था करेगा ;

(ग) बालक को अधिनियम की धारा 27 के अनुसरण में चिकित्सा प्रक्रिया के लिए अस्पताल ले जाएगा ;

(घ) यह सुनिश्चित करेगा कि न्यायालयिक जांच के लिए एकत्रित नमूने शीघ्रातिशीघ्र न्यायालयिक प्रयोगशाला में भेज दिए गए हैं ;

(ङ) बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक का भरोसा और विश्वास है, को सहायक सेवाओं, जिसमें मंत्रणा भी है, की प्राप्यता के बारे में सूचना देगा और उनकी ऐसे व्यक्ति से संपर्क करने में सहायता करेगा जो ऐसी सेवाएं और अनुतोष देने के लिए उत्तरदायी है ;

(च) बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक का भरोसा और विश्वास है, को अधिनियम की धारा 40 के अनुसरण में बालक को विधिक सलाह का अधिकार और परामर्शी और किसी अधिवक्ता द्वारा प्रतिनिधित्व किए जाने के अधिकार के बारे में सूचना देगा ।

(3) जहां एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस अधिनियम की धारा 19 की उपधारा (1) के अधीन सूचना प्राप्त होती है और यह युक्तियुक्त आशंका है कि बालक की उसी या साझी गृहस्थी में रहने वाले किसी व्यक्ति द्वारा अपराध किया गया है या करने का प्रयत्न किया गया है या किया जाना संभाव्य है या बालक किसी बाल देखरेख संस्था में रह रहा है और माता पिता की सहायता के बिना है या बालक किसी भी गृह या माता पिता की सहायता के बिना पाया गया है तो संबंधित एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस ऐसी रिपोर्ट प्राप्त होने के 24 घंटे के भीतर सीडब्ल्यूसी द्वारा ब्यौरेवार निर्धारण के अनुरोध सहित

जिसमें लिखित में दिए जाने वाले ऐसे कारण भी होंगे कि क्या बालक को अधिनियम की धारा 19 की उपधारा (5) के अधीन देखरेख और संरक्षण की आवश्यकता है, बालक को बाल कल्याण समिति (जिसमें इसमें इसके पश्चात् "सीडब्ल्यूसी" कहा गया है) के समक्ष पेश करेगी ।

(4) उपनियम (3) के अधीन किसी रिपोर्ट की प्राप्ति पर संबंधित सीडब्ल्यूसी को स्वप्रेरणा से या किसी सामाजिक कार्यकर्ता की सहायता से किशोर न्याय अधिनियम, 2000 की धारा 31 की उपधारा (1) के अधीन अपनी शक्तियों के अनुसरण में तीन दिन के भीतर यह अवधारण करने के लिए अग्रसर होना चाहिए कि क्या बालक को उसके कुटुंब या साझी गृहस्थ की अभिरक्षा से अलग ले जाने और उसे किसी बालगृह या आश्रयगृह में रखने की आवश्यकता है ।

(5) उपनियम (4) के अधीन अवधारण करते समय सीडब्ल्यूसी बालक द्वारा अभिव्यक्त किसी भी अधिमान या राय के साथ ही साथ बालक के सर्वोत्तम हित पर निम्नलिखित बातों को ध्यान में रखते हुए विचार करेगा :-

(i) बालक की तुरंत देखरेख और संरक्षण आवश्यकताओं की पूर्ति करने के लिए, जिसके अंतर्गत चिकित्सीय आवश्यकताएं और मंत्रणा भी है, माता पिता या माता या पिता या कोई अन्य व्यक्ति, जिस पर बालक को भरोसा और विश्वास है, की समर्थता ;

(ii) बालक की उसके माता पिता, कुटुंब और विस्तृत कुटुंब में रहने की आवश्यकता और उनके साथ संबंध बनाए रखना ;

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

(iv) बालक की निःशक्तता, यदि कोई हो ;

(v) ऐसी कोई भी दीर्घकालिक रूग्णता जिससे बालक ग्रस्त हो सकता है ;

(vi) बालक या बालक के कुटुंब के किसी सदस्य को अंतर्वलित करने वाली कौटुंबिक हिंसा का कोई इतिहास ; और

(vii) कोई अन्य सुसंगत कारण जो बालक के सर्वोत्तम हित पर प्रभाव डालता हो :

परंतु ऐसा अवधारण किए जाने के पूर्व एक जांच ऐसे रूप में की जाएगी जिससे बालक को अनावश्यक रूप से कोई क्षति या असुविधा नहीं हो ।

(6) बालक और उसके माता पिता या संरक्षक या किसी ऐसे व्यक्ति, जिस पर बालक का भरोसा और विश्वास है और जिनके साथ बालक रह रहा है जो कि ऐसे अवधारण से प्रभावित हुआ है, को यह सूचना दी जाएगी कि ऐसे अवधारण पर विचार किया गया है ।

(7) सीडब्ल्यूसी, अधिनियम की धारा 19 की उपधारा (6) के अधीन किसी रिपोर्ट की प्राप्ति पर या उपनियम (5) के अधीन अपने निर्धारण के आधार पर और बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति, जिस पर बालक का भरोसा और विश्वास है, की सहमति से अन्वेषण और विचारण की प्रक्रिया के माध्यम से बालक की सहायता करने के लिए एक सहायक व्यक्ति की व्यवस्था कर सकेगी । ऐसा सहायक व्यक्ति बालक अधिकारों के क्षेत्र में कार्य करने वाला कोई व्यक्ति या संगठन या बाल गृह या बालक की अभिरक्षा रखने वाले आश्रयगृह का कोई पदधारी या डीसीपीयू द्वारा नियोजित कोई व्यक्ति हो सकेगा :

परंतु इन नियमों की कोई बात बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक का भरोसा और विश्वास है, को इस अधिनियम के अधीन कार्यवाहियां करने के लिए किसी व्यक्ति या संगठन की सहायता मांगने से नहीं रोकेगी ।

(8) सहायक व्यक्ति हर समय बालक से संबंधित सभी सूचनाओं, जिन तक उसकी पहुंच है, की गोपनीयता बनाए रखेगा । वह बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक का भरोसा और विश्वास है, मामले की कार्यवाहियों के बारे में सूचित करता रहेगा जिसके अंतर्गत उपलब्ध सहायता, न्यायिक प्रक्रियाएं और संभावी परिणाम भी है, वह बालक को न्यायिक प्रक्रिया में उसके द्वारा अदा की जा सकने वाली भूमिका के बारे में भी सूचित करेगा और यह सुनिश्चित करेगा कि बालक से संबंधित उसकी अभियुक्त से सुरक्षा और वह शीति जिस पर वह अपना परिसाक्ष्य देना चाहेगा, के बारे में सुसंगत प्राधिकारियों को बताएगा ।

(9) जहां बालक को कोई सहायक व्यक्ति दिया गया है, वहां एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस ऐसे समनुदेशन करने के 24 घंटे के भीतर लिखित में विशेष न्यायालयों को सूचना देगा ।

(10) सीडब्ल्यूसी (बालक कल्याण समिति), बालक और उसके माता पिता या संरक्षक या उस व्यक्ति के, जिस पर बालक का भरोसा और विश्वास है, अनुरोध पर सहायक व्यक्ति की सेवाएं समाप्त कर सकेगा और ऐसा अनुरोध करने वाले बालक से ऐसे अनुरोध के लिए कोई भी कारण देने की अपेक्षा नहीं की जाएगी। विशेष न्यायालय को ऐसी सूचना लिखित में दी जाएगी।

(11) एसजेपीयू (विशेष किशोर पुलिस यूनिट) या स्थानीय पुलिस का बालक और उसके माता पिता या संरक्षक या किसी अन्य व्यक्ति की, जिस पर बालक का विश्वास और भरोसा है और जहां सहायक व्यक्ति समनुदेशित किया गया है वहां ऐसे व्यक्ति को मामले की प्रगति के बारे में सूचना देने का उत्तरदायित्व होगा जिसके अंतर्गत अभियुक्त की गिरफ्तारी, फाइल किए गए आवेदन और अन्य न्यायालयिक कार्यावाहियां भी हैं।

(12) एसजेपीयू (विशेष किशोर पुलिस यूनिट), स्थानीय पुलिस, या सहायक व्यक्ति, द्वारा बालक और उसके माता पिता या संरक्षक या अन्य व्यक्ति जिस पर बालक का भरोसा और विश्वास है, को दी जाने वाली सूचना में निम्नलिखित है किंतु निम्नलिखित तक ही सीमित नहीं है :-

- (i) लोक और निजी आपात और संकटावस्था सेवाओं की उपलब्धता ;
- (ii) किसी दांडिक अभियोजन में अंतर्वलित प्रक्रियात्मक कदम ;
- (iii) पीड़ित के प्रतिकर फायदों की प्राप्यता ;
- (iv) अपराध के अन्वेषण की प्रास्थिति, जहां तक उसकी सूचना पीड़ित को देना उपयुक्त है और जहां तक इससे अन्वेषण में हस्तक्षेप नहीं होगा ;
- (v) किसी संदिग्ध अपराधी की गिरफ्तारी ;
- (vi) किसी संदिग्ध अपराधी के विरुद्ध आरोप फाइल करना ;
- (vii) न्यायालयिक कार्यवाहियों की समयानुसूची जिस पर या तो बालक के उपस्थित होने की अपेक्षा की गई है या वह उपस्थित होने का हक रखता है ;
- (viii) किसी अपराधी या संदिग्ध अपराधी की जमानत, उसे छोड़े जाने या निरोध की प्रास्थिति ;
- (ix) विचारण के पश्चात् किसी अधिमत का दिया जाना ; और

(x) किसी अपराधी पर अधिरोपित दंडादेश ।

5. **आपात चिकित्सा देखरेख** - (1) जहां एसजेपीयू (विशेष किशोर पुलिस यूनिट), या स्थानीय पुलिस के किसी अधिकारी को अधिनियम की धारा 19 के अधीन यह सूचना प्राप्त होती है कि अधिनियम के अधीन का कोई अपराध किया गया है और उसका समाधान हो जाता है कि उस बालक को, जिसके विरुद्ध कोई अपराध किया गया है, तुरंत चिकित्सा देखरेख और संरक्षण की आवश्यकता है तो वह यथाशक्य शीघ्र किंतु ऐसी सूचना प्राप्त होने के 24 घंटे के अपश्चात्, ऐसे बालक को आपात चिकित्सा देखरेख के लिए निकटतम अस्पताल या चिकित्सा देखरेख प्रसुविधा केन्द्र ले जाने की व्यवस्था करेगा :

परंतु जहां कोई अपराध अधिनियम की धारा 3, धारा 5, धारा 7 या धारा 9 के अधीन किया गया है वहां पीड़ित आपात चिकित्सा देखरेख के लिए ले जाया जाएगा ।

(2) आपात चिकित्सा देखरेख, ऐसी रीति में, जिससे बालक की निजता की सुरक्षा हो सके, और उसके माता पिता या संरक्षक या किसी ऐसे व्यक्ति की उपस्थिति में जिस पर बालक का भरोसा और विश्वास है, की जाएगी ।

(3) किसी बालक की आपात चिकित्सा देखरेख करने वाला कोई भी चिकित्सा व्यवसायी, अस्पताल या अन्य चिकित्सा प्रसुविधा केन्द्र ऐसी देखरेख करने के लिए पूर्व अपेक्षा के रूप में किसी भी विधिक या मजिस्ट्रेट की अध्यक्षता या अन्य प्रलेखीकरण की मांग नहीं करेगा ।

(4) आपात चिकित्सा देखरेख करने वाला रजिस्ट्रीकृत चिकित्सा व्यवसायी बालक की आवश्यकताओं की पूर्ति करेगा जिसके अंतर्गत निम्नलिखित भी है :-

(i) कट (विदारण), नीलों, और अन्य क्षतियों जिसके अंतर्गत जननेन्द्रिय क्षति, यदि कोई हों, भी है, का उपचार ;

- (ii) लैंगिक पारेषित रोग (एसटीडीज) के उच्छन्न जिसके अंतर्गत परिलक्षित एसटीडीज का रोग निरोध भी है, का उपचार ;
- (iii) संक्रामक रोग विशेषज्ञ से आवश्यक परामर्श के पश्चात् ह्यूमन इम्यूनोडेफियंसी वायरस (एचआईवी) के उच्छन्न जिसके अंतर्गत एचआईवी का रोग निरोध भी है, का उपचार ;
- (iv) यौवनागम बालक और उसके माता पिता या किसी अन्य व्यक्ति से, जिस पर बालक का भरोसा और विश्वास है, के साथ संभाव्य गर्भास्तित्व और आपात गर्भ निरोधक के बारे में चर्चा करनी चाहिए ; और
- (v) जहां आवश्यक हो, मानसिक या मनोवैज्ञानिक स्वास्थ्य के लिए संदर्भालोकन या परामर्श या अन्य मंत्रणा की जानी चाहिए ।

(5) आपात चिकित्सा देखरेख करने के प्रक्रम पर एकत्रित किए गए किसी भी न्याय संबंधी साक्ष्य को अधिनियम की धारा 27 के अनुसरण में एकत्रित किया जाना चाहिए ।

6. अधिनियम के कार्यान्वयन की मॉनीटरी - (1) यथास्थिति, राष्ट्रीय बालक अधिकार संरक्षण आयोग (जिसे इसमें इसके पश्चात् "एनसीपीसीआर" कहा गया है) या राज्य बालक अधिकार संरक्षण आयोग, (जिसे इसमें इसके पश्चात् "एससीपीसीआर" कहा गया है), बालक अधिकार संरक्षण अधिनियम, 2005 के अधीन उनको समनुदेशित कृत्यों के अतिरिक्त अधिनियम के उपबंधों के कार्यान्वयन के लिए निम्नलिखित कार्य करेगा :-

- (क) राज्य सरकारों द्वारा विशेष न्यायालयों के पदाभिधान को मॉनीटर करना ;
- (ख) राज्य सरकारों द्वारा लोक अभियोजकों की नियुक्ति को मॉनीटर करना ;
- (ग) राज्य सरकारों द्वारा, बालक की विचारण पूर्व और विचारण के स्तर पर सहायता से सहबद्ध गैर सरकारी संगठनों, व्यवसायियों और विशेषज्ञों या मनोविज्ञान, सामाजिक कार्य, शारीरिक स्वास्थ्य, मानसिक स्वास्थ्य और बालक विकास का ज्ञान रखने वाले

व्यक्तियों के उपयोग के लिए अधिनियम की धारा 39 में वर्णित मार्गनिर्देश बनाने को मॉनीटर करना और इन मार्गनिर्देशों को लागू करने को मॉनीटर करना ;

(घ) इस अधिनियम के अधीन अपने कार्यों के प्रभावी निर्वहन के लिए प्रशिक्षण पुलिस कार्मिकों और अन्य संबंधित व्यक्तियों, जिसके अंतर्गत केन्द्रीय और राज्य सरकारों के अधिकारी भी हैं, के लिए निश्चायिका के डिजाइन और कार्यान्वयन को मॉनीटर करना ;

(ङ) मीडिया, जिसके अंतर्गत टेलीविजन, रेडियों और प्रिंट मीडिया भी हैं, के माध्यम से नियमित अंतरालों पर अधिनियम के उपबंधों से संबंधित सूचनाओं के प्रसार के लिए केन्द्रीय सरकार और राज्य सरकारों को मॉनीटर करना और उनकी सहायता करना जिससे अधिनियम के उपबंधों के प्रति जनसाधारण, बालकों के साथ ही साथ उनके माता पिता और संरक्षकों को जागरूक किया जा सके ।

(2) यथास्थिति, एनसीपीसीआर या एससीपीसीआर किसी सीडब्ल्यूसी की अधिकारिता के भीतर आने वाले बालक लैंगिक दुरुपयोग के किसी भी विनिर्दिष्ट मामले पर रिपोर्ट मांग सकेंगे ।

(3) यथास्थिति, एनसीपीसीआर या एससीपीसीआर स्वप्रेरणा से या सुसंगत अभिकरणों से लैंगिक दुरुपयोग के रिपोर्ट किए गए मामले और अधिनियम के अधीन स्थापित प्रक्रिया के अधीन उनके निपटारे की बाबत सूचना और आंकड़े एकत्रित कर सकेंगे जिसके अंतर्गत निम्नलिखित सूचना भी है :-

(i) अधिनियम के अधीन रिपोर्ट किए गए अपराधों की संख्या और ब्यौरे ;

(ii) क्या अधिनियम और नियमों के अधीन विहित प्रक्रियाओं का अनुसरण किया गया है जिसके अंतर्गत समयसीमा से संबंधित प्रक्रिया भी है ;

(iii) अधिनियम के अधीन अपराधों के पीड़ितों की देखरेख और संरक्षण के लिए व्यवस्था के ब्यौरे जिसके अंतर्गत आपात चिकित्सा देखरेख और चिकित्सा परीक्षा की व्यवस्था भी है ; और

(iv) संबंधित सीडब्ल्यूसी द्वारा किसी भी विनिर्दिष्ट मामले में किसी बालक की देखरेख और संरक्षण के लिए आवश्यकता के निर्धारण की बाबत ब्यौरे ।

(4) यथास्थिति, एनसीपीसीआर या एससीपीसीआर इस प्रकार एकत्रित सूचना का प्रयोग अधिनियम के उपबंधों के कार्यान्वयन को निर्धारित करने के लिए कर सकेगी। अधिनियम की मॉनीटरी पर रिपोर्ट को एनसीपीसीआर या एससीपीसीआर की वार्षिक रिपोर्ट में एक अलग अध्याय में सम्मिलित किया जाएगा।

7. **प्रतिकर** - (1) विशेष न्यायालय, समुचित मामलों में स्वप्रेरणा से या बालक द्वारा या उसकी ओर से फाइल किए गए आवेदन पर प्रथम इत्तला रिपोर्ट के रजिस्ट्रीकरण के पश्चात् किसी भी स्तर पर बालक के अनुतोष या पुनर्वास की तुरंत आवश्यकता की पूर्ति के लिए अंतरिम प्रतिकर का आदेश पारित कर सकेगा। बालक को संदत्त ऐसे अंतरिम प्रतिकर को अंतिम प्रतिकर, यदि कोई हों, के विरुद्ध समायोजित किया जाएगा।

(2) विशेष न्यायालय, स्वप्रेरणा से या पीड़ित द्वारा या उसकी ओर से फाइल किए गए किसी आवेदन पर जहां अभियुक्त को दोषसिद्ध किया गया है या जहां मामले का परिणाम दोषमुक्ति या उन्मोचन है या अभियुक्त का पता नहीं लगा है या पहचान नहीं की गई है और विशेष न्यायालय की राय में बालक ने उक्त अपराध के परिणामस्वरूप हानि या क्षति उठाई है तो प्रतिकर अधिनिर्णीत करने की सिफारिश कर सकेगा।

(3) जहां विशेष न्यायालय दंड प्रक्रिया संहिता की धारा 357क की उपधारा (2) और उपधारा (3) के साथ पठित अधिनियम की धारा 33 की उपधारा (8) के अधीन पीड़ित को प्रतिकर अधिनिर्णीत करने का निदेश देता है तो पीड़ित को हुई हानि या क्षति से संबंधित सभी सुसंगत कारणों पर विचार करेगा जिसके अंतर्गत निम्नलिखित भी है :-

(i) दुरुपयोग का प्रकार, अपराध की संगीनता और बालक द्वारा उठाई गई मानसिक और शारीरिक अपहानि और क्षति की गंभीरता ;

(ii) शारीरिक और/या मानसिक स्वास्थ्य के लिए उस पर उपगत या उपगत किए जाने के लिए संभाव्य व्यय ;

