

**The Child as a Witness:
Developmental & Mental Health
Implications for Eliciting Evidence
under Protection of Children
from Sexual Offences Act, 2012**



A Training Manual for Judicial Personnel

**Developed by
Community Child & Adolescent Mental Health Service Project
Dept. of Child & Adolescent Psychiatry,
National Institute of Mental Health & Neurosciences
(NIMHANS)**

**In Collaboration with Karnataka Judicial Academy
&
Dept. of Women and Child Development and
Integrated Child Protection Scheme,
Government of Karnataka**

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“If you are neutral in situations of injustice, you have chosen the side of the oppressor. If an elephant has its foot on the tail of a mouse and you say that you are neutral, the mouse will not appreciate your neutrality.”

- Archbishop Desmond Tutu

Acknowledgements

At the outset, we would like to acknowledge the commitment of the Juvenile Justice Committee of the Supreme Court, particularly Justice Deepak Gupta, Judge and Chairperson of the Supreme Court Juvenile Justice Committee, to children's rights and welfare. Their strong recognition of child abuse and exploitation, especially of vulnerable children in institutions, has been heartening to those of us who work in the areas of child mental health and protection. Furthermore, the Committee's belief that judicial systems need to be transformed, to accommodate the needs and concerns of children, and its openness to experimenting with new (child-friendly) methodologies in child sexual abuse inquiry has encouraged us to engage deeply and proactively with judicial systems and personnel.

We are grateful to the Karnataka Judicial Academy and the Juvenile Justice Committee of the Karnataka High Court for granting us opportunities to conduct training for judges, for, this manual is a result of several training programs implemented for their personnel. In this regard, we thank all the Special Court judges and other judicial personnel who participated in our training workshops. Their debates, insights and queries have helped us refine our thinking and methodologies. The Karnataka Judicial Academy's initiative is reflective not only of their interest in effective implementation of the Protection of Children from Sexual Offences (POCSO) Act 2012 but also their caring and concern for children and child rights. That the Judiciary should take the lead to develop flexible and rights-based systems, including initiating transformations in existing legal procedures for children, is truly reassuring and encouraging for the country. We express our deep gratitude, therefore, to the President(s), Director(s) of Karnataka Judicial Academy, and members of the Board of the Academy for their kind cooperation and painstaking review of this manual.

We appreciate the keen interest and encouragement of Hon'ble Justice Chandrashekar (Former Judge, High Court of Karnataka)—his serious and long-standing interest in children and child sexual abuse, because of which he also spearheads POCSO reviews, prompted him to request the writing of this manual. His review and inputs to the manual have been invaluable to us.

We are thankful to the Dept. of Women and Child Development, Government of Karnataka, for supporting the Community Child and Mental Health Service Project, of which this manual is a product. Their generous support over a 5-year period has enabled intensive psychosocial and systemic interventions and training in the area of child sexual abuse, the experience of which has translated into the development of many training and intervention manuals and activity books.

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No acknowledgement would be complete without thanks to the children and families we have had the privilege to serve and assist—indeed it is their anguish, anxiety and dilemma in coping with child sexual abuse trauma, alongside their courage and resilience, that continues to inspire us and propel us to persist with change-making. We hope and trust that this manual will serve as a guide for trainers and for legal personnel involved in child sexual abuse work so that children will be heard, as critical witnesses, and receive the justice they deserve.

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Contents

Foreword	i
About the Manual	ii
1. Introduction & Objectives	1
2. Setting the Tone: Re-connecting with Childhood	4
3. The Dynamics of Reporting & Disclosure: The ABCs of Child Sexual Abuse & Its Perpetration	6
3.1. Definition & Nature of Child Sexual Abuse	6
3.2. Nature or Type of Child Sexual Abuse	8
3.3 When to Suspect CSA: Signs & Symptoms	9
3.4. Sexual Abuse dynamics and Processes	11
3.5 Processes of Abuse in Younger Children	13
3.6. Processes of Abuse in Older Children and Adolescents	14
3.7. Implications of CSA Methods & Dynamics for Statement Recording & Evidence Gathering	16
4. The Child's Capacity for Providing Testimony: Applying the Child Development Lens	19
4.1. Dilemmas Posed by the Indian Evidence Act and POCSO 2012	19
4.2. Introduction to Child Development	21
4.3. Children's Capacity to Provide Evidence, according to Age & Developmental Stage	28
4.4. Case Examples of Mental Health & Developmental Assessments to Establish Children's Capacity to Provide Evidence	31
5. Developing Empathy: Identifying the Child's InnerVoice	44
6. Evidence Gathering under POCSO: Child-Friendly Methods & Techniques for Interviewing Children and Adolescents	49
6.1. Rapport Building	49

6.2. Taking the Statement: How to Inquire about Abuse	54
6.3. Close the interview with the child	61
Annex 1: Materials for Child Development File Sorting Activity	68
Annex 2: Standard Operating Procedure for Implementation of POCSO: Incorporating Child Psychosocial & Mental Health Care Aspects	72
Annex 3: Additional Guidelines for Conducting Child Sexual Abuse Inquiry by Mental Health Services	85
Annex 4: POCSO 2012 in Action: When and Why it Does Not Work	88
Annex 5: Our failure to protect sexually abused children: Where is our ‘willing suspension of disbelief’?	93
Annex 6: Salient Features in Investigation, Prosecution and Trial of Cases under POCSO ACT – 2012	96
Annex 7: Important Decisions Relating to Victims of Child Sexual Abuse	110
Annex 8: Suggested Training Schedule	122

Foreword

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December 10, 2019

FOREWORD

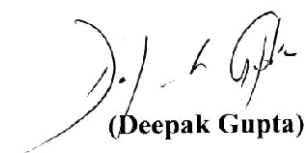
I am extremely happy to know that the Community Child & Adolescent Mental Health Service Project, Dept. of Child & Adolescent Psychiatry, and National Institute of Mental Health & Neurosciences (NIMHANS), in collaboration with Karnataka Judicial Academy and Dept. of Women and Child Development, Government of Karnataka, are publishing this manual titled "The Child as a Witness: Developmental and Mental Health Implications for Eliciting Evidence under Protection of Children from Sexual Offences Act, 2012".

It gives me immense pleasure to see that an initiative is being taken to train judicial personnel on dealing with children as witnesses. Often children have to stand in the witness box, and while dealing with them, the court and all judicial officers involved have to be conscious of the fact that they cannot deal with them in the same manner as they would with adult witnesses. Witnessing a crime or being a victim of the crime may have a devastating effect on the child. It would have much greater impact on her/his psyche as compared to an adult.

All of us dealing with children who are victims of sexual abuse must remember to treat children with great sensitivity. A concerted effort must be made by all concerned viz., the investigation agency, the medical team, the prosecution, as well as the court, dealing with such children to ensure that the child does not have to repeat her/his testimony time and again. Every time the child recounts the incident, she/he virtually relives the trauma, which must be avoided.

This manual will not only help judicial personnel understand the nuances of testimonies and gathering evidence in child sexual abuse cases, but also cover various aspects of the crime itself, including, types of child sexual abuse and how to suspect child sexual abuse. Another important and unique aspect of dealing with children as witnesses covered by this manual is developing empathy for the child. The work of various judicial personnel dealing with children who have faced sexual abuse cannot end at 'evidence gathering'. It is important for them to be compassionate towards these children and empathize with them, while doing the job of evidence gathering, taking testimonies, etc.

This comprehensive manual will help close the gap that existed and adequately train judicial personnel, equipping them with the correct techniques to be used while dealing with children as witnesses. I would like to extend my appreciation to all concerned for taking this initiative.


(Deepak Gupta)

About the Manual

Why and How it was Developed

Current Landscapes, Laws and Challenges in Child Sexual Abuse Work

While child sexual abuse has existed since time immemorial, a relatively new-found public awareness has contributed to increasing reports of incidents in many parts of the country. The frequency of reports of child sexual abuse (CSA), especially abuse of very young children, in homes, neighborhoods and schools, appearing these days in the newspapers, is on the rise. Our observations show that younger children are increasingly being targeted for sexual abuse, due to their less developed physical and mental capacities to resist or report abuse. Very young children and children with disability are at the early stages of physical, speech and language, social and cognitive development, as a result of which they have lesser ability to comprehend and verbalize their experiences, as compared to older children or adolescents. Their developmental vulnerability is compounded by the fact that they are far more susceptible to simple material lures and rewards that perpetrators use to entice them into secluded spaces or into performing sexual favours.

However, older children and adolescents are also vulnerable but in ways that are different from young children. At times, they may even be more vulnerable as they are less likely (than young children), to disclose sexual abuse experiences due to embarrassment, shame and fear of not being believed. Current contexts of social taboos and stigmatization hinder disclosure of child sexual abuse. Furthermore, they are equally at risk of manipulation by grooming, a process by which perpetrators use a process of befriending and gaining the trust of the child or forming an emotional connection with the child to then enable a 'consenting' sexual engagement. Such abuse dynamics are exceedingly complex, more so than direct coercive forms of abuse, which are easier for children and adolescents to recognize. The difficulty that children and adolescents may have in even recognizing abuse and exploitation thus further compounds the barriers to reporting and disclosure.

Finally, there is the challenge of dealing with issues of adolescent sexuality and romantic relationships (also between peers), that are mutually consenting. The Protection of Children from Sexual Offences Act, 2012 (POCSO) Act does not take cognizance of adolescent sexual development/ needs and rights, thereby deeming any adolescent sexual relationship as being abusive; such situations place adolescent boys in very fragile positions as the implementation of POCSO tends to favour the adolescent girl (even though she may have consented to, or even initiated sexual relations). Therefore, there tends to be a gender bias against boys, many of whom are charged under POCSO and placed in Observation Homes.

In addition to the age and developmental stage of children, and the processes and dynamics of sexual abuse, which affect reporting and disclosure, there are also the different contexts in which abuse plays out: at home, at school, in child care institutions...each of these contexts are fraught with their own unique features that make it challenging for children to report or disclose experiences of abuse. For instance, when abuse occurs at home, by a family member, both children and caregivers are reluctant to engage in legal processes that may result in punishment of a family member and/or exceedingly complex family relationship dynamics. In the context of abuse occurring in a child care institution, a child, who is perhaps orphaned/abandoned and has no support except for that of the institution, will find it equally difficult to report abuse by a staff or caretaker, because of serious threats of security.

The Judiciary's Viewpoints on the Child as a Witness

As per Section 118 of the Indian Evidence Act, 1972, *“All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.”*

About the child witness, the Act goes on to state that *“With respect to children, no precise age is fixed by law within which they are absolutely excluded from giving evidence on the presumption that they have not sufficient understanding. Neither can any precise rule be laid down respecting the degree of intelligence and knowledge which will render a child a competent witness. In all questions of this kind much must depend upon the good sense and discretion of the judge”.*

Thus, there are provisions in the Evidence Act (used in pre-POCSO times), for the validity of children serving as witnesses and providing evidence in civil and criminal proceedings. But in 2012, India passed the Protection of Children from Sexual Offences (POCSO) Act, a landmark in the history of the country's national child protection policies. In a sense, this Act built on the provisions of the Evidence Act, strengthening the validity and reliability of statements and evidence provided by children as witnesses and victims of crime. POCSO, aiming to deliver justice to sexually abused children by punishing the perpetrator, has made critical contributions to child protection, thus changing the landscape of child sexual abuse in India. In pre-POCSO times, the judiciary came into the picture much later, only at the time the case was taken up for trial, and the child was asked for evidence. Now, however, POCSO requires the judiciary to enter the picture much sooner, by way of the magistrate/judge's statement under Section 164, soon after sexual abuse is reported.

POCSO operates in a complex context (as already described), not least because it relies on the child as a witness. The child's testimony is the most crucial part of the prosecution's case. Since the child is typically the only real witness against the suspected abuser, successful prosecution is heavily dependent on the child's disclosure and narrative on the abuse experience. This is especially true when there is no forensic evidence available and the case rests on the word of the child as against that of the alleged perpetrator. Thus, the ability and skills of judicial personnel, such as the magistrates who record the child's statement under Section 164 of POCSO, and later on, the special court judges who record evidence during the trial in court, are vital to eliciting the child's abuse narrative. It appears therefore, that the judiciary increasingly feels that especially in instances where the child is not merely a witness but is also a victim of crime (sexual abuse, in this case), the child witness requires to be understood and interacted with in ways that are different from adult witnesses/ victims. In other words, the assumptions that are made while recording evidence from adult witnesses, in terms of their knowledge of the world, of the issues at hand and of relevant legalities, do not hold good for children.

The skills and sensitivities required to elicit information from children, that is, information that can stand the tests of reliability, depend on how children communicate, across ages. Thus, the developmental level of children, their emotional states (particularly in the aftermath of abuse), the manner in which issues and questions are posed, and the environment in which these processes are conducted, are critical for maintaining the balance between the reliability of the information being sought and the child's psychosocial well-being. Thus, in order that the child's best interests and his/her psychosocial and mental well-being is preserved, judicial personnel require training in child development and child interviewing skills as well as in child psychosocial issues pertaining to sexual abuse.

The role of the judiciary is essential in bringing justice to sexually abused children. But judicial processes run the risk of being as difficult or traumatic for children as the primary abuse itself, if not conducted in child-friendly and sensitive ways. The combination of communication and interviewing skills with children, a nuanced knowledge of child sexual abuse dynamics and barriers to disclosure, demonstrated qualities of patience and circumspection, will therefore prevent re-traumatization of children, which frequently occurs during legal and inquiry processes. Consequently, such skills and abilities will result in the elicitation of more accurate and detailed narratives from abused children, so that justice can be dispensed in an effective and timely manner. Furthermore, it is apparent from our work and experiences that the judiciary is cognizant that if statement recording and evidence gathering is not done in a skilled and child-friendly way, the objective of the POCSO Act will be defeated; in other words, the case will fall and the necessary conviction of perpetrators of abuse will not be achieved.

The Community Child and Adolescent Mental Health Service Project's Work in Child Sexual Abuse

For the past five years, the Dept. of Child and Adolescent Psychiatry, NIMHANS has been implementing a community-based child and adolescent mental health service project with support from the Dept. of Women & Child Development, Government of Karnataka. Aiming to provide direct services and capacity building in primary healthcare centres, government schools, anganwadis and child care institutions, it is based on the premise that in the Indian context, there is a vast gap between child and adolescent mental health needs and resource availability, with the few available resources being concentrated in tertiary care health facilities; and that children in difficult circumstances, who are at the greatest risk of mental health morbidity, often have the poorest access to quality psychosocial and mental health assistance.

Since its initiation, the Project has worked extensively with child sexual abuse issues in the following ways:

- (i) Clinical services in NIMHANS's in-patient and out-patient care facilities as well through outreach programs in schools and child care institutions;
- (ii) Conducting psychosocial assessments for sexually abused children to elicit narratives of abuse and working with family, school and legal systems to provide information and reports;
- (iii) Designing and implementing therapeutic assistance for sexually abused children as well as personal safety and prevention programs in the afore-mentioned settings;
- (iv) Extending psychosocial assistance to sexually abused children to include accompanying and supporting them through legal processes (such as interviews with the police and recording of magistrate statement under Section 164);
- (v) Assisting agencies such as the Central Bureau of Investigation (CBI), under Supreme Court Orders, in investigations relating to child abuse (in child care institutions).
- (vi) Building the capacities of caregivers and child care staff in various governmental and non-governmental, care and protection, health and education settings, to provide the above-described services and assistance to sexually abused and other vulnerable children.

The Project's knowledge, and skill sets have thus emerged from intensive field experience—and the training manual seeks to capture and share the understandings and methods developed thereof. It was in recognition of the above-described experiences, issues and challenges that the Karnataka Judicial Academy requested the NIMHANS team to conduct training workshops for judicial personnel, to equip them with the skills to carry out their legal responsibilities in the context of child sexual abuse. This manual is a product of a series of such workshops, a testimony to the sensitivity of the judiciary to child abuse issues, and their vision for child-centric systems of justice.

Objectives and Approach

In the light of the concerns and challenges discussed above, and in keeping with the mandates of psychosocial and mental health professionals i.e. healing and recovery of sexually abused children, and of the judiciary i.e. apprehension of the perpetrator and justice to children, the overall aim of this training manual is to ensure that inquiry and legal processes for child sexual abuse are strongly embedded in child-centric approaches and in the best psychosocial interests of the child.

The specific objectives of this training manual are to build the capacities of judicial personnel in:

- Sensitivity to children and childhood and experiences of abuse.
- Understanding of child sexual abuse dynamics and processes, and how these in turn, affect children's decisions on abuse disclosure and reporting.
- Knowledge about child development and developmental milestones, and how they impact children's ability to give testimonies.
- Methods and skills to elicit the abuse narratives from children and adolescents.

The methods used for training combine inputs on conceptual frameworks on child development and child sexual abuse with practical skill training to enable participants to translate theory into practice i.e. 'learning by doing'. Thus, lecture and discussion methods are used along with experiential methods of visualization and simulation, role plays, video clip viewing and participatory methods such as pile sorting and case study analysis.

How it is Organized

The manual begins with an introductory brief on how child sexual abuse work developed in India. It moves on to sensitize participants about childhood and children's issues through experiential activities that enable them to re-connect with their own childhoods and probable difficult and traumatic experiences.

The third module lays out the basic conceptual frameworks for understanding child sexual abuse (CSA) dynamics, the differential impact that different methods of abuse can have on children and adolescents, especially with regard to disclosure and reporting.

