

Tools for human rights defenders: Child Rights

The Protection of Children from Sexual Offences Act (POCSO) 2012

1 General rights

1. *Right to anonymity:* The identity of the child (any personally identifiable information including name, family, school, neighbourhood) cannot be revealed to anyone but the Child Welfare Committee (CWC) or Special Juvenile Police Unit (SPJU). It is a punishable offence to do so [S23(1), S23(2), S23(3), S23(4)]. It is the duty of the police [S24(5)] and the special court [S33(7)] to protect the privacy of the child at all times of investigation and trial and after.
2. *Right to accompanier/supporter:* The child must be accompanied by a parent/ guardian/ any other person whom the child trusts at all times of the investigation and trial including medical examination, recording statements, or giving testimonies in court. [r4(8)]
3. *Right to interpreter/ translator/ special educator:*
 - a) The child must be kept informed of the proceedings/ contents of the complaints and other documents [r4(12)] in a simple language (including sign language) that the child can understand.
 - b) The interpreter will be paid for by the state [r3(6)].
 - c) The child can choose the gender of the interpreter at anytime [r3(7)]. No reason needs to be given for change of interpreter/support person [r4(10)].
 - d) The number of interpreters can be more than one [r3(7)].
 - e) All interpreters are bound by confidentiality [r3(10)], without conflict of interest [r3(9)].
4. *Right to not to be confronted:* The child must not be brought face to face with the accused while giving his/her statement to the police or magistrate [S24(3)], or while testifying in court [S36(1)].
5. *Right to non-liability:* The child is not to be punished if the accused is found to be not guilty [S22(2)].
6. *Right to information and consent:* The preference of the child is considered depending on its age and level of maturity, gender, and social and economic background for institutional care [r4(5), r4(6)], in selection of a support person [r4(7)], free copy of the FIR [r4(2)a] and updates on status of the case [r4(12)].
7. *Right to legal advice and counsel* and to be represented by a lawyer [S40, r4(2)f]
8. *Right to compensation:* The child is entitled to compensation [S33(7)] for rehabilitation, and physical or mental trauma.
9. *Rights as accused:* If the child is charged as an accused, then the child shall be tried under the Juvenile Justice (Care and Protection) Act 2000. No child can be charged or tried under POCSO [S21(3), S22(2), r34(1)].

2 Special provisions for the girl child

1. Medical examination (ME) should be done by a lady doctor [S27(2)]
2. ME should be in the presence of the parent/ person trusted by the child [S27(3)] or, if they cannot be present, in the presence of a woman nominated by the head of the medical institution [S27(4)].

3 Special provisions for children with disabilities

1. If the child is temporarily or permanently physically or mentally disabled, the information must be recorded by a police officer at her residence or at a place of her choice, in the presence of an interpreter or special educator [S26(3)] and must be videographed [S26(4)].
2. A judicial magistrate must ensure that the methods used to identify an arrested person by a child is comfortable. The process will also have to be videographed.
3. While recording the statement, evidence of the child the police or magistrate can seek the assistance of the special educator, qualified expert, or any person who is familiar with the manner of communication of the child. [S26(3)] The process will also have to be videographed [S26(4)].

4. While ordering the compensation, the Special court can take into consideration whether the child acquired a disability as a result of the offence committed against her/him.

4 When you suspect child abuse

Despite our best effort, there might be cases when child abuse takes place. It is important to take quick action to protect the child from further harm and to bring the perpetrator to justice.

4.1 DO

1. Report to the Special Juvenile Police Unit (SPJU) [S19(1)a] or local police [S19(1)b] even if you only suspect that an offence is likely to be committed [S19(1)]. You need not / should not wait for an offence to be committed.
 - a) You are protected if you report (even if you err on the side of caution and the person is found not guilty). No criminal or civil case can be filed against you for a complaint made in good faith.[S19(7)]
 - b) You can be punished (including imprisonment and fine) if you don't report [S21(1) and S21(2)].
 - c) You can be prosecuted if you lodge a complaint falsely naming a child as a victim [S22(3)].
2. Ensure the child is produced before the CWC (the police cannot skip this process) within 24 hours [r4(3)].

