

**Training Manual on Protection of Children from Sexual Offences
(POCSO) Act & Rules, 2012 for Medical/Health Professionals**



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FOREWORD

Sexual offences against children are undoubtedly a violation of child's rights as these are the reflections of perverted, perpetuated and hatred feelings of adults who indulge in such acts driven by brutal and unsolicited gratification of their sexual needs. These harmful acts result in manifold effects on the lives of the child victims. Since each child victim develops his/her own coping mechanisms, the effects of sexual offences vary from child to child. Considering the serious nature of consequences of child sexual abuse, however, till recently, no single legislation was handling this aspect, other than certain provisions of IPC. As a result, there was no law to adequately penalize the perpetrators of such crimes. In order to deal with sexual offences against children, the Government has enacted a special law, i.e. The Protection of Children from Sexual Offences Act (POCSO), 2012 which came into force from 14 November 2012 along with Rules framed there under.

Some important features of this comprehensive gender-neutral Act, *inter-alia*, include child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The Act defines six types of sexual offences for which provisions for penalty have been clearly defined. These six types comprise preventive sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment and using child for pornographic purposes. The Act also calls for mandatory reporting of sexual offences. The Act further provides for 'in-camera' trial and prohibits revelation of victim's identity.

The Act also calls for effective role of different stakeholders in its implementation. Each stakeholder has a unique and crucial role to play at different stages of dispensing justice to the victims. Viewing the essential and vital role each stakeholder has to play, the Ministry of Women and Child Development, Government of India requested the Institute to develop training manuals in order to sensitise these stakeholders on various aspects of child sexual abuse with specific reference to implementation of POCSO Act and Rules, 2012. In view of this, the Institute has developed training manuals in respect of eleven stakeholders. These stakeholders are: Police/ SJPU; Chairpersons/ Members of Child Welfare Committee (CWCs); Superintendents and Caregivers of Child Care Institutions; Medical/ Health Professionals; District Child Protection Units (DCPUs); Counsellors, Social Workers and Special Educators; Faculty of Educational Institutions; Judicial Officers; Media Professionals; NGOs/ Youth Clubs/ Youth Groups; Elected Representatives of Local Self Government. This training manual deals with one of these stakeholders.

I would like to place on record the efforts and services put in by Shri Subhasis Ray, Assistant Director and in charge of this project and his team comprising Ms. P. Saroja, Project Associate and Ms. Josmi Joseph Srampickal, Project Assistant in developing these training manuals under the overall guidance and supervision of Dr. (Ms.) Tejinder Kaur, Joint Director (PC). My sincere thanks go to all of them.


(Dr. Dinesh Paul)
Director 30/6/2015

Table of Contents

		Page Nos.
i	Abbreviations	
A.	Introduction to the Manual	1-6
	Background	1
	Training Module and Programme Schedule	4
	Need of the Manual	6
B.	Role of the Facilitator	7-12
	Introduction	7
	Training Innovations (Methods and Techniques)	9
	Training Games/Energizers	11
	Facilitator's Check List: "Do's and Don'ts" for Facilitators	12
C.	Inauguration and Introduction	13-20
	Registration/ Introductory/Inaugural Session	13
	Rapport Building/Ice Breaking	15
	Pre-Training Assessment	17
D.	Technical Sessions	21-87
Technical Session I	Child Rights: An Overview of UNCRC & Obligations	21
Technical Session II	Salient Features of Protection of Children from Sexual Offences (POCSO) Act & Rules, 2012	48
Technical Session III	An Overview of Medical & Forensic Services for Investigating Sexual Offences	59
Technical Session IV	Role of Medical/ Health professionals in Implementation of POCSO Act & Rules, 2012	67
Technical Session V	Panel Discussion of Interface of Health/ Medical Professionals with Other Stakeholders/Open House Discussion	72
E.	Annexure	87-111
	The Protection of Children from Sexual Offences Act and Rules, 2012	87

Abbreviations

SI No.	Abbreviations	Explanation
1	AIDS	Acquired Immuno Deficiency Syndrome
2	CCIs	Child Care Institutions
3	CEDAW	The Convention on the Elimination of all forms of Discrimination Against Women
4	CPCR	Commission for Protection of Child Rights
5	Cr. PC	Criminal Procedure Code
6	CRIN	Child Rights Information Network
7	CWC	Child Welfare Committee
8	DCPU	District Child Protection Unit
9	FIR	First Information Report
10	FOGSI	Federation of Obstetric and Gynecological Societies of India
11	GACFCA	Georgia Center for Child Advocacy
12	GOI	Government of India
13	HIV	Human Immunodeficiency Virus
14	ICDS	Integrated Child Development Services Scheme
15	ICPS	Integrated Child Protection Scheme
16	ILO	International Labour Organisation
17	IO	Investigation Officer
18	IPC	Indian Penal Code
19	JJ Act	Juvenile Justice (Care and Protection of Children) Act
20	NCPCR	National Commission for Protection of Child Rights
21	NGO	Non-Governmental Organisation
22	OPs	Optional Protocols
23	POCSO	Protection of Children from Sexual Offences Act
24	PTSD	Post-Traumatic Stress Disorder
25	RTE	Right to Education
26	SCPCR	State Commission for Protection of Child Rights
27	SJPU	Special Juvenile Police Unit
28	STDs	Sexually Transmitted Diseases
29	UNCRC	United Nations Convention on the Rights of the Child
30	UNFPA	United Nations Fund for Population Activities
31	UNICEF	United Nations Children's Fund
32	UOI	Union of India
33	UTs	Union Territories

A. Introduction to the Manual

I. Background

Caring and nurturing of children entails commitment, concentration and efforts in order that they grow into healthy citizens of the country. The State owes to itself, the responsibility for care, nurture and growth of its citizens. The State has mandate to proactively promote the well-being of its citizens by adopting measures for the welfare of its citizens. Children, who constitute almost 41 percent of total population of the country, are an important entity for the State. The Preamble of Constitution of India declares "... JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity ...". The agenda is set in the Directive Principles of State Policy and rights of all citizens are guaranteed as Fundamental Rights.

Children and women constitute two vulnerable sections of our society. Vulnerability of women and children is multi-dimensional and multi-faceted. In social milieu, they strive to struggle against all odds, whenever faced with stigma and biases. This vulnerability primarily emanates from concocted gender misconception, authoritarian social roles, extreme disrespect towards individual's needs and rights. In a given situation, when children push themselves into taking risky action and resultantly face injury, stress, trauma and scar which may be a traumatic experience or a disability. Since children are a national asset, proactive planning and provision of services to children is an investment for the future of the country. Children have rights, and we, as adults, have duties and responsibilities towards them. Of late, child care and protection has emerged as a priority area for the Government. Recognition by the Government of this priority area is evident from the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its Amendment Act, 2006 which focused specifically on child rights and rights-based approach. Following this, the Government launched the Integrated Child Protection Scheme (ICPS) in 2009 to provide structural, schematic and infrastructural support to child protection endeavour. Recognising the vulnerability of children, JJ legislation put in place provisions for ensuring a protective and caring environment under close supervision mechanism. The Act also departed from the judicial processes in place for adults and prescribed specialised procedures in order to address the 'best interest' of children in a consultative regime, with participation from a multitude of stakeholders, including children, to arrive at practical and meaningful solutions to the vulnerability of children.

The premise of adult jurisprudence emphasizes on punitive action and a reformative option for the individual to reflect and repent and reform as a consequence. The premise, on the other hand, in case of children, as enshrined in the child-specific statutes is to protect children, who have strayed, to counsel them and turn-around in order to gain understanding of the need to progress by providing ample opportunities to develop and advance into socially desirable and acceptable adult roles. Thus, the approach is contrasted between adults and children, in that, while, for the former, it is reformation, for the latter, it is a fresh start. This premise forms the basis for our work with children.

Sexual offences are a violation of human rights. They are condemnable, reprehensive and repugnant to what we stand for – human dignity and rights of individuals. These are acts of perversion, perpetuated with feelings of hatred, intended to hurt, brutal and unwilling and

unsolicited gratification of personal needs. Child sexual abuse can result in both short term and long term harm, including psychopathology in later life. Physical and social effects, including depression, post-traumatic stress disorder, poor self-esteem, anxiety disorders, general psychological distress and disorder are instilled in them. In spite of the fact that not all victims of child abuse and neglected childhood experience behavioural consequences, studies have found abused and neglected children to be at least 25 percent more likely to experience problems such as delinquency, teen pregnancy, drug use and mental health problems, etc.

Sexual offences like rape, hitherto, including sexual offences against children, were dealt under IPC till now. The Juvenile Justice (Care and Protection of Children) Act, 2000 provided some penal provisions for adults committing crimes against children under Sec. 23 to 28. However, offences of such serious nature against children were neither adequately addressed by the existing laws nor were they adequately penalized. Therefore, to deal with such sexual offences against children, the Government has brought in a special law “The Protection of Children from Sexual Offences Act, 2012”. The Act has come into force with effect from 14th November, 2012 along with the Rules framed there under.

An Overview of the Protection of Children from Sexual Offences (POCSO) Act, 2012:

The Act is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The Act is gender neutral in nature and defines a child as any person below eighteen year of age and is gender-neutral. The Act identifies six types of sexual offences namely:

- Penetrative Sexual Assault (Sec. 3)
- Aggravated Penetrative Sexual Assault (Sec. 5)
- Sexual Assault (Sec. 7)
- Aggravated Sexual Assault (Sec. 9)
- Sexual Harassment (Sec. 11)
- Using child for Pornographic Purposes (Sec. 13)

The Act deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, a family member, police officer, teacher or doctor. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act. The Act prescribes stringent punishment, graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

In keeping with the best international child protection standards, the Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has

knowledge that a child has been sexually abused to report the offence, if he fails to do so, he may be punished with six months' imprisonment and/ or a fine.

The Act calls for a role of child protectors, among others, for the police as well, during the investigative process, makes provision for the medical examination of the child in a manner designed to cause as little distress as possible and provides for Special Courts that conduct the "in-camera" trial and without revealing the identity of the child, in a child-friendly manner.

The achievement of these objectives requires a coordinated response of all the key players, specially the medical fraternity.

In short, the Act recognises almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State as collaborators in securing justice for a sexually abused child.

Role of State Governments in Implementation of POCSO Act, 2012

The POCSO Act, 2012 envisages that the State Government shall:

- (i) in consultation with the Chief Justice of the High Court will designate for each district, by notification in the Official Gazette, a Court of Session to be a Special Court to try the offences under the Act (If a Court of Session is already notified as a Children's Court under the Commissions for Protection of Child Rights (CPCR) Act, 2005, then such Court shall be deemed to be a Special Court for cases under POCSO Act).
- (ii) set up the State Commission for Protection of Child Rights as per the CPCR Act, 2005.
- (iii) set up ICPS structures - DCPUs at the District Level to arrange training of all personnel for professional handling of cases and expand the non-institutional services under the JJ Act.
- (iv) pay the compensation awarded by the Special Court/Children's Court from the "Victim Compensation Fund" or JJ Fund or other Scheme or fund established for the purpose of compensating and rehabilitating child victims under Section 357 A of the CrPC or any other law for the time being in force.
- (v) training and awareness programmes for child protection functionaries.

Objectives

The main objectives of the Orientation Workshop are to:

- i. enhance the knowledge of the participants about salient features of POCSO Act, 2012;
- ii. sensitize the participants about the sexual offences being committed against children and consequent trauma faced by them;
- iii. develop an understanding of their role in implementation of the Act;

- iv. enable them to understand and contextualize the rights of children;
- v. orient them about different support and rehabilitation services available for victims of sexual offence under POCSO Act & Rules 2012; and
- vi. discuss about difficulties/problems encountered in the implementation of the Act and skills required in solving these problems.

Programme Contents

The contents of the Orientation Workshop would broadly include Child Rights: An Overview; Abuse and violence against children: A situational analysis; Understanding child sexual abuse, Children’s consequential trauma and its impact on them; Salient features of Protection of Children from Sexual Offences (POCSO) Act and Rules, 2012; An Overview: of medical and Forensic services for investigating sexual offence; Role of Medical/Health Professionals in implementation of POCSO Act and Rules, 2012.

Participants

About 25-30 Medical/Health Professionals will take part in the Orientation Workshop.

Methodology

The participants would be exposed to deliberations mainly based on participatory methods which may include presentations, lecture cum discussions, group work, panel/open house discussions, information sharing on each other’s experience, case studies, etc.

II. Training Module and Programme Schedule

The programme schedule sets the agenda for capacity building of Medical/Health Professionals. It describes the issues to be covered during the training programme delineating the inter-linkages of various stakeholders.

