

This book has been prepared as an attempt to simplify the Protection of Children from Sexual Offences Act, 2012, and to make information about this law widely available to individuals interested in or working on child rights. The second edition provides answers to additional questions under this Act, and also under the Criminal Law Amendment Act, 2013. It is designed to serve as a ready reckoner of key provisions of the law, for those interested in knowing about and using this law in order to make a difference to the lives of children in India.

The Centre for Child and the Law (CCL) of the National Law School of India (NLSIU) is a specialized research centre working in the area of child rights since 1996. The main thrust of CCL NLSIU is on Juvenile Justice, Child Protection, Universalization of Quality Equitable School Education and Child Labour, and more recently - Independent Human Rights Institutions for Children, Right to Food, Child Marriage and Child Sexual Abuse. CCL engages in direct field intervention, research, lobbying, advocacy training and teaching in order to impact policy, law and practice on issues concerning children. The mission of the Centre is to institutionalize a culture of respect for child rights in India.



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FREQUENTLY ASKED QUESTIONS ON THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 AND THE CRIMINAL LAW (AMENDMENT) ACT, 2013



FREQUENTLY ASKED QUESTIONS

ON THE PROTECTION OF CHILDREN

FROM SEXUAL OFFENCES ACT, 2012

AND

THE CRIMINAL LAW (AMENDMENT) ACT, 2013

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Edited by
Arlene Manoharan

**Centre for Child and the Law
National Law School of India University**

January 2015

**FREQUENTLY ASKED QUESTIONS ON
THE PROTECTION OF CHILDREN
FROM SEXUAL OFFENCES ACT AND
RULES, 2012 AND THE CRIMINAL LAW
(AMENDMENT) ACT, 2013**



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Foreword

Child sexual abuse is a serious affront to this nation's dignity. The rising number of cases of children who are being reported to be sexually abused is a matter of grave concern. However, this is also a positive sign, one that indicates that more children and families now have the confidence to come forward and report such abuse to the police, in the hope that justice will be done. Similarly there seems to be a rising public consciousness about this issue, fueled by increasing media reporting and civil society participation in protests against such violence.

This booklet offers a wealth of information about child sexual abuse and the law in India. These FAQs have been published with an aim to simplify this legislation and to make it widely available to individuals interested in or working on child rights. It will serve as a ready reckoner of relevant provisions of the law for NGOs, advocates, social workers, doctors, media, parents, and everyone interested in knowing about the law.

I congratulate the team for the commendable effort in revising the Frequently Asked Questions on Protection of Children from Sexual Offences Act and Central Rules, 2012 published by CCL NLSIU last year.

The team has added 30 additional questions which explain the key changes introduced by the Criminal Law (Amendment) Act,

2013, the obligations of schools, and the roles and responsibilities of the Child Welfare Committee under the Juvenile Justice (Care and Protection of Children) Act 2000 in cases involving sexual offences against children.

It is hoped that this resource will be instrumental in enabling not just more successful litigation against alleged child sex offenders, but also more sensitive interventions in conformity with the legal standards established by law - those that will help to achieve perhaps a higher goal- the healing of the survivors of child sexual abuse and their families.

Prof. (Dr).R Venkata Rao
Vice-Chancellor

Message

Child sexual abuse has been shrouded in a culture of silence and most often left unaddressed, leaving behind shattered lives, perpetrators with impunity and a widespread societal level loss of faith in the legal system. There is no doubt that a comprehensive approach is required to effectively prevent child sexual abuse, ensure convictions and to ultimately enable healing of survivors of such crimes. Law after all is just one instrument in this regard. However, a comprehensive understanding of the POCSO Act and the relevant provisions in the Criminal Law Amendment Act (2013) is indispensable in not only accessing justice, but also towards ensuring the delivery of essential services that child survivors and their families are entitled to by law- whether they be legal, psychological or even medical.

To this end, all actors and stakeholders working on the issue require to be thoroughly equipped with the knowledge of applicable law. Accordingly this second edition of the booklet containing FAQs on the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and also the relevant provisions in the Criminal Law Amendment Act (2013) has been published so as to provide information on the intricacies of the law in an accessible and reader friendly format. It not only simplifies the law on child sexual abuse in India but also clarifies the roles of the various stakeholders in the system.

I am happy to see that the Centre for Child and the Law, NLSIU has taken this much-needed and timely initiative to educate the public on the applicable legal framework on this vexing issue. I am confident that this booklet will serve as a valuable tool for those working towards ensuring justice to child survivors of sexual abuse.

Prof. (Dr) O.V. Nandimath
Registrar

Message

Incidents of sexual offences against children not only erode our faith in humanity, it promotes fear and mistrust in people all around us. A study undertaken by the Ministry of Women and Child Development, Government of India (2007) in 13 states reported serious and widespread sexual abuse. One has to recognize that many cases are still unreported. However, the enactment of The Protection of Children from Sexual Offences Act, 2012, the Central Rules under this legislation and the more recent Criminal Law Amendment Act (2013) has provided some hope and a positive impetus to the efforts aimed at addressing this grave situation.

Effective use of law in cases of child sexual abuse, will require not only a keen understanding of applicable legal provisions, but also training of all actors and stakeholders involved in ensuring justice and healing to child survivors and their families. I am delighted to see that this second edition of the FAQs on the POCSO Act 2012, and the applicable provisions of the Criminal Law Amendment Act (2013), has been brought out in a timely manner and that it serves as a resource to help fulfill both these needs. The team has received accolades for the quality of the first edition-demonstrated by the fact that copies was sold out within months of it being published. I am sure with the increasing demands being placed on the team to provide a psycho-socio-legal opinion on such cases, and to conduct training programmes for various actors - this second edition too will be an extremely

valuable resource - one that I am sure will make a significant difference to the ongoing efforts of government and civil society organizations to address this troubling issue.

Prof. (Dr) Ashok R. Patil

Faculty Co-ordinator,
Centre for Child and the Law, NLSIU

About the Centre for Child and the Law

The Centre for Child and the Law, of the National Law School of India (CCL-NLSIU) is a specialized research centre working in the area of child rights, since 1996. The main thrust of the Centre is on Juvenile Justice, Universalisation of Quality Equitable School Education, Child Labour, and Justice to Children through Independent Human Rights Institutions. More recently work is underway on the issue of Protection of Children from Sexual Offences, Right to Food, Child Marriage, and Children with Disabilities. The Centre engages in research, teaching, training, direct field intervention, lobbying and advocacy in order to impact policy, law and practice on issues concerning children. The mission of the Centre is to institutionalize a culture of respect for child rights in India.

CCL-NLSIU has revised this booklet to include additional questions on the Protection of Children from Sexual Offences Act and Rules, 2012, as well as the Criminal Law (Amendment) Act, 2013 with an aim to simplify the legislations and to make it widely available to individuals interested in or working on child rights. We have added 30 questions so as to explain the key changes introduced by the Criminal Law (Amendment) Act, 2013, obligations of schools, and to clarify the roles and responsibilities of the Child Welfare Committee. These FAQs will serve as a ready reckoner of relevant provisions of the law for NGOs, advocates, social workers, doctors, media, parents, and everyone interested in knowing about the law. Answers to 159 questions have been included in this booklet under the following broad heads:

- I. Introduction to the POCSO Act and the Criminal Law (Amendment) Act, 2013
- II. Offences
- III. Reporting of Offences
- IV. Duties of the Special Juvenile Police Unit or local police
- V. Procedure for Recording Statement of the Child
- VI. Medical Examination of the Child
- VII. Emergency Medical Care
- VIII. Care and Protection
- IX. Special Court
- X. Trial Proceedings
- XI. Compensation
- XII. Presumptions
- XIII. Obligations of Media
- XIV. Obligation of District Child Protection Unit
- XV. Obligation of the Central Government
- XVI. Obligations of State Government
- XVII. Monitoring of implementation of the Act
- XVIII. Role of Interpreters, Translators, Special Educators, and Experts

This booklet is intended for use as an introductory guide containing explanations to the key provisions of the POCSO Act on the above topics. It is not intended to be an exhaustive document.

List of Abbreviations

CLAA	Criminal Law (Amendment) Act, 2013
CWC	Child Welfare Committee
Cr.P.C	Code of Criminal Procedure, 1973
DCPU	District Child Protection Unit
DNA	Deoxyribo-Nucleic Acid
HIV	Human Immunodeficiency Virus
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2000
IPC	Indian Penal Code, 1860
POCSO	Protection of Children from Sexual Offences Act, 2012
RMP	Registered Medical Practitioner
SCPCR	State Commission for Protection of Child Rights
SJPU	Special Juvenile Police Unit
STD	Sexually Transmitted Disease
UNCRC	United Nations Convention on Rights of the Child

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No.7	About the Juvenile Justice System
No.8	Special Obligations of Schools in Karnataka
No. 9	Order passed by the Delhi High Court in <i>Court on its own motion v. Union of India</i> , W.P. (C) 7927/2012 on 13.08.2014

**Frequently Asked Questions
on the Protection of Children
from Sexual Offences (POSCO) Act,
2012 and The Criminal Law
(Amendment) Act, 2013**



I

Introduction to the POCSO Act and the Criminal Law (Amendment) Act, 2013

1. Why was the POCSO Act enacted?

The POCSO Act was enacted to protect children from offences of sexual assault, sexual harassment and pornography and to provide a child-friendly system for the trial of these offences. Data from a study undertaken by the Ministry of Women and Child Development on *Child Abuse* in 2007 had revealed that 53.22% of children had faced one or more forms of sexual abuse. The data from the National Crime Records Bureau had also indicated an increase in sexual offences against children. The increasing incidence of sexual offences against children had to be addressed through a separate legislation, as the Indian Penal Code (IPC) did not specifically provide for sexual offences against children, particularly boys. It recognised limited forms of sexual violence against girls, and considered acts other than rape as amounting to “outraging the modesty of women” which was punishable with a maximum term of two years and/or fine. The controversially worded Section 377, IPC which criminalized voluntary acts of intercourse against the order of nature, was the only provision available to address penetrative sexual assault against boys.

The sanction and push for the POCSO Act also came from Article 15(3) of the Indian Constitution which allows the State to create special laws for children, and the UN Convention on the Rights of the Child, 1989 which requires the State to take measures to protect children from unlawful sexual activities, and sexual exploitation through prostitution or pornography.

The need to protect the interest of a child victim and child witness was also recognised. Since the procedures and processes of the regular criminal court are not suited for a child, the POCSO Act provides for child-friendly measures at every stage of the legal process. The recording of the complaint, recording of evidence, investigation, and trial of offences must be done in a child-friendly manner and the dignity and autonomy of the child must be respected.

2. When did the POCSO Act come into force?

The POCSO Act received the assent of the President on 19 June 2012 and came into force on 14 November 2012, through a Gazette notification dated 9 November 2012.

3. Is the POCSO Act applicable across India?

The Act applies to the whole of India, except the State of Jammu and Kashmir.

4. When were the POCSO Rules notified by the Central Government? Will they apply to all States?

The POCSO Rules were notified by the Central Government on 14 November 2012. Under the POCSO Act, the power to make rules has been vested only with the Central Government. Therefore, the Central Rules will apply to all States.

5. What are the sexual offences which are recognized under the POCSO Act?

The POCSO Act recognizes *seven* types of sexual offences. They are:

- penetrative sexual assault,
- aggravated penetrative sexual assault,
- sexual assault,
- aggravated sexual assault,
- sexual harassment,
- use of a child for pornographic purposes, and
- storage of pornographic materials involving a child.

Abetment, or attempt to commit any of the above offences, are also considered as offences and are punishable under this Act. For details, refer to Answer 20 below.

6. What is the definition of 'child' under the POCSO Act?

The term 'child' has been defined to mean "any person below the age of eighteen years".¹

7. Why was the Criminal Law (Amendment) Act, 2013 (the CLAA) enacted?

The Criminal Law Amendment Act, 2013 was enacted in response to the Delhi gang rape incident that took place on 16th December, 2012 which exposed the deficiencies in the present law in addressing sexual crimes.

¹ Section 2(1)(d) of the POCSO Act.

A three member committee was formed headed by Justice J.S. Verma, the former Chief Justice of India to review the laws on crimes against women. Based on the recommendation of the Verma Committee, the Criminal Law Amendment Act 2013 was passed by the Parliament on 2nd April, 2013. The Amendment Act introduces several substantial and procedural changes in the three main criminal law statutes: The Indian Penal Code, 1860 (the IPC), The Code of Criminal Procedure, 1973 (the CrPC), and the Indian Evidence Act, 1872 (the Evidence Act).

The new Act not only introduces new categories of offences against women but clarifies the procedure to be followed in conducting the investigation, medical examination, trial and appreciation of evidence in relation to these offences as well.

Further, the new legislation has significantly increased the punishment under existing offences against women and has prescribed higher minimum mandatory sentences to be given.

The CLAA also allows for the fines collected under these offences to be given to the victim.

Prior to the CLAA, the IPC recognised a very limited category of sexual offences which were defined very narrowly. The only recognised offences in this category were:

- a. Outraging the modesty of a woman (section 354)
- b. Kidnapping a woman to compel her marriage (section 366)
- c. Selling a minor for purposes of prostitution (section 372)
- d. Rape
- e. Unnatural sexual offence (section 377)

- f. Intercourse during separation (section 376A)
- g. Custodial Rape (Section 376B, Section 376C and section 376D)
- h. Word, gesture or Act intended to outrage the modesty of a women (Section 509)

The CLAA rectifies this insufficiency by adding several new offences and redefining old offences. The new offences however, are not gender neutral and only recognise offences committed by men against women, with the exception of trafficking.

8. What are the key amendments introduced by the Criminal Law (Amendment) Act, 2013?

The CLAA introduced several new offences and redefined the offence of rape and traffic king in the IPC.

New offences introduced:

- a. Acid attacks (inserted as section 326A and section 326B, IPC)
- b. Sexual harassment (inserted as section 354A, IPC)
- c. Assault or use of criminal force to woman with intent to disrobe (inserted as section 354B, IPC)
- d. Voyeurism (inserted as section 354C, IPC)
- e. Stalking (inserted as section 354D, IPC)
- f. Punishment for causing death or resulting in persistent vegetative state of victim (inserted as section 376A, IPC)
- g. Sexual intercourse by a person in authority (inserted as section 376C, IPC)
- h. Gang rape (inserted as section 376D, IPC)

- i. Punishment for repeat offenders (inserted as section 376E, IPC). The Act makes certain repeat sexual offences punishable with a minimum mandatory period of 20 years or with death.

Redefining of offences:

- a. Rape (section 375 of the IPC amended via section 9 of the CLAA): The amendment provides a broader definition of 'rape' and is no longer limited to non-consensual penetrative peno-vaginal intercourse, but includes all forms of penetrative assault.
- b. Trafficking (section 370 of the IPC amended via section 8 of the CLAA): This amendment removes the obsolete provision covering 'buying or disposing of any person as a slave' and provides for detailed definition of the offence of trafficking. The provision also provides for more stringent sentencing with a mandatory sentence of life imprisonment which will mean imprisonment for the remainder of the person's natural life in certain serious cases.
- c. Aggravated cases of rape (section 376(2) of the IPC amended by section 9 of the CLAA): The amendment has added additional offences under this category that attract more stringent punishment than the offence of rape.

