

State Commission For Protection of Child Rights BIHAR



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POCSO
made simple



Protection of Children Against Sexual Offences (POCSO)



State Commission For Protection of Child Rights
BIHAR

Introduction

Indian society is predominantly patriarchal in nature and women and children are treated as the property of the family. When it comes to children both parents and teachers adopt harsh methods of disciplining them and treat them as they please. People believe in the old saying “Spare a rod and spoil the child”, the underlying belief is that physical punishment encourages discipline in children and it is for their betterment in the long-run. There is enough scientific proof to the contrary and evidence suggests that sometimes it is parent's inability to raise their children, and their frustrations find a manifestation in the form of beating them or causing other physical harm. While the Constitution of India guarantees many fundamental rights to the children, the approach to ensure the fulfilment of these rights was more needs based rather than rights based. The transition to the rights based approach in the Government and civil society is still evolving.

Child sexual abuse is the worst form of abuse among all kinds of violations against children. To deal with child sexual abuse cases, the Government of India has brought in a special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act has come into force with effect from 14th November, 2012 along with the Rules framed there under. The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child -friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The Act also defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non -penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, like a family member, police officer, teacher, or doctor. People who traffick children for sexual purposes are also punishable under the provisions relating to abetment in the said Act. The said Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine. In keeping with the best international child protection standards, the

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

The said Act also casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child. The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor. There is also a provision for Special Courts that conduct the trial in camera and without revealing the identity of the child, in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video link rather than in a courtroom. Above all, it stipulates that a case of child sexual abuse must be disposed off within one year from the date the offence is reported. It also provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

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

be implemented with the active participation of the State Governments. Under Section 39 of the said Act, the State Government is required to frame guidelines for the use of persons including non-governmental organisations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage. Nevertheless Model Guidelines are formulated by the Central Government, based on which the State Governments can then frame more extensive and specific guidelines as per their specific needs.

The State Commission for Protection of Child Rights ,Bihar has the responsibility to protect and safeguard the child Rights and has a monitoring responsibility of the Protection of Children from sexual offences Act 2012, under sec 44, Rule 6 of the Central Rules. In this background a small booklet on various issues related to Child Sexual Abuse and POCSO are prepared in a simple, crisp and lucid form so as to enable various stakeholders quickly grasp various nuances of the ACT. I sincerely hope that it serves the purpose of bringing awareness on the subject and aids in better implementation of the Act.

Dr. N. Vijaya Lakshmi, IAS, Ph.D

Secretary

Bihar State Commission for Protection of Child Rights

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POCSO

(Protection of Children Against Sexual Offences)



Child sexual abuse is a form of child abuse in which an adult or older adolescent uses a child for sexual stimulation. Forms of child sexual abuse include asking or pressuring a child to engage in sexual activities (regardless of the outcome), indecent exposure (of the genitals, female nipples, etc.) to a child with intent to gratify their own sexual desires, or to intimidate or groom the child, physical sexual contact with a child, or using a child to produce child pornography.

The effects of child sexual abuse can include depression, post-traumatic stress disorder, anxiety, complex post-traumatic stress disorder, propensity to further victimization in adulthood and physical injury to the child, among other problems. Sexual abuse by a family member is a form of incest, and can result in more serious and long-term psychological trauma, especially in the case of parental incest.

The global prevalence of child sexual abuse has been estimated at 19.7% for females and 7.9% for males, according to a 2009 study published in Clinical Psychology Review that examined 65 studies from 22 countries. Using the available data, the highest prevalence rate of child sexual abuse geographically was found in Africa (34.4%), primarily because of high rates in South Africa; Europe showed the lowest prevalence rate (9.2%); America and Asia had prevalence rates between 10.1% and 23.9%. In the past, other research has concluded similarly that in North America, for example, approximately 15% to 25% of women and 5% to 15% of men were sexually abused when they were children. Most sexual abuse offenders are acquainted with their victims; approximately 30% are relatives of the child, most often brothers, fathers, uncles or cousins; around 60% are other acquaintances such as 'friends' of the family, babysitters, or neighbors; strangers are the offenders in approximately 10% of child sexual abuse cases. Most child sexual abuse is committed by men. Some sources report that most offenders who sexually abuse prepubescent children are pedophiles but some offenders do not meet the clinical diagnosis standards for pedophilia.



Under the law, child sexual abuse is an umbrella term describing criminal and civil offenses in which an adult engages in sexual activity with a minor or exploits a minor for the purpose of sexual gratification. The American Psychiatric Association states that "children cannot consent to sexual activity with adults", and condemns any such action by an adult: "An adult who engages in sexual activity with a child is performing a criminal and immoral act which never can be considered normal or socially acceptable behavior."

The Indian scenario

Nineteen percent of the world's children live in India, which constitutes 42 percent of India's total population. According to one assumption 40 percent of these children are in need of care and protection, which indicates the extent of the problem. In a country like India with its multicultural, multi-ethnic and multi-religious population, the problems of socially marginalized and economically backward groups are immense. Within such groups the most vulnerable section is always the children. In 2007 the Ministry of Women and Child Development published the "Study on Child Abuse: India 2007". It sampled 12447 children, 2324 young adults and 2449 stakeholders across 13 states. It looked at different forms of child abuse: physical abuse, sexual abuse and emotional abuse and girl child neglect in five evidence groups, namely, children in a family environment, children in school, children at work, children on the street and children in institutions.

The study's main findings included: 53.22% of children reported having faced sexual abuse. Among them 52.94% were boys and 47.06% girls. Andhra Pradesh, Assam, Bihar and Delhi reported the highest percentage of sexual abuse among both boys and girls, as well as the highest incidence of sexual assaults. 21.90% of child respondents faced severe forms of sexual abuse, 5.69% had been sexually assaulted and 50.76% reported other forms of sexual abuse. Children on the street, at work and in institutional care reported the highest incidence of sexual assault. The study also reported that 50% of abusers are known to the child or are in a position of trust and responsibility and most children had not reported the matter to anyone.

While on the one hand girls are being killed even before they are born, on the other hand children who are born and survive suffer from a number of violations. The world's highest number of working children is in India. To add to this, India has the world's largest number of sexually abused children, with a child below 16 years raped every 155th minute, a child below 10 every 13th hour and one in

every 10 children sexually abused at any point of time. Despite years of lack of any specific child sexual abuse laws in India, which treated them separately from adults in case of sexual offense, the 'Protection of Children Against Sexual Offences Bill, 2011' was passed by the Indian parliament on May 22, 2012.

Why a Separate Law on Child Sexual Abuse?

Until 2012, provisions of the Indian Penal Code, 1860 (IPC), Immoral Traffic (Prevention) Act, 1956 (ITPA), and Juvenile Justice (Care and Protection of Children) Act 2000 (JJ Act) applied to sexual offences against children.

- The IPC is gender specific, that is, only a woman or a girl can file a complaint of rape or sexual assault against a man.
- With regard to sexual offences against men and boys, the IPC does not distinguish between consensual intercourse between adults and forced intercourse "against the order of nature."
- The IPC until 2013 only covered 'rape' (defined as penetration of the penis into the vagina) by a man of a woman. Now following the Criminal Law Amendment in 2013, the IPC covers a range of sexual offences against women. However, the IPC does not distinguish between women and girl children in terms of the needs of girl children for special procedures during the course of the trial.
- The ITPA applies only to cases of child prostitutions.
- The Juvenile Justice (Care and Protection of Children) Act does not explicitly provide penal provisions for sexual abuse of children.

