



GOVERNMENT OF INDIA

Monitoring Guidelines for NCPCR/SCPCR for Roles and Functions of Various Stakeholders

Child Welfare Committees/Support Persons and Health Professionals



NCPCR

Prepared by
Lawyers Collective Women's Rights Initiative (LCWRI) and UNICEF

National Commission for Protection of Child Rights
5th Floor, Chanderlok Building
36, Janpath, New Delhi-110001
Website : www.ncpcr.gov.in

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Table of Contents

Introduction	3
<i>List of Abbreviations</i>	8
Introduction to the POCSO Act	9
Roles and Functions of the CWC's / Support Persons under the POCSO Act <i>Role of NCPCR in Monitoring: What to Monitor and How to Monitor</i>	22
List of Monitoring Questions for CWC's/ Support Persons for Quarterly Collection of Data by the NCPCR	45
Roles and Functions of Health Professionals under the POCSO Act <i>Role of NCPCR in Monitoring: What to Monitor and How to Monitor</i>	46
List of Monitoring Questions for Health Professionals for Quarterly Collection Of Data by the NCPCR	59
Bibliography	60

Introduction

Article 15 of the Constitution of India (“Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”) allows for **positive discrimination**. Article 15 (3) of the Constitution of India states, “*Nothing in this article shall prevent the State from making any special provision for women and children.*”

Article 39 (“Certain principles of policy to be followed by the State”) directs State policy towards securing “*that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment*” [Article 39 (f)].

The Convention on the Rights of the Child (CRC) 1989 was ratified by India on 12th November 1992. The CRC specifies that in all actions concerning children, “the best interests” of the child shall be a primary consideration [Article 3 (1)].

The POCSO Act, 2012 is a step forward in providing special procedures for children who are survivors of sexual violence. The Preamble to the POCSO Act upholds the principles of the Constitution of India and International Law:

Preamble to the Act

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

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

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

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

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

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

prevent –

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

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

Based on a reading of the Constitution of India, Judicial Pronouncements in the Supreme Court of India, the CRC and the POCSO Act, the following Charter of Rights of child survivors has been developed in relation to child survivors of sexual violence:

CHARTER OF RIGHTS OF CHILD SURVIVORS

1. **Right to Privacy and Confidentiality** – The name of the child, the family, educational institution wherein s/he is enrolled, and other information capable of identifying her/him shall be kept confidential [*Article 3 of the CRC, Preamble to the POCSO Act, Shankar Kisanrao Khade vs. State of Maharashtra 2013 (6) SCALE 277*]
2. **Right to Dignity**- The child survivor shall be treated with dignity and respect at all stages in the matter and by all players including health care workers, police, judiciary, prosecutor, translators, etc. [*Article 39 (f) of the Constitution of India, Preamble to the CRC*]
3. **Right to Non-Discrimination** – There shall be no discrimination against any child based on religion, race, sex, or caste. For example, girl children cannot be discriminated against by blaming them for their dress / attire for the incident of sexual offence. At the same time, all stakeholders shall be sensitive to any special needs of a child. For instance, disabled children, medically unfit children or very young children will need to be accorded special treatment [*Article 15 (1) of the Constitution of India, Article 2 of the CRC*].
4. **Child has the right to express his /her views in all matters affecting the child:** The wishes of the child shall be given priority when decisions regarding institutionalization, medical examination of the child and appointment of a support person. The views of the child shall be given due weight in accordance with the child's age and level of maturity (*Article 12 of the CRC*).
5. **Right to Safety and Well Being** – The best interest and well being of the child survivor must be regarded as being of paramount importance at every stage of the trial. Each stakeholder under the Act shall act with sensitivity to the healthy physical, emotional, intellectual and social development of the child (*Preamble to the POCSO Act*). In

Shankar Kisanrao Khade vs. State of Maharashtra 2013 (6) SCALE 277, the Supreme Court laid down various guidelines for stakeholders under the Act, and held that in cases where the perpetrator of the crime is a family member, utmost care must be taken bearing in mind the best interest of the child is of paramount consideration.

6. **Child has a right to be protected from all forms of sexual exploitation by the State:** There can be no exemption for committing sexual intercourse with a child – not even if the accused is married to the child (*Article 34 of the CRC, Section 42A of the POCSO Act*)
7. **Right to Medical Treatment:** The child survivor shall not be denied medical treatment (*section 27 of the POCSO Act*). The dynamics of child sexual abuse differ from those of adult sexual abuse. In particular, children rarely disclose sexual abuse immediately after the event. Moreover, disclosure tends to be a process rather than a single episode and is often initiated following a physical complaint or a change in behavior. Therefore, the evaluation of children requires special skills and techniques in history taking, forensic interviewing and examination; the examiner may also need to address specific issues related to consent and reporting of child sexual abuse [*The International Covenant on Economic Social and Cultural Rights, General Comment 14, Right to Health (11th August 2004), Guidelines for medico-legal care for survivors of sexual violence, World Health Organization, 2003*].

The NCPCR and all State Commissions have been given the onerous responsibility of monitoring the implementation of the Protection of Children from Sexual Offences Act 2012 under Section 44 of the Act and Rule 6 of the Central POCSO Rules. To take this mandate forward, Monitoring Guidelines for the Police, Special Courts, Special Prosecutors have been prepared by Lawyers Collective Women's Rights Initiative as a technical partner for NCPCR with support from UNICEF.

In order to conduct the exercise of Monitoring and Evaluation, NCPCR or SCPCR are mandated to systemize the process of data collection by compiling information from the implementing agencies functioning under the Act. Questionnaires, which correspond with the duties and statutory obligations of the agencies, can be used to collect data. Accordingly, the data collected can be contextualized and evaluated by any concerned person to gauge the effectiveness, efficiency and impact of measures taken to implement the Act. These Monitoring Guidelines contain questions for monitoring the fulfillment of roles of the stakeholders under the Act. The purpose of providing monitoring questions for stakeholders is to increase efficiency in service delivery and prevent instances of child sexual abuse. The list of monitoring questions provided at the end of each chapter can be used for quarterly collection of data by the NCPCR, which can be compiled to form the Annual Report under section 44 (3) of the POCSO Act.

Cases of child sexual abuse can be brought to the notice of the NCPCR through various sources. For example, information may reach the NCPCR through print media and newspapers, through NGOs, or through complainants approaching the Commission directly. Such cases require monitoring by the NCPCR as well. In this regard, it is recommended that:

- i. As far as possible NCPCR / SCPCR should try and follow a case till the conclusion of the trial.
- ii. For each case a Fact Sheet, Action Taken by NCPCR/SCPCRs and a Response sheet should be prepared
- iii. Monitoring of complaints received from agencies like NGOs, institutions, RWAs, Unions etc: They require monitoring as they have not yet reached the criminal justice functionaries. These have to be followed till they are registered as FIR's in the police system. If they have not been registered, then it has to be examined why not. Once the NCPCR/SCPCR has the information then regular updates of cases can be automatically asked from the authority/ organization till the case reaches its logical conclusion Also the role of State Legal Services Authority can be roped in for giving legal and para legal help to the victim and family. The role of State Commission can also be reviewed, and the good practices noted and shared.
- iv. There should be separate monitoring system for the complaints received directly by NCPCR/SCPCR
- v. With regard to cases reported in the media, it is the duty of the Commission to follow the case until FIR is registered. In case the FIR is not registered, the reasons must be monitored by the Commission.

OBJECTIVES OF THE MONITORING GUIDELINES FOR THE CWC's AND HEALTH PROFESSIONALS

- The objectives of the Guidelines for CWC's / Support Persons are:
 - Identifying the roles and responsibilities of the CWC with regard to assisting the child in need of care and protection including general rules of procedure;
 - Identifying indicators to assess the response of CWC's to child survivors;
 - Identifying who are Support Persons under the Act, and indicators to assess their response to child survivors.
- The objectives of the Guidelines for Health Institutions are:
 - To clarify provisions of comprehensive medical care, carrying out history seeking medico legal examination, and evidence collection, preservation of medical evidence and maintaining chain of custody and provision of psycho social support to survivors of sexual assault;
 - Identifying indicators for assessing the response of health institutions to child survivors

In the Monitoring Guidelines, clarifications of the scope of the POCSO Act and promoting the best interest of the child are primary objectives.

LIST OF ABBREVIATIONS

CEHAT: Centre for Enquiry into Health and Allied Themes

CFCA: Children Found Co-Habiting with Accused

CLA Act: The Criminal Law (Amendment) Act 2013

CRC: The United Nations Convention on the Rights of the Child, 1990

Cr.P.C: The Code of Criminal Procedure, 1973

CSA: Child Sexual Abuse

CWC: Child Welfare Committee

DCPU: District Child Protection Unit

FIR: First Information Report

FSL Report: Forensic Science Laboratory Report

G.P: General Practitioner

IPC: The Indian Penal Code, 1860

ITPA: The Immoral Traffic (Prevention) Act, 1956

J.J Act: The Juvenile Justice (Care and Protection of Children) Act, 2000

LCWRI: Lawyers Collective, Women's Rights Initiative

MCU: Medical Care Unit

MOHFA: Ministry of Health and Family Welfare

NGO: Non-Government Organization

NCPCR: The National Commission for Protection of Child Rights

PCPP: Police Care and Protection Report

POCSO: The Protection of Children from Sexual Offences Act, 2012

RI: Rigorous Imprisonment

SCPCR: State Commission for Protection of Child Rights

SJPU: Special Juvenile Police Unit

SOP: Standard Operating Procedures

STI: Sexually Transmitted Infection

UNICEF: The United Nations Children's Fund

U/s: Under section

INTRODUCTION TO THE POCSO ACT

The Figures

There were a total of 24, 915 victims of rape out of 24,923 reported rape cases during the year 2012. Out of these, 1051 rapes were perpetrated on children under 10 years of age. 12.5% (3,125) of the total victims of rape were girls under 14 years of age, while 23.9% (5,957 victims) were teenaged girls in the age group of 14 to 18 years. (*National Crime Records Bureau 'Crimes in India' 2012*).

Why a separate law on Child Sexual Abuse?

The Rationale

As there was no other law governing child sexual abuse until 2012, sections 354, 509, 377 and where appropriate, section 376 of the Indian Penal Code, 1860 (IPC) were invoked to cover cases of child sexual abuse. Sections 4 (1), 5 (d), 7 of the Immoral Traffic (Prevention) Act, 1956 (ITPA) applied to children in prostitution. The Juvenile Justice (Care and Protection of Children) Act, 2000 applies to sexual offences by children.

- Prior to the Criminal Law (Amendment) Act of 2013, Section 376 of the IPC only covered penetration of the penis into the vagina in the definition of “rape”.
- Sexual offences in the IPC are gender specific. The provisions (with the exception of section 377) only apply to women as victims, while the perpetrators are male.

Key Features of POCSO, 2012

- **The definition of sexual offences is broad** and not restricted to rape. The Act protects children of both sexes from offences of sexual assault, sexual harassment, and pornography – for example, penetration by objects, touching with sexual intent, or showing pornography to a child.
- The POCSO Act ensures **effective access to justice**. The Act provides for the establishment of special procedure for reporting of cases, special procedures for recording statement of a child, and Special Courts for the trial of such offences.
- The POCSO Act makes **abetment of, and attempt to commit an offence under the POCSO Act** punishable.

Duty to Inform (Sections 19 and 20)

- The Act provides for **mandatory reporting of sexual abuse of a child or apprehended sexual abuse of a child**. Any person (including a child) who has apprehension that an offence is likely to be committed, or has knowledge that an offence has been committed

shall provide such information to the Special Juvenile Police Unit or the local police [section 19 (1)].

- In case any personnel of the media or hotel, lodge, hospital, club or a studio or photographic facilities comes across any child pornography (through any medium), he shall provide such information to the Special Juvenile Police Unit or the local police (section 20).
- False complaints with the intention to humiliate, extort, or threaten or defame someone are punishable under the Act. However, a person who provides information about the occurrence of a sexual offence in good faith will not incur any liability [section 19 (7)].

Against whom can a complaint be filed?

- Both men and women can be offenders under the Act. Offences under sections 3 (a) and 5 (j) (ii) involve penetration by the penis and can be perpetrated only by men. Specifically:
 - Section 3: A person is said to commit “penetrative sexual assault” if (a) “*he penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a child or makes the child to do so with him or any other person*”;
Since the words “*any other person*” are used in section 3 (a), women may also be offenders or victims under the second part of section 3 (a).
 - Section 5 (j): Whoever commits penetrative sexual assault on a child, which - (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault.