- (iii) अपराध के परिणामस्वरूप शैक्षिक अवसरों की हानि जिसके अंतर्गत मानसिक आघात, शारीरिक क्षति, चिकित्सा उपचार, अपराध के अन्वेषण और विचारण के कारण या किसी अन्य कारण से विद्यालय से अनुपस्थिति भी है ;
- (iv) अपराध के परिणामस्वरूप नियोजन की हानि जिसके अंतर्गत मानसिक आघात, शारीरिक क्षति, चिकित्सा उपचार, अपराध के अन्वेषण और विचारण के कारण या किसी अन्य कारण से नियोजन के स्थान से अनुपस्थिति भी है ;
- (v) अपराधी के साथ बालक का संबंध, यदि कोई हो ;
- (vi) क्या ऐसा दुरुपयोग एक अकेली घटना थी या ऐसा दुरुपयोग अलग-अलग समय पर बार-बार पर होता रहा ;
- (vii) क्या बालक अपराध के परिणामस्वरूप गर्भवती हो गई है ;
- (viii) क्या बालक अपराध के परिणामस्वरूप किसी लैंगिक पारेषित रोग (एसटीडी) से संसर्ग-प्राप्त हो गया है ;
- (ix) क्या बालक अपराध के परिणामस्वरूप ह्यूमन इम्यूनोडेफियेंसी वायरस (एचआईवी) से संसर्ग-प्राप्त हो गया है ;
- (x) अपराध के परिणामस्वरूप बालक द्वारा वहन की गई कोई भी निःशक्तता ;
- (xi) उस बालक की वित्तीय स्थिति जिसके विरुद्ध अपराध किया गया है जिससे उसके पुनर्वास की आवश्यकता को अवधारित किया जा सके ;
- (xii) कोई अन्य कारण जो विशेष न्यायालय सुसंगत समझे ।

(4) विशेष न्यायालय द्वारा अधिनिर्णीत प्रतिकर राज्य सरकार द्वारा पीड़ित के लिए प्रतिकर निधि या उसके द्वारा दंड प्रक्रिया संहिता की धारा 357क या तत्समय प्रवृत्त किसी अन्य विधि के अधीन पीड़ित के प्रतिकर और पुनर्वास के प्रयोजनों के लिए स्थापित कोई अन्य स्कीम या निधि से किया जाना है या जहां ऐसी निधि या स्कीम नहीं है वहां राज्य सरकार द्वारा किया जाना है ।

(5) राज्य सरकार विशेष न्यायालय द्वारा आदेशित प्रतिकर का संदाय ऐसे आदेश की प्राप्ति के 30 दिन के भीतर करेगी ।

(6) इन नियमों की कोई बात बालक या उसके माता पिता या संरक्षक या किसी अन्य व्यक्ति, जिस पर बालक का भरोसा और विश्वास है, को केन्द्रीय सरकार या राज्य सरकार के किन्हीं अन्य नियमों और स्कीम के अधीन अनुतोष मांगने के लिए आवेदन देने से नहीं रोकेगी।

[फा. सं. 22-14/2012-सीडब्ल्यू-1]

डॉ. विवेक जोशी, संयुक्त सचिव

MINISTRY OF WOMEN AND CHILD DEVELOPMENT

NOTIFICATION

New Delhi, the 14th November, 2012

G.S.R. 823(E).— In exercise of the powers conferred by sub-section (1), read with clauses (a) to (d) of sub-section (2), of section 45 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), the Central Government hereby makes the following rules, namely -

1. Short title and commencement – (1) These rules may be called the Protection of Children from Sexual Offences Rules, 2012.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. Definitions – (1) In these rules, unless the context otherwise requires, -

(a) “Act” means the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);

(b) “District Child Protection Unit” (DCPU) means the District Child Protection Unit established by the State Government under section 62A of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006;

(c) “Expert” means a person trained in mental health, medicine, child development or other related discipline, who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability;

(d) “Special educator” means a person trained in communication with children with special needs in a way that addresses the child’s individual differences and needs, which include challenges with learning and communication, emotional and behavioural disorders, physical disabilities, and developmental disorders;

(e) “Person familiar with the manner of communication of the child” means a parent or family member of a child or a member of his shared household or any person in whom the child reposes trust and confidence, who is familiar with that child’s unique manner of communication,

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and whose presence may be required for or be conducive to more effective communication with the child;

(f) "Support person" means a person assigned by a Child Welfare Committee, in accordance with sub-rule (8) of rule 4, to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act;

(2) Words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them under the Act.

3. Interpreters, translators and Special educators – (1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators and special educators for the purposes of the Act, and this register shall be made available to the Special Juvenile Police Unit (hereafter referred to as "SJPU"), local police, magistrate or Special Court, as and when required.

(2) The qualifications and experience of the interpreters, translators, Special educators, and experts, engaged for the purposes of sub-section (4) of section 19, sub-sections (3) and (4) of section 26 and section 38 of the Act, shall be as indicated in these rules.

(3) Where an interpreter, translator, or Special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on evidence of relevant experience or formal education or training or demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, Special Court or other authority concerned.

(4) Interpreters and translators engaged under sub-rule (1) should have functional familiarity with language spoken by the child as well as the official language of the state, either by virtue of such language being his mother tongue or medium of instruction at school at least up to primary school level, or by the interpreter or translator having acquired knowledge of such language through his vocation, profession, or residence in the area where that language is spoken.

(5) Sign language interpreters, Special educators and experts entered in the register under sub-rule (1) should have relevant qualifications in sign language or special education, or in the case of an expert, in the relevant discipline, from a recognized University or an institution recognized by the Rehabilitation Council of India.

(6) Payment for the services of an interpreter, translator, Special educator or expert whose name is enrolled in the register maintained under sub-rule (1) or otherwise, shall be made by the State Government from the Fund maintained under section 61 of the Juvenile Justice Act, 2000, or from other funds placed at the disposal of the DCPU, at the rates determined by them, and on receipt of the requisition in such format as the State Government may prescribe in this behalf.

(7) Any preference expressed by the child at any stage after information is received under sub-section (1) of section 19 of the Act, as to the gender of the interpreter, translator, Special educator, or expert, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child.

(8) The interpreter, translator, Special educator, expert, or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest. He shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973.

(9) In proceedings under section 38, the Special Court shall ascertain whether the child speaks the language of the court adequately, and that the engagement of any interpreter, translator, Special educator, expert or other person familiar with the manner of communication of the child, who has been engaged to facilitate communication with the child, does not involve any conflict of interest.

(10) Any interpreter, translator, Special educator or expert appointed under the provisions of the Act or its rules shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872.

4. Care and Protection – (1) Where an SJPU or the local police receives any information under sub-section (1) of section 19 of the Act from any person including the child, the SJPU or local police receiving report of such information shall forthwith disclose to the person making the report, the following details:-

- (i) his name and designation;
- (ii) the address and telephone number;
- (iii) the name, designation and contact details of the officer who supervises the officer receiving the information.

(2) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, -

(a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973, and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of the Code;

(b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 5;

(c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;

(d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory at the earliest;

(e) inform the child and his parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;

(f) inform the child and his parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.

(3) Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC.

(4) Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2000, to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of his family or shared household and placed in a children's home or a shelter home.

(5) In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations:

- (i) the capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counselling;
- (ii) the need for the child to remain in the care of his parent, family and extended family and to maintain a connection with them;
- (iii) the child's age and level of maturity, gender, and social and economic background;
- (iv) disability of the child, if any;
- (v) any chronic illness from which a child may suffer;
- (vi) any history of family violence involving the child or a family member of the child; and,
- (vii) any other relevant factors that may have a bearing on the best interests of the child:

Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

(6) The child and his parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered.

(7) The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU:

Provided that nothing in these rules shall prevent the child and his parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

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

(9) Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing.

(10) The services of the support person may be terminated by the CWC upon request by the child and his parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.

(11) It shall be the responsibility of the SJPU, or the local police to keep the child and his parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.

(12) The information to be provided by the SJPU, local police, or support person; to the child and his parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:-

- (i) the availability of public and private emergency and crisis services;
- (ii) the procedural steps involved in a criminal prosecution;
- (iii) the availability of victims' compensation benefits;
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
- (v) the arrest of a suspected offender;

- (vi) the filing of charges against a suspected offender;
- (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;
- (viii) the bail, release or detention status of an offender or suspected offender;
- (ix) the rendering of a verdict after trial; and
- (x) the sentence imposed on an offender.

5. Emergency medical care – (1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, he shall, as soon as possible, but not later than 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility centre for emergency medical care:

Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.

- (2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.
- (3) No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.
- (4) The registered medical practitioner rendering emergency medical care shall attend to the needs of the child, including --
 - (i) treatment for cuts, bruises, and other injuries including genital injuries, if any;
 - (ii) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;
 - (iii) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;

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- (iv) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,
- (v) wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made.

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

6. Monitoring of implementation of the Act – (1) The National Commission for the Protection of Child Rights (hereafter referred to as “NCPCR”) or the State Commission for the Protection of Child Rights (hereafter referred to as “SCPCR”), as the case may be, shall in addition to the functions assigned to them under the Commissions for Protection of Child Rights Act, 2005, perform the following functions for implementation of the provisions of the Act:-

- (a) to monitor the designation of Special Courts by State Governments;
 - (b) to monitor the appointment of Public Prosecutors by State Governments;
 - (c) to monitor the formulation of the guidelines described in section 39 of the Act by the State Governments, for the use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child, and to monitor the application of these guidelines;
 - (d) to monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Central and State Governments, for the effective discharge of their functions under the Act;
 - (e) to monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act.
- (2) The NCPCR or the SCPCR, as the case may be, may call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.

(3) The NCPCR or the SCPCR, as the case may be, may collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes established under the Act, including information on the following:-

- (i) number and details of offences reported under the Act;
- (ii) whether the procedures prescribed under the Act and rules were followed, including those regarding timeframes;
- (iii) details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,
- (iv) details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case.

(4) The NCPCR or the SCPCR, as the case may be, may use the information so collected to assess the implementation of the provisions of the Act. The report on monitoring of the Act shall be included in a separate chapter in the Annual Report of the NCPCR or the SCPCR.

7. Compensation -

(1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;

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

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

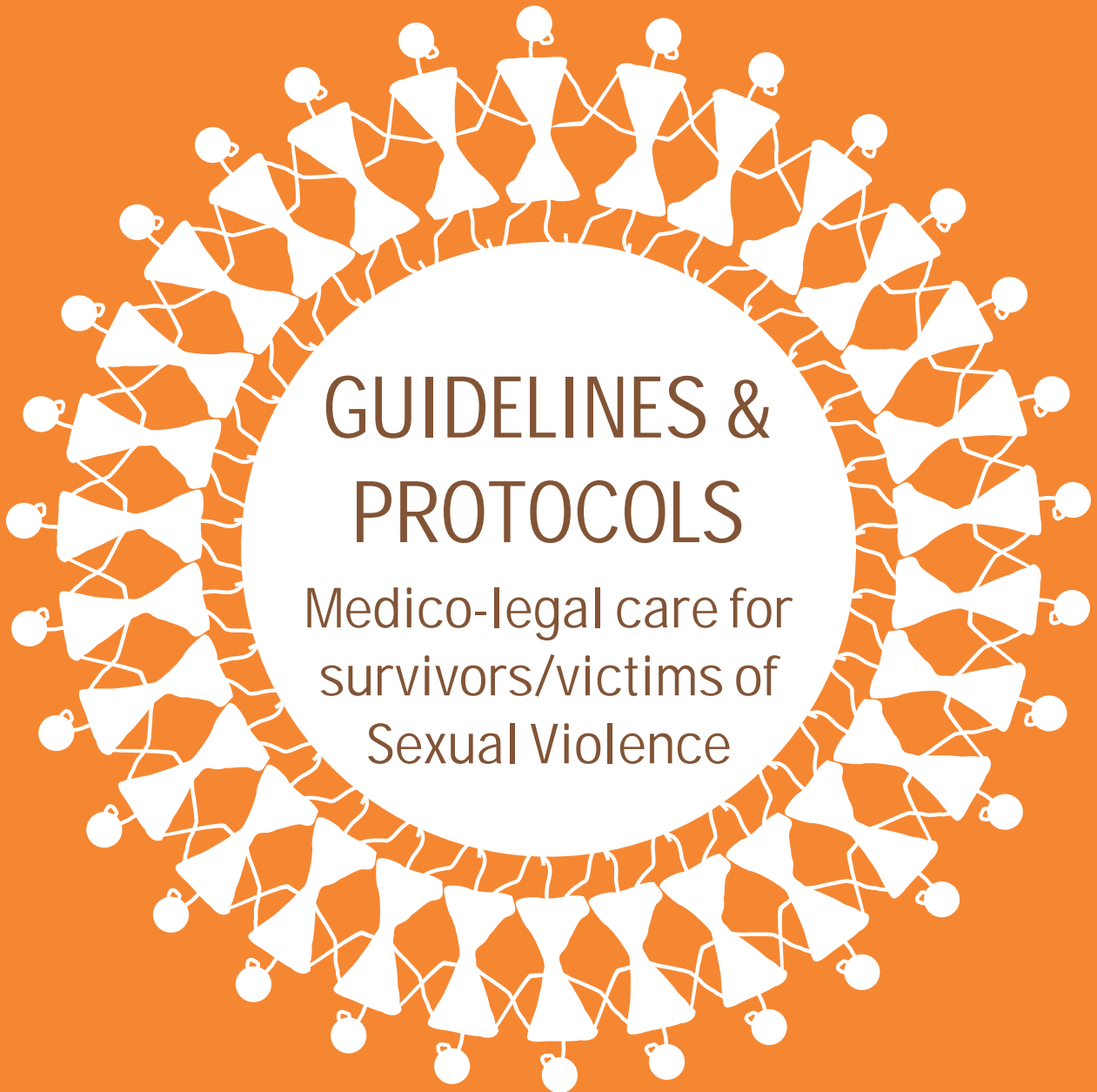
(6) Nothing in these rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.

[F. No. 22-14/2012-CW-I]

DR.VIVEK JOSHI, Jt. Secy.



Ministry of Health
& Family Welfare
Government of India



GUIDELINES & PROTOCOLS

Medico-legal care for
survivors/victims of
Sexual Violence

GUIDELINES & PROTOCOLS

Medico-legal care for survivors/victims of sexual violence

FOREWORD

I deem it a great honour to contribute this foreword to the Guidelines and Examinations Proformae for Medico Legal Cases of victims of sexual violence, being brought out under the auspices of the Ministry Of Health and Family Welfare, Government of India. With the publication of this compact document a long felt need to bring about a certain degree of uniformity in approaching, treating and documenting cases of sexual violence, mainly against women and girls should get fulfilled. Even so, there still maybe some gaps in these guideline which need to be plugged and through feedback received from various quarters further improvements can be effected in them. Thus, the exercise of drawing up these guidelines has to be treated as an iterative one and the process would need to continue till such time as a reasonable level of definitiveness can be brought into them.

The guidelines, have specially been drawn up for rape cases, although they could be used in other cases of sexual violence as well. Statistics pertaining to sexual and physical violence against women in this country are alarming as around one in three is likely to face this sort of violence in her lifetime. Thirty three percent plus is a big number while the approach to mitigating such problems has to be a holistic one cutting across boundaries. We in this Ministry have taken the first step towards sexual violence mitigation.

The guidelines are essentially aimed at doctors who might one day be called upon to handle female victims of sexual assault / rape in the course of their duty whether in a government hospital or even a private one. Sexual assault victims cannot be denied treatment in either of these hospitals when they approach them as denial has lately been made a cognizable criminal offence punishable with appropriate jail terms or fines or both. As is known rape law has been made more stringent with zero tolerance for offenders and through these guidelines the aim is to ensure a sensitive and humane approach to such victims, their proper treatment apart from attending or treating doctors responsibility and duty in recording and documenting the medical aspects in order that such cases when they come up before the criminal justice system are not found wanting in the quality of evidence produced by the prosecution during trial.

Many a times it has been experienced in the past in such cases that medical evidence has not been recorded and documented in a proper fashion leading thereby to a poor conviction in rape cases.

We are in debted to Justice Verma, who was the first one to highlight the need to standardize medical evidence collection during such victim's treatment process. This Ministry responded to the challenge and took the initiative in drawing up these guidelines. Here I would like to specifically mention the contribution made by my predecessor, Shri. Keshav Desiraju, the then Secretary/ Health and Family welfare, who realizing the gravity of this issue, responded to the challenge and expeditiously set up a committee for framing these guidelines in a time bound manner. We are deeply indebted to him for his personal intervention, indulgence and guidance at every stage of framing these guidelines.

Many persons from the medical, legal and administrative fields who have distinguished themselves in their professions have been associated with the work on these guidelines. Had it not been for their painstaking and dedicated effort these guidelines might not have either seen the light of day or may not have turned out to be so comprehensive and

complete. While it is difficult in the space allocated to me to pen down the names of all such individuals, it would suffice if a few of them were to be named. First and foremost, I would like to thank Ms. Padma B. Deosthali, Coordinator, CEHAT, Ms. Aruna Kashyap, Women's Rights Division, HRW, Ms. Vrinda Grover, Advocate, New Delhi, Ms. Indira Jaisingh, ASG, Professor Shekhar Sheshadri, Psychiatrist, NIMHANS, and Dr. Jagadeesh Reddy, Forensic Medicine Expert, Bengaluru.

I would also thank the Department of Health Research for their assistance in the formulation of the medical protocols, and the Ministry of Home Affairs for their kind support. The DGHS and his team of doctors who have contributed to this laudable effort in formulating the medical investigating protocol, while taking into consideration the concerns and suggestions of the Justice Verma Committee Report in Chapter 11; its conclusion recommendations and the appendix 7 of the report. A reference of the Ministry of Women and Child Development on the Child/patient interviewing and the sensitivities of forensic evidence collections that has been consulted needs a special mention, a sincere attempt to incorporate the psychological and social factors of the sexual assault survivor/victim, who could be a minor / child, as the case may be, have been drawn from the guidelines of Ministry of Women & Child Development. The responsibilities on the surrounding adults and the hospital staff have been articulated in such guidelines.

I would specially like to put on record my gratitude for Ms. Indira Jaisingh, Additional Solicitor General who has played a key role and contributed extensively to making its content pointed and effective.

I would also like to put on record my appreciation for the coordination and organisational efforts put in by Mrs. Shakuntala D. Gamlin, Joint Secretary, Ministry of Health & Family Welfare and her team comprising Shri Vikas Arya, Director, Shri Amal Pusp, Director, Smt. Aparna Sharma, Director, Shri Sanjay Pant, Under Secretary and staff from the Hospital Section. This team under the leadership of Shri C.K. Mishra, Additional Secretary (H) has worked hard in putting together these guidelines.

The guidelines are to be brought to the attention of hospitals within the jurisdiction of each state and UT. It is incumbent on every government hospital in the country to treat rape victims free of charge, even post treatment will have to be gratis. Through this document I would like to avail the opportunity of appealing to every private hospital in the country to treat rape victims free of charge too as a part of their corporate social responsibility. In doing so they would be contributing to make India a better and safe place to live in. I'm sure these guidelines will be helpful to all the medical practitioners to deal with such cases in an informed manner.

The guidelines are being uploaded on the Ministry's website for information of all concerned and with the request that suggestions for their further improvement may be sent to Director (H), Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.

