

# **Training Manual on Protection of Children from Sexual Offences (POCSO) Act & Rules 2012 for NGOs/ Youth Clubs/ Youth Groups**



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## FOREWORD

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

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

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

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

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



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## Abbreviations

<b>SI No.</b>	<b>Abbreviations</b>	<b>Explanation</b>
1.	AIDS	Acquired Immuno Deficiency Syndrome
2.	ARAI	Actuarial Risk Assessment Instruments
3.	CACs	Child Advocacy Centers
4.	CCIs	Child Care Institutions
5.	CPCR	Commission for Protection of Child Rights
6.	CPP	Child Protection Plan
7.	Cr. PC	Criminal Procedure Code
8.	CRIN	Child Rights Information Network
9.	CWC	Child Welfare Committee
10.	DCPU	District Child Protection Unit
11.	FIR	First Information Report
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.	JJ Act	Juvenile Justice (Care and Protection of Children) Act
19.	NCPCR	National Commission for Protection of Child Rights
20.	NGO	Non Government Organisation
21.	OP3CRC	Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure
22.	OPs	Optional Protocols
23.	POCSO	Protection of Children from Sexual Offences Act
24.	PTSD	Post Traumatic Stress Disorder
25.	SCPCR	State Commission for Protection of Child Rights
26.	SJPU	Special Juvenile Police Unit
27.	SOMBs	Sex Offender Management Boards
28.	STDs	Sexually Transmitted Diseases
29.	UNCRC	United Nations Convention on the Rights of the Child
30.	UNICEF	United Nations Children's Fund





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

Sexual offences are a violation of human rights. They are condemnable, reprehensible and repugnant to what we stand for – human dignity and rights of individuals. These are acts of perversion, perpetuated with feelings of hatred, intended to hurt, brutal and unwilling and unsolicited gratification of personal needs. Child sexual abuse can result in both short term and long term harm, including psychopathology in later life. Physical and social effects, including depression, post traumatic stress disorder, poor self esteem, anxiety disorders, general psychological distress and disorder are instilled in them. In spite of the fact that not all victims of child abuse and neglected childhood experience behavioural consequences, studies have found abused and neglected children to be at least 25 per cent more likely to experience problems such as delinquency, teen pregnancy, drug use and mental health problems, etc.

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

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

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

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

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

The Act deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, a family member, police officer, teacher or doctor. People who traffic children for sexual purposes are also

punishable under the provisions relating to abetment in the Act. The Act prescribes stringent punishment, graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

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

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

The achievement of these objectives requires a coordinated response of all the key players, specially the NGOs/Youth Clubs/Youth Groups.

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 Overview of Child Rights and How Child Sexual Abuse a Violation of Child Rights; Salient Features of Protection of Children from Sexual Offences (POCSO) Act and Rules, 2012; Impact of Trauma and Abuse in Children; Role of NGO's/Youth Clubs/Youth Groups in Implementation of POCSO Act and Rules, 2012 and Support & Rehabilitation Services to Victims of Sexual Offences under the POCSO Act & Rules, 2012.

## ***Participants***

About 25-30 officials representing NGOs/Youth Clubs/Youth Groups 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 NGOs/Youth Clubs/Youth Groups. 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, policy and programmes, roles and responsibilities of various stakeholders prescribed under the Act. Training techniques in the programme schedule include panel discussion/open house discussion, group work/role play/mock sessions, etc. The pre and post assessment of knowledge of participants is a hallmark of the programme.

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

<b>Day 1</b>	
<b>Time</b>	<b>Topic</b>
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. – 1.00 p.m.	Technical Session I – Overview of Child Rights and How Child Sexual Abuse is a Violation of Child Rights
1.00 p.m. – 2.00 p.m.	Lunch Break
2.00 p.m. – 3.15 p.m.	Technical Session II – Salient Features of Protection of Children from Sexual Offences (POCSO) Act and Rules, 2012
3.15 p.m. – 3.30 p.m.	Tea Break
3.30 p.m. – 5.00 p.m.	Technical Session II – Continued
<b>Day 2</b>	
<b>Time</b>	<b>Topic</b>
9.15 a.m. – 9.30 a.m.	Recap of the Previous Day
9.30 a.m. – 10.45 a.m.	Technical Session III – Impact of Trauma and Abuse in Children
10.45 a.m. – 11.00 a.m.	Tea Break
11.00 a.m. – 1.30 p.m.	Technical Session IV – Role of NGOs/Youth Clubs/Youth Groups in Implementation of POCSO Act and Rules, 2012
1.30 p.m. – 2.30 p.m.	Lunch Break
2.30 p.m. – 4.00 p.m.	Technical Session V – Support & Rehabilitation Services to Victims of Sexual Offences under the POCSO Act & Rules, 2012.
4.00 p.m. – 4.15 p.m.	Tea Break
4.15 p.m. – 4.30 p.m.	Post-Training Assessment
4.30 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 NGOs, Youth Clubs and Youth Groups which can play the roles of important stakeholders in the process of 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 NGOs, Youth Clubs and Youth Groups 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**

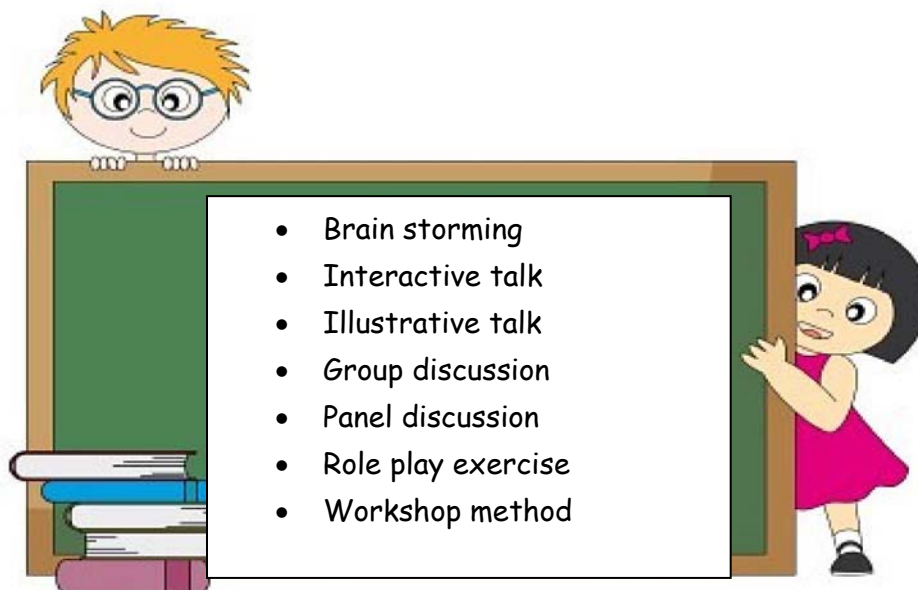
At the beginning of the training ask the participants to help you lay out the ground rules which are generally formed to guide the trainees on certain behavioural pattern so that they treat others equally, support each other, communicate, participate, cooperate and coordinate joint activities. When the 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.

## I. Training Innovations (Methods and Techniques)

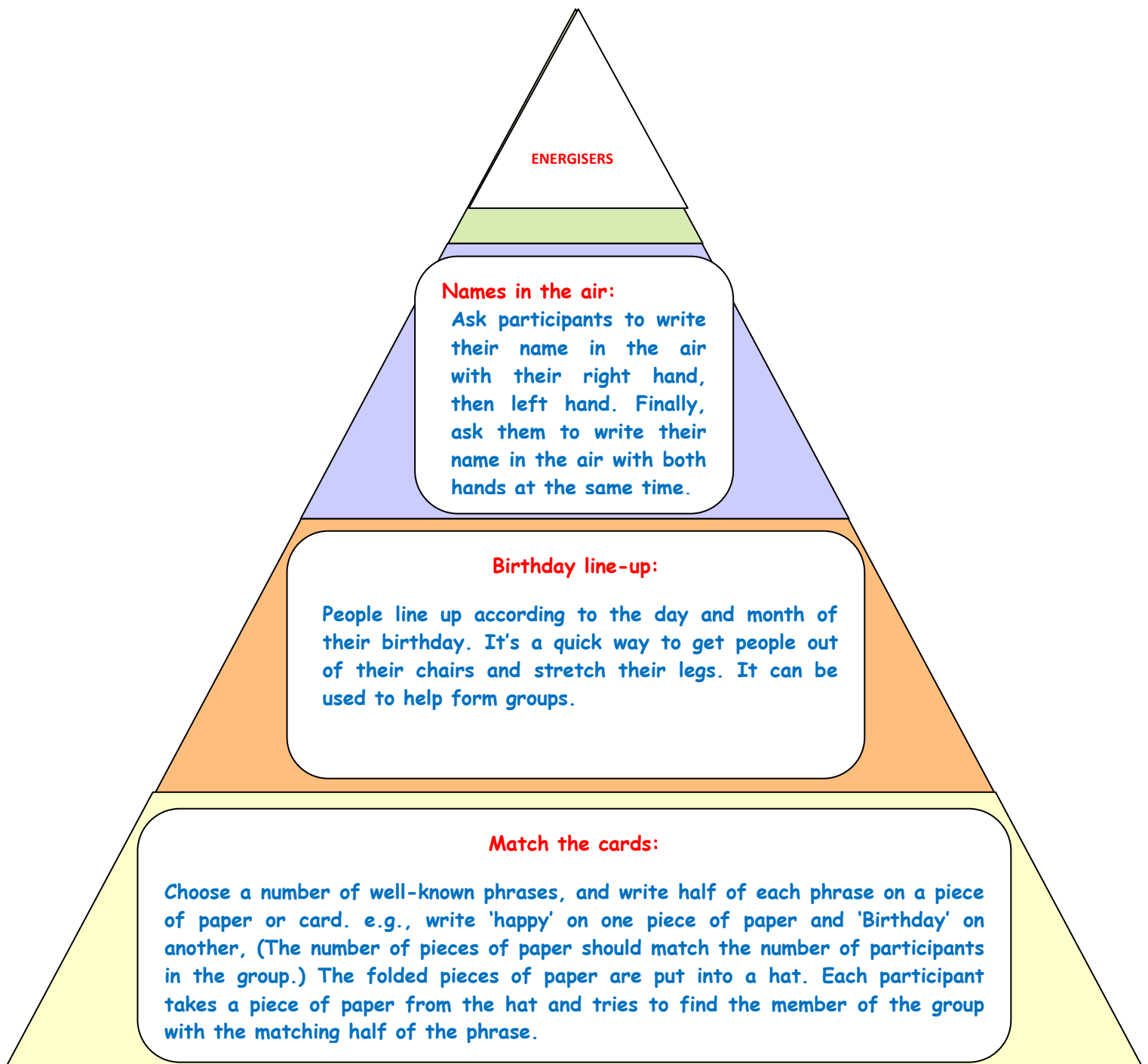


### Training Glossary

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

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

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



### **III. Facilitator's Check List: "Do's and Don'ts" for Facilitators**

#### **The Facilitators MUST.....**

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

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

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



## **C. Inauguration and Introduction**

- **Registration**
- **Introductory/Inaugural Session**
- **Pre-Training Assessment**
- **Reference Material**



**Registration**  
**Introductory/Inaugural Session**  
**Pre-Training Assessment**  
**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
  - ✓ Copy of POCSO Act
  - ✓ Copy of POCSO Rules
  - ✓ Any other reading material relevant to the participants
- Welcoming the participants.
- Introductory remarks by the Head of the Institution.
- Ensure that the introductory session shall highlight the following:
  - ✓ Introduction to the training schedule, Briefing on the running programme, objectives, programme schedule, working hours, punctuality, leave rules, etc.