The fourth module enables participants to understand developmental milestones in children, with a view to equipping them to make decisions about when and how to elicit statements from children of various ages; understanding normative development in physical, social, speech and language, cognitive and emotional domains of child development helps participants to recognize deficits and disabilities

in children who might not be able to provide a statement using regular methods i.e. participants learn when and how to make use of special ancillary child mental health services in such instances.

The fifth module builds on child sensitivity, extending it to empathy. This is to better enable participants to respond in helpful and reassuring ways to children in court, in recognition and acknowledgement of the fears, confusions and other emotional states that the children come in—essential to eliciting accurate testimonies.

The sixth module lays out systematic processes, including methods and techniques to elicit the child's statement, making the difference between interviewing young children versus older children and adolescents. It provides step-by-step guidance on how to interact with children and adolescents, from rapport building to ways of initiating inquiry on the abuse experience; it describes how play materials, toys and pictures can be used with young and/or non-verbal children to create non-threatening, child friendly spaces which reassure children and encourage them to be more disclosive about difficult experiences. This module is also accompanied by a video clip to demonstrate methods of child interviewing and interaction in legal settings. Additionally, the manual contains 6 annexes that provide readings for more holistic understanding of child sexual abuse responses.

It is recommended that this manual be used in conjunction with the many documents that exist and are about child sexual abuse or make references to it—such as the provisions of the Indian Evidence Act 1872, POCSO 2012 Act, the Juvenile Justice Act and several other documents on child rights and welfare, also accessible on the website of the National Commission for Protection of Child Rights (<http://ncpcr.gov.in/>). This manual has a specific focus in providing content for knowledge and skill training of legal personnel working to assist sexually abused children. It is predicated on the assumption that such personnel have some idea and knowledge about the legal issues involved in child sexual cases, so that the child psychosocial perspective provided by this training helps them to build on their existing understanding and professional skills.

For Whom

The manual has been developed for training and skill development of judicial personnel of various cadres: the magistrate who records the statement under Section 164, and is the first person within the judicial system who elicits the child's narrative, Special Court Judges and other judicial personnel who work with sexually abused children such as public prosecutors and lawyers. In fact, as per the structure and workings of the judicial system, any judge appointed as part of the state or country's judicial system might, in future occupy the positions of special court judges or magistrates, thereby necessitating the training of all judges in child sexual abuse inquiry (just as they all receive training in POCSO and legal proceedings in child sexual abuse cases). Indeed, it is with this foresight that the Karnataka Judicial Academy requests NIMHANS to conduct training on POCSO and statement recording of a child every six months, in order to train the Judicial Magistrate First Class (JMFC) who serve in trial courts, as well as magistrates who record children's statements under Section 164 and Special Court judges.

Since this manual was developed by mental health professionals, to provide a psychosocial perspective on child sexual abuse inquiry and legal processes, it is intended for use by facilitators with psychosocial and/or mental health backgrounds, to be able to deliver training workshops to legal personnel assisting sexually abused

children. However, following the receipt of training and after some amount of field practice and experience, legal personnel may also use this manual to train their teams and colleagues. In fact, the use of the manual by both psychosocial and legal personnel, would amalgamate child psychosocial and legal interests, thus greatly enriching capacity building workshops, by melding together multiple perspectives on children, mental health and justice. Since these two groups usually work together on assisting children who are sexually abused, we believe that such exchange of ideas and understanding could only foster the growth of multi-disciplinary team approaches and strengthen, structure and standardize child sexual abuse response systems, all of which are, (currently) desperately needed and often lacking in our country.

1. Introduction & Objectives

Objectives

- To briefly trace, from a psychosocial perspective, the history of how child sexual abuse work and law developed.
- To introduce the objective and contents of the workshop.

Time

30 minutes

Concept...What to Say

A Brief on How Child Sexual Abuse Work Developed in India...

Around 25 years ago, a group of American child psychiatrists came on a trip to India at which time, they also visited NIMHANS. At the time, NIMHANS had a 20 bed children's ward (now expanded to 64 beds—40 in Child Psychiatry and 24 in Adolescent Psychiatry). There was a 14-year-old girl, with a condition called Dissociative Disorder, which has symptoms like falling unconscious suddenly; this is not a neurological problem but an emotional one. So, the American psychiatrists asked the NIMHANS team if this girl had been sexually abused and the team's response was that she had not been abused. Later, the consultant concerned went back to his NIMHANS colleagues and asked "*Why did we tell them she was not sexually abused, when we had not even asked?*" Why did the team not ask? Because the team did not know how to ask. Then, the NIMHANS team realized that this was a major limitation of many enquiry processes on issues that are commonly not discussed in civil society—such as child sexual abuse (CSA) and other sexuality-related matters.

Sexuality-related issues are treated as something private and personal. Of course, they are. But even in spaces that are meant for discussions on sexuality issues, such as family planning clinics, professionals are not sure how to talk about these sensitive issues, and often end up being clumsy and insensitive. Medical colleges do not equip medical professionals with skills to work with sexuality and abuse-related issues.

So, when it comes to talking about sexuality and abuse, what is the language of trauma? What is the language of sexuality? What is the language of trauma and sexuality? What is the language of trauma and sexuality when talking to children? What is the language of trauma and sexuality when talking to pre-school children? These were (and continue to be) some of the challenges in child sexual abuse work.

Meanwhile, in Bangalore, there was a phase where activists got together and wanted to do something about CSA and decided to conduct abuse awareness-prevention workshops in schools. But when they went to a school, they were not allowed in. The mindset was: *'The problem of sexual abuse is only in foreign countries and does not happen in our country. You come with a western mindset. It is not necessary to talk to our children about these subjects. Their curiosity [about sexuality-related matters] will increase unnecessarily...'* Schools also asked for evidence that CSA was happening and professionals and activists realized that there was no evidence.

It was only as recently as 2007 that UNICEF and the central Government, in collaboration with Prayas, a Delhi-based NGO, launched a project to gather evidence

on child abuse. A questionnaire on various forms of sexual abuse was administered to 12,447 children belonging to the five different categories including children in family environments, children in schools, children in institutions, children at work and street children. Of the total child respondents, 53.22% reported having faced one or more forms of sexual abuse that included severe and other forms. Among them 52.94% were boys and 47.06% girls¹.

Some mental health professionals from NIMHANS also collaborated with an NGO called Samvada, and went to 8-10 colleges to interact with students. Everyone spoke about their own childhood, including the co-facilitators of the workshop. Through these interactions and workshops, it was found that CSA very much exists. But there is a **culture of denial and a conspiracy of silence** and this is a pervasive culture. If a child goes to her mother and tells her that something like abuse happened, then the mother is most likely to say *'don't tell anyone, it will be an embarrassment, no one will marry you...so, keep silent'*. Or, if a child goes to his parent and tells him that *'uncle is behaving like this with me...'* the parent is likely to say *'Shut up! Don't talk nonsense. Where did you learn all this from? My brother would never do things like this...'*

In the early 1990s, there was the notorious case of Freddy Peats, who was running a child care agency in Goa. The police impounded thousands of pictures of adults running the agency, engaging in all kinds of sexual acts with children. In 1996, a Public Interest Litigation was filed by Sheila Barse, a child-rights activist in Mumbai. Freddy Peats was convicted and he died in prison. Around that time, Sheila Barse organized an international conference in Mumbai called 'Prevention of Secondary Victimization and Child Protection Trial Procedures' because the truth, is that child sexual abuse enquiry, whether medical or legal, can be as traumatic and as sexualizing for the child, as the primary experience itself. What has happened is one thing (and is already traumatic); but repeatedly talking to the doctor, lawyer and the police is more traumatizing. As Sheila Barse often used to say, how do you expect a child to give evidence in exact sequence of what happened in the presence of the perpetrator (this is Pre-POCSO time) and in the presence of the challenging defense lawyer? If even adults cannot do it, so how can children?

The workshop that Sheila Barse had organized, highlighted another major issue relating to systemic responses to CSA—and it was the basis on which the POCSO law was founded. Let us look at pre-POCSO times and the Indian Penal Code (IPC)... look at Section 354 on outraging the modesty and section 376 on penile penetration... there were cases where 18-month-old children had been handled in the genital areas, by offenders, using an object and not the penis. Defense lawyers said: 'how can an 18-month-old child have modesty? So, section 354 does not apply; and penile penetration did not take place and so section 376 does not apply'. Based on these, he asked for acquittal. These are examples of litigation of pre-POCSO. But POCSO has taken account of the fact that digital handling and other contact and non-contact forms also constitute child sexual abuse; and it has taken cognizance of the fact that CSA is not just about touching of the child-- it also exposing the child to pornography or taking pictures or exposing oneself to the child. We have struggled through many such experiences and taught ourselves how to take history about traumatic experiences and abuse, and how elicit information especially from children. So, when we compare pre-POCSO and post-POCSO, the ways in which litigations proceed have certainly changed.

1. Loveleen, K. et al. (2007). Study on Child Abuse INDIA. Ministry of Women and Child Development, Government of India

After POCSO came into being, there are more child-friendly approaches to CSA enquiry, also facilitated by the setting up of special courts; Karnataka state has even instituted the first specially designed child-friendly courts in the country. However, although POCSO is a very progressive law, it has its limitations and challenges. The issue of mandatory reporting is one such challenge-- when a child comes, and discloses to one and pleads *'please don't tell anyone...if you do then you will put an end to my entire family', what does one do?* Then, there are also the challenges of other systemic processes -- when an incident of CSA happens, and someone comes to know, an FIR is lodged, an investigating officer (not less than the rank of a Sub-Inspector, preferably a woman) is appointed, and does enquiry under section 161. Following this, under Section 164, the magistrate/judge statement has to be recorded--the challenge we are here to discuss today.

In pre-POCSO times, there was a culture of denial. But we all know that abuse, exploitation, rape has been the nature of human kind. It has been going on for thousands of years and it will continue. Abuse will perhaps never stop. No matter how many safety workshops in schools have been done, it does not prevent a motivated abuser. Therefore, our response systems must be strong, so that they function as deterrents. Unfortunately, this is where we fail, even today. When the system does not seem to respond strongly, then offenders feel that they can continue to be abusive and that there will be no consequences to their actions. This is what perpetuates the culture of impunity i.e. *'I can do anything and I know that there will be no consequences'*. So, they keep on offending, and becoming more and more fearless because they see the system as being weak or hesitant. Strengthening our response systems entails capacitating ourselves, and our legal systems to elicit valid, reliable evidence from children, in ways that enable children to communicate their narratives as per their age and ability; it entails making our judicial systems more flexible so as to accommodate and understand the world of children and their functioning.

Objectives of Workshop

- Developing sensitivity to children and childhood and experiences of abuse.
- Understanding child sexual abuse dynamics and processes, and how these in turn, affect children's decisions on abuse disclosure and reporting.
- Applying knowledge of child development and developmental milestones, to decisions on children's ability to give testimonies.
- Learning child-friendly methods and skills to elicit the abuse narratives from children and adolescents.

2. Setting the Tone: Re-connecting with Childhood

Objectives

- To sensitize participants to children and childhood experiences.
- To enable them to be aware of and alert to children's experiences and emotions, especially in difficult circumstances.

Time

1 hour

Concept...What to Say

Let us, for the first hour, set aside the issue of child sexual abuse and POCSO. Let us just think and talk about children and childhood...and about children and justice, by re-connecting with our own childhoods and remembering what our lives were about then...people, places and events...how we felt—things that made us happy, sad, angry...who were we as children, how we perceived the world as children, what we felt and experienced. We are going to do a simple visualization exercise to return to our childhoods.

A Note on Memories and Why they Matter

We usually have a memory of an event that:

- Happened several times (again and again), for example:
 - *“When I was a child, there was an old bell in the house and it was my job to ring it to call everyone for dinner each night...we always ate dinner together, as a family.”*
 - *“When I was young, every deepawali, we used to go to give sweets to an orphanage near our house...that is how I spent time with underprivileged children and decided later on to do a degree in social work.”*
 - *“When I was a child, I just remember thinking all the time: why was I born in this horrible family? Every night I remember putting my ear to the keyhole of my parents' room and being afraid about their shouting, and whether my mother would get hurt.”*
- Happened just once but was very significant, almost life-changing, for example:
 - *“My father died when I was 8-year-old...life changed for us after”.*
 - *“The time my teacher punished me severely for what was not even my fault...and the sense of injustice I felt...and made me decide to study law.”*
 - *“The time my teacher called me aside, without humiliating me in front of everyone, to ask me why I looked so disturbed in class...I told her about some bad family problems I had...I will never forget how kind and comforting she was...and how I managed to come to school for the rest of the year because of her reassurance.”*

The questions are: whether we are families or caregivers or child care service providers, how do we create memories for children? What memories are we creating for them, not just in the short term but those to remember and live by twenty or thirty years later? For a sexually abused child, a traumatic memory has already been created by the abuse experience. Are the systems and their processes only going to increase that trauma? What can the system do to change it at least a little bit to make it less difficult a memory? Thirty years later, what memory will an individual have of the sexual abuse? ...that *‘the abuse was scary and I had a terrible time, with the police and others...but there was that one magistrate/judge who was sensitive...his ways of interacting were different from the others...or...?’*

Activity for Re-Connecting with Childhood

Method: Visualization and sharing

Materials: None

Process:

- Request participants to set aside their note books/pens (no note taking to be done now).
- Ask them to close their eyes and remember their childhood days. They may revisit people, places, events that occurred then.
- When they are ready (after about a minute or two), ask them to open their eyes and one by one, to share the images that came to their minds.
- Repeat the process (of visualization) asking participants to revisit childhood memories of:
 - Difficult or traumatic experiences.
 - Experiences of acute injustice i.e. incidents when they felt that some injustice had been done to them

Note: Be prepared for some participants to become very emotional when sharing difficult and traumatic experiences. Acknowledge the courage of the participant and thank him/her for sharing his/her experience, credit the group for creating a safe space for difficult sharing...offer comfort (within the group) to the participant in a gentle and reassuring manner—before you move on with the session.

Discussion:

- What do you think was the purpose of doing this activity?
- How did you feel when you re-visited happy memories versus difficult and traumatic ones or memories of injustice?
- Who helped/ how did you cope? (What are some specific qualities you remember about this person? Or ways in which he/she did things to help you?)
- The importance of being in touch with your own childhoods so you know what it is like to be a child, what makes children happy, angry or sad...
- How this sensitivity is essential to working effectively with children...what trauma means to children, how acutely children feel injustice...
- The impact of childhood memories—how childhood events and experiences still impact us in adult life and therefore how childhood experiences, especially those of trauma and abuse, can never be undermined.

3. The Dynamics of Reporting & Disclosure: The ABCs of Child Sexual Abuse & Its Perpetration

Objectives

- To understand the ABCs of child sexual abuse from a psychosocial perspective.
- To recognize the dynamics of abuse, including the various methods of abuse that perpetrators use.
- To be cognizant of how the methods of (perpetration of) abuse influence a child's willingness to provide a statement or narrative.
- To apply an understanding of perpetration and abuse processes to evidence gathering and statement recording.

Time

2 hours

Concept...What to Say

3.1. Definition & Nature of Child Sexual Abuse

Child sexual abuse is the involvement of children and adolescents in sexual activities (usually for adult sexual stimulation or gratification) that they cannot fully comprehend and to which they cannot consent as a fully equal, self-determining participant, because of their early stage of development.

For the purposes of inquiry and investigation, it is important to have a nuanced understanding of child sexual abuse, over and beyond definitions of abuse.

Contrary to what is commonly understood, child sexual abuse (CSA) is not always a one-off act nor is it merely a series of sexual actions against a child; particularly in cases where abuse is perpetrated by known people, abuse is also process comprising of a series of actions leading up to the act of sexual abuse.

Understanding the different methods and processes by which child sexual abuse is perpetrated helps to identify CSA more clearly and thus strengthen the evidence to convict the perpetrator.

Child Sexual Abuse is...

...an interaction between a child and an adult where the child is used for sexual stimulation.

...exploration of sexuality between a minor, traditionally understood as below 18 years of age, could be exploitative if the age difference and power dynamics between them is significant.

...not restricted to rape/penetrative genital contact.

...digital handling of the child's genitalia.

...non-genital forms of sexual touching.

...non-contact forms of abuse for the pleasure of the perpetrator such as exposing the child to pornography or taking nude pictures of the child.

**Digital handling refers to sexual abuse wherein no penile-vaginal contact occurred, but a child's genitals are assaulted by the perpetrator by use of hand or other objects.*

Activity for Understanding CSA Basics

Method: Discussion

Materials: Statements regarding CSA (below)

Process & Discussion:

- Read each set of statements and ask participants in plenary whether they agree or disagree...
- Discuss why they agree or disagree with each of these statements.

Statements:

- Child sexual assault is a rare occurrence.
- It can only be considered abuse only if it is violent.
- Most children who are sexually abused do something to cause the abuse to occur.
- Perpetrators are those who...
- Suffered physical/ sexual abuse themselves as children.
- Are from lower socio-economic strata, or from difficult or deprived family circumstances.
- Poor educational level/ not professionals.
- 'Dirty old men'
- Always men (never women).
- Strangers.
- Mentally ill people.
- CSA is more or most likely to occur...
 - In places where risk of detection is low.
 - In lonely, isolated places that are unfamiliar to the child, or where there are no people nearby.
 - Where there are no CCTV cameras.
 - Anywhere because actual abuse incident can occur quickly (commonly 5 to 15 minutes).
 - Within the home (especially if the perpetrator is a family member).
 - In places the child regularly visits or performs routine activities, such as schools, tutorials, playgrounds and other public spaces.
- Discussions/ information on child sexual abuse will scare children.
- The most common form of abuse suffered by children at home is sexual abuse.
- Children who disclose abuse and later retract their stories were lying about the abuse.

