

Protection Of Children from Sexual Offences Act, 2012.

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Not only as a Prosecutor but even as a layman, one needs to know about this act. Let me make it more clear, why it is important to know about this act, It is not because of the subject it covers, but it is because of Sec. 21(1) of the said act.

According to sec 21(1) of POCSO Act, any person having knowledge of such offence, should report the matter. It not only included Parents; Doctors; Teachers; staff of Hospital, School, Office; but also others equally. Failure of which would attract punishment from 6 months to 1 year with fine.

Hence, every citizen should know about this act, which came into effect on **14/11/2012.**

IMPORTANT FEATURES

Before delving into the aspects of the act, let us see the important features of the act. They are:

- a. To protect Children from offences of Sexual assault, Sexual harassment and Pornography.
- b. To provide Child friendly system for trial of these offences and Investigation.
- c. Describes 7 types of specific sexual offences.
- d. Gender Neutral covering children below 18 years.
- e. Both abetment and Attempt are punishable(Sec 16 & 17)
- f. Presumption that offence is committed and with Culpable mental State (Sec 29, 30)
- g. Lodging False report is punishable (Sec 22), whereas a person giving information about the offence is protected from civil and criminal liability.(Sec 19(7))

OBJECTIVE OF THE ACT

Coming to the next aspect, what was the requirement of this act, when the IPC covered the offences against minors also. The following are the reasons which made the parliamentarians enact this law.

1. The IPC, as it was then, covered only penetrative sexual offence. (It is relevant here to mention that the definition of sexual assault of this act was adopted later on in IPC, vide Criminal Law amendment act, 2013)
2. There were increased offences against Children by parents, teachers and other guardians.

3. It was necessary to have a CHILD Friendly procedures-both substantive and procedural. (Reported offence against minors ranging from 3 yrs, whose innocent minds would not know what was happening to them and how to retell the same to strangers..)

OFFENCES

The offences and punishments under the act are annexed hereto, which includes punishment for abetment and attempt.

INVESTIGATION

Coming to the main aspect, that is Investigation of offences under the act. The powers and role of police are enumerated in Sec 19 and 24 of the act.

The Special Juvenile Police Unit Officer (Rank of Inspector as laid in JJ Act) or any other police officer upon receipt of information about the commission or apprehension of any offence under this act, in addition to the normal course of action that would be taken in regular cases, shall inform to the CWC; provide treatment necessary for the victim; lodge the victim in protection home; inform to the Special Court or sessions court.

Further,

- (1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice
 1. and as far as practicable by a woman police officer not below the rank of sub-inspector.
- (2) The police officer while recording the statement of the child shall not be in uniform.
- (3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child comes in the contact in any way with the accused.
- (4) No child shall be detained in the police station in the night for any reason.
- (5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.
- (6) It shall be the responsibility of the SJPU, or the local police to keep the child and his parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.
- (7) Investigation should be completed within 3 Months, from date of FIR, (Sec 173 1A CrPC) preceded by audio-visual recording of Sec 161 & 164 Cr.P.C. Statements.

TRIAL

After the investigation, coming to the trial procedures:

1. Special Court can take cognizance without committal proceedings.
2. the evidence shall be recorded by communicating the questions to be put to the child to the Special Court which shall in turn put those questions to the child.
3. Permit breaks to the child during trial.
4. a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, may be allowed to be present in the court.
5. the child shall not be called repeatedly to testify in the court.
6. aggressive questioning or character assassination of the child shall not be permitted and dignity of the child is maintained at all times during the trial.
7. the identity of the child is not disclosed at any time during the course of investigation or trial
8. the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.
9. compensation including interim compensation shall be awarded as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.
10. Special court shall be Sessions Court.
11. The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence
12. The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.
13. Child not to see accused at the time of testifying : may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.
14. Trials to be conducted in camera however in presence of the parents of the child or any other person in whom the child has trust or confidence or even on commission.

SOME IMPORTANT G.O'S, CIRCULARS, PRECEDENTS:

The 2012 Act came into force w.e.f. 14.11.2012 vide notification of the Government of India No. S.O 2705 (E), dated 09.11.2012 which was published in the Gazette (Extraordinary), Part II, Section 3, sub-section (ii) dated 09.11.2012 of Government of India.

The courts of I Addl. MSJ or I Addl. District and Sessions judges are designated Special courts to deal with the offences under this act, as per G.O.Rt. no. 630 LAW (LA&J-HOME COURTS-C) DEPARTMENT Dated:23-03-2013. Copy annexed.

The Addl. Public Prosecutor attached to the courts of the I Addl. MSJ or I Addl. District and Sessions judges, are designated as Special prosecutors under the act as per G.O.Rt.No. 2364 LAW (LA&J-HOME- COURTS.A1) DEPARTMENT Dated:23-12-2013.

Though SJPU officer is prescribed as of the rank of Inspector of Police. The DGP had issued a circular RC/60/M3/2014 dt. 21-01-2014, prescribing the rank of officers to investigate the cases. According to the same

Sec 5 & repeat offenders	-	Rank of SDPO/ ACP.
Sec 3 & 13 offences	-	Rank of Inspector of Police.
Sec 7, 9, 11 offences	-	Rank of Sub-Inspector of Police.

Compensation to victims is to paid as per G.O.Ms. no. 28 DWCD & SC (WP) dated 13.06.2011.

Sexual Offence against a minor belonging to Schedule Caste. POCSO act and SC & ST POA Act, both having non-obstinate clauses for exclusive trial- Trial to be held by Spl Court for POCSO offences, in view of the special procedures and safeguards of trial under the act. **State of A.P. Vs. Mangali Yadagiri 2016 (1) ALD (Crl) 314 (A.P).**

In the event of accused being a Juvenile in conflict with law, the non-obstinate clauses in POCSO would pave way for Juvenile Justice (Care and Protection) act, 2015, in view of Sec 34 of the act.

The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website **2016 0 Supreme(SC) 692; Youth Bar Association of India Vs. Union of India and Others**

When the victim has not complained about the procedure of non recording of the victim's 154 (1) and 161(3) Cr.P.C. statement by a women officer, the accused cannot take advantage of the same. **Pasupalleti Srinivasa Rao Vs The State of A.P. rep by its Public Prosecutor and another 2016(1) ALD (Crl) 207.(A.P).**

The Supreme court in a recent judgment pointed out that the POCSO act did not account for mental age of the Victim.

The Protection of Children from Sexual Offences Act, 2012

Sec	Offence	Sentence		C/ NC	B/ NB	TC
		Imp	Fine			
4	<p>Punishment for penetrative sexual assault A person is said to commit "penetrative sexual assault" if—</p> <p>(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or</p> <p>(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or</p> <p>(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person or</p> <p>(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.</p>	7 yrs to Life and	F	C	NB	Spl. Court
6	<p>Punishment for aggravated penetrative sexual assault</p> <p>(a) Whoever, being a police officer, commits penetrative sexual assault on a child —</p> <p>(i) within the limits of the police station or premises at which he is appointed; or</p> <p>(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or</p> <p>(iii) in the course of his duties or otherwise; or</p> <p>(iv) where he is known as, or identified as, a police officer; or</p> <p>(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a .</p> <p>(i) within the limits of the area to which the person is deployed; or</p>	RI-10yr to Life and	F	C	NB	„

	<p>(ii) in any areas under the command of the forces or armed forces; or</p> <p>(iii) in the course of his duties or otherwise; or</p> <p>(iv) where the said person is known or identified as a member of the security or armed forces; or</p> <p>(c) whoever being a public servant commits penetrative sexual assault on a child; or</p> <p>(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or</p> <p>(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or</p> <p>(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or</p> <p>Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or</p> <p>(g) whoever commits gang penetrative sexual assault on a child.</p> <p>(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or</p> <p>(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the</p>					
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<p>child; or</p> <p>(j) whoever commits penetrative sexual assault on a child, which—</p> <p>(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or 14 of 1987</p> <p>(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;</p> <p>(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or</p> <p>(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or</p> <p>(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or</p> <p>(m) whoever commits penetrative sexual assault on a child below twelve years; or</p> <p>(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or</p> <p>(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or</p> <p>(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or</p> <p>(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or</p>				
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	<p>(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or</p> <p>(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or</p> <p>(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or</p> <p>(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault</p>					
8	<p>Punishment for sexual assault</p> <p>Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.</p>	3 to 5yr &	F	C	NB	„
10	<p>Punishment for aggravated sexual assault</p> <p>(a) Whoever, being a police officer, commits sexual assault on a child—</p> <p>(i) within the limits of the police station or premises where he is appointed; or</p> <p>(ii) in the premises of any station house whether or not situated in the police station to which appointed; or</p> <p>(iii) in the course of his duties or otherwise; or</p> <p>(iv) where he is known as, or identified as a police officer; or</p> <p>(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—</p> <p>(i) within the limits of the area to which the person is deployed; or</p> <p>(ii) in any areas under the command of the security or armed forces; or</p> <p>(iii) in the course of his duties or otherwise; or</p>	5 to 7yr &	F	C	NB	„