Dated 19 March, 2014
New Delhi


Mr Lov Verma
Secretary (HFW)

Message from WHO Representative to India

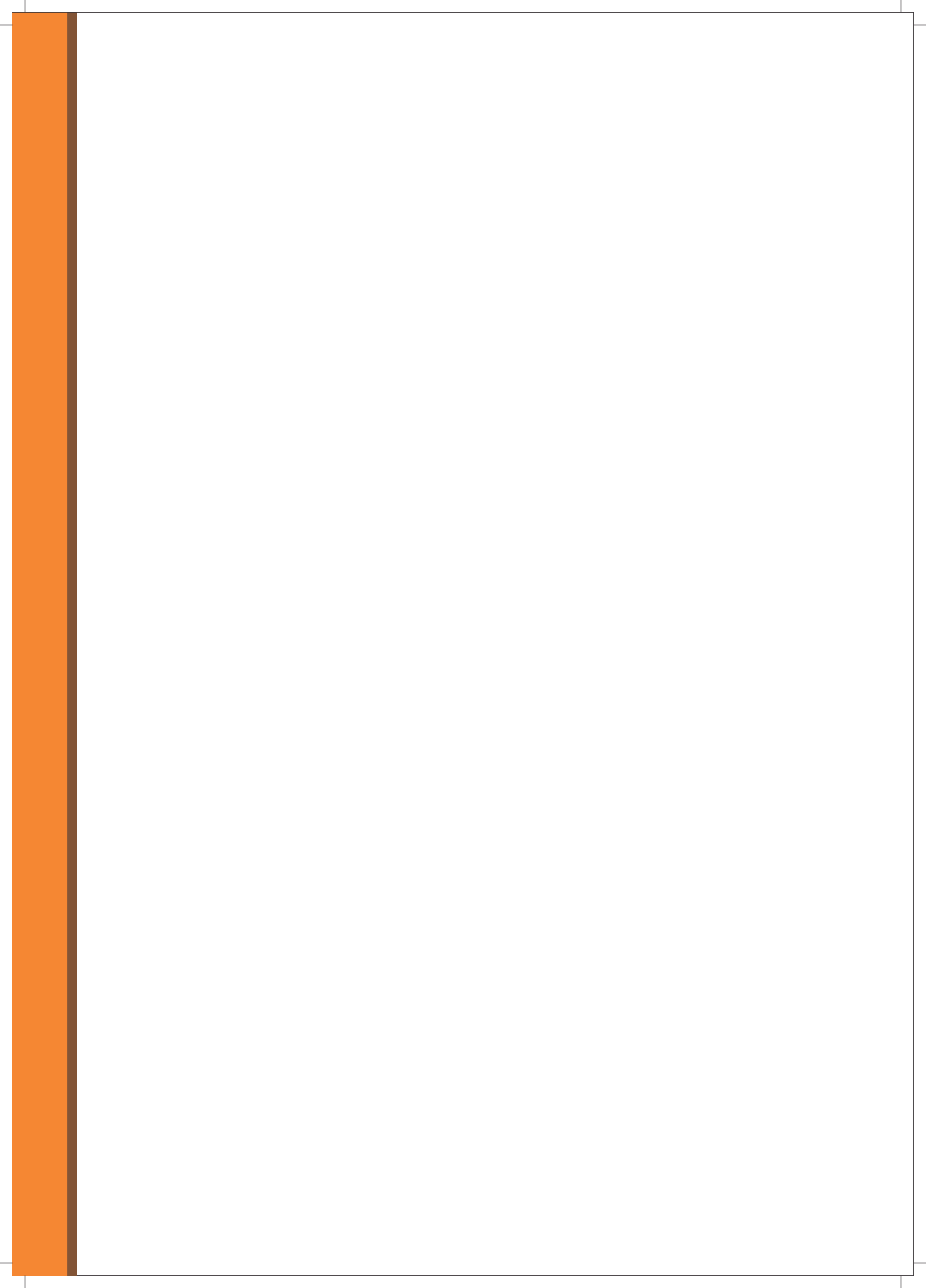
Violence is preventable and is not inevitable. There is a need to address the economic and sociocultural factors that foster a culture of violence against women (VAW). While we recognize that there is a need to adopt a multi-sectoral framework of mutually reinforcing interventions for prevention and management of gender based violence particularly against women and girls, the focus of our work is to build health systems capacities. The health care system is the only institution that interacts with almost every woman at some point in her life and women living with violence are likely to visit health facilities more frequently than non-abused women. Interventions by health providers can potentially mitigate both the short and long-term health effects of gender-based violence on women and their families.

Taking into understanding the rise in the reported cases of violence against women and also the gaps in responding to the needs of survivors of sexual violence at various levels, the Ministry of Health and Family Welfare is committed to setting up of standardized protocols for care, treatment and rehabilitative services for survivors of sexual violence. These guidelines and protocols recognize the role of the health sector and is a positive way forward towards providing empathetic support and rebuilding lives after assault.

WHO will continue to play a significant role in generating evidence of the health consequences of VAW, build health systems capacity and partner with other sectors to adapt an integrated approach in addressing this public health issue.



Dr Nata Menabde
WHO Representative to India



No.Z.28015/21/2013-H

Government of India
Ministry of Health & Family Welfare
Department of Health & Family Welfare
Hospital Division

Nirman Bhawan, N. Delhi
Dated the 18th March, 2013

ORDER

A Committee is constituted under the Chairmanship of Shri Keshav Desiraju, Secretary (H&FW), to go into all M/o Health & Family Welfare's related aspects related to the survivors/victims of sexual violence and sexual assault arising out of the Justice Verma Committee Report, particularly, with reference to standardizing the medical examination protocols for them.

2. The Committee will function under the Chairmanship of Shri Keshav Desiraju, Secretary (H&FW) with the following members:-

- i) AS (H) & MoHFW
- ii) Joint Secretary (Hospitals), MoHFW
- iii) Ms. Vrinda Grover, Lawyer & Independent Researcher
- iv) Ms. Aruna Kashyap, Asia Researcher, Women's Rights Division, Human Rights Watch
- v) Dr. Suneeta Mittal, formerly of AIIMS
- vi) Dr. Shekhar Sheshadri, Psychiatrist and Prof. NIMHANS
- vii) Dr. Padma Deosthali, Coordinator of CEHAT
- viii) Dr. Jagadeesh Reddy, Forensic medicine expert
- ix) Ms. Indira Jaisingh, Lawyer
- x) Ms. Renu Khanna (SAHAJ)
- xi) Dr. T.S. Sidhu, formerly MS, RML Hospital
- xii) Dy. Director General (Planning), Dte.GHS ----- Member Secretary

3. Terms of Reference of the Committee:-

The Terms of Reference of the Committee are the following:-

- I) To finalise the revised 'Proformae' regarding 'Medical Examination Report for Sexual Assault Victim' and related guidelines for examination of such victims as drafted by DGHS.
- ii) To examine the relevant observations/recommendations made by the Justice (Retd.) Verma Committee Report for effective and time bound implementation.
- iii) To examine the relevant observations/recommended measures from the Minutes of meeting dated 4th January, 2013 of the Chief Secretaries and Director Generals of Police for effective and time bound implementation.
- iv) To examine the relevant observations/recommended measures from the meeting dated 23rd January, 2013 of Committee of Secretaries held under the Chairmanship of Cabinet Secretary for effective and time bound implementation.
- v) To finalise M/o H&FW's views on the draft manuals developed for addressing sexual violence by Indian Council of Medical Research (ICMR)

- vi) Any other related matter as desired by Chairman to be placed before the Committee.
- 4. The Committee may co-opt other members as per requirement.
- 5. This issues with the approval of Secretary (H&FW).

Sd/-
(Sanjay Pant)
Under Secretary to the Govt. of
India
Tel: 011-23061521

Copy for information to:

- 1. All Members of the Committee
- 2. DGHS/DD(P), Dte.GHS
- 3. Secretary, M/o Home Affairs - with reference to D.O No.15011/89/2012-SC/ST-W

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PART I
**GUIDELINES FOR MEDICO-LEGAL CARE FOR
SURVIVORS/VICTIMS OF SEXUAL VIOLENCE**

Glossary

Genetic sex and Anatomical Sex: Genetic sex refers to a person's sex chromosomes and anatomical sex refers to genitalia and gonads. It is assumed that appearance of genitalia corresponds to an individual's chromosomal pattern, eg. the Karyotype 46XX goes with the presence of ovaries, uterus and vagina, etc. However, this is not the case with intersexuality, wherein an individual's anatomical presentation is at variance with chromosomal pattern.

Gender identity: An individual's preferred gender role and presentation, as masculine, feminine, both or neither. Gender identity therefore is not determined by chromosomal or anatomical sex of a person.

Sexual orientation: An individual's sexual preference, whether homosexual, heterosexual or bisexual.

Gay/Homosexual: A man who is attracted towards other men.

Lesbian: A woman who is attracted to other women.

Bisexual: A person is attracted to both men and women.

Intersex: Non-conformity of an individual's body to prevalent ideas of maleness and femaleness. It is used as a blanket term for different biological possibilities and variations which may include, for instance, a large clitoris, absence of vagina, congenital absence of gonads among others.

Transgender: Individuals whose lived gender identity does not conform to their physiological appearance. It includes cultural categories such as hijras, transvestites as well as transitioning or post-operative transpersons. Transgender people may identify with either male or female gender identity, both, or neither.

Sex work: Is broadly defined as the exchange of money or goods in lieu of sexual services, either regularly or occasionally, involving female, male, and transgender adults.

Survivor: The Guidelines and proforma use the term survivor. The term survivor recognizes that the person has agency and she is capable of taking decisions despite being victimised, humiliated and traumatised due to the assault. Use of the term survivor by all those providing services recognizes these efforts and encourages them to believe the person and not pity her, whereas the term “victim” is understood as a person who doesn't possess agency and is not fully capable of comprehending situation at hand because of the victimhood faced. Given the judgmental attitudes towards the issue of rape and sexual assault, often police, health systems and other stake holders make decisions on behalf of the person because there is a belief that the person is so victimised that she may not be in a frame of mind to make decisions independently.

Victims: The term “victim” literally means a person suffering harm including those who are subjected to non-consensual sexual act which could be sexual assault, rape or sexual violence. It also means a person is in need of compassion, care, validation, and support.

INTRODUCTION

Sexual violence is a significant cause of physical and psychological harm and suffering for women and children. Although sexual violence mostly affects women and girls, boys are also subject to child sexual abuse. Adult men, especially in police custody or prisons may also be subject to sexual violence, as also sexual minorities, especially the transgender community. Sexual violence takes various forms and the perpetrators range from strangers to state agencies to intimate partners; evidence shows that perpetrators are usually persons known to the survivor.

The World Health Organisation (WHO) defines Sexual Violence as "any sexual act, attempt to obtain a sexual act, unwanted sexual comments/ advances and acts to traffic, or otherwise directed against a person's sexuality, using coercion, threats of harm, or physical force, by any person regardless of relationship to the victim in any setting, including but not limited to home and work." (WHO, 2003) Sexual assault, a form of sexual violence, is a term often used synonymously with rape. However, sexual assault could include anything from touching another person's body in a sexual way without the person's consent to forced sexual intercourse --- oral and anal sexual acts, child molestation, fondling and attempted rape. Forms of Sexual Violence include:

- Coerced/forced sex in marriage or live in relationships or dating relationships.
- Rape by strangers.
- Systematic rape during armed conflict, sexual slavery.
- Unwanted sexual advances or sexual harassment.
- Sexual abuse of children.
- Sexual abuse of people with mental and physical disabilities.
- Forced prostitution and trafficking for the purpose of sexual exploitation.
- Child and forced marriage.
- Denial of the right to use contraception or to adopt other measures to protect against STIs.
- Forced abortion and forced sterilization.
- Female genital cutting.
- Inspections for virginity.
- Forced exposure to pornography.
- Forcibly disrobing and parading naked any person.

(Please refer to **Annexure 1** for legal definitions.)

The Criminal Law Amendment Act (CLA) 2013 has expanded the definition of rape to include all forms of sexual violence-penetrative (oral, anal, vaginal) including by objects/weapons/fingers and non-penetrative (touching, fondling, stalking, etc.) and recognised right to treatment for all survivors/victims /victims of sexual violence by the public and private health care facilities. Failure to treat is now an offence under the law. The law further disallows any reference to past sexual practices of the survivor.

The health concerns of survivors/victims of sexual violence, and their right to health is an issue of importance. The Right to Health is not a fundamental right in India. However, the Supreme Court has interpreted the Right to Life as including the Right to Health. The Right to Health is enshrined in a number of international instruments ratified by India, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention of the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).

The right to health care requires the state to ensure that appropriate physical and mental health services are available without discrimination and are accessible, acceptable and of good quality. This includes medical treatment for physical injuries, prophylaxis and testing for sexually transmitted infections, emergency contraception, and psychosocial support. Recognizing the right of all persons to health, health care workers must obtain informed consent of the survivors/victims of sexual violence prior to conducting medical examinations or initiating medico-legal investigations. All medico-legal examinations and procedures must respect the privacy and dignity of the survivor. To realize the right to health care of survivors/victims , health professionals must be trained to respond appropriately to their needs, in a sensitive and non-discriminatory manner respectful of the privacy, dignity and autonomy of each survivor. Health workers cannot refuse treatment or discriminate on the basis of gender, sexual orientation, disability, caste, religion, tribe, language, marital status, occupation, political belief, or other status. Refusal of medical care to survivors/victims of sexual violence and acid attack amounts to an offence under Section 166B of the Indian Penal Code read with Section 357C of the Code of Criminal Procedure.

The Ministry of Health and Family Welfare recognizes the critical role to be played by the Health professionals and health systems in caring for survivors/victims of sexual violence and collecting relevant evidence so that the culprit could be brought to the book.

While preparing the protocol and guidelines, the Committee under the Secretary (HFW) deliberated on the issues several times and took cognizance of the lack of uniform protocols and gaps in existing provision of medico legal care to survivors/victims of sexual violence, recommendations of the JVC, the CLA 2013 and Protection of Children from Sexual Offences (POCSO) 2012. While doing so, international standards especially the WHO Guidelines on medico legal care (2003) and Clinical and Policy Guidelines for responding to

Intimate Partner Violence (IPV) and sexual assault (2013) were referred to. The committee has drawn from the available evidence from health sector interventions, legal and other expert opinions and voices of survivors/victims.

The protocol and guidelines recognize the role of health sector in strengthening legal frameworks, developing comprehensive and multi-sectoral national strategies for preventing and eliminating all forms of sexual violence. Through these, the Ministry of Health and Family Welfare proposes to provide clear directives to all health facilities to ensure that all survivors of all forms of sexual violence, rape and incest, including people that face marginalisation based on disability, sexual orientation, caste, religion, class, have immediate access to health care services that includes immediate and follow up treatment, post rape care including emergency contraception, post exposure prophylaxis for HIV prevention and access to safe abortion services, police protection, emergency shelter, documentation of cases, forensic services and referrals for legal aid and other services. It recognizes the need to create an enabling environment for survivors/victims where they can speak out about abuse without fear of being blamed, where they can receive empathetic support in their struggle for justice and rebuild their lives after the assault.

The Ministry of Health and Family Welfare feels that sensitive handling can reduce self-blame and enhance healing for survivors. It also recognises the critical role of health professionals in their interface with the police, CWCs and judiciary. Such inter-sectoral collaboration is essential to provide services and deliver justice. The health system is committed to setting up services for survivors.

The Ministry places importance to:

- Provide medical assistance to the person suffering from violence
- Provide psychological assistance to both victim and perpetrator of Violence, if required. Health facilities can be instructed to handle all cases of Violence/suspected Gender Based Violence compassionately and to encourage them to seek the help of psychologist/psychiatrist.
- Help the law enforcing agencies to bring to book the perpetrators of Violence by conducting the necessary medico-legal examination.
- Refer those women, who come to healthcare facilities for self or childcare, to appropriate agencies as stated above, if it is suspected that they may be suffering from any kind of violence.
- Give parenting lessons to women coming to health care facilities for child care.
- Provide information about the ill-effects of drug abuse and alcoholism in order to help people in abstaining from such activities.
- Lay down standard operating procedures for the care, treatment and rehabilitation of survivors/victims of sexual violence.
- Propose to use these guidelines and protocol in all the health care facilities under the Ministry of Health and Family Welfare.

- Request State Government to follow them in their States/UTs.
- Although, this is essentially being done in all the health facilities, a uniform protocol and designated facilities would lead to prompt medical care. Apart from the present actions the Health care providers need to be more sensitive towards the victims of sexual violence. Additionally, the routine demographic data, detailed history can be recorded bringing out the root cause of the Violence. Accordingly the person can be referred to the appropriate agencies like Police, NGOs, Self-help Groups, Counsellors, etc. for appropriate redressal or dedicated centres providing all the required services under one roof.

These guidelines for health workers are aimed at providing an appropriate understanding of sexual violence and the needs and rights of survivors/victims of sexual violence, and to highlight the medical and forensic responsibilities of health professionals. It is also an important milestone in strengthening health system's response in addressing GBV. We are hopeful that concerted efforts will be taken to effectively implement these guidelines at the grass-root level.

The protocol and guidelines aim to achieve the following:

- Operationalise informed consent and respect autonomy of survivors in making decisions about examination, treatment and police intimation.
- Specific guidance on dealing with persons from marginalised groups such persons with disabilities, sex workers, LGBT persons, children, persons facing caste, class or religion based discrimination.
- Ensure gender sensitivity in the entire procedure by disallowing any mention of past sexual practices through comments on size of vaginal introitus, elasticity of vagina or anus. Further, it bars comments of built/height-weight/nutrition or gait that perpetuate stereotypes about 'victims'.
- Focus on history by recognising various forms and dynamics of sexual violence including activities that lead to loss of evidence
- Evidence collection based on science and history, with specific guidance for taking relevant samples and preservation of evidence.
- Lay down Standard Treatment protocols for managing health consequences of sexual violence.
- Lay down Guidelines for provision of first line psychological support.

HEALTH CONSEQUENCES AND ROLE OF HEALTH PROFESSIONALS

Health consequences of sexual violence

Sexual violence, in addition to being a violation of human rights, is an important public health issue as it has several direct and indirect health consequences. Survivors of sexual violence may present to health care services with varying signs and symptoms. For those survivors who do not reveal a history of sexual violence, the following signs and symptoms should prompt one to suspect the possibility of sexual abuse/assault:

Physical health consequences:

- Severe abdominal pain.
- Burning micturition.
- Sexual dysfunction.
- Dyspareunia.
- Menstrual disorders.
- Urinary tract infections.
- Unwanted pregnancy.
- Miscarriage of an existing fetus.
- Exposure to sexually transmitted infections (including HIV/AIDS).
- Pelvic inflammatory disease.
- Infertility.
- Unsafe abortion.
- Mutilated genitalia.
- Self-mutilation as a result of psychological trauma.

Psychological health consequences:

Short term psychological effects:

- Fear and shock.
- Physical and emotional pain.

- Intense self-disgust, powerlessness.
- Worthlessness.
- Apathy.
- Denial.
- Numbing.
- Withdrawal.
- An inability to function normally in their daily lives.

Long term psychological effects:

- Depression and chronic anxiety.
- Feelings of vulnerability.
- Loss of control/loss of self-esteem.
- Emotional distress.
- Impaired sense of self.
- Nightmares.
- Self-blame.
- Mistrust.
- Avoidance and post-traumatic stress disorder.
- Chronic mental disorders.
- Committing suicide or endangering their lives.

Role of the health facility and components of comprehensive health care response

Health professionals play a dual role in responding to the survivors of sexual assault. The first is to provide the required medical treatment and psychological support. The second is to assist survivors in their medico-legal proceedings by collecting evidence and ensuring a good quality documentation. After making an assessment regarding the severity of sexual violence, the first responsibility of the doctor is to provide medical treatment and attend to the survivor's needs. While doing so it is pertinent to remember that the sites of treatment would also be examined for evidence collection later.

Section 164 (A) of the Criminal Procedure Code lays out following legal obligations of the health worker in cases of sexual violence:

- Examination of a case of rape shall be conducted by a registered medical practitioner (RMP) employed in a hospital run by the government or a local authority and in the absence of such a practitioner, by any other RMP.
- Examination to be conducted without delay and a reasoned report to be prepared by the RMP.

- Record 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 Cr.PC says that both private and public health professionals are obligated to provide treatment. Denial of 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. Health professionals need to respond comprehensively to the needs of survivors. The components of a comprehensive response include:

- Providing necessary medical support to the survivor of sexual violence.
- Establishing a uniform method of examination and evidence collection by following the protocols. [in the Sexual Assault Forensic Evidence (SAFE) kit] [The contents of the kit are listed under Operational Issues (Page No.20)]
- Informed consent for examination, evidence collection and informing the police.
- First contact psychological support and validation.
- Maintaining a clear and fool-proof chain of custody of medical evidence collected.
- Referring to appropriate agencies for further assistance (eg. Legal support services, shelter services, etc).

It is important to establish a rapport with the survivor. The following guidelines are to help establish rapport:

- Never say or do anything to suggest disbelief regarding the incident.
- Do not pass judgmental remarks or comments that might appear unsympathetic.
- Appreciate the survivor's strength in coming to the hospital as it can serve to build a bond of trust.
- Convey important messages such as: the survivor is not responsible for precipitating the act of rape by any of her actions or inactions.
- 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 honour, 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 as children, persons with disability, LGBTI persons, sex workers or persons from minority

community, may be required as recommended in Chapter 3.