## **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.	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"/>
2.	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"/>
3.	Match the punishments and fine for various offences in the POCSO Act 2012? <b>Answer:</b> <b>Offence</b>	<b>Punishment there for</b> i) 5 years and fine (Section 14) 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)
4.	Where will the cases of the POCSO Act 2012 are tried?	a) Special Courts <input type="checkbox"/> b) High Courts <input type="checkbox"/> c) District Courts <input type="checkbox"/>
5.	Tick mark some of the specifications of POCSO Act 2012 <b>Answer:</b>	
	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	
6.	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"/>
7.	What is the role of the SJPU or local police in the POCSO Act 2012?	a) Relief and rehabilitation of the child <input type="checkbox"/> b) <b>Care and protection such as admitting the child into shelter home or to the nearest hospital</b> <input type="checkbox"/> c) <b>Report to the CWC within 24 hours of recording of complaint for long term rehabilitation</b> <input type="checkbox"/> d) <b>All</b> <input type="checkbox"/>
8.	Who will monitor the implementation of the Act?	a) NCPCR & SCPCR <input type="checkbox"/> b) NCW & SCW <input type="checkbox"/>
9.	Which one of the following is the first legally binding international instrument to incorporate full range of human rights?	(a) UNCRC <input type="checkbox"/> (b) UNFPA <input type="checkbox"/> (c) UNICEF <input type="checkbox"/> (d) None of these <input type="checkbox"/>
10.	Expand CPR.	
11.	The GOI adopted National Policy for children, 1974 which was amended again in -----	(a) 2001 <input type="checkbox"/> (b) 2005 <input type="checkbox"/> (c) 2013 <input type="checkbox"/> (d) 2014 <input type="checkbox"/>
12.	When did the GOI ratified the Convention on the Rights of the Child?	(a) 5 April, 2001 <input type="checkbox"/> (b) 12 Novemeber, 1992 <input type="checkbox"/> (c) 8 December, 1978 <input type="checkbox"/> (d) None <input type="checkbox"/>
13.	Which Ministry has the nodal responsibility of coordinating the implementation of the Convention?	(a) Ministy of Human Resource Development <input type="checkbox"/> (b) Ministy of Social Justice & Empowerment <input type="checkbox"/> (c) Ministy of Environment & Forests <input type="checkbox"/> (d) Ministy of Women & Child Development <input type="checkbox"/>
14.	Article that prohibits employment of children in factories	(a) Article 39 <input type="checkbox"/> (b) Article 45 <input type="checkbox"/> (c) Article 24 <input type="checkbox"/>
15.	Hague Convention deals with	(a) Foster Care <input type="checkbox"/> (b) Inter-Country Adoption <input type="checkbox"/> (c) Sponsorship <input type="checkbox"/>
16.	Expand CEDAW	
17.	Child Sex Ratio according to Census 2011.	(a) 914:1000 <input type="checkbox"/> (b) 904:1000 <input type="checkbox"/> (c) 940:1000 <input type="checkbox"/>
18.	One of the biggest problems associated with Child Marriages is:	(a) Early Motherhood <input type="checkbox"/> (b) Higher incidences of death <input type="checkbox"/> (c) Birth of Low Birth Weight (LBW) babies <input type="checkbox"/> (d) All of the above <input type="checkbox"/>



19.	Act related to education in India	(a) RTI <input type="checkbox"/> (b) RTE <input type="checkbox"/>
20.	Statutory body to protect, promote and defend child rights in the country is (Under CPC Act, 2005).	(a) SCW <input type="checkbox"/> (b) SCPCR <input type="checkbox"/> (c) NCW <input type="checkbox"/> (d) NCPCR <input type="checkbox"/>
21.	Both girls and boys are Vulnerable to Child Sexual Abuse	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
22.	Which one of the following is a myth about child abuse & neglect?	(a) Child abuse doesn't happen in good families <input type="checkbox"/> (b) Most child abusers are strangers <input type="checkbox"/> (c) Abused children always grow up to be abusers <input type="checkbox"/> (d) All of the above <input type="checkbox"/>
23.	Physically abused children may have problems with	(a) academic achievement and developing friendships and relationships <input type="checkbox"/> (b) depression, anxiety and low self-esteem <input type="checkbox"/> (c) both (a) & (b) <input type="checkbox"/> (d) None <input type="checkbox"/>
24.	The _____ is a very important tool for the child in rebuilding his or her life after he/she is sexually abused.	(a) Counsellor <input type="checkbox"/> (b) Society <input type="checkbox"/> (c) All the above <input type="checkbox"/>
25.	Which of the following represents role of NGOs/ Youth Clubs/ Youth Groups?	(a) Raising public awareness on child rights <input type="checkbox"/> (b) Preventing and responding to violence against children <input type="checkbox"/> (c) Providing technical support to institutions in developing and monitoring government child protection policies <input type="checkbox"/> (d) Identifying child abuse concerns <input type="checkbox"/> (e) All <input type="checkbox"/>

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

**Key:**

- 1) (a)
- 2) Any person below the age of 18 years
- 3) a-vi, b-v, c-iv, d-iii, e-ii, f-i
- 4) (a)
- 5) Correct-1, 4, 5, 6, 8, 11, 12  
Wrong-2, 3, 7, 9, 10
- 6) (c)
- 7) (d)
- 8) (a)
- 9) (a)
- 10) Commissions for Protection of Child Rights
- 11) (c)
- 12) (b)
- 13) (d)
- 14) (c)
- 15) (b)
- 16) The Convention on the Elimination of all forms of Discrimination against Women.
- 17) (a)
- 18) (d)
- 19) (b)
- 20) (d)
- 21) (a)
- 22) (d)
- 23) (c)
- 24) (a)
- 25) (e)

**Minimum Score: 0**  
**Maximum Score: 25**

**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	0-5
Poor	6-10
Good	11-15
Very Good	16-20
Excellent	21-25

## **D. Technical Sessions**



## **Session I: Overview of Child Rights and How Child Sexual Abuse is a Violation of Child Rights**

### **Learning Objectives:**

- To enable the participants to understand and contextualize UNCRC to the rights of children.
- To develop an insight into the nature and extent of child sexual abuse
- **Methodology:** Presentation, lecture and discussion

### **Material Required:**

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

**Duration:** 1 hour 15 minutes

### **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 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
  
- **Relevance of UNCRC to rights of children**
  - ✓ What is Convention?
  - ✓ Understanding Wants, Needs and Rights
  - ✓ Evolution of Children's Rights and UNCRC
  - ✓ Articles of UNCRC
  - ✓ UNCRC and Optional Protocols
  - ✓ Committee on the Rights of the Child
  - ✓ Reporting mechanism on UNCRC
  - ✓ Relevance of UNCRC to rights of children
  
- What is child sexual abuse
- Forms of child sexual abuse
- Who are the offenders
- Effects of child abuse
- What can you do to prevent and report child sexual abuse
- How child sexual abuse is a violation of child rights

## Concept of child rights

### Children's Rights

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

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

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

### Justifications

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

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

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

## Historical Definitions of Children's Rights

Consensus on defining children's rights has become clearer in the last fifty years. A 1973 publication by Hillary Clinton (then an attorney) stated that children's rights were a "slogan in need of a definition". According to some researchers, the notion of children's rights is still not well defined, with at least one proposing that there is no singularly accepted definition or theory of the rights held by children.

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

## Types of Child Rights

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

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

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

- **Economic, social and cultural rights**, related to the conditions necessary to meet basic human needs such as food, shelter, education, health care, and gainful employment. Included are rights to education, adequate housing, food, water, the



highest attainable standard of health, the right to work and rights at work, as well as the cultural rights of minorities and indigenous people.

- **Environmental, cultural and developmental rights**, which are sometimes called "third generation rights," and including the right to live in safe and healthy environments and that groups of people have the right to cultural, political, and economic development.

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

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

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

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

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

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

### **Parental rights**

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

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

### **Movement**

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

### **Opposition**

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

### **International Law**

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

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

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

[Court](#), the [Yugoslavia](#) and [Rwanda Tribunals](#), and the [Special Court for Sierra Leone](#), is said to have significantly increased the profile of children's rights worldwide.

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

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

### **Scenario in India**

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

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

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

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

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

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

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

#### *Recognises that:*

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

#### *Reaffirms that:*

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

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

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

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

### **At the provincial level**

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

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

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

### **Indian Constitutional provisions:**

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

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

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

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

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

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

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

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

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

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

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

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

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

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

Introduction (from Bills of Right Comparative Law Materials):

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

### Cases:

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

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

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

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

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

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

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

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



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

### What is Convention?

Convention may refer to

(1) Treaty, an agreement in International Law.

### Whether Children need Rights?

#### YES, Children do need RIGHTS because:

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

### Understanding Wants, Needs and Rights

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

### Difference between Need and Rights Based Approaches

Needs Based Approach	Rights Based Approach
Children deserve help	Children are entitled for help
Government ought to do something	Government have binding legal and moral obligation

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

### **Evolution of Children's Rights and UNCRC**

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

#### **Articles on UNCRC**

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

- The Convention protects children’s rights by setting standards in health care; education; and legal, civil and social services.
- States parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.

Given below are descriptions of some important Articles of UNCRC:

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

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

## **Optional Protocols to UNCRC**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **The Hague Convention on Inter-country Adoption, 1993**

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

These procedures have basically two goals in mind:

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

The guidelines and procedures that are set forth in the Hague Convention are also for the protection of birth families, as well as adoptive families. Part of the Convention’s

guidelines ensures the one Central Authority in each country so that adoptive parents get the most accurate information regarding adoption.

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

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

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

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

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

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

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

### **Declaration of the Rights of the Child, 1959**

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

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



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

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

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

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

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

The basic principle are:

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

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

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

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

The main principles of these rules are:

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

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

Child labour, as the statistics clearly demonstrate, is a problem of immense global proportion. Following its comprehensive research into the issue, the ILO concluded that it was necessary to strengthen existing Conventions on child labour. Convention No. 182 helped to focus the international spotlight on the urgency of action to eliminate as a priority, the worst forms of child labour without losing the long term goal of the effective elimination of all child labour.

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

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

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

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

Both Conventions Nos. 138 and 182 are fundamental Conventions, Under the ILO Declaration, even the member States that have not yet ratified these Conventions should respect, promote and realize the principles.

## Relevance of UNCRC to Rights of Children

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

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

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

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

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

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

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

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

### **Rights-based national child protection systems**

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

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

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

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

### **Components of national child protection systems**

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

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

protection of their children and which can intervene when families are unable or unwilling to fulfill their role appropriately.

- A skilled and committed child protection workforce has the mandate to respond effectively to issues faced by children, their families and communities.
- Adequate and appropriate resource allocation underpins effective children's and family services at all levels, including within the child's community.
- Children have genuine opportunities to express their views and be involved in responses and interventions deployed to protect them and in the development of policies and services relevant to their protection and the fulfillment of their rights.
- An aware and supportive public is engaged and involved in efforts to prevent harm to children and respond to child protection issues in their communities and 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](http://www.wcd.nic.in) .

## **What is Child Sexual Abuse**

### **Child Sexual Abuse**

Child Sexual Abuse is the use of a child for sexual gratification by an older or more powerful person. The offender is usually an adult, but could also be a more powerful child. Both girls and boys are vulnerable. Besides being a public health concern, it is a crime punishable by law.

### **Understanding Child Abuse and Neglect**

Child abuse is more than bruises or broken bones. While physical abuse is shocking due to the scars it leaves, not all child abuse is as obvious. Ignoring children's needs, putting them in unsupervised, dangerous situations, or making a child feel worthless or stupid are also child abuse. Regardless of the type of child abuse, the result is serious emotional harm.

### **Myths and Facts about Child Abuse and Neglect**

#### **MYTH #1: It's only abuse if it's violent.**

**Fact:** Physical abuse is just one type of child abuse. Neglect and emotional abuse can be just as damaging, and since they are more subtle, others are less likely to intervene.

#### **MYTH #2: Only bad people abuse their children.**

**Fact:** While it's easy to say that only "bad people" abuse their children, it's not always so black and white. Not all abusers are intentionally harming their children. Many have been victims of abuse themselves, and don't know any other way to parent. Others may be struggling with mental health issues or a substance abuse problem.