	<p>(iv) where he is known or identified as a member of the security or armed forces; or</p> <p>(c) whoever being a public servant commits sexual assault on a child; or</p> <p>(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or</p> <p>(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or</p> <p>(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or</p> <p>(g) whoever commits gang sexual assault on a child.</p> <p>Explanation.—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or</p> <p>(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or</p> <p>(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or</p> <p>(j) whoever commits sexual assault on a child, which—</p> <p>(i) physically incapacitates the child or causes the child to become mentally ill as defined</p>					
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<p>under clause (l) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or 14 of 1987</p> <p>(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or</p> <p>(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or</p> <p>(l) whoever commits sexual assault on the child more than once or repeatedly; or</p> <p>(m) whoever commits sexual assault on a child below twelve years; or</p> <p>(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or</p> <p>(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or</p> <p>(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or</p> <p>(q) whoever commits sexual assault on a child knowing the child is pregnant; or</p> <p>(r) whoever commits sexual assault on a child and attempts to murder the child; or</p> <p>(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or</p> <p>(t) whoever commits sexual assault on a child and who has been previously convicted of</p>				
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	having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or (u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.					
12	Punishment for sexual harassment A person is said to commit sexual harassment upon a child when such person with sexual intent,- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or (iii) shows any object to a child in any form or media for pornographic purposes; or (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or (vi) entices a child for pornographic purposes or gives gratification therefor.	3 yrs and	F	C	NB	„
14 (1)	Punishment for using child for pornographic purposes	5 yrs and	F	C	NB	„
	On 2 nd or subsequent conviction	7 yrs and	F	C	NB	„
14 (2)	If the person using the child for pornographic purposes commits offence u/s.3 by directly participating in pornographic acts	10 yrs to Life and	F	C	NB	„
14	If the person using the child for pornographic purposes commits offence u/s.5 by directly	R.I. for	F	C	NB	„

(3)	participating in pornographic acts	Life and				
14 (4)	If the person using the child for pornographic purposes commits offence u/s.7 by directly participating in pornographic acts	6 to 8yrs and	F	C	NB	„
14 (5)	If the person using the child for pornographic purposes commits offence u/s.9 by directly participating in pornographic acts	8 to 10yrs and	F	C	NB	„
15	Punishment for storage of pornographic material involving child	3 yrs or	F	C	NB	„
18	Punishment for attempt to commit an offence	½ of IMP provided for the offence or	F	-	--	..
22 (1)	Punishment for false complaint or false information with the intention to humiliate, extort or threaten or defame	6 Month or *	F	C	B	Spl. Court
22 (3)	Whoever, not being a child makes false complaint or provides false information against a child knowing it to be false, thereby victimizing such child in any of the offences under this Act.	1 yr or	F	C	B	„
23 (4)	Person who contravenes sub-sections (1) or (2) of sec.23 i.e. making a report or comment on any child through any form of media without having authentic information which may effect the reputation or privacy of the child or disclose of a identity of the child	Not less than 6 Months upto 1yr or	F	C	B	„

Note: as per sec.2-d “Child” means any person (boy or girl) below the age of 18 years. Offences under this Act are triable by a court of sessions, designated as special court u/s.28. Special court can take cognizance of the case without the accused being committed to it for trial by a Magistrate as per Sec.33(1). Trial of these cases shall be held in-camera u/s.37 in the presence of parents / relatives of the child. Evidence of victim / child shall be recorded within 30 days from the date of taking cognizance of the offence by the special court and trial shall be completed as far as possible within a period of one year from the date of taking cognizance of the offence as per Sec.35

* **As** per sec.22(2) if a false complaint or false information was made by child no punishment shall be imposed on such child.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 34] नई दिल्ली, बुधवार, जून 20, 2012/ ज्येष्ठ 30, 1934 (शक)
No. 34] NEW DELHI, WEDNESDAY, JUNE 20, 2012/ JYAISTHA 30, 1934 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 20th June, 2012/Jyaistha 30, 1934 (Saka)

The following Act of Parliament received the assent of the President on the 19th June, 2012, and is hereby published for general information:—

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

[19th June, 2012]

An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected 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 has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

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

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

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

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

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

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

CHAPTER I

PRELIMINARY

Short title,
extent and
commencement.

1. (1) This Act may be called the Protection of Children from Sexual Offences Act, 2012.
- (2) It extends to the whole of India, except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. (1) In this Act, unless the context otherwise requires, —
 - (a) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;
 - (b) "aggravated sexual assault" has the same meaning as assigned to it in section 9;
 - (c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;
 - (d) "child" means any person below the age of eighteen years;
 - (e) "domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005;
 - (f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;
 - (g) "prescribed" means prescribed by rules made under this Act;
 - (h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988;
 - (i) "sexual assault" has the same meaning as assigned to it in section 7;
 - (j) "sexual harassment" has the same meaning as assigned to it in section 11;
 - (k) "shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;
 - (l) "Special Court" means a court designated as such under section 28;
 - (m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.

43 of 2005.

41 of 1988.

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

45 of 1860.
2 of 1974.
56 of 2000.
21 of 2000.

CHAPTER II

SEXUAL OFFENCES AGAINST CHILDREN

A.—PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Penetrative
sexual assault.

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; or
 - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

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

Punishment
for
penetrative
sexual assault.

B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

5. (a) Whoever, being a police officer, commits penetrative sexual assault on a child —

Aggravated
penetrative
sexual assault.

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as, a police officer; or

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

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

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

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

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

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

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

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

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

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

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

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

14 of 1987.

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

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

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

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

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

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

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

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

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

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

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

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

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated penetrative sexual assault.

Punishment
for aggravated
penetrative
sexual assault.

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

C.—SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Sexual assault.

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

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

D.—AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR

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

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as a police officer; or

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

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Punishment
for aggravated
sexual assault.

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

E.—SEXUAL HARASSMENT AND PUNISHMENT THEREFOR

Sexual
harassment.

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

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

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

Punishment
for sexual
harassment.

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

CHAPTER III

USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

Use of child for
pornographic
purposes.

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

(a) representation of the sexual organs of a child;

(b) usage of a child engaged in real or simulated sexual acts (with or without penetration);

(c) the indecent or obscene representation of a child,

shall be guilty of the offence of using a child for pornographic purposes.

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

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

Punishment for using child for pornographic purposes.

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

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

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

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

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

Punishment for storage of pornographic material involving child.

CHAPTER IV

ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

16. A person abets an offence, who—

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

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

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

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

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

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

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

Punishment for abetment.

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

18. Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the

Punishment for attempt to commit an offence.

Abetment of an offence.

offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.

CHAPTER V

PROCEDURE FOR REPORTING OF CASES

Reporting of offences.

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

2 of 1974.

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

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

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

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

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

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

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

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

Obligation of media, studio and photographic facilities to report cases.

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

Punishment for failure to report or record a case.

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

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

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

Punishment for false complaint or false information.

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

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

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

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

Procedure for media.

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

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

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

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

CHAPTER VI

PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

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

Recording of statement of a child.

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

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

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

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

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

Recording of statement of a child by Magistrate.

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

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

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

Additional provisions regarding statement to be recorded.

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

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

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

Medical examination of a child.

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

2 of 1974.

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

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

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

CHAPTER VII

SPECIAL COURTS

Designation of Special Courts.

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

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

4 of 2006.

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

2 of 1974.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

21 of 2000.

Presumption as to certain offences.

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

Presumption of culpable mental state.

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

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

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

Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.

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

2 of 1974.

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

Special Public Prosecutors.

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

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

2 of 1974.

CHAPTER VIII

PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

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

Procedure and powers of Special Court.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

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

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

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

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

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

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

Explanation.—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session.

2 of 1974.

34. (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

56 of 2000.

Procedure in case of commission of offence by child and determination of age by Special Court.

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

Period for recording of evidence of child and disposal of case.

35. (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

Child not to see accused at the time of testifying.

36. (1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

Trials to be conducted *in camera*.

37. The Special Court shall try cases *in camera* and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973.

2 of 1974.

Assistance of an interpreter or expert while recording evidence of child.

38. (1) Wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

CHAPTER IX

MISCELLANEOUS

Guidelines for child to take assistance of experts, etc.

39. Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

Right of child to take assistance of legal practitioner.

40. Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

2 of 1974.

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

Provisions of sections 3 to 13 not to apply in certain cases.

41. The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

Alternative punishment.

42. Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.

43. The Central Government and every State Government, shall take all measures to ensure that—

Public awareness about Act.

(a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;

(b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

4 of 2006.

44. (1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

Monitoring of implementation of Act.

4 of 2006.

(2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005.

4 of 2006.

(3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005.

45. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the qualifications and experience of, and the fees payable to, a translator or an interpreter, a special educator or any person familiar with the manner of communication of the child or an expert in that field, under sub-section (4) of section 19; sub-sections (2) and (3) of section 26 and section 38;

(b) care and protection and emergency medical treatment of the child under sub-section (5) of section 19;

(c) the payment of compensation under sub-section (8) of section 33;

(d) the manner of periodic monitoring of the provisions of the Act under sub-section (1) of section 44.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

46. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(c)]

ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER

- (a) The Air Force Act, 1950 (45 of 1950);
- (b) The Army Act, 1950 (46 of 1950);
- (c) The Assam Rifles Act, 2006 (47 of 2006);
- (d) The Bombay Home Guard Act, 1947 (3 of 1947);
- (e) The Border Security Force Act, 1968 (47 of 1968);
- (f) The Central Industrial Security Force Act, 1968 (50 of 1968);
- (g) The Central Reserve Police Force Act, 1949 (66 of 1949);
- (h) The Coast Guard Act, 1978 (30 of 1978);
- (i) The Delhi Special Police Establishment Act, 1946 (25 of 1946);
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992);
- (k) The Navy Act, 1957 (62 of 1957);
- (l) The National Investigation Agency Act, 2008 (34 of 2008);
- (m) The National Security Guard Act, 1986 (47 of 1986);
- (n) The Railway Protection Force Act, 1957 (23 of 1957);
- (o) The Sashastra Seema Bal Act, 2007 (53 of 2007);
- (p) The Special Protection Group Act, 1988 (34 of 1988);
- (q) The Territorial Army Act, 1948 (56 of 1948);

(r) The State police forces (including armed constabulary) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of section 2 of the Armed Forces (Special Powers) Act, 1958 (28 of 1958).