The two-day programme covers key subject of relevance to the roles and responsibilities of participants underlying the necessity and relevance of legal framework and the schematic content of POCSO for child sexual abuse. The programme is a mix of theoretical constructs, context of child rights, legislations for child protection, roles and responsibilities of the Medical/Health Professionals prescribed under the Act. Training techniques in the programme schedule include panel discussion/open house discussion, etc. The pre and post assessment of knowledge of participants is a hallmark of the programme.

The day-wise breakup of programme schedule is as under:

Programme Schedule

Day 1	
Time	Topic
9:30 a.m. –10.00 a.m.	Session I – Registration
10.00 a.m. – 10.45 a.m.	Session II – Introductory/Inaugural Session

10.45 a.m. – 11.00 a.m.	Tea Break
11.00 a.m. – 11.45 a.m.	Session III – Rapport Building/Ice Breaking/Pre Training Assessment
11.45 a.m. – 1.15 p.m.	Technical Session I – Child Rights: An Overview
1.15 p.m. – 2.15 p.m.	Lunch Break
2.15 p.m. – 3.30 p.m.	Technical Session II – Salient Features of Protection of Children from Sexual Offences (POCSO) Act and Rules, 2012
3.30 p.m. – 3.45 p.m.	Tea Break
3.45 p.m. – 5.00 p.m.	Technical Session II Continued
Day 2	
Time	Topic
9:00 a.m. – 9.15 a.m.	Recap of the Previous Day
9.15 a.m. – 11.00 a.m.	Technical Session III – An Overview of Medical & Forensic Services for Investigating Sexual Offences
11.00 a.m. – 11.15 a.m.	Tea Break
11.15 a.m. – 1.15 p.m.	Technical Session IV – Role of Medical/Health Professionals in Implementation of POCSO Act and Rules, 2012
1.15 p.m. – 2.15 p.m.	Lunch Break
2.15 p.m. – 4.15 p.m.	Technical Session V – Panel Discussion on Interface of Health/Medical Professionals with Other Stakeholders/Open House Discussion
4.15 p.m. – 4.30 p.m.	Tea Break
4.30 p.m. – 4.45 p.m.	Post Training Assessment
4.45 p.m. – 5.15 p.m.	Valedictory Session

III. Need of the Manual

A [training](#) manual is a [book](#) or [booklet](#) of instructions, designed to standardize and maintain the quality of a training imparted and tasks performed thereafter by the trainees. A training manual also contains necessary supportive reading/reference material relevant to various sessions of the training to help the facilitator supplement his/her knowledge-base. It also guides the facilitators, in the form of tips, as to how to handle a particular training session. A training material also helps the facilitators to decide about the training aids and training methodology they are supposed to apply/use in a particular training session. Keeping these in view, this training manual has been designed to cater to the police/SJPU which has a crucial role to play in implementation of the POCSO Act, 2012.

Designing Training Manual

The Manual has been designed in such a manner that it can serve as a helpful training tool. It has been ensured that materials have been designed to provide the most learning opportunities as a support material for each session. Ultimately, the manual is an attempt to help the Medical/Health Professionals to achieve required competency in dealing with cases being dealt under POCSO Act, 2012.

Utility of the Training Manual

The manual is based on the interaction between trainers and participants. It emphasizes extensive use of participatory and interactive exercise to help participants in the learning process.

It is designed in the form of a reference document so as to assist the trainer to accomplish the task with tips for trainers and facilitators where necessary, games and exercise that can help facilitate the sessions and content specific information will help the trainers/facilitators/resource persons conduct training programmes successfully.

Trainers/facilitators in different States will have to look for State-specific information to assist the participants with tools that will help them perform their role suitably. These include State-specific situation of children, cases, issues and concern of children etc.

B. Role of the Facilitator

- I. Introduction**
- II. Training Innovations (Methods and Techniques)**
- III. Training Games/Energizers**
- IV. Facilitator's Check List: "Do's and Don'ts" for Facilitators**

Introduction

“A person who is acceptable to all group members, substantively neutral, and has no decision-making authority who helps a group improve the way it identifies and solves problems and makes decisions.” - Roger M. Schwarz

The definition of "facilitate" is "to make easy" or "ease a process". What a facilitator does is plan, guide and manage a group event to ensure that the group's objectives are met effectively, with clear thinking, good participation and full cooperation from everyone who is involved.

To facilitate effectively, you must be objective. This doesn't mean you have to come from outside the organization or team, though. It simply means that, for the purposes of this group process, you will take a neutral stance. You step back from the detailed content and from your own personal views, and focus purely on the group process. (The "group process" is the approach used to manage discussions, get the best from all members, and bring the event through to a successful conclusion. How you design this depends on many factors, and we'll explore this in a little more detail later in the article. The secret of great facilitation is a group process that flows – and with it will flow the group's ideas, solutions, and decisions too.)

Your key responsibility as a facilitator is to create this group process and an environment in which it can flourish, and so help the group reach a successful decision, solution or conclusion.

Guidelines for the facilitators: In order to promote experiential learning through optimum participation and interaction, the facilitators should pay attention to the following aspects:

Training Environment

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

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

Setting Ground Rules

At the beginning of the training ask the participants to help you lay out the ground rules which are generally formed to guide the trainees on certain on certain behavioural pattern so that

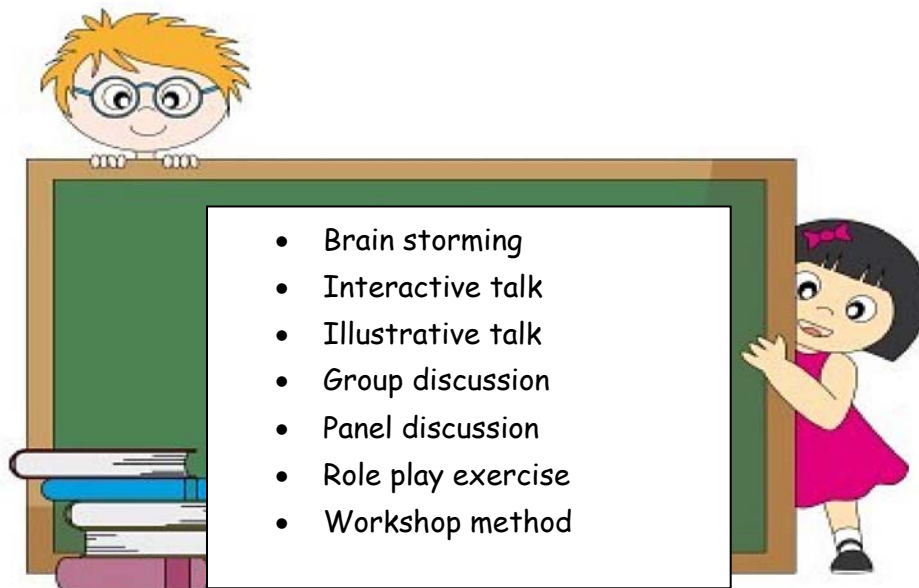
they treat others equally, support each other, communicate, participate, cooperate and coordinate joint activities. When the ground rules are set in consultation with the trainees, these need to be written on a chart paper. Thereafter, ask the trainees if they agree to them or want to add anything. After finalizing the content, keep the chart paper displayed in the classroom. Some typical ground rules are:

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

Appropriateness of the Training

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

Training Innovations (Methods and Techniques)

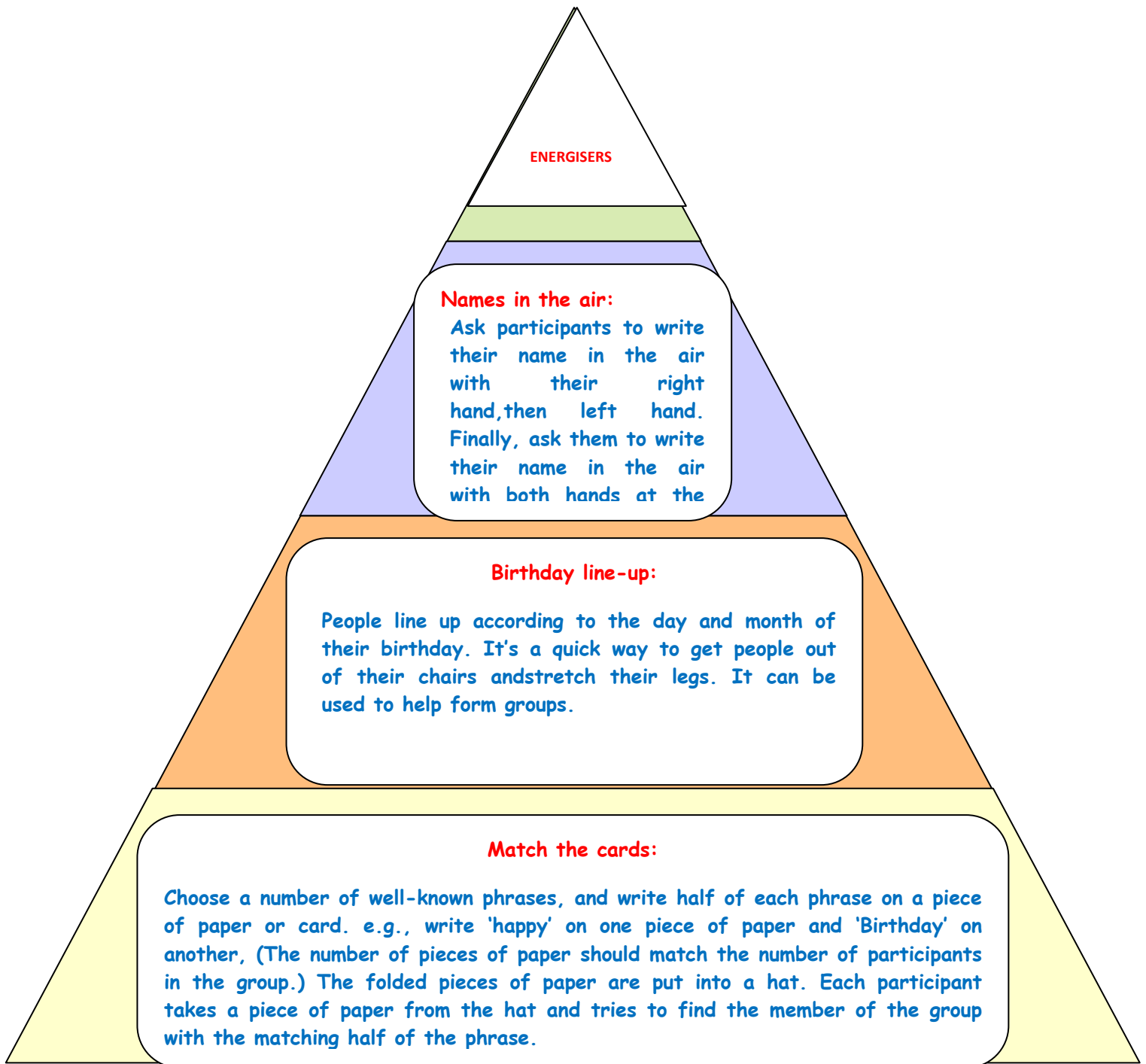


Training Glossary

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

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

I. Training Games/Energizers (Some example)



II. Facilitator's Check List: "Do's and Don'ts" for Facilitators

The Facilitators MUST.....

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

The facilitators must ensure that they:-

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

C. Inauguration and Introduction

- **Registration**
- **Introductory/Inaugural Session**
- **Rapport Building/Ice Breaking**
- **Pre-Training Assessment**
- **Reference Material**

Registration
Introductory/Inaugural Session
Pre-Training Assessment
Rapport Building/Ice Breaking

Learning Objectives:

- To make the participants aware about the objectives and contents of orientation programme.
- To help the participants to open up develop rapport with each other

Material Required: Flip Chart, Marker, Projector, Computer, Pre Training Assessment Form, etc.

Duration:

Session I: 30 Minutes

Session II: 45 Minutes

Session III: 45 Minutes

Instructions for Sessions I, II & III:

Registration and Inauguration

- Distribute registration forms to the participants.
- Match the registration forms with the list of confirmed participants.
- Address issues of participants who may be attending the programme but their nomination papers are yet to be received. Sort out the issue in accordance with eligibility of the programme and regret letter for the participants. Final admission to the programme should be based on approval of the competent authority.
- Distribute training kit to the participants.
- Ensure that the training kit shall have copies of the following:
 - ✓ Programme Schedule
 - ✓ Registration Form
 - ✓ TA form, if applicable
 - ✓ Local Conveyance Form, if applicable
 - ✓ Note Pad and Pen
 - ✓ POCSO Act
 - ✓ POCSO Rules
 - ✓ Any other reading material relevant to the participants
- Welcoming the participants.
- Introductory remarks by the Head of the Institution.
- Ensure that the introductory session shall highlight the following:
 - ✓ Introduction to the training schedule, Briefing on running the programme, objectives, programme schedule, working hours, punctuality, leave rules, etc.