4.2 DO NOT

1. Do not reveal the identity of the child to anyone except the Child Welfare Committee (CWC) or Special Juvenile Police Unit (SPJU). It is a punishable offence to do so [S23(4)].
2. Even the media cannot publish anything that lowers the dignity of the child, or any information that can identify the child [S23(1), S23(2)].
3. Do not panic. Remain calm. Support the child.

5 The police/ Special Juvenile Police Unit (SPJU)

5.1 What the police should do

5.1.1 Immediately

1. Disclose to the child or person making the report, the following details:(i) his name and designation; (ii) the address and telephone number; (iii) the name, designation and contact details of the officer who supervises the officer receiving the information. [r4(1)]
2. Record and register the First Information Report, FIR [S19(2), r4(2)a].
3. Immediate care and protection if required, including admitting to a hospital or shelter home [S19(5)].
4. Arrange emergency medical care if required [S19(5), r4(2)b] and take the child to the nearest hospital for medical care [r4(2)c].
5. Arrange for medical examination and take the child to the hospital. [r4(2)c].
6. Ensure that the samples received for forensic testing are sent to the Forensic Laboratory at the earliest [r4(2)d].
7. Inform the child/ parent/ trusted person the availability of support services and assist them in contacting the persons who are responsible for providing these services and relief; [r4(2)e].
8. Inform the child/ parent/ trusted person the right of the child to legal advice and counsel and the right to be represented by a lawyer [S40, r4(2)f].

5.1.2 Within 24 hours of receiving the complaint

1. Report to the Child Welfare Committee and the Special Court [S19(6)].
2. Produce the child before the CWC if the place of residence (whether household, child care institution or without parental support) is determined to be unsafe for the child [r4(3)].
3. Facilitate recording of statement by magistrate.
4. Admit to a hospital or shelter home within 24 hours if required [S19(5), r4(2)b,].
5. If the child is without any parental support or is living with the abuser or is in need of care and protection [S19(5)] request the CWC to do a detailed assessment [r4(3)].

5.1.3 Record the cases

1. Wear plain clothes and not appear in uniform [S24(2)].
2. Record the cases reported by a child [S19(2)] at the residence of the child, or where the child is comfortable [S24(1)].
3. Record and register a First Information Report (FIR) [r4(2)a]
4. The case should be recorded by a woman police officer not below the rank of sub-inspector [S24(1)] while not in uniform [S24(2)].
5. Read the complaint to the child in the language that the child can understand, using words that the child can comprehend. [S19(2)b,S19(3),S19(4)].
6. Give a copy of the FIR free of cost to the person making such report [r4(2)a].

5.1.4 Assessment

1. Make a preliminary assessment as to whether the child is without any parental support or is living with the abuser or is in need of care and protection [S19(5)].
2. Record the reasons in writing as to why the child needs to be shifted and make immediate arrangements for care and protection [S19(5)].
3. Admit the child to hospital or shelter home within 24 hours of the report if required [S19(5)].
4. Report to the CWC and the Special Court/Court of Session as soon as possible, (at least within 24 hours) the incident, the care and protection needs of the child and the steps taken.[S19(6)]
5. If the child is without any parental support or is living with the abuser or is in need of care and protection [S19(5)] request the CWC to do a detailed assessment [r4(3)].
6. Give a copy of the FIR free to the child and guardian/accompanying adult [r4(2)a].
7. Protect the identity of the child, especially from the mass media [S24(5)].
8. The investigating officer should ensure that the child never comes into contact with the accused [S24(3)] for any reason whatsoever.

5.1.5 Emergency medical care

1. Emergency medical care (EMC) must be provided for crimes under sections 3 Penetrative Sexual Assault, 5 Aggravated Penetrative Sexual Assault, 7 Sexual Assault and 9 Aggravated Sexual Assault.
2. The police must arrange for EMC if required [S19(5), r4(2)b] as set out in Rule 5.
3. The police must take the child to the hospital for EMC [r4(2)c].
4. EMC shall be rendered in such a manner as to protect the privacy of the child [r5(2)].
5. EMC should be in the presence of the parent or guardian or a person in whom the child has trust and confidence [r5(2)].