V. K. BHASIN,
Secretary to the Govt. of India.

[To be published in the Gazette of India Extraordinary Part II, Section 3(i)]

Government of India
MINISTRY OF WOMEN AND CHILD DEVELOPMENT
NOTIFICATION

New Delhi, the 14th November, 2012

G.S.R. ____ (E).- In exercise of the powers conferred by sub-section (1), read with clauses (a) to (d) of sub-section (2), of section 45 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), the Central Government hereby makes the following rules, namely -

1. Short title and commencement – (1) These rules may be called the Protection of Children from Sexual Offences Rules, 2012.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. Definitions – (1) In these rules, unless the context otherwise requires, -

(a) “Act” means the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);

(b) “District Child Protection Unit” (DCPU) means the District Child Protection Unit established by the State Government under section 62A of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006;

(c) “Expert” means a person trained in mental health, medicine, child development or other related discipline, who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability;

(d) “Special educator” means a person trained in communication with children with special needs in a way that addresses the child’s individual differences and needs, which include challenges with learning and communication, emotional and behavioural disorders, physical disabilities, and developmental disorders;

(e) “Person familiar with the manner of communication of the child” means a parent or family member of a child or a member of his shared household or any person in whom the child reposes trust and confidence, who is familiar with that child’s unique manner of communication, and whose presence may be required for or be conducive to more effective communication with the child;

(f) “Support person” means a person assigned by a Child Welfare Committee, in accordance with sub-rule (8) of rule 4, to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act;

(2) Words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them under the Act.

3. Interpreters, translators and Special educators – (1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators and special educators for the purposes of the Act, and this register shall be made available to the Special Juvenile Police Unit (hereafter referred to as “SJPU”), local police, magistrate or Special Court, as and when required.

(2) The qualifications and experience of the interpreters, translators, Special educators, and experts, engaged for the purposes of sub-section (4) of section 19, sub-sections (3) and (4) of section 26 and section 38 of the Act, shall be as indicated in these rules.

(3) Where an interpreter, translator, or Special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on evidence of relevant experience or formal education or training or demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, Special Court or other authority concerned.

(4) Interpreters and translators engaged under sub-rule (1) should have functional familiarity with language spoken by the child as well as the official language of the state, either by virtue of such language being his mother tongue or medium of instruction at school at least up to primary school level, or by the interpreter or translator having acquired knowledge of such language through his vocation, profession, or residence in the area where that language is spoken.

(5) Sign language interpreters, Special educators and experts entered in the register under subrule (1) should have relevant qualifications in sign language or special education, or in the case of an expert, in the relevant discipline, from a recognized University or an institution recognized by the Rehabilitation Council of India.

(6) Payment for the services of an interpreter, translator, Special educator or expert whose name is enrolled in the register maintained under sub-rule (1) or otherwise, shall be made by the State Government from the Fund maintained under section 61 of the Juvenile Justice Act, 2000, or from other funds placed at the disposal of the DCPU, at the rates determined by them, and on receipt of the requisition in such format as the State Government may prescribe in this behalf.

(7) Any preference expressed by the child at any stage after information is received under subsection (1) of section 19 of the Act, as to the gender of the interpreter, translator, Special educator, or expert, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child.

(8) The interpreter, translator, Special educator, expert, or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest. He shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973.

(9) In proceedings under section 38, the Special Court shall ascertain whether the child speaks the language of the court adequately, and that the engagement of any interpreter, translator, Special educator, expert or other person familiar with the manner of communication of the child, who has been engaged to facilitate communication with the child, does not involve any conflict of interest.

(10) Any interpreter, translator, Special educator or expert appointed under the provisions of the Act or its rules shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872.

4. Care and Protection – (1) Where an SJPU or the local police receives any information under sub-section (1) of section 19 of the Act from any person including the child, the SJPU or local police receiving report of such information shall forthwith disclose to the person making the report, the following details:-

- (i) his name and designation;
- (ii) the address and telephone number;

(iii) the name, designation and contact details of the officer who supervises the officer receiving the information.

(2) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, -

(a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973, and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of the Code;

(b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 5;

(c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;

(d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory at the earliest;

(e) inform the child and his parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;

(f) inform the child and his parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.

(3) Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC.

(4) Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2000, to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of his family or shared household and placed in a children's home or a shelter home.

(5) In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations:

(i) the capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counselling;

(ii) the need for the child to remain in the care of his parent, family and extended family and to maintain a connection with them;

(iii) the child's age and level of maturity, gender, and social and economic background;

(iv) disability of the child , if any;

(v) any chronic illness from which a child may suffer;

(vi) any history of family violence involving the child or a family member of the child; and,

(vii) any other relevant factors that may have a bearing on the best interests of the child:

Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

(6) The child and his parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered.

(7) The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU:

Provided that nothing in these rules shall prevent the child and his parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

(8) The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he has access. He shall keep the child and his parent or guardian or other person in whom the child has trust and confidence, informed as to the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. He shall also inform the child of the role he may play in the judicial process and ensure that any concerns that the child may have, regarding his safety in relation to the accused and the manner in which he would like to provide his testimony, are conveyed to the relevant authorities.

(9) Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing.

(10) The services of the support person may be terminated by the CWC upon request by the child and his parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.

(11) It shall be the responsibility of the SJPU, or the local police to keep the child and his parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.

(12) The information to be provided by the SJPU, local police, or support person, to the child and his parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:-

- (i) the availability of public and private emergency and crisis services;
- (ii) the procedural steps involved in a criminal prosecution;

- (iii) the availability of victims' compensation benefits;
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
- (v) the arrest of a suspected offender;
- (vi) the filing of charges against a suspected offender;
- (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;
- (viii) the bail, release or detention status of an offender or suspected offender;
- (ix) the rendering of a verdict after trial; and
- (x) the sentence imposed on an offender.

5. Emergency medical care – (1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, he shall, as soon as possible, but not later than 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility centre for emergency medical care:

Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.

(2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.

(3) No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

(4) The registered medical practitioner rendering emergency medical care shall attend to the needs of the child, including --

- (i) treatment for cuts, bruises, and other injuries including genital injuries, if any;
- (ii) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;
- (iii) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;
- (iv) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,
- (v) wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made.

(5) Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act.

6. Monitoring of implementation of the Act – (1) The National Commission for the Protection of Child Rights (hereafter referred to as "NCPCR") or the State Commission for the

Protection of Child Rights (hereafter referred to as “SCPCR”), as the case may be, shall in addition to the functions assigned to them under the Commissions for Protection of Child Rights Act, 2005, perform the following functions for implementation of the provisions of the Act:-

- (a) to monitor the designation of Special Courts by State Governments;
- (b) to monitor the appointment of Public Prosecutors by State Governments;
- (c) to monitor the formulation of the guidelines described in section 39 of the Act by the State Governments, for the use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child, and to monitor the application of these guidelines;
- (d) to monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Central and State Governments, for the effective discharge of their functions under the Act;
- (e) to monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act.

(2) The NCPCR or the SCPCR, as the case may be, may call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.

(3) The NCPCR or the SCPCR, as the case may be, may collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes established under the Act, including information on the following:-

- (i) number and details of offences reported under the Act;
- (ii) whether the procedures prescribed under the Act and rules were followed, including those regarding timeframes;
- (iii) details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,
- (iv) details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case.

(4) The NCPCR or the SCPCR, as the case may be, may use the information so collected to assess the implementation of the provisions of the Act. The report on monitoring of the Act shall be included in a separate chapter in the Annual Report of the NCPCR or the SCPCR.

7. Compensation - (1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with subsections (2) and (3) of section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;
 - (ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;
 - (iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
 - (iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
 - (v) the relationship of the child to the offender, if any;
 - (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;
 - (vii) whether the child became pregnant as a result of the offence;
 - (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;
 - (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;
 - (x) any disability suffered by the child as a result of the offence;
 - (xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;
 - (xii) any other factor that the Special Court may consider to be relevant.
- (4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.

[F. No. 22-14/2012-CW-I]

**Dr. Vivek Joshi,
Joint Secretary to the Government of India**



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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नई दिल्ली, शुक्रवार, नवम्बर 9, 2012/कार्तिक 18, 1934

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NEW DELHI, FRIDAY, NOVEMBER 9, 2012/KARTIKA 18, 1934

महिला और बाल विकास मंत्रालय

अधिसूचना

नई दिल्ली, 9 नवम्बर, 2012

का.आ. 2705(अ).—केन्द्रीय सरकार, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (2012 का 32) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 14 नवम्बर, 2012 को उस तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के उपबंध प्रवृत्त होंगे।

[सं. 22-14/2012-सीडब्ल्यू-1]

डॉ. विवेक जोशी, संयुक्त सचिव

MINISTRY OF WOMEN AND CHILD
DEVELOPMENT
NOTIFICATION

New Delhi, the 9th November, 2012

S.O. 2705(E).—In exercise of the powers conferred by sub-section (3) of Section (1) of the Protection of Children from Sexual Offences Act, 2012 (No. 32 of 2012), the Central Government hereby appoints the 14th November, 2012, as the date on which the provisions of the said Act shall come into force.