3.2. Nature or Type of Child Sexual Abuse

Sometimes, people tend to take a position that 'if he did not touch you and he only said sexual things' it is not actually abuse. It is important to recognize that all sexual acts, and use of a child for sexual purposes, through contact and non-contact methods, with or without penetration constitute sexual abuse and have a certain kind of psychosocial impact on the child. The dimensions (described below) on type of abuse, number of abuse episodes and perpetrators of abuse are often used to determine the psychosocial impact that the abuse may have had on a child—and every child would have a unique combination of these variables.

Nature of CSA: Dimensions to understanding the nature of CSA

Type of Abuse	Non-Contact versus Contact	<p>Non-contact abuse entails offensive sexual remarks /exposure of child to nudity or perpetrator's private parts or observation of the victim in a state of undress or in activities that provide the offender with sexual gratification or exposing child to pornography.</p> <p>Contact abuse entails touching of the intimate body parts including perpetrator fondling or masturbating the victim, and/or getting the child to fondle and/or masturbate him/her.</p>
	Non-Genital versus Genital	<p>Non-genital contact abuse entails touching and fondling of parts other than the genitals.</p> <p>Genital contact abuse entails touching and fondling of the genitals. This itself can be penetrative or non-penetrative.</p>
	Penetrative versus Non-Penetrative	<p>Using the penis or other objects to penetrate any orifice of the child's body (including vaginal, anal or oral penetration) versus other forms of contact abuse that may not be penetrative.</p>
No. of Episodes	Single versus Multiple Episodes of Abuse	One incident of abuse versus many incidents of abuse (over a period of time...days/ months/ years)
Perpetrator(s) of Abuse	Known versus Unknown Perpetrator	Abuse perpetrated by a family member/ caregiver or some person known to the child versus a stranger; within known people, if the person is responsible for care and protection of the child (such as institution staff, parent, teacher, school attender...), it qualifies as aggravated abuse, resulting in more severe punishment under POCSO, because this person abused the child in a situation or relationship wherein he/she is meant to be caring for and protecting the child.
	Single versus Multiple Perpetrators	Abuse by a single perpetrator versus abuse by more than one or many/ different perpetrators

In case of a one-off contact abuse by a stranger, frightening and unsettling as it may be for the child, he/she may heal better than a child whose uncle has not touched her but has been constantly making sexual remarks to her. The fact remains that coercive acts and sexual acts that cause injury and tissue damage carry their own valence in how a child is impacted. Contact abuse, especially in case of coercive and violent processes such as rape, are likely to be more traumatic for a child and make recovery from the abuse experience more difficult; however, it has also been found that children who have been abused through coercive processes and injury, despite their trauma, have (psychologically) recovered better than abuse that may not have been injurious but committed by a known (and trusted) person such as a family member or caregiver.

However, the impact of CSA does not necessarily follow a linear logic-based on generic presumptions about what ought to be more severe. Thus, if a rape survivor were to stoically fight back, without any conventional misconception on the honour-stigma dimension, there is a tendency to interpret this as 'so much has happened and look at her...she seems unaffected', whereas the truth is that this person may be more resilient or have better support.

Thus, the severity of the impact of the abuse depends on not only on the type of abuse but also on the duration of the abuse and very importantly, whether the abuser is a known/ trusted person or a stranger. Thus, CSA is a complex issue, wherein impact and recovery depends on all of the above variables and how they combine together to influence the child's experience of abuse. Finally, even when there are two children, who have been impacted by identical forms and processes of abuse (similar variables), they may still be different in terms of their responses. This difference is accounted for personality and temperament of each child, and social context and circumstances of each child, due to which each child perceives and internalizes the abuse differently, thus resulting in different emotional and behavioural states or responses to the abuse.

3.3. When to Suspect CSA: Signs & Symptoms

There are broadly three contexts in which children present for psychosocial consultation on sexual abuse issues. The first is when child sexual abuse is already established by agencies and individuals and they refer the child to the mental health system. Such referrals may be received from:

- i) District Child Protection Units;
- ii) Childline and child care agencies/ service providers;
- iii) Police;
- vi) Courts and judicial personnel.

Children are brought by such agencies and bodies either for interventions in the wake of trauma and emotional problems and/or for inquiry and evidence gathering for use in court cases. Thus, in this context, the mental health system is not required to establish whether or not CSA has occurred, as it is already known—usually, children would have reported abuse or in case of children in sex trafficking, they have been rescued through a raid on sex work institutions, and so the abuse has come to light.

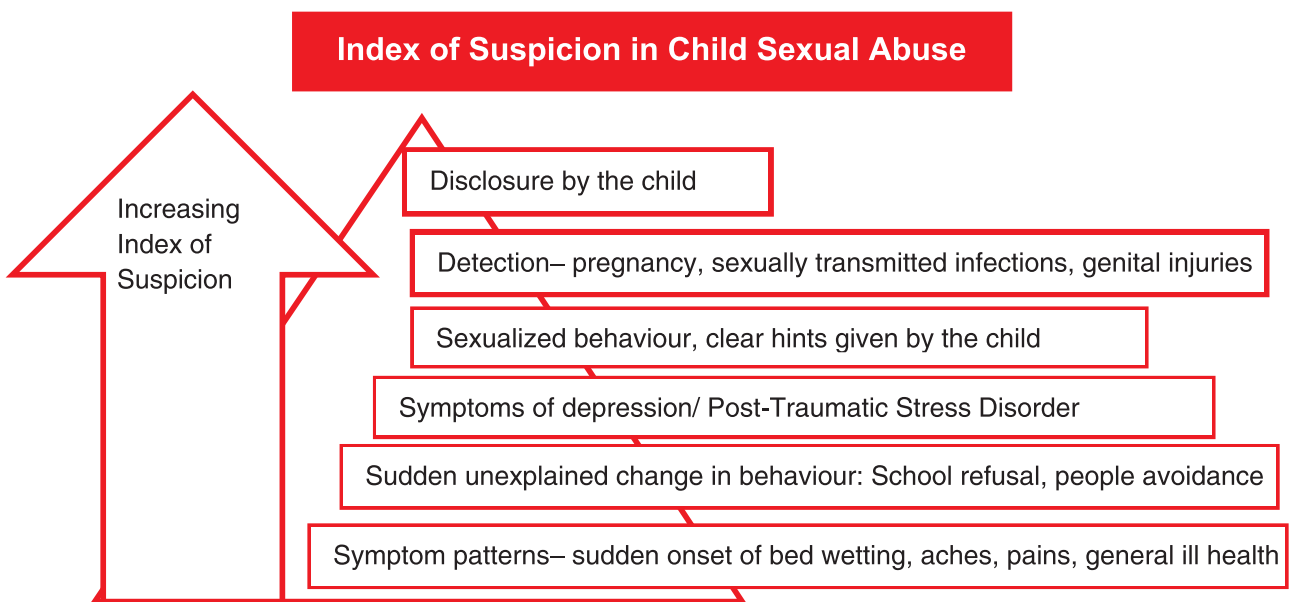
The second context is one in which the child has reported to his/her parents but they in turn, have not reported the abuse to police or legal systems. However, they seek consultation to provide the child with mental health interventions.

The third context is when it is not (yet) known that he/she has been sexually abused; the child comes to the mental health system for some psychological or psychiatric manifestation, but upon enquiry and examination, CSA issues emerge in one of the following ways:

- The child discloses or reports abuse.
- An adolescent girl is found to be pregnant.
- (Frequent) urinary tract infections in the child are reported by the child/ caregivers and/or genital injuries in the child are reported/ observed.
- Emotional and behavioural issues that are associated with anxiety, anger and depression.

There is what is called an index of suspicion in child sexual abuse i.e. when to suspect child sexual abuse and how true one's suspicions likely to be. Refer to figure below--it diagrammatically represents the index of suspicion in child sexual abuse.

At the peak of triangle, the index of suspicion is highest i.e. there is no doubt when a child reports or discloses that abuse has taken place, especially when a child spontaneously reports without particular inquiry by an adult.



Equally high on the index is pregnancy (in adolescent girls)—a sure sign that sexual abuse has occurred. Genital injuries and frequent urinary tract infections must lead to suspicion that there is digital handling and sexual abuse is very likely to have taken place. Emotional and behavioural changes observed in the child are important indicators of child sexual abuse, however, they come lower on the index of suspicion because these psychological changes may occur due to a number of reasons (unlike pregnancy or genital injuries which do not have a range of reasons for their occurrence).

Emotional and behavioural issues relating to anxiety and depression may occur due to sexual abuse but may also be due to other difficult and traumatic experiences such as parental marital conflict, bullying, learning difficulties and academic pressures, loss and grief (death-related) experiences...so, while emotional and behavioural changes may lead to CSA suspicion, further examination and inquiry needs to be made (by a psychosocial or mental health professional) to understand exactly what difficult event(s) or experiences they are attributable to in a given child. During inquiry, if sexual abuse is ruled out, then the signs and symptoms may be attributable to other difficult experiences.

Below is a list of signs and symptoms of child sexual abuse i.e. emotions and behaviours that if children show, we must suspect abuse. **It is useful for judicial personnel to know and understand signs and symptoms of CSA because they need to read FIR reports provided by the police as well as medical and psychosocial reports provided by health and mental health professionals. When psychosocial reports contain some of the signs and symptoms listed below, the judicial personnel may already have a sense that CSA has taken place and the inquiry and statement recording can proceed accordingly.**

Emotional & Behavioural Signs & Symptoms of CSA

In Younger Children...	In Older Children/ Adolescents...
<ul style="list-style-type: none"> • Sexualized behaviour • Avoidance of specific adults • Nightmares/ Sleep disturbance • Clingy behaviour/ separation anxiety • Fearfulness and anxiety • Bedwetting • School refusal • Decreased scholastic performance • Medically unexplained body aches and pains 	<ul style="list-style-type: none"> • Self-harm • Depression/ isolation • Anger • Fearfulness and anxiety • Sleep disturbance/ nightmares/ flashbacks • Avoidance of specific adults • School refusal • Decreased scholastic performance • Medically unexplained body aches and pains/ fainting attacks • High risk behaviours—sexual behaviour/ substance abuse/ runaway.

3.4. Sexual Abuse dynamics and Processes

Thus far we have been using a trauma lens to discuss child sexual abuse experiences. However, not all child sexual abuse is traumatic or at least not traumatic at the time at which it occurs or the in the ways in which it is perpetrated. Let us consider these two examples:

Example 1: A 6-year old child has been inappropriately (sexually) touched in various parts of her body by her uncle, who has over a period of several months, lured her with sweets and toys to spend time with him; his ways of expressing affection towards the child has been to touch and fondle her in various inappropriate ways. He has also invented 'special, fun' games that entail inappropriate touching and imbued the game with an element of excitement and secrecy.

Example 2: A 10-year old boy who lives in a child care institution has been fondled and sexually touched by one of the staff in the institution. An orphan, having never known a family or any sort of love or support system before, this boy has a relationship of deep affection and trust with this staff, who spends time with him, plays with him and ensures that the boy gets additional food, exemption from punishments (that other children may have to bear).

Example 3: A 16-year old girl is lured into a sexual relationship with a 25-year-old man, who has told the girl that she is beautiful, that he is in love with her and would even consider marrying her at a later point. Happy with his attention and his love and caring, the girl has agreed to physical intimacy with him [following which she gets pregnant and the man is nowhere on the scene].

Grooming...A Method of Child Sexual Abuse that Does Not Entail Fear-Coercion Methods

Grooming is a method of manipulation that entails a process of engaging the child/adolescent in sexual acts through:

- Selecting and targeting the victim (especially when children are vulnerable due to difficult circumstances, with little or no family and social support systems).
- Gaining trust and access (through special attention, sympathy to child, playing games/ giving gifts to gain child's friendship and affection).
- Playing a role in the child's life ('no one understands you like I do & vice-versa')
- Isolating the child (from family/ others by telling the child 'I understand you best and love you the most...the others do not...they don't know what is right for you...')
- Creating secrecy around the relationship (through personal contact, letters and phone calls...imbuing the relationship with a certain specialness and excitement)
- Introducing misconceptions and misnomers about sexual behaviour ('the greater your sexual experience, the more useful for you as you grow up...people will think you are old-fashioned if you have no knowledge and experience of sexuality...')
- Initiating sexual contact (only after a trust and special relationship has been created).
- Controlling the relationship (using the existing advantages of age and power dynamics, threats, and emotional manipulation...making child believe it was her fault i.e. coercive elements may be introduced at this stage).

**Adapted from: Georgia M. Winters & Elizabeth L. Jeglic (2017) Stages of Sexual Grooming: Recognizing Potentially Predatory Behaviors of Child Molesters, Deviant Behavior, 38:6, 724-733*

If we examine these three examples, we may agree that all of them entail sexual abuse and could be filed as POCSO cases. However, you also notice that in all three instances, there is no use of violence or force, no injuries resulting from the abuse and consequently, at least at the time of abuse, no trauma felt by the children concerned. The 6-year-old has no idea of sexuality or boundaries and since she was not hurt or threatened, but treated with affection/ given rewards, would not even be able to recognize what was being done to her as abuse, so she is unlikely to internalize her experience as being traumatic. The 10-year-old, being older, may have some sense of boundaries around his body and may feel some discomfort but the feelings of confusion, given his relationship with the abuser, may be greater than any trauma caused. The 16 year old, on the face of it, may even be accused (by some people) of having 'given consent' and therefore it not even being a case of child sexual abuse; and in fact the girl herself may defend the perpetrator with whom she believes she shares a romantic and sexual relationship.

Thus, the common image of child sexual abuse as being an act of violence and coercion (by a stranger) can be a misconception i.e. while that form of CSA also occurs, that is not the only method by which child sexual abuse occurs. So, what are the (other) methods by which CSA is perpetrated? How do different methods of abuse have varying psychological impacts on children? And why would it be important for judicial personnel to understand the method of abuse and its and its impact?

3.5 Processes of Abuse in Younger Children

In younger children, the methods of abuse entail i) inducement and lure and/or ii) coercion and threat. As shown in the table below, inducement and lure entails use of sweets and toys to get children to perform or cooperate in sexual acts for adult stimulation. Perpetrators also use attention and affection in exchange for sexual favours i.e. provision of attention and affection when the child complies with the adult on sexual acts and withdrawal of attention and affection when the child does not. These methods are followed by the perpetrator creating excitement and secrecy around the sexual act, often presenting it to the child as a 'special new game', a 'secret game' that no one else plays and no one else knows about; and young children, who have no understanding of sexuality are vulnerable to such ruses.

However, despite children's lack of knowledge of sexuality issues, even very young children (around the ages 2 to 3 years) can have a sense of discomfort with (sexual) touching of the genitals and private parts. This is because socialization processes (and taboos) have already introduced to children, such as the importance of wearing clothes (especially underwear) and the need to 'hide' and 'not touch' private parts and genitals. Therefore, in many children, methods of abuse that use lure and inducement also create confusions regarding love and caregiving ('only if I do this [sexual acts], he will love me and play with me') and around sexual norms i.e. what is socially appropriate in terms of inter-personal interactions and sexual norms.

Lure & Inducement in Child Sex Tourism

Inducement and lure methods of CSA play out in particularly complex ways in situations of child sex tourism as happens in many places in South Asia, where children are engaged in prostitution. In such tourist places, children who come from extremely deprived backgrounds i.e. with lack of resources, finances, parenting and supervision and opportunities for growth and development, are targeted by tourism paedophiles and other tourists who looking for sexual activity. The dynamics in such abuse and exploitation is such that the above-described needs are satisfied in exchange for sex. These perpetrators, also known as 'sugar daddies' provide children with food, clothes, toys as well as travel, activity and fun experiences which take these children away from their childhoods of deprivation and trauma. Some children recognize the exploitative nature of the relationship but in the balance, (and perhaps legitimately so in their minds) feel that it is better than the life of poverty and misery that they normally lead. The more generous the gifts and opportunities for fun and entertainment, the greater the lure and inducement and unfortunately, the greater the mutual benefit to the child and perpetrator.

Sexual Abuse Processes in Younger Children

Method or Process of Abuse	Impact on Child
<ul style="list-style-type: none"> – Inducement & Lure – Child rewarded for sexual behavior — <i>'I will give you chocolate/ toy if you...'</i> – Offender exchanges attention and affection for sex: <i>"If you don't do this [sexual act], then I will not speak with you or play with you...if you do this, I will love you"</i>. – Creating excitement & secrecy around the act--<i>'This is our special secret...remember no one should know about it!'</i> 	<p>Confusions regarding sex and love and care getting/care giving</p> <p>Confusion about sexual norms</p>
<ul style="list-style-type: none"> • Coercion & Threat – Threatening the child/ creating fear in the child—<i>'If you don't do as I tell you/ and if you tell anyone about it...I will kill you/ I will harm your parents.'</i> 	<p>Fear and compliance</p>

Methods of coercion and threat are used to create fear in the mind of the child and force him/her to comply with the perpetrator's requests to engage sexually. These methods are used more effectively with slightly older children, who have more of a sense of the inappropriateness of the perpetrator's actions. It is a key reason for children not disclosing the abuse to anyone else.