#### **MYTH #3: Child abuse doesn't happen in "good" families.**

**Fact:** Child abuse doesn't only happen in poor families or bad neighbourhoods. It crosses all racial, economic, and cultural lines. Sometimes, families who seem to have it all from the outside are hiding a different story behind closed doors.

#### **MYTH #4: Most child abusers are strangers.**

**Fact:** While abuse by strangers does happen, most abusers are family members or others close to the family.

#### **MYTH #5: Abused children always grow up to be abusers.**

**Fact:** It is true that abused children are more likely to repeat the cycle as adults, unconsciously repeating what they experienced as children. On the other hand, many adult survivors of child abuse have a strong motivation to protect their children against what they went through and become excellent parents.



## Forms of child sexual abuse

Child sexual abuse includes a variety of sexual offenses, including:

- **Sexual assault** – a term defining offenses in which an adult touches a minor for the purpose of sexual gratification; for example, **rape** (including **sodomy**), and sexual penetration with an object.
- **Sexual exploitation** – a term defining offenses in which an adult victimizes a minor for advancement, sexual gratification, or profit; for example, prostituting a child and creating or trafficking in child pornography.
- **Sexual grooming** – defines the social conduct of a potential child sex offender who seeks to make a minor more accepting of their advances, for example in an online **chat room**.

Child Sexual Abuse includes the following: Touching and Non-Touching Behaviours (but need not be limited only to these acts)

### Touching behaviours include

- Fondling a child's body for sexual pleasure
- Kissing a child with sexual undertones/inclinations
- Sexually touching a child's body, and specifically private parts. Includes encouraging or forcing a child to do likewise
- Playing sexual games
- Encouraging or forcing a child to masturbate, with the child as either a participant or observer
- Encouraging or forcing a child to perform oral sex

### Non-touching behaviours include

- Encouraging a child to watch or hear sexual acts either in person or lowering the bars of privacy
- Looking at a child sexually
- Exposing one's private body parts to a child (exhibitionism)
- Watching a child in a state of nudity, such as while undressing, using the bathroom, with or without the child's knowledge (voyeurism)
- An adult making suggestive comments to the child that are sexual in nature.
- Commenting on the sexual development of a child
- Encouraging or forcing a child to read/watch pornography, giving pornographic material or using the child in pornography

## Types of Child Abuse

Child abuse and neglect occurs in a range of situations, for a range of reasons. In this section, we outline the different forms of child abuse most commonly identified by research, and some of the consequences of this abuse for victimised children and adults.

In abusive homes, children are rarely subject to one form of abuse. They often endure multiple forms of abuse at once. The most severe effects of child abuse often do not become apparent until the abused child grows to adulthood, at which point the adult may experience a range of psychological, emotional and social problems related to childhood abuse.

Different types of child abuse, commonly found, are:

- [Emotional abuse](#)
- [Neglect](#)
- [Physical abuse](#)
- [Family violence](#)
- [Sexual abuse](#)
- [Organised sexual abuse](#)

### Emotional abuse

Emotional abuse refers to the psychological and social aspects of child abuse, and it is one of the main causes of harm to abused children.

Many parents are emotionally abusive without being violent or sexually abusive. However, emotional abuse invariably accompanies physical and sexual abuse. Emotionally abusive parents practice forms of child-rearing that are orientated towards fulfilling their own needs and goals, rather than those of their children. Their parenting style may be characterised by overt aggression towards their children, including shouting and intimidation, or they may manipulate their children using more subtle means, such as emotional blackmail. Parents may also emotionally abuse their children by "mis-socialising" them, which means that they may encourage their children to act in inappropriate or criminal ways with direct encouragement and/or by surrounding the child with adults for whom such behaviour is normative.

Emotional abuse does not only occur in the home. Children can be emotionally abused by teachers and other adults in a position of power over the child. Children can also experience emotional abuse by other children, and one of the most common experiences of child-to-child emotional abuse is trivialised in Australia under the rubric of "bullying". Chronic emotional abuse in schools is a serious cause of harm to victimised children.

- **Who is most likely to be emotionally abused?** Boys and girls are equally likely to be victims of emotional abuse by their parents, and emotional maltreatment

has been reported to peak in the 6 to 8 year old range and to remain at a similar level throughout adolescence.

- **What are the characteristics of emotionally abusive parents?** Research findings suggest that emotionally abusive parents have negative attitudes towards children, perceive parents as unrewarding and difficult to enjoy, and that they associate their own negative feelings with the child's difficult behaviour, particularly when the child reacts against their poor parenting methods. \*Emotional abuse has increasingly been linked to parental mental health problems, domestic violence, drug and alcohol misuse, being abused or having been in care as children.

## **Signs in childhood**

From infancy to adulthood, emotionally abused people are often more withdrawn and emotionally disengaged than their peers, and find it difficult to predict other people's behaviour, understand why they behave in the manner that they do, and respond appropriately.

Emotionally abused children exhibit a range of specific signs. They often:

- feel unhappy, frightened and distressed
- behave aggressively and anti-socially, or they may act too mature for their age
- experience difficulties with academic achievement and school attendance
- find it difficult to make friends
- show signs of physical neglect and malnourishment
- experience incontinence and mysterious pains.

## **Signs in adulthood**

Adults emotionally abused as children are more likely to experience mental health problems and difficulties in personal relationships. Many of the harms of physical and sexual abuse are related to the emotional abuse that accompanies them, and as a result many emotionally abused adults exhibit a range of complex psychological and psychosocial problems associated with multiple forms of trauma in childhood.

Significant early relationships in childhood shape our response to new social situations in adulthood. Adults with emotionally abusive parents are at a disadvantage as they try to form personal, professional and romantic relationships, since they may easily misinterpret other people's behaviours and social cues, or misapply the rules that governed their abusive relationship with their parent to everyday social situations.

## **Neglect**

Complaints of neglect constitute a significant proportion of notifications and referrals to child protection services. However, there is no single definition of child neglect. It is generally understood that "neglect" refers to a range of circumstances in which a parent or caregiver fails to adequately provide for a child's needs:

- through the provision of food, shelter and clothing

- by ensuring their access to medical care when necessary
- by providing them with care, love and support
- by exercising adequate supervision and control of the child
- by showing appropriate moral and legal guidance
- by ensuring that the child regularly attends school

One of the contentious aspects of "neglect", as a category of child abuse, is that it is closely related to socioeconomic status. Many parents lack the money and support to meet the standards outlined above. Parents in financial need are also more likely to be in contact with welfare services, which in turn are more likely to scrutinise their parenting practices, and therefore more likely to make a report of abuse or neglect. As a result of these factors, poor communities and poor families have often been stigmatised as epicentres of child abuse and neglect. In fact, when adults in the community are asked to make retrospective reports, emotional abuse and neglect occurs in all families, rich or poor.

### **Physical abuse**

Physical abuse has been a normal aspect of domestic life for a long time. Physical assaults that would be serious criminal offenses if committed by one man against another - for instance, hitting, slapping, or striking with an object - have been legally and socially sanctioned when committed by a man against his wife and child, or by parents against their children. Today, incidents of domestic violence committed against both women and children remain at epidemic proportions.

Whilst community attitudes to violence against women and children have changed for the better, policy-makers have failed to outlaw physical assaults against children by caregivers. According to the 2007 report of the Global Initiative to End All Corporal Punishment of Children, a number of countries failed to prohibit violence against children, and has failed to commit to legislative reform.

- **How many children are physically abused?**
- **What are the characteristics of parents who physically abuse children?** Characteristics of physical child abusers include emotional impairment, substance abuse, lack of social support, presence of domestic violence and a history of childhood abuse.
- **What are the characteristics of physically abused children?** Boys and girls are equally likely to be physically assaulted by their parents, and whilst research suggests that physical abuse peaks when children are aged 4 to 8 years old, physical assault resulting in death occurs most often to infants and toddlers.

### **Signs in childhood**

Physically abused children find it difficult relating to their peers and the adults around them. The constant threat of violence at home makes them perpetually vigilant and mistrustful, and they may be overly domineering and aggressive in their attempts to

predict and control other people's behaviour. They are also vulnerable to "emotional storms", or instances of overwhelming emotional responses to everyday situations. These "storms" can take the form of profound grief, fear, or rage.

Physically abused children may also have problems with:

- academic achievement
- physical development and coordination
- developing friendships and relationships
- aggression and anger management
- depression, anxiety and low self-esteem.

## **Signs in adulthood**

Adults physically abused in childhood are at increased risk of either aggressive and violent behaviour, or shy and avoidant behaviour leading to rejection or re-victimisation. This polarised behaviour is often driven by hyper-vigilance and the anticipation of threat and violence even in everyday situations. Men with a history of physical abuse in childhood are particularly prone to violent behaviour, and physically abused men are over-represented amongst violent and sexual offenders.

## **Family violence**

Family violence, or domestic violence, usually refers to the physical assault of children and women by male relatives, usually a father and husband/partner. In these situations, a man uses violence to control his partner and children, often in the belief that violence is a male prerogative ("I'm a guy, I can't control myself"), or that his victims are responsible for his behaviour ("You bought it on yourself"). Whilst women may also be perpetrators of family violence, they are usually "fighting back" against a physically abusive partner, and it is unusual for violent women to inflict the same scale of harm as violent men.

- **How many children witness domestic violence?**

Statistics reveal that domestic violence is a serious, widespread problem across the world. However in India, physical violence is in some sense the endgame in an environment that is structured and dependent on the continued and institutionalized subjugation of women as a social class.

- According to a report published by the International Center for Research on Women in 2000, 45% of all Indian women experience some form of domestic violence in their lives
- BBC's statistics (2001) revealed that every six hours a young, married woman is burnt alive, beaten to death or driven to commit suicide somewhere in India
- The All-Women police stations in Chennai released a joint report in 2005 which stated that there were 10,508 cases of physical, sexual, verbal and mental abuse reported to them by women over the course of three years

## *Effects of Domestic Violence on Children*

Domestic violence affects every member of the family, including the children. Children witnessing domestic violence live in constant fear and feel as if they are physically abused. They are often unable to establish nurturing bonds with either parent. Children are at greater risk for abuse and neglect if they live in a violent home.

"Families under stress produce children under stress. If a spouse is being abused and there are children in the home, the children are affected by the abuse." (*Ackerman and Pickering, 1989*)

*Dynamics of domestic violence are unhealthy for children:*

- Control of family by one dominant member
- Abuse of a parent
- Isolation
- Protecting the "family secret"

Children react to their environment in different ways, and reactions can vary depending on the child's gender and age.

Children exposed to family violence are more likely to develop social, emotional, psychological and or behavioral problems than those who are not. Recent research indicates that children who witness domestic violence show more anxiety, low self esteem, depression, anger and temperament problems than children who do not witness violence in the home. The trauma they experience can show up in emotional, behavioral, social and physical disturbances that effect their development and can continue into adulthood.

- **Who commits domestic violence?** Research overwhelmingly suggests that family violence is enacted by men against women and children. Whilst women can and do commit violent offences within families, rates of female-initiated violence are much lower than male violence, and it is rarely as severe and brutal.

## **Signs in childhood**

A child witnessing family violence, and domestic violence, is at risk of:

- Behavioural and emotional difficulties
- Learning difficulties
- Long-term developmental problems
- Aggressive language and behaviour
- Restlessness, anxiety and depression

## **Signs in adulthood**

Adults exposed to domestic violence as children can carry with them a legacy of trauma-related symptoms and developmental delays. Women who grew up in an environment of family violence are more likely to be victimised in adulthood, whilst men who grew up in a violent environment are more likely to commit violent offences in adulthood.

## **Sexual abuse**

Sexual abuse describes any incident in an adult engages a minor in a sexual act, or exposes the minor to inappropriate sexual behaviour or material. Sexual abuse also describes any incident in which a child is coerced into sexual activity by another child. A person may sexually abuse a child using threats and physical force, but sexual abuse often involves subtle forms of manipulation, in which the child is coerced into believing that the activity is an expression of love. Sexual abuse involves contact and non-contact offences.