[No. 22-14/2012-CW-I]

Dr. VIVEK JOSHI, Jt. Secy.

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Courts – Criminal – Cases relating to the Protection of Children from sexual offences Act, 2012 (Act 32 of 2012) – Designation of a Court as Special Court in Each District to try the said offences - Notification – Issued.

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LAW (LA&J-HOME COURTS-C) DEPARTMENT

G.O.Rt.No. 630

Dated:23-03-2013.

Read:

From the Registrar (Vigilance), High Court of Andhra Pradesh, Hyderabad, Letter R.O.C.No.521/E1/2012, dated:16-02-2013.

ORDER:

In the letter read above, the Registrar (Vigilance), High Court of Andhra Pradesh, Hyderabad, has forwarded draft notification and requested the Government to approve and publish the same in the Andhra Pradesh Gazette Extraordinary;

2. The Government after careful examination of the proposal of the Registrar (Vigilance), High Court of Andhra Pradesh, have decided to issue Notification.

3. Accordingly, the following Notification will be published in an Extraordinary issue of the Andhra Pradesh Gazette.

NOTIFICATION

In exercise of the powers conferred under Sub-Section (1) of Section 28 of the "Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)" the Government of Andhra Pradesh, in consultation with the Chief Justice of the High Court hereby designate the Courts of I Additional District and Sessions Judges in all the Districts and the Courts of I Additional Metropolitan Sessions Judges in Metropolitan Sessions Divisions of Hyderabad, Visakhapatnam and Vijayawada, to try the offences, filed under the "Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)".

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R.DAMODAR,
SECRETARY TO GOVERNMENT,
LEGISLATIVE AFFAIRS & JUSTICE (FAC).

To

The Registrar (Vigilance), High Court of Andhra Pradesh, Hyderabad.
The Commissioner Printing, Stationery & Stores Purchases, Hyderabad,
(2) copies with a request to Publish the same in Andhra Pradesh Gazette
and send 25 copies directly to the High Court of Andhra Pradesh.

Copy to:

The Private Secretary to Principal Secretary to Government,
Department for women, Children, Disabled and Senior Citizens
- with reference to D.O. Letter No.2203/JJ.A1/2008-25,
Dated 07-03-2013, for favour of information.

The Private Secretary to Secretary (LA & J) Department
The Private Secretary to Minister (Law & Courts).
The Law(E) Department.
SF/SC.

// FORWARDED :: BY ORDER //

SECTION OFFICER.

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Criminal Courts – Designating the Additional Public Prosecutors of I Additional District & Sessions Courts of all the Districts and I Additional Metropolitan Sessions Judge Courts in the Sessions Divisions of Hyderabad, Visakhapatnam and Vijayawada as Additional Public Prosecutor-cum-Special Public Prosecutor for conducting trial of cases in the specified courts U/s 32 (1) for the purpose of conducting the prosecution of the cases filed under the "**Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)**– Notification – Orders - Issued.

LAW (LA&J-HOME- COURTS.A1) DEPARTMENT

G.O.Rt.No. 2364

Dated:23-12-2013.
Read the following:-

1. G.O.Ms.No.30, Law (LA&J-Home-Courts.C1) Department, dated:28-03-2012.
2. From the Additional Director of Prosecutions, letter No.527/A2/2012, dated:20-07-2013.

ORDER:-

In the G.O. 1st read above, Government have issued notification under section 25 of the Commissions for Protection of Child Rights Act, 2005 specifying the Courts of I Additional District & Sessions Judges in all the Districts and the Courts of I Additional Metropolitan Sessions Judges Courts of Hyderabad, Visakhapatnam and Vijayawada for trial of the offences committed against Children, violation of child Rights in the State.

2. In the letter 2nd read above, the Director of Prosecutions has stated that, the District & Sessions Judge, Visakhapatnam, has informed that the Government have also designated the Court of I Additional Metropolitan Sessions Judge, Visakhapatnam, for trial of the offences filed under the "**Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)** and also informed that as per Section 32 of the said Act the State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for the Special Court for conducting prosecution filed under the provisions of the said Act. He has further stated that as per Section 28 (1) of the Act -"For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each District, a court of Session to be a Special Court to try the offences under the Act:

Provided that if a court of Session is notified as a Children's Court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this Section. Accordingly, Government have designated the courts of I Additional District & Sessions Judge in all the Districts and the Courts of I Additional Metropolitan Sessions Judges in Sessions Divisions of Hyderabad, Visakhapatnam and Vijayawada to try the offences under the "Protection of Children from Sexual Offences Act, 2012 vide G.O.Rt.No.630, Law (LA&J-Home-Courts.C) Department, dated:23-03-2013.

3. Therefore, in the exigency of services and in the interest of prosecution, the Director of Prosecutions has requested the Government to notify the Additional Public Prosecutors of I Additional District & Sessions Courts of all the Districts and I Additional Metropolitan Sessions Judge Courts in the Sessions Divisions of Hyderabad, Visakhapatnam and Vijayawada as Additional Public Prosecutors-cum-Special Public Prosecutors Under section 32(1) for the purpose of conducting the prosecution of the cases filed under the "Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), since the said Courts were notified to conduct trial of the said cases and also requested to issue a notification to that effect.

4. After careful examination, Government hereby decided to notify the Additional Public Prosecutors of I Additional District and Sessions Judge Courts of **all the Districts** and I Additional Metropolitan Sessions Judge Courts in the Sessions Divisions of **Hyderabad, Visakhapatnam, and Vijayawada** as Additional Public Prosecutors-cum-Special Public Prosecutors Under section 32(1) for the purpose of conducting the prosecution of the cases filed under the "**Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)**:"

[P.T.O.]

5. Accordingly, the following notification will be published in an extraordinary issue of the Andhra Pradesh Gazette.

NOTIFICATION

In exercise of the powers conferred under sub section (1) of Section 32 of the "**Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)**" Government hereby appoint the Additional Public Prosecutors of I Additional District & Sessions Courts of **all the Districts** and of I Additional Metropolitan Sessions Judge Courts in the Sessions Divisions of **Hyderabad, Visakhapatnam, and Vijayawada** as Additional Public Prosecutors-cum-Special Public Prosecutors for the purpose of conducting the prosecution of the cases filed under the said Act.

6. The Director of Prosecutions, Andhra Pradesh, Hyderabad shall take further necessary action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.SANTHOSH REDDY,
SECRETARY TO GOVERNMENT,
LEGISLATIVE AFFAIRS & JUSTICE.

To

The Director of Prosecutions, Andhra Pradesh, Hyderabad.

All the I Additional District & Sessions Courts through the

Director of Prosecutions, Andhra Pradesh, Hyderabad.

The I Additional Metropolitan Sessions Judge Courts in the

Sessions Divisions of **Hyderabad, Visakhapatnam, and**

Vijayawada through the Director of Prosecutions,

Andhra Pradesh, Hyderabad.

The Commissioner of Printing Stationery & Stores Purchase (Ptg. wing) Department,
Hyderabad, to publish in the Andhra Pradesh Gazette. (2 copies)

Copy to: The P.S to M(L&C).

Copy to: The P.S. to Secretary to (LA&J).

Copy to: SC/SF.

// FORWARDED :: BY ORDER //

SECTION OFFICER.

MEMORANDUM

Sub: Investigation of cases under Protection of Children from Sexual Offences Act. 2012 – instructions to investigation officers – Rank and profile of I.Os – Regarding.

Ref:

1. GO Rt.No.630, Law (LA&J-Home Courts.C) Dept., dt. 23-03-2013 regarding designation of Special Courts to try offences under “Protection of Children from sexual offences Act. 2012 (POCSO Act).
2. GO.Rt.No. 2364, Law (LA&J – Home Courts A2) Dept., dt. 23-12-2013 regarding designation of Special Public Prosecutors to conduct trial under POCSO Act.
3. Workshop on POCSO Act as APPA dt:30-12-2013.

Some of the Officers expressed certain doubts regarding the rank of Police Officers to take up personal investigation of cases under POCSO Act. Based on the punishment provided under the relevant section of law, the following officers will take up personal investigation of the cases registered under POCSO Act 2012, read with other relevant IPC provisions. The SDPOs will write GCRs for the offences investigated by Inspectors of Police and submit their personal investigation case GCRs as contemplated in PSO No. 52-(12) of APPM, duly using the latest of Criminal Law (Amendment) Act 2013.