In offences under sections 3 (a) and 5 (j) (ii), women can be joined as abettors under section 16. Moreover, in case of commission of such offences by men in conspiracy with women, section 120-B, IPC, may be invoked to prosecute such accused women.

The other clauses in section 3 and section 5 may be committed by women as well.

Offences under section 11 (“sexual harassment”) and section 13 (“use of child for pornographic purposes) are gender neutral and may be committed by a man or a woman against a male or a female child.

- **The POCSO Act is only applicable to child survivors and adult offenders.** In case two children have sexual relations with each other, or in case a child perpetrates a sexual offence on an adult, the Juvenile Justice (Care and Protection of Children) Act, 2000, will apply.

What is a Child? [Section 2(d)]

- A child under the Act means any person below the age of eighteen years.

What is Child Sexual Abuse?

For the sake of convenience, offences may be divided into two specific categories: (i) Penetrative; and (ii) Non penetrative sexual offences.

- **Penetration** is defined in section 3 as penetration of the penis into any orifice of a child's body, insertion of an object into the vagina, urethra, or anus of a child, manipulating the body of a child so as to cause penetration into the vagina, urethra or anus, and applying the mouth to the vagina, penis, anus or urethra of a child.
- Non penetrative sexual offences are **sexual assault (section 7)**, **sexual harassment (section 11)**. Sexual assault involves any form of physical contact without penetration with a child with sexual intent. Sexual harassment constitutes verbal acts, showing pornography to a child, constantly following or watching a child, threatening to use depiction of a child involved in a sexual act, and enticing a child for pornographic purposes.

Degrees of Child Sexual Abuse

- Under the Act, certain acts committed along with penetrative sexual assault are listed as 'aggravated' and stricter punishment is accorded to these offences.
- **Aggravated penetrative sexual assault (section 5)**: For example, penetrative sexual assault by a police officer within the limits of the police station at which he is posted, or gang rape by any person committing penetrative sexual assault, or penetrative sexual assault by any person leading to grievous hurt, or bodily harm and injury or injury to the sexual organs of a child.
- **Aggravated sexual assault (section 9)**: For example, sexual assault by a police officer within the limits of the police station at which he is appointed, gang sexual assault by any person, or sexual assault by any person leading to grievous hurt, or bodily harm and injury, or injury to the sexual organs of the child.

Table 1. List of offences under the Act and the Punishment for the offence:

S.No	Offence and Description	Punishment under POCSO
1.	Section 3 Penetrative Sexual Assault Inserting body part or object in a child, or making a child does this with another.	Section 4 Not less than seven years of imprisonment which may extend to imprisonment for life, and fine
2	Section 5 Aggravated Penetrative Sexual Assault Penetrative sexual assault by a police officer, member of armed forces, public servant, staff of remand home, jail, hospital or school. It	Section 6 Not less than ten years of imprisonment which may extend to imprisonment for life, and fine

	includes penetrative sexual assault committed by any other person through gang penetrative assault, penetrative sexual assault using deadly weapons, fire, heated substance or corrosive substance, penetrative sexual assault which physically incapacitates the child or causes child to become mentally ill, causing grievous hurt or bodily harm and injury to the sexual organs of the child, making girl child pregnant, inflicting child with HIV or any other life threatening disease, penetrative sexual assault more than once, penetrative sexual assault on a child younger than 12 years, by a relative, owner / manager or staff of any institution providing services to the child, by a person in a position of trust or authority over the child, committing penetrative sexual assault knowing the child is pregnant, attempts to murder the child, by a person previously convicted for a sexual offence, penetrative sexual assault in the course of communal or sectarian violence, penetrative sexual assault and making the child strip or parade naked in public.	
3	Section 7 Sexual Assault With sexual intent touching the private parts of a child	Section 8 Not less than three years of imprisonment which may extend to five years, and fine
4	Section 9 Aggravated Sexual Assault Sexual assault by a police officer, member of armed forces, public servant, staff of remand home/jail/hospital/school, etc, and other acts of sexual assault by any person as mentioned in the second part of section 5, except making a girl child pregnant.	Section 10 Not less than five years of imprisonment which may extend to seven years, and fine (Section 10)
5	Section 11 Sexual Harassment of the Child With sexual intent: <ul style="list-style-type: none"> • showing any object/body part, or making any gesture aimed at a child • making a child exhibit her body • enticing or threatening to use a child for pornography 	Section 12 Up to three years of imprisonment and fine
6	Section 13 Use of Child for Pornographic Purposes	Section 14 (1) Imprisonment up to five years and fine and in the event of subsequent conviction, up to seven years and fine
7	Section 14 (2) Penetrative sexual assault by directly participating in pornographic acts	Section 14 (2) Not less than ten years of imprisonment, which may extend to imprisonment for life,

		and fine
8	Section 14 (3) Aggravated penetrative sexual assault by directly participating in pornographic acts	Section 14 (3) Rigorous imprisonment for life and fine
9	Section 14 (4) Sexual assault by directly participating in pornographic acts	Section 14 (4) Not less than six years of imprisonment which may extend to eight years, and fine
10	Section 14 (5) Aggravated sexual assault by directly participating in pornographic acts	Section 14 (5) Not less than eight years of imprisonment which may extend to ten years, and fine
11	Section 15 Storage of pornographic material involving a child for commercial purposes	Section 15 Three years of imprisonment and / or fine
12	Section 21 Punishment for failure to report or record a case by (i) Any person; (ii) Any person, being in charge of any company or an institution. (This offence does not apply to a child)	Section 21 (i) Imprisonment of either description which may extend to six months or with fine or with both (ii) Any person, being in charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub section (1) of section 19 in respect of a subordinate under his control shall be punished with imprisonment for a term which may extend to one year and with fine.
13	Section 22 (1) Punishment for false complaint or false information in respect of an offence committed under sections 3, 5, 7 and section 9 solely with the intention to humiliate, extort or threaten or defame him. (3) False complaint or providing false information against a child knowing it to be false, thereby victimising such child in any of the offences under this Act. (This offence does not apply to a child)	Section 22 (1) Imprisonment for a term which may extend to six months or with fine or with both. (3) Imprisonment which may extend to one year or with fine or with both.

The POSCO Act is a special law and it has not specified which offences are cognizable and, therefore, to determine which of the POCSO Act offences cognizable and non-bailable, reliance are must be placed exclusively on Part II (“Classification of Offences against Other Laws”), First Schedule of the Code of Criminal Procedure, 1973. **Whenever the punishment is less than 3 years of imprisonment, the offence would be non-cognizable and bailable. Any higher term of imprisonment beginning from 3 years and above would make such offence cognizable and non-bailable.**

Hence all sections are cognizable, with the exception of section 21 and section 22 which are non cognizable and bailable offences.

The Criminal Law Amendment Act of 2013 amended the IPC so as to include sexual offences other than penetration as penal offences. Many of the POCSO offences are now also covered in the Indian Penal Code (IPC) following the Criminal Law Amendment Act of 2013.

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

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

The following table compares provisions of IPC with POCSO to check which statute will apply where offences overlap.

Table 2: Applicability of IPC or POCSO in overlapping offences

S.No	Offence and Description	Punishment under IPC	Whether Punishable under IPC or POCSO
1	<p>Section 166 A Public servant disobeying directions under law - A public servant who–</p> <p>(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence, or</p> <p>(b) knowingly disobeys to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or</p> <p>(c) fails to record any information given to him u/s 154 (1) of the Cr.P.C in relation to cognizable offence punishable u/s 326 A, 326B, 354, 354B, 370, 370A, 376, 376A, 376B, 376C, 376D, 376E, 509,</p>	Six months rigorous imprisonment which may extend to two years, and shall also be liable to fine	IPC. Failure to record an offence u/s 19 (2) of POCSO shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

	Commits an offence under the section.-		
2	<p style="text-align: center;">Section 354 A</p> <p>Sexual Harassment consists of; Any of the following offending acts of a man (i) physical contact and advances including unwelcome and explicit sexual overtures; (ii) a demand or request for sexual favours; (iii) showing pornography against the will of the woman; (iv) making sexually coloured remarks.</p>	<p>Rigorous imprisonment which may extend to three years or with fine, or with both for clause (i) to clause (iii). Imprisonment of either description which may extend to one year or with fine or both for clause (iv)</p>	<p>The definition of sexual harassment is different under POCSO. POCSO carries the greater punishment for uttering any words or sounds with sexual intent under section 11 (i). Showing pornography against the will of the woman carries the greater punishment under IPC. Under section 11 (iii) of POCSO showing pornography to a child with or without its consent is an offence. Physical contact is covered under “sexual assault” (s.7) of POCSO, which carries the greater punishment.</p>
	<p style="text-align: center;">Section 354B</p> <p>Assault or use of criminal force to woman with intent to disrobe is an offence.</p>	<p>Not less than three years imprisonment which may extend to seven years and shall also be liable to fine?</p>	<p>POCSO Act, section 9 (u)-makes it an offence to commit sexual assault on a child and to make it strip or parade naked in public and punishes it with imprisonment not less than 5 years but which may extend up to 7 years and fine. When such offence is accompanied by penetrative sexual assault as defined under section 5 (u) of the POCSO Act, the same is punishable under section 6 of the POCSO Act with RI for a term which shall not be less than ten years but which may</p>

			extend to imprisonment for life and shall also be liable to fine.
	<p>Section 354C Voyeurism – is an offence by a man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed.</p>	<p>First conviction – One year imprisonment which may extend to three years and fine Subsequent conviction – Three years imprisonment which may extend to seven years and shall also be liable to fine</p>	IPC. No such offence exists under POCSO.
	<p>Section 354 D Stalking is an offence by a man who (i) 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 (ii) monitors the use by a woman of the internet, email, or any other form of electronic communication.</p>	<p>First conviction – Imprisonment which may extend to three years and shall also be liable to fine Subsequent conviction – Imprisonment which may extend to five years and shall also be liable to fine</p>	<p>Under section 11 (iv) of POCSO repeated or constant following, watching, contacting a child with sexual intent is punishable with three years imprisonment and fine. IPC carries the greater punishment for subsequent offence.</p>
	<p>Section 370 Trafficking of Persons is an offence committed by a person who for the purpose of exploitation (a) recruits (b) transports (c) harbours (d) transfers or (e) receives a person/s by firstly using threats, secondly, using force / coercion, thirdly, by abduction, fourthly, by practicing fraud, fifthly, by abuse of power or sixthly by inducement commits the offence of trafficking. Exploitation includes sexual exploitation.</p>	<p>Section 370 (4), 370 (5), 370 (6) deal with trafficking of minors. The offence is punishable with rigorous imprisonment for not less than ten years imprisonment but which may extend to life and shall also be liable to fine</p>	IPC. No such offence exists under POCSO.
	<p>Section 370 A Exploitation of a trafficked person is an offence by anyone—who knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation.</p>	<p>Rigorous imprisonment for not less than 5 years which may extend to seven years and shall also be liable to fine</p>	IPC. No such offence exists under POCSO.
	<p>Section 375 A man is said to commit "rape" if he— (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other</p>	<p>Section 376 Whoever, except in the cases provided for in sub-section (2), commits rape, shall</p>	Under section 5 (m) of POCSO whoever commits penetrative sexual assault on a child below 12 years