Key Features

- The POCSO Act is gender neutral. Both boys and girls can be victims/survivors of rape and/or sexual assault under the POCSO Act.
- The definition of sexual offences is broad and not restricted to rape, which is limited to penetration of the penis into the vagina. The Act protects children from offences of sexual assault, sexual harassment, and pornography- for example, Penetration by object touching with sexual intent, or showing pornography to the child.
- The POCSO Act ensures effective access to justice. The Act provides for the establishment of special procedures for reporting of cases, special procedures for recording statement of the child victim, and Special Courts for the trial of such offences.



- The POCSO Act makes abetment of, and attempt to commit an offence punishable.

Who can complain? (Section 19 and section 20)

- The Act provides for mandatory reporting. Any person (including the child) who has apprehension that an offence is likely to be committed, or has knowledge that an offence is likely to be committed, or has knowledge that an offence has been committed shall complain to the Special Juvenile Police Unit or the local police.
- In case any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities comes across any child pornography (through any medium), shall provide such information to the Special Juvenile Police Unit or the local police.
- False complaints with the intention to humiliate, extort, or threaten or defame someone punishable under the Act. However, a person who provides information about the occurrence of a sexual offence in good faith will not incur any liability.

Against whom can a complaint be filed?

- Both men and women can be offenders under the Act. However, a case of penetrative sexual assault can only be filed against a man.

Who is a Child? [section 2(d)]

- A child under the act includes any person below the age of eighteen years.

What is Child Sexual Abuse?

- Under the Act, sexual offences are divided into two, specifically (i) Penetrative (ii) Non penetrative sexual offences.
- Penetrative is defined as penetration of the penis into any orifice of the child's body, insertion of an object into the vagina, urethra, or anus of the child, manipulating the body of the child so as to cause penetration into the vagina, urethra or anus, and applying the mouth to the vagina, penis anus or urethra of the child. In all these cases, making a child do the same with himself / herself or another person is also an offence.
- Non penetrative sexual offences are sexual assault, sexual harassment and using a child for pornographic purposes. Sexual assault involves any

form of physical contact without penetration with a child with sexual intent. Sexual harassment does not include physical contact- it constitutes verbal acts, showing pornography to a child, constantly following or watching a child, threatening to use depiction of the child involved in a sexual Act, and enticing a child for pornographic purposes. Using a child in any form of media for the purpose of sexual gratification constitutes using a child for pornographic purposes.

Kinds of Child Sexual Abuse: Gradations

Under the act, certain acts of penetrative sexual assault are listed as, aggravated and stricter punishment is accorded to these offences.

- Aggravated penetrative sexual assault: For example, penetrative sexual assault by a police officer within the limits of the police station at which he is appointed, gang rape, or penetrative sexual assault leading to grievous hurt, or bodily harm and injury to the sexual organs of the child.
- Aggravated sexual assault: For example, sexual assault by a police officer within the limits of police station at which he is appointed, gang sexual assault, or sexual assault leading to grievous hurt, bodily harm and injury to sexual organs of the child.

Punishments for sexual offences perpetrated under the Act

- Penetrative sexual assault is punishable with imprisonment of either description for a term not less than seven years which may extend to imprisonment for life, and the perpetrators shall also be liable to fine (Section 4).
- Aggravated penetrative sexual assault is punishable with not less than ten years rigorous imprisonment which may extend to imprisonment for life, and the perpetrator shall also be liable to fine (Section 6).
- Sexual assault is punishable with imprisonment of either description for a term not less than three years, which may extend upto five years, and the perpetrator shall also be liable to fine (Section 8).
- Aggravated sexual assault is punishable with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and the perpetrator shall also be liable to fine (section 10).
- Sexual harassment of a child is punishable with imprisonment of either



description for a term which may extend to three years imprisonment of and the perpetrator shall also be liable to fine (section 12).

- Punishment for using a child for pornographic purposes is punishable with imprisonment of either description which may extend to five years and the perpetrator shall also be liable to fine, and in the event of a subsequent conviction with imprisonment of either description which may extend to seven years and also be liable to fine (section 14).
- If the person commits penetrative sexual assault by directly participating in pornographic acts, he shall be punished with imprisonment of either description for terms which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
- If the person commits aggravated penetrative sexual assault by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.
- If the person commits sexual assault 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.
- If the person commit aggravated sexual assault by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less eight years, but which may extend to ten years, and shall also be liable to fine.
- Punishment for storage of pornographic purpose involving a child for commercial purposes is punishable with imprisonment of either description for a term which may extend to three years or with fine or with both (section 15)

Special Procedures under the Act

- Recognizing that child victims of sexual assault are vulnerable, the Act puts in place special procedures to assist the child from the time of recording of his/her statement to the conclusion of the trial.
- Provisions for recording the statement of the child are child- friendly. For example, the statement shall be recorded at the resident of the child or a place where he/she usually resides or the place of his/her choice. The presence of the advocate of the accused is not permitted while recording the statement of the child.

- The consent of the victim of sexual assault, or a person competent to give consent on his/her behalf is required for medical examination of the child. The medical examination shall be conducted in the presence of a parent or any other person in whom the child has trust and confidence. In case of girls, only a woman doctor can conduct the medical examination.

Special Courts and Special Prosecutors

- Special courts are to be set up under the Act. The Special Courts are mandated to set up a child-friendly atmosphere. For example, frequent breaks may be permitted for the child during trial, and the special court shall ensure the child is not called frequently to testify.
- A Special Public Prosecutor shall be appointed for every Special Court for conducting cases under the Act.
- During the course of the trial, while recording the examination in chief, cross-examination or re-examination, the special Prosecutor or the Counsel shall pose the question to the special Court, which in turn shall put the question to the child. Hence the child shall not be directly questioned by the Special Prosecutor or Counsel.
- Trial under the Act is to be conducted in camera, that is, the trial will be conducted in private and persons unconnected to the case (including the press) will not be allowed to enter the court room.
- The Special court has to ensure that the child shall not see the accused at any time during recording of the evidence of the child.

The Burden of Proof

- The burden of proof regarding the sexual offence has been shifted onto the accused.

Period for recording of evidence and disposal of the case

- The evidence of the child has to be recorded within 30 days of the special Court taking cognizance of the case;
- Reasons for delay are to be recorded in writing;
- The Special Court is expected to complete the trial within one year of taking cognizance of the case.

Alternative Punishment (section 42 inserted by the Criminal law Amendment Act, 2013)



- If an offence is committed under the POCSO Act and also under the relevant provisions of the IPC, then the offender is liable for punishment under the POCSO Act or under the IPC, as provides for punishment greater in degree.

Monitoring the implementation of the POCSO Act under Section 44

National Commission for Protection of Child Rights (NCPCR) and State Commission for Protection of Child Rights (SCPCRs) have been assigned a huge mandate in monitoring the implementation of the Act which falls within the powers designated under sec. 13 of the Commissions for protection of child right Act 2005. (CPCR Act)

¹Sec 89 IPC states that a person who is 12 years and above is empowered to provide consent for examination and torment Hence, a child of 12 years and above can given consent for medical examination. In case of a child under 12 years of age, the consent of another person would be required.

Commission (NCPCR and SCPCR) shall:

- i. In addition to the function assigned to them under the CPCR Act, (Sec, 3 & Sec.17) also monitor the implementation of the provisions of this Act in such manner as may be prescribed.
- ii. While inquiring in to any matter relating to any offence under this Act They Have the same powers as are vested in it under the CPCR Act.