Sl.No.	Rank	Section of POSCO Act
1	SDPO	(i) Sec. 5 r/w 6, (Aggravated penetrative sexual assault) (ii) Repeat offender involved in PSA u/s 3 r/w 4
2	CI/Inspector	a) Sec. 3 r/w 4 (Penetrative sexual assault) b) Sec. 13 r/w 14 (Use of child for pornographic purposes)
3	SI of Police	a) Sec 7 r/w 8 (Sexual assault) b) Sec 9 r/w 10 (Aggravated sexual assault) c) Sec.11 r/w 12 (Sexual harassment)

The investigation in relation to rape of a child should be completed within 3 months from the date of FIR as mandated u/s 173 (1A) Cr.PC preceded by audio-video electronic recording of Sec.161 Cr.PC, 164 Cr.PC Statements. The investigating officers have to abide by other pre-requisites like:

- (i) Medical examination of the chilled (male/female below 18 yrs) u/s 164 A Cr.PC r/w 27 POCSO Act
- (ii) Conducting in camera trial (u/s 327 Cr.Pc r/w 37 POCSO Act)
- (iii) Bringing to the notice of the trial court regarding threatening of witness u/s 195 A IPC r/w 195 A Cr.Pc.
- (iv) Completion of trial of rape case by Trial Courts within two months (u/s 309 (1a) Cr.Pc.)

- (v) Payment of victim compensation in terms of G.O.Ms 28 of WCD of 2014
- (vi) Assisting the victim to prefer an appeal against Trial Court orders u/s 372 Cr.PC.

All Ss.P/Cs.P/Ss.G.R.P. should support the victim at all costs to ensure her safety and security during pre/post trial of case.

It is to inform that vide reference 1st cited Addl. District and Sessions Judge in all the districts and the Courts of 1 Addl. Metropolitan Sessions Judge in Metropolitan Sessions Divisions of Hyderabad, Visakhapatnam and Vijayawada, have been designated as Special Courts and vide reference 2nd cited the Addl. Public Prosecutors of 1st Addl. District & Sessions Judge Courts of all Districts and 1st Addl. Metropolitan Sessions Judge Courts in the Sessions Divisions of Hyderabad, Visakhapatnam and Vijayawada have been designated as Addl. Public Prosecutor-cum-Special Public Prosecutors.

The investigating officers will have to adopt the following 12 principles of the POCSO Act while investigating the cases and during trial and explain the same to the prosecuting officers. .

- 1) Principle of right to life and survival of the child victim.
- 2) Protecting the best interests of the child.
- 3) The right to be treated with dignity and compassion
- 4) The right to be protected from discrimination .
- 5) The right to special preventive measures.
- 6) The right to be informed of legal processes involved and other case details.
- 7) The right to be heard and to express views and concerns.
- 8) The right to effective assistance at all times till completion of trial.
- 9) The right to privacy protecting identity of victim and precluding re-victimization.
- 10) The right to be protected from hardship during the justice process.
- 11) The right to safety of the child Protecting child from any risk before during and after the justice process.
- 12) The right to compensation, relief and rehabilitation.

All Ss.P./Cs.P/Ss.G.R.P are requested to strengthen Special Juvenile Police Unit SJPUs (District Crime Bureau) Inspectors and constantly liaise with CWC (Child Welfare Committee) District Child Protection Officers of WCD Department and Prosecution Department to safeguard the best interests of the child.

All Ss.P/Cs.P/Ss.G.R.P are instructed to follow the above procedure while investigating the cases under POCSO Act 2012 and ensure that the accused is brought to justice.

All are requested to acknowledged receipt of the Memo.

Sd/- Vinoy Kumar Singh
For Director General of Police

To
All Commissioners of Police.
All Superintendents of Police.
All Superintendents of Railway Police.
All Range Dy. Inspectors General of Police including I.G.P., G/R, Guntur.
The Dy. Inspector General of Police, Marine.
All Regional Inspectors General of Police.
The Inspectors General of Police, Personnel, Provisioning & Budget, L&O,
Welfare, Marine, Octopus.
Copy to Director General, Greyhounds and Octopus.
Copy to all Addl. Directors General of Police, L&O, Legal, P&L. Co-ordination,
Training, Home Guards, Organization, Technical Services, Road Safety, CID,
Railways, Intelligence, APSP Bns., Sports and Director APPA, Hyderabad.
Copy to the Inspector General of Police, PCS&S for uploading to all SHOs /
CIs/SDPOs/Unit Heads/Ranges/IGP in the State.
Copy to all Commandants of APSP Bns.
Copy to all Staff Officers for information.
Copy to the with compliments to Director A.P.Judl. Academy. Director of
Prosecution, Hyderabad for information.
Copy to Superintendent, 'A' Section, Chief Office.
Copy to Stock File.

// t.c.f.b.o.//



ABSTRACT

Provision of immediate relief to trafficked victims - Enhancement of immediate relief from Rs.10,000/- to Rs.20,000/- to the Children/Women who are rescued from trafficking – Orders – Issued.

DEPT. FOR WOMEN, CHILDREN, DISABLED & SENIOR CITIZENS (WP).

G.O.Ms.No. 28

Dated:15-10-2012.

Read the following:-

1. G.O.Ms.No.47, WDCW&DW(Prog) Dept., dt.12-7-1999.
2. G.O.Ms.No.1, WDCW&DW(Prog) Dept., dt.3-1-2003.
3. G.O.Ms.No.28, WDCW&DW(Prog) Dept., dt.4-7-2003.
4. G.O.Ms.No.13, WDCW&DW(WP) Dept., dt.21-4-2006.
5. From the Director, WD & CW, Hyderabad, Lr.No.4205/ATC/2006, dt:05-05-2012.

ORDER:-

In the G.O. 1st read above, a Relief and Rehabilitation fund was set up for providing relief to women who become unfortunate victims of atrocities, like rape, molestation, kidnapping, abduction of women and girls, dowry deaths, etc.

2. In the G.O. 2nd and 3rd read above, Government have issued orders on the policy for combating trafficking of women and children for commercial sexual exploitation and Government have also decided to utilize the existing rehabilitation and relief fund for providing relief to victims of trafficking. The Government have also ordered that an amount of Rs.5,000/- or actuals, whichever is lower, be paid either by the Director, Women Development & Child Welfare or the District Collectors to the children/women who are rescued from trafficking as immediate relief for the purpose of travel, clothing, medicine and other immediate necessities for the women and children rescued from trafficking.

3. In the G.O. 4th read above, Govt. have issued orders enhancing the immediate relief to women and children who are rescued from trafficking from Rs.5,000/- to Rs.10,000/-.

4. In the 8th meeting of the State Level Coordination Committee on Policy for Combating Trafficking of Women and Children for commercial sexual exploitation headed by the Chief Secretary, held on 07-12-2011, it was decided to increase the immediate relief to women and children rescued from trafficking from Rs.10,000/- to Rs.20,000/- and to draw the amount without budget control to provide immediate relief to trafficked victims as a similar provision was provided for SC atrocity victims. The Director, WD & CW Dept vide his letter dt.05-05-2012 has also requested the Government to issue necessary instructions in this regard.

5. After careful examination of the matter, Government hereby order that the immediate relief to women and children who are rescued from trafficking be enhanced from Rs.10,000/- to Rs.20,000/- (Rupees Twenty Thousand Only) and draw the amount without budget control.

P.T.O.

:: 2 ::

6. The procedure laid down in the G.O. 3rd read above for claiming relief and filing FIR remain unchanged and holds good.

7. This order issues with the concurrence of Finance Department vide their U.O.No.20707/144/Exp.WD/12, dt.23-8-2012.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

PUSHPA SUBRAHMANYAM,
PRINCIPAL SECRETARY TO GOVERNMENT (I/c).

To

The Home Department.

The Commissioner, WD & CW Department, Hyderabad.

The Director General of Police, Hyderabad.

The Additional Director General of Police (CID), Hyderabad.

All District Collectors of Andhra Pradesh.

All Superintendents of Police of Andhra Pradesh.

The Accountant General, A.P., Hyderabad,

Copy to:-

The Pay and Accounts Officer, A.P., Hyderabad

The Director of Treasuries and Accounts, Hyderabad

The Special Secretary to Chief Minister.

Finance (Expr. WD, CW & DW) Department.

The Commissioner, Information and Public Relations Department,
Hyderabad.

The P.S. to Minister (S.E.) Department

The File/SF/SC.

/ / FORWARDED :: BY ORDER / /

SECTION OFFICER

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Department for Women, Children, Disabled & Senior Citizens – Setting up Relief and Rehabilitation Fund for victims of atrocities – Consolidated instructions and modalities for providing relief to the victims of atrocities – Orders – Issued.

DEPT. FOR WOMEN, CHILDREN, DISABLED & SENIOR CITIZENS (WP).

G.O.Ms.No.28

Dated:13.06.2011.

Read the following:-

1. G.O.Ms.No.47, WD CW & DW (Prog) Dept., Dt:12-07-1999.
2. G.O.Ms.No.1, WD CW & DW (Prog) Dept., Dt:03-01-2003.
3. G.O.Ms.No.28, WD CW & DW (Prog) Dept., Dt:04-07-2003.
4. G.O.Ms.No.13, WD CW & DW (WP) Dept., Dt:21-04-2006.
5. From the Director, WD & CW, Lr.No.8405/B1/09, Dt:11-12-2009.
6. From Additional Director General-CID, Hyderabad, D.O.Lr.C.No.5903/C-28/WPC/CID/2011, dt:13-05-2011.

* * *

ORDER:

In the G.O. 1st read above, a Relief and Rehabilitation Fund was set up for providing relief to the women who are victims of atrocities like Rape, Molestation, Kidnap, Dowry Harassment etc.

2. Vide G.O. 3rd read above, the scope of the scheme was widened and the procedure simplified.

3. Vide G.O. 4th read above, orders were issued enhancing the relief fund from Rs.5,000/- to Rs.10,000/- to the Children/Women who are rescued from Trafficking.