Although the two methods are different, they are not exclusive to each other. Perpetrators may begin the abuse process through use of lure and inducement and at a later stage, continue by coercing and threatening the child, especially if after a certain period of time, the child realizes the inappropriateness of his actions and wants to or tries to stop the abuse.

3.6. Processes of Abuse in Older Children and Adolescents

In older children and adolescents, the processes of abuse are similar but the use of lure and inducement are slightly different. Given that adolescents are at a life stage wherein they are interested in issues of love, attraction and sexuality and are also keen to experiment with these experiences, perpetrators tend to use lure and inducements that are more emotional in nature (rather than the more material ones used with younger children). This means that they 'smooth talk' adolescents about their physical appeal and qualities, making promises of long term emotional and romantic relationships with them.

Adolescents from difficult circumstances, those with poor family support, who have been neglected and/or abused, are particularly vulnerable to such attentions from offenders. Following such manipulation and abuse, adolescents experience feelings of tremendous confusion, especially as they have shared 'deep' sexual and romantic relationships with the offender. They find it exceedingly difficult to discern this as an abuse process and defend the offender, often refusing to accept that this is abuse.

Sexual Abuse Processes in Older Children & Adolescents²

Method or Process of Abuse	Impact on Child/Adolescent
<ul style="list-style-type: none"> • Use of Lure & Inducement - <i>"I will ensure that even if other children are punished, you are not punished...you will always have special privileges..."</i> [Expressed verbally or through actions]. - <i>"You are so beautiful...you know I love you...no one in the world cares about you the way I do..."</i> [Manipulation of adolescent girls]. 	<p>Confusions regarding sex and love and care getting/care giving</p>
<ul style="list-style-type: none"> • Transmission of Misconceptions about Sexual Behaviours & Norms - <i>"The more people you sleep with the greater your sexual experience will be...no man wants a girl who is ignorant about sex."</i> - <i>"Sexual experience is important...a real man should have tried everything at least once..."</i> - <i>"Not had any sexual experience...that is not cool...what will other boys/ girls your age think of you?"</i> 	<p>Confusions about sexual norms and decision-making.</p>
<ul style="list-style-type: none"> • Blaming the Victim - Offender blames the victim - Child infers attitude of shame about activities - Victim is stereotyped as "damaged goods" (this is often used to continue the abuse) 	<ul style="list-style-type: none"> - Guilt, shame - Lowered self esteem - High risk sexual behaviours
<ul style="list-style-type: none"> • Threat & Coercion - Conditioning of sexual activity with negative emotions & memories...through violence and coercive sexual acts. - Pressure on child for secrecy through use of threats. 	<ul style="list-style-type: none"> - Negative associations to sexual activities and arousal sensations - Aversion to sexual Intimacy - Fear and compliance

Again, given the life stage adolescents are at, often also under peer pressure to experiment with sexuality, offenders have the perfect opportunity to manipulate them into sexual engagement by transmitting all sorts of misconceptions about sexual behaviours and norms. For instance, appealing to adolescents' need to 'fit in' with their peers, perpetrators tell adolescents that it is necessary to gain sexual experience, that it would be 'uncool' if they are ignorant about sexual acts. As a result, adolescents, who are still acquiring life skills such as (sexual) decision-

² Finkelhor, D, Browne, A (1985). The Traumatic Impact of Child Sexual Abuse: A Conceptualization. American Journal of Orthopsychiatry. 55: 530-541

making, are negatively influenced, believing in the misconceptions transmitted to them, confused by how they should respond.

The Issue of Consent from a Psychosocial Perspective

We are aware that the POCSO Act does not recognize consent below 18 years of age; however, adolescents, due to their developmental stage, do engage in sexual relationships. It is often assumed that adolescents who get involved in sexual relationships, given their age and life stage, have done so by giving their consent i.e. they consented to the sexual relationship and therefore they are to be blamed. Thus, in addition to the perpetrator, other well-intentioned persons, such as caregivers, welfare, legal and medical system personnel, who are meant to be playing a helping role, also end up vilifying the child instead of supporting him/her. It is therefore critical to make the difference between so-called consent and 'informed consent'. Consent on the face of it simply entails saying 'yes' and entering into the sexual relationship. But informed consent assumes that the adolescent has given consent by knowing and understanding the consequences of sexual engagement i.e. with full information on the following:

- Permission and consent: what coercion means and how to recognize direct and indirect methods of coercion
- Relationships: The contexts in which sexual relationships can play out in a happy, healthy and responsible manner, including who the person is, whether the person can be trusted and whether there is an emotional connect with the person
- Health and safety: issues of unprotected sex, pregnancy risks, sexually transmitted diseases
- Protection and abuse: what sexual abuse entails and how to recognize it

It is only if an adolescent knows and makes relationship and sexuality-related decisions based on the above framework can it be considered as informed consent—which is usually not the case in child and adolescent sexual abuse.

After gaining the trust of adolescents, through inducement and lure and transmission of sexual misconceptions, when perpetrators have successfully engaged the adolescent sexually, they then blame the victim with statements such as 'you started this...you wanted this and consented to this...so, it is your fault'. Adolescents then feel 'dirty and damaged', guilty and ashamed.

3.7. Implications of CSA Methods & Dynamics for Statement Recording & Evidence Gathering

In addition to eliciting a narrative on the immediate abuse, it is also important to understand the methods and processes used by the perpetrator to sexually abuse the child. Statements regarding lure-seduction-manipulative-grooming behaviours as well as on threat and coercion behaviours by the perpetrator help to strengthen the evidence of abuse. In fact, if the statement focuses only cross-sectionally (at a moment in time) on an incident of abuse, failing to recognize that CSA is often a process that consists of a series of actions entailing lure, seduction, manipulation and/or coercion and threat, then some cases may fall i.e. defense lawyers may argue that touching the child in certain ways, especially when touch is not used in genital areas/ private parts, is not child sexual abuse.

Furthermore, there are several instances, especially in peer relationships, of adolescent girls coercing adolescent boys into 'running away and getting married' and/or into physical intimacy—threats of self-harm and suicide to coerce boys into doing their bidding are becoming increasingly common. Similarly, there have also been instances (even if fewer in number) of older girls and women using processes

of grooming and/or coercion with adolescent boys...take for example the case of a 17-year-old boy who was sexually abused by a 19 year old girl who was his college mate. Therefore, a conventional approach to understanding abuse i.e. that it is always perpetrated by males over females, may result in unfair gender biases and improper decision-making about abuse. Providing justice entails the breaking out of stereotypes regarding age and gender, else, how could a 17-year-old boy (who is a victim of abuse) hope to be understood and believed (in court and elsewhere) whilst reporting? The fear of disbelief and of the humiliation of questions that court asks regarding his masculinity are likely to deter male adolescents from reporting abuse.

The Problem with the Morality Lens...

It is important for judicial personnel to understand adolescents' high risk sexual behaviours from a mental health perspective, to know that some of these problem behaviours are attributable to their experiences of trauma and abuse. If the causes and contexts of these adolescent risk behaviours are not understood, and 'moralistic' positions are taken, resulting in vilifying and labelling the child/ adolescent, then justice will not be done.

In fact, it would be incorrect to assume that caregivers and others accompanying children through CSA systemic processes are always empathetic to the child or that they are interested in children receiving justice. There have been instances where families/ caregivers/ institution staff have been reluctant to go through with CSA systemic and legal processes either due to social stigma associated with sexual abuse reports or the need to protect the perpetrator for family honour and other reasons or due to the vested organizational and political interests (such as happens in institutions wherein they are concerned about 'protecting the institution's name' than about children's safety).

Judicial personnel need to be alert to the unsupportive environments sexually abused children come from, understanding that the pressure that many children are under, to 'not report'. One of the ways in which this pressure and lack of support is reflected is through criticizing children's behaviour i.e. labelling a child as a long-standing pathological liar or accusing a child of high risk sexual behaviours and substance abuse—the logic being 'if a child behaves like this and is of such poor moral character, how can his/her account of abuse be true? Such a child should not be believed...his/her views should not be considered'. However, the presence of so-called 'immoral' sexual behaviours and substance abuse behaviours does not preclude a child or adolescent from being abused, so it is recommended that judicial personnel do not enter into value-based or moral judgments about a child or adolescent's behaviours because this will only make a child or adolescent defensive and fearful, causing him/her to provide inaccurate statements or retract statements of abuse.

Thus, in order to **focus on the experiences, events and narratives of abuse perpetration**, whomsoever it is by and whatever the age, judicial personnel must ask children and adolescents questions to elicit a more longitudinal narrative of the abuse, for example:

- How do you know this person (alleged perpetrator)?
- Where did you meet him/her and how long do you know him for?
- Tell me about how your friendship/relationship developed...
- What kind of activities did you do in your time together?...Tell me all the different things he/you did.
- Can you remember some of the things (s)he used to tell you? Anything that ever made you feel worried or uncomfortable?

Such questions (asked in a gentle and reassuring manner) will help judicial personnel understand the dynamics of the abuse and therefore also to establish that abuse

occurred. It will help establish whether manipulation and grooming processes have taken place—in which case, even if an adolescent were to say (s)he consented, the court may be able to establish that that consent was ‘manufactured’ and thus decide that there was sexual abuse.³ It is thus important for **judicial personnel to apply their (psychosocial) knowledge of abuse dynamics and processes in evidence gathering and decision-making.**

Finally, a nuanced understanding of CSA will help judicial personnel to anticipate situations in which retraction of statements may take place. When abuse has taken place through grooming processes (i.e. lure, inducement and manipulation) and violence, threat and coercion methods have played little or no role in the abuse process, children/ adolescents are likely to be reluctant to provide statements; or they tend to retract any statements previously made about inappropriate touch and interactions with the perpetrator because:

- The abuse is carried out in a seeming context of consent and mutual pleasure.
- Such abuse is carried out by persons in whom children have tremendous trust so children are in a state of confusion when these persons are suddenly ‘vilified’.
- Due to the emotional and material benefits that children gain from the offender, they may be reluctant to recognize or concede that the relationship is an exploitative one.
- Due to children/ adolescents being blamed for ‘giving consent’ and the ensuing feelings of shame and guilt, the social stigma causes children and adolescents to not want to report the sexual abuse.
- Sometimes there might be a threat from the perpetrator and the threat can also take a very conflicting form wherein the perpetrator puts the onus of protecting him/her on the child i.e. ‘*I will be destroyed...my life will be ruined...*’ as a result of which the child feels guilty and responsible for having got the perpetrator ‘into trouble’.

In such situations, where less overt abuse methods have been used, it requires the magistrates and judges to be skilled in their inquiry, not only asking about abuse incidents and actions at any given point in time, but also eliciting information on the nature of the child or adolescent’s relationship and the types of interactions they have had over a period of time. (The requisite inquiry is described in detail in the final chapter of this training manual).

***Note:** The above content refers to sexual (abuse) relationships between children or adolescents and adults. If working with POCSO charges that involve two mutually consenting adolescents i.e. romantic and sexual relationships between peers, then the perspective required to be taken is a slightly different one. From an adolescent sexual rights perspective, such relationships actually do not fall in the realm of child sexual abuse. Thus, such cases, ideally should be referred to the mental health system rather than the legal system. Please refer to Annex 2 on ‘POCSO 2012 in Action: When and Why it Does Not Work’ for more detailed explanations.*

^{3.} Distinguishing so-called ‘consenting’ sexual relationships from sexual relationships in which grooming and manipulation has taken place i.e. to ‘manufacture’ consent is a challenging task. As of now, some ways of inquiry to make these distinctions are largely available in mental health practice. It would be useful therefore, for the court, to ask for mental health professionals to conduct some aspects of child sexual abuse inquiry.

4. The Child's Capacity for Providing Testimony: Applying the Child Development Lens

Objectives

- To understand the domains of child development.
- To understand how child development is impacted by abuse and trauma.
- To apply child development concepts to issues of validity and reliability of evidence provided by child witnesses.

Time

2 hours

Concept...What to Say

4.1. Dilemmas Posed by the Indian Evidence Act and POCSO 2012

a) Minimum Age of Child Witness

Section 118 of the Indian Evidence Act deals with the competency of the witness. Under this section '*All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind*'. However, the Indian Evidence Act does not define 'tender years' in terms of at what age(s) children are too young to provide testimonies—the Evidence Act says '*There is no fixed age below which children are incompetent to give evidence*'. Similarly, POCSO 2012 also remains silent on the issue of age-appropriateness of a child witness to be able to testify in court.

This raises the question of how to examine or elicit evidence from an 8-month-old child who has been sexually abused. Of course, in case of an infant, there is no debate regarding evidence gathering because it is obvious (and indeed part of general knowledge) that a child so young will not have the capacity to speak and provide narrative evidence.

However, the lines become blurred when a child is about 2.5 years old and has developed some skills in speech and language. The question now is to what extent is this child able to provide evidence with the level of speech and language development s(he) has, and so, in turn, it raises the question of how to examine and elicit evidence from a 2.5-year-old child witness. Would it be legitimate to do so? Would the evidence (if) obtained be credible?

b) Ascertaining the Competency of the Child Witness

According to the Indian Evidence Act, in criminal proceedings, '*a person of any age is competent to give evidence if he or she is able to (1) understand questions put to him or her as a witness, and (2) give answers to them which can be understood.*' Therefore, a child may be considered a competent witness if he/she is able to understand and answer the questions put to him/her.

This brings us back to the age question: in a neuro-typical child (a child whose development follows normal milestones), at what age would a child be competent to provide evidence? Pre-schoolers are just developing the abilities of sequencing and organizing. Thus, it may be difficult for them to provide coherent statements or narratives of events. They may find it especially difficult to withstand cross-examination where they are likely to be questioned about time (of day) and sequence of events. Also, the development of memory is still at its early stages, for this age group, their long term memories may not be as well developed as in older children, making it hard for them to difficult to recall the details of events clearly and/or in the type of specificity and sequence that the prosecutors and defense may require.

Furthermore, competence is not only an age-related issue. Even older children with intellectual disability may not have the ability to comprehend and respond to questions put to them in court. Children with intellectual disability, depending on the degree of disability and level of impairment, may be compromised in their abilities to comprehend and respond to enquiry. POCSO 2012 addresses this issue to some extent through its provision to the effect: *'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'*. The law states that the Special Court **'may'**, and not **'shall'** take the assistance of child mental health professionals in such cases. Considering that judicial personnel speak of difficulties with interviewing child witnesses without disabilities, this problem is likely to be compounded as they attempt to communicate with children with disability.

Furthermore, a child's abilities to understand and respond to questions are not only a function of developmental abilities but also of his/her emotional state. Given the pernicious nature of child sexual abuse, experiences of trauma or post-traumatic stress disorder may not even always be restricted to the immediate aftermath of the incident. Many individuals go on to developing post-traumatic stress disorder (PTSD) that occurs in the aftermath of the traumatic event. PTSD comprises of anxiety and depression related symptoms that occur when an individual is exposed to objects/places/events that are reminiscent of the traumatic event. Due to the flashbacks, nightmares, difficulty in concentration and constant anxiety experienced as part of PTSD, such individuals may have much difficulty returning to their daily lives and normal functioning. In the process of getting children to recall their experiences of sexual abuse, to be able to provide the requisite evidence in the court, we run the risk of re-traumatizing them. Recalling unpleasant and frightening experiences of what occurred earlier in the year might make children fearful all over again, and nullify all efforts that parents and counsellors have made to help children overcome their trauma and fears, return to school and resume normal life. So, children who are either in a state of trauma or PTSD may find it hard to give evidence at the court, thus bringing into question their competencies as witnesses.

According to the Indian Evidence Act, the decision about competence of a child witness *'must depend upon the good sense and discretion of the judge'*. This phrase is not clearly defined by the law—to mean that it would be critical for the judge to have knowledge of child development and milestones, of the traumatic impact of CSA on a child and consequently on the child's abilities to provide valid and reliable evidence. The absence of a clear definition might make it more challenging for judges to make decisions on whether a given child would be competent to testify before the court.

4.2. Introduction to Child Development

In the light of the above-described challenges in evidence gathering from children, it is necessary to scientifically and systematically establish a child's capacity to provide valid and reliable evidence. This requires an understanding of child development, including the skill to assess child development.

Child development refers to the abilities and skills that a child has at a particular age. There are, broadly-speaking, five domains of child development: **physical, social, speech & language, emotional and cognitive development**. Mere knowledge of children's developmental milestones is not useful—what we need to know is how to apply the concepts of child development in our work with children. So, we are now going to do an activity to help us learn about child development in a practical way—to understand the abilities and skill children should achieve at various ages; this in turn will help us understand how a child's developmental stage and skills affect his/her abilities to provide evidence. For instance, very young children, whose speech and language abilities are not yet developed would be unable to provide a statement; or children with cognitive deficits would also find it difficult to provide a coherent statement.