Rapport Building and Setting up of Ground Rules

- Carry out at least two activities to establish rapport among participants.
- Ask the participants whether they need to have ground rules for the training programme or not.
- Ask them why ground rules are important in training programme.
- Let the participants come up with their own set of rules for the training programme.
- Quickly write down the responses on the flip chart/ chart paper.
- Paste the flip chart at a place where it is visible to all the participants.

Pre-Training Assessment

- Explain why pre training assessment is important.
- Distribute the pre training assessment form to the participants.
- Instruct them to fill the form in 10 minutes.
- Collect the filled in form for analysis.

Rapport Building and Setting up of Ground Rules

Activity-I Who am I?

- Ask each participant to write his/her name on masking tape and stick it on his or her shirt or dress.
- Tell them to stand in a circle, with everyone wearing their nametag.
- Give them 2 minutes to look around the circle and try to get everyone's name.
- Then tell them to cover their name and ask for a volunteer to try and name everyone in the circle.
- Give three or four volunteers the chance to do this.

Activity-II What do I feel?

- Participants sit in a circle; each one of them takes turns acting out certain emotions.
- Others try to guess out what emotion is being acted, the one who guesses right acts out the next emotion.

Setting Ground Rules

What are Ground Rules?

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

Why are ground rules important?

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

- When broken, ground rules provide the facilitator/resource person, and others in the group, implied consent to intervene.

How to establish ground rules?

- It's important to spend necessary time to come to consensus (an essential precondition) on the specific rules for an ongoing group.
- Each trainee should be encouraged to give his/her suggestions, so as to what all should comprise the ground rules.
- Let the trainees come up with their own protocol/set of rules at the start of the training session. Do not dictate the rules to them. This process will help the participants to have a clear understanding of acceptable behaviour.
- The facilitator/resource person must engage all the trainees in the establishment of ground rules to build up required trust and confidence in them. If trainees have difficulty in developing these rules, the facilitator/resource person may like to guide the process of rule setting with some suggestions as given below:
 - Session will start promptly on time as scheduled. All trainees are expected to be on time. If, for extenuating circumstances, a trainee is late, he/she must catch up on his/her own
 - Switch off mobile phones – this could be addressed by asking, “Does anyone need to keep mobile on for family or 'on-call' reasons? OK, then could you put your mobile on silent mode please?” and “when you get a call, take the call after going out of the room”.
 - Never refer to someone by name when giving an example.
 - Do not interrupt while someone is talking.
 - Listen to different ideas without put-downs.
 - Everyone has the right to speak and therefore everyone must respect each other's right to participate and share thoughts.
 - Each person is responsible for his or her own behaviour.
 - Respect other's cultural and religious traditions, beliefs, values and languages.
 - Respect other people's contributions.
 - Only have one conversation at a time in the class.

Pre-Training Assessment

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

Pre-Training Assessment Form

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

S. No.	Question	(Tick the correct option)
1.	Any idea about POCSO Act 2012?	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/> (c) Somewhat <input type="checkbox"/>
2.	When did POCSO Act 2012 come into force?	(a) 14 November 2012 <input type="checkbox"/> (b) 12 May 2013 <input type="checkbox"/> (c) 30 March 2011 <input type="checkbox"/>
3.	The Act was passed in the Indian Parliament in May 2012	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
4.	Who is a child under POCSO Act 2012?	(a) Any person below the age of 18 years <input type="checkbox"/> (b) Any person above the age of 18 years <input type="checkbox"/>
5.	Is the Act gender neutral?	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
6.	The Act have a clear definition for all types of sexual abuses like sexual assault, sexual harassment and pornography.	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
7.	What is an "aggravated" offence?	When an offence is committed by: (a) Police Officer <input type="checkbox"/> (b) Armed Forces Or Security Forces <input type="checkbox"/> (c) Public Servant <input type="checkbox"/> (d) All the above <input type="checkbox"/>
8.	According to POCSO Act, 2012, if someone fails/hides the information of the commission/apprehension of the offence shall be punishable with imprisonment for a term which may extend to one year with fine.	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
9.	Match the punishments and fine for various offences in the POCSO Act 2012? Answer: Offence a) Penetrative Sexual Assault	Punishment there for i) 5 years and fine (Section 14)

	(Section 3) b) Aggravated Penetrative Sexual Assault (Section 5) c) Sexual Assault (Section 7) d) Aggravated Sexual Assault (Section 9) e) Sexual Harassment (Section 11) f) Using Child for Pornographic Purposes (Section 13)	ii) 3 years and fine (Section 12) iii) 5-7 years and fine (Section 10) iv) 3-5 years and fine (Section 8) v) 10 years/imprisonment for life and fine (Section 6) vi) 7 years/imprisonment for life and fine (Section 4)	
10.	Where are the cases of the POCSO Act 2012 tried?	(a) Special Courts (b) High Courts (c) District Courts	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
11.	Whether the POCSO Act 2012 has incorporated the child friendly procedures for reporting, recording of evidence, investigation and trial of offences?	(a) Yes (b) No	<input type="checkbox"/> <input type="checkbox"/>
12.	Whether the POCSO Act 2012 has recognized the intent to commit an offence, even when unsuccessful for whatever reason and be penalized?	(a) Yes (b) No	<input type="checkbox"/> <input type="checkbox"/>
13.	Tick mark some of the specifications of POCSO Act 2012 Answer: 1. Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector 2. Child to be detained in the police station in the night for any reason. 3. Police officer to be in uniform while recording the statement of the child 4. The statement of the child to be recorded as spoken by the child 5. Assistance of an interpreter or translator or an expert as per the need of the child 6. Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled 7. Medical examination of the child to be conducted in the absence of the parent of the child or any other person in whom the child has trust or confidence. 8. In case the victim is a girl child, the medical examination shall be conducted by a woman doctor. 9. No frequent breaks for the child during trial 10. Child to be called repeatedly to testify 11. No aggressive questioning or character assassination of the child 12. In-camera trial of cases		
14.	Whether the abetment of the offence is punishable in the POCSO Act 2012?	(a) Yes (b) No	<input type="checkbox"/> <input type="checkbox"/>
15.	On whom lies the burden of proof in	(a) Accused	<input type="checkbox"/>

	the heinous cases of POCSO Act 2012?	(b) Children <input type="checkbox"/> (c) Both <input type="checkbox"/> (d) None <input type="checkbox"/>
16.	Where the cases under this Act reported?	(a) Special Juvenile Police Unit (SJPU) <input type="checkbox"/> (b) Local Police <input type="checkbox"/> (c) Both <input type="checkbox"/>
17.	Whether documentation or magisterial requisition is demanded before treatment in the emergency medical facility to the child?	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
18.	The Act provides for Interpreters, translators and Special educators for convenience.	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
19.	When is a child referred to emergency medical care under POCSO Act, 2012?	(a) section 3 and 5 <input type="checkbox"/> (b) section 3 and 7 <input type="checkbox"/> (c) section 9 <input type="checkbox"/> (d) section 3,5,7 and 9 <input type="checkbox"/>
20.	It is the responsibility of the doctor 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.	(a) True <input type="checkbox"/> (b) False <input type="checkbox"/>

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

Key:

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

Minimum Score: 0
Maximum Score: 20

Scoring Pattern:

- Assign score 1 for the right answer and 0 to wrong.
- Sum of all scores is the Total Score
- Ranges for assessing knowledge level of participants are:

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

D. Technical Sessions

Technical Session I Child Rights: An Overview

Learning Objectives:

- To orient participants about UNCRC and other international instruments.
- To enable them to understand and contextualize UNCRC to the rights of children.

Methodology:

Presentation, lecture and discussion

Material Required:

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

Duration: 1 hour 30 minutes

Instructions:

- Ask the participants what they understand by the terms like ‘rights’ and ‘conventions’, difference between ‘rights’ and ‘needs’, etc.
- Explain the participants about the evolution of various conventions on child rights.
- Show and explain the slides on the session “Child Rights: An Overview”. Include slides on reporting mechanism on UNCRC.
- Ask the participants to share the situation of children in their area/region/state.
- Also ask the participants to share their views on ‘rights based approach to child protection system’.
- Explain the concept, components and guiding principles of rights based approach system with the help of slides.
- Discuss the terms ‘monitoring’ and ‘evaluation’.
- Select the relevant response of the participants and explain the concept of ‘rights based monitoring and evaluation’.
- Quickly write the responses of the participants on flip chart/white board.
- Quickly analyze the responses and presentation with discussion.
- Keep track of time and wind up the session.

Tips for the Facilitators/Resource Persons:

- This session is meant to make the participants understand and contextualize UNCRC and other international instruments on child rights and protection.
- As this is theoretical session try to seek as much participation as possible
- Link the participants view points with the available literature
- Read/Review the slides carefully before conducting the session.
- Have updated data and knowledge on the topic.
- Keep track of the time as it is an extensive session with limited time.

Reference Material for Technical Session I

CONTENTS

Concept of child rights

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

Articles of UNCRC and other international instruments concerning child rights

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

Relevance of UNCRC to rights of children

Rights-based approach in working with children

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

Concept of child rights

Children's Rights

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

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

The field of children's rights spans the fields of [law](#), [politics](#), [religion](#), and [morality](#).

Justifications

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

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

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

Historical Definitions of Children's Rights

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

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

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

Types of Child Rights

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

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

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

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

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

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

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

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

Difference between children's rights and youth rights

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

Parental rights

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

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

Movement

The 1796 publication of [Thomas Spencer's *Rights of Infants*](#) is among the earliest English-language assertions of the rights of children. Throughout the 20th century children's rights

activists organized for homeless children's rights and [public education](#). The 1927 publication of [The Child's Right to Respect](#) by [Janusz Korczak](#) strengthened the literature surrounding the field, and today dozens of international organizations are working around the world to promote children's rights.

Opposition

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

International Law

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

Convention on the Rights of the Child

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

Vienna Declaration and Programme of Action

[Vienna Declaration and Programme of Action](#), 1993 urges at Section II para 47, all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action and calls on States to integrate the Convention on the Rights of the Child into their national action plans. By

means of these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates and providing access to safe drinking water and basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from disasters and [armed conflicts](#) and the equally grave problem of children in extreme poverty. Further para 48 urges all states, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female [infanticide](#), harmful [child labour](#), [sale of children](#) and organs, [child prostitution](#), [child pornography](#), as well as other forms of sexual abuse. This gave an influence to adoptions of [Optional Protocol on the Involvement of Children in Armed Conflict](#) and [Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography](#).

Scenario in India

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

Trafficking of children also continues to be a serious problem in India. The nature and scope of trafficking range from industrial and domestic labour, to forced early marriages and commercial sexual exploitation. Existing studies show that over 40 per cent of women sex workers enter into prostitution before the age of 18 years. Moreover, for children who have been trafficked and rescued, opportunities for rehabilitation remains scarce and reintegration process arduous. While systematic data and information on child protection issues are still not always available, evidence suggests that children in need of special protection belong to communities suffering disadvantage and social exclusion such as scheduled castes and tribes, and the poor. The lack of available services, as well as the gaps persisting in law enforcement and in rehabilitation schemes also constitute a major cause of concern.

The History of Child Rights in India

The Indian Constitution has a framework within which ample provisions exist for the protection, development and welfare of children. There are a wide range of laws that guarantee children their rights and entitlements as provided in the Constitution and in the UN Convention. It was during the 50s decade that the UN Declaration of the Rights of the Child was adopted by the UN General Assembly. This Declaration was accepted by the Government of India. As part of the

various Five Year Plans, numerous programmes have been launched by the Government aimed at providing services to children in the areas of health, nutrition and education.

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

The National Policy for Children, 2013

Recognises that:

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

Reaffirms that:

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

The Department of Women and Child Development was set up in the Ministry of Human Resource Development in 1985. This department besides ICDS, implements several other programmes, undertakes advocacy and inter-sectoral monitoring catering to the needs of women and children. In pursuance of this, the Department formulated a National Plan of Action for Children in 1992.

The Government of India ratified the Convention on the Rights of the Child on 12 November 1992. By ratifying the Convention on the Rights of the Child, the Government is obligated "to

review National and State legislation and bring it in line with provisions of the Convention". The Convention revalidates the rights guaranteed to children by the Constitution of India, and is, therefore, a powerful weapon to combat forces that deny these rights.