- **How many children are sexually abused?**

According to a statement released by Louis-Georges Arsenault, UNICEF Representative to India, clearly establishes children in India are facing child sexual abuse. Arsenault states, "It is alarming that too many of these cases are children. One in three rape victims is a child. More than 7,200 children including infants are raped every year; experts believe that many more cases go unreported. Given the stigma attached to rapes, especially when it comes to children, this is most likely only the tip of the iceberg."

But as alarming as that sounds the current report released by Human Rights Watch is not the only study done in India on a subject of child sexual abuse. In 2007 the Indian government sponsored a survey called, "National Study on Child Abuse: India 2007" through the Ministry of Women and Child Development, Gol. The findings of the study was based on interviews with 12,500 children in 13 different states, and reported serious and widespread sexual abuse, thereby bringing on record the gravity of the problem. Yet no concrete steps were initiated to deal with the problem and Renuka Chowdhry, the then Minister of Women and Child, went as far as describing the prevalence of child sexual abuse in India as "a conspiracy of silence"

What was really disturbing was the fact that the survey confirmed that 72 percent of the victims said they were abused and they did not report the matter to anyone. Only a small 3 percent of the victims' families complained to the police or made the abuse public. Interestingly, prior to the Gol study in 2007, an India NGO named Recovery and Healing from Incest(RAHI) conducted India's first study of child sexual abuse in 1998 called "Recovery and Healing from Incest, Voices from the Silent Zone(New Delhi 1998). The study interviewed 600 English-speaking middle and upper class women out which 76 percent said they had been abused in their childhood or adolescence. Shockingly 40 percent said they had been abused by a family member mostly an uncle

or a cousin. Yet despite the study making its findings public nothing much was done by the government or related agencies to address the problem with seriousness.

<http://www.countercurrents.org/asingh220313.htm>

- **Who is most likely to be sexually abused?** Whilst all children are vulnerable to sexual abuse, girls are more likely to be sexually abused than boys. Disabled children are up to seven times more likely to be abused than their non-disabled peers.

- **How often is sexual abuse reported to the authorities?**

A study conducted by Ministry of Women and Child Development in association with the United Nations Children's Fund (UNICEF) and a few Indian NGOs working for child's rights found that more than 53% of children in India are subjected to sexual abuse, but most don't report it. The survey was conducted in 2007 and covered 13 states across the country with a sample size of 12,447. NGOs are demanding an in-depth study to address the issue properly.

The first-ever survey on child abuse in the country disclosed that more than 50% of survey participants had been sexually abused in ways that ranged from severe — such as rape or fondling — to milder forms of molestation that included forcible kissing. In 50% of child abuse cases, the abusers were known to the child or were in a position of trust and responsibility and most children did not report the matter to anyone.

<http://www.hrw.org/es/node/113480>

- **Who sexually abuses children?** Across all community-based studies, most abusers are male and related to the child. Most adults who sexually abuse children are not mentally ill and do not meet the diagnostic criteria for "paedophilia".

## Signs in childhood

Sexually abused children exhibit a range of behaviours, including:

- Withdrawn, unhappy and suicidal behaviour
- Self-harm and suicidality
- Aggressive and violent behaviour
- Bedwetting, sleep problems, nightmares
- Eating problems e.g. anorexia nervosa and bulimia nervosa
- Mood swings
- Detachment
- Pains for no medical reason
- Sexual behaviour, language, or knowledge too advanced for their age



## Signs in adulthood

Adults, sexually abused as children, have poorer mental health than other adults. They are more likely to have a history of eating disorders, depression, substance abuse, and suicide attempts. Sexual abuse is also associated with financial problems in adulthood, and a decreased likelihood to graduate from high school or undertake further education.

## Organised sexual abuse

Organised sexual abuse refers to the range of circumstances in which multiple children are subject to sexual abuse by multiple perpetrators. In these circumstances, children are subject to a range of serious harms that can include child prostitution, the manufacture of child pornography, and bizarre and sadistic sexual practices, including ritualistic abuse and torture.

- **What are the circumstances in which children are subject to organised sexual abuse?** Many children subject to organised abuse are raised in abusive families, and their parents make them available for abuse outside the home. This abuse may include extended family members, family "friends", or people who pay to abuse the child. Other children are trafficked into organised abuse by perpetrators in schools, churches, state or religious institutions, or whilst homeless or without stable housing.
- **Who is most likely to be sexually abused in organised contexts?** Children who are vulnerable to organised abuse include the children of parents involved in organised abuse, and children from unstable or unhappy family backgrounds who may be targeted by abusers outside the family.
- **Who sexually abuses children in organised contexts?** Organised abuse, like all forms of child abuse, is primarily committed by parents and relatives. Organised abuse differs from other forms of sexual abuse in that women are often reported as perpetrators. Research with female sexual abusers has found that they have often grown up in environments, such as organised abuse, where sexual abuse is normative, and, as adults, they may sexually abuse in organised contexts alongside male offenders.

## Signs in childhood

Young children subject to organised sexual abuse often have severe traumatic and dissociative symptoms that inhibit disclosure or help-seeking behaviour. They are often very withdrawn children with strong suicidal ideation. They may exhibit disturbed behaviours while at play or when socialising with their peers or other adults.

## Signs in adulthood

Organised abuse is a key predisposing factor for the development of Dissociative Identity Disorder and other dissociative spectrum disorders. Adults with histories of organised abuse frequently have long histories of suicide attempts and self-harm, and they often live with a heavy burden of mental and physical illnesses.

## Who are the Offenders

Most people imagine offenders to be shadowy and frightening strangers. In fact, most often these offenders can range from family members to acquaintances and someone the victim trusts explicitly. Rarely are offenders complete strangers.

Contrary also to what people may think, a person who abuses a child is usually not someone with a psychiatric disorder. They are usually indistinguishable from anyone else. In fact, often an abuser is a "regular" person who leads a "routine" life and is known to the victim, but has no inhibition or qualms for having sex with children.

Furthermore, child sexual offenders do not share any specific common characteristics:-

- Though most offenders are men, women can also be offenders.
- They do not belong to any particular socio-economic class.
- Education, or the lack of it, does not define an offender.
- The offender need not have any psychological/emotional problems.
- Offenders can be married and have children of their own.
- The offender may or may not have history of abuse in his/her childhood.

When offenders plan on targeting a child, they keep in mind the following factors:

- Picking someone who can be safely victimized.
- Spending time observing and then tricking the child into performing sexual acts so that the victim appears to be willing partner.
- Manipulates an apparently "willing victim" through encouragement, coercion, surveillance, constraint and bribery.

## Effects of Child Abuse

### Can children recover from sexual abuse?

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

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

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

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

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

### Effects of child abuse and neglect

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

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

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

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

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

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

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

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

- Sexually abused children who do not disclose or who do and are not believed are at greater risk than the general population for psychological, emotional, social, and physical problems that last well into adulthood.
- Victims of child sexual abuse often report symptoms of Post Traumatic Stress Disorder. They suffer more sadness and more school problems than non-victims.

- Victims of child sexual abuse are more likely to experience major depressive disorder as adults.
- Young girls who are sexually abused are more likely to develop eating disorders as adolescents.

### **Drug and Alcohol Problems**

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

### **Teenage Pregnancy and Promiscuity**

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

### **Crime**

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

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

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

- Mental health conditions such as depression, anxiety, post-traumatic stress disorder (PTSD), insomnia, and lack of trust in others are reported more often by people who have experienced child sexual abuse.
- Physical health conditions such as HIV or other STDs, unintended pregnancy, alcohol or other drug abuse, hypertension, and obesity are all reported with greater frequency among people who have experienced child sexual abuse.

- Many survivors of sexual abuse overcome adverse health conditions, and can prove especially resilient when provided with therapy and other supports that empower them to take control over their lives and relationships.

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

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

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

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

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

### ***Nightmares***

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

### ***Persistent Pains***

Lots of children develop aches and pains that have no physical cause. These will often have a connection to an aspect of the assault. Sometimes if a child has experienced physical pain during the assaults their body can retain the memory of this pain, for example, one child who had been tied up continued to have tingling in his hands;

another child had severe stomach pains after vaginal penetration. Another boy had blinding headaches because he felt he could not get the offender out of his head. Children may also think that something is broken inside of them. Repeated pain can also be a way for children to gain the extra love and attention they need at the time. Sometimes emotions manifest themselves physically for children because they do not have the ability to put it in to words.

### ***Clingyness***

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

### ***Aggression***

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

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

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

### ***Sexualised Behaviour***

When children are sexually assaulted their sense of what is right and wrong becomes distorted. What they had previously learnt about bodies and sexual activity becomes invalid. If a child was shown how to light a fire, for example, it is likely that the child will attempt to repeat what they saw. If children have learnt that they get attention by being sexual with one person they may well repeat the behaviour with another person. If children have experienced sexual feelings, which are common in children who have been sexually assaulted, they are likely to try and recreate those reactions. They may

begin to sexually act out with other children to try and make sense of what has happened to them. Their curiosity about sexual matters may have been activated years before they develop the intellectual ability to understand. Children may want to sexually act out on other children to make them feel less vulnerable in the same way they may be aggressive. The trouble they may get into as a result of this behaviour then confirms their view of themselves as dirty and bad.

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

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

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

### **Triggers & Recovery**

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

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

The behaviours that children exhibit after sexual assault do tend to pass in time as children regain a sense of safety and self control. When the feelings that drive the behaviour are explored, they become less powerful and the behaviour becomes more



manageable. Establishing a link between the feeling and the behaviour is important as it gives you an understanding of what is happening.

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

## **Indicators and Effects**

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

### **Physical Indicators**

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

### **Behavioural Indicators**

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

- Learning problems, inexplicable fall in academic grades, poor memory and concentration
- Reluctance to participate in physical or recreational activities
- Regression to younger behaviour, such as thumb-sucking, acting like a baby, bedwetting and/or speech difficulties
- Tendency to cling or need constant reassurance
- Sudden accumulation of money or gifts
- Complaining of headaches, stomach pains or nausea without a physiological basis
- Fatigue and sleeping difficulties
- Poor self-care/personal hygiene
- Depression
- Social withdrawal (such as poor or deteriorating relationships with adults and peers)

- Developing fears, phobias and anxieties (A fear of a specific place related to abuse, a particular adult, refusing to change into sports/swimming clothes)
- Wearing of provocative clothing, or layers of clothes to hide injuries and/or to appear unattractive
- Sexual knowledge, behavior, or use of language not appropriate to age level
- Sexual inference in children's recreational activities such as drawing, playing, singing etc.
- Sexually abusive behavior towards other children, particularly younger or more vulnerable than themselves
- Age inappropriate sexual behavior
- Child running away from home/school
- Self-injurious behavior, like alcohol or drug abuse, body-mutilation, getting in trouble with law, suicide attempts

## What can you do to Prevent and Report Child Sexual Abuse

### *What Can You Do?*

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

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

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

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

### **Preventing Child Sexual Abuse**

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

- School-based prevention programs that teach avoidance skills to youth show evidence that youth empowerment and safety can be increased, and also help reduce stigma and self-blame for sexually abused youth.
- Training of medical providers, school staff, clergy, child protection caseworkers, forensic interviewers, and law enforcement officials can increase the willingness of youth to disclose child sexual abuse as well as the willingness of adults to report suspected abuse.

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

## How Child Sexual Abuse is a Violation of Child Rights

*Children have the right to be protected against all forms of abuse. Sexual abuse and commercial sexual exploitation are crimes and severe violations of the Rights of the Child.*

Commercial sexual exploitation includes a range of commercial sexual activities, such as child prostitution, the trade and sale of children for sex within a country or across international borders, the production, promotion and distribution of pornographic materials and using minors in public or private sex shows. Commercial Sexual Exploitation is the use of children for adult sexual satisfaction in exchange for remuneration in money or in kind, paid to the child or to a third party. It is a form of coercion and violence against children and is considered to be a contemporary version of slavery.