Amendments to the CrPC:

- a. Information given by a woman against whom any sexual offence under the IPC is allegedly committed or attempted must be recorded by a woman police officer or any woman officer. The recording of such information must be videographed and the police officer must get her statement recorded by a Judicial Magistrate as soon

as possible. Further, if the woman is temporarily or permanently mentally or physically disabled, then such information must be recorded by a police officer, at her residence or at a convenient place of her choice, in the presence of an interpreter or special educator. [Proviso to section 154(1), CrPC]

- b. Statement of a girl against whom any sexual offence under the IPC is allegedly committed or attempted must be recorded by a woman police officer or woman officer. [Proviso to section 161(2), CrPC]
- c. The Judicial Magistrate must record the statement of a victim of any sexual offence as soon as the commission of the offence is brought to the notice of the police. [Section 164(5A), CrPC]
- d. If the victim is temporarily or permanently mentally or physically disabled, the Magistrate must take the assistance of an interpreter or a special educator while recording her statement and such statement should be videographed. Such statement will also be considered in lieu of examination-in-chief, and the woman can be cross-examined on such statement without the need for recording it at the time of trial. [Proviso to section 164(5A)(a) and section 164(5A)(b), CrPC]
- e. No sanction is required for prosecuting a public servant charged with any sexual offence under the IPC. [Explanation to section 192, CrPC]
- f. The court must take appropriate measures to ensure that a victim of sexual offence is not confronted by the accused at the time of recording the evidence, while also ensuring the right of cross-examination of the accused. [Proviso to section 273, CrPC]

- vii. When the inquiry or trial relates to rape, causing injury in the course of rape which causes the death of a woman or causes her to be in a persistent vegetative state, sexual intercourse by husband upon his wife during separation, sexual intercourse by a person in authority or gang rape, the trial must be completed within a period of two months from the date of filing the charge-sheet. [Proviso to section 309(1), CrPC]
- viii. All public or private hospitals, whether run by the Central/ State Government, local bodies or any other persons are under an obligation to provide immediate, first-aid or medical treatment to victims of sexual offences free of cost. [Section 357 C, CrPC]
- ix. Where the person identifying the arrested person is mentally or physically disabled, the identification process should be supervised by a Judicial Magistrate and videographed. [Proviso to section 54(A), CrPC].

Amendments to the Evidence Act:

- a. Introduction of 'section 53A' to the Evidence Act whereby it makes previous sexual experience irrelevant to determining consent in respect of sexual offences.¹
- b. Amendment to section 114A by which a court may presume the absence of consent in all cases of aggravated rape falling under section 376(2).²
- c. Amendment to the proviso under section 146 whereby the questioning of a victim of sexual offences in a manner that calls into question the general immoral character or the previous sexual experience is now prohibited.³

1 Vide section 25 of the CLAA.

2 Vide section 26 of the CLAA.

3 Vide section 28 of the CLAA.

9. When did the Criminal Law (Amendment) Act, 2013 come into force?

The Criminal Law (Amendment) Act, 2013 was deemed to have come into force on 3 February 2013.

10. What are the sexual offences against children under the Criminal Law (Amendment) Act, 2013?

The Criminal Law (Amendment) Act, 2013, introduced and amended several provisions in the Indian Penal Code on sexual offences against women. Those that will also apply to children are as follows:

- Sexual Harassment which includes physical contact and advances, sexual overtures, demand for sexual favours, showing pornography against will, and making sexually coloured remarks.
- Assault or use of criminal force to woman with intent to disrobe
- Voyeurism which entails watching or capturing image of a woman engaging in a private act or disseminating such images
- Stalking
- Trafficking of minor; trafficking of more than one minor
- Exploitation of a trafficked minor
- Rape
- Aggravated Rape
- Rape causing death or resulting in vegetative state of victim
- Sexual intercourse by a person in authority (includes superintendent or manager of children's institutions)
- Gang rape

- Word, gesture or act intended to insult the modesty of a woman.

These offences are however applicable against male perpetrators and where the child is a girl. Except trafficking, the newly introduced sexual offences under the IPC will not be applicable where the victim is a minor boy.

11. Is the electronic depiction of children in a sexually explicit manner an offence?

Yes, depiction of children in a sexually explicit is an offence under the POCSO Act as well as the Information Technology Act, 2000 (IT Act). Using a child in any form of media for the purpose of sexual gratification is an offence under Section 13 of the POCSO Act. (See Answer 33)

Section 67B of the IT Act, 2000 criminalizes the publication or transmission of materials depicting children in sexual explicit act or conduct in electronic form. The term “children” signifies persons who have not completed the age of 18 years. Creating text or digital images, collecting, seeking, browsing, downloading, advertising, promoting, exchanging or distributing material in any electronic form depicting children in obscene or indecent or sexually explicit manner is an offence. Cultivating, enticing, or inducing children to enter into online relationships for any sexually explicit act, facilitating the abuse of children, or recording in electronic form own abuse or that of others pertaining to sexually explicit act with children, is also an offence. These acts are punishable on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees 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 with fine which may extend to ten lakh rupees. However,

this penalty will not be attracted to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form which is proved to be justified as being for the public good, on the ground that it is in the interest of science, literature, art or learning or other objects of general concern, or is kept or used for *bonafide* heritage or religious purposes.

12. What are the reliefs available to child victims of sexual offences under the POCSO Act?

The POCSO Act offers several procedural and substantive reliefs to a child victim. They are as follows:

- a. **Child-friendly processes:** The POCSO Act requires respect for the dignity and autonomy of the child at every stage of the legal process. It provides for child-friendly procedures for medical examination, recording the statement of the child by the police and Magistrate, as well as during the examination of the child in court. A child must be accompanied by a parent, guardian, or any other person whom the child trusts or has confidence in, during procedures involving medical examination, recording of statements, or giving testimonies in court. Also, the child must not be brought face to face with the accused while giving her/his statement to the police or the Magistrate, or while testifying in court. If necessary, a support person must also be provided to a child to assist him/her during the investigation and trial.
- b. **Emergency medical care:** Children who are victims of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, and aggravated sexual assault; or who are found to be in need of urgent medical attention are entitled to receive emergency medical care within 24 hours of the police/Special Juvenile Police Unit (SJPU) receiving information about the crime.

- c. **Care and protection:** If the police/SJPU have reasonable grounds to believe that the child is in need of care and protection, they must immediately make arrangements to provide the child such care and protection and also alert the Child Welfare Committee (CWC), the statutory authority vested with this responsibility. The CWC can take steps to ensure that care and protection is extended to the child. For instance, it can provide the child with a support person to render assistance during the investigation and trial. It can also order that the child be taken out of the custody of her/his family if she/he has been or is likely to be sexually abused there.
- d. **Speedy Procedure:** The Act specifically requires that the evidence of the child must be recorded by a Special Court within 30 days of taking cognizance of the offence. Reasons for delay have to be recorded in writing. Further, the trial must be completed within a year's time, as far as possible.
- e. **Compensation:** A child victim may receive interim compensation for immediate needs for relief or rehabilitation and final compensation for the loss or injury caused to her/him.
- f. **Punishment:** The Act prescribes punishment for offenders who commit sexual offences against children.

13. What are the child-friendly procedures provided for under the POCSO Act and the Criminal Law (Amendment) Act, 2013?

The child-friendly provisions of law that must be adhered to during different stages of the legal process are as follows:

Reporting of Offence

- Cases reported by a child must be recorded by the police/SJPU in simple language so that the child understands what is being recorded.

- If it is recorded in a language other than the preferred language of the child, a qualified translator or interpreter must be provided to the child.
- As per the amendment to the CrPC by the CLAA, information given by the girl against whom sexual offences under the IPC have allegedly been committed or attempted must be recorded by a woman police officer or any woman officer. The recording of such information must be videographed. Further, if the girl is temporarily or permanently physically or mentally disabled, the information must be recorded by a police officer at her residence or at a place of her choice, in the presence of an interpreter or special educator and must also be videographed.

Medical Examination

- Before any medical examination is conducted, consent by or on behalf of the child must be obtained.
- Medical examination can be conducted irrespective of whether a FIR/complaint has been filed.
- The privacy of the child must be respected, and medical examination must be conducted in the presence of parent/guardian/ person the child trusts. If such a person is not available, then the examination must be conducted in the presence of a woman nominated by the head of the medical institution.
- Where the victim is a girl, examination must be done by a woman doctor.

Recording of Statement by the Police/SJPU

- While recording the statement of a child, the police officer investigating the case must ensure that the child does not come in contact with the accused at any point.

- A child's statement must be recorded at her/his residence, at a place where she/he normally resides or at a place of her/his choice.
- Under no circumstances can a child be detained in the police station in the night.
- The statement must be recorded in the presence of the parent/s or any other person in whom the child trusts or has confidence.
- Under the POCSO Act, the statement of the child must as far as is practical, be recorded by a woman police officer not below the rank of a sub-inspector.
- As per the amendment to the CrPC by the CLAA, the statement of a girl against whom sexual offences under the IPC have allegedly been committed or attempted must be recorded by a woman police officer or any woman officer.
- The identity of the child must be protected from the media, unless the Special Court allows it in the interest of the child after giving reasons for the same in writing.
- While recording the statement of a child with mental or physical disability, the police 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.

Recording of Statement by the Magistrate

- The statement under Section 164 of the Code of Criminal Procedure must be recorded as spoken by the child and in the presence of parent/s or any other person the child trusts or has confidence in. As per section 164(5A) of the CrPC as inserted by the CLAA, while recording the statement of a

child with mental or physical disability, 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. This statement must be videographed.

Establishment of a Special Court

- State Governments must, in consultation with the Chief Justice of the High Court, designate a Sessions Court to be a Special Court to try offences under the POCSO Act. This is with a view to facilitate speedy trial.
- If a Session's Court has been notified as a Children's Court under the Commissions for Protection of Child Rights Act, 2005, or if any other Special Court has been designated for similar purposes under any other law, it will be regarded as a Special Court under the POCSO Act.

Trial

- All questions by the Special Public Prosecutor or the lawyer of the accused must be posed to the child through the Judge.
- Though the child must not be exposed to the accused at any point during the legal process, the accused does have a right to hear the testimony of the victim. Video-conferencing, one-way mirrors or curtains should be used to ensure this. The CLAA also requires all courts to take appropriate measures to ensure that a girl below the age of 18 years who has been subjected to any sexual offence is not confronted by the accused during the trial, while at the same time ensuring the right of cross-examination to the accused.
- Frequent breaks must be allowed to the child during the trial.

- The child should not be called repeatedly to testify in court.
- Aggressive questioning or character assassination of the child is prohibited and should not be permitted by the Special Court.
- The Special Court must create a child-friendly atmosphere by allowing a family member, guardian, friend or relative, in whom the child has trust or confidence, to be present in the court.
- The identity of the child should not be disclosed at any time during the course of investigation or trial, unless the Special Court allows it in the interest of the child after giving reasons in writing.
- The evidence of the child must be recorded within 30 days and the trial must be completed within one year from the date on which the Special Court takes up the matter. As per the amendment to the CrPC by the CLAA, trials related to the offences of rape, rape that causes death or results in persistent vegetative state, sexual intercourse by a person in authority, sexual intercourse by a husband upon his wife during separation, and gang rape, must as far as possible be completed within two months from the date of filing the charge sheet.

14. Do the POCSO Act and the Criminal Law (Amendment) Act contain any special measures for children with disabilities?

Yes, both Acts contains the following provisions for children with disabilities:

- **Offences:** Under the POCSO Act, if a person takes advantage of a child's mental or physical disability to commit penetrative

sexual assault, this would amount to an aggravated offence and is punishable with fine and a minimum term of 10 years rigorous imprisonment that can extend to life imprisonment. It also constitutes a ground for aggravated non-penetrative sexual assault, which is punishable with fine and a minimum term of 5 years imprisonment and a maximum term of 7 years. Similarly, assault (penetrative or non-penetrative) that results in physical incapacitation, mental illness, or any kind of temporary or permanent impairment also constitutes an aggravated offence.

Commission of rape on a girl suffering from mental or physical disability is a ground for aggravated rape under the amended IPC and is now punishable with fine and rigorous imprisonment for a minimum term of ten years which may extend to life imprisonment which will mean the remainder of the person's natural life. Further, rape that results in death or causes the girl to be in a persistent vegetative state, is punishable with rigorous imprisonment for a minimum term of 20 years which may extend to life imprisonment which will mean the remainder of the person's natural life or death.

- **Recording of information:** As per the amendment to the CrPC by the CLAA, information given by the girl against whom sexual offences under the IPC have allegedly been committed or attempted must be recorded by a woman police officer or any woman officer. Further, if the girl is temporarily or permanently physically or mentally disabled, the information must be recorded by a police officer at her residence or at a place of her choice, in the presence of an interpreter or special educator and must be videographed.

- **Identification of arrested person:** A Judicial Magistrate will have to supervise the identification of an arrested person by a mentally or physically disabled child and ensure that methods that the child is comfortable with are used. The process will also have to be videographed.
- **Recording of Statement:** Under the POCSO Act, while recording the statement of a child victim with a physical or mental disability, the police or Magistrate can seek the assistance of a special educator, qualified expert, or any person who is familiar with the manner of communication of the child. The State Government will have to pay for this service.

As per the amendment to the CrPC by the CLAA, the Magistrate should take the assistance of an interpreter or special educator while recording the statement of a girl who is temporarily or permanently mentally or physical disabled. Such statement must also be videographed. Further, such statement will be considered in place of the examination-in-chief and the girl can be cross-examined on it. The statement need not be recorded afresh at the time of trial.

- **Evidence:** The Special Court can take the assistance of a special educator, qualified expert, or any person who is familiar with the manner of communication of the child while recording the evidence of the child. As per the amendment to the Indian Evidence Act, 1872, by the CLAA, a witness who is unable to speak can give his or her evidence in any other intelligible manner, as by writing or by signs. Such writing or signs must be made in open court and will be considered oral evidence. If the witness is unable to communicate verbally, the court should take the assistance

of an interpreter or a special educators and also videograph the statement.

- **Compensation:** While ordering compensation, the Special Court can take into consideration whether the child acquired a disability as a result of the offence committed against her/him.

15. In what way is the procedure under the POCSO Act different from regular criminal procedure?

The procedure stipulated under the POCSO Act is much more child-friendly as compared to the procedure laid down in the Code of Criminal Procedure (CrPC). An attempt has also been made to include guidelines laid down by the Supreme Court in *Sakshi v. Union of India*, AIR 2004 SC 3566 in the Act. The key procedural differences are listed below:

- Venue for recording of statement:** Under the POCSO Act, the statement of a child below the age of 18 years must be recorded in a place of the child's choice. This could be the place in which the child ordinarily resides or any other place. Under the Cr.P.C., the statement of a person below the age of 15 years irrespective of gender and that of a woman must be taken in the place in which they reside and not in the police station. As is evident, the POCSO Act extends a choice to the child and also requires that the statement of all persons below the age of 18 years be recorded in this manner.
- Questions to be put to the child only by the Special Judge:** Under the POCSO Act, the child cannot be questioned directly by the Special Public Prosecutor or the lawyer for the accused. Instead, all questions have to be put to the child by the judge. In a regular trial, the public prosecutor conducts the examination in chief and the questions in

cross-examination are asked by the lawyer of the accused, the defence lawyer. In *Sakshi v. Union of India*, the Supreme Court had directed that in cases of child sexual abuse or rape, questions during cross-examination on behalf of the accused must be given to the Presiding Officer of the court in writing who may then put it to the child in language that is clear and not embarrassing. The POCSO Act goes a step further and requires that all questions, including those by the Special Public Prosecutor, be put to the child by the Special Judge.

- c. **Presumption of culpable mental state:** Under the POCSO Act, if a person is prosecuted for allegedly committing, abetting, or attempting to commit penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, or aggravated sexual assault, then the Court will presume that the person has actually committed, abetted, or attempted to commit the offence. The onus is on the accused to establish his/her innocence. This is in marked departure from general criminal procedure and evidence under which the burden is on the prosecution to establish guilt beyond all reasonable doubt.
- d. **Direct cognizance by Special Court:** Under the Cr.P.C., the Magistrate has to take cognizance of any criminal case and depending on the jurisdiction, transfer the case to respective courts. Cases cannot lie before the Sessions Court directly. For instance, in a case of rape, the police will give the report to the magistrate and since the Magistrate's Court does not have jurisdiction in rape cases, it will be transferred to the Sessions Court once the initial procedures are completed. Under the POCSO Act, however, the Special Court can take cognizance of offences directly and does not have to wait for a Magistrate's Court to commit the matter to it.