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

At the provincial level

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

Networking with experts and NGOs

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

Indian Constitutional provisions:

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

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
 - a) access to shops, public restaurants, hotels and palaces of public entertainment; or
 - b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
3. Nothing in this article shall prevent the State from making any special provision for women and children
4. Nothing in this article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 21 Protection of life and personal liberty

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

Article 23 Prohibition of traffic in human beings and forced labour

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

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

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

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

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

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

Article 45 Provision for free and compulsory education for children

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

Introduction (from Bills of Right Comparative Law Materials):

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

Cases:

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

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

3. Lakshmi Kant Pandey v. Union of India: [(1984) 2 SCC 244; AIR 1984 SC 469] This is an extremely important case relating to the adoption of Indian children by persons inside and outside India. In the absence of legislation, the Supreme Court framed elaborate guidelines in the matter. There was no law to regulate inter-country adoptions and such lack of legal regulation could cause incalculable harm to Indian children. Considering the possibility of child trade for prostitution as well as slave labor, legal regulation of such adoptions was essential. Therefore, Justice Bhagwati created a scheme for regulating both inter-country and intra-country adoptions. The Supreme Court held that any adoption, in violation of or non-compliance with, may lead adoption to be declared invalid and expose person concerned with to strict action including prosecution. For years, social activists have used these directions to protect children and promote desirable adoptions. The Government of India framed a national policy in this regard. Also Indian Council for Social Welfare v. State of A.P. [(1999) 6 SCC 365]

4. M.C.Mehta v. State of T.N.: [(1991) 1 SCC 283] The Supreme Court directed that children should not be employed in hazardous jobs in factories for manufacture of match boxes and

fireworks, and positive steps should be taken for the welfare of such children as well as for improving the quality of their life.

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

6. Gaurav Jain v Union of India: [(1997) 8 SCC 114; AIR 1997 SC 3021] The Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any stigma attached on them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry.

7. Sakshi v Union of India: [(1999) 8 SCC 591] In this Public Interest Litigation matter, the Supreme Court of India asked the Law Commission to consider certain important issues regarding sexual abuse of children submitted by the petitioner and the feasibility of amendment to 375 and 376 IPC.

Articles of UNCRC and other international instruments concerning child rights

What is Convention?

Convention may refer to

(1) Treaty, an agreement in International Law.

Whether Children need Rights?

YES, Children do need RIGHTS because:

- They are also human beings and their rights are Human Rights
- They are more vulnerable than adults to the conditions in which they live.
- In many societies, view persist that children are their parent's property, or are adults in the making, or are not yet ready to contribute to society.
- They are vulnerable to exploitation and abuse
- They are unheard many a times

Understanding Wants, Needs and Rights

- A need is something that is basic to being alive, for example, water, food, shelter, work, money.
- A want is something that you desire to have but don't have e.g. radio, TV, fancy clothes, cell phone etc.
- Wants and needs vary from person to person, but rights are common to all.
- All persons have rights irrespective of their age, caste, sex etc.
- Every child has rights. No matter which region/state they are from, which community or religion they belong to, how old they are, irrespective of their sex – all have same rights.
- All wants are not needs.
- Things that are WANTS but not NEED are called desirable but not necessary for survival (e.g. toys, games etc.).
- Rights are non-negotiable, they are legal entitlements recognized by Government.
- The Governments are the bearers of rights of children. They have an obligation to fulfill them.

Difference between Need and Rights Based Approaches

Needs Based Approach	Rights Based Approach
Children deserve help	Children are entitled for help
Government ought to do something	Government have binding legal and moral obligation
Children can participate so as to improve	Children are active participants in all matters

service delivery	concerning them
Given scarce resources, some children may have to be left out	All children have same rights to fulfill their potential
Each activity meets a set goal, but there is no unifying purpose	All activities contribute to an overarching goal
Certain groups have expertise to meet children's needs	All adults can play a role in achieving children's right
Focus is on the specific immediate situation	Analyses root cause

Evolution of Children's Rights and UNCRC

Year	Developments
1914-18	First World War
1919	Save the Children Fund
1924	League of Nations Concedes to Child Rights
1948	The Universal Declaration of Human Rights
1959	Acceptance of Right of the Child. It is the duty of Humanity to offer the best to every child
1978	Poland demanded for creation of Child Rights in the background of past and present situation of children
1979	International Children's Year. Committee on Child Rights Starts Functioning
1989	United Nations adopts Convention of Rights of the Child (UNCRC)
1990	World Leaders' Summit
1990	CRC – an International Law
1992	India Signs and ratified CRC
1997	India submitted First Country Report to UN Committee
2000	UN Committee reviews India's First Report

Articles on UNCRC

- The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights – civil, cultural, economic, political and social rights.
- The Convention sets out these rights in 54 articles and two Optional Protocols.
- The cluster of rights of children covered by Convention are:
 1. Right to Survival
 2. Right to Development
 3. Right to Protection
 4. Right to Participation
- Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child.
- The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services.

- States parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.

Given below are descriptions of some important Articles of UNCRC:

UNCRC Article	Title of the UNCRC Article	Detail
Article 1	(Definition of the Child)	A child means every human being below the age of 18 years unless under the law applicable to the child majority is attained earlier.
Article 3	(Best Interests of the child)	The best interests of the child must be a top priority in all actions concerning children.
Article 6	Survival and Development	Every child has the inherent right to life. Governments shall ensure the survival and development of the child.
Article 7	Registration, Name, Nationality, Care	Every child has the right to be registered immediately after birth, right to name and right to acquire Nationality.
Article 8	Preservation of Identity	Governments must respect and protect a child's identity and prevent their name, nationality or family relationships from being changed unlawfully.
Article 9	Separation from Parents	Children must not be separated from their parents unless it is in the best interests of the child.
Article 11	Kidnapping and Trafficking	Governments must take steps to prevent children being taken out of their own country illegally or being prevented from returning.
Article 12	Respect for the Views of the Child	Every child who is capable of forming his/her own views has the right to express his/her views freely in all matters affecting them.
Article 13	Freedom of Expression	Every child must be free to seek, receive and impart information and ideas of all kinds either orally, in writing or in print or any other media of the child's choice.
Article 16	Right to Privacy	Every child has the right to privacy. The law should protect the child's private, family and home life.
Article 19	Protection from All Forms of Violence	Governments must take all appropriate legislative, administrative, social and educational measures to protect child from all forms of physical and mental violence, injury or abuse.
Article 20	Children Deprived of A Family	The State Govt. shall provide special protection and assistance to those children who are

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

Optional Protocols to UNCRC

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

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

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

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

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

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

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

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

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

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

1. “Emphasize the well-being” of young people and ensure that any reactions should always be in proportion to the circumstances of both the offenders and the offence

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

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

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

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

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

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

The Hague Convention on Inter-country Adoption, 1993

The Hague Convention on Inter-country Adoption is an international agreement between participating countries on best adoption procedures.

These procedures have basically two goals in mind:

- The best interest of children is considered with each inter-country adoption.
- The prevention of abduction, exploitation, sale, or trafficking of children.

The guidelines and procedures that are set forth in the Hague Convention are also for the protection of birth families, as well as adoptive families. Part of the Convention’s guidelines ensures the one Central Authority in each country so that adoptive parents get the most accurate information regarding adoption.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

It was adopted by the UN General Assembly as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life – including the right to vote and to stand for election – as well as education, health and employment.

States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire change or retain their nationality and the nationality of their children. State parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

Declaration of the Rights of the Child, 1959

The General Assembly proclaimed the Declaration of the Rights of the Child to the end that the children may have a happy childhood and enjoy for their own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken.

1. The child must be given the means requisite for its normal development, both materially and spiritually;

2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;
3. The child must be the first to receive relief in times of distress;
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

Basic principles on the use of restorative justice programmes in criminal matters

“Restorative process” means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

Recalling that there has been, worldwide, a significant growth of restorative justice initiatives, Recognizing that those initiatives often draw upon traditional and indigenous forms of justice which view crime as fundamentally harmful to people, Emphasizing that restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities, Stressing that this approach enables those affected by crime to share openly their feelings and experiences, and aims at addressing their needs, Aware that this approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community wellbeing and to prevent crime, Noting that restorative justice gives rise to a range of measures that are flexible in their adaptation to established criminal justice systems and that complement those systems, taking into account legal, social and cultural circumstances, Recognizing that the use of restorative justice does not prejudice the right of States to prosecute alleged offenders.

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 1990

The basic principle are:

- The present standard minimum rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment
- The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

- The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.
- When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.
- Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990

An area of concern identified by the UN has been the treatment of children within state juvenile justice systems. Hence the UN drafted three documents of rules concerning child justice; the UN Standard Minimum Rules for the Protection of Juvenile Justice 1985 (the Beijing Rules), the UN Guidelines for the Administration of Juvenile Delinquency 1990 (the Riyadh Guidelines), and the UN Rules for the Protection of Juveniles Deprived of their Liberty 1990.

The main principles of these rules are:

- Depriving a child of his/her liberty should be a last resort and there should be a minimum period of deprivation set out by the state.
- Deprivation of children's right to liberty should follow the provisions and norms as laid out in international law
- The state should set up small open facilities where children can be tended to on an individual basis and hence avoid additional negative effects of deprivations of liberty
- The institutions should have adequate facilities and meaningful activities for children to promote their health, safety and responsibilities. It should also provide them with all necessary skill trainings to become responsible members of society
- Institutions should be decentralized to allow for children to continue having access to their families and community.
- Juveniles deprived of their liberty should be aided in understanding their rights and obligations.
- Personnel dealing with juveniles should have adequate training regarding child rights and welfare.
- Juvenile Justice Systems should be aimed at helping and benefiting the child so that he/she can return to society with a better understanding of rights and responsibilities.

ILO Convention No. 182 on the Worst Forms of Child Labour, 1999

Child labour, as the statistics clearly demonstrate, is a problem of immense global proportion. Following its comprehensive research into the issue, the ILO concluded that it was necessary to strengthen existing Conventions on child labour. Convention No. 182 helped to focus the

international spotlight on the urgency of action to eliminate as a priority, the worst forms of child labour without losing the long term goal of the effective elimination of all child labour.

ILO Conventions No. 138 on the Minimum Age for Admission to Employment and Work, 1973

One of the most effective methods of ensuring that children do not start working too young is to set the age at which children can legally be employed or otherwise work. The main principles of the ILO's Convention concerning the minimum age of admission to employment and work are in the table below.

	The minimum age at which children can start work.	Possible exceptions for developing countries
Hazardous work Any work which is likely to jeopardize children's physical, mental or moral health, safety or morals should not be done by anyone under the age of 18.	18 (16 under strict conditions)	18 (16 under strict conditions)
Basic Minimum Age The minimum age for work should not be below the age for finishing compulsory schooling, which is generally 15.	15	14
Light work Children between the ages of 13 and 15 years old may do light work, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training.	13-15	12-14

ILO Declaration on Fundamental Principles and Rights at Work, 1998

Both Conventions Nos. 138 and are fundamental Conventions, Under the ILO Declaration, even the member States that have not yet ratified these Conventions should respect, promote and realize the principles.

Relevance of UNCRC to Rights of Children

Right is something you have as a person, for example the right to an education, or the right to life. Every child, no matter who they are, where they live or what they believe in has the right to grow up safe, happy and healthy. In 1989, the world's leaders officially recognised the human rights of all children and young people under 18 by signing the [UN Convention on the Rights of the Child](#). The UNCRC is an agreement between countries which sets out the basic rights all children should have. Almost every country in the world apart from the United States and Somalia has signed the agreement.

A common approach is to group the articles of UNCRC together under the following themes:

1. **Right to Survival:** include the child's right to life and the needs that are most basic to existence, such as nutrition, shelter, an adequate living standard, and access to medical services.
2. **Right to Development:** include the right to education, play, leisure, cultural activities, access to information, and freedom of thought, conscience and religion.
3. **Right to Protection:** ensure children are safeguarded against all forms of abuse, neglect and exploitation, including special care for refugee children; safeguards for children in the criminal justice system; protection for children in employment; protection and rehabilitation for children who have suffered exploitation or abuse of any kind.
4. **Right to Participation:** encompass children's freedom to express opinions, to have a say in matters affecting their own lives, to join associations and to assemble peacefully. As their capacities develop, children should have increasing opportunity to participate in the activities of society, in preparation for adulthood.

The UNCRC includes 42 rights given to all children and young people. Five important rights are:

- The right to a **childhood** (including protection from harm)
- The right to be **educated** (including all girls and boys completing primary school)
- The right to be **healthy** (including having clean water, nutritious food and medical care)
- The right to be treated **fairly** (including changing laws and practices that are unfair on children)
- The right to be **heard** (including considering children's views)

It's the most complete statement of children's rights ever produced and is the most widely-ratified international human rights treaty in history.

These are our rights and together we must make sure that every child and young person in India and across the world has the opportunity to grow up in a safe, happy, clean and healthy environment. The respective governments must report to the United Nations on the progress it has made in meeting the rights outlined in the UNCRC.

Rights-based approach in working with children

Rights-based national child protection systems

The building and strengthening of rights-based national child protection systems will lead to holistic, sustainable and well-coordinated ways of protecting all children.