Monitoring the implementation of the Act-Rule 6 of the POCSO Act

(1) NCPCR & SCPCR shall in addition to the functions assigned to them under the CPCR Act, perform the following functions for implementation of the provisions of the Act:

- To monitor the designation of Special Court by State Governments;
- To monitor the appointment of public prosecutors by State Governments;
- To monitor the formulation of the guidelines described in section 39 of the Act by the State Governments, for the use of non-governmental organizations, professionals and expert or persons having knowledge of psychology, social work, physical health, mental health and child development who are associated with the pre-trial and trial stage to assist the child and to also monitor the application of these guidelines
- To monitor the designing and implementation of modules for training police personnel and other concerned persons, including officer of the

Central and State Government, for the effective discharge of their function under the Act

- To monitor and support the Central Government and State Government 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.
 - SCPCRs may in a format so crated seek information from CWCs. about the number of complaints registered and action taken in the cases.
 - As and when required in specific cases, NCPCR would be seeking a compilation of such information from SCPCRs for influencing policy and practice when required.
 - (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 case of sexual abuse and their disposal under the processes established under the Act including information on the following :-
 - Number and details of offences reported under the Act;
 - Whether the procedures prescribed under the Act and rules were followed, including those regarding time frames;
 - Details of arrangement for care and protection of victims of offences under the Act, including arrangements for emergency medical care and medical examination; and ;
 - Details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case.

Monthly collection of such details form different stakeholders would lead to analysis of offences reported to enable course correction.
 - (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 including in a separate chapter in the Annual Report of the NCPCR or the SCPCR."



Know Your Rights!



These days there are many incidents coming to light where a child is sexually abused. Our government has recently passed a law covering all kinds of sexual offences and with strict punishment for the same as listed below:

Sl.	Offence	Punishment
1.	Penetrative Sexual Assault (sec 3)	Not less than seven years which may Extend to imprisonment for life, And fine (Sec-4)
2.	Aggravated Penetrative Sexual Assault (Sec-5)	Not less than ten years which may extend to imprisonment for life, and fine (Sec-6)
3.	Sexual Assault (sec-7)	Not less than three years which may Extend to five years, and fine (sec-8)
4.	Aggravated Sexual Assault (section 9)	Not less than five years which may Extend to seven years, and fine (section 10)
5.	Sexual Harassment of the Child (Section 11)	Three years and fine (Section 12)
6.	Use of child for pornographic purposes (Section 13)	Five years and fine and in the event of subsequent conviction, Seven years and fine (Section 14(1))

Reporting

- In case of any offence under the Act complaint can be made to, the Special Juvenile Police Unit (SJPU); or the local police.
- On receipt of the complaint the offence shall be recorded in writing in simple language and allotted an entry number, be read over to the informant; and shall be entered in a book to be kept by the Special Juvenile Police Unit.
- No person shall incur any liability, whether civil or criminal, for giving the information in good faith

- Any personnel of the media or hotel or lodge etc if has/gets knowledge or information of any material or object which is sexually exploitative of the child, shall provide such information to the Spl. Juvenile Police Unit, /the local police.
- 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 disclose the identity of the child.

Recording statement & functions of Police and Magistrate

- The statement of the child shall be RECORDED AT THE RESIDENCE of the child as far as practicable by a WOMAN POLICE OFFICER not below the rank of sub-inspector. The police officer while recording the statement of the child shall NOT BE IN UNIFORM.
- The police officer has to ensure that at no point of time the child comes in the contact in any way with the accused
- Any child shall NOT BE DETAINED in the police station in the night for any reason
- The police officer shall ensure that the CHILD'S IDENTITY IS PROTECTED from the public media, unless otherwise directed by the Special Court in the interest of the child
- If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure (CrPC), 1973, the Magistrate recording such statement shall record the statement AS SPOKEN by the child
- 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.
- The Magistrate shall provide to the child and his parents or his representative, a copy of charge sheet or the final report being filed by the police.
- Magistrate/police officer 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
- The Magistrate/police officer, in the case of a child having a mental/physical disability, can take assistance of a special educator or any person familiar with the manner of communication of the child.



- Where the Special Juvenile Police Unit or local police is satisfied that the child is in need of care and protection, then, it shall, immediately make arrangements to give him/her such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, and report the matter to the Child Welfare committee.
- The police officer making the investigation, shall, ensure that at no point of time during investigation, the child come in contact in any way with the accused.

Medical Examination

- In case the victim is a GIRL CHILD, the medical examination shall be conducted by a woman doctor.
- The medical examination shall be conducted in the presence of the parent of the child or any confidant of the child
- Where, in case the parent of the child or other person referred to 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

Special Courts

- For purposes of providing a speedy trial, the State Government shall designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

The Special Court shall:

- Create a child-friendly atmosphere and also 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
- Allow frequent breaks for the child during trial, Child not to be called repeatedly to testify. No aggressive questioning/character assassination of the child, In-camera trial of cases
- Record evidence of the child within a period of thirty days of it taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court
- Complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence

- 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/her advocate.
- Record the statement of a child through video conferencing or by utilizing single visibility mirrors or curtains or any other device.

Role of the Commission (State Commission for Protection of Child Rights)

- Commission can ONLY GIVE RECOMMENDATIONS but cannot pass orders in any matter or interfere in court proceedings. It shall:
- Examine and review the safeguards for the protection of child rights and recommend measures.
- Monitor the designation of Special Courts and appointment of Public Prosecutors by State Governments.
- Monitor the formulation of guidelines described in section 39 of the Act by the State Governments, for the use of non-governmental organizations, 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.
- 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.
- 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.
- Undertake monthly collection of such details from different stakeholders for analysis of offences reported and to influence policy & practice.



Child Victim's Charter



If you are a victim of sexual abuse and below the age of 18 years, you have a right to seek justice under the provisions of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act") for offences of sexual assault, sexual harassment and pornography. If a person does any of the following acts, they are liable to the punishment as shown below under the POCSO Act:

Sl.	Offence	Punishment
1.	Section 3 Penetrative Sexual Assault:- Inserting body part or objects in a child, or making a child do this with another.	Section 4 Imprisonment+Fine Minimum 7 years-Maximum Life imprisonment
2.	Section 5 Aggravated Penetrative Sexual Assault Penetrative sexual assault by a police officer, member of armed forces, public servant, staff of remand home, jail, hospital or school. It includes gang penetrative assault, penetrative sexual assault using deadly weapons, fire, heated substance or corrosive substance, penetrative sexual assault which physically incapacitates the child or causes child to become mentally ill, causing grievous hurt or bodily harm and injury to the sexual organs of the child, making girl child pregnant, inflicting child with HIV or any other life threatening disease, penetrative sexual assault more than once, penetrative sexual assault on a child younger than 12 years, by a relative, owner / manager or staff of any institution providing services to the child, by a person in a position of trust or authority over the child, committing penetrative sexual assault knowing the child is pregnant, attempts to murder the child, by a person previously convicted for a sexual offence, penetrative sexual assault in the course of communal or sectarian violence, penetrative sexual assault and making the child strip or parade naked in public.	Section 6 Imprisonment+ Fine Minimum 10 years - Maximum Life imprisonment

Sl.	Offence	Punishment
3.	Section 7 Sexual Assault: With sexual intent touching the private parts of a child	Section 8 Imprisonment+Fine Minimum 3 years-Maximum 5 years
4.	Section 9 Aggravated Sexual Assault Sexual assault by a police officer, member of armed forces, public servant, Staff of remand home/jail/ hospital/school, etc.	Section 10 Imprisonment+ Fine Minimum 5 years- Maximum 7 years
5.	Section 11 Sexual Harassment With sexual intent: <ul style="list-style-type: none"> Showing any object/body part, or making any gesture aimed at a child Making a child exhibit her body enticing or threatening to use a child for pornography 	Section 12 3 years Imprisonment+ Fine
6.	Section 13 Use of Child for Pornographic Purposes	Section 14 (1) First Conviction: Imprisonment upto 5 years & fine On Second or subsequent conviction: 7 years Imprisonment
7.	Section 14 (2) Penetrative sexual assault by directly participating in pornographic acts	Section 14(2) Imprisonment+ Fine Minimum: 10 years Maximum: Life imprisonment
8.	Section 14 (3) Aggravated penetrative sexual assault by directly participating in pornographic acts	Section 14 (3) Rigorous imprisonment for life + Fine.
9.	Section 14 (4) Sexual assault by directly participating in pornographic acts	Section 14 (4) Imprisonment+ Fine Minimum 6 years - Maximum 8 years
10.	Section 14 (5) Aggravated sexual assault by directly participating in pornographic acts	Section 14(5) Imprisonment + Fine Minimum 8 years - Maximum 10 years
11.	Section 15 Storage of pornographic material involving a child for commercial purposes	Section 15 Imprisonment or Fine or Both Minimum: Not specified Maximum: 3 years



2. Remember:

- a) The burden of proof regarding the sexual offense is now shifted on the accused keeping in view the greater vulnerability and innocence of children like yourself.
- b) False complaint of child sexual offence with the intention to humiliate, extort or threaten or defame someone will get punishment.
- c) Not reporting information on sexual offences is now punishable
- d) Giving information about occurrence of sexual offenses in good faith will not incur any liability.