<p>person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:— <i>First.</i>—Against her will. <i>Secondly.</i>—Without her consent. <i>Thirdly.</i>—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. <i>Fourthly.</i>—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. <i>Fifthly.</i>—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. <i>Sixthly.</i>—With or without her consent, when she is under eighteen years of age. <i>Seventhly.</i>—When she is unable to communicate consent. <i>Explanation 1.</i>—For the purposes of this section, "vagina" shall also include <i>labia majora</i>. <i>Explanation 2.</i>—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. <i>Exception 1.</i>—A medical procedure or</p>	<p>be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine. (2) Whoever,— (a) being a police officer, commits rape— (i) within the limits of the police station to which such police officer is appointed; or (ii) in the premises of any station house; or (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or (d) being on the management or on the staff of a jail, remand home or other place of custody established</p>	<p>shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to life and shall also be liable to fine. Under section 376 (i) of the IPC rape of a woman under 16 years of age is punishable for a term which shall not be less than ten years but which may extend to life and shall also be liable to fine. Hence, rape of a girl aged 12 years to 16 years carries greater punishment under IPC. Exception 2 of section 375 IPC is inconsistent with POCSO. Hence POCSO has overriding effect and marital rape of a minor is an offence under POCSO.</p>
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	<p>intervention shall not constitute rape. <i>Exception 2.</i>—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.]</p>	<p>by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or <i>(e)</i> being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or <i>(f)</i> being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or <i>(g)</i> commits rape during communal or sectarian violence; or <i>(h)</i> commits rape on a woman knowing her to be pregnant; or <i>(i)</i> commits rape on a woman when she is under sixteen years of age; or <i>(j)</i> commits rape, on a woman incapable of giving consent; or <i>(k)</i> being in a position of control or dominance over a woman, commits rape on such woman; or <i>(l)</i> commits rape on a woman suffering from mental or physical disability; or <i>(m)</i> while committing rape causes grievous bodily harm or</p>	
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		maims or disfigures or endangers the life of a woman; or (n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine	
	Section 376 A Punishment for causing death or resulting in persistent vegetative state of victim- Whoever commits an offence punishable under subsection (1) or (2) of S 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state	Rigorous imprisonment for not less than 20 years, but which may extend to imprisonment for life (remainder of that person's natural life) , or with death	IPC. No corresponding section in POCSO.
	Section 376 C Sexual intercourse by a person in authority- Whoever, being- (a) in a position of authority or in a fiduciary relationship; (b) a public servant; (c) superintendent or manager of a jail, remand home or other place of custody or a women's or children's institution; or (d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape.	Rigorous imprisonment of either description for a term which shall not be less than five years, but may extend to ten years, and fine	POCSO [section 5 (p)].
	Section 376 D Gang Rape- When a woman is raped by one or more persons constituting a group or acting in furtherance of a	Rigorous imprisonment for not less than 20 years and may extend to	IPC. Under section 5 (g) of the POCSO if the offence is committed on a child

	common intention, each of those persons shall be deemed to have committed the offence of rape	life (remainder of that person's natural life), and with fine (the fine shall be paid to the victim and shall be just and reasonable to meet the medical expenses and rehabilitation of the victim)	it is punishable with minimum imprisonment of 10 years which may extend up to life imprisonment and fine as provided under section 6.
	<p style="text-align: center;">Section 376 E</p> <p>Punishment for repeat offenders- Whoever has been previously convicted of an offence punishable under 376, 376A or 376D and is subsequently convicted of an offence punishable under any of the said sections</p>	Imprisonment for life (remainder of that person's natural life), or with death	IPC. Under sections 5 (t) and section 9 (t) of the POCSO Act a previous convict of an offence under the POCSO Act when commits penetrative sexual assault or sexual assault on a child, as the case may be, is liable to severe punishment, and these offences cover a wider sphere than under section 376 E, IPC.
	<p style="text-align: center;">Section 509</p> <p>Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, of that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman,</p>	Simple imprisonment for a term which may extend to three years, and also with fine	Section 509 IPC and section 11 (i) POCSO carry the same punishment

Special Procedures under the Act

- Recognizing that children survivors of sexual assault are vulnerable, the Act puts in place special child friendly procedures to assist a child in recording his/her statement at all stages (*for details, please see the recommendations and guidelines below*).

Continuing Obligations

- Training and sensitization of the police and other stakeholders, such as health professionals and Child Welfare Committees in handling cases under POCSO;
- Training and sensitization programs for members of the judiciary;
- Establishment of Special Courts and appointment of Special Prosecutors;
- **Supreme Court in Exploitation of Children in Orphanages in State of T.N vs. Union of India 2013 (1) SCALE 260** directed the State Governments to indicate what measures have been taken for setting up Special Courts. In case the Special Courts have been set up, the Court directed that the status report shall indicate the number of such Special Courts established. In the event, Special Courts have not been established, the status report should indicate the maximum time limit within which such Courts will be established.

Note: The primary responsibility for dissemination of the law is on the Central and State governments (section 43).

Roles and Functions of the CWC's under the POCSO Act

Role of NCPCR in Monitoring: What to Monitor and How to Monitor

The following are in the nature of guidelines to Child Welfare Committees in discharge of their functions under the Protection of Children from Sexual Offences Act, 2012.

GENERAL GUIDELINES

1. Definitions

- 1.1 In these Guidelines, unless otherwise stated or otherwise required in the context, words and expressions listed hereunder shall have the following meaning:
- (a) “Claimant Relatives” means Relatives who ask to be granted custody of the child;
 - (b) “Code” means The Code of Criminal Procedure, 1973;
 - (c) “Concerned Relatives” means Relatives that are summoned to appear before the CWC or who apply to be heard by the CWC;
 - (d) “Guardians Acts” means The Guardians and Wards Act 1890 and / or The Hindu Minority and Guardianship Act 1956 as amended from time to time;
 - (e) “Immediate Relative” means parents (including accused parents), grandparents and siblings (including child siblings);
 - (f) “Other Relatives” means any relative other than an Immediate Relative;
 - (g) “POCSO Rules” means rules notified under POCSO;
 - (h) “Relatives”, “family”, “family members” and cognate expressions refer to Immediate Relatives and Other Relatives collectively or individually as determined in the context;
 - (i) “SCPCR” means State Commission for the Protection of Child Rights;
 - (j) “Support Person” means a person or organization assigned by the CWC, in accordance with sub-rule (8) of rule 4, to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act;

- (k) “Survivor” in these guidelines, means a child who was a victim of any of the offences under the POCSO Act and is recovering, or has recovered from the sexual offence.

2. Legal Background & Managing Multiplicity of Legal Regimes

- 2.1 In cases of sexual offences against children, recourse is provided under the following statutes:
 - (a) The Protection of Children from Sexual Offences Act, 2012
 - (b) The Juvenile Justice (Care and Protection of Children) Act, 2000
 - (c) The Guardians and Wards Act 1890 or The Hindu Minority and Guardianship Act 1956
 - (d) The Indian Penal Code, 1860
 - (e) The Code of Criminal Procedure, 1973
- 2.2 Child Welfare Committees are advised to familiarize themselves with each of these statutes, so that decisions may be taken in each case keeping in view the overall legal regime that governs sexual offences against children. In cases involving pornography, the internet and stalking, CWCs are advised to familiarize themselves with the relevant laws in addition to the statutes listed above.
- 2.3 Where there are multiple statutes governing a particular issue, there is the challenge of conflicting rules and overlap of jurisdiction of different authorities. This result in the legal and regulatory regime provided for dealing with a particular class of offence being clogged with disputes on interpretation of rules and decisions on substantive issues being stalled owing to confusion on technical issues such as jurisdiction. Child Welfare Committees are therefore advised to construe the multiple legal regimes governing children facing sexual offences in a manner that avoids such complications so that such children are given speedy and efficacious support as envisaged under POCSO.
- 2.4 Keeping the above principle in mind, CWCs should adopt the following approach when applying POCSO:
 - (a) POCSO should be construed as far as possible harmoniously with the other statutes governing this area of the law, keeping in mind the rule stated in Section 42A of POCSO which provides that the provisions POCSO “shall be

in addition to and not in derogation of the provisions of any other law for the time being in force”

- (b) If there is a conflict between what is stated in POCSO and what is stated in some other law, then as per Section 42A of POCSO, it shall override any such other law. However, ordinarily, laws should not be interpreted as being inconsistent with each other.
- (c) Since POCSO is a special law for dealing with sexual offences against children, if a special procedure is laid down in this Act then, it will apply and procedures prescribed under general laws will to this extent be treated as having been modified.
- (d) Where POCSO is silent on recourse that may be had in relation to a child in a particular set of circumstances, the CWC shall refer to the other laws as referred to in Guideline 2.1, above to provide redress to the child, and where applicable, its family.
- (e) In cases where the law provides a remedy but the CWC is itself not authorised to pass decisions (as for instance under the Guardians Acts), the CWC shall refer the parties before it to the appropriate authority and shall use its good offices with the District, State and National authorities and government officials constituted or designated for dealing with issues of child welfare to assist the child and its family in obtaining redress before the appropriate forum.
- (f) In cases where the CWC has powers to give redress, but under a different law than POCSO (as for instance under the JJ Act), it shall without any delay take steps to initiate redress under such other law, including by advising the police or other parties before it to make a formal application under such law. In such cases, while the CWC shall follow the rules and procedures under the relevant law, it shall at all times attempt to supplement such rules and procedures, as far as possible, with the rules laid down in POCSO and apply these Guidelines in making its decision under such other law. *By way of illustration:* Say there is a case where the CWC turns to the JJ Act for a remedy not provided in POCSO, when making its decision under the JJ Act, the CWC should ordinarily apply the time limits provided in POCSO or these Guidelines for grant of remedy to children.

3. Overview of powers of CWC in cases of sexual assault against children

Main Role of CWC

- 3.1 The main role of the CWC under POCSO is to provide assistance to children who are alleged to be victims of sexual assault and, where applicable, their families, in obtaining care and protection. This role has been given to the CWCs in recognition of the fact that in cases of sexual assault it is important to look beyond the investigation and trial of the alleged perpetrator to providing assistance to the children in such cases who are in need of care and protection.

Who initiates the case before the CWC?

- 3.2 Under section 19 (6) of POCSO, it is the SJPU or local police that will report and produce a child before the CWC. So cases before the CWC will be initiated by the SJPU or local police. If the case under POCSO is brought to the notice of the CWC directly, the CWC shall inform the police / SJPU of the case.

In what circumstance can a child be brought before the CWC?

- 3.3 Rule 4(3) of the POCSO Rules lists the following circumstances in which a child is to be brought before the CWC. The child is:
- (a) living in the same or shared household with a person who the police allege has committed or is likely to commit or attempt to commit an offence under POCSO (such children are hereinafter referred to as “Children Found Co-Habiting with Accused” or “CFCA”);
 - (b) living in a child care institution and does not have parental or other family support, i.e., is either orphaned or abandoned in such institution (such a child is hereinafter referred to as “Institutionalized Child/Children”); or
 - (c) is found without any home or parental or other family support (such a child is hereinafter referred to as “Destitute Child/Children”).

In addition, Section 19(5) of the POCSO and Rule 4(3) of the POCSO Rules state that such a child should be determined by the SJPU or local police for reasons recorded in writing to be a child in need of care and protection (this report is hereinafter referred to as the “Police Care and Protection Report” or “PCPP”).

Monitoring Questions for the NCPCR in a case referred to the CWC

1. *Under what circumstances was the case referred to the CWC for inquiry/ assessment?*

4. General Rules of Procedure for CWCs

- 4.1 To ensure a fair and just proceeding, the CWC considering a case initiated under POCSO may look for guidance to the procedures laid down for CWCs in cases

initiated under the JJ Act. The JJ Act provides in Section 54 that the procedures for enquiries by the CWC should be, to the extent possible, as provided for in a summons-case for trial under the Code. The CWCs considering POCSO cases are advised to proceed in their inquiries according to these rules.

4.2 CWCs acting under POCSO are also advised, when conducting searches or other investigations, to act within the procedures and limits of the powers of a magistrate of the first class under the Code as has been provided for CWCs under the JJ Act in Section 29(5) thereof.

4.3 The constitution of the CWC shall be as provided in the JJ Act, subject to the following: The quorum for CWCs considering cases under Rules 4(4), 4(5) and/or 4(6) of the POCSO Rules shall include at least two members each having not less than 10 years of active experience as litigator (pleader) or judge, or a combination of experience as litigator (pleader) and judge totaling 10 years. Any decision under the said rules that does not have the concurrence of at least one such member shall require consent of all other members of the CWC. Subject to the foregoing, all decisions by the CWC may be taken by a majority of those present and voting.

4.4 In making any decision (whether at the initiation of proceedings under POCSO, or thereafter, including when reviewing previous decisions) as to the custody of the child, of whatever duration, the CWC should facilitate participation in such decision of the non-accused parents and where they are both dead, unable to participate or untraceable, of the non-accused Relatives (other than the parents) of the child. The CWC should also give the accused parent an opportunity to be heard in relation to the custody of the child. To the extent that the CWC is considering refusal of custody or permanent or temporary termination of custody of a Claimant Relative, it must treat the Claimant Relative as a respondent in a judicial proceeding who is contesting denial of custody to them with all attendant rights of natural justice, due process and a fair hearing. In order to achieve this, the CWC should in relation to any proceedings under or ancillary to Rule 4(4) or (5):

- (a) give notice of such proceedings, where possible in advance, to the parents and where they are both accused, dead, unable to participate or untraceable, to all other non-accused Relatives;
- (b) make efforts to trace the non-accused parents and where they are both accused, dead, unable to participate or untraceable, to trace all other non-accused Relatives (including minor siblings) and to issue and publish summonses upon them;
- (c) conduct proceedings in the mother tongue of the Concerned Relatives or provide them with competent translators so as to ensure that they follow the proceedings;

- (d) assist Concerned Relatives in obtaining legal representation;
- (e) furnish Concerned Relatives with the entire case record and all documents or other evidence or materials being considered by the CWC in arriving at any decision in such proceedings;
- (f) ensure a full and fair hearing to Claimant Relatives prior to passing any orders;
- (g) permit Claimant Relatives to cross-examine any party (other than the child) testifying before the CWC against grant of custody to them;
- (h) keep the parents and Immediate Relatives, and where they are all accused, dead, unable to participate or untraceable, the other Concerned Relatives informed as to where the child has been placed by the CWC; and
- (i) give full copies of all orders passed by it to the Concerned Relatives and arrange for official translations thereof in a language known to such parties upon their request.