An effective National Child Protection System recognizes the state's ultimate responsibilities and human rights obligations to children. It consists of:

- Laws and policies that protect children from abuse, neglect, exploitation and violence and respond in the best interests of the child when violations occur.
- A Central Government coordination mechanism for child protection, bringing together Central Government departments, different provinces, central and local levels of government and civil society.
- Effective regulation and monitoring at all levels of child protection standards, for instance, in child care institutions and schools.
- A committed working with relevant competencies and mandates.

A functioning child protection system is informed by children's views and experiences and strengthens families in the care and protection of their children. It connects child and family support mechanisms in the community with child-friendly services at all levels, regulated by quality standards and delivered by the government or accredited social agencies.

Components of national child protection systems

A rights-based National Child Protection System is made up of components that, work together to strengthen the protective environment around each child and his or family.

- Child protection laws and policies, including customary law, are all compliant with the UNCRC and other international and regional standards and good practice, and a plan of action exists to prevent, protect and respond to all forms of violence against children.
- There are coordination mechanisms across government, with civil society, human rights bodies and mechanisms, International organisations and between sectors at different level, with a framework for reporting and referral of child protection issues for each agency involved in working with children's rights and wellbeing, in emergency as well as development context.
- A centralized data collection system ensures regular information on both prevalence and knowledge of child protection issues and good practices.
- Services and responses are effectively regulated, including through accreditation and licensing of care providers, enforced minimum standards of care institutions and independent oversight of these.

- There is a range of preventive and responsive child-friendly services that recognize the need to support and strengthen the role of families in the care and protection of their children and which can intervene when families are unable or unwilling to fulfill their role appropriately.
- A skilled and committed child protection workforce has the mandate to respond effectively to issues faced by children, their families and communities.
- Adequate and appropriate resource allocation underpins effective children's and family services at all levels, including within the child's community.
- Children have genuine opportunities to express their views and be involved in responses and interventions deployed to protect them and in the development of policies and services relevant to their protection and the fulfillment of their rights.
- An aware and supportive public is engaged and involved in efforts to prevent harm to children and respond to child protection issues in their communities and neighbourhoods and in wider society.

Guiding principles of rights-based child protection system

A child protection system that truly promotes children's rights and wellbeing is based on the Government's obligations to respect, protect and fulfill children's right to protection and is guided by the following principles:

- Everyone has the right to participation (especially children, families and communities)
- Non-discrimination and inclusion of all children (especially groups who are discriminated against – such as girls, children with disabilities and those of minority ethnic background), regardless of their or their parents' legal identity and residency status.
- Every child is treated with dignity and respect
- Sensitivity to children's ages and their stage of development, recognising children's individuality and differences
- An absolute focus on the child and the promotion of the child's best interests is the primary consideration
- The system builds on the strengths of children, families and communities
- There is an emphasis on prevention as well response, with a focus on supporting the role and responsibilities of parents and caregivers
- Evidence of how children of different ages, gender and background are affected by violence, abuse, exploitation and neglect, ensuring that services and interventions are reviewed regularly, respond to needs and are proven to work in the long term
- Mandates, responsibilities, standards and systems of supervision are established to ensure compliance
- It is contextualized to the cultural, social, political situation. Positive aspects of traditional practices must be integrated into child protection policies and structures, while addressing aspects that hinder child protection

Rights-based Monitoring and Evaluation

Monitoring and evaluation can be undertaken for a range of purposes, including:

- To measure impact, outputs, efficiency, effectiveness or change;
- To strengthen accountability;
- To facilitate organisational learning; to strengthen partnerships and team building; to support advocacy efforts; or
- To influence an organisation's culture.

Reporting mechanisms

The UNCRC reporting mechanism

The UNCRC is monitored through a system of reporting by States Parties to the Committee on the Rights of the Child. Each State Party is required to submit a report two years after ratification of the Conventions. Progress reports are required every five years after that. The Committee may also request a complementary report or additional information between these periods. All States Parties from South Asia have submitted their initial reports to the Committee.

Committee on the Rights of the Child

- The Committee is composed of 18 independent experts who are elected in their personal capacity to four-year terms by States Parties.
- The Committee is responsible for examining the progress made by States Parties in fulfilling their obligations under the Convention and the Optional Protocols.
- The mechanism for addressing individual complaints under the UNCRC, once introduced, will help those children whose voices are not heard by the national authorities.

Essential elements of State Party reporting

- Cooperation with civil society organisations.
- Awareness and dissemination of reports.
- National human rights institutions.
- States Parties are expected to provide detailed information on their budgetary allocations for implementation of Child Rights.

(Source: Save the Children)

The status of reporting system of UNCRC can be seen in the Ministry of Women and Child Development website www.wcd.nic.in .

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

Learning Objectives:

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

Methodology: Presentation, lecture and discussion

Material Required:

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

Duration: 2 hours 15 minutes

Instructions:

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

Tips for the Facilitators/Resource Persons:

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

Reference Material for Technical Session II

CONTENTS

Provisions and Components of POCSO Act/Rules

Procedure for:

- ✓ reporting of cases
- ✓ recording of statement of child
- ✓ medical examination, etc

Provisions and Components of POCSO Act/Rules

The Protection of Children from Sexual Offences (POCSO) Act 2012 is applicable to the whole of India. The POCSO Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from sexual abuse. It also intends to protect the child through all stages of judicial process and gives paramount importance to the principle of "best interest of the child".

Penetrative and aggravated penetrative sexual assault, sexual and aggravated sexual assault, sexual harassment, and using a child for pornographic purposes are the five offences against children that are covered by this Act. This Act envisages punishing even abetment or an attempt to commit the offences defined in the Act. It recognizes that the intent to commit an offence, even when unsuccessful needs to be penalized. The punishment for the attempt to commit is up to half the punishment prescribed for the commission of the offence.

This Act suggests that any person, who has an apprehension that an offence is likely to be committed or has knowledge that an offence has been committed, has a mandatory obligation to report the matter i.e. media personnel, staff of hotel/ lodges, hospitals, clubs, studios, or photographic facilities. Failure to report attracts punishment with imprisonment of up to six months or fine or both. It is now mandatory for police to register an FIR in all cases of child abuse. A child's statement can be recorded even at the child's residence or a place of his choice and should be preferably done by a female police officer not below the rank of sub-inspector.

As per this Act, the child's medical examination can be conducted even prior to registration of an FIR. This discretion is left up to the Investigation Officer (IO). The IO has to get the child medically examined in a government hospital or local hospital within 24 hours of receiving information about the offence. This is done with the consent of the child or parent or a competent person whom the child trusts and in presence of such a person.

Child Welfare Committees (CWC) play a vital role under the POCSO Act. The cases registered under this act need to be reported to the CWC within 24 hours of receiving the complaint. The CWC should take into account the opinion of the child to decide on the case within three days and conclude whether the child should remain in an institution or be with the family. The CWC should nominate with the consent of the child/ parent / guardian / other person whom the child trusts, a support person to assist the child during the investigation and trial of the case.

The State Commissions for Protection of Child Rights (SCPCRs) have been entrusted with the responsibility of monitoring the implementation of the provisions of the POCSO Act, 2012, to conduct inquiries and to report the activities undertaken under the POCSO Act, 2012, in their Annual Reports. These Commissions also have the authority to call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC in their State. The Commissions may also recommend interim relief, or make recommendations to the state government to effectively redress the matter.

The rules laid down in this Act define the criteria for awarding the compensations by the Special Courts that include the following:

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

Some of the child-friendly procedures which are envisaged under the POCSO Act are as follows:-

- Child to be interrogated once only and in a child-friendly environment.
- At night no child is to be detained in the police station.
- The statement of the child be recorded as spoken by the child.
- Frequent breaks for the child during trial.
- Child not to be called repeatedly to testify.

For offences under this Act the burden of proof is on the accused, keeping in view the vulnerability and innocence of children. To prevent misuse of the law, punishment has been provided for false complaints or false information with malicious intent.

The media has been barred from disclosing the identity of the child without the permission of the special court. The punishment for breaching this provision by media may be from six months to one year.

For speedy trial, the evidence of the child is to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within one year.

The Act casts duty on state to spread awareness among general public, about the provisions of this Act through media, i.e., television, radio and print at regular intervals.

Procedure for reporting of cases, recording of statement of child, medical examination, etc

Procedures under POCSO Act

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) prescribes five sexual offences against children - penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, and using a child for pornographic purposes. Abetment of or an attempt to commit these offences is also punishable under the Act. These offences are gender neutral vis-à-vis the perpetrator as well as the victim. The Act requires the State Governments to designate the Sessions Court in each district as a Special Court to try offences under the Act. If, however, a Children's Court under the Commissions for Protection of Child Rights Act, 2005 or Special Court for a similar purpose has been notified in a district, then that court will try offences under this Act.

The process laid down under the Act and POCSO Rules, 2012 for recording of complaints and trial of sexual offences against children is explained below:

Reporting of Cases

Who can report?

Any person (including the child) who has an apprehension that an offence under the POCSO Act is likely to be committed or has knowledge that an offence has been committed has a mandatory obligation to report the matter. An express obligation has also been vested upon media personnel, staffs of hotels, lodges, hospitals, clubs, studios, or photographic facilities, to report a case if they come across materials or objects that are sexually exploitative of children. Failure to report is punishable with imprisonment of up to six months or fine or both. This penalty is, however, not applicable to a child.

Whom should the case be reported to?

A case must be reported to the Special Juvenile Police Unit (SJPU) or the local police. The police or the SJPU must then record the report in writing, ascribe an entry number, read the report over to the informant for verification, and enter it in a book. A FIR must be registered and its copy must be handed to the informant free of charge.

Language of the report

If a case is reported by a child, it must be recorded verbatim and in simple language so that the child understands what is being recorded. If it is being recorded in a language that the child does not understand, a qualified translator or interpreter must be provided to the child.

Recording of Statement of Child

A. Recording of Statement of Child by the Police

Where the child's statement must be recorded?

A child's statement must be recorded at his or her residence or a place where he or she usually resides or at a place of his or her choice. Under no circumstances can a child be detained in the police station in the night. The police officer must also try and ensure that the statement is recorded by audio-visual means. (or atleast by audio means).

By whom should the statement be recorded?

As far as practicable, the statement must be recorded by a woman police officer not below the rank of a Sub-inspector. She should not be in uniform when the statement is recorded. The assistance of a qualified translator or interpreter can be taken while recording the statement. The statement must be recorded in the presence of parents or any other person in whom the child trusts or has confidence.

What steps must the police take to protect the child?

While examining the child, the police officer investigating the case must ensure that the child does not come in contact with the accused at any point. The identity of the child must also be protected from the media unless the Special Court, in the interest of the child, directs otherwise.

What measures must be taken to record the statement of a child with disabilities?

The police officer must seek the assistance of a qualified special educator or a person familiar with the manner of communication of the child or an expert in that field, while recording the statement of a child with mental or physical disability.

B. Recording of Statement of Child by the Magistrate

How must the statement be recorded?

A Magistrate recording the statement of a child under Section 164 of the Code of Criminal Procedure (Cr. PC) must record it verbatim (in the exact language spoken by the child). The statement must be recorded in the presence of parents or any other person in whom the child trusts or has confidence. The assistance of a qualified translator or interpreter can be taken while recording the statement. The Magistrate must also try and ensure that the statement is recorded by audio-visual (or audio) means. The Magistrate must also provide the child and his or her parents or representative, a copy of the police report in the matter.

What measures must be taken to record the statement of a child with disabilities?

The Magistrate must seek the assistance of a qualified special educator or a person familiar with the manner of communication of the child or an expert in that field, while recording the statement of a child with mental or physical disability.

Medical Examination of the Child

Take the child victim for medical examination immediately

A medical examination of a child can be conducted even before a FIR is filed or a complaint is registered. It must be conducted by a registered medical practitioner in a government hospital or a hospital run by a local authority within 24 hours from the time of receiving information about the commission of offence. If such practitioner is not available, the examination can be conducted by any other registered medical practitioner with the consent of the child or a person competent to give consent on his or her behalf. If the victim is a girl child, the examination must be conducted by a woman doctor. The medical examination must be conducted in the presence of the parent or any other person in whom the child reposes trust or confidence. If a parent or such other person cannot be present, for any reason, the medical examination must be conducted in the presence of a woman nominated by the head of the medical institution.