So, the questions are: **how do we apply an understanding of children's developmental milestones to statement recording or evidence gathering? And when or under what circumstances would they would be able to (not) provide a statement about the abuse?**

Activity for Applying the Child Development Lens

Method: Pile Sorting

Materials: Child development cards (Available for print in Annex 1)

Process:

- Place (spread out) the child development cards on the floor, on one side of the room, so that they are clearly visible.
- Select 5 corners or spaces in the room and place the title cards for each domain, to form a matrix (as shown in the pictures on subsequent pages).
- Divide the participants into 5 groups assigning each group to one of the five domains of child development.
- Explain that each of the cards (spread out, as shown in subsequent pages), show an ability or skill that children have, pertaining to one of the domains of development, at a certain age.
- Now, ask them to look at the cards and sort and categorize them in two rounds:
 - Round 1: Sort cards into 5 domains of development—wherein each group picks up the cards relevant to their domain i.e. you pick up the 'needs and abilities' cards pertaining to physical development or social development, depending on which group you belong to.
 - Round 2: Within each domain, each group sorts its cards into the five different age groups i.e. decides whether a card belongs in the 0-12 months, 1 to 3 years, 3-5 years, 6 to 12 years or 13 to 18 year age group, and places them accordingly in the matrix.
- When each group has completed their task, ask participants to walk around and view others' matrix...and ask for any cards that they feel belong to their own matrix!

Physical Development

Abilities & Skills

0 to 12 months

1 to 3 years

3 to 5 years

6 to 12 years

13 to 18 years

Speech & Language Development

Abilities & Skills

0 to 12 months

1 to 3 years

3 to 5 years

6 to 12 years

13 to 18 years

Social Development

Abilities & Skills

0 to 12 months

1 to 3 years

3 to 5 years

6 to 12 years

13 to 18 years

Cognitive Development

Abilities & Skills

0 to 12 months

1 to 3 years

3 to 5 years

6 to 12 years

13 to 18 years

Emotional Development

Abilities & Skills

0 to 12 months

1 to 3 years

3 to 5 years

6 to 12 years

13 to 18 years

Note: A card generally needs to be read carefully to see which primary domain the skill belongs to (the domain in which the skill applies i.e. the context is the secondary domain) and placed in the domain it belongs to. For example, 'Complex use of language for higher level social transactions' could belong to two possible domains—Speech & Language or Social Development. But since the card focuses on language skills, the primary domain (and therefore where it needs to be placed) is Speech & Language Development, while the secondary domain (where the skill is applied) happens to be 'Social Development'. That said, some skills could belong almost equally in two domains, so the importance of the activity lies in understanding the concepts of development, not in trying to 'get the right answer'.

Discussion (1):

- View the categorization in plenary...by (the whole group) moving from one developmental domain matrix to another.
- Highlight specific skills and abilities; ask questions (and encourage participants to ask questions) of each sub-group about their decisions to categorize the cards.
- When you (as the facilitator) see some cards in a particular domain when they actually belong to another, discuss why they need to be elsewhere i.e. justify why they belong to another domain.
- About child development in general:
 - A card could actually belong in more than one domain of development—because the developmental domains are not water-tight compartments...one domain influences another. For example, children who have deficits in cognitive development are also likely to have gaps in social and emotional development; or children who have physical and loco-motor deficits and consequently have mobility issues may also have issues with social relationships as they are unable to play and mingle with their peers and/or emotional issues as they may have poor self-esteem due to feelings of inability or inadequacy.
 - Thus, a primary deficit, in a single domain of development, could lead deficits and problems in other areas of development. So, it is important, even when a caregiver describes a problem in one domain, to evaluate the child in all 5 domains.
 - Most psychosocial problems in children (even when we have diagnosed them using the child psychiatry disorder approach) may be viewed from a child development lens. For example, a child who has been sexually abused is likely to have problems with social skills (due to the anxiety that he/she has developed after abuse), emotional skills (due to low self-esteem issues); cognitive effects of abuse range from attentional problems and learning difficulties.

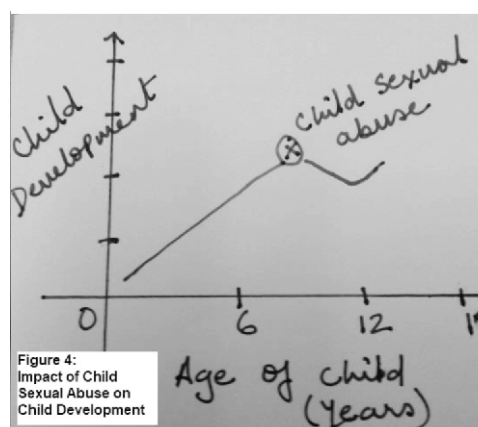
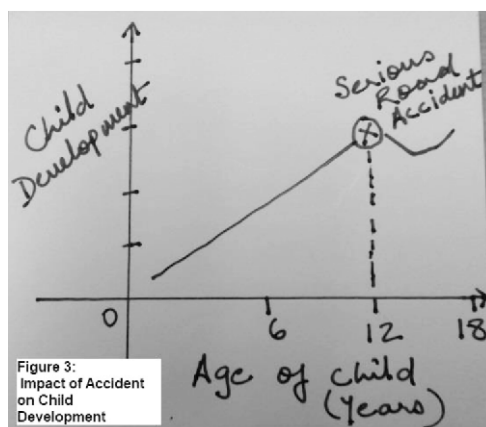
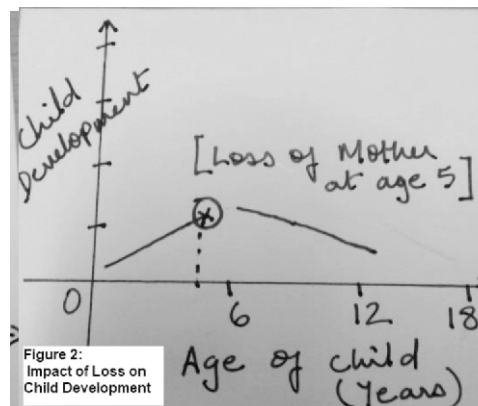
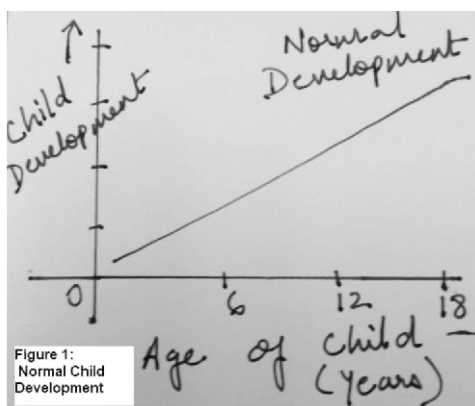
***[Completed matrices are shown at the end of this module].**

Process (2):

- Ask participants to consider the impact of deprivation or life events such as trauma and abuse on child development—such as a young 4 year old who loses his mother, a 6 year old who is neglected, a child who is left in the care of her older sibling as the parents are migrant labourers and have to be at work all day, a street child...how might these events and experiences affect child development? What specific domains of development may be affected and how?

Discussion:

- Display the graphical pictures below and explain:
 - Figure 1 shows normal child development for a child who has not experienced a difficult/ traumatic event i.e. as age increases, the development of the child increases as indicated by the linear curve
 - Figure 2 shows how a child develops normally, until at age 5 years, when he suffers the loss of his mother. The curve then dips to indicate falling development with increase in age.
 - Similarly, figure 3 and 4 when children suffer from an accident and sexual abuse, respectively, their development falls, after the traumatic events, as indicated by the falling curve.



Thus, any traumatic event is likely to negatively impact a child's development—unless the child receives appropriate interventions and support to be able to get back on track and follow normal trajectories of development.

Discussion:**Child development in the context of eliciting a statement from a sexually abused child:****a) Speech & Language Development:**

At 10-14 months, a child can speak only about 3 meaningful words (usually referring to parents or common objects); at 1.5 to 2.5 years, a child can speak 2 to 3 word phrases, which means he/she is still not capable of constructing sentences to provide a narrative of experiences. At age 3+, the child develops an increased fund of words and vocabulary and is able to construct short sentences. Thus, it is only after 3 years that a statement can be attempted to be elicited from a child. Further, many children (even those with normal cognitive abilities) start developing speech late, so even at 3.5 years of age, they may not always have capacity to build sentences, in which case the Section 164 statement cannot be elicited from them. Even if they speak in phrases at this age, there may not be any reference words to imply 'private parts', 'pain', 'assault', 'trauma', which are associated with sexual abuse.

b) Social Development:

Between the ages of 10 months and 3 years, children have what is known as 'stranger anxiety'— is a form of distress that children experience when exposed to people who are new or unfamiliar to them. This is a normal developmental phenomenon, but it can be very challenging for a magistrate/judge, who is a stranger to the child, to be able to communicate with the child and obtain a statement.

As children grow older and develop social skills, usually stranger anxiety fades out. However, there are children who for a range of reasons also develop social skills deficits. If these deficits occur in the form of social anxiety, which may manifest as the fear of social situations, inhibition to interact with other people that bring on feelings of self-consciousness, judgment, and criticism. In such cases, even in older children, who have no speech and language problems or cognitive deficits, it may become difficult to elicit the Section 164 statement. A child who is sexually abused is particularly vulnerable to social skills problems and social anxiety, following the abuse event—this may be due to the child's own fears and reluctance to engage with the outside world (especially in the immediate aftermath of the abuse events) and/or due to the parents' over-protectiveness i.e. 'don't go out...don't talk to people unnecessarily...remember what happened to you when you did...' which only serves to compound children's fears and anxieties.

Another social development-related issue that adds to the challenge of talking to children about sexual (abuse) experiences is that by the age of 3 years, due to cultural norms and socialization processes, children have already developed an understanding of concepts of privacy and shame relating to their bodies. For instance, when young children are not wearing their pants/ clothes, caregivers often make statements such as 'shame-shame...go wear your clothes immediately'. Such processes of shaming (however well-intentioned) result in children developing discomfort and hesitancy about their bodies, and the messages they receive are '*it is dirty and shameful to touch or talk about body parts, especially private parts*' or '*it is bad to mention private parts...*' Consequently, they are hesitant to or less likely to be comfortable talk about body parts, especially their private parts, and more so to a stranger such as the magistrate or judge is to them.

c) Emotional Development:

Children are emotionally attached to significant others who show positive attitude towards them, especially when they are given rewards and praise. They would be happy to oblige to do specific activities that earn them praise and tangible rewards. So, if sexual abuse is followed by rewards and praise by the perpetrators, children may not be able to understand the acts as abusive and report to significant others. For many children, whatever the age, especially when the method of sexual abuse is coercive and/or violent, the experience of abuse is already traumatizing; added to this is the flurry of bewildering medical, legal and systemic processes that follow and the distress and anxiety of caregivers, so that the trauma can only increase. While not all children respond to CSA in exactly the same ways, those who are seriously injured, severely traumatized and may be diagnosed with post-traumatic stress disorder (PTSD) may not be functional. Their emotional state may impair their social and cognitive functioning as well, thereby making it impossible for them to provide a coherent statement to the magistrate/judge. Their memory, abilities to sequence and organize information and then to provide a descriptive narrative to a stranger (the magistrate/judge) may all be adversely affected. Eliciting a statement at such a time would only result in an erroneous report and in further traumatization of the child.

d) Cognitive Development:

Expression and communication is also a function of cognitive abilities and at 1 to 2 years, children communicate mostly non-verbally, through actions.

Children may not be able to point or name private body parts before age 3 years, particularly in Indian context where we do not teach children to name private body parts as part of body awareness. So, if specific questions are directed to elicit information related to the mode and degree of sexual contact involving the private body parts, children of this age will not be able to accurately point despite abuse.

At 3 years, children develop a cognitive ability known as 'object permanence'—it means that children now understand that objects continue to exist even when they cannot be observed; for example, if their mother leaves the room and they cannot see her, they know that she is still there and has not vanished. (At younger ages, children believe that when a person or object is no longer in sight, it ceases to exist or that it disappears). Therefore, based on this cognitive development, even when the perpetrator not present, children know that he still exists and can re-appear. This leads the child to feel anxiety and fear—which can make it difficult for them to talk about the perpetrator and abuse (to the magistrate/judge) i.e. the child is thinking: *'what if he comes back and hurts me?'*

From the age of about 2 to 7 years, children are at a stage of cognitive development wherein their thoughts and communications are typically egocentric (i.e. about themselves). Egocentrism refers to the child's inability to see a situation from another person's point of view. The child thus assumes that other people see, hear, and feel exactly the same as the child does.

As a result, young children are unable to understand the need to respond to inquiry, especially repeated inquiry as happens in CSA response processes. Their logic is, what is known to them should also be known to others. Therefore, children of this age may not really grasp the fact that they have to narrate their experience for others to understand. In some instances, children may not understand the significance of the abuse other than for physical pain or any violent behaviours in the context of abuse; and hence they may not grasp the concern of the adults who are trying to conduct 'inquiry' let alone 'judiciary help'. Therefore, they may not share anything.

Finally, both younger and older children may find it difficult to report abuse because many of them have no understanding of the concept of abuse, violation and exploitation. Unless they have undergone abuse awareness-prevention programs or been educated at home/ by their caregivers, children are unlikely to recognize sexual abuse as an action of violation and exploitation. This is true even for older children and adolescents, especially when the method of abuse is lure-seduction-manipulation (grooming).

In summary, evidence eliciting of the child's statement needs to consider the following while deciding whether and how to take the statement:

- Narration (or statement provision) is a function not only of speech & language abilities but also of social, emotional and cognitive skills/abilities of a child.
- Exceptions to taking the statement must be made for:
 - very young children (ages 0 to 3.5 years)
 - children with intellectual disability
 - children with speech and language delays/ problems
 - children (of any age) with severe trauma/ post-traumatic stress disorder and associated dysfunctionality

*In such cases, statements from parents and caregivers and/or mental health professionals should be permitted.

- At a minimum, a child has to be about 3 to 3.5 years of age, to even attempt taking a statement.
- Children with intellectual disability including speech & language delays will need to be assessed by mental health professionals, to understand what their abilities and deficits are...and whether or not they will be able to give a statement.
- Consider extending the time frame for magistrate/judge statement recording in case the child is not in an emotional state to report, either due to serious injury and/or PTSD.
- Additional/specialised assistance from mental health and education professionals such as interpreters, translators, and sign language professionals should be sought.
- Mental health professionals (such as psychiatrists, psychologists and social workers) should be requested to assist the magistrate/judge in statement recording and be permitted to:
 - To use play and other creative methods to elicit narratives from young children and/or children with intellectual disability.
 - Use and present audio-visual recordings done in spaces other than the magistrate/judge's court (i.e. in hospital or clinic play rooms).

4.3. Children’s Capacity to Provide Evidence, according to Age & Developmental Stage⁴

Age	Ability to Provide Abuse Narratives	Emotional-Behavioural Symptoms Indicative of Abuse
Infancy (0—18 months)	<ul style="list-style-type: none"> • Unable to make any disclosures of physical or sexual abuse. • Cases can only be substantiated if: <ul style="list-style-type: none"> ✓ There is an eye witness; ✓ Perpetrator confesses; ✓ Infants are found to have an STD, sperm or semen on their examination, and/or genital injuries. 	<ul style="list-style-type: none"> • Fearful of the offender, • Fussier than normal • Reluctant to have diaper changed • Occasionally imitate sexual acts.
Toddlers (18—36 months)	<ul style="list-style-type: none"> • Due their limited communication skills, toddlers are unlikely to report the abuse. • Simple phrases may be the only clue that something has happened, such as, "Owie, pee-pee, Daddy" while pointing to their genital area (indicating that Daddy touched or hurt them in this area). • Toddlers cannot sequence time and place very well and will probably not be able to tell you how often something has happened, when it happened, or even where it happened. • Only some children of this age group know their body parts or understand right from wrong. • To substantiate the abuse, a witness, a confession, an STD, or sperm/semen are usually required—and/or evidence of injury. 	<ul style="list-style-type: none"> • Frequently show fear and anxiety around the perpetrator. • May mimic the sexual acts with their own bodies, other children, or dolls. • Regressive behaviours observable. • Difficulty toilet training, sleep disturbances • Angry outbursts and clinginess to caregivers.