5. Action to be taken by CWC on receipt of report or production of child before it

- 5.1 On being apprised of a case by the SJPU or local police, the CWC should first ascertain whether the PCPP has been filed.
- 5.2 If the PCPP has not been filed, the CWC must insist that the PCPP be produced without further delay and in any event within the period of 24 hours as prescribed under Rule 4(3) of the POCSO Rules. This is an important safeguard to ensure that the SJPU or local police adhere to the procedures laid down under POCSO. Requiring the police to officially state their reasons for producing the child before the CWC will also help to curb misuse of POCSO provisions for fraudulent purposes, such as illegal trafficking of children or failure of the police to make adequate efforts to trace the parents and relatives of Destitute or Institutionalized Children.

6. Action to be taken by CWC where the child produced before it is not a CFCA, Institutionalized Child or Destitute Child

- 6.1 The CWC should commence its assessment by first verifying whether the child is a CFCA, Institutionalized Child or Destitute Child. If the child does not fall into any of these categories, the CWC should ask the SJPU or police, as the case may be, to explain why the child has been produced before it and also ask for the children's current guardians or Relatives to be produced before it, so that they may be enabled to take over custody and care of the child. In such cases, the CWC may also advise the guardians or relatives as to what recourse they may have for financial, medical or legal assistance. In case of any

objection to the current guardian or custodian, the party raising the objection may be advised to take action under the appropriate Guardian Act.

7. Detailed Assessment by CWC under Rule 4(3) of POCSO Rules

7.1 Under Rule 4(3) of the POCSO Rules, the CWC is required to make a “detailed assessment” of the CFCA, Institutionalized Child or Destitute Child, as the case may be, who is reported to it as needing care and protection by the SJPU or local police.

7.2 The Rules do not expressly state what matters are to be assessed or what recommendations are to be made in the detailed assessment called for under Rule 4(3). The CWCs are advised to be guided in this respect by the underlying principle of POCSO that children who are victims of sexual assault, and their parents or other guardians be given the widest possible support in bringing the perpetrator to justice and securing medical and legal assistance for the child.

7.3 Section 47 of the Juvenile Justice (Care and Protection of Children) Act, 2000, gives discretion to the Committee in relation to a child in need of care and protection to dispense with his attendance during the inquiry. Rule 27 (2) of the Juvenile Justice (Care and Protection of Children) Central Rules 2007,¹ provides for sending written report to the CWC with the photograph of a child instead of producing him/her, when the child is under 2 years of age and medically unfit. **Thus, the presence of a disabled, severely injured or a child below 2 years before the CWC is not necessary for beginning with the statutory inquiry, and the CWC has powers to dispense with attendance of such child.** The CWC should be apprised by the police in writing of cases involving such children. In cases where for example, due to severe injuries or illness it would be detrimental for a child to travel to appear before the CWC and the child is not in a position to state whether he wants to live with his family, rule 4 (3) of the Rules of 2012 and section 19, sub-section (6) of the Act shall not be read as mandatory. In such cases, the CWC should form a panel that will visit the child at its habitual place of residence in order to satisfy itself as to the veracity of any claims or requests made by any party in relation to the child.

7.4 The assessment report shall state whether the child is a CFCA, Institutionalized Child or a Destitute Child and shall record reasons thereof. It may be noted that this categorization is only for assisting the CWC in finding the appropriate legal regime for providing support for the child and its family or other guardians. Therefore, if the parents or guardians of an Institutionalized Child or Destitute Child are found, or if the alleged perpetrator ceases to share a home with the child after submission of the assessment report, the status of the

¹ Rule 27 (2) of the JJ Rules 2007 states “*In case of a child under two years of age, who is medically unfit, the person or the organization shall send a written report along with the photograph of the child to the Committee within twenty-four hours and produce the child before the Committee as soon as the child is medically fit along with a medical certificate to that effect.*” Rule 27 (3) of the Delhi Juvenile Justice (Care and Protection of Children) Rules 2009 reproduces this same Rule.

child shall, for the purpose of these Guidelines, be treated as having been so altered from that point in time and the CWC shall issue orders or alter its previous orders accordingly. In this regard, reference may also be had to the Guidelines provided under the heading “*Powers where child’s family are in the process of being traced or are untraceable*”, below.

- 7.5 As a starting point in making its assessment, the parents or, where the child’s guardian is someone other than its parents, such guardian should be traced and summoned before the CWC in order that their concerns and requirements for the care and protection of the child be taken on record. CWCs should note that even Institutionalized Children who are alleged to have suffered sexual assault in their care institutions or child victims of sexual assault who are found as Destitute Children may have living parents or other family members. Therefore even in such cases, and not just in CFCA cases, the CWC must take immediate steps to contact the parents and, where they are dead or untraceable, the other Relatives of the child and facilitate in placing the child in the immediate care and custody of its willing Relatives as it is in the best interests of such a child to be given the comfort and care of his family. To avoid the risk of fraud or illegal trafficking, CWCs are advised to verify whether persons stating to be Relatives of a child are indeed so related to the child. In this regard, reference may be had to the Guidelines provided under the heading “*Verification of claimed relationship to child*”, below.
- 7.6 A copy of the PCPP should be given to the parents (one each to the mother and father) or other guardian as the case may be, preferably at the time of issuing notice to them to appear before the CWC. The notice summoning them should also state that they are entitled to appear before the CWC with a legal representative.
- 7.7 Proceedings should ordinarily be conducted in the mother tongue of the parents (and where this is different, in the mother tongue of the mother) or other guardian. Where this is not possible a translator should be provided, including for translating the contents of the PCPP, the notice, the assessment report of the CWC prepared under Rule 4(3) and any other orders of the CWC.
- 7.8 The assessment report should detail the submissions of the parents or other guardian as to the requirements for care and protection of the child. Where the CWC disagrees with any submission, it should state reasons thereof in the assessment report.
- 7.9 The assessment report should also record if the CWC is unable to provide assistance requested by the child, its parents or its other guardian for reason of inadequate funds or inadequate access to the requisite expertise or medical facilities in the area.
- 7.10 If the PCPP or the parents or other guardian of the child expresses apprehensions that the alleged perpetrator will carry out further sexual assault on the child, the CWC should inquire with the police as to why such perpetrator has not been arrested so that the child

can continue safely in the environment to which it is accustomed. Where such arrest is not possible, the CWC will discuss with the parents or other guardian of the child as to what assistance they need in keeping the child secure from the perpetrator. The submissions of the parents or other guardian of the child in this regard shall be included in the assessment report.

- 7.11 In making its assessment, the CWC may include recommendations to the SJPU or police initiating the case as to emergency medical treatment that the child may require in aid of the duties of the SJPU or police under Rule 4(5) of the POCSO Rules. The CWC may also recommend non-emergency medical treatment that they may deem desirable given the physical and emotional state of the child.
- 7.12 In making its assessment, the CWC may also, acting under its powers provided in Rule 4(7) of the POCSO Rules provide a support person to render assistance to the child through the process of investigation and trial of the case against the POCSO-accused. In addition to such support, the support person will also be under a duty as per Rule 4(12) of POCSO to inform the child and its parent or guardian or other person in whom the child has trust and confidence as to the availability of public and private emergency and crisis services as well as the availability of victim's compensation benefits. Rule 4(12) states that the information to be provided by the support person to the child and its parent, guardian or other person in whom the child has trust and confidence is not limited to the items listed therein. Therefore, CWCs are advised to take advantage of the provision for appointment of support persons to enable, through the support person, as wide a range of assistance to the child and its family or other guardian in obtaining medical, legal and financial assistance that may be necessary as a result of the sexual assault or apprehension of sexual assault on the child in its current circumstances. Appointment of a support person requires the consent of both the child and the child's parent, guardian or other person in whom the child has trust and guidance (For further guidelines as to appointment of support persons, refer to *Guidelines for Support Persons, Paragraph 14 below*).
- 7.13 A copy of the assessment report shall be given to the parents or other guardian of the child. Where the report is not written in the mother tongue of the parents or other guardian, the CWC shall make available an official translation of the report along with the original report to them. Where the parents have different mother tongues, the translation shall be in the mother tongue of the mother.

Monitoring Questions for the NCPDR in a case where CWC has made its assessment report

- 1. Did the CWC constitute a panel for conducting preliminary visits to the place of residence of the child during its assessment/ inquiry?*
- 2. On what grounds did the CWC refuse grant of custody to the parents?*

3. *On what grounds did the CWC consider institutionalization of the child?*
4. *What evidence was relied upon by the CWC while conducting the assessment?*
5. *Did the CWC take into account any preference or opinion expressed by the child on the matter?*
6. *What procedure was followed by the CWC for inquiry in a case where the child was below the age of 2 years and / or medically unfit?*

8. Powers where child's family is in the process of being traced or are untraceable

- 8.1 In cases where the child is found without any family or other legal guardian or any home or the child has a non-family legal guardian but such legal guardian is himself or herself an accused under POCSO, the CWC has no explicit powers under POCSO, but may have the child declared as a child in need of care and protection under the JJ Act and pass orders for the child's immediate living arrangements and other care in accordance with its powers there under. If, during the course of proceedings in such a case, the parents or other relatives of the child are traced and they express a willingness to take care of the child, then the CWC shall immediately ensure that the child is placed in their care and shall assist them in participating in the investigation and trial under POCSO.
- 8.2 Even if the child has lost both its parents, or if neither parent is traceable, the Committee must Endeavour to find other relatives of the child willing to take care of the child. Section 39 of the Juvenile Justice (Care and Protection of Children) Act, 2000, makes it clear that even children's homes or shelter homes shall have restoration of the child as their prime objective and shall take steps for a child deprived of family atmosphere to live with its family.
- 8.3 Under Rule 27 (7) of the Juvenile Justice (Care and Protection of Children) Central Rules 2007 whoever produces a child before the Committee shall submit a report on the circumstances under which the child came to their notice and efforts made by them on informing the police and the missing persons squad and in cases where a recognized voluntary organization or any police personnel produce a child before the Committee, they shall also submit a report on the efforts made by them for tracing the family of the child. The CWC may be guided and seek the assistance of the police in accordance with the steps as laid down by the Supreme Court in such cases.
 - In *Hori Lal vs. Commissioner of Police, Delhi and Ors* W.P (Crl) 610 of 1996, the Supreme Court laid down the steps to be taken by Investigation Officers for tracing missing girls. These steps include, publishing photographs of the missing child with

the permission of the parent/guardian, making inquiries in the neighbourhood, contacting the school and making inquiries on incidents of violence in the family.

- In *Bachpan Bachao Andolan vs. Union of India and Ors* W.P (C) 75/2012, the Supreme Court passed interim directions that that in case a complaint with regard to any missing children is made in a police station, the same should be reduced into an FIR and appropriate steps should be taken to see that follow up investigation is taken up immediately thereafter. The Supreme Court directed the National Legal Services Authority the para-legal volunteers, recruited by the Legal Services Authorities, should be utilized, so that there is, at least, one paralegal volunteer, in shifts, in the police station to keep a watch over the manner in which the complaints regarding missing children and other offences against children, are dealt with.

The CWC may be guided and seek the assistance of the police in accordance with the steps as laid down by the Supreme Court in this case.

9. Verification of claimed relationship to child

- 9.1 CWC must satisfy itself that persons claiming to be relatives of the child are indeed so related to the child. In order to establish the relationship of a person to a child before it, the CWC may refer to any one or more of the following materials: medical records, school records, civic registrations (such as birth certificates, ration cards, adhar cards, municipal or panchayat records), DNA tests, or any other materials establishing the claimed relationship. The CWC may also call upon any one or more of the following persons to confirm such relationship: the child's school teachers, doctors, the relevant panchayat, district magistrate or other local authority, neighbours, or any other persons in order to satisfy itself in this regard. It is clarified that the foregoing is in the form of guidelines to the CWC and none of these are mandatory requirements for verifying claims of filial relationship by parties before the CWC in relation to the child whose case is being considered under POCSO. CWC shall not ordinarily question birth certificates or court orders granting guardianship/custody that are produced before it as proof of a party's relationship to the child in question.