4. Government after due consideration hereby include crimes such as Acid attacks, causing grievous injury with other weapons such as hacking, slitting of throats etc. of Women and Girls, under the purview of the Relief and Rehabilitation Fund for victims of atrocities.

5. Further, with a view to ensure effective implementation of the Scheme, Government in supercession of the orders issued vide G.O's 1st, 3rd & 4th read above, hereby issue consolidated and comprehensive instructions for implementation of the scheme as follows:-

- (i). Whenever any atrocity is brought to notice, either by individuals or Organizations or are reported in the media, the Child Development Project Officer (CDPO) concerned/Project Director (PD) / District Women & Child Development Agency will record the case in a register immediately. The registration of the case shall immediately be done suo-moto or on the representation made to the CDPO/PD by the victim of the atrocity or her family members/ Social Worker/ any concerned citizen.
- (ii). When the case is registered suo-moto, the CDPO having jurisdiction should report the matter to the Police Station having jurisdiction and file FIR. Whenever the family members/Social Worker/(s) take up the matter, they should simultaneously register the complaint with the Police Station and obtain FIR and a copy of such FIR should be handed over to the CDPO concerned.

(P.T.O.)

- (iii). The victim of the atrocities such as rape/custodial rape/gang rape should be advised to be referred for medical examination by the Civil Assistant Surgeon in-charge of Primary Health Centre or the nearest Government Hospital.
- (iv). After medical report is received and the charge sheet is filed, the District Collector shall, after due scrutiny, accord sanction of Compensation / Relief to the victims as per the scale and up to the limits laid down in the Annexure to this order. On the basis of the sanction accorded by the District Collector, the CDPO of the area concerned will draw and disburse the amount from the Treasury in the shape of Demand Draft/ Pay Order.
- (v). The P.D. W & C.W. have to mobilize legal aid/support from District Legal Service Authority wherever the victim requires such legal aid /support in accordance with the **Sec.357-A Cr.PC** or Cr.PC New Rules or Guidelines issued to this effect.

6. The expenditure in this regard shall be debited to “2235 SS & W 02 SW – MH – 103 Women Welfare GH.11-Normal State Plan (SH) 27 Financial Assistance to Women and Girls affected by cognizable offences under Criminal Procedure Code 310 Grant-in-aid 312 Other Grant-in-aid.”

7. This order is issued with the concurrence of Finance Department vide their U.O.No.741/65/Expd.WD/11, dt:27-05-2011.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

M.CHAYA RATAN,
SPECIAL CHIEF SECRETARY TO GOVERNMENT.

To
All District Collectors.
All Superintendents of Police.
The Commissioner, Women Development & Child Welfare Dept.,
Hyderabad.
The Principal Accountant General (Audit-I) Hyderabad.
The Accountant General (Audit-II), Hyderabad.

Copy to:

Director General of Police, A.P., Hyderabad.
Deputy General of Police, (PCR Cell), Hyderabad.
Director of Treasuries and Accountants, Hyderabad.
Pay and Accounts Officer, A.P., Hyderabad.
Secretary to Government of India, Ministry of Welfare, New Delhi.
Secretary to Chief Minister.
Secretary, A.P. Public Service Commission, Hyderabad.
Law (Scrutiny Cell) Department.
Finance (EBS.XII) Department.
P.S. to Minister (Women and Child Welfare).
P.S. to Spl. Chief Secretary, WCD & SC Department.
Commissioner, Information and Public Relations Department,
Hyderabad.
S.F./S.C.

// FORWARDED : : BY ORDER //

SECTION OFFICER

ANNEXURE

(to G.O.Ms.No.28, WCD & SC Dept., Dated:13.06.2011)

SL. No.	CATEGORY OF OFFENCE/ ATROCITY AND SECTION OF I.P.C.	PURPOSE/QUANTUM OF RELIEF
1	Outraging the modesty of Women (Rape) as per Sec.375 & 376 of I.P.C.	(i) An amount of Rs.50,000/- to each case as follows:- (ii) 25% when FIR is registered along with the Medical Report. (iii) 25% after filing of charge-sheet. (iv) Balance 50% should be paid after completion of trial.
2	Kidnapping and abduction of woman or child as per Sec. 360 & 361, 362, 363, 363-A, 365 or Procuration of Minor Girl U/s 366-A I.P.C.; selling minor for purpose of prostitution U/s 372 I.P.C.; buying minor for prostitution U/s 373 I.P.C.	• Rs.20,000/- to each victim if she is alive. If not, to the head of the family or Legal Guardian as the case may be, provided such person is not an accused.
3	Dowry Death (Section 304-B I.P.C.) Or Dowry Murder Sec.302 I.P.C. r/w or Sec.3,4,5,6 of DP Act.. Sec.306 I.P.C r/w with 498-A I.P.C.	1. Rs.50,000/- in case of Dowry death as follows:- (i) Rs.25,000/- to the parents towards legal expenses. 2. In addition the following Relief/Rehabilitation measures shall be taken:- (i) If the mother is left with children, they should all be admitted to the residential schools run by Welfare Departments with the permission of family head or Guardian. (ii) The facility of GCPS shall be extended to all the Girl children of the deceased, if they are eligible. (iii) In case they are not eligible for the scheme, Rs.25,000/- will be deposited in the name of the Child, in Local Nationalized Bank which the child will get after she reaches (20) years. (iv) The Government will take care of full cost of education of children upto (14) years. (v) Whenever any dowry death is recorded, if the husband is accused and a Government employee he should immediately be suspended from service, and strict action taken as per the Dowry Prohibition Act etc.

(P.T.O.)

4	Sexual assault (rape) of minor below 18 years, (or) Gang rape Sec.375 & 376 (2) (g) I.P.C. (or) Custodial rape Sec.376 (2) (b) or Sec.376-B I.P.C.	<ul style="list-style-type: none"> (i) A compensation of Rs.1,00,000/- to each victim as follows:- (ii) 25% when FIR is registered along with Medical Report. (iii) 25% after filing of charge-sheet. (iv) Balance 50% should be paid after completion of trial.
5	Women and Children rescued from trafficking.	<ul style="list-style-type: none"> • An amount of Rs.10,000/- to each individual per case or actual, whichever is lower, to be paid either by the Commissioner, WD & CW or the District Collector to the Children/Women who are rescued from trafficking for:- (i). Repatriation of victims rescued from brothels and other places of trafficking to their homes/transit home/rescue home. (ii). Expenditure towards travel, clothing and other immediate necessities, urgent medical care, food and accommodation expenses. (iii). As per G.O.Ms.No.1, WD, CW & DW (Pro.) Department, dt.03-01-2003, the Dist .Collector and P.D. WD & CW will ensure all rehabilitation measures like, Economic Empowerment, Health, Education, Housing and Civic Amenities, Legal Assistance etc.,
6	Women & Girl victims of Acid attacks Based on FIR & Medical Report.	<ul style="list-style-type: none"> (i). An amount of Rs.1,00,000/- to each victim as follows:- (ii). 50% when FIR is Registered along with Medical Report (and Free Treatment under Arogya Sree Policy). (iii). 25% after filing of charge sheet. (iv). Balance 25% should be paid after completion of trail.
7	Women & Children who have been Hacked or Throat Slit, or grievously injured due to attack with a weapon etc.	<ul style="list-style-type: none"> (i). An amount of Rs.50,000/- to each victim as follows:- (ii). 50% when FIR is Registered along with Medical Report (and Free Treatment under Arogya Sree Policy). (iii). 25% after filing of charge sheet. (iv). Balance 25% should be paid after completion of trail.

Sd/-
M.CHAYA RATAN,
SPECIAL CHIEF SECRETARY TO GOVERNMENT.

This Product is Licensed to Lh. Rajeshwer Rao, D.O.P, Hyderabad

2016 1 ALD(Cri) 314; 2016 1 ALT(Cri) 101; 2016 0 CrLJ 1415; 2015 0 Supreme(AP) 765;

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA
AND THE STATE OF ANDHRA PRADESH

C. Praveen Kumar, J.

State of A.P. - Appellant

Vs.

Mangali Yadagiri - Respondent

CrI. Revision Case No. 1596 of 2014

Decided On : 08.04.2015

Sarwan Singh Vs. Kasturi Lal, 1977 SC 265

KSL & Industries Limited Vs. Arihant Threads Limited and others, 2014 (10) SCJ 361 : 2015 (1)
ALT 45.1 (DN SC) : 2015 (2) ALD 15 (SC)

KSL & Industries Limited Vs. Arihant Threads Limited and others, 2014 (10) SCJ 361 : 2015 (1)
ALT 45.1 (DN SC) : 2015 (2) ALD 15 (SC)

**CRIMINAL LAW AMENDMENT ACT : S.2 INDIAN PENAL CODE : S.354(a)(1)(i) CRIMINAL
PROCEDURE CODE : S.395(2) PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
ACT : S.25, S.26, S.31, S.42(a) SCHEDULED CASTES AND SCHEDULED TRIBES
PREVENTION OF ATROCITIES ACT : S.14, S.3(1)(xi)**

ORDER :

C. Praveen Kumar, J.

1. The I Additional District and Sessions Judge, Medak, invested with the power to try offences under the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POSCO Act) made a reference under Section 395 (2) Cr.P.C. seeking clarification as to the jurisdiction of the Court to try the case when the offences alleged against the accused are triable under two legislations i.e. POSCO Act and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as SC/ST Act) in view of Section 14 of the SC/ST Act and Section 42-A of the POSCO Act. The facts in issue are as under:

"The informant/victim girl, who was aged about 14 years at the time of incident, belonging to Scheduled Caste, lodged a report before the police on 03.05.2013 stating that the accused, who belongs to a caste other than scheduled caste or scheduled tribe, assaulted and used criminal force on her with a dishonest intention to outrage her modesty within public view. In respect of the

above incident, a case in Crime No. 39 of 2013 of Kowdipally Police Station came to be registered for the offences punishable under Section 354 (A) (1) (i) IPC, Section 2 of the Criminal Law Amendment Act, 2013, Section 8 of POSCO Act and Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as SC/ST Act). The police investigated into the matter and filed a charge sheet which was taken on file as P.R.C. No. 22 of 2013 on the file of the Judicial First Class Magistrate, Narsapur, Medak District, for the above mentioned offences. Thereafter, the learned Magistrate committed the case to the Special Court for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-cum-V Additional Sessions Judge, Medak at Sangareddy. The special Judge sent the case records to the Court of I Additional District and Sessions Judge, Medak at Sangareddy, on the point of jurisdiction since it involves an offence punishable under POSCO Act."