The ways in which this serious violation of children's rights are carried out include sexual tourism, local demand for sex with girls and boys with the involvement of local individual and organised exploiters, trafficking of children with the intention of using them in sexual activities, as well as the distribution of pornography on the internet.

There are no recent estimates of the actual number of children who are exploited sexually and commercially. However, according to an exploratory study carried out by the ILO/IPEC in 2002, the situation is characterised by the existence of:

- Tolerance of sexual exploitation by the local as well as foreign population
- Adults buying sex from children, in the parks, streets, beaches, brothels, night clubs, bars and hotels.
- Intermediaries, businesses and organised networks of exploiters earning money through these activities.
- Production of child pornography.
- Minors being trafficked for sexual and commercial purposes.
- Increase in the use of the internet for dissemination of child pornography and promotion of sex tourism.
- Impunity for national and foreign sexual exploiters.

The risk factors associated with the commercial sexual exploitation of boys, girls and young people include sexually transmitted infections and HIV/AIDS. The adult population that is currently affected by the AIDS virus contracted the illness during their teenage years, confirming the vulnerability of the adolescent population.

The campaigns that have been launched and distributed through the communications media have been used as advocacy and social mobilisation tools, aimed at achieving ZERO TOLERANCE for abuse and Commercial Sexual Exploitation.

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

### **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 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, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- the relationship of the child to the offender, if any;
- whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;
- whether the child became pregnant as a result of the offence;
- whether the child contracted a sexually transmitted disease (STD) as a result of the offence;
- whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;
- any disability suffered by the child as a result of the offence;
- financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;
- any other factor that the Special Court may consider to be relevant.

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

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

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

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

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

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

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

### **Procedures under POCSO Act**

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

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

### **Reporting of Cases**

#### **Who can report?**

Any person (including the child) who has an apprehension that an offence under the POCSO Act is likely to be committed or has knowledge that an offence has been committed has a mandatory obligation to report the matter. An express obligation has also been vested upon media personnel, staffs of hotels, lodges, hospitals, clubs, studios, or photographic facilities, to report a case if they come across materials or objects that are sexually exploitative of children.

Failure to report is punishable with imprisonment of up to six months or fine or both. This penalty is, however, not applicable to a child.

#### **Whom should the case be reported do?**

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

#### **Language of the report**

If a case is reported by a child, it must be recorded verbatim and in simple language so that the child understands what is being recorded. If it is being recorded in a language

that the child does not understand, a qualified translator or interpreter must be provided to the child.

## **Recording of Statement of Child**

### **A. Recording of Statement of Child by the Police**

*Where the child's statement must be recorded?*

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

*By whom should the statement be recorded?*

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

*What steps must the police take to protect the child?*

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

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

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

### **B. Recording of Statement of Child by the Magistrate**

*How must the statement be recorded?*

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

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

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

## **Medical Examination of the Child**

### ***Take the child victim for medical examination immediately***

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

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

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

examination was conducted; general information and consent; history/details of alleged sexual assault; medical, obstetrical and surgical history; general physical examination; injury examination: injuries on body (if any); local examination of genitals, anus and oral cavity; specific examinations (these examinations shall only be done whenever facilities exist and if indicated); sample collection for hospital/clinical laboratory; collection of forensic evidence/material/samples; and provisional opinion.

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

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

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

## Types of sexual offences covered under the Act and punishments thereof

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

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

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

12	<p><b>Section 21</b> Punishment for failure to report or record a case by (i) Any person; (ii) Any person, being in charge of any company or an institution. (This offence does not apply to a child)</p>	<p><b>Section 21</b> (i) Imprisonment of either description which may extend to six months or with fine or with both (ii) Any person, being in charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub section (1) of section 19 in respect of a subordinate under his control shall be punished with imprisonment for a term which may extend to one year and with fine.</p>
13	<p><b>Section 22</b> (1) Punishment for false complaint or false information in respect of an offence committed under sections 3, 5, 7 and section 9 solely with the intention to humiliate, extort or threaten or defame him. (2) False complaint or providing false information against a child knowing it to be false, thereby victimising such child in any of the offences under this Act. (This offence does not apply to a child)</p>	<p><b>Section 22</b> (1) Imprisonment for a term which may extend to six months or with fine or with both. (3) Imprisonment which may extend to one year or with fine or with both.</p>

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



## **Technical Session III: Impact of Trauma and Abuse in Children**

### **Learning Objectives:**

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

**Methodology:** Presentation, lecture and discussion

### **Material Required:**

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

**Duration:** 1 hour 15 minutes

### **Instructions:**

- Ask the participants to share what they know on child sexual abuse, its effect on children and interventions required for the same.
- Quickly write the responses of the participants on flip chart/white board.
- Show the slides on the topic
- 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 child sexual abuse, trauma faced by them, its effect and the interventions required to bring the victims back to normal life.
- 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 III**

### **CONTENTS**

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

Trauma responses in children – pre schoolers, school age children and teenagers

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

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

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

- Interventions for child sexual abuse
- Preventing child sexual abuse

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

### **Trauma responses in children**

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

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

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

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

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

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

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

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

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

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

### **Can children recover from sexual abuse?**

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

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

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

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

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

### **Effects of child abuse and neglect**

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

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

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

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

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

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

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

- Sexually abused children who do not disclose or who do and are not believed are at greater risk than the general population for psychological, emotional, social, and physical problems that last well into adulthood.
- Victims of child sexual abuse often report symptoms of Post Traumatic Stress Disorder. They suffer more sadness and more school problems than non-victims.
- Victims of child sexual abuse are more likely to experience major depressive disorder as adults.
- Young girls who are sexually abused are more likely to develop eating disorders as adolescents.

## **Drug and Alcohol Problems**

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

## **Teenage Pregnancy and Promiscuity**

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

## **Crime**

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

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

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

- Mental health conditions such as depression, anxiety, post-traumatic stress disorder (PTSD), insomnia, and lack of trust in others are reported more often by people who have experienced child sexual abuse.
- Physical health conditions such as HIV or other STDs, unintended pregnancy, alcohol or other drug abuse, hypertension, and obesity are all reported with greater frequency among people who have experienced child sexual abuse.
- Many survivors of sexual abuse overcome adverse health conditions, and can prove especially resilient when provided with therapy and other supports that empower them to take control over their lives and relationships.

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

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

Many young children lose bladder/bowel control following sexual assault. It can be frustrating for parents and cause extra work. It can be humiliating and embarrassing for

children. It is easy for adults and children to focus on the consequences of wetting and soiling e.g. changing sheets/clothes, washing, rather than the reasons why it happens.

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

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

### ***Nightmares***

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

### ***Persistent Pains***

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

### ***Clingyness***

A clingy child can test the patience of a saint! This behaviour which is so common after sexual assault is a communication of a real need to be reassured of being lovable and of being secure. Children are attempting to rebuild a sense of safety and trust through their relationships with close adults. They are trying to restore a sense of good touch by



demanding affection and cuddles. In essence, they are trying to heal their wounds. Constant physical and verbal demands can be difficult for parents but can be modified by identifying what the child needs and putting limits on when and how they are met. Clinginess can also reflect fears which can be reduced by talking about them.

### ***Aggression***

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

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

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

### ***Sexualised Behaviour***

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

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

Normal sexual activity between children is about exploration not gratification (Martinson 1991 in Hunter 1996). Up to the age of 5, children are interested in touching their private parts and looking and touching the private parts of others if they have the opportunity. From 6 to 10 children have learnt that sexual activity should be hidden and will

masturbate secretly. They may create situations with their peers that involve looking and possibly touching. (Attempted or actual penetration and activities using force are not normal). They are likely to be curious about adult bodies. Early adolescents will masturbate and begin to develop relationships that involve a range of touching.

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

### **Triggers & Recovery**

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

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

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

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

### **Indicators and Effects**

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

## **Physical Indicators**

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

## **Behavioural Indicators**

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

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

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

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

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

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

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

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

## **Preventing Child Sexual Abuse**

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

- School-based prevention programs that teach avoidance skills to youth show evidence that youth empowerment and safety can be increased, and also help reduce stigma and self-blame for sexually abused youth.
- Training of medical providers, school staff, clergy, child protection caseworkers, forensic interviewers, and law enforcement officials can increase the willingness of youth to disclose child sexual abuse as well as the willingness of adults to report suspected abuse.
- Training parents to refute common myths around “stranger danger” can help to increase their awareness of far more common (and preventable) sexual abuse risk factors in the household.

- Training parents to teach proper names for genitals and other reproductive organs to their youngest children can help to increase youths' empowerment to resist sexual abuse or disclose it to trusted adults. It can also reduce shame, stigma, and self-blame for youth who have experienced child sexual abuse.
- Evidence is lacking that laws and policies prevent child sexual abuse when they focus on monitoring and restricting known perpetrators. There is stronger evidence that sexual abuse is prevented — rather than simply avenged; through laws, policies, and fully-funded programs that focus on early identification of people at risk for committing child sexual abuse. Effective strategies help those at-risk of committing sexual abuse by confronting attitudes and behaviours that contribute to exploitation of children. Effective strategies also hold open the possibility for offenders — especially juvenile offenders whose recidivism rates are low — to re-integrate into society and establish productive and trusting relationships with family and community members.

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

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

#### Specific objectives of study

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

#### Child abuse across globe

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

- WHO estimates that almost 53,000 child deaths in 2002 were due to child homicide.
- In the Global School-Based Student Health Survey carried out in a wide range of developing countries, between 20% and 65% of school going children reported having been verbally or physically bullied in school in the previous 30 days. Similar rates of bullying have been found in industrialized countries.
- An estimated 150 million girls and 73 million boys under 18 have experienced forced sexual intercourse or other forms of sexual violence involving physical contact.

- UNICEF estimates that in sub-Saharan Africa, Egypt and Sudan, 3 million girls and women are subjected to FGM every year.
- ILO estimates that 218 million children were involved in child labour in 2004, of which 126 million were engaged in hazardous work. Estimates from 2000 suggest that 5.7 million were in forced or bonded labour, 1.8 million in prostitution and pornography and 1.2 million were victims of trafficking.
- Only 2.4% of the world's children are legally protected from corporal punishment in all settings.

### Child abuse in Asia

Apart from physical abuse, sexual abuse, emotional and psychological abuse, abandonment and, increasingly, problems of street children, in Asia where population density is high, the issues of child labour and child sexual exploitation are also high. Political instability and other internal disturbances, including conditions of insurgency in many countries in Asia are also creating major problems, with increasing number of child soldiers, refugee children, trafficked children and children on the streets.

### Major Findings (India)

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

### Physical Abuse

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

### Sexual Abuse

- 53.22% children reported having faced one or more forms of sexual abuse.
- Andhra Pradesh, Assam, Bihar and Delhi reported the highest percentage of sexual abuse among both boys and girls.
- 21.90% child respondents reported facing severe forms of sexual abuse and 50.76% other forms of sexual abuse.

- Out of the child respondents, 5.69% reported being sexually assaulted.
- Children in Assam, Andhra Pradesh, Bihar and Delhi reported the highest incidence of sexual assault.
- Children on street, children at work and children in institutional care reported the highest incidence of sexual assault.
- 50% abuses are persons known to the child or in a position of trust and responsibility.
- Most children did not report the matter to anyone.

#### Emotional Abuse and Girl Child Neglect

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

## **Technical Session IV: Role of NGOs/Youth Clubs/Youth Groups in Implementation of POCSO Act and Rules, 2012**

### **Objectives:**

- To develop an understanding of role of NGOs/Youth Clubs/Youth Groups in implementation of POCSO Act and Rules, 2012
- To sensitize the participants on the procedures laid down in the Act

**Methodology:** Presentation, lecture and discussion

### **Material Required:**

Projector, computer, softcopy/hardcopy of the concerned presentation, flip chart, marker

**Duration:** 1 hour 30 minutes

### **Instructions:**

- Ask the participants about the role of NGOs/Youth Clubs/Youth Groups
- Quickly write their responses on the flip chart
- Ask them to prioritize their responses
- Clarify the responses with the help of power point presentation referring the POCSO Act and Rules
- Ask the participants what mechanism they follow to review the cases.
- Appreciate their responses and clarify with presentation.
- Wind up the session by answering the relevant queries.