4. Adapted from 'The Art of The Interview In Child Abuse Cases' by Captain Barbara Craig, Medical Consultant for Child Abuse and Neglect, Department of Pediatrics, National Naval Medical Center, Bethesda, Maryland available on <http://www.nccpediatrics.com/powerpoints/interview.html>

<p>Preschool (3—5 year olds)</p>	<ul style="list-style-type: none"> • During an interview, they become easily distracted, and revert to physical activity, or phrases such as "I don't know" or "I can't remember". • Tend to tell small excerpts of their abuse with minimal detail, disorganized thought processes, and give relevant and irrelevant details. • Time and space relationships are poorly defined; however they can relate things to before and after such as birthdays holidays, dinner, bedtime, etc. • They can on occasion be specific and give enough detail to be good witnesses in court. • Demonstration is a better tool than verbalization for many children this age. • They may confuse he-she-me and sex specific body parts. • Although substantiation may still rely on finding acute injuries, sperm or semen, or an STD, their history becomes increasingly important. • Ask short and specific questions, but do not put words in their mouths. • Asking them to draw or demonstrate what happened might be easier for them than verbal communication. • Make the child feel at ease and safe—they may be fearful of what will happen to them if they tell. 	<ul style="list-style-type: none"> • May exhibit sexualized play, somatic complaints (headaches, abdominal pain, painful urination, genital discomfort, etc) May also have nightmares, regressed behaviour, anger, aggression, withdrawal, mood lability and other psychosocial problems.
<p>Elementary school aged children (6—9 years old)</p>	<ul style="list-style-type: none"> • Children of this age are reluctant and tentative in their disclosures and will withdraw if they perceive non-reassuring reactions from the interviewer. • Role play may be an appropriate tool, as well as drawing and the use of dolls and doll houses. • Building rapport is essential before the interview begins because they are frequently embarrassed and uncomfortable discussing the inappropriate touching. • One way to ease their discomfort is to engage them in a simultaneous 	<ul style="list-style-type: none"> • Feel conflicted and confused, guilt ridden, embarrassed and may be fearful • Behavioral symptoms may include withdrawal, depression, emotional lability, nightmares, poor school performance, aggression, lying, stealing, and other antisocial behaviors. • Physical symptoms may include enuresis, encopresis, dysuria, headaches, abdominal

	activity like drawing, coloring, or working a simple puzzle.	pain, genital pain, and tics.
Puberty (9—13 year olds)	<ul style="list-style-type: none"> • Usually more at ease with an interviewer of the same sex. • A more formal approach to the interview frequently minimizes the pre-adolescents discomfort with the discussion. • Keep your questions brief and clinically oriented, yet let them know that their feelings and opinions are also important to the investigation. • Reassure them that they are not at fault for what has happened. 	<ul style="list-style-type: none"> • Shame, guilt—feelings that the abuse was their fault. • They not only feel uncomfortable about the sexual molestation, but are feeling awkward and self-conscious about their bodies and discussions regarding sexual issues.
Adolescents (13—18 yearolds)	<ul style="list-style-type: none"> • To maximize the outcome of the interview, an open, direct approach is usually the best. • Be serious about their concerns and supportive of their needs. Never criticize or judge their acts. • By being honest with them, they will be more likely to be cooperative with you. 	<ul style="list-style-type: none"> • Behavioral problems may include defiant, aggressive acts, truancy or school failure, criminal behavior, suicidal ideation or attempts, high risk sexual behaviour, substance abuse, self-mutilation and runaway behavior. • They may present to the medical clinic with chronic aches and pains, vague complaints, and hysteria.

4.4. Case Examples of Mental Health & Developmental Assessments to Establish Children's Capacity to Provide Evidence

Effective legal assistance in the context of child sexual abuse, particularly forensic interviewing of child witnesses, should ideally entail a major role for child mental health services in the following ways:

- To conduct mental health and developmental assessments for affected children in order to screen for mental health morbidity and ascertain the psychological impact of child sexual abuse (CSA).
- To use the developmental and mental health assessments to ascertain the child's capacity to provide evidence/ testimony as child witness.
- To assist legal personnel to interview and gather evidence from the children, using sensitive and child-friendly methods of interviewing.

Such ways of implementing the child sexual abuse law will go a long way in ensuring that evidence from children is accurately and sensitively recorded, and in increasing the concerning low conviction rates for perpetrators of child sexual abuse in India. The challenges that the judicial system currently faces, with regard to reliability of a child's testimony, due to age and developmental abilities, the appropriateness of gathering evidence from very young children (3 years and below) and methods and modalities of gathering evidence from children, may also be circumvented to some extent.

The use of systematic child-friendly methods may also encourage more children and families to overcome their reluctance to report to legal authorities and to follow through with court processes, thus allowing for prosecution of child sexual abuse perpetrators.

Following the sexual abuse of children in a child care institution in one of the Indian states (allegedly by the caregivers of the institution), a central government agency undertook the investigation of the case. The agency had been issued directives by the Supreme Court to only interview the children with the help of/ in the presence of qualified child mental health professionals. It therefore requested the Dept. of Child & Adolescent Psychiatry to assist with interviewing and evidence gathering from the affected children. The NIMHANS team assisted the agency's investigative officers to interview and gather evidence from the children, using sensitive and child-friendly methods of interviewing. Specific protocols and specialized methods were used, to interview children, depending on their developmental and communication abilities. Before even gathering the evidence or eliciting abuse narratives, a developmental/psychiatric and mental health assessment was done for each individual child, in order to determine the child's capacity to provide evidence and testimony as child witness.

Below are 3 examples of case reports to show how developmental & mental health evaluations of children were conducted during the process of evidence gathering. [The names and other identifying details have been removed for confidentiality reasons]. The first example describes a child with intellectual disability; example 2 and 3 are both of children having psychiatric issues i.e. post-traumatic disorders, but with varying capacities to provide evidence and testimony.

Example 2: Child with Post-Traumatic Disorder (Having Difficulty Providing Evidence)

**Assessment for Children in Institutions/Childcare Agencies
Dept. of Child & Adolescent Psychiatry, NIMHANS**

1. Basic Information

Name: XXXXXXXX

Name of Institution/Agency: XXXXXXXXXXXXXXXX

Age: 15 yrs

Sex:F

Class:Grade 3

Date: XXXXXXXX

2. Presenting Problems/Complaints

None reported by child/ agency.

Referred for mental health evaluation and evidence gathering by XX agency in the context of child sexual abuse in child care institution.

3. Institutional History(where all the child has been /lived, for what periods of time, experiences and difficulties, circumstances of coming to this agency)

Initially, the child reported that she was from X (no further address provided).

Later, however, she said that she used to stay along with her uncles and grandmother in Q until she was 10 years old. While she was on her way back from the school, she lost her way and then she was taken to the police station from where she went through Childline, and was placed in the X shelter home. She was in X shelter home for 5 years. [However, shortly after, the child said she does not recall how she reached X].

4. Family Issues Identified (Child's living arrangements/parental relationships/child's emotional relations)

The child said she does not recall names of her parents, uncles or grandmother or of the place/area in which they lived.

5. Child's Temperament and Personality (Caregiver's description of child's temperament and personality – aggressiveness, sociability, attentiveness, motivation, emotionality...)

Developmental history not available as current caregivers are relatively new to child; therefore, no reliable source to provide report on child's temperament.

6. Schooling History (School performance/specific learning disabilities/school attendance)

The child reports that she went to school at the time she lived with her uncles and grandmother. She was in grade 3 at the time she left. She says she does not remember the name of the school or the place it was in.

7. Work Experiences (Child labour experiences: why child had to work/ how child found place of work (trafficking?)/where the child was working, hours of work, amount of remuneration received/whether this was regular, any form of abuse encountered at the place of work/ how the owner and others treated child.)

Unclear/ not known as the child did not report.

8. Physical, Sexual & Emotional Abuse Experiences *(Ask Child/ Child's report)

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

[Evidence recorded but removed for reasons of confidentiality].

9. Feelings and Emotions

9.1. Anxiety

i) Look at the feelings thermometer and tell me, for most of the time, how worried do you feel? (Mark it).

0 1 2 3 4 5 6 7 8 9 10

ii) At which times do you feel really very worried? Describe when/in what situations.

The child appeared exceedingly anxious but was unable to report details of it, whether in the shelter home or in her current home.

9.2. Depression and Self-Harm Risks

0 1 2 3 4 5 6 7 8 9 10

- i) Look at the feelings thermometer and tell me, for most of the time, how sad/bad do you feel? (Mark it).
- ii) At which times do you feel really very sad? Describe when/in what situations.
- iii) Have you ever felt like life is not worth living/ you don't want this life...? When? Tell me what you do at such times.

No sadness/depression symptoms reported by the child currently. [This needs further evaluation]. However, the child had self-injury marks (of cutting) on her forearm. These were old scars, of cutting that she had engaged in during her time in X shelter. These are indicative of distress experienced in that shelter. There are no new self-injury marks i.e. the child has stopped cutting behaviours since removal from X shelter.

9.2. Anger

- i) Look at the 'feelings' thermometer and tell me, for most of the time, how angry (or irritable) do you feel? (Mark it).

0 1 2 3 4 5 6 7 8 9 10

- ii) At which times do you feel really very angry? Describe when/ in what situations/ what do people do to make you angry.
- iii) What do you do when you feel very angry?

No anger reported by the child currently.

9.3. Post-Traumatic Stress Disorder (PTSD)

In the beginning of the conversation, the child said that she is happy in the current shelter home and that she enjoys playing games and interacting with her friends. On further inquiry, however, about PTSD symptoms, she reports that she gets images of the past and things that happened in XX shelter. [No account provided on what types of images come to her]. She said that those images used to come to her more during her stay at that shelter and that they have reduced over time. Now also, if she is sitting alone or not engaged in play or activities, those thoughts and images (of difficult experiences in X) come back to her mind. She said that some months ago, it was harder to get those thoughts and images out of her mind but now she is able to do so, to some extent. She reports that she feels anxious for short periods during the times the images return to her mind. She does not report sleep disturbance or irritability or sadness.

Example 3: Child with Post-Traumatic Disorder (Having Capacity to Provide Evidence)

**Assessment for Children in Institutions/Childcare Agencies
Dept. of Child & Adolescent Psychiatry, NIMHANS**

1. Basic Information

Name: XXXXXX

Name of Institution/Agency: XXXXXX

Age: 17yrs

Sex: F

Class: -

Date: 29th September 2018

2. Presenting Problems/Complaints

None reported by child/ agency

Referred for mental health evaluation and evidence gathering by XX agency in the context of child sexual abuse in child care institution.

3. Institutional History(where all the child has been /lived, for what periods of time, experiences and difficulties, circumstances of coming to this agency)

Child reports that she lived at home until a year and a half ago. When she was fifteen years of age her bua and mama took her to Z and sold her into a family. She was coerced to marry a forty year old man. When she protested, the forty year old husband told her 'You cannot go because your aunt has taken money in exchange for you'. The child stayed there for two days and then ran away. She was about to take a train from Z railway station to return home but the police caught her and placed her in a home in Z where she stayed for two months. Following this she was transferred to XX shelter home as per the CWC orders (as her family home is in P). Following the rescue of the children at XX shelter, on XXXX (date), the child was placed in YY Home.

4. Family Issues Identified (Child's living arrangements/parental relationships/child's emotional relations)

Child lived in a village in P, XX Zilla, XX Thana, XX village. Her father's name is XX (self employed) and mother is Kunti who is a home maker. The child has five brothers and two sisters and reports that she was happy at home. However, low socioeconomic status appears to have been a significant factor. The child reports being sold through marriage to another family.

5. Child's Temperament and Personality (Caregiver's description of child's temperament and personality – aggressiveness, sociability, attentiveness, motivation, emotionality...)

Developmental history not available as current caregivers are relatively new to child; therefore, no reliable source to provide report on child's temperament.

6. Schooling History (School performance/specific learning disabilities/school attendance)

No formal schooling as the child said that she had never been interested in studies. Currently the child is attending non formal education at the institution.

7. Work Experiences (Child labour experiences: why child had to work/ how child found place of work (trafficking?)/where the child was working, hours of work, amount of remuneration received/whether this was regular, any form of abuse encountered at the place of work/ how the owner and others treated child.)

While at home (before going to place X) the child was working as domestic help in a neighbouring house.

8. Physical, Sexual & Emotional Abuse Experiences *(Ask Child/ Child's report)

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

[Evidence recorded but removed for reasons of confidentiality].

9. Feelings and Emotions

9.1. Anxiety

i) Look at the feelings thermometer and tell me, for most of the time, how worried do you feel? (Mark it).

0 1 2 3 4 5 6 7 8 9 10

ii) At which times do you feel really very worried? Describe when/in what situations.

The child's anxiety symptoms are characteristic of post-traumatic stress disorder. (As detailed below)

Depression and Self-Harm Risks

0 1 2 3 4 5 6 7 8 9 10

iv) Look at the feelings thermometer and tell me, for most of the time, how sad/bad do you feel? (Mark it).

v) At which times do you feel really very sad? Describe when/in what situations.

The child reported experiencing pervasive low mood, decreased interest in previously pleasurable activities, death wishes and suicidal ideations especially when experiencing flashbacks or recollections of the traumatic events. It was observed that the child had multiple incision marks over her forearms from self-injurious behavior that she had engaged in, in the context of PTSD and severe depression.

vi) Have you ever felt like life is not worth living/ you don't want this life...? When? Tell me what you do at such times.

Child reported that she would frequently experience active death wishes and frequent suicidal ideations.

9.4. Anger

iv) Look at the 'feelings' thermometer and tell me, for most of the time, how angry (or irritable) do you feel? (Mark it).

0 1 2 3 4 5 6 7 8 9 10

v) At which times do you feel really very angry? Describe when/ in what situations/ what do people do to make you angry.

vi) What do you do when you feel very angry?

Child's anxiety and depressive symptoms are cross sectionally more prominent than her anger.

9.5. Post-Traumatic Stress Disorder (PTSD)

Child clearly has severe post-traumatic stress disorder. She reported frequent flashbacks, vivid intrusive recollections of the traumatic events which were associated with increased heartbeat, giddiness and other symptoms of autonomic arousal. She reported that that on one occasion she had experienced loss of consciousness (suggestive of a dissociative episode) when she had been highly distressed and this was corroborated by the caregiver.

10. Any Other Observations of the Child:

Time-place orientation/ thought processes/ cooperativeness, rapport, social responsiveness/ Attentiveness & Activity level/ Speech and language skills:

While the child was waiting to be interviewed, she suddenly had an outburst of crying, and she later explained how thoughts of the abuse experiences keep coming back to her mind at random times (a symptom of PTSD). She became very tearful and needed much reassurance during the interview as well. However, despite her intense distress, she was also resolute in that she wished to narrate all that had happened to her, saying several times over that despite her distress she would like to tell the truth and recount what had happened to her. She was thus able to provide clear sequential accounts of her abuse experiences including details of time, place and person—and was amenable to soothing and reassurance at times when she became emotional and highly distressed during some parts of the interview.

11. Summary of Child’s Problems

Disability (Physical/ Intellectual): Nil

Psychiatric Diagnosis: Post traumatic stress disorder and severe depressive episode

Medical Problem:Not assessed by NIWHANS

Context:Child sexual abuse and trafficking issues within child care institution

Implications for developmental and mental health capacity to provide evidence/ testimony as child witness:

As the child has age-appropriate developmental and communication abilities, she has the capacity to provide valid and reliable evidence/ testimony. She also has some mental health issues by way of depression and PTSD—but this in no way impacts the validity or reliability of her evidence. The way in which her PTSD symptoms manifest are such that the child is open to sharing and expressing her abuse and distress experiences. However, given her high levels of intense distress, she requires gentle and sensitive ways of inquiry, with adequate preparation, soothing and reassurance prior to and during the course of her narrative.

12. Care Plan (List actions taken or planned by the assessment agency/ case worker to assist the child, such as emergency actions/ measures to address immediate concerns, referrals made to other agencies/depth work).

XX

Physical Development

Child Development: Abilities & Skills

0 to 12 months

Balances Neck without Support

Sits without Support if made to Sit

Crawls Forward On Belly

Stands Without Support/ Starts Walking

Grasps Objects Dangling in front Of Him/Her

1 to 3 years

Grasps Small Objects Using Two Fingers (Thumb and Index Finger)

Puts Objects into Container and Takes Them Out

Runs Easily

Screws and Unscrews Jar Lids, Nuts, And Bolts

Climbs Onto and Down From Furniture Unsupported

Walks Up and Down Stairs Holding On To Support

Can Drink From Open Cup, With Some Spilling

Turns Book Pages One at a Time

Makes Vertical, Horizontal, Circular Strokes With Pencil or Crayon

3 to 5 years

Goes to Toilet during Day Time with Some Help

Gross Motor Skills: mobility, ability to handle objects

Fine Motor Skills: pre-writing skills, transfer functions, eye-hand coordination

Physical skills necessary self- help: buttoning, brushing, feeding etc.

6 to 12 years

Fine motor tasks easily achieved.

Full independence in self-care.

13 to 18 years

Development of secondary sexual characteristics.

Menstruation in girls

Speech & Language Development

Child Development: Needs & Abilities

0 to 12 months

Makes Cooing Noises and Reacts to Sound

Babbles “Dadada....” “Mamama....”