10. Change of custody of the child

- 10.1 Where the child is a CFCA, the CWC is required under Rule 4(4) of the POCSO Rules to make a determination as to whether the child should be removed from the custody of his family or shared household and placed in a children's home or shelter home. In making such decision, CWCs are required to consider the factors listed in Rule 4(5) of the POCSO Rules. For further Guidelines as to how Rule 4(4) is to be applied, refer to "*Removal of child from family home*", below.
- 10.2 Rule 4(4) is silent on action that may be taken as to custody if the child is an Institutionalized Child or a Destitute Child. But change in custody of an Institutionalized

Child who has no family, or whose family is yet to be traced or is untraceable, may be required for instance when the care home itself is implicated in the alleged offences. Similarly, for Destitute Children alleged to have suffered sexual assault, a custodian will have to be designated so that the child can be taken care of. In such cases, the CWCs are advised to exercise their powers regarding Institutionalized and Destitute Children under the JJ Act. The CWC may direct Childline or some other recognised party under the JJ Act to initiate proceedings under the JJ Act in relation to the child and pass orders for change of custody of an Institutionalized Child or institutionalisation of a Destitute Child, should this be deemed fit.

- 10.3 In addition, the CWC should exercise its powers under POCSO to appoint a support person for the child.
- 10.4 Simultaneously, the CWC must take immediate steps to contact the parents and, where they are dead or untraceable, the other Relatives of the child and facilitate in placing the child in the immediate care and custody of its willing Relatives as it is in the best interests of such a child to be given the comfort and care of his family.

11. Removal of CFCA from family home

- 11.1 Under Rule 4(4) of the POCSO Rules, within three days of receipt of a PCPP under Rule 4(4) in relation to a CFCA, the CWC is required to make a determination as to whether “the child needs to be taken out of the custody of his family or shared household and placed in a children’s home or a shelter home.”
- 11.2 Under the law, there is no concept of custody of a “family” as custody belongs to the parents or other guardian of a child. A child residing with its family is in the custody of its parents or other guardian and not strictly speaking in the custody of its family as a whole. However, in order not to render this provision of POCSO meaningless, CWCs are advised to construe “custody of his family or shared household” as referring to residence of the child in the family home. In other words, in cases of FCAs, the CWC has to consider whether continued residence of the child in the family home along with the alleged perpetrator would be against the best interests of the child and its non-accused family members and consider whether placement of the CFCA in a children’s home or shelter home is required.
- 11.3 The guiding principle in such cases should be that since the CFCA has committed no wrong, it should not be deprived of its family or removed from the familiar surroundings of its home, except in the rarest of rare cases.
- 11.4 CWC shall at all times regard institutionalisation of all forms, for whatever period, as a measure of last resort and not as a substitute for placement of the child with a Relative.

- 11.5 CWC shall at all times regard institutionalization of all forms, for whatever period, as an interim measure contingent upon arrangements being made for the child to be restored and replaced within his or her family in custody of a Relative.
- 11.6 CWC shall act on the principle set out in Section 39 of the JJ Act which provides that placement in a children's home or shelter home shall be temporary measures, with the objective being at all times to enable restoration of the child to its family.
- 11.7 Deprivation of a child of custody in the family shall have to be justified by the CWC in a reasoned order for each day that such deprivation is ordered.
- 11.8 The power of the CWC under Rule 4(4) of the POCSO Rules to remove the CFCA from its habitual place of residence or to deprive it of parental custody are primarily emergency powers to be used in exceptional cases where:
- (a) there is strong evidence that the child is totally unprotected in its home from being subjected to further assault or threats of such assault from the alleged perpetrator; *and*
 - (b) it is not possible for the alleged perpetrator to be prevented from accessing the child in the said home.
- 11.9 Ordinarily, placement in a care home or shelter of a CFCA under Rule 4(4) would be considered by the CWC only in cases where the person accused of the offence against a child under POCSO is:
- (a) a parent or other Relative of the child; *and*
 - (b) lives in the same household or (in case the parents are separated or the child has more than one home) lives in one of the households where the child habitually resides.
- 11.10 CWCs shall at all times regard the ability of a child to live with its family as an inalienable part of the child's best interests and welfare. CWCs should first explore and comprehensively exhaust all options of a family placement with Relatives before considering placement of the child in a children's home or shelter home.
- 11.11 Ordinarily, the child should be permitted to remain in the custody of its non-accused parent. So long as a non-accused parent applies for or has custody of the child, no other Relative shall be permitted custody of the child by the CWC.
- 11.12 Where parents are both accused under POCSO or dead or untraceable, the child should be permitted to remain in the custody of its non-accused Relatives who state they wish to remain in custody of or to obtain custody of the child. The mother ought to be restored custody of the child should she be acquitted, her conviction be reversed on appeal or

charges against her dropped. Similarly missing parents should be granted custody of the child as soon as they are traced.

11.13 Where parents are both accused under POCSO or dead and untraceable and there are competing Claimant Relatives, the order of preference for grant of custody shall be as follows:

- (a) Mother of non-accused parent;
- (b) Father of non-accused parent;
- (c) Maternal grandmother;
- (d) Paternal grandmother;
- (e) Adult female sibling;
- (f) Maternal aunt;
- (g) Paternal aunt;
- (h) Maternal grandfather;
- (i) Paternal grandfather;
- (j) Adult male sibling;
- (k) Other Relative not listed above.

11.14 Where there is a threat of further sexual assault or other victimization of the child by the alleged perpetrator in its home, the CWC should ask the police why it is not arresting the alleged perpetrator before making any decision that would interfere with the current living arrangements of the child.

11.15 Where the alleged perpetrator is not a Relative of the child and can be removed from the family home, there would ordinarily be no need to alter the present residence of the child.

11.16 Where the alleged perpetrator is not a Relative of the child, but for some reason cannot be excluded from the family home and there is an imminent threat of further victimization of the child by such alleged perpetrator, the CWC should explore with the child's Relatives alternatives for accommodation of the child in another family home with such Relatives.

11.17 If the accused in the POCSO case undertake to or are under court orders to remove themselves from the home of the child, then there would ordinarily be no necessity for the CWC to order removal of the child from its home/habitual place of residence or from the custody of its non-accused Relatives. If the CWC has passed orders removing the child from the family home or from the custody of a Relative, such orders should be reversed where the accused undertake to or are ordered to remove themselves from the family home.

11.18 If the accused in the POCSO case are sentenced to prison, then there would ordinarily be no necessity for the CWC to order removal of the child from his or her home/habitual place of residence or from the custody of his or her non-accused Relatives as the child will not be exposed to the perpetrator.

- 11.19 Where the accused is not a parent, or where one of the child's parents is a non-accused, the CWC shall not disrupt custody if the non-accused parents undertake that the accused shall not be granted access to the child. Where the CWC believes the child must be removed from its home, custody of non-accused parents shall not be disrupted where such parent(s) can find an alternative home where they can live with the child. If the alternative home is outside the jurisdiction of the CWC, then the CWC or other equivalent authority in the relevant area shall be informed accordingly and involved in the matter. No CWC shall interfere with parental custody solely on the ground that the alternate home found by the non-accused parent(s) is outside of its jurisdiction.
- 11.20 If the child is under the age of six months, then it should not under any circumstances be deprived for any period of time of the custody and company of its mother, even if she is an accused in the POCSO case. In such cases if the child has to be removed from the family home, it shall be accompanied at all times by its mother who may be placed under supervision if it is felt necessary by the CWC.
- 11.21 CWC proceedings shall terminate and custody orders reversed upon acquittal or reversal of conviction on appeal or dropping of a complaint under POCSO. If the child or its mother (whether or not accused) or a non-accused father or other non-accused Relative of the child (including a minor or adult sibling) expresses apprehensions about restoring the child to the formerly accused parent or other custodian or remaining in the same household with the formerly accused party, the CWC should assist them in identifying lawyers and other persons experienced in these issues for advice and assistance.
- 11.22 In the event the accused in the POSCO case is found guilty and sentenced to prison, if the child or its mother (whether or not accused) or a non-accused father or other non-accused Relative of the child (including a minor or adult sibling) expresses apprehensions about restoring the child to the custody of the offender or being in the same household as the offender after completion of his or her prison sentence, the CWC should assist them in identifying lawyers and other persons experienced in these issues for advice and assistance.
- 11.23 If the child is old enough to speak and express its wishes clearly, the CWC must place on record the wishes of the child after speaking to it. The wishes of the child in favour of living with parents or other Relatives must be accorded priority. When the child is unwilling to live with its parent or other Relatives, the CWC should ascertain reasons for such refusal and make efforts to determine whether apprehensions of the child in this regard can be set at rest by taking appropriate measures. In such a case, the CWC is advised to consider whether the custody of the child with Relatives should be temporarily under supervision, and full-fledged custody be given to the family once the CWC is satisfied that the child has been able to settle in with the parent or other Relative as the case may be.

- 11.24 When making a determination under Rule 4(4), the CWC shall take into account the factors listed in Rule 4(5) with a view to enabling the child's family to help the child recover from the assault, to rehabilitate the child in its school and with its peers and to otherwise best care for the child in the circumstances, including by giving counselling to the child's Relatives and assisting them in obtaining financial sponsorship for the child where the accused in the POCSO case was a breadwinner for the family. It is clarified that poverty or illness or disability, whether of the child or of a Claimant Relative, shall not be taken as factors justifying removal of a child from its home or denial of family custody. Rather, such factors shall be considered by the CWC to formulate ways and means by which the non-accused Relatives can be aided and counselled in better caring for the child. A history of violence alone shall not be a reason for depriving the child of the custody of a Relative unless such violence is apprehended against the child or its Relatives in connection with the prosecution of the case against the POCSO accused. Relatives being granted custody shall be counselled against harsh treatment or infliction of physical pain as a measure of disciplining the child.
- 11.25 Being an emergency power, Rule 4(4) shall be exercised primarily to safeguard the child in the immediate aftermath of a proceeding being invoked under POCSO. Therefore Rules 4(4) and 4(5) shall not be applied to make long term or permanent custody arrangements for a CFCA. Where the CWC is not satisfied with the arrangement made by the CFCA's parents or other Relatives for the long term residence or custody of the child, action shall be initiated through the appropriate parties under the applicable Guardian Acts.
- 11.26 Bearing in mind the principles that the best interests of the child are paramount; that orders as to custody of a minor are always open to alteration where this would be in the best interests of the child; and that institutionalization of a child under Indian juvenile laws is seen as temporary measure with the ultimate objective of restoring and rehabilitating a child in its family environment, the CWC shall at all times make efforts to ensure that the child is not deprived of enjoyment of the custody and company of its Relatives except for the duration and to the extent strictly necessary. Therefore, orders passed under Rules 4(4) and 4(5) shall be subject to immediate reconsideration on application by any one or more non-accused Claimant Relatives and shall in any case be subject to weekly reconsideration by the CWC with a view to enabling placement of the child in the custody of its non-accused Relatives whom the CWC shall actively seek out and encourage to take custody of the child.

12. Case Management and Care of the Child While Institutionalized

- 12.1 The CWC shall hold itself responsible for the welfare of the child so long as it is subject to orders of the CWC placing it in any institution or interfering with the child's continuous enjoyment of the company of its Relatives. Therefore, CWC shall not

consider the case as closed once an order for placement of the child in a care home or shelter is passed whether such order is in relation to a CFCA under Rule 4(4) of POCSO, or in relation to an Institutionalized Child or Destitute Child.

12.2 Support persons and care home personnel shall be directed by the CWC to provide weekly status reports as to the physical and emotional status and the developmental and educational progress of any Institutionalized Child or Destitute Child subject to a care order of the CWC under the JJ Act.

12.3 In case of institutionalization of a CFCA, the following Guidelines shall be applied for the duration of its institutionalization:

- (a) The child's parents and Concerned Relatives shall be kept fully informed of where the child has been placed, the living conditions where it has been placed, including the food given and the sleeping arrangements for the child and the identity and child-care experience of the persons entrusted with the care of the child. The parents, and where they are both accused or dead or unable to participate or untraceable, the other Immediate Relatives of the child, and where they are all accused or dead or unable to participate or untraceable, other Concerned Relatives shall be: (i) given weekly reports as to the physical and emotional state and developmental and educational progress of the child; (ii) informed immediately in case the child falls ill or suffers any injury; and (iii) given access to the medical records and doctors engaged by new custodians of the child in case of any injury or health issues in the child.
- (b) The parents, and where they are both accused or dead or unable to participate or untraceable, the other Immediate Relatives of the child, and where they are all accused or dead or unable to participate or untraceable, other Concerned Relatives shall have the right to seek alternative medical advice in the event any surgery or other medical procedure or medication is prescribed for the child.
- (c) If the child is being breast-fed, the mother shall be allowed to breast-feed it at all times if she so wishes. Feeding the child expressed milk pumped by the mother through a bottle shall not be considered a substitute for breast-feeding where the mother expresses a wish to breast feed.
- (d) To minimize the trauma of dislocation on the child, if the child is below the age of ten years, the mother, and where she is dead, untraceable or unable to do so, any other Concerned Relative known to the child shall be allowed to feed it all meals, bathe it, groom it (including making its hair and cutting its nails) and put it to sleep. CWC shall be sensitized to the fact that for a young child to have these functions attended to by strangers would be additionally traumatic.