- Ensure confidentiality and explain to the survivor that she/he must reveal the entire history to health professional without fear. The survivor may be persuaded not to 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 him/her to visit to others departments.

While performing the examination, the purpose of forensic medical examination is to form an opinion on the following:

- Whether a sexual act has been attempted or completed. Sexual acts include genital, anal or oral penetration by the penis, fingers or other objects as well as any form of non-consensual sexual touching. A sexual act may not only be penetration by the penis but also slightest penetration of the vulva by the penis, such as minimal passage of the glans between the labia with or without emission of semen or rupture of the hymen.
- Whether such a sexual act is recent, and whether any harm has been caused to the survivor's body. This could include injuries inflicted on the survivor by the accused and by the survivor on the accused. However, the absence of signs of struggle does not imply consent.
- The age of the survivor needs to be verified in the case of adolescent girls/boys. Whether alcohol or drugs have been administered to the survivor needs to be ascertained.

GUIDELINES FOR RESPONDING TO SPECIAL GROUPS

This section aims to alert health professionals to the specific health care needs of different marginalized groups and equip them to respond to them in an appropriate, comprehensive and sensitive manner in a difficult situation. These guidelines stem from recognition of the historical stigmatization faced by marginalized groups in accessing health services.

For the purpose of these guidelines, marginalized groups are defined as

1. Individuals who face discrimination because their gender identity is not based on physiological appearance or where an individual's body doesn't fall in the rigid binary of male and female genitalia.
2. Individuals who face discrimination based on the sexual orientation they practice.
3. Individuals who face discrimination because they are involved in sex work.
4. Individuals with physical, psycho social and/or intellectual disability.
5. Individuals from religious minorities, castes or tribes.

Guiding principles for health professionals while working with special groups

1. Complete medical treatment and health care must be offered right at the outset at all health facilities. Health professionals should ensure that they are not biased against people belonging to marginalised groups and must treat them with respect
2. Health professionals must steer clear from demonstrating shock, disbelief, ridicule and ensure that such a conduct does not seep into the doctor- patient relationship.
3. Health professionals must acknowledge challenges and obstacles faced by marginalised groups in accessing health services and create an enabling atmosphere for them in the health facility.
4. Health professionals must enable survivors to feel at ease to be able to reveal the abuse that they have faced.
5. There must be cultural sensitivity while carrying out medical procedures. Cultural sensitivity refers to recognition of the caste, class, community, religion-determined behaviour and perceptions of the patient, without any bias/prejudice.

6. Individuals belonging to marginalised communities are often mistreated and ridiculed. 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 the 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.
7. Health professionals must ensure that information on referral institutions providing good quality services for marginalised groups is available at the health facility.

A. Transgender and intersex persons

Medical practitioners must recognize that transgender and intersex people (TG/IS) are vulnerable to sexual violence due to the marginalization and discrimination they face. Under such circumstances, it is all the more essential that sexual violence faced by TG/IS people is recognized as such by health professionals who often serve as the first point of approach for a survivor of sexual violence. It is not uncommon for TG and IS persons to experience ridicule in the health facilities. Health professionals often ignorant of the variations in biology and gender identity and also tend to 'pathologize' them.

Guidelines for examination:

- Gender identity is not constituted by anatomy, especially appearance of genitals. Primacy should be given in the record to the survivor's stated gender identity and appropriate names and pronouns used.
- Intake forms and other documents that ask about gender or sex should have options as male/female/others.
- Genital anatomical variations of transgender and intersex people must be included in the examination proforma.
- Transgender and intersex people may be unwilling to report the case to law enforcement for fear of being exposed to inappropriate questions and abuse, therefore adequate care should be provided for those who do approach health institutions.
- Information on the intersex variations or transgender status of the survivor must be treated as confidential and not to be revealed without the survivor's consent.
- The inadvertent discovery during examination or history taking that a person is transgender or intersex must not be treated with ridicule, hostility, surprise, shock, or dismay. Such reactions convey that the person is being judged and is likely to make them uncomfortable in the health care setting.
- It is important to be aware of the possible health consequences that the sexual violence may have resulted in. For instance, transgender male individuals who still have ovaries and a uterus can become pregnant even when they were using testosterone and/or had

not been menstruating. Similarly, intersex variations which include non-typical genital appearance may still put some intersex women at risk of pregnancy. Health professionals must be aware of these variations and must anticipate health consequences accordingly.

- Some transgender or intersex survivors may want to talk about their perceptions of the role their gender identity might have played in making them vulnerable to an assault. Though Indian laws do not recognize gender identity-based hate crimes, it is important for the health professionals to record the survivor's account of the assault as part of the procedural history-taking, making note of the survivor's perception of the reasons for the assault, if so stated.
- Information about referral agencies that provide services to transgender or intersex survivors of sexual violence must be provided where available.

B. Persons of alternate sexual orientation

Sexual orientation refers to a person's sense of identity based on sexual attractions, related behaviour, and membership in a community of others who share those attractions. The 'normative' sexual orientation in our society is 'heterosexual', meaning that persons are expected to be attracted to others of the opposite sex. However, people may have various other sexual orientations. A person identifying with a homosexual identity for instance, is sexually attracted to a person of the same sex. There is widespread belief that homosexuality is a 'disease'; generally a 'mental illness' that needs to be cured or that homosexuality is a 'sin'. These ideas have no basis in fact and are responsible for deep-seated prejudices in society against lesbian, gay and bisexual people which often lead to a number of violent acts against them, including sexual violence.

Guidelines for examination

Even though the examination of a lesbian, gay or bisexual individual is not physically any different from that of a heterosexual person, a doctor should be especially sensitive to the former group's anxieties and concerns when it comes to such examinations.

- There should be no judgment on the person's sexual orientation in general or as a cause of the assault.
- Confidentiality of their sexual orientation should be maintained. One should not discuss or mention it to the other staff members unless needed for treatment reasons.
- The health professional should not express shock, wonder, or any other negative emotions when a person reveals their sexual orientation. The speech and behaviour of the health professional should remain inclusive.
- Old injuries or fact that a person is 'habituated to anal sex' should NOT be recorded.
- Treatment should NOT be denied to any person based on/due to their sexual orientation.

- The doctor and hospital staff should be understanding towards the survivor and should provide care and treatment with sensitivity.
- The doctor or the hospital staff should not give any advice or 'offer solutions' to 'cure' them of their sexual orientation.
- Lesbian, gay, bisexual and transgender persons are likely to be targets of hate crimes and may want to talk about the role their sexual orientation played in making them vulnerable to sexual violence. Their experience should be given a sincere hearing and validated. The survivors should be assured that it was not their fault that they were sexually assaulted.

C. Sex workers:

While women remain the largest group involved in sex work, the numbers of men acknowledged to be involved is growing. Although far less numerous, transgender individuals - both transvestites and trans-sexuals - are also active in sex work. It is important to bear in mind that just because sex workers exchange sexual acts for money or goods, does not mean that they cannot be sexually assaulted. The Supreme Court of India has acknowledged that a woman who is a sex worker has the right to decide with whom she will have sex, and so any non-consensual intercourse with her would therefore amount to rape. Sexual abuse by clients, police, pimps, brothel owners and others is commonly encountered by sex workers. Coercion to perform sexual acts by use of verbal threats, physical force and forced unwanted sexual acts by clients have been reported by sex workers as some of the types of sexual violence that they face.

Guidelines for examination

While examining sex workers reporting sexual violence, it is important to keep in mind that sex workers face a number of challenges due to the nature of their work when they approach the healthcare system. They have already faced a significant amount of discrimination from various agencies of society at every stage and hence their decision to approach a health care facility for treatment or examination should be considered a courageous one.

- A sex worker has a right to receive treatment and not providing it for any reason is punishable by law.
- Do not make assumptions about the person's health. Myths such as, "Sex workers are all addicts/HIV positive" are only myths. These propagate an unhealthy assumption of this group which may lead to further marginalization.
- Sex workers can be of any gender. No statements blaming the survivor or his/her profession for the violence faced should be made.
- Only information of the current episode of violence that the survivor is reporting must be documented. Any information of past sexual encounters is irrelevant to the current incident of sexual violence and should not be noted.

D. Persons with Disability

Persons with disability includes those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Women and children with disability are particularly vulnerable to violence, discrimination, stigma and neglect. In fact, persons with disabilities may be repeatedly victimized, especially by caretakers. Some reports suggest that women and girls with disabilities are three times more likely to be victims of physical and sexual abuse as compared to other women and girls. Women and girls with disabilities who are institutionalized are at risk of abuse in shelters and hospitals. This has now been recognized as 'custodial rape' in the revised Indian Penal Code (Criminal Law Amendment Act, 2013). Women with disabilities are often unable to report sexual abuse because of the obvious barriers to communication, as well as their dependency on carers who may also be abusers. When they do report, their complaints are not taken seriously and the challenges they face in expressing themselves in a system that does not create an enabling environment to allow for such expression, complicates matters further. India has ratified the United Nations Convention on Rights of Persons with Disabilities (UNCRPD) which mandates that country must make specific provisions to end discrimination and violence faced by persons with disabilities. It also mandates that healthcare systems must make necessary provisions to ensure access to health care to persons with disabilities. However, our health systems in general are not friendly to persons with disabilities.

Guidelines for examination:

- Be aware of the nature and extent of disability that the person has and make necessary accommodations in the space where the examination is carried out.
- Do not make assumptions about the survivor's disability and ask about it before providing any assistance.
- Do not assume that a person with disability cannot give history of sexual violence himself/herself. Because abuse by near and dear ones is common, it is important to not let the history be dictated by the caretaker or person accompanying the survivor. History must be sought independently, directly from the survivor herself/himself. Let the person decide who can be present in the room while history is being sought and examination conducted.
- Make arrangements for interpreters or special educators in case the person has a speech/hearing or cognitive disability. Maintain a resource list with names, addresses and other contact details of interpreters, translators and special educators in and around your hospital, who could be contacted for assistance.
- Even while using the services of an interpreter, communicate with the person directly as much as possible, and be present while the interpreter or special educator is with the person.

- Understand that an examination in the case of a disabled person may take longer. Do not rush through things as it may distress the survivor. Take time to make the survivor comfortable and establish trust, in order to conduct a thorough examination.
- Recognize that the person may not have been through an internal examination before. The procedure should be explained in a language they can understand. They may have limited knowledge of reproductive health issues and not be able to describe what happened to them. They may not know how they feel about the incident or even identify that a crime was committed against them.
- Ensure that adequate and appropriate counselling services are provided to the survivors. If required, the services of an expert may be required in this regard, which should be made available.
- Consent: All persons are ordinarily able to give or refuse to give informed consent, including persons with mental illness and intellectual disabilities, and their informed consent should be sought and obtained before any medical examination. Some specific steps may be required when taking informed consent from persons with mental illness or those with intellectual disabilities. If it is deemed necessary, such persons should (a) be provided the necessary information (what the procedure involves, the reason for doing the procedure, the potential risks and discomforts) in a simple language and in a form that makes it easy for them to understand the information; (b) be given adequate time to arrive at a decision; (c) be provided the assistance of a friend/colleague/care-giver in making the informed consent decision and in conveying their decision to medical personnel. The decision of the person to either give consent or refuse consent with the above supports, to the medical examination, should be respected.

E. People facing caste, class or religion based discrimination

Sexual violence is mostly perpetrated by those in a position of power upon those who are relatively vulnerable. This position of power may be a function of a person's gender, class, caste, religion, ethnicity, sexual orientation and/or other factors. In India, the caste or religion that a person belongs to impacts on the power and influence that they exercise. Women are seen as symbols of honour of their social community. Violating the bodily integrity of women is equated with violating the honour of the entire community and bringing disgrace to it. Health professionals should be aware that while women and girls are specifically targeted during communal or caste conflicts, other members of the targeted community (including young boys) may also be subjected to sexual violence.

Guidelines for examination:

- Do not pass any explicit or implicit comments, or in any other way communicate your personal opinion, about the person's caste or religion while medically treating them.
- Do not ask the person who is being given medical treatment any questions about her religion/caste, except those that are relevant to the nature of violence she has faced or the kind of treatment she requires.

- Do not make assumptions about the person's life, the number of children she has, the kind of treatment that she may be willing to undergo etc.
- In a situation of communal/caste conflict, health professionals should sensitively enquire about and look for signs and symptoms that suggest sexual violence, among all women and girls who access the health system, even where they do not explicitly claim to have suffered sexual violence.
- Some survivors may be willing to talk about the role that their religious or caste identity has played in the commission of the offence. The survivors experience should be listened to and recorded in the Medical Report.
- These are often reports that actions of the Police and other State/administrative functionaries are partisan during communal/caste and other kinds of conflict. This must be kept in mind while providing medical treatment to women in conflict situations, and the actions/instructions of the police/state functionaries should not interfere with the provision of medical treatment to the survivor and the documentation.

GUIDELINES FOR RESPONDING TO CHILDREN

The prevalence of child sexual abuse in India is known to be high. A National Study on Child Abuse conducted by the Ministry of Women and Child Development showed that more than 53 per cent children across 13 states reported facing some form of sexual abuse while 22 per cent faced severe sexual abuse. Both boys and girls reported facing sexual abuse.

Most commonly, abusers are persons who are well known to the child and may even be living in the household. Children are considered soft targets for sexual abuse because they may not realize that they are being abused. Abusers are also known to use chocolates and toys to lure children. Further, children are more easily threatened and less likely to speak out about the abuse.

While the principles of medical examination and treatment for children remains the same as that for adults, it is important to keep some specific guidelines in mind:

- In case the child is under 12 years of age, consent for examination needs to be sought from the parent or guardian.
- Children may be accompanied by the abuser when they come for medical treatment, so be aware and screen when you suspect abuse. In such situations, a female person appointed by the head of the hospital/institution may be called in to be present during the examination.
- 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.
- Specific needs of children must be kept in mind while providing care to child survivors. 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 carer/s of the survivor in addition the survivor themselves.
- 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

OPERATIONAL ISSUES

Every hospital must have a Standard Operating Procedure (SOP) for management of cases of sexual violence:

1. To provide comprehensive services.
2. For the smooth handling of the cases and clarity of roles of each staff.
3. To have uniform practice across all doctors in the hospital.

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

- Any registered medical practitioner can conduct the examination and it is not mandatory for a gynaecologist to examine such a case. 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.
- Providing treatment and necessary medical investigations is the prime responsibility of the examining doctor. 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 in the special room set up 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, and the sexual assault forensic

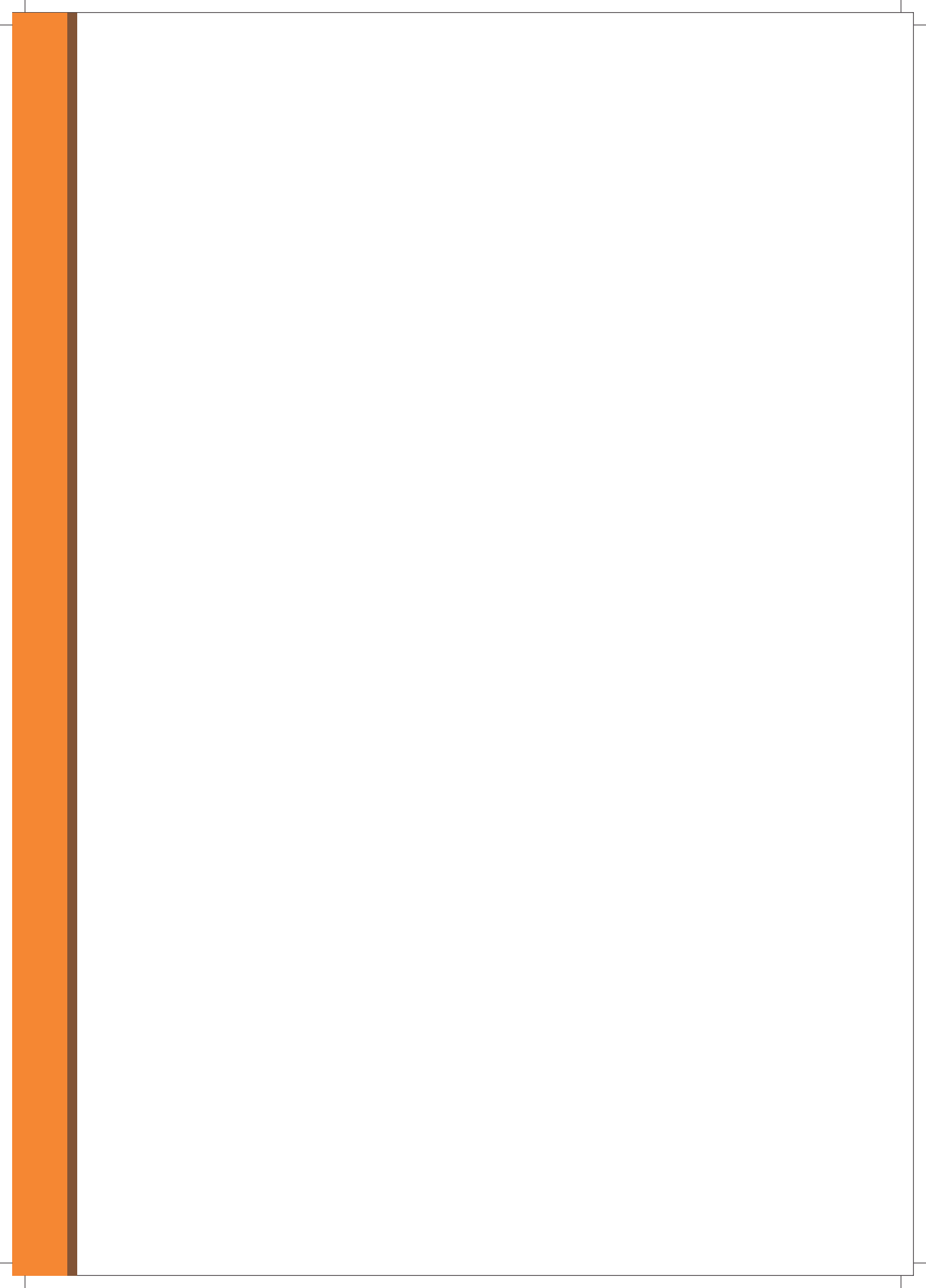
evidence (SAFE) kit containing the following items for collecting and preserving physical evidence following a sexual violence:

- 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 [Ethylenediaminetetraacetic acid (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
- Camera (35mm, digital with colour printer)
- 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, Urine Pregnancy Test (UPT) and medicines. The casualty medical officer must label the case papers for any sexual violence case as “free” so that free treatment is ensured. 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.



MEDICAL EXAMINATION AND REPORTING FOR SEXUAL VIOLENCE

The following guidelines are for health professionals when a survivor of sexual violence reports to a hospital. The guidelines describe in detail the stepwise approach to be used for a comprehensive response to the sexual violence survivor as follows:

- I. Initial resuscitation/ first Aid
- ii. Informed consent for examination, evidence collection, police procedures
- iii. Detailed History taking
- iv. Medical Examination
- v. Age Estimation (physical/dental/radiological) – if requested by the investigating agency.
- vi. Evidence Collection as per the protocol
- vii. Documentation
- viii. Packing, sealing and handing over the collected evidence to police
- ix. Treatment of Injuries
- x. Testing/prophylaxis for STIs, HIV, Hepatitis B and Pregnancy
- xi. Psychological support & counseling
- xii. Referral for further help (shelter, legal support)

Record the name of hospital where the survivor is being examined followed by the following:

2-5. Name, address, age and sex (male/female/other) of the survivor

6-7. Date and time of receiving the patient in the hospital and commencement of examination

8. Name of the person who brought the survivor and relationship to accompanying persons.

12. Informed consent: A survivor may approach a health facility under three circumstances:

- a) on his/her own only for treatment for effects of assault;
- b) with a police requisition after police complaint; or
- c) with a court directive.