2. Thereafter, the learned I Additional District and Sessions Judge, Medak at Sangareddy, through his letter in Dis. No. 536, dated 22.05.2014, made a reference under Section 395 (2) Cr.P.C., seeking necessary clarification from this Court.

3. Heard learned Public Prosecutor appearing for the State and learned counsel appearing for the accused.

4. As seen from the facts of the case, an offence under POSCO Act was committed against a child, who was a member of Scheduled Caste/Scheduled Tribe. In such a case, the issue that stems out for consideration is whether the said case should be tried by a Special Court constituted under SC/ST Act or by a Special Court constituted under POSCO Act.

5. The POSCO Act, which came into force from 14.11.2012, was enacted with a view to protect the children from offences of sexual assault, sexual harassment and pornography and to provide for establishment of Special Courts for trial of such offences and matters connected therewith or incidental thereto. This Act is a children friendly Act providing a special procedure for dealing with the offences relating to the children.

6. Sections 25 and 26 of the POSCO Act deal with the procedure to be followed by the Magistrate for recording the statements of the children under Section 164 Cr.P.C.

7. Section 28 of the POSCO Act deals with Designation of Special Courts, which reads as under:

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

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

(2) While trying an offence under this Act, a Special Court shall also try an offence (other than the offence referred to in sub-section (1), with which the accused may, under the Cr.P.C. be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under Section 67 B of that Act insofar

as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilities abuse of children online."

8. Section 31 of the POSCO Act refers to application of Criminal Procedure Code to the proceedings before the Special Court while Section 33 of the Act deals with the procedure and powers of Special Courts while recording the evidence.

9. Section 42-A of the POSCO Act stipulates that the provisions of the POSCO Act shall be in addition to and not in derogation to the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of POSCO Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

10. Section 20 of the SC/ST Act reads as under:

"20. Act to override other laws: Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything consistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law."

11. As per Section 14 of the SC/ST Act, the State Government shall, with the concurrence of the Chief Justice of the High Court, by a notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act. From the above, it is clear that an offence punishable under the provisions of SC/ST Act is triable exclusively by a Special Court constituted under Section 14 of SC/ST Act.

12. Section 42-A of the POSCO Act reads as under:

"42-A. 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 this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."

13. A perusal of Section 20 of the SC/ST Act and Section 42-A of the POSCO Act reveal that there is a direct conflict between the two non-obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the Acts, the same would be triable by a Special Court constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of the POSCO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POSCO Act.

14. From a perusal of the aims and objects of SC/ST Act, it is manifest that it was passed with a view to prevent Commission of atrocities on members of the Scheduled Castes and the Scheduled Tribes by persons other than SC/ST. The procedure contemplated under the said Act is almost identical to the procedure contemplated under Cr.P.C. for trial of Sessions Cases, apart from providing compensation. The SC/ST Act is silent as to the protection granted to the children belonging to the weaker sections of the society. The situation under the POSCO Act is totally different. The statement of object and reasons of the Act show that it was enacted with a view to protect children from the offences of sexual assault, sexual harassment and pornography. It takes within its fold the protection of children of all castes including those belonging to SC/ST. As stated earlier, number of safeguards are provided to the children from being exploited and Special provisions are also made for recording their statements. Therefore, the paramount consideration

of the legislature under POSCO Act appears to be the interest of all children including those belonging to SC/ST.

15. Dealing with an issue identical to the case on hand, the Apex Court in *Sarwan Singh v. Kasturi Lal*, 1977 SC 265 held as under:

"When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier.

16. In *KSL & Industries Limited v. Arihant Threads Limited and others*, 2014 (10) SCJ 361 : 2015 (1) ALT 45.1 (DN SC) : 2015 (2) ALD 15 (SC) the Apex Court held as under:

"In view of the non-obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible, fulfilled.

Indeed, the question as to which act shall prevail must be considered with respect to the purpose of the two enactments; which of the two Acts is the general or special; which is later. It must also be considered whether they can be harmoniously construed."

17. From a reading of the judgments referred to above, it is clear that when there are two different enactments containing two non-obstante clauses, the Court has to see the object and purpose of the two enactments and the legislation which is later in point of time.

18. A perusal of both the enactments would show that POSCO Act is a self contained legislature which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and other allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non-obstante clause in Section 42-A of the POSCO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POSCO Act, though the legislature was aware about the existence of non-obstante clause in Section 20 of the SC/ST Act.

19. Applying the test of chronology the POSCO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POSCO Act being beneficial to all and later in point of time, it is to be held that the provisions of POSCO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments. The reference is thus answered holding that where an accused is tried for offences under both the enactments, the appropriate Court to try the offence would be the Court designated under Section 28 of the POSCO Act.

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2016 1 ALD(Cri) 207; 2015 0 Supreme(AP) 634;

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA
AND THE STATE OF ANDHRA PRADESH

B. SIVA SANKARA RAO, J.

Pasupalleti Srinivasa Rao – Petitioner

Versus

The State of A.P. rep by its Public Prosecutor & Another – Respondent

Criminal Petition No. 3976 of 2015

Decided on : 08-06-2015

State of Orissa V. Debendranath Padhi (2005) SCC 568)

CONSTITUTION OF INDIA : Art.21 INDIAN PENAL CODE : S.354(a), S.354(b), S.354(c), S.354(d), S.375, S.376, S.376(a), S.376(b), S.376(c), S.376(d), S.448, S.454, S.509 CRIMINAL PROCEDURE CODE : S.154(1), S.161(3), S.190, S.205, S.239, S.240, S.482

Judgment :-

1. This Criminal Petition is filed by the Petitioners/Accused under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.2228 of 2014 on the file of the Court of I Additional Chief Metropolitan Magistrate, Visakhapatnam City.

2. The petitioner is the sole accused and the 2nd respondent is the defacto-complainant. Heard the learned counsel for the petitioner before admission and before issuing notice to the 2nd respondent and the learned Public Prosecutor representing State of the case taken cognizance for the offence punishable under Section 354, 448 and 509 I.P.C that was taken cognizance by the learned Magistrate from the police final report, under Section 190 Cr.P.C since impugned. Perused the material on record.

3. The core of the contention of the learned counsel for the petitioner/accused is that Section 154(1) Cr.P.C. amended with effect from 03.02.2013 by incorporating a proviso which mandates the police officer where the victim in the offences punishable under Sections 354(A) to (D) or 375 or 376 or 376 (A) to (D) or Section 326(A) and (B) or Section 509 I.P.C, if she comes to the police station to give report by oral statement, such statement shall be recorded either by a female police officer or other officer. In this case no doubt, the statement is recorded by the male police officer according to the case of the petitioner. Further more under Section 161(3) proviso (1) of the Cr.P.C amended, with effect from 03.02.2013, in such a case referred supra the recording of the

statement of such victim in the course of investigation is also by a female police officer. Here, it is also the contention that it was recorded by the investigating officer, a male police officer. The submission there from is that once it is mandated by use of the word 'shall' on the part of the police officer by virtue of the amended provisions of the crime occurred subsequent to the amendment Act came into force, the non-compliance is fatal to the case of the prosecution and the Magistrate ought not to have taken cognizance against the accused and thereby the proceedings are liable to be quashed.

4. Whereas, it is also the submission by the learned Public Prosecutor representing the State that the proceedings no way vitiates the taking of cognizance as the provisions are meant for the benefit of the victim and not to take any advantage by accused, when the victim herself has no grievance muchless to complain any little prejudice even to any of the rights of the accused there from.

5. A perusal of the provisions with reference to the object in incorporating the same is crystal clear that these are meant to protect the right of privacy as part of Article 21 of the Constitution of India of the victim and not even to protect the right of the privacy of the accused under that qualified fundamental right. When such is the case when the very victim not complained of; the accused has no right to complain, muchless to take any advantage therefrom to perpetrate his wrong if any, muchless to complain any prejudice to him for non-compliance of the procedure by the provision is of the rights of the victim to say in the victim's point of view is mandatory and if all for her to complain, who did not when the protection.