3. Where should you report sexual offence?

- a) The local police.
- b) The Special Juvenile Police Unit ("SJPU"),

The Police Officer must register a First Information Report ("FIR"), and give a copy of this document to you or to the person giving the information.

If you are produced before the Child Welfare Committee they will refer you to the Police.

4. Role of the Police during Reporting - these too are your rights

- a) Your statement shall be recorded at your residence, or at a place where you usually live.
- b) The statement as far as practicable to be recorded by a woman police officer not below the rank of sub-inspector.
- c) All offences under the Act are cognizable. So the police must take cognizance of the offence and carry out necessary arrests, without waiting for orders from a Magistrate.
- d) All offences involving any form of sexual assault are non-bailable. This means the police cannot on their own release the accused on bail. The accused can only get bail from the court.
- e) Getting released on bail does not mean the case is over and the accused will get no punishment. If the accused causes any harassment or harm to the victim after release on bail, the police and/or the court should be informed immediately and necessary protection can be sought.

5. Police officer shall:

- a) Not be in uniform while recording the statement.
- b) At no point of time should the Police ask you to come into contact in any way with the accused.
- c) You are not to be detained in the police station in the night for any reason.
- d) Your identity is to be protected from the public and the media.
- e) Your statement is to be recorded as spoken by you
- f) Immediate arrangements are to be made to provide you care and protection if the Police with your consent feels that this is necessary (such as admitting you into a shelter home or to the nearest hospital within 24 hours). Care and protection will be considered necessary if the offense has been committed or is likely to be committed by a person living in the same home as you, or if you are in a child care institution without parental support, or if you do not have a home and parental support.
- g) The status report of your complaint is to be intimated to the Child Welfare Committee within 24 hours
- h) The complaint is to be reported to the Court within 24 hours from receipt of information.
- i) Your evidence is to be recorded within a period of 30 days.
- j) You or your parent or any person whom you trust are to be kept informed about the investigation of the crime from time to time regarding:
 - i. The arrest of a suspected offender.
 - ii. The filing of charges against a suspected offender.
 - iii. The schedule of court proceedings that you are either required to attend or are entitled to attend, The bail, release or detention status of an offender or suspected offender.
 - iv. The rendering of a verdict after trial.
 - v. The sentence imposed on the offender.
 - vi. Free legal assistance that can be received from a legal aid lawyer.

6. Information to be given by Police Officer while recording YOUR statement:



- a) His/her name and designation
- b) The address and telephone number where he/she is reachable
- c) The name, address and contact details of the Officer who supervises him/her.

7. If a Police Officer fails to record a complaint:

- a) He/she can be punishable with imprisonment and fine

8. Child Friendly Procedures

- a) While the Police is recording your statement or the Magistrate is taking your evidence, he/she shall take the assistance of: An interpreter or translator or an expert (special educator) or any person familiar with the manner of your communication, in case you have a special need
- b) Your medical examination is to be conducted in the presence of your parent or any other person in whom you have trust or confidence.
- c) In case you are a girl, the medical examination shall be conducted by a woman doctor.
- d) Your statement to the Magistrate should be recorded by the Magistrate or Police Officer as you say it (in your own words).

9. During Trial - You are entitled to:

- a) Frequent breaks
- b) YOU are not to be called repeatedly to testify
- c) No one can put aggressive questions to you or try and damage your character
- d) Trial is to be conducted in-camera (without outsiders)
- e) During trial, you have to give evidence before the court and then you will be cross- examined by the lawyer of the accused. It is possible for your testimony as well as her/his cross-examination conducted the same day. Therefore, you must ask your lawyer to push for it so that you do to the court again and again.

Remember the lawyer of the accused cannot put any direct questions to you. He/she will have to write them down and give them to the court. The judge will

then decide which question to ask and which one to reject.

10. Court Hearing

- a) The Act provides for the establishment of Special Courts for trial of offences under the Act. The Court shall complete the trial within one year, as far as possible.
- b) "Special Courts" are to be set up to deal with cases of sexual offenses against children. However, if no. Special Court has been set up, then the matter can be reported to a "Court of Session" by the Police.

Where no Special Courts are set up after the Act comes into force and an offence is committed after the Act the procedures for trial under the Act will apply to the Sessions Court.

11. Media:

Is not allowed to disclose your identity without the permission of the Special Court.

12. Victim Compensation:

The Special Court can direct the State to pay you compensation out of a Victims Compensation Fund, established in the state for any physical or mental trauma that you have or are suffering from, and for your immediate rehabilitation. Compensation can be paid to you while the case is still pending at the interim stage as well as after the trial ends.



Role of the Police



The Protection of Children from Sexual Offences Act, 2012 (POCSO Act), which came into force on November 14, 2012, provides for some procedural guidelines to be followed by the Police in relation to a child victim (any person below the age of 18 years) of a sexual offense under the POCSO Act.

The police have been given a huge role to play in ensuring the implementation of the child-friendly procedures laid down under the POCSO Act. At the same time, the police have also been made accountable for failure to perform their duties under the Act. For example, if a Police Officer fails to record a complaint, he/she can be punished with imprisonment and fine.

A. Child friendly procedures to be followed by Police under POCSO Act:

1. A copy of the FIR should be given free of cost to the person making the complaint, and to the parents/ guardian of the child victim if they have made the complaint.
2. The Police should inform the child/ the parents or the person in whom the child has trust or confidence that the child is entitled to be assisted by a legal counsel of choice [R 4(2) (f)].
3. The Police should inform the parent, guardian or the person in whom the child has trust or confidence about availability of support services such as counseling and help them access such services [R 4(2)].
4. The FIR should be recorded in simple language so that the child understands the contents. [S.19 (3)]
5. In case the report is recorded in a language not understood by the child an interpreter or a translator should be provided to explain the contents [S. 19(4)].
6. Where the child needs emergency medical care the police must arrange for medical care and treatment (take the child to the hospital) without

waiting for the registration of the FIR [Sec. 19 (5)/rule 4(2)(b)(C)/rule 5]

7. Medical examination of child must be conducted irrespective of FIR or complaint of the offence, according to Sec. 164 A of Cr P C. (Sec. 27(1)).
8. Child to be taken to the hospital for medical examination in accordance with Sec. 27. (Rule 4 (2) (C))
9. In case victim is a girl child examination shall be conducted by a woman doctor. (Sec 27 (2))
10. Medical examination of the child must be done in the presence of the parents or the person in whom the child has trust or confidence. (Sec 27 (3))
11. The child's statement must be recorded at the child's residence, or at a place where the child usually lives or at a place of choice. Recording the statement at the place of choice of the child will be applicable in cases of child sexual abuse within the home (Sec.24).
12. While recording the child's statement, the following information should be given by the Police Officer to the person making the report and to the child, the parents or the person in whom the child has trust and confidence (R. 4(1)):
 - a. His/her name and designation
 - b. The address and telephone number where he/she is reachable
 - c. The name, address and contact details of the Officer who supervises him/her.
13. The statement as far as practicable is to be recorded by a woman police officer not below the rank of sub-inspector.
14. The statement of the child should be recorded in the presence of the parents of the child or any other person in whom the child has trust or confidence (Sec. 26(1)).
15. While the Police is recording the child's statement, he/she shall take the assistance of (Sec.19 (4),26(2),(3)):
 - a. An interpreter or translator or an expert as per the child's need
 - b. Special educator or any person familiar with the manner of communication in case the child has a special need.