- If a person has come directly to the hospital without the police requisition, the hospital is bound to provide treatment and conduct a medical examination with consent of the survivor/parent/guardian (depending on age). A police requisition is not required for this.
- If a person has come on his/her own without FIR, s/he may or may not want to lodge a Complaint but requires a medical examination and treatment. Even in such cases the doctor is bound to inform the police as per law. However neither court nor police can force the survivor to undergo medical examination. It has to be with the informed consent of the survivor/ parent/ guardian (depending on the age). In case the survivor does not want to pursue a police case, a MLC must be made and she must be informed that she has the right to refuse to file FIR. An informed refusal must be documented in such cases.
- If the person has come with a police requisition or wishes to lodge a complaint later, the information about medico-legal case (**MLC**) no. & **police station** should be recorded.
- Doctors are legally bound to examine and provide treatment to survivors of sexual violence. The timely reporting, documentation and collection of forensic evidence may assist the investigation of this crime. Police personnel should not be present during any part of the examination.

In all three circumstances, it is mandatory to seek an **Informed Consent/refusal** for examination and evidence collection. Consent should be taken for the following purposes: examination, sample collection for clinical and forensic examination, treatment and police intimidation.

Doctors shall inform the person being examined about the nature and purpose of examination and in case of child to the child's parent/guardian/ or a person in whom the child reposes trust. This information should include:

- a) The medico-legal examination is to assist the investigation, arrest and prosecution of those who committed the sexual offence. This may involve an examination of the mouth, breasts, vagina, anus and rectum as necessary depending on the particular circumstances.
- b) To assist investigation, 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.
- c) The survivor or in case of child, the parent/guardian/or a person in whom the child reposes trust, has the 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.
- d) As per the law, the hospital/ examining doctor is required/duty bound to inform the police about the sexual offence. However, if the survivor does not wish to participate in the police investigation, it should not result in denial of treatment for sexual violence.

Emphasize that seeking treatment is critical for the survivor's well-being.

- The survivor or guardian may refuse to give consent for any part of examination. In this case the doctor should explain the importance of examination and evidence collection, however the refusal should be respected. It should also be explained that refusal for such examination will not affect/compromise treatment. Such informed refusal for examination and evidence collection must be documented.
- In case there is informed refusal for police intimation, then that should be documented. At the time of MLC intimation being sent to the police, a clear note stating “informed refusal for police intimation” should be made.
- Only in situations, where it is life threatening the doctor may initiate treatment without consent as per section 92 of IPC.
- The consent form must be signed by the person him/herself if s/he is above 12 yrs. of age. Consent must be taken from the guardian/ parent if the survivor is under the age of 12 years.
- In case of persons with mental disability, please refer to section on “Persons with Disabilities”
- The consent form must be signed by the survivor, a witness and the examining doctor.
- Any major 'disinterested', person may be considered a witness

13. Two marks of identification such as moles, scars, tattoos etc., preferably from the exposed parts of the body should be documented. While describing identification mark emphasis should be on size, site, surface, shape, colour, fixity to underlying structures. Left Thumb impression is to be taken in the space provided.

14. Relevant medical/surgical history

- Menstrual history (Cycle length and duration, Date of last menstrual period).If the survivor is menstruating at the time of examination then a second examination is required on a later date in order to record the injuries clearly. Some amount of evidence is lost because of menstruation. Hence it is important to record whether the survivor was menstruating at the time of assault/examination
- Vaccination history is important with regard to tetanus and hepatitis B, so as to ascertain if prophylaxis is required.

15. Sexual violence history

- Be sensitive to the survivor as she has experienced a traumatic episode and s/he may not be able to provide all the details. Explain to him/her that the process of history taking is important for further treatment and for filing a case if needed.
- Create an environment of trust so that the survivor is able to speak out. Do not pass judgmental remarks.

- A relative could be present with the consent of the survivor, if s/he is comfortable.
- Details of the date, time and location of incident of sexual violence should be recorded.
- In case of more than one assailant, their number should be recorded along with the names and relation if known.
- One must note who is narrating the incident- survivor or an informant. If history is narrated by a person other than the survivor herself, his/her name should be noted. Especially if the identity of assailants is revealed it is better to also have a counter-signature of the informant.
- The doctor should record the complete history of the incident, in survivor's own words as it has evidentiary value in the court of law.
- Use of any Physical violence during assault must be recorded with detailed description of the type of violence and its location on the body (eg. Beating on the legs, biting cheeks, pulling hair, kicking the abdomen etc.).
- Note history of injury marks that the survivor may state to have left on the assailant's body as it can be matched eventually with the findings of the assailant's examination.
- If any weapon(s) were used such as sticks, acid burns, gun shots, knife attacks etc.; if the use of drugs/alcohol was involved. Verbal threats should be recorded in survivor's words, eg. harming her or her near and dear ones.
- 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 as swabs taken from such sites can have evidentiary value. Information regarding use of condom during the assault is relevant because in such cases, vaginal swabs and smears would be negative for sperm/semen.
- While recording history of sexual violence, it is important to enquire and record in simple language whether these acts occurred or not. A clear differentiation should be made between a 'negative' and 'not sure' history. If the survivor does not know if a particular act occurred, it should be recorded as "did not know".
- One should not feel awkward in asking for history of the sexual act. If details are not entered it may weaken the survivor's testimony. The details of history are what will also guide the examination, treatment and evidence collection and therefore seeking a complete history is critical to the medical examination process, sample collection for clinical & forensic examination, treatment and police intimation.
- 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.
- Details of clothing worn at the time of assault should be recorded.
- 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.

- If vaginal swabs for detection of semen are being taken then record history of last consensual sexual intercourse in the week preceding the examination. It should be recorded because detection of sperm/semen is a valuable evidence. While seeking such history, explain to the survivor why this information is being sought, because the survivor may not want to disclose such history as it may seem invasive.
- 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.

16. General physical examination

- Record if the person is oriented in space and time and is able to respond to all the questions asked by the doctor. Any signs of intoxication by ingestion or injection of drug/alcohol must be noted.
- Pulse, B.P., respiration, temperature and state of pupils is recorded.
- A note is made of the state of clothing if it is the same as that worn at the time of assault. If it is freshly torn or has stains of blood/ semen/ mud etc.; the site, size, and colour of stains should be described.

17. Examination for injuries

- Presence of injuries is only observed in one third cases of forced sexual intercourse. Absence of injuries does not mean the survivor has consented to sexual activity. As per law, if resistance was not offered that does not mean the person has consented.
- The entire body surface should be inspected carefully for signs of bruises, physical torture injuries, nail abrasions, teeth bite marks, cuts, lacerations, fracture, tenderness, any other injury, boils, lesions, discharge specially on the scalp, face, neck, shoulders, breast, wrists, forearms, medial aspect of upper arms, thighs and buttocks
- Describe all the injuries. Describe the type of injury (abrasion, laceration, incised, contusion etc.), site, size, shape, colour, swelling, signs of healing, simple/grievous, dimensions. Mention possible weapon of infliction such as - hard, blunt, rough, sharp, etc. Refer to Annexure 2 for noting time of injury
- Injuries are best represented when marked on body charts. They must be numbered on the body charts and each must be described in detail.
- Describe any stains seen on the body - the type of stain (blood, semen, lubricant, etc.) its actual site, size and colour. Mention the number of swabs collected and their sites.

18. Local examination of genital parts/other orifices

- A. External genital area and Perineum is observed carefully for evidence of injury, seminal stains and stray pubic hair. Pubic hair is examined for any seminal deposits/ stray hair. Combing is done to pick up any stray hair or foreign material, and sample of pubic hair, and matted pubic hair is taken and preserved. If pubic hair is shaven, a note is made.
- B. In case of female survivors, the vulva is inspected systematically for any signs of recent injury such as bleeding, tears, bruises, abrasions, swelling, or discharge and infection involving urethral meatus & vestibule, labia majora and minora, fourchette, introitus and hymen.
- Examination of the vagina of an adult female is done with the help of a sterile speculum lubricated with warm saline/ sterile water. Gentle retraction allows for inspection of the vaginal canal. Look for bruises, redness, bleeding and tears, which may even extend onto the perineum, especially in the case of very young girls. In case injuries are not visible but suspected; look for micro injuries using good light and a magnifying glass/ colposcope whatever is available. If 1% Toluidine blue is available it is sprayed and excess is wiped out. Micro injuries will stand out in blue. Care should be taken that all these tests are done only after swabs for trace evidence are collected.
 - Per speculum examination is not a must in the case of children/young girls when there is no history of penetration and no visible injuries. The examination and treatment as needed may have to be performed under general anaesthesia in case of minors and when injuries inflicted are severe. If there is vaginal discharge, note its texture, colour, odour.
 - **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.
 - Genital findings must also be marked on body charts and numbered accordingly.
- C. Bleeding/swelling/tears/discharge/stains/warts around the anus and anal orifice must be documented. Per-rectal examination to detect tears/stains/fissures/hemorrhoids in the anal canal must be carried out and relevant swabs from these sites should be collected.
- D. Oral cavity should also be examined for any evidence of bleeding, discharge, tear, odema, tenderness.

19. Collection of samples for hospital laboratory/ clinical laboratory

- If requested by police radiographs of wrist, elbow, shoulders, dental examination etc. can be advised for age estimation. Refer to **Annexure 3** for details on Age estimation.
- For any suspected fracture/injury- appropriate investigation for the relevant part of the body is advised.
- Urine Pregnancy test should be performed by the doctor on duty and the report should be entered.
- Blood is collected for evidence of baseline HIV status, VDRL and HbsAg.

20. Collection of samples for central/ State forensic science laboratory

- After assessment of the case, determine what evidence needs to be collected. It would depend upon nature of assault, time lapsed between assault and examination and if the person has bathed/washed herself since the assault. Please refer to Table in **Annexure 4** indicative of type of evidence to be collected in specific cases.
- If a woman reports within 96 hours (4 days) of the assault, all evidence including swabs must be collected, based on the nature of assault that has occurred. The likelihood of finding evidence after 72 hours (3 days) is greatly reduced; however it is better to collect evidence up to 96 hours in case the survivor may be unsure of the number of hours lapsed since the assault.
- The spermatozoa can be identified only for 72 hours after assault. So if a survivor has suffered the assault more than three days ago, please refrain from taking swabs for spermatozoa. In such cases swabs should only be sent for tests for identifying semen.
- Evidence on the outside of the body and on materials such as clothing can be collected even after 96 hours.
- The nature of swabs taken is determined to a large extent by the history and nature of assault and time lapse between incident and examination. For example, if the survivor is certain that there is no anal intercourse; anal swabs need not be taken.
- Request the survivor to stand on a large sheet of paper, so as to collect any specimens of foreign material e.g. grass, mud, pubic or scalp hair etc. which may have been left on her person from the site of assault/ from the accused. This sheet of paper is folded carefully and preserved in a bag to be sent to the FSL for trace evidence detection.
- Clothes that the survivor was wearing at the time of the incident of sexual violence are of evidentiary value if there is any stains/tears/trace evidence on them. Hence they must be preserved. Please describe each piece of clothing separately with proper labeling. Presence of stains - semen, blood, foreign material etc - should be properly noted. Also note if there are any tears or other marks on the clothes. If clothes are already changed then the survivor must be asked for the clothes that were worn at the time of assault and these must be preserved.
- Always ensure that the clothes and samples are air dried before storing them in their respective packets. Ensure that clothing is folded in such a manner that the stained parts are not in contact with unstained parts of the clothing. Pack each piece of clothing in a separate bag, seal and label it duly.

Body evidence:

- Swabs are used to collect bloodstains on the body, foreign material on the body surfaces seminal stains on the skin surfaces and other stains. Detection of scalp hair and pubic hair of the accused on the survivor's body (and vice-versa) has evidentiary value. Collect loose scalp and pubic hair by combing. Intact scalp and pubic hair is also collected from the survivor so that it can be matched with loose hair collected from the accused. All hair must be collected in the catchment paper which is then folded and sealed.
- If there is struggle during the sexual violence, with accused and survivor scratching each other, then epithelial cells of one may be present under the nails of the other that can be used for DNA detection. Nail clippings and scrapings must be taken for both hands and packed separately. Ensure that there is no underlying tissue contamination while clipping nails.
- Blood is collected for grouping and also helps in comparing and matching blood stains at the scene of crime.
- Collect blood and urine for detection of drugs/alcohol as the influence of drugs/ alcohol has a bearing on the outcome of the entire investigation. If such substances are found in the blood, the validity of consent is called into question. In a given case, for instance, there may not be any physical or genital injuries. In such a situation, ascertaining the presence of drug/alcohol in the blood or urine is important since this may have affected the survivor's ability to offer resistance. Urine sample may be collected in a container to test for drugs and alcohol levels as required.
- Venous blood is collected with the sterile syringe and needle provided and transferred to 3 sterile vials/ vaccutainers for the following purposes: Plain Vial/Vacutainer - Blood grouping and drug estimation, Sodium Fluoride - Alcohol estimation, EDTA - DNA Analysis.
- Collect oral swab for detection of semen and spermatozoa. Oral swabs should be taken from the posterior parts of the buccal cavity, behind the last molars where the chances of finding any evidence are highest.

Genital and anal evidence

- In the case of any suspected seminal deposits on the pubic hair of the woman, clip matted portion of the pubic hair; allow drying in the shade and placing in an envelope.
- Pubic hair of the survivor is then combed for specimens of the offender's pubic hair. A comb must be used for this purpose and a catchment paper must be used to collect and preserve the specimens. Cuttings of the pubic hair are also taken for the purpose of comparison or to serve as control samples. If pubic hair has been shaved, do not fail to make a mention of it in the records.
- Take two swabs from the vulva, vagina, anal opening for ano-genital evidence. Swabs must be collected depending on the history and examination. Swabs from orifices must be collected only if there is a history of penetration. Two vaginal smears are to be prepared on the glass slide provided, air-dried in the shade and sent for seminal fluid/ spermatozoa examination.

- Often lubricants are used in penetration with finger or object, so relevant swabs must be taken for detection of lubricant. Other pieces of evidence such as tampons (may be available as well), which should be preserved.
- Swab sticks for collecting samples should be moistened with distilled water provided.
- Swabs must be air dried, but not dried in direct sunlight. Drying of swabs is absolutely mandatory as there may be decomposition/degradation of evidence which can render it un-usable.
- Vaginal washing is collected using a syringe and a small rubber catheter. 2-3 ml of saline is instilled in the vagina and fluid is aspirated. Fluid filled syringe is sent to FSL laboratory after putting a knot over the rubber catheter.
- While handing over the samples, a requisition letter addressed to the FSL, stating what all samples are being sent and what each sample needs to be tested for should be stated. For example, "Vaginal swab to be tested for semen". This form must be signed by the examining doctor as well as the officer to whom the evidence is handed over.
- Please ensure that the numbering of individual packets is in consonance with the numbering on the requisition form. Specimens sent to the Forensic Science laboratory will not be received unless they are packed separately, sealed, labeled and handed over.

21. Provisional clinical opinion

- 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.
- The provisional opinion must, in brief, mention relevant aspects of the history of sexual violence, clinical findings and samples which are sent for analysis to FSL.
- An inference must be drawn in the opinion, correlating the history and clinical findings.

The following section offers some scenarios about ways to draft a provisional and final opinion. However, this list is not exhaustive and readers are advised to form provisional opinions based on the examples given below.

It should be always kept in mind that normal examination findings neither refute nor confirm the forceful sexual intercourse. Hence circumstantial/other evidence may please be taken into consideration.

Absence of injuries or negative laboratory results may be due to:

- a. Inability of survivor to offer resistance to the assailant because of intoxication or threats
- b. Delay in reporting for examination
- c. Activities such as urinating, washing, bathing, changing clothes or douching which may lead to loss of evidence
- d. Use of condom/vasectomy or diseases of vas

This reasoning must be mentioned while formulating the opinion.

Genital injuries	Physical injuries	Opinion	Rationale why forced penetrative sex cannot be ruled out	What can FSL detect
Present	Present	There are signs suggestive of recent use of force/forceful penetration of vagina/ anus. Sexual violence cannot be ruled out.	Evidence for semen and spermatozoa are yet to be tested by laboratory examinations in case of penile penetration.	Evidence of semen except when condom was used
Present	Absent	There are signs suggestive of recent forceful penetration of vagina/anus.	Evidence for semen and spermatozoa are yet to be tested in case of penile penetration. The lack of physical injuries could be because of the survivor being unconscious, under the effect of alcohol/drugs, overpowered or threatened. It could be because, there was fingering or penetration by object with or without use of lubricant - which is an offence under Sec 375 IPC	Evidence of semen or lubricant except when condom was used
Absent	Present	There are signs of use of force, however vaginal or anal or oral penetration cannot be ruled out.	The lack of injuries could be because of the survivor being unconscious, under the effect of alcohol /drugs, overpowered or threatened or use of lubricant.	Evidence of semen or lubricant
Absent	Absent	There are no signs of use of force; however final opinion is reserved pending availability of FSL reports. Sexual violence cannot be ruled out.	The lack of genital injuries could be because of use of lubricant. The lack of physical injuries could be because of the survivor being unconscious, under the effect of alcohol/drugs, overpowered or threatened. It could also be because, there was fingering or penetration by object with use of lubricant- which is an offence under Sec 375 IPC	Evidence of semen, lubricant and drug/alcohol

22. Treatment guidelines and psychosocial support

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, within 72 hours. If vomiting occurs, repeat within 3 hours. OR 2 tablets COCs Mala D - 2 tablets stat repeated 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 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.

Signature and seal

After the examination the medical practitioner should document the report, formulate opinion, sign the report and handover the report and sealed samples to police under due acknowledgement.

- On the last sheet, mention how many pages are attached. Each page of the report should be signed to avoid tampering.
- It is important that one copy of all documents be given to the survivor as it is his/her right to have this information. One copy to be given to the police and one copy must be kept for hospital records.
- **All evidence needs to be packed and sealed properly in separate envelopes.** The responsibility for this lies with the examining doctor. **All blood samples must be refrigerated until handed over** to next in chain of custody. The hospital has the responsibility of properly preserving samples till handed over to police.
- Each envelope must be labeled as follows

Packet number.....
Name of the hospital & place
Hospital number & date
Police station with MLC number
Name of the person with age & sex
Sample collected
Examination required.....
Date & time signature of doctor with seal

- Chain of custody: The hospital must designate certain staff responsible for handling evidence and no one other than these persons must have access to the samples. This is done to prevent mishandling and tampering. If a fool-proof chain of custody is not maintained, the evidence can be rendered inadmissible in the court of law. A log of handing over of evidence from one 'custodian' to the other must be maintained.

Miscellaneous information

If a woman reports with a pregnancy resulting from an assault, she is to be given the option of undergoing an abortion, and protocols for MTP are to be followed. The products of conception (PoC) may be sent as evidence to the forensic lab (FSL) for establishing paternity / identifying the accused. The examining doctor/AMO/CMO is to contact the respective police station, ask them to collect the DNA Kit from the FSL and bring it to the hospital to coincide with the time of MTP. The DNA Kit is used to collect the blood sample of the survivor. The accompanying DNA Kit forms are to be filled by the examining doctor. A photograph of the survivor is required for this form, and should be arranged for prior to the MTP. The products of conception (PoC) are to be rinsed with normal saline (NOT completely soaked in saline) and collected in a wide-mouthed container with a lid. This sample is to be handed over immediately to the police along with the DNA Kit, or preserved at 4 degree Celsius. It is to be transported by the police in an ice-box, maintaining the temperature at around 4 degree Celsius (2 to 8 degree Celsius) at all times.

23. FINAL OPINION: To be formulated after receiving reports from the FSL

S.No.	Genital	Physical injuries/ diseases	FSL report injuries/ diseases	Final opinion
FOR PENILE PENETRATION				
1.	Present	Present	Positive for presence of semen	There are signs suggestive of forceful vaginal/anal intercourse.
2.	Present	Absent	Positive for presence of semen	There are signs suggestive of forceful vaginal/anal intercourse.
3.	Absent	Present	Positive for presence of semen	There are signs suggestive of forceful vagina/anal intercourse.
4.	Absent	Absent	Positive for presence of semen	There are signs suggestive of vagina/anal intercourse.
5.	Absent	Absent	Positive for drugs/ alcohol and semen	There are signs suggestive of vagina/anal intercourse under the influence of drugs/alcohol.
FOR NON-PENILE PENETRATION				
6.	Present	Present	FSL report is negative for presence of semen/ alcohol/ drugs/lubricant	There are no signs suggestive of vagina/anal intercourse, but there is evidence of physical and genital assault.
7.	Present	Absent	FSL report is negative for presence of semen/ alcohol/ drugs/ lubricant	There are no signs suggestive of vagina/anal intercourse, but there is evidence of genital assault.
8.	Absent	Present	FSL report is negative for presence of semen/ alcohol/ drugs/ lubricant	There are no signs suggestive of vagina/anal intercourse, but there is evidence of physical assault.
9.	Absent	Absent	FSL report is negative for presence of semen/ alcohol/ drugs/ lubricant	There are no signs suggestive of penetration of vagina/anal.
10.	Absent	Absent	FSL report is positive for presence of lubricant only	There is a possibility of vaginal/anal penetration by lubricated object.

