

Government of Himachal Pradesh,
Department of Social Justice & Empowerment,
(Section-A)

No.: SJ&E-A-A(3)-2/2014

Dated: 01st April, 2015

NOTIFICATION

In pursuance to the Section 39 of the Protection of Children from Sexual Offence Act, 2012 (POCSO Act), the Governor of Himachal Pradesh is pleased to adopt the Model Guidelines issued by the Government of India vide their letter No. 26-4/2013-CW-I(Pt.) dated 18th September, 2013 for enabling in implementation of POCSO Act in the State of Himachal Pradesh. These Model Guidelines can be seen/downloaded at the Departmental Website www.himachal.nic.in.

By Order

*Addl. Chief Secretary (SJ&E) to the
Government of Himachal Pradesh.*

Endst. No. As above

Dated: Shimla-02

01st April, 2015

Copy forwarded to the following for information and necessary action:-

1. All the Administrative Secretaries to the Govt. of Himachal Pradesh.
2. All the Heads of Departments in Himachal Pradesh.
3. The Director, General of Police, Himachal Pradesh.
4. The Director, W&CD/SC, OBC & Minority Affairs, Himachal Pradesh.
5. All the Deputy Commissioners in Himachal Pradesh.
6. All the District & Session Judges in Himachal Pradesh.
7. The Member Secretary, H.P. Judicial Academy, Shimla.
8. All the Superintendents of Police, Himachal Pradesh.
9. All the District Attorneys, Himachal Pradesh.
10. The Controller, Printing & Stationary Department for publication in Rajpatra.
11. Guard File.


(Madan Lal Kaushal)

Under Secretary (SJ&E) to the
Government of Himachal Pradesh.
Phone No. 0177-2620627

SJE/52871917

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04/10/2013

F.N.26-4/2013-CW-I (Pt.)
Government of India
Ministry of Women and Child Development
(Child Welfare-I Section)

Shastri Bhawan, New Delhi
Dated: 18th September, 2013

To,

The Chief Secretary (All States and UTs)

Subject: Model Guidelines under the Protection of Children from Sexual Offences (POCSO) Act, 2012.

Sir/Madam,

I am directed to say that under Section 39 of the POCSO Act, 2012, States are required to formulate Guidelines for different stakeholders associated with the pre-trial and trial stage to assist the child. Some of the States requested this Ministry to develop Model Guidelines. Accordingly, Model Guidelines have been developed in consultation with relevant individuals/organisations/departments.

Since these Guidelines are required to be issued without further delay, the Model Guidelines are enclosed for the States/UTs to adopt or adapt as per their requirements.

Encl: As above

Yours faithfully,

(Anand Prakash)

Deputy Secretary to the Government of India

TeleFax: 01123381857

Email: anand.prakash62@nic.in

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Copy To:

- 1) Secretary, Ministry of Health and Family Welfare, New Delhi
- 2) Secretary, Ministry of Home Affairs , New Delhi
- 3) Secretary, Ministry of Law and Justice, New Delhi
- 4) Secretary, Ministry of Social Justice and Empowerment, New Delhi
- 5) Chairperson, National Commission for Protection of Child Rights, New Delhi
- 6) Director, National Institute of Public Cooperation and Child Development, New Delhi

Copy also to as per list-

✓ Principal Secretary /Secretary /Director/WCD/Social Welfare Department of all states/UTs



**MINISTRY OF WOMEN AND CHILD
DEVELOPMENT**

**Model Guidelines under Section 39 of
The Protection of Children from Sexual Offences
Act, 2012**

September, 2013

30/9/13

Guidelines for the Use of Professionals and Experts under the POCSO Act, 2012

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Chapter 1

Introduction

An Overview of the Protection of Children from Sexual Offences Act, 2012

To deal with the rising sexual abuse cases, the Government has brought in a special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act has come into force with effect from 14th November, 2012 along with the Rules framed thereunder.