16. Who are the key authorities under the POCSO Act and what are their duties towards child victims of sexual offences?

The key authorities and their duties are as follows:

Box No.1: Key Authorities under the POCSO Act and their duties	
Authority under the POCSO Act and Central Rules	Duties
<p style="text-align: center;">Police/Special Juvenile Police Unit⁴ (SJPU)</p> <p>(Also see Section IV -Answers 63-69)</p>	<ul style="list-style-type: none"> Recording information pertaining to the commission of an offence, or apprehension that it is likely to be committed. Making a preliminary assessment as to whether the child is in need of care and protection and if so, taking immediate steps to ensure protection. Reporting the case to the Special Court and the Child Welfare Committee (CWC) within 24 hours of receiving the report about the commission of the crime. Producing the child before the CWC within 24 hours if the child has been abused or faces the risk of further abuse in the place where the child is residing, or if the child is without parental support.

4. Under Section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000, Special Juvenile Police Units (SJPU) may be created by State Governments in every district and city to co-ordinate and upgrade the police treatment of juveniles and children.

	<ul style="list-style-type: none"> • Taking the child for medical examination to a medical practitioner in a government hospital or to a private hospital in the event that a registered medical practitioner is not available at the government hospital. • Ensuring that if required, the child receives emergency medical care at the nearest hospital. • Recording the statement of the child at a place of his or her choice. • Ensuring that the child is not exposed to the accused during investigation. • Providing information about the procedures, developments in the case, and services to the child, parent/guardian, support person, etc. • Ensuring that the statement of the child is recorded by the nearest lady Magistrate, and within 24 hours.
<p style="text-align: center;">Child Welfare Committee</p> <p>(Also see Answer 101)</p>	<ul style="list-style-type: none"> • Determining a suitable placement for a child who has been abused or is facing a threat of abuse in her/his place of residence, within three days. • Providing a support person to a child for assistance during the investigation and trial with the consent of the child and her/his parent, guardian, or person whom the child trusts.
<p style="text-align: center;">District Child Protection Unit (DCPU)</p> <p>(Also see Answer 148)</p>	<ul style="list-style-type: none"> • Maintaining a register with names, addresses and contact details of interpreters, translators, and special educators. • Making the register available to the SJPU, local police, magistrate, or Special Court. • Making payments for services to the above experts, from funds at their disposal.

<p>Magistrate</p> <p>(Also see Answers 75-76)</p>	<ul style="list-style-type: none"> Recording the statement of the child in a child friendly manner and by audio-video electronic means, with the assistance of experts, special educators, translators, or interpreters, if necessary. Recording such statement within 24 hours of the police receiving information about the alleged commission of a sexual offence.
<p>Special Court and Judge</p> <p>(Also see Section IX)</p>	<ul style="list-style-type: none"> Conducting in camera trials of offences under the POCSO Act. Ensuring that a child-friendly atmosphere is maintained in the Court and that the dignity, interests, and identity of the child are respected and protected during trial. Recording the evidence of the child within 30 days and completing the trial within 1 year of taking up the matter, as far as possible. Ordering payment of compensation in appropriate cases.
<p>Special Public Prosecutor</p>	<ul style="list-style-type: none"> Prosecution of cases exclusively under the POCSO Act.
<p>Support Person</p> <p>(Also see Answer 108)</p>	<ul style="list-style-type: none"> Maintaining confidentiality of all information pertaining to the child, to which she/he has access. Keeping the child, parent/guardian, or other person in whom the child has trust and confidence informed about the proceedings in the case, including available assistance, judicial procedures, and potential outcomes.

	<ul style="list-style-type: none"> • Informing the child of the role she/he may play in the judicial process. • Ensuring that any concerns the child may have, regarding safety in relation to the accused and the manner in which testimony is provided, are conveyed to the relevant authorities.
<p>Central Government (Also see Answer 149)</p>	<ul style="list-style-type: none"> • Giving wide publicity to the provisions of the POCSO Act at regular intervals through the media including television, radio and print media. • Imparting periodic training to government officers, police, and others on matters related to the implementation of the Act. • Framing Rules to give effect to the provisions of the Act. • Passing orders to remove difficulties that may arise in giving effect to the provisions of the Act, within two years from the commencement of the Act, ie. 13 November 2014.
<p>State Government (Also see Answer 150)</p>	<ul style="list-style-type: none"> • Designating a Court of Sessions to be a Special Court under this Act in every district. • Appointing a Special Public Prosecutor for every such Special Court. • Promoting wide publicity of the provisions of the Act through media at regular intervals to spread awareness among the public, particularly children, their parents and guardians. • Training police and other officers of the State Government on matters relating to the implementation of the provisions of the Act.

	<ul style="list-style-type: none"> • Framing guidelines for use by all persons who are to be associated with the pre-trial and trial stage to assist the child. These include NGOs, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development. • Paying compensation from the Victims Compensation Fund or other schemes for the purpose of compensation and rehabilitating victims, within 30 days from the order of the Special Court.
<p style="text-align: center;">National Commission for Protection of Child Rights and State Commissions for Protection of Child Rights</p> <p>(Also see Answer 152)</p>	<ul style="list-style-type: none"> • Monitoring the implementation of the POCSO Act by the Central and State Governments. • Calling for reports from the CWC on specific cases. • Reporting on the implementation of the Act by way of a separate chapter in its Annual Report.

17. Which Court will conduct the trial of offences under the POCSO Act?

All offences under the POCSO Act will be tried by a Special Court. All State Governments are required to designate a Sessions Court in each district as a Special Court to try offences under this Act. In the event that a Children’s Court has been notified under the Commissions for Protection of Child Rights Act, 2005 (See Box No.2), or any other Special Court has already been designated for similar purposes under any other law; such court will be considered a Special Court for the purpose of the POCSO Act. The Special Court cannot, however, try offences committed by a juvenile i.e. a person under 18 years of age. The matter will

lie before the Juvenile Justice Boards set up under the Juvenile Justice (Care and Protection of Children) Act, 2000 in such cases.

Box No.2: Children's Courts under the Commissions for Protection of Child Rights Act, 2005 (CPCR Act)

The CPCR Act which pre-dates the POCSO Act, vests State Governments with the discretion to specify at least one Court in the State or a Sessions Court in every district as a Children's Court. This must be done in concurrence with the Chief Justice of the High Court. The purpose of the Children's Court is to provide speedy trial of offences against children or violation of child rights. Further, the CPCR Act also requires the State Government to notify a Public Prosecutor or appoint an advocate who has practiced for at least seven years as a Special Public Prosecutor for cases before the Children's Court.

18. Can a Special Court also try offences other than those under the POCSO Act?

Generally, the term 'Special Court' indicates that it is a Court designated to hear cases only under the Act under which it is set up. Hence, the Special Court under the POCSO Act will hear only cases under the POCSO Act. However, it is possible that an act constitutes an offence under the POCSO Act as well as the Indian Penal Code or any other law, and an accused is charged under more than one law. For instance, if a child has been assaulted sexually as well as physically, the act will be a sexual offence under the POCSO Act and will also constitute the offence of hurt under the Indian Penal Code. In such cases, the Special Court can conduct the trial for both sets of offences even

though the offence of hurt is not provided for under the POCSO Act. The Special Court can also try the matter if it constitutes a sexual offence under the POCSO Act as well as the IPC. In such cases, the Special Court must prescribe a punishment under that law which provides a greater punishment. For instance, where a girl below the age of 16 is raped, the POCSO Act - under the offence of 'penetrative sexual assault' prescribes a punishment of minimum seven years that may extend to imprisonment for life. But, the same offence constitutes aggravated rape under section 376(2)(i) of the IPC and under this law - a greater degree of punishment is prescribed, i.e., minimum sentence of ten years that may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life. The Special Court here must therefore apply the IPC punishment as it is greater.

The Special Court can also try offences under Section 67B of the Information Technology Act, 2000 which relates to publication or transmission of sexually explicit materials depicting children or facilitating the abuse of children online. A Children's Court that serves as a Special Court under the POCSO Act can however, also try offences other than sexual offences against children.

Offences that can be heard by the Special Court under the POCSO Act	Sexual Offences and non-sexual offences under the POCSO Act
	Sexual Offences under the Indian Penal Code
	Offences under Section 67B of the Information Technology Act, 2000
	Offences that the accused is charged with at the same trial.

19. In the event that provisions of another Act are inconsistent with the POCSO Act, which Act will override?

Being a special law, the POCSO Act will govern the field on sexual offences against children. Besides, Section 42A of the Act clearly states that in the event of inconsistency between this Act and any other law, the POCSO Act will override. For instance, under the IPC, sexual intercourse by a man with his wife who is above 15 years of age is not rape. No such exception has been provided for under the POCSO Act. Hence, this is an inconsistency between the POCSO Act and the IPC. Due to its overriding effect, a person who has intercourse with his wife who is between the ages of 15 to 18 years can be prosecuted under the POCSO Act.

Offences

20. What are the sexual offences and penalties provided for under the POCSO Act?

The POCSO Act recognizes *seven* types of sexual offences. They are penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, use of a child for pornographic purposes, and storage of pornographic materials involving a child. Abetment or attempt to commit any of the above offences are also considered as offences and are punishable under this Act. The punishment for these offences is as follows:

Box No.3. List of sexual offences and penalties under the POCSO Act

Offence	Minimum	Maximum	Fine
Penetrative Sexual Assault	7 years	Life imprisonment	√
Aggravated Penetrative Sexual Assault	10 years (rigorous imprisonment)	Life imprisonment	√
Sexual Assault	3 years	5 years	√
Aggravated Sexual Assault	5 years	7 years	√

Offence	Minimum	Maximum	Fine
Sexual Harassment	-	3 years	√
Use of a child for pornographic purposes	-	5 years	√
Second conviction	-	7 years	√
Penetrative sexual assault for pornographic purposes	10 years	Life imprisonment	√
Aggravated penetrative sexual assault for pornographic purposes	Life imprisonment (rigorous)		√
Sexual assault for pornographic purposes	6 years	8 years	√
Aggravated Sexual assault for pornographic purposes	8 years	10 years	√
Storage of pornographic materials involving a child	-	3 years	And/or
Abetment of an offence	If offence abetted is committed, punishment for abetment is same as that provided for the offence.		
Attempt to commit an offence	(1) ½ of imprisonment for life, or (2) ½ of the longest term of imprisonment provided for that offence, or (3) Fine, or (4) Fine and imprisonment		

21. What are the sexual offences and penalties provided for under the IPC?

Box No.4. List of sexual offences and penalties under the IPC			
Offence	Minimum	Maximum	Fine
Section 354: Assault or criminal force to a woman with intent to outrage her modesty	One year	Five years	And
Section 354A(2): Sexual Harassment (physical contact and advance, sexual overtures, demand for sexual favours, showing pornography against will)	-	RI for 3 years	And/Or
Section 354A(3): Sexual Harassment (making sexually coloured remarks)		1 year	And/Or
Section 354B: Assault or use of criminal force to woman with intent to disrobe (abetment included)	3 years	7 years	√
Section 354C: Voyeurism (watching or capturing image of a woman engaging in a private act or disseminating such images)	1st CV: 1yr 2nd CV: 3 years	1st CV: 3 years 2nd CV: 7 years	√ √

Section 354D: Stalking (physical/ electronic)	-	1st CV: 3 years 2nd CV: 5 years	√ √
Section 370(4): Trafficking of minor	RI 10 years	Life imprisonment	√
Section 370(5): Trafficking of more than one minor	RI 14 years	Life imprisonment	√
Section 370(6): Repeat trafficker of minors	Imprisonment for remainder of natural life		√
Section 370A(1): Sexual exploitation of a trafficked manner	RI for 5 years	RI for 7 years	√
Section 376(1): Rape	RI 7 years	Life imprisonment	√
Section 376(2): Aggravated Rape (includes rape of a girl below 16 years of age)	RI 10 years	Life imprisonment for remainder of life	√

22. Who can be charged for sexual offences under the POCSO Act?

The POCSO Act is gender neutral *vis-à-vis* the perpetrator as well as the victim. This means that it is applicable to everyone (male, female or others). Unlike the position before the POCSO Act, women can also be charged under this Act. Moreover, any person of any age, including a child can be charged with an

offence under this Act. A parent or relative of the child can also be an offender under the Act. In fact, sexual assault by a parent or relative would constitute an aggravated offence that carries a much higher penalty.

23. Who can be charged for sexual offences under the IPC?

Unlike the POCSO Act, sexual offences under the IPC are not all gender-neutral. Except for the offence of trafficking, the perpetrator in all sexual offences under the IPC is a male and the victim a female.

24. Is consent by a child a valid defence against sexual offences?

No, under the POCSO Act, consensual sexual intercourse between children or between a child and an adult is not recognised. None of the sexual offences under the Act require that the absence of consent, force, or coercion be established by the prosecution. In other words, any sexual act with a person under the age of eighteen years is an offence. The IPC also makes it clear that sexual intercourse with or without the consent of a woman below the age of 18 years will amount to statutory rape.

25. What are the other offences that are provided for under the POCSO Act?

Apart from sexual offences, the POCSO Act also creates eight other offences. The offences and the punishment they carry are as follows:

Box No.5: List of other offences and penalties under the POCSO Act

Offence	Minimum	Maximum	Fine
Failure to report an offence that has been committed	-	Six months	And/ Or
Failure of media, hotel, hospital, club, studio or photographic facility to report about pornographic or sexually exploitative object involving a child	-	Six months	And/ Or
Failure of the police to record information relating to the commission of an offence or an apprehension that an offence is likely to be committed	-	Six months	And/ Or
Failure of the head of a company or institution to report an offence allegedly committed by his/her subordinate	-	1 year	√
False complaint about specific offences against an adult	-	Six months	And/ Or
False complaint against a child	-	1 year	And/ Or
Making report or comments on any child victim from any form of media or studio or photographic facilities without having complete and authentic information	6 months	1 year	And/ Or
Disclosure of the identity of a child victim in the media	6 months	1 year	And/ Or

26. Can the police or the Special Juvenile Police Unit (SJPU) be held liable for non-compliance with the child-friendly procedures under the POCSO Act?

Yes, they can be held liable for failure to comply with the child-friendly procedures under the POCSO Act. The penalties for such failure have been stipulated under the IPC.

Under Section 166A, IPC, a public servant who knowingly disobeys any direction of the law which prohibits him or her from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter can be punished with fine and rigorous imprisonment for a minimum term of six months which may extend to two years. For instance, if a sub-inspector summons a child to the police station to record her statement or detains her in the night in the police station, she or he can be held liable under the IPC.

A public servant is also liable for the same punishment if she or he knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which she or he should conduct the investigation. For instance, under Section 24(3), POCSO Act, the investigating officer must ensure that the child is not exposed to the accused during investigation. Failure to ensure this can result in criminal prosecution.

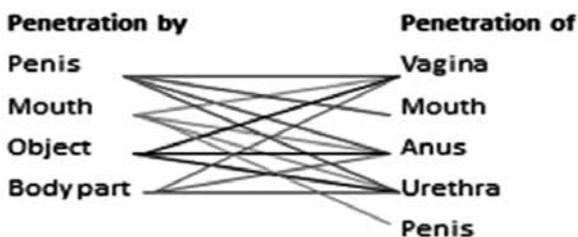
27. Can the police or SJPU be held liable for failure to record a report of a sexual offence?

Yes, the police or SJPU can be held liable under the POCSO Act as well as the IPC. Failure to record information about the alleged commission of offences under the POCSO Act is punishable with imprisonment which may extend to six months or fine or both. Failure to record information about alleged

commission of sexual offences under the IPC is punishable with fine and a rigorous imprisonment for a minimum of six months which may extend to two years.

28. What is meant by 'penetrative sexual assault' under the POCSO Act?

As the name suggests, the key feature of this offence is that it is penetrative in nature. According to Section 3 of the POCSO Act, a penetrative sexual assault involves some form of penetration with a body part (penis, finger, etc.) into the vagina, anus, urethra, or penetration with an object into the vagina, urethra, or anus of the child.