Police officer shall ensure that:

- a) He/ She is not in uniform while recording the statement. (Sec24(2)).
- b) At no point of time does the child come in to contact in any way with the accused. (Sec24 (3)).
- c) The child is not detained in the police station in the night for any reason. (Sec 24(4)).
- d) The child's identity is protected from the public and the media. (Sec 24 (S)).
- e) The child's statement is recorded as spoken by the child. (Sec 26(1)).
- f) Where ever possible statement of the child is also recorded by audio-video electronic means [Sec.26(4)].
- g) In case the child has physical or mental disability, help of a special educator is taken on payment of fees to record the statement of the child. S. 26(2).
- h) Immediate arrangements are made to provide the child with care and protection, such as admitting the child into a shelter home or to the nearest hospital within 24 hours, if he/she feels that this is necessary² and after recording his reasons in writing.
- i) Without delay, within 24 hours, report the matter to the Child Welfare Committee, and the steps taken to provide shelter [Sec.19 (6)].
- j) Where sexual abuse has been committed by a person living in the same or shared household / child care institution, or where there is no parental support, to produce the child within 24 hours before the CWC with reasons stating whether child is in need of care or protection [R4(3)].
- k) The complaint and the steps taken to provide shelter is to be reported to the Court within 24 hours from receipt of information.
- l) If no Special Court has been set up, as mandated under the Act then the matter can be reported to a "Court of Session" by the Police. For any offence committed after the Act the procedures for trial under the Act will apply to the Sessions Court .

²Care and protection will be considered necessary if the offense has been committed or is likely to be committed by a person living in the same home as the child, or if the child are in a care institution without parental support, or if the child does not have a home and parental support.

- m) Sample collected for purposes of the forensic tests are sent to the forensic laboratory at the earliest R.4 (2) (d)

The child or the child's parent or any person whom the child trusts, should be kept updated by the Police, about the investigation of the crime from time to time regarding:

- a. The arrest of the accused.
- b. The framing of charges against the accused.
- c. The filing of charge-sheet against the accused.
- d. The schedule of court proceedings that the child is either required to attend or is entitled to attend.
- e. The bail, release or detention status of the accused.
- f. The outcome of the trial/rendering of a verdict after trial.
- g. The sentence imposed on an offender.



Child friendly procedure for Trial under the POCSO Act



The Protection of Children against Sexual Offences Act, 2012 (POCSO Act), which came into force on November 14, 2012, provides for child friendly procedures under Chapter VII, VIII and IX, which need to be followed by the Special Court (and where a Special Court has not been set up, the Court of Sessions) for the trial of a child, defined as any person below the age of eighteen years [section 2(d)].

One of the objectives of the POCSO Act is to create an atmosphere in the Special Court whereby the child witness is able to speak freely and fearlessly, in order to enable the court to gather accurate and reliable evidence and arrive at the truth. To achieve this end, POCSO Act recognizes that it is essential for the child to be able to communicate. Procedures have been laid down to ensure support and assistance of professionals and experts to the child, as also suitable infrastructure. Stipulating such procedures within the law itself ensures that the defense has no cause for suspicion or adverse inference. It is hoped that such child enabling procedures will also minimize the secondary trauma that occurs due to inept handling of the child as s/he journeys through the criminal justice system. At the same time the POCSO Act has ensured that the accused person's right to a fair trial is maintained.

Designation of Special Court

A Court of Session is required to be designated for each district by the State Government in consultation with the Chief Justice of the High Court as a Special Court to try offences under POCSO Act. [section 38(1)]

- a) The need to establish Special Court is to ensure speedy disposal of the case [section 28(1)], and to provide requisite infrastructure [section 36] and human resources [sections 38, 39 and 40] for the support of the child.
- b) The Special Court is to take cognizance of an offence under POCSO Act without the accused being committed to it for trial. [section 33(1)] The Special Court is empowered to try cases where an accused is charged of having committed an offence under POCSO Act and an offence under any

other law; including section 67B of the Information Technology Act 2000. [section 28(2) and (3)]

- c) When an F.I.R. shows that any offence under POCSO Act has been committed, irrespective of whether an offence under any other law has also been committed, and the accused is arrested, such accused should be produced before the Special Court within 24 hours of arrest. This procedure will apply for all accused persons arrested in pursuance of a single F.I.R.
- d) If a person who has not completed 18 years of age is produced before the Special Court as an accused person, such case should be transferred, and such juvenile should be produced before the Juvenile Justice Board [section 34(1)] as provided for under the Juvenile Justice (Care and Protection of Children) Act 2000 [section 1(4), 2(k), 2(1) and 6(1) of JJA]. It is also imperative for the Special Court to ensure that a juvenile in conflict with law who is incarcerated in police lock-up or prison is forthwith shifted to the Observation Home [section 12(2) and 8 of JJA].
- e) If a question arises before the Special Court as to whether a person is a child or not, such question is to be determined by the Special Court. [section 34(2)]

Child friendly trial procedures under POCSO Act

All High Courts must be encouraged to develop guidelines for Special Courts. The Delhi High Court Committee has framed the '**Guidelines for Recording of Evidence of Vulnerable Witnesses in Criminal Matters 1**', which incorporates the following procedures:

- a) All trials before the Special Court must be conducted in camera and in the presence of the parents of the child or any other person the child trusts. (section 37)
- b) In the course of recording the examination-in-chief, cross-examination or re-examination, all questions to the child by the Special Public Prosecutor or the counsel for the accused must be communicated to the Special Court which would then put the questions to the child. [Section 33 (2)]
- c) The evidence of the child must be recorded within 30 days of the Special Court having taken cognizance of the offence. If it is delayed, reasons will

¹The 'Guidelines for Recording of Evidence of Vulnerable Witnesses in Criminal Matters' are available at: http://delhihighcourt.nic.in/notifications_practice_directions.asp (last visited 5.8.2013)



have to be recorded by the Special Court explaining the delay [section 35(1)].

- d) At the time of recording evidence, the Special Court will have to ensure that the child is not exposed to the accused and also that the accused is in a position to hear the statement of the child and communicate with his advocate. This can be done by recording the evidence through video-conferencing or by using single visibility mirrors or curtains (section 36). The following procedures should be adhered to when recording the evidence of the child through video-conferencing or vide-link courts.
- e) The court room and the children's room will be connected by live video-link and video-conferencing facilities. This will ensure that a child of tender age or a traumatized child is able to depose without being overwhelmed by the court surroundings and / or the accused. The video-link and the video-conferencing shall be so arranged that the child does not see the accused, though those present in the court room are able to see the child deposing in the children's room. Furthermore, the goings-on in each room should be heard by those in – the other room.
- f) The Judge; the accused; the special public prosecutor [section 32]; the defense lawyer; the child's lawyer [section 40]; police personnel; the Special Court's administrative staff; and persons necessary to operate the live video-link and video-conferencing equipment; shall be present in the court room during the child's deposition.
- g) The child witness; a family member or guardian or friend or relative in whom the child has trust or confidence [section 33(4)]; support person appointed by the Child Welfare Committee or parent / guardian, etc. [rule 4 (7)]; translator or interpreter [section 38 (1)] or special educator or any person familiar with the manner of communication of child or expert [section 38 (2)]; any other person [representative of non-governmental organization (NGO) / professionals / experts / persons having knowledge of psychology, social work, physical health, mental health and child development (section 39)] as the court may deem necessary for the welfare and well-being of the child; an officer of the court; and persons necessary to operate the live video-link and video-conferencing equipment; shall be present in the children's room during the child's deposition.
- h) Assistance of a qualified translator or interpreter or special educator can be sought while recording the evidence of a child including a child with mental or physical disability (section 38).