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

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

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

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

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

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

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

The said Act is to be implemented with the active participation of the State Governments. Under Section 39 of the said Act, the State Government is required to frame guidelines for the use of persons including non-governmental organisations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage. The following guidelines are Model Guidelines formulated by the Central Government, based on which the State Governments can then frame more extensive and specific guidelines as per their specific needs.

Multi-sectoral Approach

Children who have been sexually abused are not only traumatised as a result of their experience, but are also more vulnerable to further and repeated abuse and at risk of secondary

victimisation at the hands of the justice delivery process. A common example is the handling of cases of child victims by unspecialized police, prosecutors and judges who are not trained in justice for children, children's rights or how to deal and communicate with victim children and their families. The lack of clear guidelines and procedures on how to deal with child victims and their families in a child – sensitive manner during the court process affects the quality of trial and evidence and trial process; the child is subjected in such cases to repeated probing and questioning, made to relive the traumatic incident again and again, and thereby suffer in the retelling. Another instance is that of child victims not receiving proper medical support and counselling, causing physical and mental distress to the child and his/her family and hampering the healing process for the child. In addition to this, families and child victims are unable to benefit from legal aid as the appropriate agencies are not involved at the right stage in the procedure. Child victims do not receive timely advice and assistance so as to be free from a fear of family breakdowns and social isolation if the offender is a relative and/or the breadwinner of the family. There is also no system of supervision for checking the welfare and well-being of child victims during and after the court process, particularly when the abuser is the parent or guardian of the child.

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

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

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

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

The responsibility of supporting children who have been sexually abused should be embraced by the whole community, but it is the professionals that work in this field who play an important role in enabling the healing process. These guidelines are therefore aimed at various professionals involved in providing services to the child and other affected persons including his/her family. Their objective is to foster better response mechanisms involving coordination amongst these professionals, so as to result in the evolution of a multi-sectoral, multi-disciplinary approach that will go a long way in achieving the objectives of the POCSO Act, 2012.

Chapter 2

General Principles for use of Professionals and Experts Assisting the Child at Pre-trial and Trial Stages

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

These principles are -

- a) *Right to life and survival* - Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect; and to a chance for harmonious development and a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development.
- b) *The best interests of the child* - Every child has the right to have his/her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development. Protecting the child's best interests means not only protecting the child from secondary victimisation and hardship while involved in the justice process as victim or witness, but also enhancing the child's capacity to contribute to that process. Secondary victimisation refers to the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.
- c) *The right to be treated with dignity and compassion* - Child victims should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. Interference in the child's private life should be limited to the minimum needed and information shared on a need to know basis. Efforts should also be made to reduce the number of professionals interviewing

the child. At the same time, however, it is important that high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process. In order to avoid further hardship to the child, interviews, examination and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner in a child-friendly environment. All interactions should also take place in a language that the child uses and understands. Medical examination should be ordered only where it is necessary for the investigation of the case and is in the best interests of the child and it should be minimally intrusive.

d) *The right to be protected from discrimination* - The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste and socio-economic condition, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences. Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, according to his/her age and level of maturity.

e) *The right to special preventive measures* - Children may already face twice as much risk of repeated victimisation as adults because they often are or are perceived by a potential offender as being vulnerable, unsure of how to defend themselves or unable to properly assert themselves and take a strong position against an adult. A preventive measure that could be used to protect children is to demand references and a criminal background assessment before hiring personnel likely to work with children, such as schoolteachers.

f) *The right to be informed* - There are two aspects of child victims' and witnesses' right to be informed. The first aspect is the more general one and consists of informing child victims and witnesses about the assistance they are entitled to, the way legal proceedings are organized and the role they can play in those proceedings if they decide to do so. The second aspect is more specific and relates to information on the particular case in which the child is involved: it implies being informed about the progress of the case, about the scheduling of the proceedings, about what is expected of the child, about the decisions rendered, about the status of the offender, and so forth.