"Forensic Medical Care for Victim of Sexual Assault – DHR Guidelines", brought out by the Department of Health Research (DHR), Family Welfare, Government of India in 2013 has suggested several guidelines aiming at forensic medical care for survivors of sexual assault. The guidelines suggest the following:

- Whenever cases of sexual assault comes on her own to the hospital or are brought by the police, it shall be registered as MLC (Medical Legal Care).
- The information obtained for medical examination is confidential and therefore, every effort must be made to protect the privacy and safety of the patient.
- The victim must be given appropriate treatment and counselling as per the need. Victim must not be refused treatment and/or examination for want of police papers.
- Exposure to sexual violence is associated with a range of health consequences for the victim. Comprehensive care must address the following issues: physical injuries; pregnancy; STIs, HIV and hepatitis B; counseling and social support, follow-up consultations and appropriate referral.
- The examination should be conducted in private but the patient should be allowed to choose to have a support person (e.g. family member or counselor) to be present. If the patient does not request the presence of a support person, the patient should be informed that she may have a female nurse or other suitable person present during the examination.
- Each hospital can use already printed version of the Forensic Medical Form or can generate the same form through software. The form may include information such as name of the Department/Hospital/Unit including place where the examination was conducted; general information and consent; history/details of alleged sexual assault; medical, obstetrical and surgical history; general physical examination; injury examination: injuries on body (if any); local examination of genitals, anus and oral cavity; specific examinations (these examinations shall only be done whenever facilities

exist and if indicated); sample collection for hospital/clinical laboratory; collection of forensic evidence/material/samples; and provisional opinion.

- In the past, survivor examination was only done after receiving police requisition. Now, the police requisition is not mandatory for a rape survivor to seek medical examination and care. The doctor should examine such cases if the survivor reports to the hospital first without FIR. He should then inform the police accordingly.

As per the document "Guidelines & Protocol, Medical-legal Care for Survivors/Victims of Sexual Violence", Ministry of Health & Family Welfare, Government of India, 2014, the following guidelines have been suggested in order to forge an interface of health system with police:

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

Types of sexual offences covered under the Act and punishments thereof

List of sexual offences under the Act and the punishment for the offences:

S. No	Offence and Description	Punishment
1	<p>Section 3 Penetrative Sexual Assault Inserting body part or object in a child, or making a child does this with another.</p>	<p>Section 4 Not less than seven years of imprisonment which may extend to imprisonment for life, and fine</p>
2	<p>Section 5 Aggravated Penetrative Sexual Assault</p> <p>Penetrative sexual assault by a police officer, member of armed forces, public servant, staff of remand home, jail, hospital or school. It includes penetrative sexual assault committed by any other person through gang penetrative assault, penetrative sexual assault using deadly weapons, fire, heated substance or corrosive substance, penetrative sexual assault which physically incapacitates the child or causes child to become mentally ill, causing grievous hurt or bodily harm and injury to the sexual organs of the child, making girl child pregnant, inflicting child with HIV or any other life threatening disease, penetrative sexual assault more than once, penetrative sexual assault on a child younger than 12 years, by a relative, owner / manager or staff of any institution providing services to the child, by a person in a position of trust or authority over the child, committing penetrative sexual assault knowing the child is pregnant, attempts to murder the child, by a person previously convicted for a sexual offence, penetrative sexual assault in the course of communal or sectarian violence, penetrative sexual assault and making the child strip or parade naked in public.</p>	<p>Section 6 Not less than ten years of imprisonment which may extend to imprisonment for life, and fine</p>
3	<p>Section 7 Sexual Assault With sexual intent touching the private parts</p>	<p>Section 8 Not less than three years of imprisonment which may extend to five</p>

	of a child	years, and fine
4	<p>Section 9 Aggravated Sexual Assault</p> <p>Sexual assault by a police officer, member of armed forces, public servant, staff of remand home/jail/hospital/school, etc, and other acts of sexual assault by any person as mentioned in the second part of section 5, except making a girl child pregnant.</p>	<p>Section 10</p> <p>Not less than five years of imprisonment which may extend to seven years, and fine (Section 10)</p>
5	<p>Section 11 Sexual Harassment of the Child With sexual intent:</p> <ul style="list-style-type: none"> • showing any object/body part, or • making any gesture aimed at a child • making a child exhibit her body • enticing or threatening to use a child for pornography 	<p>Section 12</p> <p>Up to three years of imprisonment and fine</p>
6	<p>Section 13 Use of Child for Pornographic Purposes</p>	<p>Section 14 (1)</p> <p>Imprisonment up to five years and fine and in the event of subsequent conviction, up to seven years and fine</p>
7	<p>Section 14 (2) Penetrative sexual assault by directly participating in pornographic acts</p>	<p>Section 14 (2)</p> <p>Not less than ten years of imprisonment, which may extend to imprisonment for life, and fine</p>
8	<p>Section 14 (3) Aggravated penetrative sexual assault by directly participating in pornographic acts</p>	<p>Section 14 (3)</p> <p>Rigorous imprisonment for life and fine</p>
9	<p>Section 14 (4) Sexual assault by directly participating in pornographic acts</p>	<p>Section 14 (4)</p> <p>Not less than six years of imprisonment which may extend to eight years, and fine</p>
10	<p>Section 14 (5) Aggravated sexual assault by directly participating in pornographic acts</p>	<p>Section 14 (5)</p> <p>Not less than eight years of imprisonment which may extend to ten years, and fine</p>
11	<p>Section 15 Storage of pornographic material involving a child for commercial purposes</p>	<p>Section 15</p> <p>Three years of imprisonment and / or fine</p>
12	<p>Section 21 Punishment for failure to report or record a case by (i) Any person; (ii) Any person, being</p>	<p>Section 21</p> <p>(i) Imprisonment of either description which may extend to six months or</p>

	<p>in charge of any company or an institution. (This offence does not apply to a child)</p>	<p>with fine or with both (ii) Any person, being in charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub section (1) of section 19 in respect of a subordinate under his control shall be punished with imprisonment for a term which may extend to one year and with fine.</p>
13	<p>Section 22 (1) Punishment for false complaint or false information in respect of an offence committed under sections 3, 5, 7 and section 9 solely with the intention to humiliate, extort or threaten or defame him. (2) False complaint or providing false information against a child knowing it to be false, thereby victimising such child in any of the offences under this Act. (This offence does not apply to a child)</p>	<p>Section 22 (1) Imprisonment for a term which may extend to six months or with fine or with both. (3) Imprisonment which may extend to one year or with fine or with both.</p>

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

Technical Session III: An Overview of Medical & Forensic Services for Investigating Sexual Offences

Learning Objectives:

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

Methodology:

- Presentation, lecture and discussion

Material Required:

- Projector, computer, marker

Duration: 1 hour 45 minutes

Outcomes:

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

Contents:

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

Tips for the Facilitators/Resource Persons:

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

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

Section 27 – Medical Examination:

1. *The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973.*
2. *In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.*
3. *The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.*
4. *Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.*

Emergency Medical care:

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

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

Medical Examination:

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

1. *Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.*

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

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

❖ **Prompt and Sensitive Response by Medical Personnel**

Rule 5 - Emergency medical care:

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

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

2. *Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.*

3. *No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.*
4. *The registered medical practitioner rendering emergency medical care shall attend to the needs of the child, including –*
 - (i) *treatment for cuts, bruises, and other injuries including genital injuries, if any;*
 - (ii) *treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;*
 - (iii) *treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;*
 - (iv) *possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,*
 - (v) *wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made.*
5. *Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act.*

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

- **If the child resists the examination**

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

- **Techniques to help the child relax**

- i) Offer clear age-appropriate explanations for the reasons for each procedure, and offer the child some control over the exam process.
- ii) Proceed slowly, explain each step in advance.
- iii) Use curtains to protect privacy, if the child wishes.
- iv) Explain to parent or support person that their job is to talk to and distract the child, and the findings of the exam will be discussed with them after the exam is completed.
- v) Position the parent near the child's head.
- vi) Use distracters. For example, ask the parent to sing a song, or tell a familiar story, or read a book to the child. A nurse or other helper can do this if the parent is unable to do so.
- vii) Use TV, cell phone game, or other visual distraction.
- viii) Do not forcibly restrain the child for the examination.

- **Sedation for Medical Treatment**

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

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

- i) Last occurrence of alleged abuse (younger children may be unable to answer this precisely). When do you say this happened?
- ii) First time the alleged abuse occurred. When is the first time you remember this happening?
- iii) Threats that were made.
- iv) Nature of the assault, e.g. anal, vaginal and/or oral penetration. What area of your body did you say was touched or hurt? (The child may not know the site of penetration but maybe able to indicate by pointing. This is an indication to examine both genital and anal regions in all cases.)

- v) Whether or not the child noticed any injuries or complained of pain.
- vi) Vaginal or anal pain, bleeding and/or discharge following the event. Do you have any pain in your bottom or genital area? Is there any blood in your panties or in the toilet? (Use whatever term is culturally acceptable or commonly used for these parts of the anatomy.)
- vii) Any difficulty or pain with voiding or defecating. Does it hurt when you go to the bathroom? (indication to examine both genital and anal regions in all cases.)
- viii) Any urinary or faecal incontinence.
- ix) Whether or not the child noticed any injuries or complained of pain.
- x) In case of children, illustrative books, body charts or a doll can be used if available, to elicit the history of the assault. When it is difficult to elicit history from a child, please call an expert.

❖ **Precautions, do's and don'ts for preservation of evidence**

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

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

❖ **Importance & need for Support Persons**

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

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

Rule 4(7) of the POCSO Rules states:

The Child Welfare Committee, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his/her parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU: Provided that nothing in these rules shall prevent the child and his/her parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

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

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

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

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

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

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

Technical Session IV: Role of Medical/Health Professionals in Implementation of POCSO Act and Rules, 2012

Learning Objectives:

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

Material Required:

- Projector, computer, presentation on 'Role of Medical/Health Professionals in Implementation of POCSO Act and Rules,2012', marker

Duration: 2 hours

Outcomes:

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

Contents:

- having an in-depth understanding of sexual victimization
- obtaining a medical history of the child's experience in a facilitating, non-judgmental and empathetic manner
- meticulously documenting historical details
- conducting medical examination of a child victim in accordance with section 164A of the CrPC, 1973 or section 27 of the POCSO Act, 2012 (in the case of a female child, by a female doctor or a woman nominated by the head of the medical institute)
- facilitating emergency medical care by a registered medical practitioner under sections 3, 5, 7 or 9 of the Act
- invariably collecting any forensic evidence in the course of rendering emergency medical care in accordance with section 27 of the Act
- providing first-aid or medical treatment free of cost
- mandatory reporting of the case to the police
- wherever applicable/possible, referring the child for counseling, testing of HIV & other STDs
- considering a differential diagnosis of behavioural complaints and physical signs that may mimic sexual abuse
- obtaining photographic/video documentation of all diagnostic findings that appear to be residual to abuse
- formulating a complete and thorough medical report with diagnosis and recommendations for treatment testifying in court when required

Tips for the Facilitators/Resource Persons:

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

Role of Medical Professionals in the context of the POCSO Act, 2012

Modalities of Medical Examination of Children

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

The role of the doctor may include:

- i) Having an in-depth understanding of sexual victimization
- ii) Obtaining a medical history of the child's experience in a facilitating, non-judgmental and empathetic manner
- iii) Meticulously documenting historical details
- iv) Conducting a detailed examination to diagnose acute and chronic residual trauma and STDs, and to collect forensic evidence
- v) Considering a differential diagnosis of behavioral complaints and physical signs that may mimic sexual abuse
- vi) Obtaining photographic/video documentation of all diagnostic findings that appear to be residual to abuse
- vii) Formulating a complete and thorough medical report with diagnosis and recommendations for treatment.
- viii) Testifying in court when required

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

- i) when a child has a complaint that might be directly related to the possibility of sexual abuse, such as a girl with a vaginal discharge;
 - ii) when a child has a complaint that is not directly related to the possibility of sexual abuse, such as abdominal pain or encopresis (soiling);
 - iii) when a child has no complaint but an incidental finding, such as an enlarged hymenal ring, makes the doctor suspicious.
- **Mandatory Reporting:** When a doctor has reason to suspect that a child has been or is being sexually abused, he/she is required to report this to the appropriate authorities (i.e. the police or the relevant person within his/her organization who will then have to report it to the police). Failure to do this would result in imprisonment of up to six months, with or without fine.¹

¹Section 21, Protection of Children from Sexual Offences Act, 2012.

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

Where a child is brought to a doctor for a medical examination to confirm sexual abuse, the doctor must:

- i) Take the written consent of the child. The three main elements of consent are information, comprehension and voluntariness. The child and his/her family should be given information about the medical examination process and what is involved therein, so that they can choose whether or not to participate. Secondly, they should be allowed enough time to understand the information and to ask questions so that they can clarify their doubts. Lastly, the child and/or his or her parent/guardian should agree to the examination voluntarily, without feeling pressurised to do so. In some situations it may be appropriate to spend time with the child/adolescent alone, without the parent/guardian present. This may make it easier for the child to ask questions and not feel coerced by a parent/guardian.
- ii) Where the child is too young or otherwise incapable of giving consent, consent should be obtained from the child's parent, guardian or other person in whom the child has trust and confidence.
- iii) The right to informed consent implies the right to informed refusal.
- iv) To be able to give informed consent, the child and his/ her parents/guardian need to understand that health care professionals may have a legal obligation to report the case and to disclose information received during the course of the consultation to the authorities even in the absence of consent.
- v) Document who was present during the conversation with the child.
- vi) Document questions asked and child's answers in the child's own words.
- vii) Conduct the examination in a sensitive manner. It is important that the exam is never painful. The exam should be done in a manner that is least disturbing to the child.
- viii) Focus on asking simply worded, open-ended, non-leading questions, such as the "what, when, where, and how" questions, which are important to the medical evaluation of suspected child sexual abuse.
- ix) Reliance should be placed as far as possible on such questioning as "tell me more" followed by "and then what happened?"
- x) Do not ask uncomfortable questions related to details of the abuse, but try to find out more about the medical and family history of the child.
- xi) Using the child's words for body parts may make the child more comfortable with difficult conversations about sexual activities.
- xii) Using drawings may also help children describe where they may have been touched and with what they were touched.