Making a child penetrate the accused, another adult, or another child is also an offence. For instance, a person who makes a child insert her/his finger into the vagina of another child or woman is liable for having committed penetrative sexual assault. Similarly, insertion of the tongue into the child's vagina, urethra or anus, or making the child do the same with the accused, another adult, or another child is also an offence.

29. What is meant by 'aggravated penetrative sexual assault' under the POCSO Act?

Penetration is a necessary ingredient of an offence of aggravated penetrative sexual assault as well. The offences under

Section 5 (aggravated penetrative sexual assault) is distinguished from offences under Section 3 (penetrative sexual assault) based on factors such as 'how', 'where', 'when', 'by whom', and 'what act'. Aggravating factors are the status of the offender, his/her relationship with the victim, the status of the victim, the impact on the victim, as well as the context and gravity of the assault. The aggravating factors are grouped below.

Status of the offender

The following kinds of penetrative sexual assault amounts to aggravated penetrative assault when the offender is:

- **Police officer:** A police officer committing penetrative sexual assault on a child in the police station or the premises of the police station which he/she is appointed, in the course of duty or otherwise. Such an act by a person who is known as, or identified as a police officer is also an aggravating factor. For instance, a police officer on duty can be charged of this offence, even when he/she is outside the jurisdiction of his/her station.
- **Member of the armed forces or security forces:** A member of the armed/security forces committing penetrative sexual assault on a child in the area in which he/she is deployed or in any area that is within the command of the forces or armed forces, while on duty or otherwise. Such an act by a person who is known as, or identified as a member of the forces is also an aggravating factor. For instance, a member of a Special Task Force constituted for nabbing a forest brigand could be charged of an offence under this provision if he/she sexually assaults a child in that forest area.

- **Public servant:** A judge, court officer, government officer, etc.
- **Management or staff of any custodial institution for children:** Custodial institutions includes sjail, protection home, home for alleged child offenders or for children who are in the care of the State etc. Hence, a superintendent of a Children’s Home under the JJ Act can be charged under this offence, if he/she has penetrative sex with a child in the institution.
- **Management or staff of a Hospital:** If a nurse, doctor or ward boy/girl commits penetrative sexual assault against a child in the hospital premises, this would be considered aggravated sexual assault.
- **Management or staff of an educational/religious institution:** A teacher who commits penetrative sexual assault on a student who studies in the same institution where he/she teaches would be charged with aggravated penetrative sexual assault.
- **Relative of the child through blood, adoption, marriage, guardianship, foster care, or having a domestic relationship with parent, or living in the same or shared household with the child:** Sexual assault by a parent, uncle, aunty, cousin etc., of a child, will be charged with aggravated sexual assault.
- **Management or staff of an institution providing services to children:** For instance, a trustee of a charitable trust running a home for orphans who sexually assaults a child could be charged with this offence.

- **Person in a position of trust or authority of a child in an institution, home of the child, or any other place:** For instance, the head master would be considered a person who is in a position of trust and authority *vis-à-vis* a child in her/his school, and would be charged with aggravated sexual assault if he sexually assaulted one of the students.
- **Person having been previously convicted of a sexual offence:** For instance, if a person who was convicted for raping a woman commits penetrative sexual assault on a child, then he/she will be charged with 'aggravated' penetrative sexual assault.

Nature of the assault

The following kinds of penetrative sexual assaults amount to aggravated penetrative assault

- Penetrative sexual assault by a gang.
- Use of deadly weapons, fire, heated substance or corrosive substance (acid, cigarette, knife, sharp weapons). For instance, splashing acid on a child after committing penetrative sexual assault would constitute an aggravating factor.
- Repeated penetrative sexual assaults.
- Assault, followed by an attempt to murder the child.
- Assault in the course of communal or sectarian violence.
- Assault, followed by stripping and parading of the child naked in public.

Impact on the victim

Penetrative sexual assaults that result in the following amount to aggravated penetrative sexual assault:

- Grievous hurt or bodily harm and injury to any part of the body or injury to the sexual organs of the child. For instance, if the child is hurt badly during the sexual assault and requires a finger to be amputated this would amount to 'aggravated' penetrative sexual assault.
- Physical incapacitation, mental illness, or temporary/permanent impairments because of the assault.
- Pregnancy.
- HIV or any other dangerous infection or disease which could temporarily/permanently impair the child.

Status of the child victim

Penetrative sexual assault on any of the following persons amounts to 'aggravated' penetrative assault:

- A child with disability, by taking advantage of the child's mental or physical disability.
- A child below 12 years of age.
- A child, with the knowledge that such child is already pregnant.

Box No.6: List of Aggravating Factors under the POCSO Act

Aggravating Factors	Grounds
Status of the Offender	Police officer; member of the armed forces or security forces; public servant; management or staff of any custodial institution for children, hospital, educational institution, religious institution, institution providing services to the child; relative of the child through blood, adoption, marriage, guardianship, foster care, or having a domestic relationship with parent, or living in the same or shared household; person in a position of trust or authority; repeat sexual offender.
Nature of the Assault	Gang assault; use of deadly weapons, fire, heated or corrosive substance; repeated assaults; assault and attempt to murder; assault in the course of communal or sectarian violence; assault followed by stripping and parading the child naked in public
Impact on the Victim	Grievous hurt or bodily harm and injury; physical incapacitation, mental illness, or temporary/permanent impairments; pregnancy; HIV or any other life-threatening disease or infection that impairs the child.
Status of the Victim	Child below 12 years of age; pregnant child (knowledge of pregnancy is necessary); child with disability (taking advantage of the disability)

30. What is meant by 'sexual assault' under the POCSO Act?

'Sexual assault' as provided for under Section 7 of the Act, is an offence which does not involve penetration. It is commonly referred to as a non-penetrative touch-based offence. Presence of

sexual intent is a key ingredient of these offences. Doing any of the following with sexual intent will constitute sexual assault:

- Touching the vagina, penis, anus, or breast of a child; or
- Making the child touch one or more of these parts of the accused or that of another adult or child; or
- Doing any other act which involves physical contact without penetration.

Therefore, in order to constitute sexual assault, the act must be done with a sexual intent. For instance, if a child is taken to a doctor with a complaint of burning sensation in her vagina and the doctor examines the vagina, the doctor has not committed an offence. But, if a doctor asks a child complaining only of an ear ache to undress and then touches the child's private parts, he/she can be charged with sexual assault.

Sexual intent implies intention of a sexual nature behind the commission of the act. There is no clear definition on what constitutes 'intent'. The facts and circumstances of the case before the Court will indicate the presence or absence of sexual intent. Moreover, this will vary depending on the interpretation by the Courts.

31. What is meant by 'aggravated sexual assault' under the POCSO Act?

The offence of aggravated sexual assault under Section 9 is distinguished from the offence of sexual assault based on 'how' 'when' 'where' 'by whom' and 'what act'. Aggravating factors are the status of the offender, her/his relationship with the victim, the status of the victim, impact on the child and context

and the gravity of the assault. (Refer to Answer 29 above for a comprehensive list of aggravating factors.)

32. What is meant by 'sexual harassment' under the POCSO Act?

A person commits an offence of sexual harassment of a child under Section 11 if he/she does any of the following *with a sexual intent*:

- (i) Utters any word or makes a sound or gesture or shows any part of the body or object to the child with the intent that it is heard or seen by the child.
- (ii) Makes the child show her/his body, or part of her/his body to the person, or to any other person.
- (iii) Shows any object in any form for pornographic purposes.
- (iv) Follows the child repeatedly or watches or contacts a child directly or through other electronic, digital or other means.
- (v) Threatens to use a real or fabricated depiction of any part of the child's body or involvement of the child in a sexual act in any form of media (e.g., a threat to circulate a morphed picture with child's face and body of another child on the internet).
- (vi) Entices the child for pornographic purposes or gives gratification for such purpose.

Sexual harassment is a non-penetrative and non-touch based sexual offence. The distinct feature of this offence is that it does not involve penetration of body parts or insertion of objects

or physical contact, but requires a sexual intent while doing any of the acts listed above. E.g., a biology teacher showing a documentary on body parts to explain the human body cannot be covered under this section as he/she showed it to the class for educational purposes and not with any sexual intent. But, a teacher who shows pornographic clips to students in his/her cabin or forces them to strip can be charged with having committed sexual harassment.

33. What is meant by 'using a child for pornographic purposes' under the POCSO Act?

Under Section 13 of the Act, a person may be charged with an offence of 'using a child for pornographic purposes' if he/she uses the child in any print media, advertisements, television programme, internet or any other electronic form for purposes of sexual gratification. Involving a child for publishing and distributing pornographic material would also constitute an offence. For instance, taking a naked picture of a child with an intention to circulate it on the internet would constitute an offence. Showing the sexual organs of a child, using the child in real or simulated sexual acts, or the obscene or indecent representation of the child are also offences.

34. What is meant by 'abetment of an offence' under the POCSO Act?

Abetment of an offence means to instigate, intentionally aid, or conspire with another person to commit an offence. Any person who helps or aids the commission of a sexual offence by actively assisting someone or even by not preventing the commission of the offence will be an 'abettor' under this Act. For instance, a villager brought his fourteen year old girl with a skin problem to a god man who proclaims to have healing powers.

The god man takes her inside the room and sexually assaults her under the guise of treating her, and his wife guards the door during this period knowing full well that he is assaulting the child. The wife will be regarded as an abettor of the offence as she did not prevent the assault and also facilitated its commission by standing guard.

35. Can a child be charged with an offence under the POCSO Act?

Yes, a child can be charged with a sexual offence under the POCSO Act. However, cases against a child will lie before the Juvenile Justice Board as per procedures laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act). The child cannot be tried by the Special Court and cannot be punished under the POCSO Act. If the child is found to have committed an offence under the POCSO Act, the Juvenile Justice Board could:

- Advise and admonish the child and send her/him home with parents or guardian after counselling.
- Direct the child to participate in group counselling and similar activities.
- Order the child to perform community service.
- Order the parent or the child to pay a fine, if such child is working and is above 14 years of age.
- Release the child on probation of good conduct after executing a bond and place the child in the custody of parent or guardian or fit person.
- Release the child on probation of good conduct and place the child in the custody of a fit institution for good

behaviour and wellbeing of the child for not more than three years.

- Send the child to a Special Home for reformation for a maximum period of three years.

A juvenile cannot be sentenced to death, life imprisonment or imprisonment for any term, or be sent to prison if she/he fails to pay a fine or furnish security.

Box No.7: About the Juvenile Justice System

The JJ Act provides for a separate justice system for children in conflict with law i.e., children who commit offences. The objective of the Act is to reform, rehabilitate and reintegrate children who are found to have committed an offence. A Juvenile Justice Board (JJB), consisting of two Social Work Members, of whom at least one member is a woman, and a Judicial Magistrate of the First Class, has the exclusive power to deal with all proceedings concerning a juvenile in conflict with law. The JJB has to consider not only the gravity of the offence and commission of the offence by the juvenile, but also the socio-economic background of the juvenile, psychological factors, and circumstances in which the offence was committed.

36. What procedures must be followed if a child commits a sexual offence?

If a sexual offence is committed by a child, the case will be heard by the Juvenile Justice Board as per procedures laid down under the Juvenile Justice (Care and Protection of Children) Act,

2000. The child must be apprehended by the police and then transferred to the Observation Home attached to the Juvenile Justice Board, if such child is not released on bail by the police. The child cannot be detained in the police station or jail. Further, the child is entitled to bail irrespective of whether the offence is bailable or not. Bail should be granted unless the Juvenile Justice Board believes that the release of the child on bail is likely to bring her/him in contact with a criminal or expose her/him to moral, physical or psychological danger or if her/his release will cause defeat the ends of justice.

37. Can a medical practitioner who touches the private parts of a child in the course of conducting a medical examination be held liable under the Act?

As per Section 41 of the Act, a medical doctor while performing medical examination or giving medical treatment with the consent of the child's parents or guardian cannot be charged with any sexual offences under this Act. The intention is relevant here. If a doctor touches a child with sexual intent, she/he can be charged with having committed a sexual offence. It is also important that the doctor adheres to the other mandatory procedures under the Act as well, such as performing the medical examination of a girl child by a female doctor and also ensuring that the parent/guardian is present during the medical examination.

38. What is meant by 'sexual harassment' under the IPC?

Section 354A of the IPC refers to the offence of sexual harassment. Commission of any of the following acts by a man will constitute sexual harassment:

- Physical contact and advances involving unwelcome and explicit sexual overtures
- Demand or request for sexual favours
- Showing pornography against the will of a woman
- Making sexually coloured remarks.

39. What is meant by ‘voyeurism’ under the IPC?

The act of watching, or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the male perpetrator or by any other person at the behest of the perpetrator would constitute voyeurism. Dissemination of such images is also an offence. A ‘private’ act would include an act of watching carried out in a place which would reasonably be expected to provide privacy and where the:

- victim’s genitals, posterior or breasts are exposed or covered only in underwear; or
- victim is using a lavatory
- victim is doing a sexual act that is not of a kind ordinarily done in public.

For example, watching women undressing in a changing room would constitute voyeurism. If the victim consents to the capture of the images or any act, but not to its dissemination to a third person, the dissemination will be an offence. Where children are involved, this provision must be read along with the offences of sexual harassment and using a child for pornographic purposes under the POCSO Act. Consent of the child is irrelevant to the offences under the POCSO Act. Therefore, the act of taking

a picture of the genitals of a child, even with his or her consent, will amount to an offence under this Act.

40. What is meant by 'stalking' under the IPC?

Any man who follows a woman and contacts, or attempts to contact her to foster personal interaction repeatedly despite a clear indication of disinterest by such woman or monitors her use of the internet, email or any other form of electronic communication commits the offence of stalking. For instance, keeping tabs on a girl on social media may constitute stalking. It will not amount to stalking if the man can prove that it was undertaken in order to prevent or detect crime and that he had been entrusted with the responsibility of crime prevention and detection by the State or that it was pursued under a law or in compliance with a law or was reasonable and justified in the particular circumstances.

41. What is meant by 'trafficking' under the IPC?

The recruitment, transportation, harbouring, transferring or receiving of a person or persons for:

- physical exploitation, or
- any form of sexual exploitation, or
- slavery or practices similar to slavery, servitude, or
- forced removal of organs

by-

- using threats, or
- using force, or any other form of coercion, or
- by abduction, or
- by practicing fraud, or deception, or

- by abuse of power, or
- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person would constitute the offence of trafficking under Section 370 of the IPC.

Trafficking is a gender-neutral offence, i.e., the perpetrator and victim can be male, female, or any other gender identity. It can be for various purposes and is not confined merely to sexual exploitation. Further, inducements may be given to the trafficked person or their guardians. In the case of children, it is likely that their parents or guardians are led into believing that the children will benefit from transfer to a city under the guise of better employment or educational opportunities.

Trafficking of a minor or more than one minor attracts a harsh sentence. A person convicted for trafficking minors on more than one occasion can be sentenced to life imprisonment and also be liable to pay fine. If a public servant or police officer is involved in trafficking, then she or he can also be similarly sentenced.

Sexual exploitation of a minor knowing or having reason to believe that she or he has been trafficked is also punishable under Section 370A(1). Clients, pimps or any persons who sexually exploit trafficked minors can be charged under this provision.

42. What is meant by 'rape' under the IPC?

A man is said to commit 'rape' under Section 375, IPC if he does any of the following acts or makes a woman do so with him or any other person:

- penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman; or
- inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman; or
- manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman; or
- applies his mouth to the vagina, anus, urethra of a woman, under any of the following seven circumstances:
 - against her will.
 - without her consent.
 - with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or hurt.
 - with her consent, when the man knows that he is not her husband and that her consent is given because she believes she is or believes herself to be lawfully married to him.
 - with her consent when, at the time of giving such consent, because of unsoundness of mind or intoxication or the administration by him or through another of any stupefying substance, she is unable to understand the nature and consequence of what she is consenting to.
 - with or without her consent, when she is under 18 years.
 - when she is unable to communicate consent.