- g) *The right to be heard and to express views and concerns*—Every child has the right to be heard in respect of matters affecting him/her. The child has a right to participate at all levels, being informed, expressing an informed view, having that view taken into account, and being the main or joint decision maker. When, for any good reason, the requirements and expectations of the child cannot be met, it needs to be explained to the child, in a child-friendly way, why certain decisions are made, why certain elements or facts are or are not discussed or questioned in Court and why certain views are not taken into consideration. It is important to show respect for elements that a child finds important in his/her story, but which are not necessarily relevant as evidence.
- h) *The right to effective assistance*—The child must receive the required assistance to address his/her needs and enable him/her to participate effectively at all stages of the justice process. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's healing, as well as for justice and reintegration.
- i) *The right to privacy*—The child's privacy and identity must be protected at all stages of the pre-trial and trial process. The release of information about a child victim or witness, in particular in the media, may endanger the child's safety, cause the child intense shame and humiliation, discourage him from telling what happened and cause him severe emotional harm. Release of information about a child victim or witness may put a strain on the relationships of the child with family, peers and community, especially in cases of sexual abuse. In some cases it might also lead to stigmatization by the community, thereby aggravating secondary victimization of the child. There are two essential ways of protecting the privacy of child victims and witnesses: firstly, by restricting the disclosure of information on child victims and witnesses and secondly, by restricting the attendance of the general public or non-essential persons in courtrooms.
- j) *The right to be protected from hardship during the justice process* - Throughout the justice process, child victims are exposed to hardship, also referred to as secondary victimization: this can occur while reporting the crime and recounting what has happened, while awaiting trial and while testifying in court. The judicial process is a very stressful one for the child.

as far as possible, any stress the child may have as a result of the process should be minimized.

- le) *The right to safety* - Where the safety of a child victim may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child.
- l) *The right to compensation*- The child victim may be awarded compensation¹ for his/her relief and rehabilitation. This compensation may be awarded at an interim stage, during the pendency of trial, as well as at the conclusion of the trial. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive. Victims may be repaid for material losses and damages incurred, receive medical and/or psychosocial support and obtain reparation for ongoing suffering.

¹ As per Section 33 (8) of POCSO Act, 2012 and Rule 7(3) of POCSO Rules, 2012 so as to commensurate with the short and long term negative impact on the child. Further, as stated in Rule 7 (4) of the POCSO Rules, 2012, the compensation is to be paid by State Government from the Victims Compensation Fund or other scheme or fund established by it under Code of Criminal Procedure, 1973 or any other law for the time being in force, and in the absence of such fund or scheme, by the State Government.

Chapter 3

Guidelines on Interviewing a Child: Forensic Interview Protocol

There are two distinct aspects to the gathering of information from the child (or attending adults) in cases of alleged child sexual abuse: (a) the medical history and (b) the interview. The interview stage of the assessment goes beyond the medical history in that it seeks to obtain information directly related to the alleged sexual abuse, for example, details of the assault, including the time and place, frequency, description of clothing worn and so on. Interviewing of children is a specialized skill and, if possible, should be conducted by a trained professional.

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

The following are some basic guidelines that should be kept in mind while conducting the forensic interview to ensure that the interview process does not become traumatic for the child. Regardless of who is responsible for the medical history and interview, the two aspects of information gathering should be conducted in a coordinated manner so that the child is not further traumatized by unnecessary repetition of questioning and information is not lost or distorted.

1. Reasons for interviewing the child

- i) To get a picture of the child's physical and emotional state;
- ii) To establish whether the child needs urgent medical attention;
- iii) To hear the child's version of the circumstances leading to the concern;
- iv) To get a picture of the child's relationship with their parents or family;
- v) To support the child to participate in decisions affecting them according to their age and maturity;
- vi) To find out who the child trusts;
- vii) To inform the child of any further steps to be taken in the enquiry;