- i) A child is entitled to avail of the services of a private lawyer or a legal-aid lawyer (section 40). The child's lawyer's role in the trial is subject to section 301(2) of the Criminal Procedure Code: (i) to act under the instructions of the Special Public Prosecutor; and (ii) after the evidence of all the witnesses is recorded, to submit written arguments to the Special Court with its permission.
- j) The child witness shall be examined and cross-examined through live video-link, and a video monitor will record and transmit the child's deposition to those in the court room.
- k) The Special Court must take the following child friendly measures while conducting the trial under POCSO Act:
 - i. Permit frequent breaks for the child during the trial [section 33 (3)].
 - ii. Allow a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court [section 33(4)].
 - iii. Ensure that the child is not called repeatedly to testify in court [section 33 (5)].
 - iv. Not allow aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times [section 33 (6)].
 - v. Ensure that the identity of the child is not disclosed at any time during the course of investigation or trial. Such disclosure can be permitted if it is in the interest of the child after reasons are recorded in writing [section 33(7)].
 - vi. Ensure that trial is completed, as far as possible, within one year from the date of taking cognizance of the offence [section 35(2)].
 - vii. Ensure that the child and/ or family or guardian is informed about their entitlement to the assistance of a legal counsel of their choice or a legal-aid lawyer through the State Legal Services Authority.

Compensation

- a) The Special Court, in addition to the punishment, may direct payment of compensation to the child for any physical or mental trauma caused or for immediate rehabilitation of the child [section 33(8)].
- b) The Special Court can order interim compensation to meet the immediate needs of the child for relief and rehabilitation at any' stage after registration of the FIR. Such an order can be passed based on an



application by or behalf of the victim or by the court on its own [rule 7(1)].

- c) It can also recommend the award of compensation if the child has suffered loss or injury and where the accused is convicted, discharged, acquitted, or is not traceable or identifiable [rule 7(2)].
- d) Compensation awarded by the Special Court is payable by the State Government from the Victims Compensation Fund or other schemes or funds established for the purpose of compensating and rehabilitating victims under Section 357 A of the CrPC [Rule 7(4)].
- e) Compensation so awarded by the Special Court is payable by the State Government within 30 days of the receipt of the order.
- f) Payment of compensation to the child may be awarded by the Special Court pending trial, on completion of trial and / or on F.I.R. being registered with regards to commission of an offence under POCSO Act.

Infrastructure and Human Resources for the Special Court

The Special Court should be equipped with suitable infrastructure and human resources to be able to satisfy the provisions incorporated under POCSO Act in its true spirit and in a child-friendly manner.

1.1. Infrastructure

- a) The Special Court should be situated in an independent building or structure. The Special Court should not be situated in court premises, more particularly the Session Court premises. If not possible in all districts, the Special Court should be situated in an independent building or structure at least in metropolises or where the case load is heavy. If the Special Court is situated in the premises of the Session Court or any other court, the child should be permitted to enter the said building from a separate entrance and not that which is used by the accused and other litigants.
- b) The Special Court should be easily accessible by public transport.
- c) Every Special Court should include 3 [three] rooms:
 - i. Court room - where the Judge sits;
 - ii. Children's room - from where the child deposes;
 - iii. Children's waiting room.
- d) There should be video-conferencing or video-link facilities between the court room and the children's room.
- e) The child shall identify the accused, by entering the court room for the

limited purpose of identifying the accused or by observing the live image of the accused on the video-link. In the event of the child being required to enter the court room for identification purpose, such child shall be accompanied by a family member or a guardian or a friend or a relative in whom the child has trust or confidence, or by the support person appointed by the Child Welfare Committee or parent or guardian.

- f) Over and above the general practice followed by courts in recording evidence of witnesses, the deposition of the child shall be preserved on video-tape, digital disc or other similar devices.
- g) Children choosing to depose directly before the Special Court shall do so in the court room itself. In such case -
 - i. A screen / curtain / one-way mirror or some such arrangement should be made in the court room whereby the child does not see the accused, whilst at the same time ensuring that the accused can hear the child and instruct her / his advocate;
 - ii. For the limited purpose of identifying the accused, the accused shall be shown to the child;
 - iii. The child may be allowed to depose from a place other than the witness-box.
- h) Testimonial aids, such as, dolls, anatomically correct dolls, puppets, drawings, mannequins or any other appropriate demonstrative device, should be available with the Special Court to provide a child with appropriate assistance during such child's deposition. Testimonial aids should be kept in the children's room.

Children's waiting room:

- (a) A child witness awaiting her / his turn to depose before the special Court can wait in the children's waiting room. Such room shall be equipped with toys, reading books, drawing and painting material, indoor games and other recreational equipment;
- (b) The children's waiting room should have "an attached toilet, and should have facilities for drinking water, electricity, light and ventilation, and cooling or heating arrangement [depending on the climate], and arrangement to provide the child with appropriate food items so that the child is comfortable;
- (c) The children's waiting room should have adequate security for protection



of children, and to bar entry of the accused, the defense lawyer or any other person detrimental to the interest of the child.

Miscellaneous:

- (a) A child during deposition should be allowed to have an emotional security item, such as, blanket, toy, doll.
- (b) The Judge presiding over the Special Court should preferably be a woman and should not be dressed in judicial robes and should not be sitting on a raised platform.

1.2. Human Resources

- i. A full-time Special Public Prosecutor should be appointed by the State Government for every Special Court [section 32].
- ii. A full-time social worker, qualified Masters Degree in Social Work, should be appointed for every Special Court. The function of the social worker is to link the child and/or child's family with a legal-aid lawyer, translator, interpreter or special educator, as the case may be. The social worker will also manage the children's room and the children's waiting room, and arrange for supplies as aforementioned and its maintenance. Petty cash should at all times be available with the social worker so that there is no disruption in the supplies.
- iii. A full-time psychologist, having a Masters Degree [MA or MSc] in social or clinical psychology, or in child development, having at least three years experience of working with children should be appointed for every Special court. The function of the psychologist is to prepare the child for her / his deposition, i.e., provide trauma counseling and confidence to the child.
- IV. The State Government in order to facilitate the functioning of the Special Court should empanel translators [at least of commonly spoken languages]; interpreters [sign language]; and special educators [learning disabilities, mentally challenged]. A list of these empanelled professionals with their contact details should be furnished to the Special Court.
- V. The District Legal Services Authority (DLSA) should empanel legal-aid lawyers to provide legal assistance to children at the police station and Special Court levels. A list of these empanelled legal-aid lawyers with their contact details should be submitted to the police stations within that district's jurisdiction and to the Special Court.



Inquiring into cases of child sexual offences Sample Complaint Form & Letter



While NCPCR and SCPCR have established steps to respond to complaints, a uniform pattern of responding to complaints is being proposed.