- (e) The parents and where they are dead, untraceable or unable to do so, any other Concerned Relative family shall be permitted to supply food to the child so as to maintain the diet to which it is accustomed.
- (f) For all children, and particularly in case the child is below ten years of age, the CWC shall ensure that the routine, feeding preferences, playing and resting habits and toys to which the child is accustomed are made known to its new custodians and are maintained to the greatest extent possible.
- (g) Placement of the child shall be, as far as possible, within easy distance of its family and home.
- (h) Placement of the child shall be such that it is able, as far as possible, to continue in the same school and be cared for by the same doctors as prior to initiation of the POCSO case and in the event a break is necessary, that the child be restored to its former school and to the care of its former doctors as soon as possible.
- (i) If a child has to be removed from the home, its mother or failing her, atleast one other adult Immediate Relative, or failing them atleast one other adult Concerned Relative shall be allowed to accompany and live with the child wherever it is placed.
- (j) In all situations the child shall have the widest possible regular access to its non-accused Relatives, especially its mother, grandparents and siblings.
- (k) Even where Relatives express themselves as unable or unwilling to take over guardianship of a child, this must not result in a total severance of the child's relationship with these Relatives. The child must be enabled to know them, recognise them, visit them and foster bonds with them even while in an institution, children's home or shelter or in foster care.
- (l) Even while in an institution, children's home, shelter or in foster care every effort will be made to encourage and nurture the child's relationships with his non-accused Relatives, both by in-person interaction and through written, telephonic, video telephonic and other means of communication available.
- (m) The CWC shall ensure that care home personnel and foster careers are trained to encourage and foster the child's relationship with all Relatives. Children's homes, shelter and foster careers shall be sensitized to the fact that family interaction can be unsettling for the child, but such behavior is natural in the circumstances and will not derogate from their duty of fostering the child's ties with its Relatives. In this regard reference may be had to the general principle of law that negative reactions or responses of a child during visitation with a parent shall not be the

deciding factor in maintaining such visitation or grant of custody to the visiting parent. This principle shall be extended to all Relatives of the child who wish to maintain ties with it. CWCs shall be sensitized to the fact that and shall sensitize care home personnel and foster caregivers to the fact that temper tantrums, crying or some degree of resistance and resentment are expected to occur in Relative-child interactions; that younger children may act in a rejecting or hostile or fearful manner towards visiting Relatives owing to their inability to understand why they are being kept away from the family home or why the Relatives go away or do not take them home with them. In such situations assistance should be taken from child specialists and persons in whom the child demonstrates trust and confidence in helping the child develop a positive attitude towards all visiting Relatives, in particular visiting parents.

- (n) CWCs shall be sensitive to the fact that in cases of sexual assault by male family members on a child, where the mother is accused as an accomplice, the mother is herself often a victim of sexual and other violent assault by the same parties. Such mothers have typically themselves been subjected to long years of physical abuse and extreme emotional trauma and intimidation by the offending male family members. Where the CWC is satisfied that the mother did not act wantonly towards the child but was co-erced in her acts or omissions by the main accused under POCSO, CWC may permit her access to the child and facilitate re-establishment of trust and mutual confidence between mother and child to the extent possible, taking the assistance of child specialists and persons in whom the child has trust and confidence so as to minimise the trauma and confusion of the child in such circumstances. If a mother is convicted as an abettor or accomplice and not as the direct perpetrator of the sexual assault on the child, then she should be allowed atleast such access to her child as is generally permitted under the law to women prison inmates.
- (o) Even while in an institution, children's home, shelter or in foster care, the cultural and religious heritage of the child of the family and community into which it was born shall be fostered and nurtured in that child. The child shall be enabled to be with its family on all festival days and to participate in all religious observances with them.

12.4 *Time limit for inquiry by CWC:* When a child has been placed by the police in a shelter home under section 19 (5) of the Act, the CWC must conclude the inquiry within the prescribed time limit of 3 days [Rule 4 (4) of the Rules of 2012]. **If a child placed temporarily in a shelter home is released in the interim custody of his family, the compulsion for the CWC to conclude the inquiry within three days may not be necessary.** Strict adherence to the time schedule should not lead to sacrificing just and fair nature of the proceeding or giving hasty

decision. In such cases, the inquiry should be concluded expeditiously without any unnecessary delay.

13. Reporting to NCPCR and SCPCR

13.1 CWCs are required under Rule 6(2) of the POCSO Rules to furnish, at their request, the NCPCR or SCPCRs, as the case may be, with reports on cases of child abuse falling within their jurisdiction. Such reports must include the full case file, including the PCPP, minutes of all hearings and deliberations and copies of orders passed. CWCs should mention in such reports if they face any paucity of resources or disability in accessing expert legal, medical or other advice in such cases so that the NCPCR or the SCPCR, as the case may be is apprised of institutional difficulties facing the CWC in deciding particular cases.

Monitoring Questions for the NCPCR regarding Case-Management and Care of the Child by CWC

- 1. What was the quantum of temporary financial support provided to the child to cater to his immediate needs?*
- 2. On what basis was the quantum of financial support determined?*
- 3. Were copies of all orders passed by the CWC furnished to the concerned relatives/guardians?*
- 4. What was the approximate time taken for conclusion of inquiry since the receipt of the report from the police or any other person? State the reasons for delay, if any?*
- 5. Nature of services provided by the CWC to the affected person?*
- 6. Were arrangements made by CWC to ensure availability of qualified personnel as translators/ interpreters/ special educators?*
- 7. Were there any other restorative measures taken for the child by the CWC?*

Roles and Functions of Support Persons under the POCSO Act

14.1 The journey through the medical and legal process can result in secondary victimization to the concerned child. This re-victimization takes the form of delays at every stage, lack of sensitivity by the actors, the survivor being expected to communicate with multiple personnel for various services. These barriers can be overcome by having a coordinated mechanism with a single point contact person who can be engaged in dealing with the case. The support person

will handhold the child and his /her parents or guardians through the entire law enforcement/judicial process, thus making it easy for him / her to navigate the system as there is one person coordinating the entire effort, and acting as the link between the survivor and the court process. It is, therefore, recommended that the CWC's offer to assign a Support Person to the child survivor in all cases under Rule 4 (7) of the POCSO Rules.

14.2 The child and his parents / guardian or other person in whom the child has trust and confidence may, on their own, seek the assistance of a support person or organization for proceedings under the Act. The Special Court can assign a Support Person to the child as well.

14.2 The DCPU's and the CWC's are advised to keep a list of persons / organizations who can be appointed as Support Persons. It is suggested that Support Persons can be drawn from the State Legal Services Authorities. In Delhi, it is suggested that Support Persons can be drawn from the Crisis Intervention Centers functioning under the Delhi Commission for Women.

14.3 A support person should preferably have a minimum of four years work experience on issues related to violence against children / women. It is advised that Support Persons comprise of people with the following qualifications:

- Persons with legal or para-legal qualifications;
- Persons who can offer counseling and emotional support;
- The Support Person must comprise of an individual who is conversant in the mother tongue of the child and the family to help them fully participate in the CWC proceedings.
- The DCPU's and CWC's must hold training workshops every year with the Support Persons to upgrade their skills in dealing with survivors.

14.4 The support person should walk the child from the start of the case to the end, and keep in touch with the child at the community level. Specifically, it is recommended that the Support Person be responsible for performing the following functions:

- The support person should accompany the child for the medical examination;
- The support person should accompany the child for recording of FIR;
- The support person shall create a report of the child's case noting the details of the crime as well as the child's personal information. The support person shall record compensation and / or rehabilitation requirements and forward the same to the State Legal Service Authority;
- The support person should provide the child with immediate requirements, such as, food, clothing or medicines etc;
- The support person is required to intimate the lawyer associated with the court about the case and forward all the documents including the medical examination report, FIR, and other relevant documents;
- The Investigating Officer (IO) conducting the investigation will be required to update the support person about the progress of investigation at least once a week;

- *Witness Protection:* The support person will be responsible for communicating and coordinating with the police, Lawyer and the Public Prosecutor to ensure that the child and all the other witnesses are safe and assist the survivor in filing a fresh FIR in case of threats as well as coordinating with other agencies to ensure alternative custodial arrangements.
- *Child Protection Plan:* After the Support Person has had an opportunity to interact with the child, she / he should formulate a Child Protection Plan in respect of the child. This plan will be submitted to the CWC and can serve as a working tool that should enable the family and professionals to understand what is expected of them and what they can expect of others. The aims of the plan are: To keep the child safe; to care for the child and promote his welfare; and to support his / her family.
- The support person will coordinate with the concerned police official to ensure that the Police report under section 19 is sent to the Special Court for grant of interim compensation, if required.

14.5 The Support Person must be present in the court room during the course of the trial, and should accompany the child to the witness stand. However, the support persons cannot prompt, sway, or influence the child during his / her testimony.

14.6 The Support Person shall keep all information pertaining to the case confidential. The right to privacy of the child must be respected.

14.7 The Support Person must keep the child survivor and his / her parents / guardians informed of the court proceedings. For example, the child and his / her parents or guardians may require information on how courtroom proceedings are conducted, which the Support Person should be able to provide.

14.8 In case the child or his / her parents / guardians are concerned about the safety of the child – and express this apprehension to the Support Person - the information must be brought to the notice of the court or another relevant authority [Rule 4 (8)]. A safety plan must be drafted by the Support Person and submitted to the CWC.

14.9 The prosecution, Police, Special Judge, and CWC's shall cooperate with the Support Person and provide him/her with relevant information as and when necessary. Relevant information that needs to be conveyed to the child and his/her parents or guardians includes, information on crisis intervention cells, procedural steps involved in criminal prosecution, victims' compensation benefits, the status of investigation of the crime, arrest of the accused, the filing of charges against a suspected offender, the schedule of court proceedings, the status of the accused, and the verdict of the Court [Rule 4 (12)].

14.10 The child or his/her parents or guardians can request the CWC or the Court to have the services of the Support Person terminated. As per Rule 4 (10) of the POCSO Rules no reasons

have to be recorded for terminating the services of the Support Person. In such cases, the CWC should offer to provide another Support Person to the child.

Monitoring Questions in a case where Support Person has been appointed

- 1. Did the support person provide timely updates of the proceedings of the case and its potential outcome to the child and his non accused parent or guardian?*
- 2. Did the support person apprise the child of the role he has to play in the judicial process?*
- 3. Did the support person inform the child/ non accused parents/ guardian of the information specified within Rule 4(12) of the POCSO?*
- 4. What other concerns of the child did the support person address?*

List of Monitoring Questions for the CWC / Support Persons for Quarterly Collection of Data by the NCPCR

1. *No. of cases referred to CWC by the police, NCPCR or SCPCR?*
2. *No. of cases where the police or person producing the child has submitted a written report while reporting the case to the CWC?*
3. *No. of cases referred by the CWC for:*
 - *Medical care*
 - *Mental health support*
 - *Protection/ shelter*
 - *Sponsorship services*
4. *No. of support persons designated by the CWC to render support to the child in the process of investigation and trial?*
5. *What is the criterion for appointment of support person by the CWC?*
6. *Quantum of financial or office assistance provided to the Support Persons by the CWC for performing their duties under the Act?*
7. *No. of cases where the CWC has refused grant of custody to the parents?*
8. *No. of cases where the CWC has institutionalized the child?*
9. *No. of cases where the CWC has conducted preliminary visits to the place of residence of the child during its assessment/ inquiry?*
10. *No. of cases where the CWC has provided temporary financial support to the child to cater to his immediate needs?*
11. *No. of cases where the CWC has undertaken follow up of cases after passing an order under Rules 4(4) & 4(5)?*

Roles and Functions of Health Professionals under the POCSO Act

Role of NCPDR in Monitoring: What to Monitor and How to Monitor

The following are in the nature of guidelines to Health Professionals in discharge of their functions under the Protection of Children from Sexual Offences Act, 2012.