- xiii) Ensure that the child has adequate privacy while the examination is being conducted
- xiv) Do not conduct the examination in a labor room or other place that may cause additional trauma to the child
- xv) Always ensure patient privacy. Be sensitive to the child's feelings of vulnerability and embarrassment and stop the examination if the child indicates discomfort or withdraws permission to continue.
- xvi) Always prepare the child by explaining the examination and showing equipment; this has been shown to diminish fears and anxiety. Encourage the child to ask questions about the examination.
- xvii) If the child is old enough, and it is deemed appropriate, ask whom they would like in the room for support during the examination. Some older children may choose a trusted adult to be present. Sexual abuse of children is usually not physically violent. In the large majority of children the physical examination is normal. A normal or non-specific examination does not rule out sexual abuse.
- xviii) As a minimum, the medical history should cover any known health problems (including allergies), immunization status and medications. In terms of obtaining information about the child's general health status, useful questions to ask would be:
 - a) Tell me about your general health.
 - b) Have you seen a nurse or doctor lately?
 - c) Have you been diagnosed with any illnesses?
 - d) Have you had any operations?
 - e) Do you suffer from any infectious diseases?
- xix) Carefully collect and preserve forensic evidence
- xx) Clothing collection is critical when evidence is collected. Clothing, especially underwear, is the most likely positive site for evidentiary DNA.
- xxi) Scene investigation, including collection of linens and clothing should be done early. Evidence from clothing and other objects is more likely to be positive than evidence from the patient's body. Children often report weeks or months after the abuse event, and physical injuries to the genital or anal regions usually heal within a few days. This is why the medical provider should always consider differential diagnosis and alternative explanations for physical signs and symptoms.
- xxii) In the case of a child with special needs, ensure that the procedures are explained to the child in a manner which he/she understands and that he/she is asked what help he/she requires, if any (e.g., a child with physical disabilities may need help to get on and off the medical examination table or to assume positions necessary for the examination). However, do not assume that the child will need special aid. Also, ask for permission before proceeding to help the child.
- xxiii) Recognize that it may be the first time the child is having an internal examination. The child may have very limited knowledge of reproductive health issues and not be able to describe what happened to them. He/she may not know how he/she feels about the incident or even identify that a crime was committed against him/her.
- xxiv) Wherever necessary, refer the child for counselling.
- xxv) Wherever applicable, refer the child for testing for HIV and other Sexually Transmitted Diseases.

Technical Session V: Panel Discussion on Interface of Health/Medical Professionals with Other Stakeholders/Open House Discussion

Learning Objective:

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

Methodology: Open House Discussion

Duration: 2 hours

Content:

- Challenges for effective implementation of POCSO Act / Rules, 2012 and suggestions to overcome these challenges
- Sharing of case examples on violence against children
- Importance of advocacy - addressing societal attitudes and responses to gender issues and crimes against children etc.

Instructions:

- Interface of Health/Medical Professionals with other Stakeholders
- Initiate all the participants to start the panel discussion
- All participants are requested to take part in the discussion as this is an open house discussion
- Ask them to give their views and suggestions
- Quickly write their responses and suggestions on the white board/flip chart and lead the discussion with the help of reference material or use power point presentation, if possible
- Keep track of time and wind up the session.

Tips for the Facilitators/Resource Persons:

- This session is important to make the participants understand their role with other stakeholders in the Act.
- The panel discussion for this session will help the participants to know convergence and coordination issues with other stakeholders for the better implementation of the Act.

Interface of Health/Medical Professionals with other Stakeholders

An interface, in general, may be termed as:

1. surface regarded as the common boundary of two bodies, spaces, or phases
2. the facts, problems, considerations, theories, practices, etc., shared by two or more disciplines, procedures, or fields of study
3. a common boundary or interconnection between systems, equipment, concepts, or human beings
4. communication or interaction
5. a thing or circumstance that enables separate and sometimes incompatible elements to coordinate effectively

In this session we are going to discuss about the interface between the people belonging to different disciplines who have come together to share their views on the Act so that they can coordinate effectively for the better implementation of the Act.

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

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

- i) Courts in India in their judgments described an expert as a person who has acquired special knowledge, skill or experience in any art, trade or profession. Experts have knowledge, skill, experience, or training concerning a particular subject matter that is generally beyond the knowledge of the average person. Such knowledge may have been obtained by practice, observation or careful study. The expert thus operates in a field beyond the range of common knowledge.
- ii) Expert evidence is covered under Ss.45-51 of Indian Evidence Act. The subjects of expert testimony mentioned by the section are foreign law, science, art and the identity of handwriting or finger impressions.
- iii) In general, whether or not the testimony of an expert will be useful in any given case is almost always left to the discretion of the trial judge before whom the testimony is proffered. However, even where the Court has some degree of knowledge or familiarity with the subject, an expert's testimony may be valuable to add insight and depth in understanding the matter, or to educate them as to commonly held prejudices and misconceptions which might negatively impact upon an impartial and just decision.

- iv) In general, the opinions of medical professionals are admissible upon questions such as insanity, the causes of diseases, the nature of the injuries, the weapons which might have been used to cause injuries or death, medicines, poisons, the conditions of gestation, etc. In the case of questions pertaining to age determination, positive evidence furnished by birth register, by members of the family, with regard to the age, will have preference over the opinion of the doctor: but, if the evidence is wholly unsatisfactory, and if the ossification test in the case is complete, such a test can be accepted as a surer ground for determination of age.
- v) In their testimony regarding a forensic examination, medical professionals typically describe the process of examining the victim, the physical findings that were observed, and their interpretation. It is important to remember that the medical professional cannot be asked to testify to “diagnose” sexual abuse. The doctor cannot make any definitive conclusions regarding the degree of force used by the abuser or whether the victim consented to any sexual activity. What he/she can appropriately conclude is whether there is evidence of sexual contact and/or recent trauma. He/she can state whether the medical history and examination are consistent with sexual abuse.
- vi) In many child abuse cases, experts have first-hand knowledge of the child because the expert treated or examined the child. However, an expert may be called upon to render an opinion concerning a child without personally examining the child.
- vii) However, it is important to remember that doctors are rarely expert in interviewing, and often assume the truth of what the patient tells them. The testimony is presented as if the doctor's opinion is based on physical findings when it is not. It is often largely or wholly based on statements made, a far different and less scientific basis than objective findings upon examination.
- viii) In addition to this, opinions may be sought from mental health experts as to the psychological effects of child sexual abuse, such as PTSD and Child Sexual Abuse Accommodation Syndrome.
- ix) It is for the legal representative who proposes the use of expert testimony to establish his/her credentials, preferably listing his/her formal qualifications. The adequacy of the qualification of the expert and the admissibility of his/her testimony are within the discretion of the Special Court.
- x) Before giving evidence the expert will usually have prepared a report, either assessing one or more parties to the case or assessing other experts' reports. His/her report should be reliable on the basis of the following criteria:
 - a) It should provide a context in layman's terms from which to understand the basis of his/her opinion.
 - b) It should be clear when the expert is stating corroborated fact and when he/she is merely repeating what he/she has been told by the alleged offender. Assertions which are based entirely on the alleged offender's perception are likely to be misleading.
 - c) The expert must review the information impartially rather than ignore matters which are inconvenient to his/her conclusions.
 - d) The report should avoid restating incidental trivia and give preference to examining and analysing the crucial issues of the case.

- e) The expert should demonstrate knowledge of the process and dynamics of child sexual abuse and help to make sense of the child's and non-abusing parent's experiences and perceptions. Victims and non-abusing partners of offenders often do not act rationally and can appear collusive with the offender, whereas their behavior results from the control the offender exercises over them. It is useful to have this explained in the expert report.
- f) All professions have their exclusive language, but it is best that the expert present the issues in language that the court, advocate and parties can understand.
- g) The expert must not rely solely on quoted research to support his/her arguments, and should refer to clinical experience as well.

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

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

Challenges for effective implementation and monitoring of POCSO Act / Rules, 2012 – coordination, support, compensation, legal aid to victims, etc.

One of the functions of NCPCR is

Under Section 44 of the Protection of Children from Sexual Offences (POCSO) Act and Rule 6 of POCSO Rules, 2012:

Under the POCSO Act, the National Commission for Protection of Child Rights and the State Commissions for Protection of Child Rights have been vested with the responsibilities of:

- a) To monitor in the implementation of Protection of Children from Sexual Offences (POCSO) Act, 2012;
- b) to monitor the designation of Special Courts by State Governments;
- c) to monitor the appointment of Public Prosecutors by State Governments;
- d) 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;

- e) 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;
- f) 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;
- g) to call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC;
- h) to 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; Citizen's Charter of National Commission for Protection of Child Rights (2012-13)
 - 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.
- i) To assess the implementation of the provisions of the Act and to include a report in a separate chapter in its Annual Report to the Parliament.
- j) Conduct inquiries into matters relating to an offence under the Act

The Commissions must monitor the designation of Special Courts, appointment of Public Prosecutors, formulation of guidelines for use of NGOs, professionals and experts to be associated with the pre-trial and trial stage, dissemination of information about the Act through media to promote awareness among general public, children, parents and guardians.

The Commissions can also call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC. While inquiring into matters relating to an offence under the Act, they can utilize the powers available to them under the Commissions for Protection of Child Rights Act, 2005. Post-inquiry, they can recommend to the government to initiate proceedings for prosecution, recommend interim relief, or make any other recommendations to effectively redress the matter. They can also approach the High Court or Supreme Court for orders, directions, or writs.

Challenges for effective implementation and monitoring

- The POCSO Act of 2012 widely looks into developing support system for the child through the existing machinery i.e. the Child Welfare Officer, CWC and the Commission and in providing child friendly atmosphere in the criminal justice system. The positive aspect of this Act is the appointment of the support person for the child who would

assist the child during investigation, pretrial, trial and post-trial procedure. The major challenge also would be convergence between different entities under different legislations. Secondly, the tug of war, would erupt as the Act makes it mandatory for all (including professionals) to report to Police about any offence defined under POCSO Act, 2012. The recent decision of the Cabinet in a bill to reduce the age of consent for sex to 16 years will mean that the protection given under this law to protect children from sexual crimes will also be or restricted to the children who are of age 16 years. There is a fear that this would end up taking away safeguards available to victims under the POCSO Act, especially girls in the 16-18 age bracket. The benefits of POCSO Act would trickle down to the child only if this Act implemented in its true sense and spirit by all the agencies.

- As per the norms, emergency medical care would be rendered in such a manner as to protect the privacy of the child, and in the presence of a parent or guardian, whom the child trusts. Moreover, no medical practitioner, hospital or other medical facility giving emergency medical care to a child can demand legal requisition or other documentation before providing care. Only registered medical practitioners would attend to the child for treatment for cuts, bruises and other injuries, including genital injuries. Emergency medical care should be provided for exposure to sexually transmitted diseases (STDs), including prophylaxis for identified STDs. According to the Act, necessary pregnancy and emergency contraceptives should be discussed with the child and her parent/guardian and wherever required, the child should be given apt psychological counseling.

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

Case Example 1

Child A - AGE 14 | Paravoor, Kerala

Occurred 2010 | **Convicted** in 2012

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

Case Example 2

Child B - AGE 13 | Delhi

Occurred 2012 | Accused out on bail

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

Case Example 3

Child C - AGE 3 | Bhopal, Madhya Pradesh

Occurred 2012 | **Convicted** in 2013

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

Case Example 4

Child D - AGE 7 | Mumbai, Maharashtra

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

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

Case Example 5

Child E - AGE 8 | Bhopal, Madhya Pradesh

Occurred 2010 | **Convicted** in 2010

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

Case Example 6

Child F – AGE 14 | Maliwada, Maharashtra

Occurred 2006 | **Convicted** in 2010

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

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

What is advocacy?

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

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

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

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

Advocacy is a process of supporting and enabling people to:

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

Purpose/Importance of Advocacy

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

Issues for Advocacy

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

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

Major areas of advocacy work

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

Stakeholders of Advocacy

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

Who is an advocate?