5.1.6 Medical examination

1. Before any medical examination is conducted, consent by or on behalf of the child must be obtained.
2. The police/SPJU must immediately alert the Child Welfare Committee (CWC), the statutory authority vested with this responsibility.
3. Medical examination can be conducted irrespective of whether a First Information Report/ Complaint has been filed [S27(1)].
4. Medical evidence is solely enough to prove the case, even in the absence of circumstantial evidence [S27(1)] and should be done as per CrPC section 164a.
5. Where the victim is a girl, examination must be done by a woman doctor [S27(2)].
6. The police should arrange for medical examination and take the child to the hospital. [r4(2)c].
7. The police should ensure that the samples received for forensic testing are sent to the Forensic Laboratory at the earliest [r4(2)d].

5.1.7 Recording Statement by Magistrate

1. The SJPU or local police must take the child within 24 hours to any judicial magistrate for the purpose or recording his/her statement under section 164, CrPC.
2. As far as possible the victim should be taken to the nearest lady Metropolitan/ lady Judicial Magistrate (preferable) for this purpose.
3. The Investigation officer should record specifically the date and time at which she/he learnt about the alleged commission of the offence and the date and time at which she/he took the victim to the Metropolitan/preferably Lady Judicial Magistrate.
4. If there is any delay the IO should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
5. A copy of the medical examination report should also be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC.

5.1.8 Report to the Special Court and Child Welfare Committee

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

5.1.9 Provide information to the informant and victim

1. After receiving a complaint the SPJU / local police must provide the following details to the complainant:
[r4(1)a]
 - a) His/her name & designation, contact number
 - b) Name, designation & contact number of his/her immediate superior
2. SPJU/local police must provide information about, and assist the child in contacting persons responsible for [r4(2)e]
 - a) Emergency services
 - b) Support services
 - c) Procedures
 - d) Free legal aid
 - e) Victim compensation
 - f) Status of the arrest of accused and investigation,
 - g) Charge sheet filing and schedule of court proceedings .
3. The SPJU/police/support person is responsible to provide information to the child and his parents or guardian or other person in whom the child has trust and confidence [r4(12)] the
 - a) Availability of public and private emergency and crisis services;
 - b) Procedural steps involved in a criminal prosecution;
 - c) Availability of victims' compensation benefits;
 - d) Status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
 - e) Arrest of a suspected offender;
 - f) Filing of charges against a suspected offender;
 - g) Schedule of court proceedings that the child is either required to attend or is entitled to attend;
 - h) Bail, release or detention status of an offender or suspected offender;
 - i) Rendering of a verdict after trial; and
 - j) Sentence imposed on an offender.

5.2 What the police shouldn't do

1. The police officer recording the statement should not be in uniform [S24(2)].
2. Under no circumstances can the child be asked to remain in the police station at night [24(4)].
3. The child should never come into contact with the accused [24(3)] for any reason whatsoever.

6 The Child Welfare Committee (CWC)

6.1 What the CWC should do

1. The CWC can take steps to ensure that care and protection is extended to the child, including that the child be taken out of the custody of her/his family if she/he has been or is likely to be sexually abused there.
2. *Determination of Placement*: Determine within three days whether the child has to be taken out of the family and into institutional care [r4(4)].
3. Ensure that the child is not inconvenienced or exposed to injury during the inquiry.
4. *The steps to determine institutional care*
 - a) Inform the child and her/his parent, guardian, or other affected persons that an inquiry to enable such a determination is underway.
 - b) Take into account the preferences and opinions of the child on the matter, while making a determination as to what is in the best interests of the child [r4(5)].
 - i) The capacity of the parent(s) or person whom the child trusts and has confidence in, to provide for the immediate care, protection and, medical needs and counselling of the child.
 - ii) Need for the child to remain in the care of her/his family and maintain a connection with them.
 - iii) Age, maturity level, gender, and social and economic background of the child.
 - iv) Disability and/or chronic illness, if any.
 - v) Any other relevant factor that has a bearing on the best interests of the child.
 - c) Provide a support person to assist the child during the investigation and trial of the case. A support person must be assigned with the consent of the child and the child's parent/guardian/person.