The term 'consent' has been defined to mean an unequivocal voluntary agreement when the woman by words, gestures

or any form of verbal or non-verbal communication, which communicates willingness to participate in the specific sexual act. It is also clarified that absence of physical resistance to the act of penetration will not by reason of only that fact, be regarded as consent. Importantly, under the revised provision, the age of consent has been raised from 16 years to 18 years. Now, consent by a girl below 18 years is irrelevant to a charge of rape and cannot be used as a defence.

The IPC carves out two exceptions to rape:

- (1) A medical procedure or intervention will not amount to rape, and
- (2) Sexual intercourse or sexual acts by a man with his wife, not below the age of 15 years, will not constitute rape.

43. Will the POCSO Act apply to cases of marital rape?

Yes, it will. Unlike the IPC, the POCSO Act does not create any exceptions in favour of married couples. Further, one of the grounds of aggravated penetrative sexual assault is penetrative sexual assault by 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. This is punishable with a fine and a minimum term of 10 years imprisonment. Further, the POCSO Act also contains a provision which states that in case of conflict between the provisions of the POCSO Act and any other law, the former will override.

Under the POCSO Act, a spouse of a person below the age of 18 years can be prosecuted. Irrespective of whether the marriage has been contracted voluntarily, a person having sexual contact with a person below 18 years can be punished. While sexual intercourse with a wife above 15 years of age and below 18 years of age will not amount to rape under the IPC, it will constitute aggravated penetrative sexual assault under the POCSO Act.

44. Will the marital rape exception under the IPC apply in cases under the POCSO Act?

No, the marital rape exception under the IPC will not apply as the POCSO Act contains a provision which states that in case of conflict between the provisions of the POCSO Act and any other law, the former will override. Thus, in all cases of child marriage where the bride or groom is below 18 years of age, a charge of aggravated penetrative sexual assault can lie against their spouse under the POCSO Act.

45. What are the grounds for aggravated rape?

Section 376(2) of the IPC lists out various circumstances in which the offence of rape would amount to aggravated rape. Aggravated rape carries a more stringent punishment of a minimum mandatory sentence of 10 years which may extend to imprisonment for life which means the remainder of a person's natural life. Aggravated rape is distinguished from rape based on factors such as 'how' 'where' 'when' 'by whom' and 'what act'. Aggravating factors are the status of the offender, his/her relationship with the victim, the status of the victim, the impact on the victim, as well as the context and gravity of the assault. The aggravating factors are grouped below.

Status of the offender and the place of offence:

- **A Police Officer** who commits rape within the limits of the police station to which he is appointed, or in the premises of any station house, or upon a woman in his custody or in the custody of a police officer subordinate to him
- **A Public Servant** who commits rape on woman in his custody or in the custody of a public servant subordinate to him
- **A member of the armed forces who commits** rape in an area in which he has been deployed by the Central or State Government
- **Staff of member of the management** of a jail, remand home, or any other place of custody established by or under any law, or of a women's or children's institution who commits rape on an inmate of such jail, remand home, place or institution
- **Staff or a member of the management of a hospital** who commits rape in the hospital
- **A relative, guardian or teacher or a person in position of trust or authority** over a woman, who commits rape on such woman
- **Person in position of control or dominance** over a woman and commits rape on such woman

Status of victim:

- A woman known to be pregnant
- A woman who is under 16 years of age

- A woman who is incapable of giving consent. This could mean a woman who is unconscious, drugged, or temporarily ill.
- A woman suffering from physical or mental disability

Nature or context of the offence:

- Commission of rape during communal or sectarian violence
- Causing grievous bodily harm or maiming or disfiguring or endangering the life of a woman
- Commission of rape repeatedly on the same woman

46. What is meant by sexual intercourse by ‘a person in authority’ under the IPC?

Under Section 376C of the IPC, abuse of a position of authority or a fiduciary relationship to induce or seduce a woman under his charge, custody or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to rape, is an offence. Public servants, management or staff of hospitals, superintendents, managers or staff of a jail, remand home, custodial institutions, or institutions for the reception and care of women and children can be held liable under this provision. The term ‘fiduciary relationship’ implies a relationship that is based on trust. Abuse of such trust to induce a woman to have sexual intercourse is an offence.

47. What is meant by ‘gang rape’ under the IPC?

Rape by one or more persons constituting a group or acting in furtherance of a common intention will amount to gang rape under Section 376D. Each of the persons in group will be deemed to have committed the offence of rape. Gang rape is punishable

with fine and rigorous imprisonment for a minimum term of 20 years which can extend to life imprisonment i.e., till the remainder of the person's natural life. The fine imposed should be just and reasonable so as to meet the medical expenses and rehabilitation of the victim.

48. What will be the punishment for an act that is an offence under the Indian Penal Code as well as the POCSO Act?

At times, certain acts may be offences under more than one law. When such a situation arises, the Court decides the punishment based on the mandate of each law. According to the POCSO Act, in such a situation the person will be awarded punishment that is higher in quantum. For instance, following the Criminal Law Amendment Act, 2013, gang rape is punishable with a minimum of twenty years rigorous imprisonment under the Indian Penal Code. The punishment for penetrative sexual assault by a gang under the POCSO Act is a minimum of ten years imprisonment. Hence, in case of girl is subjected to penetrative sexual assault by a gang, charges can be framed under the IPC as well as the POCSO Act and on conviction the accused persons must be sentenced to a minimum of twenty years rigorous imprisonment.

III

Reporting of Offences

49. Who is under an obligation to report offences under this Act?

All persons are under an obligation to report offences under the POCSO Act. According to Section 19(1), anyone who knows that an offence is committed or believes that it is likely to be committed will have to inform the Special Juvenile Police Unit (SJPU) or the local police. Failure to report the commission of an offence is punishable under Section 21(1) with imprisonment for a maximum term of six months and/or fine. Children too are under an obligation to report offences under this Act. However they cannot be punished for failure to report an offence.

50. In what circumstances should one report a sexual offence?

There are two situations in which a person is expected to report an offence:

- (1) Where a sexual offence has already been committed against a child.
- (2) Where there is an apprehension that a sexual offence is likely to be committed against a child.

Thus, a person does not have to wait for the actual occurrence of the offence and can even report to the police or the SJPU if it is likely that that a child may be abused.

51. What is meant by ‘mandatory reporting’?

The term ‘mandatory reporting’ does not appear in the POCSO Act. However, by prescribing punishment for a maximum term of six months imprisonment and/or fine for failure to report the commission of a sexual offence, the Act makes it mandatory for people to report. It is important to note that the failure to report an apprehension that an offence is likely to occur is not punishable.

52. To whom should an offence under the POCSO Act be reported to?

A sexual offence must be reported to the local police or the Special Juvenile Police Unit (SJPU).

53. Are the police or the Special Juvenile Police Unit (SJPU) under an obligation to record offences under the Act?

Yes, the police and the SJPU are under an obligation to record complaints or information pertaining to offences under the Act. Where the offence has already been committed or attempted, a First Information Report (FIR) must be recorded and registered and a copy of the FIR must be handed to the informant. If the police or SJPU refuse or fail to record the offence, they can be punished with imprisonment for a maximum term of six months and/or fine under the POCSO Act and to a fine and a minimum term of six months rigorous imprisonment that may extend to two years under the IPC.

54. Who should record the report if information is being given by a child victim?

The POCSO Act does not indicate as to who within the police or SJPu should record the information. However, according to the proviso to Section 154(1) of the CrPC, if information is being given by a girl against whom any sexual offence under the IPC has been committed or attempted, it must be recorded by a woman police officer or any woman officer. This procedural rule will also apply to cases under the POCSO Act, as an act that is a sexual offence under POCSO Act will also constitute a sexual offence under the IPC. Therefore, if the first information about an offence is being given by a girl child – it must be recorded by a woman police officer or any woman officer.

55. Can the police require a child with disability who wishes to report a sexual offence to come to the police station to do so?

No, they cannot. If a child is temporarily or permanently mentally or physically disabled and wishes to report a sexual offence that has been allegedly committed or attempted against her, then the police must record such information at her residence or at any place of her choice, in the presence of an interpreter or a special educator, if required. Such recording should be videographed. Further, the police should also ensure that the statement of the child is recorded by a Judicial Magistrate under Section 164(5A) of the CrPC as soon as possible. Refer to Answer 76 for recording of statement by a Judicial Magistrate.

56. In what manner should the police or SJPU record a report?

All reports received by the police or SJPU must be recorded in writing. They must be assigned an entry number and be entered into a book kept by the Police Unit. If the report is being given by the child, it must be recorded in a simple language so that the child understands what is being recorded. If the child does not understand the language in which the report is being recorded, a qualified translator or interpreter must be provided to her/him. After recording the report, the police or the SJPU should read out the report to the informant for confirmation.

57. What are the consequences of filing a false complaint, or providing false information under the POCSO Act?

Section 22 of the Act prescribes a penalty for filing of false complaints or providing false information with the intention of humiliating, extorting, defaming, or threatening a person. This is with respect to false complaints or information pertaining only to the offences of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, and aggravated sexual assault. It is punishable with imprisonment for a maximum term of six months and/or fine. A child cannot, however, be punished for filing a false complaint or giving false information.

The Act imposes a higher punishment of imprisonment for a maximum term of one year and/or fine if the false information or false complaint is against a child.

58. Are there any safeguards available for a person reporting an offence?

Yes, the Act specifically states that a person will not incur civil (paying fine) or criminal liability (sentence to jail) for giving information about the commission of a sexual offence or the likelihood of commission of an offence in good faith. What this means is that no legal action can be taken against a person who has acted in good faith and reported an offence. An explanation of the term 'good faith' can be found in Section 52 of the IPC, which states that "Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention." For instance, if a person reports a matter based on information that a child has been sexually abused by her/his teacher after speaking to the child, doctor, and classmates of the child, then it can be said that the person has acted in good faith. This will serve as a defence in the event that the teacher files a civil suit alleging defamation.

59. What are the consequences of a child failing to report, or falsely reporting an offence?

A child who fails to report the commission of an offence, makes a false complaint, or gives false information about the commission of an offence cannot be held liable. Children have been exempted from the penalty imposed under the Act for such offences.

60. Do personnel in media, studios, photographic facilities, hotels, or hospitals have a special duty to report sexual offences against children?

Yes, a special duty has been imposed upon personnel working in the media hotels, lodges, clubs, studios, photographic

facilities, and hospitals to report cases. If they find materials or objects that are sexually exploitative of children, they must report it to the police or the SJPU. For instance, if the housekeeping personnel come across pornographic pictures of children in a hotel room, they must notify the local police or the SJPU about it. The failure to report will attract imprisonment for a maximum term of six months and/or fine.

61. Does the Act place any special obligations upon a person in-charge of a company or an institution where a sexual offence may have been committed?

Yes, the Act requires the person in-charge of a company or institution to report the commission of an offence that may have been committed by a subordinate under his/her control. For instance, if the Director of an orphanage is aware that a child has been sexually abused by the warden, he/she must report the matter to the police. Failure to do so is punishable with imprisonment for a maximum term of 1 year and fine.

62. What are the obligations of schools under the POCSO Act?

Children spend a significant amount of time in schools and schools are not only important for intellectual growth but are also an important part of the child's emotional, and psychological development. The general obligation to report sexual offences under the POCSO will apply to all schools (private/government). Sexual abuse is now a criminal offence and must be reported. It cannot be handled internally through administrative inquiries or compromises.

Reporting

Schools must report if they have knowledge of an offence that is committed under this Act. They must also report if there is an apprehension that an offence is likely to have been committed under this Act. No liability will be incurred if the information is given in good faith. For instance, if a teacher learns about the sexual abuse of a student by a worker in the school, she must definitely alert the Principal or the head of the institution. She should also inform the police or SJPU in the event that the the Principal or head fails to do so. Failure on the part of the principal to report is an offence that is punishable with imprisonment of up to one year and fines. The teacher can also be held liable for the failure to report.

Safeguarding evidence and crime scene

It is very important to secure the evidence and hence school authorities must take immediate steps to cordon the area in which the abuse may have been allegedly committed and alert the police. Destruction of evidence is an offence under Section 201 of the IPC. Whoever destroys evidence or gives false information in order to screen the offender in respect of:

- Offences punishable with death – will be punished with imprisonment up to 7 years and fine
- Offences punishable with life imprisonment – will be punished with imprisonment up to 3 years and fine
- Offences punishable with less than 10 years imprisonment - will be punished with imprisonment up to one-fourth of the longest term of punishment prescribed

Protecting the identity of the child

The privacy of the child involved is to be strictly protected. Identity of a child includes his or her name, address, photograph, family details, school, neighbourhood, or any other details that may lead to disclosure of identity. School authorities must ensure that the identity of the child is protected from the media.

Box No.8: Special Obligations of Schools in Karnataka

On 23 July 2014, the Department of Public Instruction, Government of Karnataka issued a circular regarding prevention of sexual harassment, rape and physical abuse of students studying in schools and colleges in the State. Taluk level supervisory officers are responsible for enforcing the circular. Some of the obligations imposed on schools under the circular are as follows:

- Schools to provide their name and address and the names and addresses of the members of the School Management Committee to the jurisdictional police station.
- Names and addresses of teachers/staff working in the school must be registered in the police station and updated at regular intervals.
- Schools to establish a 'Child Protection Committee' consisting of 4-5 members including the Head of the institution, teachers, parents, students, security officer, and a person with an interest in development of children. This Committee should be at every level to prevent instances of sexual harassment and other atrocities against children.

Obligation of the Head of the Institution and Private School Management Committees

- Take adequate steps to ensure that children leave school only with their parents or authorized person.
- Appoint workers for transport, security, housekeeping etc. through prestigious and recognized agencies and get police verification done.
- Appoint both female and male security personnel who will continuously monitor all entrances, exits and premises - and check visitors
- Display phone numbers of the Child Welfare Committee, DCPU, Special police units for children in the school zone on the notice board.
- Ensure that security staff confirms that no student or staff is on premises after school and report to Head of Institution/Senior Teacher everyday after school
- Make arrangements to check and inspect unauthorized persons in the school premises.
- Ensure that punishments like locking children in darkrooms or sending them out of the classrooms etc. are not practiced.
- Constitute an internal/vigilance committee concerning the security of the school.
- Install CCTVs in every class room and in school premises and appoint two vigilant staff members to report the information on the CCTVs.
- Display Childline - the toll free number - 1098 in every classroom and enter it into all students' diaries

- Conduct awareness trainings for management, teaching and non-teaching staff on POCSO Act & Rules.
- Install complaint and suggestion boxes and check them and address them on a weekly basis.
- Provide ID cards to all staff, drivers, helpers, cooks, etc.
- Identify and mark all unsafe places in schools
- Contact the nearest police station in case of mishaps/ accidents

Child Safety/Protection Action Plan

- All Schools (primary and secondary schools, play homes, Montessori's, government schools/residential schools, private schools, hostels, institutions run by NGOs, religious institutions, aided institutions) must prepare a child safety plan in order to provide the highest safety levels in schools
- The plan should list out the rules, responsibilities, norms of the teachers, parents, students and other members
- Parent and teacher meetings must happen regularly.
- If an incident of sexual harassment occurs or is likely to occur, the Child Protection Officer of the School or the counselor must immediately report to the District Child Protection Officer, Deputy Director of Public Instruction, nearest police station, and the Child Welfare Committee.

IV

Duties of the Special Juvenile Police Unit or local police

63. What immediate steps must the SJPU/ local police take upon receiving a report of a sexual offence against a child?

When the SJPU or police receive information relating to an offence that has been or is likely to be committed, they should take the following steps in accordance with the POCSO Act, CrPC, and directions issued by the Supreme Court in *State of Karnataka v. Shivanna*, 2014 STPL (Web) 334 SC:

I. Record the Complaint

- Record the information in writing. If the informant/complainant is a child, then the information must be recorded in a simple manner so that the child understands it. It must be recorded by a woman police officer of any woman officer if the victim-informant is a girl.
- Assign an entry number to the information.
- Read it over to the informant/complainant.
- Enter the complaint in a book kept by the Police unit.
- Arrange for a qualified interpreter or translator for a child who does not understand the language in which the report is being recorded.