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

- This session is important to make the participants clarify the role of NGOs/Youth Clubs/Youth Groups as per the POCSO Act 2012.
- Encourage the participants to share their experiences while dealing with cases
- As this session would be relying heavily on the knowledge of facilitation and legal aid services, the resource person must be well -versed with all these issues specified in the Act.
- Read the slides carefully before conducting the session
- Keep a track of the time as it is a extensive session



## Reference Material for Technical Session IV

### CONTENTS

#### Role of NGOs/Youth Clubs/Youth Groups:

- raising public awareness on children's rights and in disseminating a new culture of child-adult relationships
- preventing and responding to violence against children by providing active support to reported cases through individual and group counselling and services for rehabilitation of abused children
- making report to the local police/ SJPU about the offence under section 19(1)
- being "person of trust and confidence", NGO worker's presence can be requested at the time of recording a statement before the Police or Magistrate, medical examination and court proceedings
- acting as a support person to assist the child through the pre-trial and trial procedure and communicating the information on developments including the arrest of the accused, applications filed and other court proceedings
- filing application for interim and final compensations for the child with the special court as well as with the Legal Services Authority
- maintaining regular contact with the SJPU and other local police units in their areas of operation
- identifying child sexual abuse concerns
- providing technical support to institutions in developing and monitoring government child protection policies
- setting up education and training programmes for their staff, lawyers, doctors and other professionals, children and youth, etc. on this issue
- monitoring media coverage and ensuring sensitive handling of the issue
- developing and disseminating position papers and other academic and awareness materials
- creating alliances with other NGOs, business groups, private organisations, media, press, etc.
- approaching the Legal Aid cell and receive legal advice regarding the legal rights of the child and the means for accessing those rights

## **Role of NGOs/Youth Clubs/Youth Groups:**

### **Non-Governmental Organizations (NGOs) recommendation and further action by CWC**

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

Upon receiving the report of the Non-Governmental Organization (NGO)/any other person found fit by the CWC, the CWC has to make a determination as to whether the child must be removed from the custody of his/her parents/guardian/ care giver and placed in a Children's Home or Shelter Home. In making this determination, the CWC shall take into account any preference or opinion expressed by the child on the matter, together with all relevant factors that may have a bearing on the best interests of the child, having regard to the considerations referred to in Rule 4(5) of POCSO Rules, 2012. However, the CWC shall as far as possible avoid repeatedly questioning or interviewing the child.

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

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

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

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

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

course of professional service, except in the discharge of their professional duties. Social workers may disclose confidential information when appropriate with valid consent from the child or a person legally authorized to consent on behalf of the child and whose interests are not in conflict with that of the child. However, in any case, social workers should inform the child, to the extent possible, about the disclosure of confidential information and its potential consequences.

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

## **Role of Non-Governmental Organisations**

Civil society organisations (independent institutions, non-governmental organisations (NGOs) and independent experts) have a positive role to play in the effective implementation of the POCSO Act, 2012 not only in raising public awareness on children's rights and in disseminating a new culture of child-adult relationships, but also in preventing and responding to violence against children by providing active support to reported cases through individual and group counselling and services for rehabilitation of abused children.

## **Relevant legal provisions**

The POCSO Act, 2012 and POCSO Rules, 2012 envisage the involvement of NGOs as support persons for the child, as well as under various other provisions.

- i. Making report to police under Section 19(1) of POCSO Act, 2012 - any person, including a member of an NGO, may make a report under this section. Many NGOs work closely with vulnerable children and are in a position to detect child abuse. In many cases, a child may feel more comfortable disclosing abuse to an NGO worker rather than someone in his/her own family. An NGO that has knowledge of the sexual abuse of a child is also bound by the principle of mandatory reporting under section 21(1) of POCSO Act, 2012.
- ii. An NGO worker is included in the term “person of trust and confidence”. Thus, such person’s presence can be requested at the time of recording a statement before the Police or Magistrate [section 26(1)], medical examination [section 27(3)], and Special Court proceedings [section 33(4) and 37].
- iii. An NGO worker may be appointed as a support person by the CWC to assist the child through the pre-trial and trial procedure (sub-rule 7 of rule 4 of POCSO Rules, 2012). Also, the parents, guardian or other person in whom the child has trust and confidence can approach an NGO to act as a support person (proviso to sub-rule 7 of rule 4 of POCSO Rules, 2012).
- iv. Where an NGO is appointed as the support person, its worker has a right to be informed under sub-rule 11 of rule 4 of POCSO Rules, 2012 of the developments, including the arrest of the accused, applications filed and other court proceedings. The NGO support person in turn communicates this information to the child and his/her family.
- v. The NGO assisting a child can, under rule 7 of POCSO Rules, 2012 file an application for interim and final compensation with the Special Court, as well as with the Legal Services Authority.

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

NGOs must maintain regular contact with the SJPU and local police stations in their areas of operation. Cooperation between the police and NGOs would facilitate speedy action and reduction of secondary trauma. Where an NGO is approached by a child and/or his/her parents or guardian or other person in whom the child has trust and confidence before the latter approaches the police, the NGO can arrange contact with the police. On the other hand, where the child and/or his/her parents or guardian or other person in whom the child has trust and confidence approach the police on their own, the police can inform and refer them to NGOs that offer support and guidance. This course of action has been recommended for the police in many districts, and is followed in some.

Where an NGO worker is appointed as the designated support person under Rule 4 of POCSO Rules, 2012 such person should refer to the guidelines for support persons.

## **Support persons: Relevant provision**

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

The Protection of Children from Sexual Offences Act, 2012 introduces the concept of a support person, to provide support to the child through the pre-trial and trial process. The support person is thus, in a way, a guardian *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.

### **List of Support Persons**

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

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

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.

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

Thus, where the child or his/her parent or guardian or person in whom the child has trust and confidence have reason to believe that the support person is not acting in the best interest of the child, they may request his/her removal. In such a case, a new support person may be provided by CWC with the consent of the child and his/her parents or guardian or other person in whom the child has trust and confidence.

### **Training of support persons**

The support person should fulfill the requirements of having basic training in communicating with and assisting children of different ages and backgrounds to prevent the risks of revictimization and secondary victimization. Further, the support person must have an understanding of the legal and Court procedures involved in the conduct of a case under the POCSO Act, 2012. He has to be able to render concrete support to the child and facilitate his/her active participation, while not disturbing the proceedings by his/her presence.

To ensure this, the DCPU must arrange for periodic training modules to impart this knowledge to those registered with it or with the CWC for engagement as support persons.

### **Payment to Support Person**

Officials of Children's Homes and Shelter Homes and persons employed by the DCPU are entitled to receive their monthly salaries at the pre-determined rates. They will be performing the functions of support persons as part of the scope of their work and will not receive additional remuneration for this work, except reimbursement of local travel costs and other miscellaneous expenditure.

Child rights/ child protection experts and NGOs may be remunerated from the Fund constituted by the State Government under Section 61 of the JJ Act, or under any other State Government Fund at rates set up by the State Government including DCPU for this purpose.

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 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.

### **Child Protection Plan (CPP)**

As stated in Rule 4(7) of the POCSO Rules, 2012 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.

After the support person has had an opportunity to interact with the child, the support person should formulate a Child Protection Plan (CPP) in respect of the child. CPP may be submitted to the CWC and can serve as a working tool that should enable the family and professionals to understand what is expected of them and what they can expect of others. The aims of the plan are to safeguard the interests of the child, to support the child's wider family and to care for the child and promote his/her welfare.

In cases where the child is produced before the CWC under Rule 4(3) of the POCSO Rules, 2012 and an Individual Care Plan (ICP) as defined in Rule 2 (h) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is being developed for the child, the above mentioned CPP would supplement such Individual Care Plan (ICP).

The basic components of the CPP are:

- i. Identification of current and potential sources of risk to the child, including the position of the abuser;
- ii. Identification of strategies to protect the child and reduce the risks over the pre-trial and trial period;
- iii. Identification of protective aspects of the child's situation, which may need to be strengthened and developed;
- iv. Consultation and negotiation with the child and his/her parents/guardians/caregivers on the content and feasibility of the plan;
- v. Communication of information between all the parties involved;
- vi. Identification of resources necessary to carry out the plan, including family support and treatment services where required;
- vii. Consideration of the position of the abuser alleged offender and potential risks to the child from this front; and,
- viii. Need for counselling the child and his/her parents / guardians / care givers; and
- ix. Need for rehabilitation and compensation

### **General Comments:**

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

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

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

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

## **Role of Youth Clubs/Youth Groups**

Youth groups/youth clubs can take part in the following strategies for the prevention of child sexual abuse.

### **1. Strategies to empower youth and help survivors heal**

- School-based prevention programs that teach avoidance skills to youth show evidence that youth empowerment and safety can be increased, and also help reduce stigma and self-blame for sexually abused youth.
- Incorporating child sexual abuse education into general safety education programs may help to increase youths' comfort in discussing sexual topics and reduce shame, stigma, and self-blame for youth who have experienced sexual abuse.
- Because research indicates a connection between bullying and child sexual abuse, bullying prevention programs should attempt to help bully/victims with referral and assessment for sexual abuse as a possible cause of the bullying behavior.
- For youth who have experienced sexual abuse, therapeutic storytelling may be a strategy by which counselors can build trust, reduce shame and self-

blame, and increase the willingness of youth to discuss their experiences. In some forms of therapeutic storytelling, a therapist engages a child sexual abuse survivor with individually-tailored stories in which the main characters overcome danger, threats, or fears. Therapeutic storytelling can model possibilities for healing and growth following trauma.

- Numerous books for children, youth, and young adults address the topics of sexual abuse and resiliency. Parents and professionals should become thoroughly acquainted with a variety of these books before sharing them with youth. Such books have potential to raise awareness but may also trigger anxiety for youth survivors of child sexual abuse unless shared in a context where referral and support services are available.

## **2. Education and training can help parents and professionals stop child sexual abuse and facilitate recovery**

- Family cohesion is especially important for helping youth affected by child sexual abuse to cope with their experiences and reclaim control over their social and sexual lives. Prevention programs that include family members of at-risk youth are likely to have a greater impact in reducing risk factors for sexual abuse.
- Training parents to refute common myths around "stranger danger" can help to increase their awareness of far more common (and preventable) child sexual abuse risk factors in the household.
- Training parents to teach proper names for genitals and other reproductive organs to their youngest children can help to increase youths' empowerment to resist child sexual abuse or disclose it to trusted adults. It can also reduce shame, stigma, and self-blame for youth who have experienced sexual abuse.
- Educating parents in tandem with their children can increase family communication about child sexual abuse and strengthen communication between groups of parents in a community
- Parents, once trained to understand child sexual abuse, can also help to educator 'bystanders' — that is, other family members and close acquaintances whose raised awareness can lead to risk reduction and early intervention in cases of suspected sexual abuse.
- Training of medical providers, school staff, clergy, child protection caseworkers, forensic interviewers, and law enforcement officials can increase the willingness of youth to disclose child sexual abuse as well as the willingness of adults to report suspected sexual abuse.

- Forensic interviewers can be more effective at helping substantiate a child sexual abuse report when interviewing youth by using age-appropriate language when asking questions to the affected child or adolescent. Research indicates that more training is needed in this area.
- Children's Advocacy Centers (CACs) are specialized facilities where teams of professionals in pediatrics, social services, counseling, child protection and criminal justice can assist youth and families affected by sexual abuse. Many CACs are located in hospitals. When child sexual abuse is first disclosed or suspected in hospital emergency rooms, the affected youth should be referred immediately if possible to the nearest CAC.