Laughing and Squealing

1 to 3 years

Responds to Simple Verbal Requests. Such As “Give Me”

Says “No” With Meaning

Follows Simple, One-Step Instructions

Understands Simple Sentences

Says 4-5 Meaningful, Single Words

Repeats Words Overheard In Conversations and Uses Two-Word Sentences

3 to 5 years

Increased Fund of Words

Ability to Construct Short Sentences

Expresses needs

6 to 12 years

Ability to Describe

Language Used For Higher Levels of Communication—To Report Experiences

13 to 18 years

Language Used for Complex Social Transactions, Incl. Life Skills like Refusal Skills/ Assertive Skills/ Negotiation

To Process Complex Feelings and Relationship Dynamics

To articulate opinions and choices

Social Development

Child Development: Needs & Abilities

0 to 12 months

Makes Eye Contact

Smiles at Others When Smiled At

Plays Peek-A-Boo

Shy Of/Anxious About Strangers

1 to 3 years

Recognizing Familiar People

Enjoys Looking At Pictures in Books

Enjoys Imitating People in Play

Uses the Word "Mine" Often

3 to 5 years

Likes To Play With Other Children

Understanding Rules of Play

Understanding of Sequences and Routines

Understanding of Spaces (and What Happens There)

6 to 12 years

Development of Gender Identity

Same sex/ peer-group play

Pretend/ Imaginative Play, Group Play

13 to 18 years

Self-identity/ Individuality

Questioning Parental/ Adult Authority

Clarity on Future Orientation

Sexual Orientation

Peer Group Interactions All Important ('Need to Fit In')

Cognitive Development

Child Development: Needs & Abilities

0 to 12 months

Imitates Gestures

1 to 3 years

Recognizes and Identifies Common Objects and Pictures

Identifies Two to Three Body Parts

Imitates Behaviour of Others, Especially Adults & Older Children

Will Listen To Short Story Book with Pictures

Begins To Sort Shapes and Colours

3 to 5 years

Increasing Fund of information

Ability to understand concepts such as shape, size, distance, directions

Uses Words to Communicate Wants and Needs

Knowledge of Use Of Objects

Sequencing and Organizing Abilities

Completes Puzzles with 3 or 4 Pieces

Ability to Form Categories

Ability to Form Associations

Knows Several Body Parts

Understands Concept Of "Two"

6 to 12 years

Learn the Difference between 'Right' and 'Wrong'

Ability to Think and Reason from Concrete Visible Events

13 to 18 years

Less likely to Accept what is Stated by Others/ More Likely to Question

Ability for Self-Introspection, Analysis, Judgement

Creative Thinking/Abstract Abilities—Can Generalize from Specific Situations

Emotional Development

Child Development: Abilities & Skills

0 to 12 months

Attachment and bonding

Cries When Caregiver Leaves

Can Be Soothed When Upset Through Use Of Distraction/ Physical Calming

1 to 3 years

Ability to regulate emotions (responsiveness to soothing/ distress states not prolonged/ separation from attachment figure)

Shows Specific Preferences for Certain People and Toys

Enjoys Playing With Other People and May Cry When Playing Stops

Begins to Show Defiant Behaviour

Starts to Show and Identify Emotions

Objects To Major Changes in Routine, but is Becoming More Compliant

3 to 5 years

Ability to Identify Emotions

Differentiating Between Positive and Negative Emotions

Ability to Recognize Emotional State of another Person and Ascribe Simple Reasons to Causality

Begins To Separate More Easily From

6 to 12 years

Development of Empathy

Ability to Provide Positive Emotional Response (Comfort)

13 to 18 years

Ability to Cope With Stress

Developing and Making Decisions about Attraction/ Intimate/ Sexual Relationships

Relationship Satisfaction

Dealing with peer pressure

Resilient Handling of Role Task, Relational & Emotional Challenges

Happy, healthy, responsible sexual behaviour

5. Developing Empathy: Identifying the Child's Inner Voice

Objectives

- To understand how children perceive and internalize their abuse and trauma experiences.
- To realize the need to respond to children based on an understanding of children's fears and confusions.

Time

1 hour

Concept...What to Explain

The '**Inner Voice**' refers to the child's internalization of the experience i.e. how a child perceives the abuse incident and all the events that followed. An abused child's inner voice may therefore consist of interpretation of events and experiences, including various fears and anxieties. The nature of the inner voice will depend on: i) the child's age and developmental level; ii) the type of abuse he/she has undergone. The inner voice in turn leads the child to behave in certain ways, for example:

- If the inner voice is "should I tell someone or not?" or "if I tell, what would be people's response", then the resulting emotions are fear and anxiety, and the behaviours that follow may be silence, withdrawal or refusal to disclose or retraction of statement of abuse.
- If the inner voice is "I am damaged" or "I am responsible for what happened/ it is my fault", the resulting emotions may be guilt and depression, and the behaviours that follow may be crying, withdrawal, refusal to play or carry out daily activities.
- If the inner voice is 'how dare someone hurt me' or 'it is unfair for someone to have hurt me', the emotions are anger and hatred and the behaviours may be verbal and physical aggression, and revenge, including a greater likelihood of disclosure and reporting.

The magistrate/judge needs to therefore be able to imagine and anticipate the child's thoughts and perceptions, before starting to record the Section 164 statement. Doing so will enable him/her to be more sensitive and responsive to the child, thereby increasing the chances of a successful statement recording.

Activity A: Understanding the Inner Voice Concept

Method: Simulation

Material: None

Process:

- Provide the following situation to the participants: “In a Bombay local train, some years ago, a young girl with intellectually disabled was sexually abused by a man. There were 7 other people on the train, in the same compartment but they did not respond or do anything to help.”
- Tell them that each one of them is one of the 7 people on that train.
- Ask them to state what their internal voices would be. (What would they be thinking at that moment, about the situation at hand?)
- Ask them to share (in plenary) their internal voices.

Discussion:

- Emphasize to participants that they need to be the person or put themselves in the other person’s shoes and speak (not in 3rd person but in first person).
- The internal voice is not ‘they were insensitive or they were worried’...internal voice begins with ‘I...’ or pertains to the person in first person. So, it would be ‘It is not my problem’ (suggestive of some insensitivity) or ‘I am scared about what might happen to me...I am worried I will be harmed.’
- Imagining or recognizing what the inner voice of the children they are assisting is what empathy and sensitivity are about—when we imagine what someone may be thinking, then we are better aware of how they might be feeling i.e. what their fears, anxieties and confusions are.
- When we are able to imagine or recognize the emotions of others (what is loosely known as ‘understanding others’), we are better able to provide sensitive and empathetic responses.
- Thus, imagining what thoughts, questions, fears and anxieties a given child may have (depending on her experience), would enable the assisting officer to be more sensitive during the inquiry process.

Activity B: The Inner Voice of Sexually Abused Children

Method: Imagining and Listing

Material: None

Process:

- Ask the participants to form sub-groups with 2 to 3 members in each group.
- Present 3 cases (below) and ask each sub-group to select one case to work on.
- Ask them to imagine that the concerned child (Saira/ Nikhil/ Sunita) is sitting before them, or outside the magistrate/judge's court, having come to record the Section 164 statement.
- Tell them that each sub-group needs to 'BE THE CHILD' and list the following:
 - What is the child thinking?
 - What are his/her fears and anxieties regarding i) the abuse incidents; ii) the court and the statement procedures?
- Remind the participants:
 - To consider the child's age and developmental stage, as well as the nature of the abuse the child has experienced.
 - To list their responses in first person—'I am...I feel...' (not third person).
- Once completed, request the participants to share their listings and responses in plenary.
- Encourage participants to add to each other's' lists.

Discussion:

- Why we did this activity?
 - So as to be aware of and empathetic towards children's feelings, their fears and confusions when they come to the court for statement recording.
 - So that the magistrate/judge in his/her interactions with the child, can respond to at least some of these issues in the child's mind—even if they are not actually articulated by the child.
- If the magistrate/judge's interaction with and responses to the child are empathetic and reassuring, it is more likely that the child will be more relaxed and trust the magistrate/judge and be willing to engage with him/her.
- Engendering trust and comfort in the child will decrease the chances of statement retraction and increase the chances of a more accurate and detailed statement from the child.

Case Studies:

Case 1: Saira, aged 4...was sexually abused by a teacher in her school. She has been having urinary tract infections and fever. She clings to her mother and does not want to go to school or play with other children; she has nightmares and sleeps poorly.

Case 2: Nikhil, aged 10 years is an orphan child residing in a child care institution. He came to a hospital for treatment for behaviour problems, during the course of which he reported sexual abuse by one of the institution staff (other staff deny that this happened in their institution, saying child is lying).

Case 3: Sunita, a 16 year old girl ran away with a 21 year old boy. She said that they had been in love and wanted to get married. But the parents brought her back, filed an FIR against the boy.

Examples of Inner Voices of Children

Case	Inner Voice	
	Regarding Child Sexual Abuse	Regarding Court
Saira, age 4 years	<ul style="list-style-type: none"> - Why did my teacher take me in the dark room? - Why did my teacher do this to me? - Why did my teacher hurt me? - If I go to the school my teacher will hurt me again. - I will not go to school. - I don't want to play with anyone. - I will be with 'amma' I will not leave her. - I will not sleep. 	<ul style="list-style-type: none"> - Who is this uncle/ auntie? - Where am I? - Why do they want to talk to me? - Why are they asking me about my teacher? - Why has amma brought me here? - Why are there so many people here? - Police uncle is here, will he take me? - Will my teacher also come here? - I am afraid, I want to go home. - I don't want to talk with anyone.
Nikhil, age 10 years	<ul style="list-style-type: none"> - I believed Ramu uncle, why did he do this to me? - Is he behaving the same with other children? - All other staff knew that Ramu uncle used to behave badly with me, why don't they support me? - Nobody believes me. - I want to go back to the same hostel. - Will I be able to go back to the same hostel again, will they take me back? - I have nobody now. That was my home; I have nowhere to go now. 	<ul style="list-style-type: none"> - Why should I tell everything about Ramu uncle to the judge? - Will they punish him? - Should I tell the truth? - If I tell the truth, Ramu uncle will go to the jail. - Ramu uncle looked after me well sometimes, should I complain against him? - Will I be punished if I lie? - Will they believe me? - I have to tell the truth, and then Ramu uncle will be punished. - Will I have to tell everything in front of everyone?

<p>Sunita, age 16 years</p>	<ul style="list-style-type: none">- I love him very much, I want to be with him.- I want to marry him.- Why did my parents bring me back? I was happy with him.- Why don't my parents understand me?- I want to go back with him.	<ul style="list-style-type: none">- It is not his mistake alone, it is my mistake too. Why should he be punished?- He did not force me to go with him, it was my wish too.- He has not harmed me or hurt me why should he be punished.- I don't want him to be in trouble, I will not tell the truth.- I don't know what to do? Should I tell the truth?- What will this judge do?- Will I have to tell everything in front of everyone?
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6. Evidence Gathering under POCSO: Child-Friendly Methods & Techniques for Interviewing Children and Adolescents

Objectives

- Creating a child-friendly space within the court.
- Developing methods and skills to elicit the child's statement or evidence.

Time

3 hours

Concept...What to Say

Children and childhood, child sexual abuse dynamics, child development and the child's inner voice form the four foundation pillars on which the evidence gathering rest. Now, we will apply our understanding of these four pillars to understand methods and techniques that judicial personnel may use to elicit the child's statement of abuse. A systematic process, including methods and techniques to elicit the child's statement are described below.

6.1. Rapport Building

Rapport Building is the first stage towards building a relationship with children. It lays the basis for any interaction one wishes to have with a child. Without building trust and rapport with the child, it would be especially difficult to elicit a statement from a child about abuse.

It involves 3 broad steps: greeting the child and introducing yourself; using toys and play activities to initiate communication with the child; and neutral conversation to get to know the child and make him/her comfortable.

(a) Greet the Child and Introduce Yourself

- Say 'hello' or '*namaste*' (maintain casual, friendly manner)
- Tell him/her your name and then, ask the child his/her name
- Sit at the same physical level as child: if child is on the floor, sit on the floor...if child is sitting on a chair, sit on the chair next to her.
- Avoid being on the other side of the table or standing over the child!)



While greeting and introductions might sound obvious, many child service providers either forget or do not think it is necessary to greet or introduce themselves to the child. The question is, when a child does not know who you are, why should they talk to you, that too, to tell you about their difficult experiences?

Further, many sexually abused children, by this time have been compelled to be a part of various enquiry processes, answering the same type of questions over and over again. So, the magistrate/judge needs to be able to convey that he/she is different and special, and in some way more sensitive than certain others the child may have encountered.

Finally, in a world where adult-child relationships are extremely hierarchical, thereby increasing feelings of mistrust and disempowerment among children, an introduction also enables a more equal platform between the magistrate/judge and the child, and thereby increases the chances of the child trusting the magistrate/judge and sharing abuse experiences.

(b) Introduce Yourself and the Space

- Tell the child who you are and what this space is that he/she has come to?

“My name is...my job here is to make sure that children are safe and no one hurts them. If we hear that someone is hurting or troubling children, then we do things to stop that from happening”.

- Respond to child’s inner voice (fears & anxieties)

“You may be wondering about this busy place and many rooms...many people come here, just like you to talk about people who have hurt or troubled them...that’s why we need a big space like this and many people to help.”

- *“Although this place may seem a little scary and confusing, you are safe here...and after we have spent a little time talking, you can go back home with your parents [caregiver]”.*

Where to Interview the Child?

Unfortunately, the so-called child-friendly courts in some parts of the country are nothing but a replica of the regular adult court i.e. a large room, with the judge sitting at a height, and distant from the witness box/stand, a table at a lower where lawyers gather. A colorful sofa in the witness box really does not change the intimidating nature of the court. Such large spaces, with the judge sitting at a higher level than the child, and at a considerable distance from the child, only serves to heighten the fear and distress of the child during trial processes. Further, it is also not helpful to have older children and adolescents to use the witness box, as has been observed in some courts.

It is suggested therefore, that judges interview children and conduct child trial processes in their chambers—which would make for a smaller and more intimate setting for an interview. Many Special Court Judges are already doing so and finding better success in evidence gathering this way.

It is difficult for children to enter into a conversation with someone they do not know and in a space that they are afraid of or do not understand i.e. there is no context to a conversation unless children understand these. As part of systemic procedures, sexually abused children would have had to visit several spaces such as hospitals, CWC, even police the police station at times (though this is against the POCSO law), during the course of which they have met many people to whom they have had to narrate their story. Children therefore become tired and anxious and less cooperative when they have to repeatedly go through these visits and narrations, especially as

they are not aware who these people and places are. It is therefore important to allay children's questions and fears about the magistrate/judge's role and the (court) space before starting the inquiry and statement recording, so that they know who they are speaking with and why.

It is important to keep the introduction of the judicial personnel and the court space simple and truthful and in accordance with the child's age and developmental level. For instance, introducing oneself as 'I am the Magistrate/judge' or even 'I am a judge' is not useful as young children are not sure what to make of these technical terms/roles; such terms are not only intimidating but also not self-explanatory. Therefore, the function of the magistrate, judge or public prosecutor, and of the space should be explained to the child.

Since adolescents are older, it would be necessary to introduce oneself and space first, as they will want to understand these issues before they agree to engage in any sort of interaction with the magistrate/judge. This introduction would be slightly different from the one provided to younger children as adolescents usually have some understanding of court and judges and their functions. In fact, in case of children, while rapport building is followed by introducing yourself and the space, in case of older children and adolescents, introducing yourself and the space, need to be done first, followed by rapport building or getting to know the child.

(c) Use toys and play activities

- The 'Magistrate (Judge's) Magic Bag': Keep a small bag of toys (dolls, puzzles, picture books, colouring books...)
- Give the bag to the child as soon as (s)he comes to the court (while waiting for you).
- Enter into play with child and spend 5 to 10 minutes engaging child in play activity... *'What are you doing? What is the doll doing? May I see what you are colouring?'*

Where child friendly courts are set up, they are helpful in serving as a separate space for children; some of them might have some play materials too. However, ultimately, even the child friendly court is just a physical space; placing boards to indicate the purpose of the space i.e. 'Child-Friendly Court' will also not make it a child-friendly space. In other words, merely designating a space and labeling it alone does not make a space what we want it to be. It is how we arrange and render a space that imbues it with the spirit and meaning we want it to have.



Creating Child-Friendly Spaces: The Mobile Magic Bag

Providing children with toys, play and art materials is one part of helping them feel less threatened in what is a potentially intimidating space (i.e. the court), creating some sense of normalcy; children may also infer from the availability of play materials that other children come to this space and that this space is therefore geared to receiving children. All this helps them feel more relaxed and comfortable, thereby preparing them to be more trusting and communicative, thus increasing the chances of providing a coherent statement (or reducing the chances of retraction of statement, which happens frequently because children feel threatened, fearful and uncomfortable in a strange and formal space such as the court). Older children and adolescents (12 years+) can also be given materials to engage them while they wait for the magistrate/judge and after. However, materials should include board games, books and art materials (not toys and dolls, which are meant for engaging younger children).

The most critical part to a child friendly space or court is the skills of the judicial personnel—this is what finally makes for a child-centric service and therefore an environment where children feel reassured and at ease. In the absence of the judicial personnel's skills to engage children, even toys and play materials may not have the desired effect or render the space truly child friendly.

Do we have a culture of conversations with children?

To be able to talk to children about difficult and traumatic experiences, first we must be able to talk to children. Do we have conversations with children about everyday issues? Do we talk to them to ask what their views and opinions are and what they want or aspire to? Are we deeply interested in what children think and feel? Because, only then can we have the basis to speak with them about sensitive issues such as sexuality, about difficult and traumatic experiences such as abuse.

Our's is a society wherein adult-child relationships are governed by instruction, sermonizing expectations, and obedience i.e. adults tell children 'you do what I tell you to...', 'Good children behave in certain ways...if you are good person, then you will do...' and 'I expect you to behave...do certain things and if you do not...[there will be consequences]'. In such a cultural milieu, how can we expect adults to be able to speak with ease about sexuality, about difficult experiences, about trauma...?

(d) Engage in Neutral Conversations with Child

- *"What did you eat for breakfast today?"*
- *"How did you come here today?" (Bus, car...)*
- *"Guess what I saw on my way here..."*
- *"...blue is your favourite colour? Red is my favourite colour...like you, I also like ice-cream very much..."*
- *"I would like to know a little more about you... tell me where you live and what school you go to..."**
- *"Tell me a little about the things you like doing..."**
- *"What do you think you want to do when you grow up..."**

**For use with slightly older children (ages 8+)*

Often, adults' idea of talking with children is asking questions. However, a conversation is not a series of questions that is asked by one person and answered by the other—this would be an inquiry, rather like what the police do, thus creating a sense of power and hierarchy rather than one of comfort and openness. It is therefore necessary for the magistrate/judge to engage the child in a casual conversation about the child's everyday life, such as school, games, interests and hobbies. The interaction can involve questions but must also include some statements and sharing/ responses by the magistrate/judge, so that the child does not get a sense that this is an interrogation.