OPINION FOR NON-PENETRATIVE ASSAULT

1.	Bite marks present and /or FSL detects salivary stains	There are signs suggestive of evidence of bite mark/s on _____ site(time the injury)
2.	Sucking marks (discoïd, subcutaneous extravasation of blood, with or without bite marks) present and /or FSL detects salivary stains	There are signs suggestive of sucking mark/s on _____ site (time the injury).
3.	Forceful fondling, with presence of bruises or contusions with or without fingernail marks	There are signs suggestive of forceful physical injuries on _____ site (time the injury) (which may be due to fondling)
4.	Only forceful kissing and FSL detects salivary stains	There are signs suggestive of salivary contact (which may be due to kissing)
5.	If the history suggests forced masturbation of the assailant by the survivor and if there is evidence of seminal stains detected on the hands	There are signs suggestive of the survivor of seminal fluid contact (which may be due to masturbation)
6.	In case there are no signs of sucking, licking..... detected, but the history suggests some such form of assault	It is still important to document a good history because the survivor may have had a bath or washed him/herself.

PSYCHO–SOCIAL CARE FOR SURVIVORS/VICTIMS

Clinical guidelines for responding to IPV and sexual assault, WHO, 2013:

Health-care providers should, as a minimum, offer first-line support when women disclose violence. First Line support includes:

- *Ensuring consultation is conducted in private.*
- *Ensuring confidentiality, while informing women of limits of confidentiality.*
- *being non-judgmental and supportive and validating what the woman is saying.*
- *providing practical care and support that responds to her concerns, but does not intrude*
- *asking about her history of violence, listening carefully, but not pressuring her to talk (care should be taken when discussing sensitive topics when interpreters are involved)*
- *helping her access information about resources, including legal and other services that she might think helpful*
- *assisting her to increase safety for herself and her children, where needed*
- *providing or mobilizing social support-*

If doctors are unable to provide first-line support, they should ensure that someone else at the health facility is available to do so.

A set of guidelines based on the above:

Creating an enabling atmosphere and establishing trust

The health professional should

- Speak to survivor in a private space
- Recognize her courage in reaching you as she has overcome several barriers
- Recognise the dilemma faced by survivor in reporting violence. Do not label non-reporting to police as false case.
- Assure the survivor that her treatment will not be compromised
- Inform survivor of available resources, referrals, legal rights so that she can take an informed decision.

- a. Sexual violence is known to cause physical, emotional social and economic consequences which can jeopardize the well-being of survivors and their families. Fear of police investigation procedures, shame related to the sexual violence, lack of support from the community, fear that nobody will believe them and lack of information about negative health consequences may lead survivors to hide such incidents.
- b. Reasons for not wanting to report to police could range from fear about community reactions, fear that nobody would believe them, feelings of shame, threats from perpetrators. With children there could also be a possibility that survivor has not disclosed the assault to parents/guardians.

Facilitation and demystification of medical procedures

The health professional should:

- Prepare the survivor for an internal examination.
- Explain the various stages of the examination.
- Communicate the rationale for referral for X-ray, USG, age estimation amongst others.
 - a. Any incident of sexual violence leads to a feeling of powerlessness amongst survivors. It is therefore important to recognize such covert feelings and explain the purpose of medical examination. Explaining the purpose of internal examination and steps in conducting it can help survivors to make sense of what is happening to them. This can help in regaining control over the situation.
 - b. Currently each health setting may not have all the infrastructure for additional services such as age estimation, laboratory for assessing infections, sonography machines to detect internal injuries/ pregnancy and so on. While making referrals providers must ensure confidentiality and privacy of survivors so that they are not embarrassed due to being identified as a “survivor of sexual violence”.

Addressing survivor’s emotional well-being

The health professional should:

- Recognise that survivors may present varied emotions.
- Encourage the survivor to express her feelings.
- Encourage survivors to seek crisis counseling.
- Assess for suicidal ideation.
- Make a safety assessment and safety plan.
- Involve family and friends in healing process of survivor.

- a. Each survivor copes with the assault differently. Coping is also dependent on whether survivors have parental/ spousal support, community support, job security, economic wherewithal for litigation and several such factors.
- b. Most survivors may not openly express their feelings. A good starting point is to explain range of feelings that survivors may experience such as sleeplessness, anxiety, nervousness, crying spells, feelings of ending one's life, anger and flash backs (RTS, emotional reactions post rape) after an assault. It must also be discussed that such reactions are normal after a traumatic episode.
- c. Crisis counseling can help in overcoming trauma. Providers must explain to the survivors that:
 - i. "rape" is a violation of bodily integrity and not a loss of honour.
 - ii. Assault is an abuse of power and not an act of lust.
 - iii. Positive messaging such as "you are not responsible for rape", "It is not about the clothes you wear"
 - iv. This would enable the survivor to discard feelings of self-blame as it is the perpetrator who should feel ashamed about the act and help in rebuilding survivor's confidence in self.

Safety assessment must be done:

If assessment reveals that she is unsafe and fears reoccurrence of sexual violence health professional must offer her alternate arrangements for stay such as temporary admission in the hospital or referral to shelter services. However some survivors may want to go home particularly if there are children or other dependents. A safety plan must be made which may include suggestions such as making a police complaint about threats received, building support strategy with neighbours/ community and temporary relocation from the old residence.

In situations, where a parent is the perpetrator of sexual abuse:

Survivors under 18 years, are likely to be accompanied by parents / guardians. If a health professional finds out that the perpetrator is the parent, it is critical to involve social worker/counselor from the hospital to discuss safety of the child. As per POCSO Act, 2012 social worker would have to speak with the child to assess whom the child trusts and can be called upon in the hospital itself. Simultaneously social worker would also have to contact police, who in communication with social worker should assess whether the child is in need of protection and care. Likewise the child may be admitted to the hospital for a period of 24 hours till a long term strategy for shelter or child welfare home is made.(Chapter 5, Procedure on reporting offence , POCSO Act, 2012)

Role of family, friends and community :

- Recovery from sexual violence is dependent on the extent of support received from family, friends and community. Health professionals are best suited to engage with family and discuss ways of promoting survivors' well-being. It must be discussed with all care givers that survivor should not be held responsible for the assault. Judgments such as; “she should have been careful”, “she should have resisted” make the survivors journey to recovery more difficult.

In situations of child sexual abuse :

Parents may experience anger, confusion, and guilt. Some may also blame themselves for not having taken adequate care or paid attention to the child. Reiterate that it is the perpetrator who misused their position.

Messages such as:

- Believe that recovery from abuse is possible
- Strategies such as good touch and bad touch can be taught to the child from a very young age, so that if the child is touched inappropriately, she should raise an alarm.
- Restricting child's mobility such as not being allowed to play with friends, not allowed to go to school, not allowed to visit friends, may be perceived by the child as punishment for something the child had no control on.
- Encourage the child to carry on with his/ her daily routine.
- Follow up with crisis counselling so that the child is able to deal with negative feelings and also heal from the abuse.

Dealing with adolescents:

- In cases of adolescent survivors, communicate that she was not at fault, encourage her to share feelings, fears and concerns. For an adolescent, acceptance by family and peers becomes a critical aspect in healing.
- Parents and friends should encourage survivor to seek counselling and crisis intervention support as adolescence is an age of turbulence and the survivor may not be comfortable talking about several issues with parents / carers such as “contraception”, “health sexual relationships”, fears of contracting infections such as STI/HIV, anxiety about how they are perceived by others in the school/ college.
- Carers should exercise caution and not become over protective and restrictive in their approach. This could occur due to fear of recurrence of the assault and fear for survivor's safety. These concerns need to be discussed openly with the survivor and encourage her to make informed decisions.

GUIDELINES FOR INTERFACE WITH OTHER AGENCIES SUCH AS POLICE AND JUDICIARY

Health professionals have to interface with other agencies such as the police, public prosecutors, judiciary and child welfare committees to ensure comprehensive care to survivors of sexual violence. Specific guidelines have been provided in this section for this interface for smooth interagency coordination.

Interface of health systems with police

- A standard operating procedure outlining the interface between the police and health systems is critical. Whenever a survivor reports to the police, the police must take her/him to the nearest health facility for medical examination, treatment and care¹. Delays related to the medical examination and treatment can jeopardize the health of the survivor.
- Health professionals should also ask survivors whether they were examined elsewhere before reaching the current health set up and if survivors are carrying documentation of the same. If this is the case, health professionals must refrain from carrying out an examination just because the police have brought a requisition and also explain the same to them.
- The health sector has a therapeutic role and confidentiality of information and privacy in the entire course of examination and treatment must be ensured. The police should not be allowed to be present while details of the incident of sexual violence, examination, evidence collection and treatment are being sought from the survivor.
- The police cannot interfere with the duties of a health professional. They cannot take away the survivor immediately after evidence collection but must wait until treatment and care is provided.
- In the case of unaccompanied survivors brought by the police for sexual violence examination, police should not be asked to sign as witness in the medico legal form. In such situations, a senior medical officer or any health professional should sign as witness in the best interest of the survivor.
- Health professionals must not entertain questions from the police such as “whether rape occurred”, “whether survivor is capable of sexual intercourse”, “whether the person is capable of having sexual intercourse”. They should explain the nature of medico legal evidence, its limitations as well as the role of examining doctors as expert witnesses.

¹CLA, 2013 and POCSO Act, 2012 both recognize that any registered medical practitioner can carry out a medico legal examination and provide treatment and records of that health provider will stand in the court of law(164A CRPC).

Interface of health systems and public prosecutors

- The doctor must review the notes of the case to equip him/herself with the history that has been provided by the survivor to the doctor, the police and the magistrate. In case there is a difference in the histories, the same should be clarified in advance with the public prosecutor. It is possible that a survivor revealed additional information to the doctor based on her comfort, than the police or the magistrate.
- Examining doctors should prepare themselves well in time with the case documents before reaching the court. Efforts must be made by doctors to dialogue with the public prosecutor and also ask them about the role that they need to play. This would help them to be well prepared and respond to questions asked in the court.

Interface of health systems and the judiciary

- Doctors are termed as “expert witness” by Law. As per 164 A, Cr.P.C., an examining doctor has to prepare a reasoned medical opinion without delay.
- A medical opinion has to be provided on the following aspects –
 - Evidence that survivor was administered drugs/psychotropic substance/alcohol, etc;
 - Evidence that the survivor has an intellectual, or mental disability;
 - Evidence of physical health consequences such as bruises, contusions, contused lacerated; wounds, tenderness, swelling, pain in micturition, pain in defecation, pregnancy, etc.
 - Age of the survivor if she / he does not have a birth certificate or if mandated by the court.
- Absence of injuries on the survivor has to be interpreted by the examining doctor in the courtroom based on medical knowledge and details of the episode provided by survivor to the doctor. Lack of injuries have to be based on the time lapse between the incident and reporting to hospitals, information pertaining to luring the child or adult survivor, or factors such as fear, shock and surprise or other circumstances that rendered the child or adult survivor unable to resist the perpetrator.
- The examining doctor will also have to provide a medical opinion on negative findings related to forensic lab analysis. Absence of negative laboratory results may be due to:
 - Delay in reaching a hospital / health centre for examination and treatment;
 - Activities undertaken by the survivor after the incident of sexual violence such as urinating, washing, bathing, changing clothes or douching which leads to loss of evidence;
 - Use of condom/vasectomy or diseases of vas of the perpetrator, or
 - Perpetrator did not emit semen if it was a penile penetrative sexual act.
- The examining doctor should clarify in the court that normal examination findings neither refute nor confirm whether the sexual offence occurred or not. They must ensure that a medical opinion cannot be given on whether 'rape' occurred because 'rape' is a legal term.

- Examining doctors must also ensure that comments on past sexual history, status of vaginal introitus must not be made as these are unscientific and the courts too have determined them as biased.
- In most health centres because of the constant turnover, the doctor appearing in the court room could be different from the one who carried out the medical management of the survivor. In such instances, it is critical that the doctor making the court appearance be thorough with the case file of the survivor, such as, documentation of history examination findings and clinical inference drawn by the examining doctor.

Interface of the health system with the child welfare committee

- Health professionals should communicate to the child the need for her/him (health professional) to disclose the abuse to the child welfare committee (CWC) so that the latter can take immediate steps to protect the child from abuse.
- Children may be referred for examination by the child welfare committees (CWC). Health professionals may have to orient the CWC about the health consequences of sexual abuse and the importance of provision of complete health care. At the same time they must explain the limitations of medical evidence, thus even if medical evidence of sexual violence is not found, this in no way should be construed as a child lying about sexual abuse.
- Mobile care units (MCUs) must include indicators for assessing whether a child has been subjected to sexual violence. Such an enquiry must be included as a component of routine medical checkups. A standard operating procedure for routine medical examination, care and management must be adopted by all child welfare homes and they must be asked to provide reports of these assessments to the child welfare committee. Health professionals may be called upon for doing this.

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Abbreviation

AIDS	Acquired immunodeficiency syndrome
AMO	Assistant Medical Officer
CEDAW	Convention on the Elimination of Discrimination against Women
CLA, 2013	Criminal Law (Amendment) Act, 2013
CMO	Chief Medical Officer
CRC	Convention of the Rights of the Child
Cr. PC	Code of Criminal Procedure
CRPD	Convention on the Rights of Persons with Disabilities
CWC	Child Welfare Committee
DNA	Deoxyribonucleic acid
EDTA	Ethylenediaminetetraacetic acid
FIR	First Information Report
FSL	Forensic Science Laboratory
HIV	Human immunodeficiency Virus (HIV)
ICESCR	International Covenant on Economic, Social and Cultural Rights
IO	Investigating Officer
IPC	Indian Penal Code
IPD	Indoor Patient Department
IPV	Intimate Partner Violence
JVC	Justice Verma Committee
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MCUs	Mobile Care Units
MLC	Medico Legal Case
MTP	Medically Termination of Pregnancy
OPD	Outdoor Patient Department
POCSO Act, 2012	Protection of Children from Sexual Offences, 2012
PEP	Post exposure prophylaxis
PoC	Products of Conception
RMP	Registered Medical Practitioner
RTS	Rape Trauma Syndrome
SAFE	Sexual Assault Forensic Evidence
SOP	Standard Operating Procedure
STD	Sexually Transmitted Disease
STI	Sexually Transmitted Infections
TG/IS	Transgender and intersex persons
UPT	Urine Pregnancy test
USG	Ultrasonography
VDRL	Venereal Disease Research Laboratory
WHO	World Health Organization

Annexure 1

Legal definitions

List of offences under the IPC and Criminal Law Amendment Act 2013 and the punishment for the offence

Sr. No	Offence and description	Punishment
1.	Section 354 : Assault or criminal force to woman with intent to outrage her modesty	Imprisonment not less than 1 year but which may extend to 5 years and fine .
2.	Section 354 A (1) : Sexual Harassment: A man committing any of the following acts: (i) Physical contact or advances which include unwanted sexual overtures, (ii) Request for sexual favours, (iii) Showing pornography against will, (iv) Making sexually coloured remarks.	Section 354 A (2) : An offence specified in clause (i), (ii) or (iii) of sub-section (1) shall be punished with imprisonment which may extend to three years and/or fine. Section 354 A (3) : An offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment which may extend to one year and/or fine.
3.	Section 354 B : assault or use of criminal force to any woman or abetment to such act with the intention of disrobing or compelling her to be naked.	Section 354 B : imprisonment for a term not less than three years but which may extend to seven years, and shall also be liable to fine.
4.	Section 354 C : Voyeurism - Any man who watches, captures or disseminates the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed.	Section 354 C : on first conviction: imprisonment for a term not less than one year, but which may extend to three years, and fine. On a second or subsequent conviction: imprisonment of for a term not less than three years, but which may extend to seven years, and fine.
5.	Section 354 D: Stalking (1) Any man who: (i) follows a woman and contacts, or attempts to contact such woman repeatedly despite a clear indication of disinterest or (ii) monitors the use by a woman of the internet, email or any other form of electronic communication. Such conduct shall not amount to stalking if (i) it was pursued for the purpose of preventing or detecting crime by a man entrusted with such responsibility by the State (ii) it was pursued under any condition or requirement imposed by any person under any law; or (iii) in the particular circumstances such conduct was reasonable and justified.	On first conviction: with imprisonment for a term which may extend to three years, and fine. On a subsequent conviction: with imprisonment for a term which may extend to five years, and fine.

<p>6. Section 375 - Rape: A man is said to commit "rape" if he—</p> <ul style="list-style-type: none"> a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:— <p>First.—Against her will.</p> <p>Secondly.—Without her consent.</p> <p>Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.</p> <p>Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.</p> <p>Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.</p> <p>Sixthly.—With or without her consent, when she is under eighteen years of age.</p> <p>Seventhly.—When she is unable to communicate consent.</p>	<p>Section 376 (1): Anyone who commits rape shall be punished with rigorous imprisonment which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.</p>
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	<p>Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.</p> <p>Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:</p> <p>Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.</p> <p>Exception 1.—A medical procedure or intervention shall not constitute rape.</p> <p>Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape</p>	
7.	<p>Section 376 (2) In certain situations, the punishment for rape increases. These situations include:</p> <p>When rape is committed</p> <ol style="list-style-type: none"> a) by a police officer within the limits of the police station to which such police officer is appointed; in the premises of any station house; on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer b) by a public servant, commits rape on a woman in such public servant's custody c) by a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area d. by management or on the staff of a jail, remand home or other place of custody commits rape on any inmate of such jail, remand home, place or institution; or e) by management or on the staff of a hospital, commits rape on a woman in that hospital; or 	<p>Section 376 (2) Punishment not less than ten years, but may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.</p>

	<p>f) by a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or</p> <p>g) during communal or sectarian violence</p> <p>h) on a woman who is pregnant,</p> <p>l) on a woman who is under sixteen years of age,</p> <p>j) on a woman who is incapable of giving consent;</p> <p>k) by a person being in a position of control or dominance over a woman</p> <p>l) on a woman who is suffering from mental or physical disability;</p> <p>When rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; When a man commits rape repeatedly on the same woman.</p>	
8.	<p>Section 376 (A) If in the course of commission of an offence under 376 (1) and (2), the man inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state.</p>	<p>Section 376 (A) If in the course of commission of an offence under 376 (1) and (2), the man inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state.</p>
9.	<p>Section 376 (B): Non-consensual sexual intercourse with wife during separation:</p> <p>Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent</p>	<p>Section 376 (B) Imprisonment for a term not less than two years but which may extend to seven years, and fine.</p>
10.	<p>Section 376 (C) Whoever, being in a position of authority or in a fiduciary relationship; or</p> <p>a public servant; or superintendent or manager of a jail, remand home or children's institution; or on the management or staff of a hospital abuses such position or fiduciary relationship to induce or seduce any woman under his charge or present to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape.</p>	<p>Section 376 (C) Rigorous imprisonment for a term not less than five years, but which may extend to ten years, and fine.</p>

11.	<p>Section 376 (D): Gang Rape Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape.</p>	<p>Section 376 (D) Rigorous imprisonment for a term not less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and fine.</p>
12.	<p>Section 376 (E): Repeat Offenders Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted.</p>	<p>Section 376 (E): Imprisonment for life or death.</p>

List of offences under the Protection of children from Sexual Offences Act 2012 (POCSO) and the punishment for the offence