7 What the support person should do

1. Maintain the confidentiality of all information pertaining to the child to which she/he has access.
2. Keep the child and her/his parent/guardian/other person in whom the child has trust and confidence informed as to the proceedings of the case, including available assistance, judicial procedures, and potential outcomes.
3. Inform the child of the role she/he may play in the judicial process and ensure that any concerns that the child may have, regarding her/his safety in relation to the accused and the manner in which she/he would like to provide her/his testimony, are conveyed to the relevant authorities.

8 The Courts/Judge

8.1 What the Courts/Judge should do

1. The court should have a child friendly atmosphere [S33(4)] that protects the dignity of the child at all times [S33(6)].
2. Ensure that the parents/ someone the child has confidence in, is always with the child [S37].
3. Ensure the guardian or parents have legal counsel, provided free if they cannot afford it, if they are the accused under this Act [S40]
4. The punishment will be the higher of that prescribed under POCSO or any other Act [S42].
5. The child can have frequent breaks [S33(3)].

8.1.1 Trial

1. The trial should be closed to the public ('in camera') [S37].
2. It should be in the presence of the parents or support person [S37].
3. The court should take cognizance of the crime once the facts are known, even if the accused is not committed for trial [S33(1)].
4. Record the evidence within 30 days [S35(1)].
5. Complete the trial within one year [S35(2)].

8.1.2 Examination

1. The examination of the child need not be in court [S37].
2. Ensure the child is not exposed to the accused for any reason whatsoever [S36(1)].
3. Statements of the child can be recorded by video camera/ single view mirrors/curtains or other means as required for the examination [S36(2)].
4. Ensure the child is not questioned directly. The counsel for the accused has to tell the questions to the court, and the court will ask the child.[S33(2)].
5. The questioning cannot be aggressive [S33(6)].

8.2 What the Courts/Judge shouldn't do

1. The child should not be called to testify repeatedly [S33(5)].
2. The identity of the child or any identifiable information (such as family, school, neighbourhood) should not be disclosed [S33(7)] unless for reasons recorded in writing in the best interests of the child.

9 The mass media

9.1.1 What the mass media should do

1. *Keep all personally identifiable information about the child confidential.* While reporting information about a sexual offence against a child, the media should ensure that the child's identity is not disclosed except if the special court permits such disclosure in the interest of the child.
2. These include:
 - a) Name.
 - b) Address.
 - c) Photograph.
 - d) Family details.
 - e) School details.
 - f) Information about the locality where the child is residing.

9.1.2 What the mass media shouldn't do

1. Should not report or comment on any child victim in any form of media without checking the authenticity of the information.
2. Should not publish any material that will lower the dignity of the child.
3. Should not publish any personally identifiable information (including photographs) of the child, family or neighbourhood.

10 What you can do to prevent child abuse

1. Break the silence around child abuse. Talk to children, family, friends and co-workers about the extent of the problem. Awareness of the extent of child abuse will in itself lead to decrease in incidence. Most often there is denial ('It does not happen in India')
2. Spread awareness about permissible and impermissible behaviour/actions - in the community including families, children and state mechanisms: the police, teachers, health workers etc.
3. Minimise situations where child abuse, especially sexual abuse, can occur.
4. Identify areas in your locality - parks, playgrounds, isolated/under construction buildings – where child abuse can occur and form citizens watch groups.
5. Identify places where children are normally present – schools, orphanages, hostels – and ensure that all of them are (a) sensitised (b) have child protection policies (c) internal watchdog committees.
6. Always take a child's complaints seriously. Don't ever brush them off. Support them right through the process gently and firmly (no need to panic!).