A. Definitions

In these Guidelines, unless otherwise stated or otherwise required in the context, words and expressions listed hereunder shall have the following meaning:

(a) “*Health Professionals*” means both individuals and institutions that provide health care services and includes, but is not limited to, general practitioners, specialists, nurses, mental health practitioner and / or public health practitioners.

(b) “*Medico-Legal*” means a combination of medical and legal aspects. A medico legal case in these guidelines means a case under the POCSO Act which has medical implications.

(c) “*Psychological First Aid*” means skills to assist a child from recovering from an offence perpetrated under the POCSO Act. Psychological First Aid limits the distress experienced by the child survivor.

(d) “*Survivor*” means a child who was a victim of any of the offences under the POCSO Act and is recovering, or has recovered from the sexual offence.

Children are very likely to be victims of sexual assault due to vulnerability related to age. The prevalence of child sexual abuse in India is known to be high. A National Study on Child Abuse conducted by the Ministry of Women and Child Development showed that more than 53 percent children across 13 states reported facing some form of sexual abuse while 22 percent faced severe sexual abuse. Both boys and girls reported facing sexual abuse. Most commonly, it has been observed that abusers are persons who are well known to the child and may even be living in the household. Children are considered soft targets for sexual abuse because they may not realize that they are being abused. Abusers are also known to use chocolates and toys to lure children. Further, children are more easily threatened and less likely to speak out about the abuse. In our society, children are also taught to respect and obey authority. It is this culture that abusers take advantage of, to coerce children and commit them to silence. Therefore disclosing sexual abuse for children is extremely difficult. Further families and care givers due to shame, stigma and notions of honor, fail to report such incidents. However the contact of children with the health systems is inevitable because sexual abuse has several health consequences both emotional and physical. These invariably bring the child for health care to a hospital or any other health institution.

It is therefore imperative for health professionals to be equipped with the knowledge, perspective and skills related to responding to the issue of child sexual abuse. There are several pathways by which a child sexual abuse survivor may come in touch with the hospital.

B. Pathways for entry of a child into a health centre/ hospital

1. Health consequences reported by the child makes the health professional suspect that the child has been subjected to sexual abuse;
2. Child in the course of treatment and communication with the health professional may disclose that he/ she was sexually abused;
3. Child may be brought to the hospital immediately after a sexual assault for treatment.

Indicators of Child sexual abuse

Physical	Behavioral
Unexplained Genital injury	Regression in school performance behavior, developmental milestones
Recurrent vulvovaginitis	Unusually clingy behavior
Unwanted Pregnancy	Sleep disturbance, eating disorders
Bed wetting	Problems at school
Pain in urination, defecation	Poor self esteem
Anal complaints (fissures , pain, bleeding)	Inappropriate sexual behavior for a specific age
Bed wetting	Depression
Urinary tract infections	
Sexually transmitted infections	
Discharge from the vagina	

Source – *Guidelines for medico legal care of victims of sexual violence, WHO, 2003*

- The above described health complaints can come to a General Practitioner (GP), Pediatrician or a Gynecologist in any health setting whether private or public. If such symptoms are seen in a clinical setting, it is important to ask if there has been sexual abuse. Sensitive clinical enquiry and therapeutic care may enable the child to disclose sexual abuse. Certain techniques can be used to explore whether the presenting health

complaint is related to the issue of sexual abuse after ruling out all aspects of clinical enquiry.

- The child and parents should be taken in confidence and explained the reason for it. It must be explained to the parents that if the medical complaint is not being controlled in spite of medications and precautions, there is a need to assess for sexual abuse. Health professionals need to use different techniques for communicating with children. Use of non technical language, to discuss if there was sexual abuse showing male and female dolls to explain genitals of a boy and a girl, providing a child with colors and paper to show where she was touched, books with pictures to probe about the nature of abuse can become important tools for communication.

Example – A 6 year child reports to a health professional with persistent burning micturition and refusal to urinate. The child has been brought for the 3rd time with the same medical complaint in a span of 2 months. The doctor has noticed that the parents have given the prescribed medications, in spite of which the child continues to have the same complaint. The doctor explained to the parents about the need to speak to the child about the possibility of being sexually abused. This was done with the help of showing a doll and asking whether the 6-year-old child was touched on her genital area and whether the pain occurred after that. The doctor also enquired about the child's daily routine and noticed that the child would complain of pain in urination after school. After probing gently about whether she was touched by anybody in the school on the genitals with the help of a doll, the child revealed that she was abused by the school watchman and was also able to show on the doll the areas of body where she was touched.

- Sometimes the indicators of sexual abuse may not be as specific as mentioned in the table above. In spite of this a health professional may have an index of suspicion that a child could have been sexually abused. This is especially true when the child reports vague aches and pains which don't have any underlying cause. In such situations, it is best to probe about sexual abuse, but if the child doesn't report any such act, it would be important to have a follow up visit from the child. Additionally parents/care givers also need to be taken in to confidence and explained that the symptoms showed by the child could be connected to sexual abuse and so they should also probe if the child has faced any such episode.
- While carrying out such probing/ enquiries, health professionals should also be mindful of the fact that perpetrators could also be members of the family / parents / care givers

accompanying the child. Therefore such a general assessment related to the accompanying person should also be carried out by the health professional before embarking upon probing for abuse

- If the doctor – child interaction brings out the issue of child sexual abuse, as a first care response the health professional must assure the child and parents that treatment and care will reduce the clinical symptoms of abuse and counseling will help in overcoming trauma too. This reassurance can go a long way especially when they have to pursue police and legal action.

C. Steps to Provide Psychological First Aid

- As a critical component of care, health professionals must include the component of psychological first aid in their interaction with survivors of sexual abuse. This would include listening without judging, encouraging the child to reveal her feelings about the episode, providing basic messages to communicate that the sexual abuse was not her fault, assessing safety of the child, and encouraging her to follow up for counseling.
- Health professionals should communicate the next steps once disclosure of sexual abuse has occurred. Aspects of examination, treatment, counseling, medico legal information should be shared with child and care givers in a simple non technical language. This would make the child comfortable and have her participate in decision making along with her parents.
- While examination and treatment is in progress, health professionals should encourage the child to reveal her feelings. This should be done with the aim of enabling the child to ventilate her feelings and emotions about the episode. However while doing so, health professionals must have the knowledge that each child would cope with the assault differently. Many survivors may not show outward distress and crying. It is therefore important that providers don't make assumptions about a child's psychological distress, but understand that every person copes differently after a traumatic episode.

Snap shot of Psychological First Aid-

- Establish rapport with the child and encourage the child to reveal feelings without intruding.
- Assess needs of the child and her family and concerns that they may have. These could range from health concerns, safety concerns and fear of societal reactions
- Help survivor and her/ his family to address basic needs such as emergency shelter and assistance in filing a police complaint.
- Help the family and child to deal with their feelings related to sexual assault. Discuss with the family that it is not she who should be ashamed but the perpetrator and help them to understand sexual assault as an extreme physical violence and not an act that leads to loss of honor.

- Discuss with the family about threats to safety and create a plan which helps them to safety safe. Discuss potential feelings that the child may experience such as fear, nervousness, anxiety, thoughts of ending one's life and ways to handle these feelings
- Help the survivor and family to connect to resources such as legal aid agencies, schools, programs that help children deal with sexual abuse and the like. Encourage them to seek counseling to overcome the trauma faced.

(Adapted from WHO "Psychological first aid- guide for field workers" 19th August 2011)

- The age category of 0 – 18 years is varied and each age group brings different challenges to the health setting. Depending on the age, children may experience a range of feelings such as worthlessness, shame, inadequacy and helplessness post the assault. In the adolescent age group which is 12 years and above, such feelings may trigger thoughts of ending their lives. As health providers, it is therefore critical to probe for such feelings and address suicide ideation with survivors. Straight forward explanations such as discussing assault as an abuse of power and not an act of lust can encourage adolescents to place the onus of abuse on the perpetrator. Positive messaging by health providers such as "you are not responsible for rape", "It is not about the clothes you wear" etc can help in rebuilding the survivor's confidence in herself.
- Survivors of child sexual abuse should also be reassured and encouraged to seek counselling. The importance of counselling to deal with feelings must be emphasized. Simultaneously children should also be encouraged to resume their routine lives whether it is attending school/ college, playing with friends, interacting with peers, watching films and the like. It is important to bring back "normalcy" to the child's life. However this should not be understood as wanting to dismiss the sexual abuse. Health professionals should discuss with children that they may experience certain feelings such as anger about the perpetrator, shame, despair and disgust. These feelings will go away with counselling and time. Parents and friends should encourage adolescent survivors to seek counselling and crisis intervention support. Adolescence is an age of turbulence and the survivor may not be comfortable talking about several issues with parents/carers such as "contraception", "healthy sexual relationships", fears of contracting infections such as STI/HIV, anxiety about how they are perceived by others in the school/ college. They may also not discuss these feelings with friends as there is a need to fit in and avoid stigma. Such feelings can be discussed in a series of counseling sessions, which can help in rebuilding their lives and achieve a sense of normalcy.

- Before the child survivor leaves the hospital, health providers must assess physical safety of the survivor along with parents / care givers. One of the fears that child survivors grapple with is related to separation from the family and institutionalization. Therefore plan should focus on ways in which the child can be safe in her own surroundings. This could be in the form of making a police complaint about threats received, building support strategy with neighbors/ community and temporary relocation from the old residence.
- Some family members and friends may be helpful while others may blame the survivor for the assault. Providers can play a crucial role by dispelling notions about the assault. It must be discussed with all care givers that survivor should not be held responsible for the assault. Judgments such as - “she wears such clothes so it happened to her”, “she is careless”, “she/ he doesn’t listen to us” - make the survivors journey to recovery more difficult. As Health Providers are greatly respected, they are best suited to engage with family and discuss ways of promoting survivors well being.

In situations of sexual abuse by family members –

- Health providers must seek time and discuss safety of the child survivor in privacy with him/ her.
- Safety assessment of the child must be undertaken. If the child doesn’t have a guardian or another non abusive parent, provision for shelter must be made with based on discussion held with child survivor. As a stop gap, child may be admitted to the hospital till such a shelter is arranged
- As providers, it is important to remember that a child survivor may not want to be sent to a child welfare home and therefore a dialogue must be held with the child to seek alternate arrangements where the child feels comfortable.
- Informing the police and interface with CWC members may be required in some cases.

D. Medico Legal Responsibilities of a Health Professional –

The following steps should be followed to carry out a comprehensive medico legal care for a child facing sexual abuse

○ **History seeking**

After seeking informed consent, attending to immediate medical needs and providing therapeutic care, health professional must seek the details of the episode. The techniques discussed in the section above would be extremely useful for health professionals to strike a dialogue with the child. It is important to create a relationship of trust with the child and believe in her/ his narration.

1. History provided by the child must be recorded in the child's words as far as possible.
2. Along with history, circumstances under which the assault occurred should be documented.
3. The duration and the number of episodes of the sexual abuse need to be probed.
4. Details about whether the child was administered drugs/ alcohol/ any other substance which may have rendered her unconscious, or he/ she was extremely scared, shocked and numbed to resist the assault or was promised a candy/ toffee / gift must be mentioned.
5. History should also mention the number of hours/ days after which the child has reached the health facility. Such documentation greatly assists the doctor in interpreting lack of injuries to the child.

○ **General Examination and Genital Examination**

1. When medical examination of a girl child is to be conducted, the examining doctor must be a lady doctor [section 27 (2) of POCSO]. In a case decided by the Himachal Pradesh High Court a minor girl child victim of rape was taken by the police officer for medical examination to three medical establishments one after another before she could be examined at 5:40 am after undergoing trauma for 15 hours (*Siksha Vs. State of Himachal Pradesh*, 2013 Cri L.J. 2036). **Such a situation must be avoided at all costs.** Lady doctors/health care professionals may not be present in smaller towns or villages. It is advisable for all stakeholders under the Act to be prepared in advance with telephone/cellular phone numbers of hospitals and doctors.
2. While head to toe examination is being carried out, only fresh injuries on the body and genitals should be recorded.
3. Old injuries in the hymen such as “old tear”, “healed scar”, “hymen absent” should not be recorded as they are unscientific and perpetuate stereotypes about sexual assault.
4. As health professionals, it is important to understand that old tears in the hymen can occur due to several forms of vigorous activities such as cycling, swimming, horse riding and therefore their documentation has no connection to the reported sexual assault. Documentation should also not mention results of the 2 finger test or comments on laxity of the vagina. Such documentation has been considered as invading the privacy of the survivor and has no scientific relevance to the medical examination of sexual assault. This is especially true for the older adolescents (10 – 17) years old (as per Guidelines for health and psycho social services by UNICEF 2012, “*Caring for Child Sexual Abuse Survivors*”).
5. It is important to understand that presence of injuries is seen in only 1/3rd of the cases of sexual assault as per WHO. Therefore, health professionals should not disbelieve a child just because she doesn't have genital or physical injuries. Therefore circumstances surrounding sexual assault should be taken in to account while documenting and interpreting lack of injuries.