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

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

What the role means

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

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

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

What is advocacy in child care?

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

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

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

Why do children need advocacy?

Children do not have political power. They have limited say in decisions affecting their lives and generally are unable to obtain redress when decisions are taken contrary to their best interests. Children and young people are a relatively powerless group in society. Adults very often make significant decisions about children without consulting them or seeking to involve their participation in the decision making process. They are rarely informed or consulted about new laws and policies which will impact upon them. They are frequently denied rights and opportunities which other members of the community take for granted. Many laws treat children and young people not as people but as the property of their parents or as objects of concern. Many protectionist laws and policies are based on outdated paternalistic notions.

There is a considerable imbalance between children and young people and government agencies such as the police and schools.

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

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

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

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

Children, who claimed that they were abused, assaulted, raped and imprisoned, were disbelieved: the systems did not permit them to speak and be heard. Institutions refused to accept that their staff could act so disgracefully. Police gave priority to "operational requirements", were unduly deferent to religious bodies and respectable men, and education and child protection systems were "slack". Children did not know and could not claim their rights, even their right to bodily integrity. They lacked institutional or any advocacy. That is the problem. Our social and legal systems do not legitimate child advocacy.

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

Even where there is a reasonable standard of services for children, advocacy plays an important role. One submission to this Inquiry spoke of the role of advocacy in 'humanising the

bureaucracies' and assisting children and their families to navigate their way through the complex maze of bureaucratic processes to gain access to services.

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

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

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

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

Child Advocacy protects the rights of children, which are considered to include the provision of safety, wellbeing, food, water, and shelter; furthermore, these rights express that children are entitled to the participation in community-based programs and the receipt of education.

The Goals of child Advocacy

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

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

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

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

The Importance of Child Advocacy Centers

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

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

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

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

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

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

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

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

E. ANNEXURE

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

INTRODUCTION

Sexual Offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. Such offences against children need to be defined explicitly and countered through adequate penalties as an effective deterrence. This Act provides for protection of children from offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of children.

STATEMENT OF OBJECTS AND REASONS

Article 15 of the Constitution, *inter alia*, confers upon the State powers to make special provision for children. Further, article 39, *inter alia*, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse; India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self contained comprehensive legislation *inter alia* to provide for protection of children from the offense of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trials of offense and provision for establishment of Special Court for speedy trial of such offences.

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

6. The notes on clauses explain in details the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

ACT 32 OF 2012

The Protection of Children from Sexual Offences Bill having been passed by both the Houses of Parliament received the assent of the President on 19th June, 2012, It came on the Statute Book as THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (32 OF 2012).

AMENDING ACT

The Criminal Law (Amendment) Act, 2013 (13 of 2013) (w.r.e.f. 3-2-2013).

**AMENDMENT TO THE PROTECTION OF
CHILDREN FROM SEXUAL OFFENCES**

ACT, 2012 (32 OF 2012)

BY

THE CRIMINAL LAW (AMENDMENT)

ACT, 2013 (13 OF 2013)

An Act further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:-

CHAPTER I
PRELIMINARY

- 1. Short title and commencement.-** (1) This Act may be called the Criminal Law (Amendment) Act, 2013
(2) It shall be deemed to have come into force on the 3rd day of February, 2013.

CHAPTER V
**AMENDMENT TO THE PROTECTION OF CHILDREN
FROM SEXUAL OFFENCES ACT, 2012**

29. Substitution of new sections for section 42.-For section 42 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), the following sections shall be substituted, namely:-

*"42. Alternate punishment.-*Where an act or omission constitutes an offence punishable under this Act and also under section 166A, 354A, 354B, 354C, 354D, 370, 370A, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, this offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

*42A. Act not in derogation of any other law.-*The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and , in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."

**THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
ACT, 2012
[No. 32 OF 2012]**

[19th June, 2012]

An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected 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 1

PRELIMINARY

1. Short title, extent and commencement. - (1) This Act may be called the Protection of Children from Sexual Offences Act, 2012.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions. - (1) In this Act, unless the context otherwise requires, -

- (a) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;
- (b) "aggravated sexual assault" has the same meaning as assigned to it in section 9;
- (c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;
- (d) "child" means any person below the age of eighteen years;
- (e) "domestic relationship" shall have the same meaning as assigned to it in clause V) of section 2 of the Protection of Women from Domestic Violence Act, 2005;
- (f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988;
- (i) "sexual assault" has the same meaning as assigned to it in section 7;
- (j) "sexual harassment" has the same meaning as assigned to it in section 11;
- (k) "shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;
- (l) "Special Court" means a court designated as such under section 28;
- (m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.

(2) The words and expressions used herein and not defined but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meanings respectively assigned to them in the said Codes or the Acts.

CHAPTER II

SEXUAL OFFENCES AGAINST CHILDREN

A.- PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

3. Penetration sexual assault.—A person is said to commit "penetrative sexual assault" if-

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with **him** or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or **anus** of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

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

B. – Aggravated Penetrative Sexual Assault And Punishment Therefore

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

- (i) within the limits of the police station or premises at which he is appointed; or
- (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
- (iii) in the course of his duties or otherwise; or
- (iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child-

- (i) within the limits of the area to which the person is deployed; or
- (ii) in any areas under the command of the forces or armed forces; or
- (iii) in the course of his duties or otherwise; or
- (iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

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

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

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

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

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

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

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

- (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;
- (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or
- (l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or
- (m) whoever commits penetrative sexual assault on a child below twelve years; or
- (n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or
- (o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or
- (p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or
- (s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or
- (t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
- (u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated penetrative sexual assault.

6. Punishment for aggravated penetrative sexual assault.—Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

C.-Sexual Assault And Punishment Therefore

7. Sexual Assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

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

D.—Aggravated Sexual Assault And Punishment Therefore

9. Aggravated Sexual Assault.—(a) Whoever, being a police officer, commits sexual assault on a child--

- (i) within the limits of the police station or premises where he is appointed; or

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

(l) whoever commits sexual assault on the child more than once or repeatedly; or
(m) whoever commits sexual assault on a child below twelve years; or
(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or household with the child, commits sexual assault on such child; or
(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or
(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or
(q) whoever commits sexual assault on a child knowing the child is pregnant; or
(r) whoever commits sexual assault on a child and attempts to murder the child; or
(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or
(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public,
is said to commit aggravated sexual assault.

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

E.-Sexual Harassment And Punishment Therefor

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

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

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

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

CHAPTER III
USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

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

- (a) representation of the sexual organs of a child;
- (b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
- (c) the indecent or obscene representation of a child,

shall be guilty of the offence of using a child for pornographic purposes.

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

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

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

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

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

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

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

CHAPTER IV
ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

16. Abetment of an offence. — A person abets an offence, who—
First.—Instigates any person to do that offence; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

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

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

Explanation II.—Whoever, either prior to or at the time of commission of an act, does any thing 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. Punishment for abetment.—Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

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

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

CHAPTER V

PROCEDURE FOR REPORTING OF CASES

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

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

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

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

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

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER VI

PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER VII **SPECIAL COURTS**

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

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

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

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conductor manner or facilitates abuse of children online.

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

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

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

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

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

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

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

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

CHAPTER VIII

PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

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

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER IX MISCELLANEOUS

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

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

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

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

¹**[42. Alternate punishment.**—Where an act or omission constitute an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code (45 of 1860), then notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree].

²**[42A. Act not in derogation of any other law.** —The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.]

43. Public awareness about Act.—(1) The Central Government and every State Government, shall take all measures to ensure that--

- (a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;
- (b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act

44. Monitoring of implementation of Act.—(1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

(2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1) shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

(3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005.

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

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

- (a) the qualifications and experience of, and the fees payable to, a translator or an interpreter, a special educator or any person familiar with the manner of communication of the children an expert in that field, under sub-section (4) of section 19; sub-sections (2) and (3) of section 26 and section 38;
- (b) care and protection and emergency medical treatment of the child under sub-section (5) of section 19;
- (c) the payment of compensation under sub-section (8) of section 33;
- (d) the manner of periodic monitoring of the provisions of the Act under sub-section (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. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(c)]

ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER

- (a) The Air Force Act, 1950(45 of 1950);
- (b) The Army Act, 1950 (46 of 1950);
- (c) The Assam Rifles Act, 2006(47 of 2006);
- (d) The Bombay Home Guard Act, 1947(3 of 1947);
- (e) The Border Security Force Act, 1968(47 of 1968);
- (f) The Central Industrial Security Force Act, 1968(50 of 1968);
- (g) The Central Reserve Police Force Act, 1949 (66 of 1949);
- (h) The Coast Guard Act, 1978(30 of 1978);
- (i) The Delhi Special Police Establishment Act, 1946(25 of 1946);
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992);
- (k) The Navy Act, 1957(62 of 1957);
- (l) The National Investigation Agency Act, 2008(34 of 2008);
- (m) The National Security Guard Act, 1986 (47 of 1986);
- (n) The Railway Protection Force Act, 1957 (23 of 1957);
- (o) The Sashastra Seema Bal Act, 2007(53 of 2007);
- (p) The Special Protection Group Act, 1988 (34 of 1988);
- (q) The Territorial Army Act, 1948(56 of 1948);
- (r) The State police forces (including armed constabulary) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of section 2 of the Armed Forces (Special Powers) Act, 1958(28 of 1958).

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

**THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
RULES, 2012¹**

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

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

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

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

- (a) “Act” means the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);
- (b) “District Child Protection Unit” (DCPU) means the District Child Protection Unit established by the State Government under section 62A of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006;
- (c) “Expert” means a person trained in mental health, medicine, child development or other related discipline, who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability;
- (d) “Special educator” means a person trained in communication with children with special needs in a way that addresses the child’s individual differences and needs, which include challenges with learning and communication, emotional and behavioural disorders, physical disabilities, and developmental disorders;
- (e) “Person familiar with the manner of communication of the child” means a parent or family member of a child or a member of his shared household or any person in whom the child reposes trust and confidence, who is familiar with that child’s unique manner of communication, and whose presence may be required for or be conducive to more effective communication with the child;
- (f) “Support person” means a person assigned by a Child Welfare Committee, in accordance with sub-rule (8) of rule 4, to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act;

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

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

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

(3) Where an interpreter, translator, or Special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on evidence of relevant experience or formal education or training or

demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, Special Court or other authority concerned.

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

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

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

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

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

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

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

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

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

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

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

- (b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 5;
- (c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;
- (d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory at the earliest;
- (e) inform the child and his parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;
- (f) inform the child and his parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) the availability of public and private emergency and crisis services;
- (ii) the procedural steps involved in a criminal prosecution;
- (iii) the availability of victims' compensation benefits;
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
- (v) the arrest of a suspected offender;
- (vi) the filing of charges against a suspected offender;
- (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;
- (viii) the bail, release or detention status of an offender or suspected offender;
- (ix) the rendering of a verdict after trial; and
- (x) the sentence imposed on an offender.

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

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

(2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.

(3) No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

(4) The registered medical practitioner rendering emergency medical care shall attend to the needs of the child, including –

- (i) treatment for cuts, bruises, and other injuries including genital injuries, if any;
- (ii) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;
- (iii) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;
- (iv) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,
- (v) wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made.

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

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

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

- (2) The NCPCR or the SCPCR, as the case may be, may call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.
- (3) The NCPCR or the SCPCR, as the case may be, may collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes established under the Act, including information on the following:-
 - (i) number and details of offences reported under the Act;
 - (ii) whether the procedures prescribed under the Act and rules were followed, including those regarding timeframes;
 - (iii) details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,
 - (iv) details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case.
- (4) The NCPCR or the SCPCR, as the case may be, may use the information so collected to assess the implementation of the provisions of the Act. The report on monitoring of the Act shall be included in a separate chapter in the Annual Report of the NCPCR or the SCPCR.

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

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

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

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;
- (ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;
- (iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- (iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- (v) the relationship of the child to the offender, if any;
- (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;
- (vii) whether the child became pregnant as a result of the offence;
- (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;

- (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;
- (x) any disability suffered by the child as a result of the offence;
- (xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;
- (xii) any other factor that the Special Court may consider to be relevant.

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

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

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

A SONG FOR A CHILD

There are some people
Who'll say
Don't cry, cause
That was yesterday
There are others
Who'll question if it's true
But, don't worry darling
I believe in you
I know how the anger
Devours every part
Of your soul, your spirit
Your mind, your very heart
I know how you live with the abuse
Every single day
I know how hard it is
To just push the pain away
I feel it when you scream
Though you sit and stare
I feel the walls push me away
Though you long for me to be there
I don't know what to do
What could I ever say
To erase the years gone by
And make it go away
Please darling
Before you turn to stone
Always, always remember, You are not alone

Cherry Kingsley