### **3. Policies and programs should focus on preventing child sexual abuse**

- Evidence is lacking that laws and policies prevent child sexual abuse when they focus on monitoring and restricting known perpetrators. There is stronger evidence that sexual abuse is prevented — rather than simply avenged — through laws, policies, and fully-funded programs that focus on early identification of people at risk for committing child sexual abuse. Effective strategies help those at-risk of committing sexual abuse by confronting attitudes and behaviors that contribute to exploitation of children. Effective strategies also hold open the possibility for offenders — especially juvenile offenders whose recidivism rates are low — to re-integrate into society and establish productive and trusting relationships with family and community members.
- Recently, a few states have begun to convene Sex Offender Management Boards (SOMBs). These are panels of professionals from child protection agencies, law enforcement agencies, and youth-serving programs, who work collaboratively to review current practices and policies for evidence of effectiveness. SOMBs can advise state legislatures and other policy-makers on best practices to reduce the risk of recidivism among adult and youth child sexual abuse offenders.
- Actuarial Risk Assessment Instruments (ARAI) are used in some states to assess the risk of recidivism for individual adult CSA offenders. ARAIs can guide officials in the criminal justice system to determine an offender's potential to re-integrate into society and overcome risks of re-offending.

## **Technical Session V: Support and Rehabilitation Services to Victims of Sexual Offences under the POCSO Act and Rules, 2012**

### **Objectives:**

- To make the participants aware of support/rehabilitation provisions in the POCSO Act, 2012
- Link JJ Act/ICPS to support the victims and families for legal aid, compensation and reintegration mechanisms when needed

**Methodology:** Presentation, lecture and discussion.

### **Material Required:**

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

**Duration:** 2 hours

### **Instructions:**

- Ask the participants to share what they know on support and rehabilitation services to victims of sexual offences in general and also under POCSO Act and Rules, 2012
- Quickly write the responses of the participants on flip chart/white board.
- Show the slides on the topic
- 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 aware of counselling, facilitation, legal aid and compensation services available to victims of sexual abuse under the Act.
- As this is theoretical session try to seek as much participation as possible.
- Link the participants view points with the available literature.
- Read/Review the slides carefully before conducting the session.
- Have updated data and knowledge on the topic.
- Keep track of the time as it is an extensive session with limited time.

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

### **CONTENTS**

**Counselling/trauma counselling services to victims**

**Facilitation services to victims and their family**

**Legal aid services to victims**

1. Relevant legal provisions in the Act and Rules and related laws for medical and health professionals
2. Relevant legal provisions in the Act and Rules and related laws for psychologists and mental health experts
3. Social worker: Inquiry
4. Rule 4 of the POCSO Rules
5. Relevant legal provisions in the Act and Rules and related laws for CSOs (independent institutions/experts and NGOs)
6. Relevant legal provisions in the Act and Rules and related laws for child development experts
7. Relevant legal provisions in the Act and Rules and related laws for legal representatives

**Compensation disbursement including interim and final compensation as per court orders etc.**

Compensation for medical expenses

**Provision of victim compensation fund or any other such scheme to be established by state governments**

Payment to support person

## **Counselling/Trauma Counselling Services to Victims**

Counselling can be difficult for children because of the nature of being a child and the difficulty in relating to an adult, especially an adult that they don't know. Counselling for abused children therefore requires that the counsellor is trained in the subject and understands how children communicate. Children who have been sexually abused are not only traumatised as a result of their experience, but are also more vulnerable to further and repeated abuse and at risk of secondary victimisation at the hands of the justice delivery process. A common example is the handling of cases of child victims by unspecialized police, prosecutors and judges who are not trained in justice for children, children's rights or how to deal and communicate with victim children and their families. The lack of clear guidelines and procedures on how to deal with child victims and their families in a child – sensitive manner during the court process affects the quality of trial and evidence and trial process; the child is subjected in such cases to repeated probing and questioning, made to relive the traumatic incident again and again, and thereby suffer in the retelling. Another instance is that of child victims not receiving proper medical support and counselling, causing physical and mental distress to the child and his/her family and hampering the healing process for the child. In addition to this, families and child victims are unable to benefit from legal aid as the appropriate agencies are not involved at the right stage in the procedure. Child victims do not receive timely advice and assistance so as to be free from a fear of family breakdowns and social isolation if the offender is a relative and/or the breadwinner of the family. There is also no system of supervision for checking the welfare and well-being of child victims during and after the court process, particularly when the abuser is the parent or guardian of the child.

There is thus a need for prompt and systematic multi-sectoral intervention that will be conducive to the justice delivery process, minimise the risks of health problems, enhance the recovery of the child and prevent further trauma. This can be achieved through action that addresses the needs of the child effectively, not only to protect him from further abuse and help him deal with his/her trauma but also to ensure that he is not revictimised in the course of the justice delivery process. In addition to this, it also has to be ensured that the child is steered towards the path of healing, recovery and rehabilitation.

The prevention of child sexual abuse, protection of victims, justice delivery, and rehabilitation of victims are not isolated issues. The achievement of these objectives requires a co-ordinated response of all the key players, which include the police, prosecution, courts, medical institutions, psychologists and counsellors, as well as institutions that provide social services to the children. The protection of children from violence and abuse thus requires an integrated and coordinated approach. Needless to say, the identification and understanding of the roles of each of these professionals is crucial to avoid duplication and promote effective convergence.

A multi-sectoral approach, while mindful of children's rights, would address the problems related to uncoordinated interagency mechanisms that child victims face in

the legal and social service process. It will provide a frame work within which the service providers will work, and provide a mechanism for information-sharing to help the victim. The process of investigation and referral of cases will also improve. It is envisaged that such an approach will ensure support for the child and his/her family, including assistance with police and court proceedings, arrangements for emergency shelter for children, arrangements for counselling, therapy, and training courses, appropriate rehabilitative services including protective custody and foster care, if necessary; information on and access to financial assistance, where appropriate, and monitoring of family involvement.

The responsibility of supporting children who have been sexually abused should be embraced by the whole community, but it is the professionals that work in this field who play an important role in enabling the healing process.

Sexually abused children are traumatised and vulnerable. They may show certain identifiable behavioural signs of abuse, but often, these are not immediately obvious and will reveal themselves only over a period of time. As a counsellor, one must be aware of the signs of sexual abuse as Children often find it very difficult to disclose sexual abuse. Counsellors have a very important role to play in limiting the short-term and long term effect of child sexual abuse. If childhood sexual abuse is not treated, long-term symptoms can go on through adulthood. The counsellor should be aware that the effects of child sexual abuse are long-term and can change the world view and the course of life of the child. The first step in the healing process is for the child to talk about the abuse, and it is the counselor's duty to facilitate this; however, the process of recovery may be long and the child will have other needs that the counsellor can attend to.

In all cases of penetrative sexual assault and all aggravated cases, arrangements should be made as far as possible to ensure that the child is provided counselling support. The rules made under the POCSO Act, 2012 provide that the child may be referred for counselling either by the police or by a doctor. Where a counsellor is not available within the existing ICPS framework, the State Government may secure the engagement of external counsellors on contract basis. In order to enable the engagement of counsellors from outside the ICPS, including senior counsellors for the more aggravated cases, the DCPU in each district shall maintain a list of persons who may be appointed as counsellors to assist the child. These could include mental health professionals employed by Government or private hospitals and institutions, as well as NGOs and private practitioners outside the ICPS mechanism, chosen on the basis of objective criteria.

The counsellor is therefore a very important tool for the child in rebuilding his or her life after he has been sexually abused.



## **Facilitation services to victims and their family**

The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

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

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

The Act also casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

The said Act provides for Special Courts that conduct the trial in-camera and without revealing the identity of the child, in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in a courtroom. Above all, the said Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported. It also provides for the Special Court to determine the amount of

compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

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

The said Act is to be implemented with the active participation of the State Governments. Under Section 39 of the Act, the State Government is required to frame guidelines for the use of persons including non-governmental organisations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage.

The fundamental principles to be followed in the determination of a case involving a sexual offence against a child have been laid down in various international instruments and in the Preamble to the POCSO Act, 2012 itself. The State Governments, the Child Welfare Committee, the Police, the Special Courts, all other Government functionaries as well as Non-Government Organisations, and all professionals and experts assisting the child at the trial and pre-trial stages are bound to abide by these principles.

In the context of the POCSO Act, 2012 interviews may need to be conducted by a variety of professionals, including police or investigative agencies. These are forensic rather than therapeutic interviews, with the objective being to obtain a statement from the child in a manner that is developmentally-sensitive, unbiased, and truth-seeking, that will support accurate and fair decision-making in the criminal justice and child welfare systems. Information obtained from an investigative or forensic interview may be useful for making treatment decisions, but the interview is not part of a treatment process.

**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.

**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.

**Inquiry:** Inquiry under the Act is facilitated either by the CWC itself or with the assistance of a Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC to be appointed for this purpose. Where a support person has been appointed for the child, the same person may be engaged to conduct the inquiry. Upon receiving the report of the Social worker/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC, the CWC has to make a determination as to whether the child must be removed from the custody of his/her parents/guardian/ care giver and placed in a Children's Home or Shelter Home.

Thus, where the child or his/her parent or guardian or person in whom the child has trust and confidence have reason to believe that the support person is not acting in the best interest of the child, they may request his/her removal. In such a case, a new support person may be provided by CWC with the consent of the child and his/her parents or guardian or other person in whom the child has trust and confidence. The DCPU must arrange for periodic training modules to impart this knowledge to those registered with it or with the CWC for engagement as support persons.

After the support person has had an opportunity to interact with the child, the support person should formulate a Child Protection Plan (CPP) in respect of the child. CPP may be submitted to the CWC and can serve as a working tool that should enable the family and professionals to understand what is expected of them and what they can expect of others. The aims of the plan are to safeguard the interests of the child, to support the child's wider family and to care for the child and promote his/her welfare.

Civil society organisations (independent institutions, non-governmental organisations (NGOs) and independent experts) have a positive role to play in the effective implementation of the POCSO Act, 2012 not only in raising public awareness on children's rights and in disseminating a new culture of child-adult relationships, but also in preventing and responding to violence and sexual abuse against children by providing active support to reported cases through individual and group counselling and services for rehabilitation of abused children. An NGO worker can also be appointed as the designated support person. Under the Act, NGOs are the primary channels for proactive monitoring of government policies, technical support to institutions in developing child protection policies, training to professionals, setting up education and training programmes and holding consultations for children and youth, monitoring media coverage, developing and disseminating position papers, creating alliances with other NGOs, etc.

The Act envisages a role for child development experts at the stage of taking evidence from the child and recording his/her statement for the purpose of investigation and trial

under the Act. The role of this expert is to facilitate communication between the child and the authority concerned.

The POCSO Act, 2012 provides for the appointment of a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act. The act confirms the right to free legal aid, providing that the child or his family shall be entitled to a legal counsel of their choice, and that where they are unable to afford such counsel, they shall be entitled to receive one from the Legal Services Authority. The Act also provides for child-friendly pre-trial and trial procedures to minimize the trauma felt by child victims and to eliminate the possibility of revictimisation at the time of trial. Various services provided by the Legal Aid Authorities under the Act are legal representation, legal counselling, legal advice and other services like

- i. Payment of court and other process fee;
- ii. Charges for preparing, drafting and filing of any legal proceedings;
- iii. Charges of a legal practitioner or legal advisor;
- iv. Costs of obtaining decrees, judgments, orders or any other documents in a legal proceeding;
- v. Costs of paper work, including printing, translation etc.

Furthermore, guidance is given to the legal representatives of a child who has been a victim of an offence under the Act at pre-trial and at trial stages. Role of lawyer under the Act is specified in accordance with the child's welfare and best interests.