○ **Evidence collection**

1. Only relevant evidence must be collected. Collection of evidence is relevant only for 72 to 96 hours after the sexual assault episode. This is because the evidence rapidly erodes with time as well as after undertaking activities such as bathing, urinating, defecating etc.
2. The nature of swabs taken is determined to a large extent by the history and nature of assault. For example, if the child has not been subjected to anal intercourse; anal swabs need not be taken.
3. Blood and urine samples should be collected if the child reports within 3 days of the assault and shares that she was offered a drink which made her unconscious / drowsy. Blood and urine samples can help in identifying the stupefying drug given to the child.

○ **Conclusions in the Report**

1. Sec 164 A (3) Cr.P.C vests the examining doctor with the responsibility of preparing a report stating the reasons for each conclusion arrived at. Therefore she must record a provisional medical conclusion immediately after examination, which essentially means interpretation of medical examination and collected evidence. The conclusion should ordinarily be able to collate the results of the examination with the history of the alleged sexual assault as narrated by the survivor.
The report must mention the number of hours / days after which the survivor reached the hospital for examination and treatment. This is critical to note as medico legal evidence from the body rapidly erodes with time.
2. Examining doctor must refrain from recording medical opinion as “No signs of Rape/Sexual assault or Rape/Sexual assault did not occur”. This is because Rape/Sexual assault is a legal term and it is for the judiciary to decide.

The MOHFW has drafted a protocol for medical examination of sexual abuse. The same proforma should be used by all health facilities across the country for responding to child sexual abuse once it is finalized.

3. *Mandatory Reporting:* Any person who has an apprehension that an offence under the Act is likely, or has knowledge that such offence under the Act has been committed must fulfill the responsibility to report to the local police or SJPU under section 19 of the POCSO Act. The obligation u/s 19 of the Act is on every person and there is no exemption from this responsibility to inform under the Act, except that a child cannot be punished for such default.
Health Professionals must unconditionally provide appropriate treatment with informed consent before doing anything else. If the Health Professionals has

information that an offence has been committed he/she must provide the information to the police. Before providing information, the person concerned has to be informed of the fact that the Health Professional has to provide such information to the police of such offence. If the person declines to share such information, then the Health Professional must inform the police of such refusal. If the health Professional has no such information, then the question of informing the police does not arise.

- Psychological first aid and/or counseling, where necessary, may be provided to the child in order to empower the child and his/her parents or guardians to report the offence.
- Information u/s 19 can be given to the police official attached to the hospital, and a medico legal certificate made to the police is sufficient compliance with section 19.
- **In case the child and his parents/guardians do not wish to report the offence, their informed refusal must be documented and the same communicated to the police by the health professional.**
- **Confidentiality of the child must be maintained.**
- A failure to report is a non-cognizable offence under section 21 of the Act. The police cannot investigate the offence without magisterial permission under section 155 (2) of the Cr.P.C which is a discretionary act. Health professionals must perform their duty of providing medical care first, while reporting is a secondary duty.

Monitoring Questions in a case where the Child has visited a Health Professional

1. *Did the case reach the hospital without an FIR being filed?*
2. *Was the survivor provided with health care and medico legal examination free of cost?*
3. *Were the families of the child survivors provided the medical certificate? If yes, was it given free of any charge?*
4. *What was the waiting time from the period the survivor and family entered the hospital, till she/he was attended to for examination and treatment by doctor?*

E. Interface of Health professionals with Agencies responding to Child sexual abuse –

Inter – agency coordination requires interface of several functionaries such as police, public prosecutors, judiciary and child welfare committees with each other. Each one also has the responsibility of coordinating with other functionaries to provide a comprehensive response to

sexual assault survivors. Each of these players has an invariable link with the health system as sexual assault survivors are brought to health systems for medico legal examination and care. Specific guidelines have been provided in this section for each functionary for smooth inter-agency coordination.

Interface of health systems with police –

- A standard operating procedure outlining the interface between the police and health systems is critical to ensure comprehensive care to survivors of sexual assault. Whenever a survivor reports to the hospital, police must take her/ him to the nearest health facility for medical examination, treatment and care. Delays related to medical examination and treatment can jeopardize the health of the survivor. It is therefore crucial to understand sexual assault as a medico legal emergency and police must also treat it like wise.
- Police must be informed of changes in the law. CLA and POCSCO both recognize that any registered medical practitioner can carry out a medico legal examination and provide treatment and records of that health provider will stand in the court of law (section 164A Cr.P.C). Health professionals should also find out whether the child was examined elsewhere before starting the examination and if they are carrying documentation of the same. If this is the case, health providers must refrain from carrying out an examination just because the police have brought a requisition and also explain the same to them. This would greatly help in reducing the trauma of a child related to re-examination.
- Health sector is distinct from justice response system because of the therapeutic nature of services provided by the sector. Therefore while seeking details of the assault, examination, evidence collection and treatment, police should be asked to stay outside. Doctors must not ask police to give any history or details and must directly speak to the survivor and/ or family. Further healthcare provider must offer confidentiality of information and privacy in the entire course of examination and treatment.
- Police should not interfere with the duties of a health provider. Even if a medico legal examination and evidence collection has taken place, they should not take away the survivor before she receives complete treatment and care.
- In case of unaccompanied survivors brought by the police for sexual assault examination, police should not be asked to sign as witness because they are considered as an “interested party”. In such situations, a senior medical officer or any health professional should sign as witness in the best interest of the child survivor.
Police must be equipped to understand the role of medico legal evidence, its limitations as well as the role of examining doctors as expert witnesses .Even if police ask health professionals to opine on whether rape occurred or not they should refrain from commenting on “whether rape occurred”, “whether survivor is capable of sexual intercourse” and the like . This is because such “Rape” is a legal term and outside the

expertise of health care provider. Similarly, comments on whether the survivor is capable of having sexual intercourse or not are totally unscientific and irrelevant.

Interface of Health Systems with Public prosecutors –

- Health professionals must ensure that they meet Public prosecutors. This would mean that they should explain and interpret the medical evidence and the reasons for lack of medical evidence to the public prosecutor. It is therefore important for prosecutors to interact with health providers to understand reasons for negative evidence as well as doctors with the prosecutors to understand the role they have to play in the court.
- The doctor must review the notes of the case to equip him/herself with the history that has been provided by the survivor to the doctor, the police and the magistrate. In case there is a difference in the histories, the same should be clarified in advance with the public prosecutor. It is possible that a survivor revealed additional information to the doctor based on her comfort with the doctor as compared with the police or the magistrate.
- Examining doctors should prepare themselves well in time with the case documents before reaching the court. Efforts must be made by doctors to dialogue with the public prosecutor and also ask them about the role that they need to play. This would help them to be well prepared and respond to questions asked in the court.
- A public prosecutor must also understand that an examining doctor as an expert witness would also have limitations especially when the evidence is negative and therefore must also seek corroborative evidence. Such an opportunity must also be taken to discuss with the courts for the reason that no evidence was found in medical examination.

Interface of Health Systems with the Judiciary –

- Doctors are termed as “expert witness” by Law. As per 164 A, Cr.P.C, an examining doctor has to prepare a reasoned medical opinion without delay.
- A medical opinion has to be provided on the following aspects -
 - Evidence that survivor was administered drugs/ psychotropic substance /alcohol etc
 - Evidence that the survivor has an intellectual , or psycho social disability
 - Evidence of physical health consequences such as bruises, contusions, contused lacerated wounds, tenderness, swelling, pain in micturition, pain in defecation, pregnancy, etc.
 - Age of the survivor if she / he doesn't have a birth certificate or if mandated by the court.
- Absence of injuries on the survivor has to be interpreted by the examining doctor in the courtroom based on medical knowledge and details of the episode provided by child to

the doctor. Lack of injuries have to be based on the time lapse between the incident and reporting to hospitals, information pertaining to luring the child, or factors such as fear, shock and surprise that rendered the child unable to resist the perpetrator.

- The examining doctor will also have to provide a medical opinion on negative findings related to forensic lab analysis. Absence of negative laboratory results may be due to:
 - Delay in reaching a hospital / health centre for examination and treatment
 - Activities undertaken by the child after the assault such as urinating, washing, bathing, changing clothes or douching which leads to loss of evidence
 - Use of condom/vasectomy or diseases of vas of the perpetrator
 - Perpetrator did not emit semen if it was a penetrative sexual act
- Examining doctors must also ensure that comments on past sexual history, finger test, status of vaginal introitus must not be made as these are unscientific and the courts too have determined them as biased.
- In most health centres because of the constant turn over, the doctor appearing in the court room could be different from the one who carried out the medical management of the child. In such instances, it is critical that the doctor making the court appearance be thorough with the case file of the child survivor such as documentation of history examination findings and clinical inference drawn by the examining doctor.

Interface of the Health System with the Child Welfare Committee –

- As per the Juvenile justice Act 2000, every district has a mandate of setting up a CWC. The committee has been vested with the powers of a first class judicial magistrate or metropolitan magistrate. A child can be brought to this committee by police, public servant, social worker, public-spirited person or the child herself.
- In instances, where a child is produced in front of the CWC after an act of sexual violence, the committee must ensure that the health care of the child is given priority and issue a memo to make arrangements so that the child is referred to a health facility and is provided comprehensive health care.
- Under the Juvenile Justice Act (JJA, 2000) all childcare institutions are expected to have medical care units (MCU) either in the same campus or in the absence of MCUs, create a well-coordinated system of referral for regular health assessment of children residing in institutions. It is critical to ensure that when MCUs are present in child care institutions, they be fully functional and have well trained staff to undertake the medical assessment and provide therapeutic care.
- CWC's must be oriented and acquainted with the health consequences of sexual abuse and the importance of provision of complete health care. At the same time they must also understand the limitations of medical evidence, thus even if medical evidence of sexual assault is not found, this is no way should be construed as a child lying about sexual abuse .

- MCUs must include indicators for assessing whether a child has been subjected to sexual violence. Such an enquiry must be included as a component of routine medical check ups. A standard operating procedure for routine medical examination, care and management must be adopted by all child welfare homes and they must be asked to provide reports of these assessments to the child welfare committee.
- Health professionals must make a note of the following aspects while screening for sexual abuse. Assurance of confidentiality and provision of privacy are keys to enabling children to speak about the abuse. However genital and anal examination should not be conducted mechanically or routinely. A few indicators for routine enquiry are -
 - Pain in urination and /or defecation
 - Abdominal pain/ generalized body ache
 - Inability to sleep
 - Sudden withdrawal from peers/ adults
 - Feelings of anxiety, nervousness, helplessness
 - Inability to sleep
 - Weight loss
 - Feelings of ending one's life
- Health professionals should communicate to the child the need for her/him (health professional) to disclose the abuse to the child welfare committee (CWC) so that the latter can take immediate steps to protect the child from abuse.

Monitoring Questions for assessing gender sensitivity in examination and documentation

1. *Is there any mention of the finger test results in the medico legal report?*
2. *Is there a mention on elasticity of vagina/ anus in the medico legal report?*
3. *Is there a mention on old tears in the hymen in the medico legal report?*
4. *Is there a comment on built and weight of survivor in the medico legal report?*

List of Monitoring Questions for Health Professionals for Quarterly Collection of Data by the NCPCR

- 1. No. of child sexual abuse cases handled by the health professional for the three month period?*
- 2. No. of cases where the survivor was provided with health care?*
- 3. No. of cases where the survivor was provided with psychological first aid/ counseling along with health care services?*
- 4. What are the physical as well as psychological health consequences suffered by survivors?*
- 5. No. of cases where the child and his parents/ guardians do not wish to report sexual offence, subject to their informed refusal being communicated to the police by the health professional?*
- 6. Whether adequate provisions/ infrastructural facilities have been made available in order to undertake proper MLC examination of sexual assault victims?*
- 7. No. of capacity building workshops/ trainings of individual health professionals on 'sexual assault health care' carried out by the hospital / health centre?*
- 8. Has the hospital implemented a standard operating procedure for sexual assault response management?*
- 9. Are there any particular practice/ method adopted by the Medical Health Professionals that have proven to be an effective sexual assault response management?*
- 10. What are the hurdles/ challenges that the Medical Professionals face while providing health care services in child sexual abuse cases?*

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