1. As far as possible NCPCR/SCPCRs should try and follow a case till the conclusion of trial.
2. For each case a Fact Sheet, Action Taken by NCPCR/SCPCRs and a Response sheet should be prepared.
3. Depending on the case, NCPCR/SCPCRs can ask for the following information:
 - Police enquiry report,
 - Copies of FIR, Charge-sheet,
 - Whether the accused has been arrested or not?
 - Whether the child has been given medical treatment?
 - Whether the child has been counseled and by whom? Seek a copy of the counseling report? Whether the child is attending school. Name of the school.
 - If the child has discontinued schooling, then why and what steps are being taken to ensure that he/she resumes school.
 - Whether the child requires protection/shelter?(the child's family must be consulted)
 - Whether the matter has been reported to the Child Welfare Committee or not?
 - Does the child need to be removed from his/her family? Why and what steps have been taken for this.
 - Outcome of the trial.
 - Whether the accused was acquitted due to witnesses turning hostile?
 - If the perpetrator has been acquitted then whether an appeal has been filed or not.



- Whether any request for interim and/or final compensation, has been made on behalf of the victim child before the court?

Monitoring Sexual Offence Complaints

A. Monitoring of complaints received from other agencies like NGOs, institutions, RWAs, Unions etc:

They require monitoring as they have not yet reached the criminal justice functionaries. These have to be followed up till they are registered as FIR's in the police system. If they have not been registered, then it has to be examined why not. Once the NCPCR/SCPCR has the information then regular updates of cases can be automatically asked from the authority/organisation till the case reaches its logical conclusion. Also the role of State Legal Services Authority can be roped in for giving legal and paralegal help to the victim and family. The role of State Commission can also be reviewed, and the good practices noted and shared.

B. Monitoring of complaints received directly by NCPCR/SCPCR:

Cases of child abuse can be brought to the notice of NCPCR/SCPCR through various sources (print and news media, NGOs, complainant approaching directly etc). There should be separate monitoring system for the complaints received directly by NCPCR/SCPCR and they should be inquired in as detailed above under "A"

C. Monitoring of complaints in which FIR has already been registered:

These are cases which are registered by Police agencies and are under investigation. These cases will be regularly monitored by the Police and feedback can be asked on a regular bases (quarterly or six monthly) with information on (i) all cases registered and action taken up(ii) all complaints received and action taken up.

- NCPCR/SCPCR may ask from States/Districts respectively about the number of cases registered under POCSO Act and the action taken by the Police. The frequency of asking this information may be once in 3 months to 6 months.
- When initiating inquiry; letters should be sent to district authorities such as District Collectors/ SP with copies marked to the State level authorities. It is the district authorities who will have the information. Sending letters to authorities at the State level will delay the response.
- A letter should preferably be followed up with a phone call to the concerned District level authorities.

- A reminder letter must be sent to the same authorities if there is no response within 30 days of NCPCR/SCPCR sending the first letter.
- A third letter summoning and enforcing attendance, production of records u/s 14 of the Commission for Protection of Child Rights Act, 2005 should be sent
- As far as possible new complaints of States/UTs to be transferred to SCPCRs and only policy related complaints or exceptional cases to be dealt with by NCPCR
- A copy of the letter to the authorities by NCPCR may also be copied to the SCPCR. In case the SCPCR has taken up the case, NCPCR can close the file.
- On receipt of a complaint or suo motu cognizance of a complaint, the complainant must be informed that NCPCR/SCPCR has taken up the matter with the relevant authorities.
- If the complaint does not contain complete information, a letter or phone call should be made to the complainant or victim (survivor) to get all the information.
- The letter to the complainant should briefly state the powers and functions of Commission in simple language and that the Commission Cannot interfere in the trial of a case.
- A leaflet on the rights of the victim within POCSO should be shared and sent to the complainant with the NCPCR/SCPCR letter; so that they understand what the procedure are and they can inform the Commission if the law is being violated.
- A copy of the letter to the relevant authorities should be sent to the complainant.
- When a file is closed the complainant should be informed about the same, with reasons.
- In cases where prima facie there is systemic failure, such as sexual violence in state institutions, NCPCR/SCPCR must ensure there are systemic changes made by the State. For example, ensuring functioning of Inspection Committees/Management Committees as mandated under the Juvenile Justice Act or functionaries of the Complaints Committees where ever applicable, etc. If required, NCPCR/SCPCR could send a commissioner to inspect the child care institution u/s 14(1) (e) and file a detailed report.



- NCPCR/SCPCR if felt necessary could appoint a Court Observer to observe a trial or proceedings of cases under POCSO, 2011. This is not specifically mentioned in the Act but with NCPCR/SCPCR being given monitoring powers, it would provide some insights into how the victim in handling the court experience and it would provide an opportunity to arrange the necessary support and offer handholding.
- NCPCR/SCPCR should inform the Court about the presence of the Court Observer.
- NCPCR should get copies of court proceedings as the case progresses.
- As empowered u/s 15 (ii) of the Commission for Protection of Child Rights Act, 2005 can approach the Supreme Court or High Court for orders especially in cases of systemic abuse and failure of the State to take action.
- NCPCR/SCPCR should get a tabulation of the cases state-wise/ district-wise done quarterly to determine any trends emerging in the cases and how they were dealt with by the law enforcement agencies and the judiciary, etc.

Standardized pattern of complaint management system

NCPCR/SCPCR cannot follow a case once the trial starts as it then becomes sub-judice but there are some check points corresponding to the events in the whole process of administration of justice like:

- Reporting
- Registering of complaint
- Status of complainant
- Action on the part of police
- Investigation
- During Trial with respect to legal representation/ prosecution
- Compensation/ Monetary Support
- Nature of disposal of case
- Victim's re-integration in the society

A DRAFT OF TEMPLATE FOR EACH CASE MAY BE CONSIDERED AS FOLLOWS:

- a) A Fact Sheet
- b) Action Taken by NCPCR/SCPCR as the case may be.

Fact Sheet:

[A fact sheet should basically contain the basics of information in brief. Every case should have a corresponding fact sheet. It should be updated time to time with the case]

A fact sheet may consist of the following:

- A Diary Number and F.I.R. along with the copy of original complaint
- An enquiry report of the Police
- An enquiry report of Commissioner or Enquiry Team appointed by NCPCR/SCPCR (if so appointed)
- Copy of Charge-sheet wherever applicable
- Name and address of the concerned Police Station with name of SHO and contact details.
- Whether the accused has been arrested/absconding/ on bail
- Whether the child has been given medical treatment? If yes, where with name, address & contact number of the medical hospital/ center etc
- Whether the police has reported the matter to the Child Welfare Committee within 24 hours
- Whether the child has been presented before the Child Welfare Committee where required and received counseling and related mental health support. Contact number of the Child Welfare Committee as if necessary one can get back to them for better understanding of the child victim's mental health status
- Does the child need to be removed from his/her family? Why and what steps have been taken for this by the Child Welfare Committee
- Whether the child is attending school. Name & address of the school. If possible details of anyone teacher/principal of the concerned school. [If the family goes out of touch, one can talk to concerned authorities to know details/status of the child.]
- If the child has discontinued schooling. then why and what steps are being taken to ensure that he/she resumes school.
- Whether the child requires protection/shelter (the child's family must be consulted)? Contact details of the victims family must be asked for.
- SJPU of that particular district should be contacted where found necessary
- Outcome of the trial is another important detail as also the total duration of the trial Whether the accused was acquitted due to witnesses turning



hostile?

- If acquitted, then whether an appeal has been filed or not. If not, the copy of the opinion of such Public Prosecutor should be asked for.
- Whether any request for interim and/or final compensation has been made on behalf of the victim child before the Court.

Action Taken Report by NCPCR

Every complaint should basically consist of a summation of information regarding steps taken by the Commission with respect to a particular case. It could include the following:

- Status of the victim - physical and mental well being, schooling, medical and rehabilitation support received, compensation package paid etc
- Action taken against the perpetrator along with a copy of the inquiry report/Court order etc
- Details of precautionary steps the Department/authority concerned has taken to ensure that such incidents do not occur again.
- Copies of correspondence with district authorities such as District Collectors/ SP with copies marked to the State level authorities.
- Correspondence with NCPCR/SCPCRs as the case maybe and also with concerned CWCs, Protection officers/ case workers/SJPU for follow up of the individual cases.