II. Assess whether the child is in need of care and protection

- If the SJPU/ Police is convinced that the child is without any parental support or is living with the abuser or is in need of care and protection, the SJPU/ Police has to record the reasons in writing as to why the child needs to be shifted and make immediate arrangements for care and protection. This may include admitting the child to hospital or shelter home within 24 hours of the report.
- If the child is living with the abuser or potential abuser, or is in an institution and does not have parental support, or is without a home and parental support, the SJPU/police must produce the child before the CWC within 24 hours.

III. Facilitate Emergency Medical Care

- The SJPU/police must assess if the child is in need of immediate emergency medical care and then proceed to make arrangements to take the child to the nearest hospital or medical care facility for such care, irrespective of whether it is a government hospital or a private one.

IV. Facilitate Medical Examination.

- The SJPU/police must take the child to the hospital for medical examination within 24 hours of having received the report.
- The SJPU or the Police must ensure that the samples received for forensic testing are sent to the Forensic Laboratory at the earliest.

V. Facilitate Recording of Statement by Magistrate

- The SJPU or local police must take the child within 24 hours to any Metropolitan/preferably Judicial Magistrate for the

purpose of recording his/her statement under Section 164, CrPC.

- As far as possible, the victim should be taken to the nearest lady Metropolitan/preferably lady Judicial Magistrate for this purpose.
- The Investigating Officer should record specifically the date and time at which she/he learnt about the alleged commission of the offence and the date and time at which she/he took the victim to the Metropolitan/preferably Lady Judicial Magistrate.
- If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
- A copy of the medical examination report should also be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC.

VI. Report to the Special Court and Child Welfare Committee

- The SJPU/ Police must inform the Child Welfare Committee (CWC) and the Special Court about the case and steps that were taken to ensure care and protection within 24 hours of receiving the information. In the absence of a designated Special Court, such a report will have to be submitted to the Sessions Court.

VII. Provide information to the informant and victim

- The SJPU/Police must inform the informant about their name, designation, address, telephone number and name, designation and contact details of their supervisor.

- They must also inform the child and her/his parent(s), guardian, or other person about the availability of emergency health services, support services, procedures related to the case, status of the arrest of accused, availability of victim compensation, status of investigation, filing of chargesheet, schedule of Court proceedings etc.

64. What information must the SJPU/ local police provide to the complainant and the child after receiving a report?

After receiving a complaint/report, the SJPU/police must provide the following details to the complainant:

- His/her name and designation, i.e. details of his/her position as whether he/she is a Circle Inspector, Sub Inspector, or Constable.
- His/her address and telephone number
- Name, designation and contact number of his/her immediate superior.
- Information about emergency services, support services, procedures involved in the cases, availability of free legal aid services, status of the arrest of the accused, availability of victim compensation, status of investigation, filing of charge sheet, schedule of Court proceedings.

65. What information must the SJPU/ police provide to the child, her/his parent or guardian, or other person in whom the child has trust and confidence?

The SJPU or the Police has to inform the child and her/his parents/guardian/trusted person about the following :-

- 1) The right of the child to legal aid and legal representation. The SJPU/Police could give contact information of the District Legal Services Authority.
- 2) Availability of public or private medical services and emergency crises services. The SJPU/police could also connect the child and her/his family with the relevant service providers.
- 3) Procedures and stages involved in a criminal case.
- 4) Availability of victims' compensation benefits.
- 5) Status of investigation to the extent that it is appropriate to share with the victim and does not interfere with the investigation.
- 6) Arrest of the suspected offender.
- 7) Developments in the case including applications filed and court proceedings.
- 8) Status of bail application of the suspected offender being allowed or rejected by the Court, whether the accused is in jail or out on bail.
- 9) Filing of charges against the suspected offender.
- 10) If the child has to attend the Court proceedings, information about the date, time and venue needs to be given.

11) Contents of the judgment and its implication i.e. if the accused has been found guilty, has been sentenced, or has been acquitted.

66. What steps must the SJPU / local police take within 24 hours of receiving the report?

a. Immediate Care and Protection

If the child is thought to be in need of care and protection, reasons for the same must be recorded and the child must immediately be provided necessary services such as be taken to the nearest hospital or shelter home. For instance, a person reports in the city Police station that a child is found in the railway station and is bleeding profusely, and when the Police meets the child, the child complains of sexual abuse saying that his parents are in the village. The policeman should then take the child to the hospital for medical examination and treatment and then shift him to the Children's Home under the JJ Act.

b. Produce the child before the CWC

If the child is living in the same household as the person who has committed or is likely to commit an offence, or the child is living in a child care institution and is without parental support, or is homeless and without parental support, she/ he must be produced before the CWC within 24 hours.

c. Facilitate Medical Care and Medical Examination

If the child is need of urgent medical care and protection, she/ he must be taken for emergency medical care to the nearest hospital. In any case, medical examination of the child must also be conducted within 24 hours.

d. Facilitate Recording of Statement by Magistrate

The SJPU or local police must take the child within 24 hours to any Metropolitan/preferably Judicial Magistrate for the purpose of recording his/her statement under Section 164, CrPC. As far as possible, the victim should be taken to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate for this purpose.

e. Reporting

The SJPU/Police must report to the Special Court and the CWC about the case along with information about the steps taken to extend care and protection to the child

67. Does the SJPU/ local police have to report all cases of sexual offences to the Child Welfare Committee?

Yes, all the cases registered under the POCSO Act have to be reported to the CWC. The CWC has the authority to assign a support person to the child and the family to assist them in the course of the legal proceedings. The CWC must keep a record of the cases reported under the POCSO Act as well as the steps taken by the police/SJPU to ensure care and protection of the child. The CWC can also determine if the child needs to be taken out of custody of her/his family, or shared household to ensure safety.

68. Does the SJPU / local police have to report all cases of sexual offences to the Special Court?

Yes, it is the duty of the SJPU/Police to report all cases to the Special Court, or to the Sessions Court where Special Court has not yet been designated.

69. In what circumstances should the SJPU/Police produce a child before the Child Welfare Committee?

The SJPU/police will have to produce a child before the CWC within 24 hours of receiving information only if:

- The child is living in the same house or shared household as that of the person who allegedly committed or attempted to commit a sexual offence against him/her.
- The child is living in the same house or shared household as that of the person who is likely to commit a sexual offence against him/her.
- The child is staying in a child care institution and does not have any parental support.
- The child is without a home and parental support.

The police must also record the reasons in writing as to whether they believe the child is in need of care and protection and request the CWC to undertake a detailed assessment in order to determine the same, as well as the next steps in the best interest of the child.

V

Procedure for Recording Statement of the Child

70. Where should the statement of a child victim be recorded?

The statement of the child should be recorded at a place preferred by the child. This could include the child's own home or wherever the child resides. For instance, if a street child wants his statement to be recorded near a temple where he resides, the police will have to record the statement of the child at that spot.

71. Whoshould record the statement of a child victim?

As far as possible and practicable, the child's statement should be recorded by a woman police officer not below the rank of a Sub-Inspector. The officer recording the statement of a child should be in plain clothes and not in police uniform. According to the CrPC, the statement of a girl against whom any sexual offence under the IPC has allegedly been committed or attempted, must be recorded by a woman police officer or any woman officer. It is therefore imperative, that statements of girls are recorded only by a woman police officer or any woman officer.

72. Who should be present with the child when the statement is being recorded by the police or the Magistrate?

The statement of the child needs to be recorded in the presence of the child's parent/s or in presence of the person whom the child trusts or has confidence. While the Act does not state it expressly, it is obvious that if the allegation lies against a parent, she/he cannot accompany the child or be present when the child's statement is being recorded.

73. What are the duties of a police officer recording the statement of a child victim?

While recording the statement of the child, the police/SJPU should do the following:

- Wear plain clothes and not appear in uniform.
- Ensure that the child is shielded from being exposed to the accused and that the child does not come in contact with him/her while recording the statement or during the investigation.
- Ensure that the child does not remain in the police station at night for any reason whatsoever.
- Take the help of qualified translators, interpreters or special educators if necessary. For instance, if the child is from Kerala and cannot speak or understand any language except Malayalam, then the services of a translator have to be hired, if the statement is being recorded by the Bangalore police.
- Record the statement by audio video electronic means, as far as possible.

- Ensure that the identity of the child is protected from the public and the media.

74. Can a child be detained in the police station in the night for recording her/his statement or for any other purpose?

Under no circumstances can the child be asked to remain in the police station at night.

75. What are the duties of a Magistrate recording the statement of a child victim?

The child's statement must be recorded by the Magistrate in the presence of the child's parent/s or the person whom the child trusts and has confidence in. The statement must be recorded as spoken by child. If necessary, the Magistrate can take the help of qualified translator/interpreter/special educator. As far as possible, the statement should be recorded with help of audio video electronics. The advocate of the accused cannot be present when the statement of the child is being recorded by the Magistrate.

76. How must the statement of children with disabilities be recorded by the local police/SJPU and/or Magistrate?

The Magistrate/police/SJPU could avail the services of experienced, trained and qualified special educators/translators or interpreters who are familiar with the mode of communication of children with disabilities while recording the statement of a child with disability. For instance, if a speech and hearing impaired child's sincere statement has to be recorded the services of a sign language expert may be sought. Such statement must

be videographed as well. As per Section 164(5A)(b), CrPC, the statement of a child with disability recorded by the Magistrate will be considered a statement in place of the examination-in-chief. The child can be cross-examined based on this statement and it will not have to be recorded it again at the time of trial thus saving the child from having to repeat his or her statement.

77. Can a statement under Section 164, CrPC be recorded by a Child Welfare Committee?

Under the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act), the Child Welfare Committees have been empowered to function as a Bench of Magistrates. They hold this power which is available to Magistrates under the CrPC only as a bench and not as individual members. They can exercise limited powers in order to discharge their mandate under the JJ Act.

A statement under Section 164 can be recorded only by a Metropolitan Magistrate or a Judicial Magistrate, who are qualified judicial officers. The Child Welfare Committee cannot be expected to record statements under Section 164 and Statements recorded by them have not yet been recorded the same value as that recorded by a Metropolitan Magistrate or Judicial Magistrate.

78. Should the statement of the child be recorded by audio-visual electronic means?

Yes, as mentioned previously wherever possible the child's statement could be recorded by audio video electronic means. Making a child repeat the details of the sexual abuse that he/she has faced to concerned officials, forces the child to relive the trauma again and again, causing emotional stress over and above

the trauma of the abuse. The recording of the child's statement by audio-visual means enables it to be replayed and prevents secondary victimization. Under the CrPC, it is now mandatory to videograph a statement made by a child victim of sexual offences to the police and to videograph a statement made by a child with disabilities before a Magistrate.

79. Is the child and his or her parents or representative entitled to receive a copy of the statements made by other witnesses?

Yes, under section 25(2) of the POCSO Act, after the filing of the final report by the police, the Magistrate must provide the child and his or her parents or representatives with a copy of all documents or relevant extracts on which the prosecution proposes to rely on and the statements recorded by the police of all the persons whom the prosecution proposes to examine as its witnesses.

VI

Medical Examination of the Child

80. What is the time frame within which the medical examination of a child victim should be carried out?

The police or the Special Juvenile Unit has the responsibility of taking the child for a medical examination within 24 hours from the time the case was reported to them.

81. Who can carry out the medical examination of a child victim of a sexual offence?

The medical examination has to be conducted by a Registered Medical Practitioner (RMP) of a government hospital. An RMP is a medical practitioner who possesses any medical qualification listed in the Indian Medical Council Act and whose name is in the State Medical Register. If the child victim is a girl, the medical examination must be conducted only by a woman doctor. If an RMP is not available at the government hospital, then the medical examination can be conducted at a private hospital.

82. Can medical examinations be carried out by doctors of a private hospital?

Medical examinations can be carried out by doctors of private hospitals only when a registered medical practitioner is unavailable at a government hospital.

83. Who is required to pay for medical treatment administered in private hospitals?

As per Section 357 C of the Code of Criminal Procedure, the private hospitals have a duty to provide first aid or medical treatment to female victims of rape or acid attacks. This service has to be provided free of cost. In all other offences, if the victims, both male and female, approach the private hospitals, the expenses will have to be incurred by the parties. This amount may however be claimed later as part of the compensation from the State Government. Failure to provide free first aid is a punishable offence under Section 166B, IPC.

84. Should an FIR be filed before a medical examination is carried out?

No, there is no need for an FIR or even a complaint or any kind of documentation to be registered before a medical examination on a child victim of a sexual offence is conducted.

85. Should the consent of the child or the child's parent/guardian be obtained before a medical examination is conducted?

A medical examination cannot be forced upon the child. The consent of the child must be obtained prior to conducting the medical examination. Where a child is unable to consent, the consent of the parent or guardian must be obtained. Section 90 of the Indian Penal Code states that consent given by a child below 12 years is not consent unless the context shows otherwise. Hence, in cases of children under 12 years, consent should be taken from the parent or guardian on behalf of the child. If a parent of a child below 12 years or a child above 12 years refuses to give consent for the medical examination, the RMP will have

to state in his/her report that he/she has not conducted the medical examination because there was no consent.

86. What can be done if the child refuses to give consent for a medical examination to be conducted on her/him?

If the child refuses to consent, generally medical examination cannot be conducted under law. However, efforts should be made to explain and convince the child about the importance of medical evidence, with the help of counsellors. If the child still does not consent, then the doctor is expected to record that the medical examination could not be conducted as no consent was given.

87. In whose presence should the medical examination be conducted?

A child's medical examination has to be mandatorily conducted in the presence of a trusted person. Such person could be a parent, guardian or any other person the child chooses to have during the medical examination.

88. How should the medical examination be conducted if a parent, guardian or a person who the child trusts is unavailable?

If there is no parent, guardian or any other person of the child's choice available, it is the duty of the head of the medical institution to nominate a woman to be present during the medical examination. Under no circumstances should the child be alone during medical examination.

89. If the victim is a girl, who should carry out the medical examination?

The medical examination on a girl should be done only by a woman doctor.

90. How should conduct the medical examination if a woman doctor is not available in a hospital?

If a woman Registered Medical Officer is not available in the government hospital, a male doctor may conduct the examination in the presence of a female attendant.⁵

91. Can a doctor insist that legal formalities need to be completed before conducting the medical examination?

No, the doctor cannot insist on legal formalities to be completed prior to the medical examination, as under Section 27, medical examinations must be carried out even if an FIR or complaint has not been registered.

92. What details should a report of the medical examination contain?

The medical doctor conducting the medical examination should include the following information in his/her report-

- i. Contact details (such as name and address) of the child and the person who has brought the child.
- ii. The approximate age of the child.

⁵ Ministry of Health and Family Welfare, Guidelines and Protects Medico Legal care for survivors/victims of sexual violence, March 2014, p.20

- iii. Materials taken from the child for DNA profiling/ forensic evidence.
- iv. Details about any injury on the body of the child.
- v. Mental condition of the child.
- vi. Any other useful information.

The report should state the precise reasons for arriving at each conclusion in the examination, whether consent has been obtained, and the details concerning the time when the examination was started and completed. This report should be given to the Investigation Officer so that it is forwarded to the Special Court along with the police report.

VII

Emergency Medical Care

93. Who is entitled to receive emergency medical care?

There are two categories of children who are entitled to receive emergency medical care:

- Children who are victims of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, and aggravated sexual assault.
- Child victims of offences other than those listed above, who, in the opinion of the SJPU or police are in need of urgent medical care and protection.

94. What is the role of the SJPU or police in facilitating emergency medical care?

After a case has been reported to the SJPU or police, they must determine if the child is need of urgent medical care and protection. However, as stated above, if the child is a victim of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, and aggravated sexual assault, then she/ he will have to be immediately taken for emergency medical care. For instance, if a child has been gang-raped, this would constitute an aggravated penetrative sexual assault, and in such case the police would have to take her to the hospital immediately. It is

the duty of the SJPU or police to ensure that a child is taken to the nearest hospital or medical facility within 24 hours of the report being registered.