## **Legal Aid services to victims**

### **1. Relevant Legal Provisions in the Act and Rules and related laws for medical and health professionals:**

#### **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.*

#### **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.

### **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 CrPC, 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.

## **2. Relevant Legal Provisions in the Act and Rules and related laws for Psychologists and Mental Health Experts:**

**Rule 4(2) (e):** *Where an SJPU or the local police receives any information under sub-section (1) of section 19 of the Act, they must inform the child and his/her parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief.*

**Rule 5(4)(v):** *Wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made by the medical professional rendering emergency medical care to the child.*

Thus, the rules made under the POCSO Act, 2012 provide that the child may be referred for counselling either by the police or by a doctor.

## **3. Social Worker: Inquiry**

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

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

- i. There is a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or
- ii. The child is living in a child care institution and is without parental support, or
- iii. The child is found to be without any home and parental support.

Where a child is produced before the CWC in the three situations described above, the relevant

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

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

This inquiry may therefore be conducted either by the CWC itself or with the assistance of a Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC to be appointed for this purpose. Where a support person has been appointed for the child, the same person may be engaged to conduct the inquiry under Rule 4(5) to assist the CWC in its inquiry.

#### **4. Rule 4 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.

In cases where the child is produced before the CWC under Rule 4(3) of the POCSO Rules, 2012, and an Individual Care Plan (ICP) as defined in Rule 2 (h) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is being developed for the child, the above mentioned CPP would supplement such Individual Care Plan (ICP).



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.

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.

#### **5. Relevant Legal Provisions in the Act and Rules and related laws for Civil Society Organisations (independent institutions/experts and NGOs):**

The POCSO Act, 2012 and POCSO Rules, 2012 envisage the involvement of NGOs as support persons for the child, as well as under various other provisions.

- i. Making report to police under Section 19(1) of POCSO Act, 2012 - any person, including a member of an NGO, may make a report under this section. Many NGOs work closely with vulnerable children and are in a position to detect child abuse. In many cases, a child may feel more comfortable disclosing abuse to an NGO worker rather than someone in his/her own family. An NGO that has knowledge of the sexual abuse of a child is also bound by the principle of mandatory reporting under section 21(1) of POCSO Act, 2012.
- ii. An NGO worker is included in the term "person of trust and confidence". Thus, such person's presence can be requested at the time of recording a statement before the Police or Magistrate [section 26(1)], medical examination [section 27(3)], and Special Court proceedings [section 33(4) and 37].
- iii. An NGO worker may be appointed as a support person by the CWC to assist the child through the pre-trial and trial procedure (sub-rule 7 of rule 4 of POCSO Rules, 2012). Also, the parents, guardian or other person in whom the child has

trust and confidence can approach an NGO to act as a support person (proviso to sub-rule 7 of rule 4 of POCSO Rules, 2012).

- iv. Where an NGO is appointed as the support person, its worker has a right to be informed under sub-rule 11 of rule 4 of POCSO Rules, 2012 of the developments, including the arrest of the accused, applications filed and other court proceedings. The NGO support person in turn communicates this information to the child and his/her family.
- v. The NGO assisting a child can, under rule 7 of POCSO Rules, 2012 file an application for interim and final compensation with the Special Court, as well as with the Legal Services Authority.

Where an NGO worker is appointed as the designated support person under Rule 4 of POCSO Rules, 2012 such person should refer to the guidelines for support persons.

## **6. Relevant Legal Provisions in the Act and Rules and related laws for Child Development Experts:**

As per the definitions in the rules framed under the POCSO Act, 2012, Rule 2(c) states:

*“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.*

Section 26(3) states, *“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.*

Section 38(2) states, *“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”.*

**Rule 3** provides for the engagement of various experts, including child development experts, for the purposes of the Act. It specifies the qualifications and experience of the experts engaged for facilitating communication with the child, stating that such an expert shall be qualified in the relevant discipline from a recognized University or an institution recognized by the Rehabilitation Council of India. The Rehabilitation Council of India runs programmes in various aspects of child development, including working with physically and mentally disabled children. It also recognises courses run by other universities in these disciplines.

Rule 3(6) provides that payment for the services of an expert 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. It is thus for each DCPU to fix the rates payable to experts in various disciplines. However, it is suggested that these rates be fixed at the level of the State to provide for administrative consistency.

The following is also to be kept in mind while engaging the services of an expert:

- i. Any preference expressed by the child as to the gender of the 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 – Rule 3(7).
- ii. 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 - Rule 3(8).
- iii. In proceedings under section 38, it is for the Special Court to ensure that there is no conflict of interest in engaging a particular expert to provide services under the Act – Rule 3(9).
- iv. Any 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 – Rule 3(10).

#### **7. Relevant Legal Provisions in the Act and Rules and related laws for Legal Representatives:**

##### **Free Legal Aid**

Under Section 12(c) of the Legal Services Authorities Act, 1987, every child who has to file or defend a case shall be entitled to legal services under this Act. The POCSO Act, 2012 confirms the right to free legal aid under **Section 40**, providing that the child or his/her family shall be entitled to a legal counsel of their choice, and that where they are unable to afford such counsel, they shall be entitled to receive one from the Legal Services Authority.

##### **Public Prosecutor**

The Protection of Children from Sexual Offences Act, 2012 provides, under **Section 32**:

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

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

*(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the*

*Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly.*

### **Child-friendly procedures**

The Act provides for child-friendly pre-trial and trial procedures to minimise the trauma felt by child victims and to eliminate the possibility of revictimisation at the time of trial. The child friendly pre-trial procedures cast duties on the police and are to be implemented at the time of reporting of offences and recording of the child's statement. These are given in detail in Sections 19-26 of the Act. The form for Application of Legal Services should be provided to the child by the police at the time of making the report under Section 19(1).

The child-friendly procedures during the trial are to be followed by the Special Courts set up under Section 28(1) to try offences under the Act. They aim to ensure that the child is protected from intimidation, whether intentional or not. All legal representatives, whether representing the accused or the child, must be aware of these provisions. Given the particular vulnerabilities of children, additional measures should also be made available and utilised even in normal circumstances. The child-friendly trial provisions are detailed in Section 33 – 38 of the Act.

## **Compensation disbursement including Interim and Final Compensation as per Court Orders etc.**

### **Compensation for medical expenses:**

Section 33(8) provides:

*“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.”*

Rule 7 provides further details in relation to the payment of this compensation. It specifies that the Special Court may order that the compensation be paid not only at the end of the trial, but also on an interim basis, to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report [Rule 7(1)]. This could include any immediate medical needs that the child may have. Further, Rule 7(3) provides that the criteria to be taken into account while fixing the amount of compensation to be paid include the severity of the mental or physical harm or injury suffered by the child; the expenditure incurred or likely to be incurred on his/her medical treatment for physical and/or mental health; and any disability suffered by the child as a result of the offence. Hence, the child may recover the expenses incurred on his/her treatment in this way.

Counsellors engaged externally may be remunerated from the Fund constituted by the State Government under Section 61 of the JJ Act, or under any other Fund set up by the State Government for this purpose. The rates for payment shall be as fixed by the DCPU.

## **Provision of victim compensation fund or any other such scheme to be established by state governments**

### **Payment to Support Person**

Officials of Children's Homes and Shelter Homes and persons employed by the DCPU are entitled to receive their monthly salaries at the pre-determined rates. They will be performing the functions of support persons as part of the scope of their work and will not receive additional remuneration for this work, except reimbursement of local travel costs and other miscellaneous expenditure.

Child rights/ child protection experts and NGOs may be remunerated from the Fund constituted by the State Government under Section 61 of the JJ Act, or under any other State Government Fund at rates set up by the State Government including DCPU for this purpose.

## **E. ANNEXURE**





# THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

## INTRODUCTION

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

## STATEMENT OF OBJECTS AND REASONS

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

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

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

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

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

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

7. The Bill seeks to achieve the above objectives.

**ACT 32 OF 2012**

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

**AMENDING ACT**

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

**AMENDMENT TO THE PROTECTION OF  
CHILDREN FROM SEXUAL OFFENCES  
ACT, 2012 (32 OF 2012)**

**BY**

**THE CRIMINAL LAW (AMENDMENT)  
ACT, 2013 (13 OF 2013)**

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

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

**CHAPTER I  
PRELIMINARY**

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

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

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

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

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

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

**[19th June, 2012]**

*An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected there with or incidental thereto.*

WHEREAS clause (3) of article 15 of the Constitution, *inter alia*, empowers the State to make special provisions for children;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

AND WHEREAS it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

AND WHEREAS it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

AND WHEREAS the State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent-

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

AND WHEREAS sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

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

**CHAPTER 1  
PRELIMINARY**

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

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

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

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

(a) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;

(b) "aggravated sexual assault" has the same meaning as assigned to it in section 9;

(c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;

(d) "child" means any person below the age of eighteen years;

(e) "domestic relationship" shall have the same meaning as assigned to it in clause V) of section 2 of the Protection of Women from Domestic Violence Act, 2005;

(f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988;

(i) "sexual assault" has the same meaning as assigned to it in section 7;

(j) "sexual harassment" has the same meaning as assigned to it in section 11;

(k) "shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;

(l) "Special Court" means a court designated as such under section 28;

(m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.

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

## **CHAPTER II**

### **SEXUAL OFFENCES AGAINST CHILDREN**

#### **A.- PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR**

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

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

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

**B. – Aggravated Penetrative Sexual Assault And Punishment Therefore**

5. Aggravated penetrative sexual assault.-(a) Whoever, being a police officer, commits penetrative sexual assault on a child—
- (i) within the limits of the police station or premises at which he is appointed; or
  - (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
  - (iii) in the course of his duties or otherwise; or
  - (iv) where he is known as, or identified as, a police officer; or
- (b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child-
- (i) within the limits of the area to which the person is deployed; or
  - (ii) in any areas under the command of the forces or armed forces; or
  - (iii) in the course of his duties or otherwise; or
  - (iv) where the said person is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits penetrative sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or
- (e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

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

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

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

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

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

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

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

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

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

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

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

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

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

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

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

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

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

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

- (t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
- (u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated penetrative sexual assault.

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

### ***C.-Sexual Assault And Punishment Therefore***

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

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

### ***D.—Aggravated Sexual Assault And Punishment Therefore***

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

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

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

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

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

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



child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **CHAPTER III**

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

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

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

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

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

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

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

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

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

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

#### **CHAPTER IV**

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

16. Abetment of an offence. – A person abets an offence, who-

*First.*—Instigates any person to do that offence; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **CHAPTER VI**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **CHAPTER VII SPECIAL COURTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

## **CHAPTER VIII**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **CHAPTER IX MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the qualifications and experience of, and the fees payable to, a translator or an interpreter, a special educator or any person familiar with the manner of communication of the children an expert in that field, under sub-section(4) of section 19; sub-sections (2) and(3) of section 26 and section 38;
- (b) care and protection and emergency medical treatment of the child under sub-section (5) of section 19;
- (c) the payment of compensation under sub-section (8) of section 33;
- (d) the manner of periodic monitoring of the provisions of the Act under sub-section (I) of section 44.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before L e 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 diffcu1ty:

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

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

## **THE SCHEDULE**

**[See section 2(c)]**

### **ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER**

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

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

## **THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES RULES, 2012<sup>1</sup>**

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

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

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

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

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

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

3. Interpreters, translators and Special educators – (1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators and special educators for the purposes of the Act, and this register shall be

made available to the Special Juvenile Police Unit (hereafter referred to as "SJPU"), local police, magistrate or Special Court, as and when required.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973, and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of the Code;
- (b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 5;
- (c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;
- (d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory at the earliest;
- (e) inform the child and his parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;
- (f) inform the child and his parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.

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



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

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

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

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

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

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

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

(8) The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he has access. He shall keep the child and his parent or guardian or other person in whom the child has trust and confidence, informed as to the proceedings of the case, including available assistance, judicial

procedures, and potential outcomes. He shall also inform the child of the role he may play in the judicial process and ensure that any concerns that the child may have, regarding his safety in relation to the accused and the manner in which he would like to provide his testimony, are conveyed to the relevant authorities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**A SONG FOR A CHILD**

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

Cherry Kingsley