Sr. No	Offence and description	Punishment
1.	<p>Section 3: Penetrative Sexual Assault is defined as –</p> <ul style="list-style-type: none"> • penetration of the penis to any extent into any vagina, urethra, or anus of a child's body, • insertion of an object to any extent into the vagina, urethra, or anus of a child, • manipulating the body of a child so as to cause penetration into the vagina, urethra or anus, and applying the mouth to the vagina, penis, anus or urethra of a child or making a child do any of the above with him or any other person. 	<p>Section 4: Not less than seven years of imprisonment which may extend to imprisonment for life, and liable to be fined.</p>
2.	<p>Section 5: Aggravated Penetrative Sexual Assault- Penetrative sexual assault by a police officer, member of armed forces, public servant, management or staff of remand home, jail, protection home, observation home, hospital (whether government or private) or management or staff of educational or religious institution. It includes penetrative sexual assault committed by any other person:</p> <p>through gang penetrative assault, penetrative sexual assault using deadly weapons, fire, heated substance or corrosive substance, penetrative sexual assault which physically incapacitates the child or causes child to become mentally ill or causes impairment of any kind so as to render the child unable to perform regular tasks temporarily or permanently, causing grievous harm or bodily hurt and injury or injury to the sexual organs of the child, making girl child pregnant as a consequence of sexual assault, inflicting child with HIV or any other life threatening disease or infection, penetrative sexual assault taking advantage of the child's mental or physical disability, penetrative sexual assault more than once, penetrative</p>	<p>Section 6: Not less than ten years of imprisonment which may extend to imprisonment for life, and liable to fine</p>

	<p>sexual assault on a child younger than 12 years, by a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with the parent of the child or who is living in the same or shared household with the child, by the owner / manager or staff of any institution providing services to the child, by a person in a position of trust or authority over the child in an institution or home of the child or anywhere else, committing penetrative sexual assault knowing the child is pregnant, committing penetrative sexual assault on a child and attempt to murder the child, penetrative sexual assault in the course of communal or sectarian violence, by a person 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, penetrative sexual assault and making the child strip or parade naked in public.</p>	
3.	<p>Section 7: Sexual Assault includes - Touching the vagina, penis, anus or breast of the child with sexual intent or making the child touch the vagina, penis, anus or breast of such person or any other person, Any other act with sexual intent which involves physical contact without penetration.</p>	<p>Section 8: Not less than three years of imprisonment which may extend to five years, and liable to fine.</p>
4.	<p>Section 9: Aggravated Sexual Assault - Sexual assault by a police officer, member of armed forces, public servant, management or staff of remand home, jail, protection home, observation home, management or staff of hospital (whether government or private) or management or staff of educational or religious institution. It includes other acts of sexual assault by any person or in other circumstances as mentioned in the second part of section 5, except making a girl child pregnant.</p>	<p>Section 10: Not less than five years of imprisonment which may extend to seven years, and liable to fine.</p>
5.	<p>Section 11: Sexual Harassment of the Child-With sexual intent: Utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such</p>	<p>Section 12: Up to three years of imprisonment and liable to fine.</p>

	word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or 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 shows any object to a child in any form or media for pornographic purposes; or repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or 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 entices a child for pornographic purposes or gives gratification therefore.	
6.	Section 13: Use of Child for Pornographic Purposes: use of child in any form of media (including program or advertisement telecast by television, internet or electronic or printed form, whether or not such program or advertisement is intended for personal use or for distribution), for the purpose of sexual gratification which includes representation of the sexual organs of the child, usage of a child engaged in real or simulated sexual acts (with or without penetration), indecent or obscene representation of a child.	Section 14 (1): Imprisonment up to five years and fine and in the event of subsequent conviction, up to seven years and fine.
7.	Section 14 (2): Penetrative sexual assault (Section 3) by directly participating in pornographic acts.	Section 14 (2): Not less than ten years of imprisonment, which may extend to imprisonment for life, and fine.
8.	Section 14 (3): Aggravated penetrative sexual assault (Section 5) by directly participating in pornographic acts.	Section 14 (3): Rigorous imprisonment for life and fine.
9.	Section 14 (4): Sexual assault (Section 7) by directly participating in pornographic acts.	Section 14 (4): Not less than six years of imprisonment which may extend to eight years, and fine.
10.	Section 14 (5): Aggravated sexual assault (Section 9) by directly participating in pornographic acts.	Section 14 (5): Not less than eight years of imprisonment which may extend to ten years, and fine.

11.	Section 15: Storage of pornographic material in any form, involving a child for commercial purposes.	Section 15: Three years of imprisonment and/or fine.
12.	Section 16: Abetment of an offence: A person abets an offence if he <ul style="list-style-type: none"> • Instigates any person to do that offence • Engages with one or more other person/s 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 Intentionally aids, by any act or illegal omission, the doing of that offence.	Section 17: If the act abetted is committed in consequence of the abetment, the person shall be punished with punishment provided for that offence.
13.	Section 18: Attempt to commit an offence	Section 18: Imprisonment of any description provided for the offence for a term which may extend to one half of the imprisonment for life, or one half of the longest term of imprisonment provided for that offence and/or with fine.
14.	Section 21: Punishment for failure to report or record a case by (i) Any person; (ii) Any person, being in charge of any company or an institution. (This offence does not apply to a child).	Section 21 (i) Imprisonment of either description which may extend to six months or with fine or with both, (ii) Any person, being in charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub section (1) of section 19 in respect of a subordinate under his control shall be punished with imprisonment for a term which may extend to one year and with fine.
15.	Section 22: (1) Punishment for false complaint or false information in respect of an offence committed under sections 3, 5, 7 and section 9 solely with the intention to humiliate, extort or threaten or defame him. (3) False complaint or providing false information against a child knowing it to be false, thereby victimising such child in any of the offences under this Act. (This offence does not apply to a child)	Section 22: (1) Imprisonment for a term which may extend to six months or with fine or with both. (3) Imprisonment which may extend to one year or with fine or with both.

Annexure 2

Time since injury is as follows:

Abrasion

Fresh	Bright red
12 to 24 hours	Reddish scab
2 to 3 days	Reddish brown scab
4 to 7 days	Brownish black scab
After 7 days	Scab dries, shrinks and falls off from periphery

Contusion

Fresh	Red
Few hours to 3 days	Blue
4th day	Bluish black to brown (haemosiderin)
5 to 6 days	Greenish (haematoidin)
7 to 12 days	Yellow (bilirubin)
2 weeks	Normal

Note: This is a reference chart only, as many external and internal factors contribute in the healing of injuries.

If there is deep bruise or contusion, signs of injury will usually show after 48 hours. In case you see signs of injury on the follow up, please record them and attach the documentation to MLC papers.

Laceration: It becomes difficult to estimate exactly the time since injury based on the size and contamination. However, a rough estimate can be done based on signs of healing.

Incised injury:

Fresh	Hematoma formation
12 hours	Edges- red, swollen
24 hours	Scab of dried clot covering the entire area.
After this rough estimate can be based on signs of healing.	

Please do not mention old scars as they are identification marks rather than new injuries due to assault. If mentioning those seems pertinent, add a note on when they were acquired.

Annexure 3

Age estimation

Please bear in mind that age estimation is not required in every case. If there is enough documentary proof, age determination is not required

- Medical age is the mean of physical age, dental age and radiological age of the person.
- Physical age is estimated based on physical growth like height, weight, chest circumference etc and also based on secondary sexual characteristics.
- Tanner staging of breast and pubic hair should be used to determine stage of growth.

Breast Development using Tanner's Index:		
Stage 1	Pre- adolescent: Elevation of papilla only	Less than 9 years
Stage 2	Breast bud stage: Elevation of breast and papilla as a small mound. Enlargement of areola diameter	10-11 years
Stage 3	Further enlargement and elevation of breast and areola with no separation of their contours	12 years
Stage 4	Projection of areola and papilla to form a secondary mound above level of breast	13-14 years
Stage 5	Mature stage: projection of papilla only due to recession of the areola to general contour of breast	15-16 years

Pubic hair staging		
Stage 1	Preadolescent: Vellus over pubes is not further developed than that over the abdominal wall (ie. No pubic hair)	Less than 12 years
Stage 2	Sparse growth of long, slightly pigmented downy hair, straight or slightly curled, chiefly along the labia	12-13 years
Stage 3	Considerably darker hair, coarser, more curled. Hair spreading sparsely over the junction of the pubes	13-14 years
Stage 4	Hair now adult in type, but area covered is still considerably smaller than in adult. No spread over medial surface of thighs.	14-15 years
Stage 5	Adult in quantity and type with distribution to horizontal pattern. Spread to medial surface of thighs.	More than

Dental age is estimated by identifying the total number of teeth, how many and which among them are temporary and which are permanent. It is also essential to identify which is the last tooth erupted and based on charts we can estimate the dental age by noting the age corresponding to the tooth last erupted.

Count the total number of teeth and also differentiate which of them are temporary or permanent.

1. P - for permanent
2. T - for temporary
3. y - for erupted
4. X - not erupted

Eruption of teeth

Temporary teeth (Rule of halves)

- Lower central incisors - 5 to 6 months
- Upper central incisors - 6 to 7 months
- Upper lateral incisors - 7 to 8 months
- Lower lateral incisors - 8 to 9 months
- First molars - 1 year
- Canines - 1 ½ years
- Second molars - 2 to 2 ½ years

Permanent teeth

- First molars - 6 to 7 years
- Central incisors - 7 to 8 years
- Lateral incisors - 8 to 9 years
- First premolars - 9 to 10 years
- Second premolars - 10 to 11 years
- Canines - 11 to 12 years
- Second molars - 12 to 14 years
- Third molars - 17 to 25 years

Temporary teeth Smaller Shiny Vertical upper incisors Smooth incisor edge Worn out cusps in molars Twenty - 2102 (Incisor, Canine, premolar, molar)	Permanent teeth Larger Lusterless Forward & downward upper incisors Serrated incisor edge Prominent cusps in molars Thirty two - 2123 (Incisor, Canine, premolar, molar)
---	--

Note: This a reference chart only, as many external and internal factors contribute in the eruption of teeth.

Radiological age:

Radiological age is estimated by looking for appearance of ossification centers, fusion of those with the shaft, fusion of sutures etc. for this we have to take radiographs of various joints to look for these findings of ossification centers.

Important changes at various ages in joints visible radiologically.

12 years	Hip joint (center for lesser trochanter appears 10 to 12 yrs) Elbow joint (center for lateral epicondyle appears 11 to 12 yrs) Wrist joint (center for pisiform appears 10 to 12 years)
14 years	Hip joint (center for iliac crest appears 14 yrs) Elbow joint (center for radial tuberosity appears 14yrs)
16 years	Hip joint (center for ischial tuberosity appears 16 yrs)
18 years	Shoulder joint (all centers of upper end of humerus fuse with shaft) Wrist joint (all centers of lower end of radius and ulna fuse with shaft) Hip joint (center for iliac crest fuses with ilium)
21 years	Hip joint (center for ischial tuberosity fuses with the ischial body)

Note: This is a reference chart only, as many external and internal factors contribute in the fusion of ossification centers.

Annexure 4

Table indicative of type of evidence to be collected

History of sexual violence	Type of swab	Purpose	Points to consider
Peno-vaginal	Vaginal swabs	- Semen/sperm detection - lubricant - DNA	- whether ejaculation occurred inside vagina or outside - use of condom
	Body swabs	- semen/sperm detection - saliva (in case of sucking/licking)	- if ejaculation occurred outside
Peno anal	Anal swabs	- Semen/sperm detection - DNA - lubricant - faecal matter	- whether ejaculation occurred inside anus or outside - use of condom
	Body swabs	- semen/sperm detection - saliva (in case of sucking/licking)	- if ejaculation occurred outside
Peno oral	Oral swabs	- Semen/sperm detection - DNA - saliva	- whether ejaculation occurred inside mouth or outside - use of condom
	Body swabs	- semen/sperm detection - saliva (in case of sucking/licking)	- if ejaculation occurred outside
Use of objects	Swab of the orifice (anal, vaginal and/or oral)	Lubricant	Detection of lubricant used if any
Use of body parts (fingering)	Swab of the orifice (anal, vaginal and/or oral)	Lubricant	
Masturbation	Swab of orifice/body part	- Semen/sperm detection - DNA - lubricant	- whether ejaculation occurred or not - if ejaculated in orifice or body parts

Forensic evidence is likely to be found only upto 96 hours after the incident.

PART II

PROFORMA FOR MEDICO-LEGAL EXAMINATION OF SURVIVORS/VICTIMS OF SEXUAL VIOLENCE

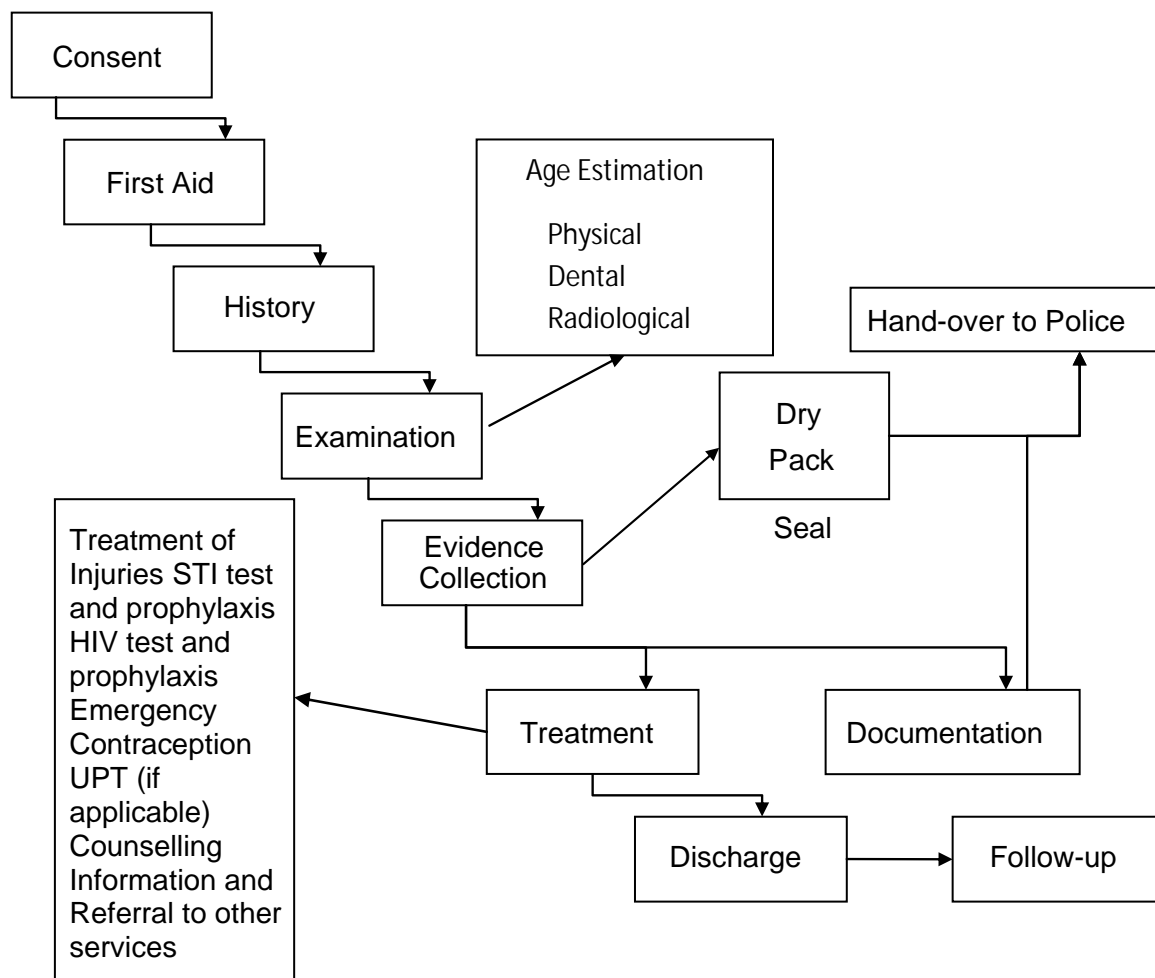
ONE PAGE INSTRUCTIONS FOR DOCTORS

The examining doctor should carefully read the Guidelines for responding to survivors of sexual violence issued by the MoHFW, and should be well aware of the comprehensive care to be provided.

1. **Informed consent:** Doctors shall inform the person being examined about the nature and purpose of examination and in case of child to the child's parent/guardian/person in whom the child reposes trust. This information should include:
 - a. The medico-legal examination is to assist the investigation, arrest and prosecution of those who committed the sexual offence. This may involve an examination of the mouth, breasts, vagina, anus and rectum.
 - b. To assist investigation, 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.
 - c. The survivor or in case of child, the parent/guardian/person in whom the child reposes trust, has the 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.
 - d. As per the law, the hospital/ examining doctor is required to inform the police 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.
2. 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.
3. 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.
4. 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. Please refer to Section VI Point 21 of Guidelines.

5. Opinion: The issue of whether an incident of rape/sexual assault occurred is a legal issue and not a medical diagnosis. Consequently, 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.
- 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.
- Absence of injuries may be due to:
 - o Inability of survivor to offer resistance to the assailant because of intoxication or threats
 - o Delay in reporting for examination

The following are the components of a comprehensive health care response to sexual violence and must be carried out in all cases:



Medico-legal Examination Report of Sexual Violence

1. Name of the Hospital OPD No. Inpatient No
2. Name D/o or S/o (where known).....
3. Address.....
4. Age (as reported) Date of Birth (if known).....
5. Sex (M/F/Others)
6. Date and Time of arrival in the hospital
7. Date and Time of commencement of examination.....
8. Brought by..... (Name & signatures)
9. MLC No.Police Station.....
10. Whether conscious, oriented in time and place and person.....
11. Any physical/intellectual/psychosocial disability

(Interpreters or special educators will be needed where the survivor has special needs such as hearing/speech disability, language barriers, intellectual or psychosocial disability.)

12. Informed Consent/refusal

I.....D/o or S/o.....

hereby give my consent for:

- | | | |
|--|------------------------------|-----------------------------|
| a) medical examination for treatment | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b) this medico legal examination | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| c) sample collection for clinical & forensic examination | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I also understand that as per law the hospital is required to inform police and this has been explained to me.

I want the information to be revealed to the police Yes No

I have understood the purpose and the procedure of the examination including the risk and benefit, explained to me by the examining doctor. My right to refuse the examination at any stage and the consequence of such refusal, including that my medical treatment will not be affected by my refusal, has also been explained and may be recorded. Contents of the above have been explained to me in language with the help of a special educator/interpreter/support person (circle as appropriate)

If special educator/interpreter/support person has helped, then his/her name and signature.....

Name & signature of survivor or parent/Guardian/person in whom the child reposes trust in case of child (<12 yrs)

.....
.....
.....

With date, time & place

Name & signature/thumb impression of Witness

.....
.....
.....

With Date, time and place

13. Marks of identification (Any scar/mole)

(1)
(2)



Left Thumb impression

14. Relevant Medical/Surgical history

Onset of menarche (in case of girls) Yes No Age of onset.....
Menstrual history – Cycle length and duration Last menstrual period.....
Menstruation at the time of incident - Yes/ No, Menstruation at the time of examination - Yes/ No
Was the survivor pregnant at time of incident - Yes/No, If yes duration of pregnancy weeks
Contraception use: Yes/No..... If yes – method used:
Vaccination status – Tetanus (vaccinated/not vaccinated), Hepatitis B (vaccinated/not vaccinated)

15 C.

- i. Emotional abuse or violence if any (insulting, cursing, belittling, terrorizing).....
.....
- ii. Use of restraints if any
- iii. Used or threatened the use of weapon(s) or objects if any.....
.....
- iv. Verbal threats (for example, threats of killing or hurting survivor or any other person in whom the survivor is interested; use of photographs for blackmailing, etc.) if any:
.....
- v. Luring (sweets, chocolates, money, job) if any:
- vi. Any other:.....

15 D.

- i. Any H/O drug/alcohol intoxication:
- ii. Whether sleeping or unconscious at the time of the incident:

15 E. If survivor has left any marks of injury on assailant/s, enter details:

15 F. Details regarding sexual violence:

Was penetration by penis, fingers or object or other body parts (Write Y=Yes, N=No, DNK=Don't know) Mention and describe body part/s and/or object/s used for penetration.