95. In which hospitals can emergency medical care be availed?

The POCSO Rules do not insist that a child be taken only to a government hospital. It requires the child to be taken to the nearest hospital or medical care facility. Thus, in order to access emergency medical care, a child can be taken to a private hospital or a government hospital, whichever is closer. Further, under the CrPC, a mandatory obligation has been cast on public and private hospitals to provide immediate first-aid or medical treatment to victims of sexual offences free of charge.

96. How must emergency medical care be tendered?

The POCSO Act and Rules lay down principles, safeguards, and measures that must be adhered to by doctors while giving emergency medical care. They are as follows:

- a) The privacy of the child must be protected while tendering emergency medical care to the child. For instance, a child should not be identified as a 'rape victim' in the hospital corridors or be examined in the presence of other persons unconnected to her/his care.
- b) Emergency medical care must always be given in the presence of a parent, guardian, or a person whom the child trusts or has confidence in.
- c) While collecting forensic evidence, the procedures laid down in the law will have to be followed. These include ensuring that a medical examination of a girl child is conducted by a

woman doctor and in the presence of a parent or a person whom the child trusts.

- d) In the absence of a parent, guardian or other trusted person on the scene, the examination and medical care should be tendered in the presence of woman nominated by the head of the medical institution.
- e) While rendering emergency medical care, all the basic needs of the child victim must be addressed. Particularly, treatment for bruises or injuries and for exposure to HIV or sexually transmitted diseases must be given. In case there is a possibility of pregnancy, the doctor should discuss that along with the option of emergency contraceptives with the child and her parent or any other person whom she/he trusts. Where appropriate, referrals for mental or psychological health or counselling should be made.

97. Can a hospital or medical practitioner demand for legal documentation before giving emergency medical care?

No, they cannot. Rule 5(3) of the POCSO Rules clearly bars doctors or hospitals from demanding legal documentation before rendering emergency medical care.

98. Can any hospital deny immediate first-aid or medical treatment to victims of sexual offences?

Under the CrPC, a mandatory obligation has been cast on public and private hospitals to provide immediate first-aid or medical treatment to victims of sexual offences free of charge. Failure to provide such treatment is punishable under Section

166B, IPC with imprisonment which may extend to one year or fine or both.

99. Can medical care be tendered in the absence of a parent, guardian or person whom the child trusts?

Yes, medical care can be tendered in the absence of parent, guardian or trusted person. In such situations, the medical care must be tendered in the presence of a woman nominated by the head of the medical institution.

VIII

Care and Protection

100. What is the role of the SJPU or local police in ensuring care and protection of a child victim?

Refer to Answers 63, 66, 67 and 69.

101. What is the role of the CWC in ensuring care and protection of a child victim?

The CWC plays a two-fold role in ensuring care and protection of children who are victims of sexual offences:

- a) **Determination of Placement:** As stated in Answer 67, the SJPU or police must report every case of sexual offence against a child to the CWC. Further, they must produce a child before the CWC if the child has been or is likely to be abused in her/his home or in an institution. Upon receiving a report from the SJPU or police, the CWC must exercise its powers under the JJ Act to determine, within three days, whether or not a child must be removed from the custody of her/his family or shared household and placed in a Children's Home or Shelter home established under the JJ Act.
- b) **Providing Support Person:** In cases reported to it by SJPU/ police, or based on its own assessment, the CWC can provide

a support person to assist the child during the investigation and trial of the case. A support person must be assigned with the consent of the child and the child's parent/guardian/person. The support person could also be a representative of an organisation or a suitable individual 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. The appointment of support persons will have to be communicated by the SJPU to the Special Court within 24 hours, while the CWC will have to communicate the termination of their services to the Special Court.

102. Is a child victim/survivor of sexual offences necessarily a 'child in need of care and protection'?

Not every child survivor under the POCSO Act is a child in need of care and protection. If a child has a supportive family that is capable of attending to his or her care and protection needs, the child must not be treated as a 'child in need of care and protection'. Requiring every child survivor to be produced before the CWC, can aggravate their trauma and cause secondary victimization.

It is only under following circumstances a child survivor can be considered as a child in need of care and protection:

- The child is living in the same house or shared household with the person who allegedly committed or attempted to commit a sexual offence against him/her.

- The child is living in the same house or shared household with the person who is likely to commit a sexual offence against him/her.
- The child is staying in a child care institution and does not have any parental support.
- The child is without a home and parental support.

103. What information is the CWC entitled to receive from the SJPU or local police?

With the objective of providing care, protection and services of support person to the child survivor from the time they enter into the criminal justice system, the SJPU or police are obligated to inform the CWC about POCSO cases within 24 hours of receiving information. The SJPU or police must also record reasons why they believe that a child survivor is in need of care and protection, take immediate steps to ensure care and protection of a child survivor, and inform the CWC about the steps taken. It follows that a copy of the report, FIR, medical reports, and report on immediate steps, if any, taken by the police or SJPU will have to be submitted to the CWC. For instance, if the child requires urgent medical services then arrangements for shifting the child to the hospital needs to be made by the SJPU/police and this must subsequently be reported to the CWC. The CWCs must ask for a 'Care and Protection' report from the police/SJPU when they produce a child before them.

104. What are the steps that the CWC must follow while determining whether a child should be taken out from the custody of her/ his family or shared household?

The CWC must take the following steps while determining whether a child should be removed from the custody of her/his family:

- a) Inform the child and her/his parent, guardian, or other affected persons that an inquiry to enable such a determination is underway.
- b) Take into account the preferences and opinions of the child on the matter, while making a determination as to what is in the best interests of the child.
- c) Ensure that the child is not inconvenienced or exposed to injury during the inquiry.
- d) Take into account the following factors:
 - i. The capacity of the parent(s) or person whom the child trusts and has confidence in, to provide for the immediate care, protection and, medical needs and counselling of the child;
 - ii. Need for the child to remain in the care of her/his family and maintain a connection with them;
 - iii. The age, maturity level, gender, and social and economic background of the child;
 - iv. The presence of a disability and/or chronic illness, if any;
 - v. History of family violence, if any;
 - vi. Any other relevant factor that has a bearing on the best interests of the child.

- e) Ensure that the determination is completed within three days.

105. What is meant by a 'support person'?

A person who assists a child during the investigation and trial of sexual offences is known as a 'support person'. She/he could be appointed by the CWC or by the child and her/his parents/guardian/person who the child trusts. The role of a support person can be discharged by an organisation or individual 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.

106. When can the CWC appoint a support person for a child victim?

As stated in Answer 101, the CWC can appoint a support person if it is of the view that a child victim needs assistance during the investigation and trial process. The child does not have to be produced before the CWC for this purpose. The decision to appoint a support person can be taken

- (1) when the CWC is considering the report filed by the SJPU/police, or
- (2) when the CWC is assessing whether a child should be removed from the custody of her/his family or shared household.

107. Can the child or her/his parent/guardian choose a support person?

Yes, the child and her/his parent/guardian/other person whom the child trusts can appoint a support person of their

choice. They can also reject the support person appointed by the CWC in favour of another person.

108. What are the roles and obligations of a support person?

The primary role of the support person is to assist the child during the investigation and trial . While doing this, the support person must:

- a) Maintain the confidentiality of all information pertaining to the child to which she/he has access.
- b) Keep the child and her/his parent/guardian/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.
- c) Inform the child of the role she/ he may play in the judicial process and ensure that any concerns that the child may have, regarding her/ his safety in relation to the accused and the manner in which she/ he would like to provide her/his testimony, are conveyed to the relevant authorities.

109. Can the services of the support person be terminated by the CWC?

Yes, the services of the support person can be terminated by the CWC if it receives a request for termination from the child and her/his parent/guardian/other person in whom the child has trust and confidence. No reason is required for making such an application.

The Special Court

110. What is meant by a 'Special Court'?

A Special Court under the POCSO Act is a Sessions Court that is designated in each district by the State Government to be a Special Court to try offences under the Act. The State Government must notify such Special Courts in consultation with the Chief Justice. The Special Court has been provided for under the POCSO Act with a view to ensure speedy trial of sexual offences against children.

111. What are the offences that a Special Court can try under the POCSO Act?

The following offences mentioned under the POCSO Act can be heard by the Special Court:

- **Sexual offences:** Penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, use of a child for pornographic purposes, storage of pornographic materials involving a child are the seven types of sexual offences under this Act.
- **Attempt/ Abetment:** Any attempt to commit any of the above offences or any abetment i.e., assistance or help in

committing the offence are also considered as offences and are punishable under this law.

- **Media violation:** If any person violates the privacy of child by giving details that could lead to the identification of the child, this amounts to an offence and is punishable by the Special Court.
- **False Complaints:** The Special Court can also take up the cases of incorrect or false complaints. For example, C wants to teach a lesson to his friend A, as C is jealous of A having a very close and friendly relationship with B. C files a complaint that A has sexually abused B. B had no complaint against A as he had not harmed her. A case of false complaint can be booked against C.
- **Failure to report:** Cases against people who have failed to file a complaint (mandatory reporting) despite being aware of the commission of the offence or aware that the offence may occur.
- **Failure to record cases:** The Special Court can also take up cases against the police who failed to record the cases when the complainant approaches them.
- **Offences under other Acts:** In situations where the Special Court is hearing an offence under this Act, the Special court may also hear offences alleged to have been committed by the accused under some other law, provided that both/all the offences were committed in the same transaction.
- **Offence under Section 67B of the Information Technology Act, 2000:** The Special Court has the power to hear cases relating to publication or transmission of sexually explicit material depicting children any act or manner or which facilitates abuse of children.

112. Can a Magistrate try offences under the POCSO Act?

No, a Magistrate cannot try offences under the POCSO Act. As stated in Answer 110, the power to try offences under the POCSO Act has been vested only with a Special Court. The Magistrate has a very limited role to play – they can only record statements of the victim under Section 164 of the CrPC. A Magistrate can record statements of the victim off any offence and not necessarily the offences under the POCSO Act

113. What are the powers of the Special Court?

The Special Court can award compensation to the victim for any physical or mental trauma caused or for immediate rehabilitation of the child. The Special Court has all powers of Sessions Court to try the offences mentioned under the POCSO Act and must conduct the proceedings in accordance with Criminal Procedure Code.

114. What are the procedures of the Special Court?

- The Special Court can take up the case directly without it having been committed to it by the Magistrate Court.
- Questions to the child have to be put by the judge during the hearing on evidence.
- The child has to be given frequent breaks during the recording of evidence.
- Video conferencing, curtains or one way mirror can be used to prevent the child from seeing the accused while child's evidence is being recorded.
- The child must be questioned in a child friendly manner.

- The court has to ensure that child is not called repeatedly to testify in court.
- The child's identity has to be protected throughout the proceedings. The permission to disclose the identity of the child must be given only if it is in her/his best interest.
- The trial has to be held *in camera*, which means that the general public must not be allowed in the Court.

115. Who is a Special Public Prosecutor?

All cases before the Special Court have to be prosecuted by a *Special Public Prosecutor*. An advocate who has at least 7 years of experience can be appointed by the State Government through a notification as a *Special Public Prosecutor*, who is responsible for exclusively prosecuting all cases under this Act.

116. How can a case lie before a Special Court?

The Special Court can directly take up cases under this Act, either upon receiving the complaint from the complainant or on the basis of a Police Report. There is no need for a Magistrate to refer/transfer/commit such cases to the Court.

X

Trial Proceedings

117. Are trials under the POCSO Act open to the public?

No, all Court proceedings under the POCSO Act are to be held *in camera* and are therefore not open to the public. Only persons concerned with the case are allowed inside the court room, i.e both the parties, the child's parents/family member/guardian and support person(if appointed), the advocate for the accused and the Special Public Prosecutor.

Besides, the child is not required to be present for all the proceedings. The child has to attend the proceedings only for giving her/his statement (if required) and during the hearing on evidence, if video conferencing is not organised for recording evidence.

118. Can the child victim/survivor be examined in a place other than the court?

Yes, the Special Court has the discretion to examine the child in a place other than the court. If it is of the opinion that the child needs to be examined in a different place, it can issue commissions under Section 284, CrPC. For instance, if after the incident, the child and her family have relocated to a different city, she need not be compelled to travel in order to appear in

court. Instead, a commission can be directed to the Special Court in whose jurisdiction she resides to record her statement.

119. Can a statement of a child recorded by a Magistrate under Section 164, CrPC be admitted as examination-in-chief?

Under the CrPC, only statements before a Magistrate by children with disabilities against whom a sexual offence under the IPC has been allegedly committed or attempted can be considered a statement in place of an examination-in-chief. They will be spared the trauma of having to repeat the statement before the Special Court and can be cross-examined on the statement they made before the Magistrate. However, no such benefit is currently available to other children.

120. Is a child victim entitled to legal assistance, apart from the assistance provided by the Special Public Prosecutor?

Yes, the child and her/his family can take assistance of a lawyer of their choice. If they are unable to hire a lawyer, they can seek the services of a free legal aid lawyer from the panel of lawyers appointed by the Legal Services Authority.

121. Can lawyers for the accused and the Public Prosecutor pose questions directly to a child victim in court?

No, all questions to be posed to the child must be given in writing to the Court and these questions will be posed to the child by the Judge. The Judge must not allow any aggressive questions or character assassinations by the lawyers and must ensure that the dignity of the child victim is maintained during trial.

122. Will the Special Court hear cases where the alleged offender is a child?

No, the Special Court cannot hear the case if the alleged offender is a child, as such cases can only be heard by the Juvenile Justice Board as per the Juvenile Justice (Care and Protection of Children) Act, 2000.

123. What is the timeframe within which the Special Court must record the evidence of the child victim?

The Special Court must record the evidence of the child within 30 days after having taken up the matter. If there is a delay in recording the evidence, reasons will have to be noted in writing.

124. What is the timeframe within which the trial must be completed under the POCSO Act and the Code of Criminal Procedure?

The trial of the cases under the POCSO Act must, as far as possible, be completed within one year of the Special Court having taken up the matter. In cases of rape, rape that causes death or results in persistent vegetative status, gang rape, and rape by a person in authority under the IPC, the trial must be completed within two months from the date of filing of the charge sheet.

125. Can a child victim be exposed to an accused at the time of recording of evidence?

No, the child victim cannot be exposed to the accused while recording the evidence. To ensure that this requirement is met, the Special Court can rely on video conferencing facility, curtains, or one way mirrors or any other devices. The accused however,

has a right to hear the statement and communicate with his/her advocate.

126. How must the Special Court record the statement of a child with disabilities or a child who does not understand the language of the Court?

The Special Court can take the assistance of a special educator, expert, or any person familiar with the manner of communication of a child with disabilities. The assistance of an interpreter or translator can be taken for recording the statement of a child who is not familiar with the language of the Court.

127. What must the Special Court consider before appointing an interpreter, translator, special educator, expert, or a person familiar with the manner of communication of the child?

The Court has to consider if the child has any physical or mental disability, such as a speech or hearing impairment. In such a case, the Court could take the assistance of a sign language expert for recording the statements and evidence.

128. Can the Special Court undertake the determination of age of a person accused under the Act to assess whether he/she is a child?

Yes, the Special Court can undertake the determination of age of the accused person in order to verify if the accused is a child.

129. What must the Special Court do if the accused produced before it is a child?

As stated in Answer 35, a child alleged to have committed offences under the POCSO Act cannot be subjected to trial before

the Special Court. Such a child can be dealt with only by the Juvenile Justice Board (JJB) in accordance with the procedure prescribed under the Juvenile Justice (Care and Protection of Children) Act, 2000. If a question arises about the age of person produced before the Special Court, it can determine such question by satisfying itself about the age of the person and place its findings and reasons in writing. If the person is found to be a child, the matter must immediately be transferred to the JJB in whose jurisdiction it will lie.

Compensation

130. In what circumstances can compensation be awarded under the POCSO Act and Rules?

The Special Court can award compensation under four grounds:

- When there is any loss or injury caused to the child. For instance compensation may be granted if the child has suffered a fracture which occurred during the commission of the offence.
- For any physical or mental trauma that the child has undergone because of the offence.
- To meet the immediate needs of the child. For eg., compensation may be granted to enable the child to avail of urgent medical intervention if s/he has suffered internal organ injuries.
- For rehabilitation of the child.