6. Accordingly, for no merits even to admit the petition under Section 482 Cr.P.C on the ground urged supra the petition is disposed of giving liberty to the petitioners to approach the learned Magistrate if there are any other grounds to seek for discharge under Section 239 Cr.P.C to decide on own merits in the course of hearing under Sections 239 read with 240 Cr.P.C only from the prosecution material vide State of Orissa V. Debendranath Padhi (2005) SCC 568). Needless to say any further remedy is also left open. If the petitioner files any application under Section 205 Cr.P.C to dispense with his personal attendance and to represent through special Vakalat holder from his waiving his right of presence in recording the evidence and in such an event, the learned Magistrate shall hear, consider and allow the same with necessary conditions including to appear as and when required for any necessity of personal appearance.

7. With the above observations, the criminal petition is disposed of.

8. Miscellaneous petitions, if any pending, shall stand closed.

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2016 9 SCC 473; 2016 6 Supreme 536; 2016 0 Supreme(SC) 692;

SUPREME COURT OF INDIA
Dipak Misra, C. Nagappan, JJ.
Youth Bar Association of India – Petitioners
Versus
Union of India and Others – Respondents
WRIT PETITION (CRL.) NO.68 OF 2016
Decided On : 07-09-2016

Code of Criminal Procedure, 1973 – Sections 207 – Held, accused entitled to get a copy of First Information Report at an earlier stage than as prescribed u/s 207 – On an application certified copy of FIR shall be supplied within 24 hours – In case FIR is forwarded to Magistrate, certified copy shall be supplied within two working days – FIR, except in sensitive offences, shall be uploaded on official website within 24 hours and 48 hours extendable up to 7 hours in places with connectivity problems – Decision not to upload FIR shall be taken by an officer not lower in rank than Dy. SP – Non-uploading of FIR shall; not be ground for claiming remedy u/s 438 – In case of non-supply of FIR on ground of sensitive nature of offence competent authority, on representation from aggrieved person, shall constitute a committee to deal with the grievance within three days – Such committees directed to be constituted within eight weeks – Even in case of sensitive offences, aggrieved person can obtain certified copy of FIR from the court – Court shall, on application, provide certified copy within three days – Directions will be effective from 15th November, 2016 (Para 12)

(2010) 3 SCC 571; (2008) 3 SCC 753; AIR 1997 SC 610; (2010) 175 DLT 110 (DB) – Referred

Facts of the case:

In this writ petition, the petitioner, Youth Bar Association of India, has prayed for issue of a writ in the nature of mandamus, directing the Union of India and the States to upload each and every First Information Report registered in all the police stations within the territory of India in the official website of the police of all States, as early as possible, preferably within 24 hours from the time of registration.

Finding of the Court:

The writ petition liable, on consensus, is liable to be allowed.

Result: Petition disposed of with directions.

Som Mittal v. Government of Karnataka, (2008) 3 SCC 753 – Referred [Para 5]

D.K. Basu v. State of West Bengal, AIR 1997 SC 610 – Referred [Para 6]

State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal, (2010) 3 SCC 571 [Para 4]

Mr. Ajay Chaudhary v. State, (2010) 175 DLT 110 (DB) – Referred [Para 7]

Mr. Ajay Chaudhary v. State, (2010) 175 DLT 110 (DB) – Referred [Para 7]

State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal, (2010) 3 SCC 571 [Para 4]

D.K. Basu v. State of West Bengal, AIR 1997 SC 610 – Referred [Para 6]

CRIMINAL PROCEDURE CODE : S.207, S.438

IMPORTANT POINT

Effective 15th November, 2016 FIR shall be uploaded on official website within 24 hours.

ORDER

Issue Rule.

2. In this writ petition, preferred under Article 32 of the Constitution of India, the petitioner, Youth Bar Association of India, has prayed for issue of a writ in the nature of mandamus, directing the Union of India and the States to upload each and every First Information Report registered in all the police stations within the territory of India in the official website of the police of all States, as early as possible, preferably within 24 hours from the time of registration.

3. After the writ petition was entertained by this Court, notices were issued to the Union of India and the States.

4. It is submitted by Mr. Sanpreet Singh Ajmani, learned counsel appearing for the petitioner that after registration of the First Information Report if it is uploaded in the official website of police, that will solve many unnecessary problems faced by the accused persons and their family members. Learned counsel would contend that when the criminal law is set in motion and liberty of an individual is at stake, he should have the information so that he can take necessary steps to protect his liberty. In this context, he has drawn our attention to a passage from the judgment rendered in State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others (2010) 3 SCC 571, wherein it has been observed:-

“Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.”

5. In Som Mittal vs. Government of Karnataka (2008) 3 SCC 753, the Court has ruled thus:-

“The right to liberty under Article 21 of the Constitution is a valuable right, and hence should not be lightly interfered with. It was won by the people of Europe and America after tremendous

historical struggles and sacrifices. One is reminded of Charles Dickens novel 'A Tale of Two Cities' in which Dr. Manette was incarcerated in the Bastille for 18 years on a mere lettre de cachet of a French aristocrat, although he was innocent."

6. In D.K. Basu vs. State of West Bengal AIR 1997 SC 610 it has been opined that:-

"The rights inherent in Articles 21 and 22(1) of the Constitution required to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicted undertrials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law."

7. Learned counsel for the petitioner has also drawn our attention to a Division Bench decision of Delhi High Court rendered in Court on its Own Motion through Mr. Ajay Chaudhary vs. State (2010) 175 DLT 110 (DB).

8. On being asked, Mr. Tushar Mehta, learned Additional Solicitor General appearing for the Union of India, has submitted that the directions issued by the High Court of Delhi can be applied with certain modifications. Learned Additional Solicitor General has also drawn our attention to paragraph 4 of the affidavit filed in an interlocutory application in the present writ petition. The said paragraph reads as under:-

"4. That is it respectfully submitted that Central Government is supporting all the states to set up a mechanism for online filing of complaints under the protect 'Crime & Criminal Tracking Network & Systems (CCTNS)'."

9. Mr. Saurabh Trivedi, learned counsel appearing for the State of Uttarakhand has submitted that the First Information Report in respect of certain offences which are registered, like sexual offences and the offences registered under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), may be difficult to be put on the website.

10. Mr. Ranjan Mukherjee, Mr. Shikhar Garg, and Mr. Yusuf Khan, learned counsel appearing for the States of Meghalaya, Mizoram and Sikkim respectively, have submitted that insurgency would be a sensitive matter and, that apart, it may not be possible on the part of the said States to upload the First Information Reports within 24 hours.

11. Mr. Uddyam Mukherji, learned counsel appearing for the State of Odisha has submitted that whether a matter is sensitive or not, the Court may say no reasons should be given because the allegation in the F.I.R. shall speak for itself.

12. Having heard learned counsel for the parties, we think it appropriate to record the requisite conclusions and, thereafter, proceed to issue the directions:-

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.

(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.

(c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhere under Section 207 of the Cr.P.C.

(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.

(f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.

(g) If an FIR is not uploaded, needless to say, it shall not enure per se a ground to obtain the benefit under Section 438 of the Cr.P.C.

(h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.

(i) The competent authority referred to hereinabove shall constitute the committee, as directed herein-above, within eight weeks from today.

(j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.

(k) The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016.

13. Let a copy of this order be sent to all the Home Secretaries and the Director Generals of Police of the States concerned.

14. The writ petition is, accordingly, disposed of.

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Does 'age' encompass mental age?

MARCH 10, 2017 00:02 IST

The Protection of Children from Sexual Offences Act fails to account for the mental age of the victim

A recent case has exposed a lacuna in the Protection of Children from Sexual Offences (POCSO) Act of 2012, which defines a 'child' as a person under 18 years of age.

The case, which came up before the Supreme Court, concerns a sexual assault victim whose biological age is 40 but whose mental age is six. The court has to decide on whether such a person is a 'child' under the POCSO Act.

Cerebral palsy victim

The victim was a woman suffering from cerebral palsy since birth. A detailed medical report shows that her Intelligence Quotient (IQ) and mental age on eight social adaptive domains specify her overall mental age to be six years.

Her 68-year-old mother wants the criminal case to be transferred to a Special Court designated under the POCSO Act. The Supreme Court has reserved the case for judgment and is determined to interpret the 2012 Act in a verdict, despite the fact that the sole accused died in judicial custody. Section 2(d) of the Act brackets victims as those whose biological age is under 18 years. The aspect of "mental age" of victims has not been considered by Parliament.

This is despite the fact that the Preamble and the Statement of Objects and Reasons of the POSCO Act, as also United Nations Convention on the Rights of the Child, make it abundantly clear that the clear purpose of the Act is to "protect children from offences of sexual assault" and "to secure the best interests of the child".

Advocate Aishwarya Bhati, who represents the victim in the case, argues that the failure to take into consideration the mental age of victims is an attack on the very purpose of the 2012 Act. Ms. Bhati submitted before the Supreme Court that a purposive construction to compositely include biological and mental age rather than singularly biological age alone will be a natural extension of the protective umbrella of POSCO Act.

A precedent

Among the international cases quoted in the Supreme Court, the South African case law of Daniel Johannes Stephanus Van Der Bank v The State (2008) involving the rape of 19-year-old woman who had a mental age of an 8.5 gains significance. The High Court held that the term 'age' also includes the mental age of the victim while granting her protection and justice. The Supreme Court of Appeal of South Africa upheld the finding as reported in 2016.

Collected and Contributed by Smt. Srivani Damodaram, DyDOP cum Addl. PP Gr-II, Mahboobnagar