DRAFT LETTERS

Letter seeking action taken report

To,
The Superintendent of Police
District
BIHAR

Subject: In brief the act/place/date of commission. Complaint received date/from.

Sir/Ma'am

I am directed to say that State Commission for Protection of Child Rights (SCPCR) has been constituted under the provisions of Commissions for Protection of Child Rights (CPCR) Act, 2005 for protection of Child Rights and related matters.

2. Commission has received a complaint, date / from or commission has taken cognizance of a news report published in news paper, date, place. The gist of the complaint is as under:

" _____ "

3. After pursuing the complaint, the Commission has taken cognizance of the matter and directed that the matter be referred to you for investigation/inquiry and to report to the Commission. You are accordingly requested to get the matter investigated and take further necessary action.
4. A factual report, along with authenticated copies of the relevant documents should be sent to the commission within 30 days of issue of this letter. The report should contain the following
 - Whether F.I.R is registered?
 - If yes, please enclose a copy of F.I.R.
 - A copy of Medico-Legal-Case document.
 - Whether the alleged accused has been apprehended? If yes, current status of his custody (Police Remand/Judicial Remand/ Bail). A detailed narration of facts of the case.
 - Present status of the victim with respect to the place of residence (with family/in some shelter home etc), medical state (undergoing treatment/ had undergone, given counseling), educational status (whether goes to school/ presently going to school or not), family/State CWC/ NGO Support (details of concerned Child Welfare Committee/ any intervening NGO, State official to whom the case is assigned, S.I/ A.S.I etc) with their correspondence address with phone numbers.
 - Does the child have any legal representation or not. If any, provide details.

2. Acknowledgment Letter to the complainant

An acknowledgment letter needs to be sent to the complainant confirming cognizance of the complaint by SCPCR.

To,
Complainant (Name)
Full address

Reference: Your complaint dated/regarding/place/received by the commission on.



Dear Sir/Ma'am

Your complaint referred to above has been registered as case _____.The matter is been looked into.

Consultant

(Enclose guidelines and check points for the victim's family/complainant so as to ensure that awareness about such relevant provisions prevails.)

3. **Reminder I for seeking action taken report**

A reminder letter must be sent to the same authorities if there is no response within 30 days of SCPCR sending the first letter.

To,
The Superintendent of Police
District
BIHAR

Subject: In brief the act/place/date of commission. Complaint received date/from.

Sir/Ma'am

Attention is invited to the enclosed copy of the Commission letter No. _____ dated, forwarding a copy of the complaint dated on the above subject received by the Commission from (Name of the complainant)

You were requested to investigate into the matter and send a report to the commission by (date - that 30 days gap). Although the stipulated date is already over, the report has not been received by the Commission so far.

You are requested to send the requisite report within 20 days of this letter.

Yours faithfully

4. **Reminder II for seeking action taken report**

If no response received from same authorities, a second reminder letter referring to the powers of SCPCR for summoning and enforcing of attendance, production of records u/s 14 of the Commission for Protection of Child Rights Act, 2005 should be sent

To,
The Superintendent of Police
District
BIHAR

Subject: In brief the act/place/ date of commission. Complaint received date/from.

Sir/Ma'am

Attention is invited to the enclosed copy of the Commission letter No. _____ dated, subsequent Reminder letter No. _____ dated (copy enclosed) on the above subject received by the commission from (Name of the complainant)

2. Your response in the matter has not been received in the Commission so far though in terms of the previous Reminder letter, you were requested to furnish the response within 20 days of the date of issue that was _____.
3. The Commission has taken a very serious view of in-action on your part. It is mentioned VIS 14 of the Commissions for Protection of Child Rights (CPCR) Act, 2005, the Commission is vested with following powers:-
 - Summoning and enforcing the attendance of any person and examining him an oath; Discovery and production of any document;
 - Receiving evidence on affidavit;
 - Requisitioning any public record or copy thereof from any court or office;
 - Issuing commissions for examination of witnesses. or documents
4. Please furnish the latest status of inquiry along with action taken on the above matter to this Commission within 15 days from the date of issue of this letter failing which further action would be taken in accordance with the provisions mentioned above.

Yours faithfully

Sample Complaint Form to SCPCR*

Often the complaint received is incomplete and does not contain adequate information to initiate an inquiry. NCPCR/SCPCR may forward this sample complaint form to complaint seeing the requisite information.

1. Details of victim/s

- a. Name



- b. Age
- c. Religion
- d. Sex
- e. Caste SC/ST /Gen
- f. Address
- g. State
- h. Name of the school
- i. Disability if any, details

2. Details of complaint (if complainant is not victim)

- a. Name
- b. Age
- c. Religion/cast
- d. Sex
- e. Address
- f. State
- g. Occupation
- h. If associated with NGO- name and address
- i. Relationship with the victim
- j. How was the information received

3. Details of the accused /s

- a. Name
- b. Age
- c. Religion/cast
- d. Sex
- e. Address
- f. State
- g. Occupation
- h. Is the accused known to the victim if yes give details
 - If yes give details
- i. Is the accused in a position of authority Public servant
 - Public servant
 - Management or staff of educational institution
 - Management or staff of Hostel
 - Management or staff of a children's home, etc:
 - Police
 - Member of armed forces
 - Any other (describe)

4. Details of the incident

- a. Date of the incident
- b. If the offence was committed more than once give as many dates as possible:
- c. Describe the incident:

5. Action taken after the incident by the victim /family and police

6. Medical Care and Examination

- a. Did the child sustain any injuries, describe the injury
- b. Was the child medically examined
- c. Date and time of the medical examination
- d. Name and address of the hospital
- e. Name of the doctor examining the child
- f. Did the child receive any medical care
- g. If yes give details of the kind of care
- h. Name of hospital and doctor
- i. Has the child be provided any counseling
- j. If yes by whom?

7. Reporting the offence

- a. Date of the FIR
- b. Reason for delay in reporting the offence
- c. FIR No.
- d. Sections mentioned in the FIR
- e. Name of Police Station
- f. Name of SHO
- g. Did the victim's family get a copy of the FIR (attach copy along with the form)

8. Arrest

- a. Has the accused/s been arrested
- b. If yes, date of arrest
- c. Has the accused been granted bail
- d. If, yes, give date
- e. Which court granted bail

9. Recording under Sec.164 CrPC

- a. Was the child's statement recorded u/s 164 CrPC
- b. Date of recording of statement
- c. Who was present while the child's statement was recorded

10. Charge-sheet

- a. Has the charge-sheet been filed
- b. Date of filing of the charge-sheet
- c. In which court :



- d. Has the child's family been given a copy of the charge-sheet
- e. If the case has been closed by the police

11. Trial

- a. Date when the child gave evidence in court
- b. How many times did the child have to go to court
- c. Who were present in court when the child was giving evidence in court
- d. Did any of the witnesses turn hostile

12. Completion of trial

- a. Date of order of the court
- b. Acquittal
- c. Conviction: under what section
- d. what punishment was awarded
- e. If, Yes how much

13. Status of the case at the time of complaining the SCPCR

- a. Investigation
- b. Charge sheet filed
- c. Trial
- d. Has the child given evidence in court
- e. Trial Concluded
- f. Appeal
- g. Do not know purpose of writing to the SCPCR

14. Please state clearly what assistance is required from the SCPCR

Date

Place

I agree that the details of the matter given in the above form is true to the best of my knowledge and information.

Signature of complainant