131. Who can award compensation?

The Special Court can order of compensation to the victim under the POCSO Act.

132. Does an application have to be filed to seek compensation under the POSCO Act?

Though an application can be filed seeking compensation, the Special Court can also award compensation on its own, without having received an application.

133. What are the factors that the Special Court must take into account before ordering compensation under the POSCO Act?

The Court has to consider the impact of the abuse on the child and must take into account the following factors:

- The type of abuse
- The amount of expenses that have been or need to be spent on medical treatment for ensuring the physical and/or mental health of the child.
- If the child's studies were affected because of the offence or has made the child to take leave from her/his school.
- If the child was working and had to take leave, or if the child lost the job, because of the offence.
- If the child was related to the accused. For eg., if the maternal uncle of the child had abused the child.
- If the offence was a one-time offence against the victim or was committed repeatedly over a period of time.
- If the child acquired HIV or any sexually transmitted disease (STD) because of the offence.
- If the child became pregnant because of the offence.

- If the child lost any limb or has become disabled because of the offence
- The financial condition of the child
- Any other factor that the Court may consider as important and relevant while making a determination on compensation to be granted to the victim.

134. Will a victim receive compensation only if the accused is convicted?

No, it is not essential that the accused be convicted in order that compensation is awarded to the victim. The Special Court can award compensation as long as the child has suffered loss or injury as a result of the offence. Interim compensation can be awarded even while the case is pending. It can also be given in cases where the accused is convicted, acquitted, or even where the accused is not traceable or identifiable. For instance, compensation can be awarded to a child who was sexually assaulted during a communal riot, even if the accused is not known.

135. Who must pay compensation to a child victim under the POCSO Act?

State Governments have to pay compensation to victims from the Victim Compensation Fund under Section 357A, CrPC. This fund is meant to support the rehabilitation of victims of crime who have suffered loss or injury. The State Government must pay the compensation to the child from the Victim Compensation Fund or any other funds/schemes established for the purpose of compensating and rehabilitating victims.

136. What is the time-frame within which compensation must be paid?

The State Government must pay the compensation to the victim within 30 days from the date of the order of the Special Court.

Box No. 9: Order passed by the Delhi High Court in *Court on its own motion v. Union of India, W.P. (C) 7927/2012 on 13.08.2014*

The Delhi High Court expressed concern about the failure of the Delhi government in establishing a Victims Compensation Fund even though the scheme had been notified. It directed the establishment of a Single Window Disbursement System and stated that when the Fund is created, it must be placed at the disposal of the Delhi State Legal Services Authority (DSLISA). The Government must transfer funds periodically to the DSLISA under the Victim Compensation Account. This Account should be operated by the Member-Secretary, DSLISA and a Senior Accounts Officer. The DSLISA must ensure that the compensation is disbursed within 24 hours by electronic clearance to the victim's/guardian's bank account.

Note: This order is applicable only in the State of Delhi.

137. Even after having received compensation under the Act, can a child or her/his parent or guardian seek relief under any other governmental scheme?

Yes, the child/family can also apply for compensation under any other relevant laws or schemes. For instance, if a child has already been awarded compensation of Rs. 2 lakh for injuries

suffered, she could also apply for assistance under a State scheme meant to promote education of the girl child.

138. Is there any limit on the amount of compensation that can be ordered by a Special Court?

No, there is no limit specified in the POCSO Act or Rules on the amount of compensation that the Special Court may order. However, the limits specified in the Victim Compensation Scheme may have to be considered by the Special Court while determining the quantum.

Presumptions

139. Does the POCSO Act provide for any presumptions?

Yes, the POCSO Act provides for two types of presumptions;

- (a) Presumption as to certain offences, and
- (b) Presumption of culpable mental state.

Both these presumptions are explained in Answers 140 and 142.

140. What is meant by 'presumption' as to certain offences?

One of the key principles of the criminal justice system is that a person is considered innocent until proven guilty. This means that an accused is regarded as being innocent till the Court makes a finding of guilt, and the responsibility lies with the prosecution to establish her/his guilt.

The POCSO Act provides for an exception to this principle through a presumption. A presumption is essentially a conclusion based on facts before the court and can be altered only by the establishment of facts to the contrary. For instance, if an accused is charged with penetrative sexual assault, aggravated penetrative

sexual assault, sexual assault, or aggravated sexual assault under the POCSO Act, the Court will presume that accused committed the offence. The accused will have to then place facts before the court that will show that he could not have or did not commit the offence. The burden therefore shifts on the accused to prove that he is innocent of the alleged charges.

141. Does a presumption under the POCSO Act mean that the prosecution does not have to prove that the crime was committed by the accused?

No, it does not mean that the prosecution does not have to prove the offence. All it means is that the prosecution has to produce the evidence to prove their case that the accused is guilty, after which the burden of proof is shifted on the accused to disprove the evidence. For eg., if a teacher has been arrested on the ground that he has sexually abused one of his students while taking a special class for girl students, the prosecution will have to establish that sexual assault took place. The teacher will then have to produce evidence that will disprove his involvement in the crime.

142. What is meant by 'presumption of culpable mental state'?

A culpable mental state would mean a punishable state of mind, or a mind that has criminal intention to commit the crime. Under the POCSO Act, the Special Court assumes the existence of the intention that the accused wanted to commit the crime.

The explanation provided under Section 30 of the POCSO Act states that culpable mental state would include intentions, motive, knowledge of a fact and belief in, or reason to believe a fact. This would mean that the Court would believe the accused

had the intention and motive to commit the offence. For instance, if a man is following a girl, trying to take her photograph and sends her obscene messages, the Court can presume that he had a culpable mental state.

143. Upon whom does the burden of proof lie under the POCSO Act?

Owing to the presumptions explained in Answers 140 and 142, the burden of proof is on the accused to prove that she/he is innocent of the charges.

Obligations of the Media

144. What safeguards must the media adopt while reporting on sexual offences against children?

While reporting information about a sexual offence against a child, the media should ensure that the child's identity is not disclosed.

145. What would constitute the 'identity' of a child?

Any information that could lead to the identification of the child victim, such as the name, address, photograph, family details, school details, information about the locality where the child is residing etc., should not be published, as this will amount to an offence under this Act. The media can disclose the identity of the child only if the Special Court permits such disclosure in the interest of the child.

146. What are the consequences of disclosing the identity of a child without obtaining the permission of the Special Court under the POCSO Act?

Any person who discloses the identity of a child without the permission of the Special Court can be punished with six months to one year punishment or fine or both.

147. What are the consequences of reporting false information to the media?

Any person who reports or comments on any child victim in any form of media without checking the authenticity of the information can be punished with a minimum of six months to one year imprisonment, or fine, or both.

XIV

Obligation of the District Child Protection Unit

148. What is the role of the DCPU *vis-à-vis* the POCSO Act and Rules?

The DCPU has the responsibility to maintain a register containing contact details of interpreters, translators and special educators in their district. This information should be shared with the SJP, local police, magistrate and Special Court to enable them to avail of such services if they feel it is necessary to facilitate communication with the child.

Obligation of the Central Government

149. What are the obligations of the Central Government under the POCSO Act?

The obligations of the Central Government include

- i. **Publicity:** Under the POCSO Act, the Central Government has the responsibility to widely publicize the provisions of the Act through various media. These would include information about the Act in the newspaper and magazines, television and radio to create awareness amongst the general public, children, parents and guardians of children.
- ii. **Training:** To conduct training programmes for government officers, including police officers, on the implementation of the Act. These training programmes have to be conducted periodically.
- iii. **Making rules:** To achieve the purposes of the Act, the Central Government can make rules. These rules should state the qualifications and experience of a translator/ interpreter/ special educator whose help may be taken by the police/SJPU, magistrate or Special Court to communicate with the child. The rules should also specify the fees payable to these

experts. Rules should also cover information about the care and protection, emergency medical treatment, payment of compensation and the manner in which monitoring of implementation of the Act is done. The Central Government notified the POCSO Rules on 14 November 2012.

Obligations of State Government

150. What are the obligations of the State Government under the POCSO Act and Rules?

The State Government is responsible for ensuring that the Special Court is in place in every district. It must also create awareness about the Act and frame guidelines for experts to assist the child before and during the trial. The specific obligations of the State Government are as follows:

- To designate for each district, a Court of Session to be a Special Court, in consultation with the Chief Justice of the High Court.
- To appoint a Special Public Prosecutor for every Special Court for conducting cases under the provisions of this Act.
- To take all measures to ensure that the provisions of the Act are given wide publicity through the media including television, radio and print media at regular intervals. This is with a view to make the general public, as well as their parents and guardians aware of the provisions of this Act.
- To impart training to officers of the State Government and other concerned persons including police officers on matters relating to the implementation of the provisions of the Act.

- To frame guidelines for use of NGOs, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to assist the child during the pre-trial and trial stage.
- To pay compensation ordered by the Special Court from the Victims Compensation Fund or other scheme/fund established for the purpose of compensation and rehabilitating victims under Section 357A of the Cr.P.C., or any other laws for the time being in force. The State Government has an obligation to pay compensation even if such funds or schemes are not in place. The compensation must be paid by the government within 30 days of receipt of the order of the Special Court.

Monitoring of implementation of the Act

151. Who is responsible for monitoring the implementation of the POCSO Act?

The National Commission for Protection of Child Rights (NCPCR) and the State Commissions for Protection of Child Rights (SCPCRs) have been tasked with the role of monitoring the implementation of the POCSO Act. These are statutory bodies provided for under the Commissions for Protection of Child Rights Act, 2005. The mandate of these Commissions is to examine safeguards for children and inquire into complaints of violation of child rights by State, or private individuals or entities. Their mandate also includes inspecting custodial institutions for children, examining factors that affect the enjoyment of rights by children and recommending remedial measures, and analyzing laws to examine their compliance with the UN Convention on the Rights of the Child, 1989 (UNCRC).

152. What are the responsibilities of the NCPCR and SCPCR under the POCSO Act?

The responsibilities of the Commission under the POCSO Act are in addition to their functions under the Commissions for Protection of Child Rights Act, 2005 (CPCR Act). Under that Act, the Commission can review laws relating to children

and make recommendations for their effective implementation, inspect custodial institutions for children, inquire into violations of child rights, report on child rights safeguards, promote child rights literacy, and undertake a host of other functions for the protection and promotion of child rights. Under the POCSO Act, the NCPCR and SCPCRs have been vested with three specific responsibilities:

(1) Monitoring the implementation of the POCSO Act

The principal task of the NCPCR and the SCPCRs is that of monitoring the implementation of the POCSO Act. In accordance with the POCSO Act and Rules, the Commissions must specifically monitor the following:

- Designation of Special Courts and appointment of Special Public Prosecutors by the State Government.
- Formulation of guidelines for NGOs, professionals, psychologists, social workers, child development, mental health and physical health experts and others on the assistance they are required to give to the child during the pre-trial and trial stages.
- Design and implementation of training modules for police and other officers of the government on their responsibilities under the Act.
- Regular dissemination of information about the Act through media so that general public, children, parents, and guardians are made aware of the Act.

(2) Reporting on their assessment of the implementation of the POCSO Act.

Besides monitoring, the Commissions are also required to collect information on their own or from relevant agencies with a view to assess the implementation of the Act. The data collected must be included in the form of a chapter in their Annual Report. The POCSO Rules specify the information that must be gathered. They are as follows:

- Number and details of reported offences
- Compliance status of timeframes specified under the Act
- Compliance status of procedures laid down in the Act
- Details of arrangements for care and protection of victims
- Details of arrangements for emergency medical care and medical examination
- Details of CWC's assessment of the need for care and protection of a child in any specific case. For this purpose, the Commission can ask for a report from a CWC on a particular case of child sexual abuse.

(3) Inquiring into matters relating to any offence under the POCSO Act.

The Commission can inquire into matters relating to offences under the Act. For this purpose, they can rely on the powers available to them under the CPC Act which are certain specified powers of a civil court. They include the power to summon a person and examine him/her on oath; order discovery and production of any document; receive evidence on affidavits;

requisition public records or copies from court or office; and issue commissions for the examination of witnesses or documents. In the event that an exercise of any of the above powers by a Commission does not result in compliance, the Commission can forward the case to a Magistrate who has the jurisdiction to hear the matter for action. However, the Commissions will not be able to inquire into the matter once it is taken up for investigation by the police or SJPU and is before the Special Court.

The Commission can take any of the following three steps after the conclusion of the inquiry:

- (1) **Recommend Action:** If the findings of the inquiry establish violation of child rights of a serious nature, the Commission can recommend to the Government to initiate proceedings for prosecution or take any other appropriate action. For instance, if the inquiry reveals that a sexual offence has been committed against a child, the Commission could ask the police to file a First Information Report (FIR). The Commission cannot, however, make pronouncements on guilt or order for suspensions or impose fines or penalties.
- (2) **Approach the Supreme Court or the High Court:** The Commission can file a writ before the Supreme Court or High Court and pray for appropriate directions or orders.
- (3) **Recommend Interim Relief:** The Commission can recommend to the government or authority to provide interim relief to the victim or her/his family.

XVIII

Role of interpreters, translators, special educators, and experts

153. How must interpreters, translators or special educators or experts be engaged?

The Magistrate or a police officer recording the statement of child can take help from language interpreters and translators. Similarly, in the case of disabled children, they can take help from special educators or a person familiar with the communication style of the child. For instance, the police can seek the assistance of a sign language interpreter to take the statement of a speech impaired child. Similarly, if the child is not familiar with the local language, a language interpreter could be engaged.

Such interpreters, translators or special educators can be engaged by studying the list of such resource persons in the register maintained by the DCPU in each district. The police or the Magistrate do not have to confine themselves to the list. They can engage an expert who is not listed if she/he has the relevant experience or formal education or training or proof of fluency in the relevant language. Such persons will have to be approved by the DCPU or special judge or any other authority who has engaged such person.

154. What should the qualifications of interpreters and translators be?

The interpreters and translators should have functional familiarity with the language spoken by the child, as well as the official language of the state. Such familiarity may have been acquired by the interpreter because it is the mother tongue of the interpreter, because he/she has studied in a school where the medium of instruction is the language he/she is interpreting, because of skill developed during the course of his/her professional experience or even by residing in the area speaking that language.

155. What should the qualifications of sign language interpreters and special educators be?

The sign language interpreters and special educators listed in the register maintained by the DCPU should have relevant degrees in their subject from a recognized University or institution that is also recognized by the Rehabilitation Council of India.

156. Who should pay for the services of interpreters, translators or special educators?

The fees for the services rendered by the interpreters, translators and special educators must be paid by the State Government from the Fund maintained under the JJA for the welfare and rehabilitation of juveniles in conflict with law and children in need of care and protection, or from the funds that is available with the DCPU.

157. What should be done if the child victim shows preference of gender in interpreters?

When a child expresses preference of gender of the interpreters, translators or special educators, this preference should be respected as it may enable the child to communicate more freely. For instance, an adolescent girl who has been sexually assaulted may be comfortable talking to a female interpreter. In such cases, efforts should be made to arrange for a female interpreter, even from another district if such a person is not available in the district where the case is being heard.

158. Can more than one interpreter, translator, special educator, or expert be appointed?

Yes, there is no limit on the number of interpreters, translators or special educators that can be appointed in one case. The purpose should be to enable the child to communicate effectively.

159. What is the role of interpreters, translators, special educators, or experts?

The interpreters, translators or special educators or experts engaging in facilitating communication of the child have to be unbiased and impartial and also have the duty to disclose any conflict of interest. If for instance, the interpreter identified for the case is related to the child, or to the accused, or knows one of them; such information should be disclosed even if the police, magistrate, Special Court or any other authority using the person's services is not aware of this. They are bound to give complete and accurate interpretation or translation and not add or leave out any information. All of them must also maintain confidentiality of information shared with them by the child in the course of her/his interactions.