	Penetration			Emission of Semen		
	By Penis	By body part of self or assailant or third party (finger, tongue or any other)	By Object	Yes	NO	Don't know
Orifice of Victim						
Genitalia (Vagina and/or urethra)						
Anus						
Mouth						

Oral sex performed by assailant on survivor	Y	N	DNK
Forced Masturbation of self by survivor	Y	N	DNK
Masturbation of Assailant by Survivor, Forced Manipulation of genitals of assailant by survivor	Y	N	DNK
Exhibitionism (perpetrator displaying genitals)	Y	N	DNK
Did ejaculation occur outside body orifice (vagina/anus/mouth/urethra)?	Y	N	DNK

If yes, describe where on the body			
Kissing, licking or sucking any part of survivor's body	Y	N	If Yes, describe
Touching/Fondling	Y	N	If Yes, describe
Condom used*	Y	N	DNK
If yes status of condom	Y	N	DNK
Lubricant used*	Y	N	DNK
If yes, describe kind of lubricant used			
If object used, describe object:			
Any other forms of sexual violence			

* Explain what condom and lubricant is to the survivor

Post incident has the survivor	Yes/No/Do Not know	Remarks
Changed clothes Changed undergarments Cleaned/washed clothes Cleaned/washed undergarments Bathed Douched Passed urine Passed stools Rinsing of mouth/Brushing/ Vomiting (Circle any or all as appropriate)		

Time since incident..... H/o vaginal/anal/oral bleeding/discharge prior to the incident of sexual violence.....

H/o vaginal/anal/oral bleeding/discharge since the incident of sexual violence.....

H/o painful urination/ painful defecation/ fissures/ abdominal pain/pain in genitals or any other part since the incident of sexual violence

16. General Physical Examination-

- i. Is this the first examination.....
- ii. Pulse..... BP.....
- iii. Temp.....Resp. Rate.....
- iv. Pupils
- v. Any observation in terms of general physical wellbeing of the survivor.....

17. Examination for injuries on the body if any

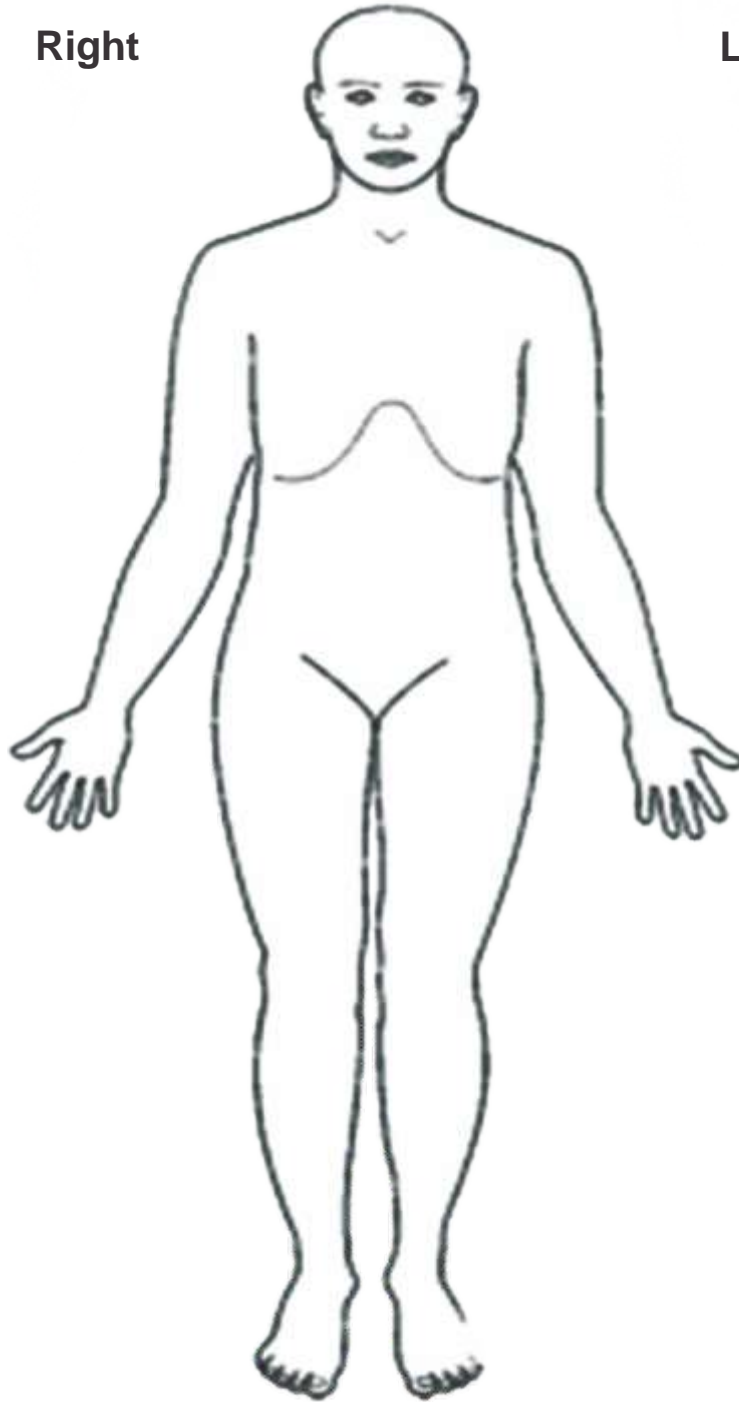
The pattern of injuries sustained during an incident of sexual violence may show considerable variation. This may range from complete absence of injuries (more frequently) to grievous injuries (very rare).

(Look for bruises, physical torture injuries, nail abrasions, teeth bite marks, cuts, lacerations, fracture, tenderness, any other injury, boils, lesions, discharge specially on the scalp, face, neck, shoulders, breast, wrists, forearms, medial aspect of upper arms, thighs and buttocks) Note the Injury type, site, size, shape, colour, swelling signs of healing simple/grievous, dimensions.)

Scalp examination for areas of tenderness (if hair pulled out/ dragged by hair)	
Facial bone injury: orbital blackening, tenderness	
Petechial haemorrhage in eyes and other places	
Lips and Buccal Mucosa / Gums	
Behind the ears	
Ear drum	
Neck, Shoulders and Breast	
Upper limb	
Inner aspect of upper arms	
Inner aspect of thighs	
Lower limb Buttocks	
Other, please specify	

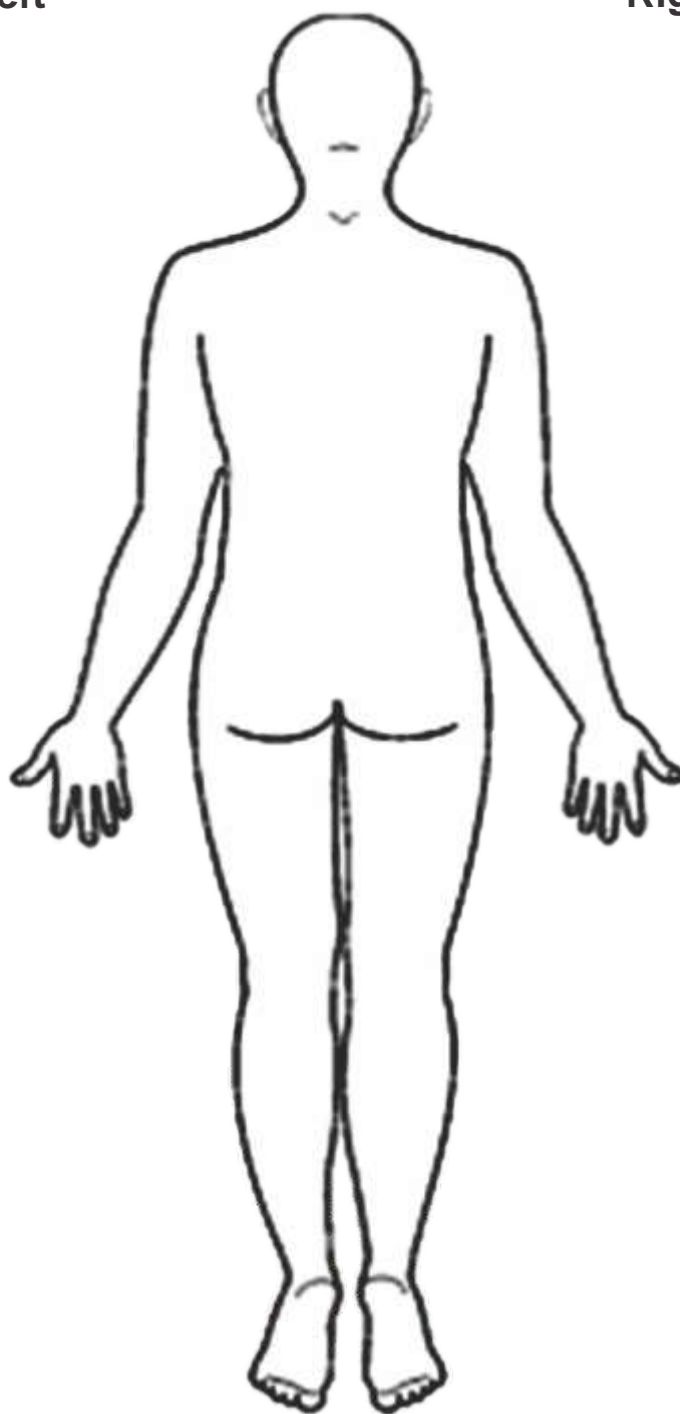
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18. Local examination of genital parts/other orifices*:

A. External Genitalia: Record findings and state NA where not applicable.

Body parts to be examined	Findings	
Urethral meatus & vestibule		
Labia majora		
Labia minora		
Fourchette & Introitus		
Hymen Perineum		
External Urethral Meatus		
Penis		
Scrotum		
Testes		
Clitoropenis		
Labioscrotum		
Any Other		

*** Per/Vaginum /Per Speculum examination should not be done unless required for detection of injuries or for medical treatment.**

P/S findings if performed

P/V findings if performed

Record reasons if P/V of P/S examination performed

C. Anus and Rectum (encircle the relevant)

Bleeding/ tear/ discharge/ oedema/ tenderness

D. Oral Cavity - (encircle the relevant)

Bleeding/ discharge/ tear/oedema/ tenderness

19. Systemic examination:

Central Nervous System:

Cardio Vascular System:

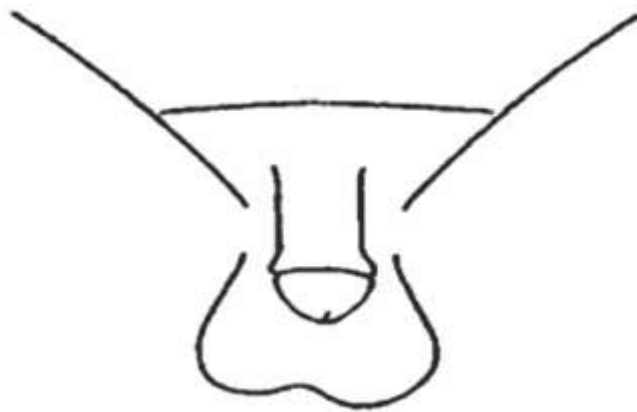
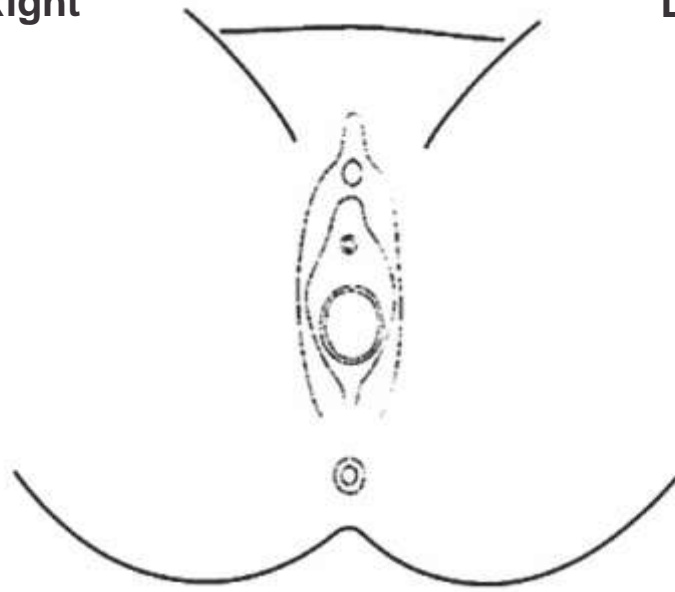
Respiratory System:

Chest:

Abdomen:

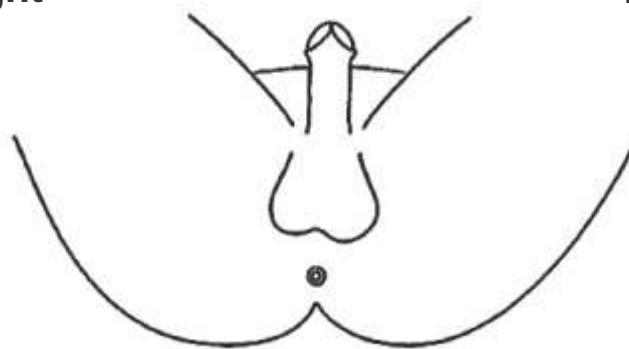
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20. Sample collection/investigations for hospital laboratory/ Clinical laboratory

- 1) Blood for HIV, VDRL, HbsAg
- 2) Urine test for Pregnancy/
- 3) Ultrasound for pregnancy/internal injury
- 4) X-ray for Injury

21. Samples Collection for Central/ State Forensic Science Laboratory

- 1) Debris collection paper
- 2) Clothing evidence where available – (to be packed in separate paper bags after air drying)

List and Details of clothing worn by the survivor at time of incident of sexual violence

3) Body evidence samples as appropriate (duly labeled and packed separately)

	Collected/Not Collected	Reason for not collecting
Swabs from Stains on the body (blood, semen, foreign material, others)		
Scalp hair (10-15 strands)		
Head hair combing		
Nail scrapings (both hands separately)		
Nail clippings (both hands separately)		
Oral swab		
Blood for grouping, testing drug/alcohol intoxication (plain vial)		
Blood for alcohol levels (Sodium fluoride vial)		
Blood for DNA analysis (EDTA vial)		
Urine (drug testing)		
Any other (tampon/sanitary napkin/condom/object)		

4) Genital and Anal evidence (Each sample to be packed, sealed, and labeled separately-to be placed in a bag)

* Swab sticks for collecting samples should be moistened with distilled water provided.

	Collected/Not Collected	Reason for not collecting
Matted pubic hair		
Pubic hair combing (mention if shaved)		
Cutting of pubic hair (mention if shaved)		
Two Vulval swabs (for semen examination and DNA testing)		
Two Vaginal swabs (for semen examination and DNA testing)		
Two Anal swabs (for semen examination and DNA testing)		
Vaginal smear (air-dried) for semen examination		
Vaginal washing		
Urethral swab		
Swab from glans of penis/clitoropenis		

*Samples to be preserved as directed till handed over to police along with duly attested sample seal.

22. Provisional medical opinion

I have examined (name of survivor).....M/F/Other.....aged..... reporting_ (type of sexual violence and circumstances)....., XYZ days/hours after the incident, after having (bathed/douched etc)..... My findings are as follows:

- Samples collected (for FSL), awaiting reports
- Samples collected (for hospital laboratory)
- Clinical findings
- Additional observations (if any)

23. Treatment prescribed:

Treatment	Yes	NO	Type and comments
STI prevention treatment			
Emergency contraception			
Wound treatment			
Tetanus prophylaxis			
Hepatitis B vaccination			
Post exposure prophylaxis for HIV			
Counselling			
Other			

24. Date and time of completion of examination

This report contains number of sheets and number of envelopes.

Signature of Examining Doctor

Name of Examining Doctor

Place:

Seal

25. Final Opinion (After receiving Lab reports)

Findings in support of the above opinion, taking into account the history, clinical examination findings and Laboratory reports of bearing identification marks described above, hours/ days after the incident of sexual violence, I am of the opinion that:

Signature of Examining Doctor

Name of Examining Doctor

Place:

Seal

COPY OF THE ENTIRE MEDICAL REPORT MUST BE GIVEN TO THE SURVIVOR/ VICTIM FREE OF COST IMMEDIATELY

Complaints can also be sent in person,
by post, through messenger or
any other means to the following
address:

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
(NCPCR)
5th Floor, Chandralok Building
36, Janpath, New Delhi-110001 India
visit <http://www.ncpcr.gov.in>

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NCPCR POCSO e-box on
www.ncpcr.gov.in
E-mail id: pocsoebox-ncpcr@gov.in
Mobile No. 9868235077

In any emergency please contact:
Police: 100, Childline 1098

Contact details of State Commissions for Protection of Child Rights

Sr.	State/UT	Telephone No.	Email Id
1.	A & N Islands	03192-232799	utepcr.ani@gmail.com
2.	Andhra Pradesh	0863-2443223/2445030	scpcrandhrapradesh@gmail.com / aparna.up@ap.gov.in
3.	Arunachal Pradesh	0360-2290549	chairperson@arunachalwomencommission.in
4.	Assam	0361-2638654/2733892	sunita_chang@hotmail.com / ascpcr@rediffmail.com
5.	Bihar	0612-2217188/2211718	scpcr.bihar@gmail.com
6.	Chandigarh	0172-2617031	chairpersoncpcr@gmail.com
7.	Chhattisgarh	0771-2420093/94	cgsccr@gmail.com
8.	D & N Haveli	0260-2642721	secysw-dd@nic.in
9.	Delhi	011-23862684/23862685	cp.dpcr@gmail.com / dpcr@hotmail.com
10.	Goa	0832-2421870/2419415	drkirtani@gmail.com / sect-scpcr.goa@nic.in
11.	Gujarat	079-23255669	jagrutipandya@gmail.com / gscpcr@gmail.com
12.	Haryana	0172-2560349	scpcrhry@gmail.com
13.	Himachal Pradesh	0177-2622033/2622003	kirandhanta25@gmail.com / socialjesececyp-hp@nic.in ,
14.	Jharkhand	0651-2223544/2223545	cp.jscpcr@gmail.com / artikujur.jp@gmail.com
15.	Karnataka	080-22115291/92	kripaalva1@gmail.com / kscpcr@gmail.com
16.	Kerala	0471-2326603	cp.cpcr@kerala.gov.in / childrights.cpcr@kerala.gov.in
17.	Lakshadweep	04892-222401	lak-cdpo@nic.in / wcdkvt@gmail.com
18.	Madhya Pradesh	0755-2559900/ 03-06	mpecpcr@gmail.com
19.	Maharashtra	022-24920894/95/97	msecpcr@gmail.com / womenchild@gmail.com
20.	Manipur	0385-2445760/2053461	ssk_sharma@hotmail.com / mecpcrmanipur@gmail.com
21.	Meghalaya	0364-2500175/252102	msecpcrcp@gmail.com
22.	Mizoram	0389-2322671	socdepimiz@gmail.com
23.	Nagaland	----	meilapongener@yahoo.co.in
24.	Odisha	0647-2394041	kasturi_m@hotmail.com
25.	Puducherry	0413-2244964/2242621	socwel.pon@nic.in / directorofsocialwelfare@yahoo.com
26.	Punjab	0172-2740811	sukeshkalia@yahoo.com / scpcrpunjab@gmail.com
27.	Rajasthan	0141-2708980/2709319	mananc73@gmail.com / rsccpcr.jaipur@gmail.com
28.	Sikkim	03592-208217	legalcell406@gmail.com
29.	Tamil Nadu	044-26421359/ 26425082,	mpnirmalab@yahoo.com / scpcrtn@gmail.com
30.	Telangana	040-233733665	scpcrandhrapradesh@gmail.com
31.	Tripura	0381-2329150	tcpcr@gmail.com / dswc_agt@gmail.com
32.	Uttarakhand	0135-2775813-16/ 2775909	yogendra_khanduri@rediffmail.com scpcr.uk@gmail.com
33.	Uttar Pradesh	0522-2308538/2239066	upbalaavog@gmail.com
34.	West Bengal	033-23560385	wbsccpcr@gmail.com

Disclaimer:

Note-Though all efforts have been made to ensure accuracy, however, the user of the User Handbook is advised to refer to the Protection of Children from Sexual Offences Act, 2012 and the Juvenile Justice (Care and Protection of Children) Act, 2015.