The judicial personnel entering into the child's play activity for a few minutes, followed by neutral questions and general conversation, provides a less formal, less intimidating and more casual and child-friendly way of initiating interactions with the child, and provides a scaffolding for further conversation, building up to queries about the child's abuse experience. In other words, if the magistrate or judge does not spend some time building a rapport with the child, there is no context for the child to engage in interactions with him/her, let alone discussing difficult and traumatic experiences of abuse.

Providing Food and Refreshments during Child Interviewing Processes

Many judicial personnel have reported how they make children comfortable by providing them with food and refreshments such as chocolate, juice etc. The intentions of the judge or magistrate, in terms of showing friendliness and concern to the child, are not in question. However, there are two innate problems with this well-intentioned gesture. For many children, the processes of sexual abuse perpetration have entailed precisely such actions of proffering food and sweets, to lure them and then abuse them. Therefore, such actions might confuse children causing them to misunderstand the actions of the judicial personnel, thereby creating fear and hesitation to interact further. Another problem with this well-intentioned action is that there is the danger of the child mis-interpreting this gesture as a lure and inducement to provide information. This would then compromise the neutrality that is required when conducting interviews for evidence gathering in the context of a sensitive issue such as child sexual abuse.

Of course, many children travel long distances to get to court; they are tired and in need of food and refreshments and a space to relax before entering the trial or other legal processes. Therefore, it is suggested that all food and refreshments be provided to the child:

- Outside the court room or magistrate's office (i.e. not in the space where the evidence is to be gathered).
- Before legal proceedings begin.
- By persons who do not play any role in legal procedures (therefore not by the magistrate, public prosecutor or judge).

Judicial personnel therefore need to use other rapport building skills, not food, to create a relaxed, comfortable and child-friendly space for evidence gathering.

And yes, it is possible to talk to children about serious and sensitive matters without chocolate! The Dept. of Child & Adolescent Psychiatry interviews over a hundred children every day in their out-patient facility and there are no biscuits, chocolates or sweets!

6.2. Taking the Statement: How to Inquire about Abuse

a) Initiate the Narrative

Asking the child open questions such as:

- *“Now that I know a little about you, I want to talk about why [you are here] today.”*
- *“I heard you talked to ‘X’ about something that happened – tell me what happened.”*
- *“I heard you saw [the doctor, a policeman, etc.] last week – tell me how come/what you talked about.”*
- *“Is [your mom, another person] worried about something that happened to you? Tell me what she is worried about.”*
- *“I understand someone might have troubled you – tell me what happened,” -“I understand someone may have done something that wasn’t right – tell me what happened.”*
- *“I understand something may have happened at [location] – tell me what happened.”*

All the above statements are ways in which the inquiry can be initiated with the child. In interviewing, there are two types of questions: close ended questions and open-ended questions. You will notice that all of the above are phrased as open-ended questions.

Give the Child a Break!

This sounds obvious and like the child-sensitive thing to do—even the POCSO Act states that children should be given frequent breaks. However, in practice, it has been observed that the pressures of time, the schedules and work-load of judges and other judicial personnel are often accorded priority and so children are urged to carry on.

‘Just a little longer so that we can finish’ is the plea that is made to children. The danger in this is that when children are tired or restless and pushed beyond their limit of tolerance, they are likely to be less cooperative and more suggestible i.e. they more readily acquiesce to any statement or question that is put to them. Evidence thus elicited is therefore not reliable.

Children with developmental disabilities and psychiatric disorders ranging from attention and hyperactivity problems to intellectual disability are observed to have poorer attention spans and lower levels of frustration tolerance. Such children therefore would require more frequent breaks than others. And if they reach a point when they cannot engage any longer, it would be in the best interests of the child as well as of the evidence to simply stop and continue at another time.

Close-Ended Questions: Where, When, Whom?

Have you ever done a survey? What kind of questions does a survey contain? Usually they are close ended—which means that a question can have only one possible, specific response like ‘yes’ or ‘no’; even where there are multiple options for answers, the respondent is allowed to select only one or select more than one from the options presented i.e. he/she cannot give a detailed descriptions of other responses he/she may have to the question. For example, a survey question may ask ‘does your child get enough food to eat?’ and the answer option are ‘yes’ or ‘no’; or ‘what are the causes of child malnutrition?’ and the answer options may be ‘dirty water’, ‘poor sanitation’, ‘inadequate quantity of food available’...but if the respondent has other views on causes of malnutrition, there is no room to express them.

The limitation of close-ended questions is that they do not help explore what happened in a detailed manner or encourage the child to talk about all the aspects and dimensions of his/her situation. Children are unlikely to tell you what happened or how they feel unless you create a space for them to do so—close-ended questions do not create this space and allow for information to come freely from them. Also, children (already used to adult, hierarchical ways of communication) are afraid to tell you the whole story and/or they think you don’t want to know or that is all you want to know i.e. if you don’t ask they won’t tell!

This is not to say that close-ended questions should never be used. They are certainly useful and necessary—when specific information needs to be elicited such as time, place and name of person, for these can have only one answer—**when, where, whom?** The point is to use close-ended questions, but to a lesser extent with children, and in ways that will not block further information/ response.

Open-Ended Questions: What, How, Why?

These types of question lead to elaborate answers that do not end in one word. They help to explore How and Why issues, thereby eliciting detailed, descriptive information from the child.

Open-ended questions encourage the child to give his/her perceptions, opinions and viewpoints so that the counselor is better able to understand events and issues from the child’s perspective. When exploring children’s experiences of trauma and abuse, it is more useful to use open-ended questions in order to gently encourage the child to talk about difficult experiences.

Again, as mentioned, we are not suggesting that close-ended questions should never be used or that only open-ended questions must be used at all times. Both types of questions are valid and should be used. It is about the purpose of use i.e. what type of information a particular question is trying to elicit—if it is very specific information about place/time/person, where only one answer is possible, then close-ended questions must be used; but if the purpose is to detail out and event and understand how a child felt or responded, then open-ended questions are more useful. The magistrate/judge’s skill lies in how to use the two types of questions, in combination, in an interview with a child, in order to be able to elicit an account of the abuse event.

Techniques of Inquiry: Leading Questions

Other than open and close ended questions, way to categorize questions is leading versus non-leading questions or techniques of inquiry. Even within this, there is a spectrum:

i) Non-leading Techniques of Inquiry: Questioning should proceed from general to more detailed. Talk about "things that happen" in the child's life — things that happen at home, in school, or in another setting. Such neutral approaches serve as excellent openers to discussion. Then work toward a key question such as:

- Do you know why you're here today? What was explained to you about why you are here today?
- Is there something that you want to tell me?
- Is there something that you wish to tell me? (or need to tell me?)
- Are there any worries you have about home or school...?

ii) Minimally Leading Techniques:

- I understand that you have had some trouble sleeping recently. Could you tell me if anything has happened that would make you to have trouble sleeping?
- Has anyone done things to harm you or upset you?
- I understand there have been some problems in your family. Can you tell me about them?

iii) Moderately Leading Techniques: These questions further narrow the range of possible responses a child might make. Example:

- Did anything happen to you when you went to visit (person)?
- How did you get along with (person) when she went to see him?
- What do you and (person) do when you go to visit?
- I understand that some things have happened between you and [the abuser]. Tell me about those things.
- Is there anything that has happened to you recently that has made you really upset?
- Can you tell me what happened between you and [the abuser]?
- I'd like you to tell me about the things you like about [the abuser] and the things you don't like about [the abuser].
- I need to know how your pee-pee got hurt. Can you tell me how that happened?

iv) Maximally Leading Techniques: These include questions which tell the child what the investigator wants to discuss. In maximally leading questioning, the interviewer does not follow the lead of the child's responses, but introduces content to the child, often communicating the interviewer's desired response. Example:

- Did he [the abuser] touch your pee-pee with his finger?
- Did he [the abuser] take off his clothes when he laid down on top of you?
- He [the abuser] put his finger in your pee-pee, didn't he?
- Did [the abuser] he touch you under your clothes or over your clothes?
- These are close-ended questions, which also assume that abuser has engaged in certain behaviours with the child (thereby leaving out others).

As the interviewing methods proceed from non-leading and minimally leading, toward more directive and leading questions, the risk of contamination of the child's report increases. Children may make reports which are not entirely accurate. It is therefore recommended to begin with open, non-leading questions moving on to minimally leading questions and then using moderately and maximally leading questions to close with confirmatory details.

b) Elicit information on sexual abuse methods and processes

- *“Where and how did you meet this person [alleged perpetrator]? How do you know whom/her?”*
- *“How long have you known this person?”*
- *“What are some of the activities he/she used to do with you? (incl. the types of games he/she used to play...)”*
- *“Tell me about any time he/she gave you sweets or toys (or things you liked)...were they given only if you did something you were asked to?”*
- *“Has this person ever said anything or done anything that made you feel frightened or uncomfortable?”*

As discussed earlier, in addition to eliciting a narrative on the immediate abuse, it is also important to understand the methods and processes used by the perpetrator to sexually abuse the child for magistrate/judges to get stronger evidence on all abuse processes and to be able to prepare for risks of retraction of statement by children. The above questions enable the magistrate/judge to establish the nature of the relationship between the child and the offender, what interactions they had had even before the actual sexual act took place but which were used by the offender to lead up to the sexual act.

On Children’s Stream of Consciousness and Sequencing

“Only answer the question I ask you...nothing more, nothing less. What you are telling me is question number 9 but we are on question number 2 now...” says the judge or the public prosecutor, to the child. The child then feels too intimidated to reveal further information, for fear that he/she is incorrect or speaking out of turn. The child may be about to reveal critical information but that is now lost.

Legalistic procedures are often rigidly ordered with public prosecutors and defense lawyers asking questions in a sequential manner, and expecting their clients to answer accordingly. However, children’s stream of consciousness is not geared to rigid legalistic thinking and processes. A format with questions to ask children is always useful, but in child interviewing, we need to be completely flexible. This means allowing children to tell their story in ways they wish to, rather than conducting the interview as a question-answer session. This is because children may have urgent things to say, based on what they prioritize in their minds—this could often be revealing and contain information that is also legally important. Thus, the more we allow children to sequence their narrative, rather than using rigid legalistic frameworks to sequence their narratives for them, the greater the chances that we will be able to obtain a coherent narrative of abuse incidents.

Lastly, many magistrate/judges tend to ask children about prior disclosures and reasons for ‘late’ disclosure’ or non-disclosure, in certain situations. While there is nothing inherently objectionable about these questions on disclosure, it is recommended that magistrate/judges avoid the issue of disclosure i.e. not ask children whom they have told and why they did not tell, because children interpret

these questions as the magistrate/judge being judgemental and critical. They feel that the magistrate/judge is blaming them for not disclosing; this results in greater fear and anxiety and reluctance to engage further with the magistrate/judge, and consequently in an inaccurate or incomplete statement of abuse.

c) Use gentle probes

Sometimes children's responses may be ambiguous and not as specific as the inquiry requires. Probes refer to asking follow-up questions, to obtain more detail as and when necessary. However, probes must be used gently, with the magistrate/judge waiting for the child to respond to each question asked.



d) Use pictures or dolls to assist the child

"I will show you a picture [here is a doll]...perhaps you can point to where this person touched or hurt you..."

As mentioned in the child development discussions, children may either not know the names of body parts, due to their young age and/or inadequate cognitive skills; or may be hesitant to mention names of body parts, especially private parts, given the socio-cultural taboos that surround these issues. During statement recording, it may therefore be useful to show pictures of boys/ girls so children can simply point to body parts that were touched or hurt by the perpetrator. Such pictures are freely available on the internet (see sample above) and simply require to be downloaded and printed. A doll (from the magic bag) could also be used instead of pictures. Pictures and dolls are also for older children, even adolescents, who may be too shy or embarrassed to name private parts.



Child-Friendly means Using the Language of Simplicity and the Child's Terminologies

- *“Did you intimate your mother after the incident occurred?” can be “Did you tell mummy what happened after?”*
- *“Did your mother enquire about your whereabouts after the incident? Can be “Did mummy ask you where you were at the time and after what happened to you?”*
- *“Did he touch you in the vagina?” is “Did he touch you in the pee-pee [or whatever the child calls this part—find out beforehand what words the child uses for private parts]?” (for a young child) and “Did he touch you in your private parts?” (for an adolescent)*

Remember that you are talking to a 6 year old (or perhaps a 12 or 16 year old), not a 40 year old person (or one with a qualification in law)! Think of your childhood...your children...what terms do you use in your family or household to describe private parts? How do you communicate with your children at home?

Tutoring Versus Briefing & Preparation of the Child Victim

The Indian law recognizes the child as a competent witness. However, there are two key concerns about child witnesses-- those of competence and credibility. The former concern has been discussed extensively in module 4 of this manual, on child development. The concern regarding credibility brings us to the issue of tutoring. Legal processes can be long drawn-out affairs, with children particularly vulnerable to pressure, from their family members and/or even perpetrators, causing them to modify or provide inaccurate evidence. The court, therefore, as a rule of prudence, is required to closely scrutinize the testimony of child witnesses, looking for adequate corroboration, from other pieces of evidence to the child's oral testimony.

That said, child witnesses, given their age and developmental stage cannot be expected to comprehend court procedures the way adult witnesses may be able to do. The unfamiliarity of the court setting, possibly of video conferencing (in case such technologies are being used to record evidence), of judicial personnel, procedures and their purposes, can add enormously to the child's existing state of fear, confusion and trauma. These in turn, will negatively impact the evidence gathering process, ultimately giving the (adult) defence and the (adult) accused an unfair advantage and also causing the case to fall.

Therefore, there is a need to prepare or brief child witnesses before they appear for trial. It is recommended that such preparation may be undertaken by child mental health professionals along with public prosecutors or other legal personnel to include sessions with the child on:

- Knowledge of court procedures [the space, who will be there, what will happen first, next...broadly what kind of questions will be asked, what the people who ask will do with the information/why they are asking it...so children know what to expect).
- Familiarizing the child with cameras/ video conferencing equipment through demonstration and use.
- Courage and confidence building [the need to tell the truth about what happened, allaying of any fears and hesitations the child may have...]

Thus, preparation or briefing of child witnesses/ victims in NO way include tutoring or telling children what to say in the court. The focus of preparatory and briefing sessions are purely on mental health/ psychological readiness to participate in trial proceedings.

Your Judicial Powers...If You've Got It, Use It!



As Special Court Judges (and Magistrates) you have many powers that could be used to ensure the protection and best interests of the child...

- ✓ Determine where/which space the trial is conducted for the child i.e. outside the courtroom, preferably in the judge's chamber or other smaller rooms.
- ✓ Discard your robes/court dress for the period you are interacting with or interviewing a child. Children are only further confused and intimidated by the robes and do not understand the purpose of court dress; everyone (else) at the court is already aware of your designation and powers! [For similar reasons, the NIMHANS Child Psychiatry Department doctors do not wear white coats].
- ✓ Actively re-frame (versus merely repeating) questions put by the public prosecutor or defense lawyer, to fit the child's age and developmental stage.
- ✓ Prevent or disallow aggressive questioning by the defense lawyer and/or (age)-inappropriate questions by the Public Prosecutor.
- ✓ Prevent or disallow questions that are irrelevant, insensitive or intimidating to the child (particularly by the defense lawyer).
- ✓ Prevent or disallow questions that are defamatory to the child's character—a child's running away in a mutually consenting romantic relationship, for instance, does not make her a characterless or a less virtuous person nor an unreliable witness. All children are vulnerable to sexual abuse, irrespective of how socially inappropriate even their behaviours may be—and negative behaviours cannot ever be used to defend child abuse.
- ✓ Elicit special assistance and support from child mental health professionals to interview the child (not only for a child having disabilities but also for one who may be in state of trauma and emotional difficulty).
- ✓ Allow the child's caregiver or counselor to sit in with the child during the interview process. This is important for judicial personnel who are observed to be rigid about disallowing a known person to be with the child through what is already a difficult and intimidating process. Contrary to what is believed by many judicial personnel, the presence of caregivers and counselors, do not bias the child or the evidence—instead, it imbues the child with the reassurance and confidence to provide accurate evidence.
- ✓ Allow the support person to hold the child's hand and engage the child in play activities such as colouring during the trial process—these actions/ activities help to reassure the child and feel less threatened during legal processes. (Don't worry--you are right there and so you can see in case the child is being prompted or tutored).
- ✓ For children who are from institutions (and who may not have families), ensure that you coordinate your work with that of the Child Welfare Committees (CWCs) or Juvenile Justice Boards (JJBs) so that they are aware of the trial processes and can also develop protection, care and rehabilitation plans for children accordingly.
- ✓ Refer all children and adolescents (and their families) to mental health services for counseling and therapy. It is a myth that counseling will bias the evidence—in fact, many children who are sexually abused come to mental health services first, and are assisted to enter into legal processes. Depriving sexually abused children of psychosocial and mental health support is a child (health) rights violation—and cannot be supported by claims to unbiased evidence gathering.

**The POCSO Act 2012 does not have provisions, rules or caveats against the above-listed actions.*

6. 3. Close the interview with the child

- *“You’ve given me lots of information and that really helps me to understand what happened.”*
- *“You have told me lots of things today, and I want to thank you for helping me.”*
- *“I want to especially tell you how brave you are for telling me all that happened...things like this happen to many children but they don’t always want to tell others about it...because they are afraid. You may also have been scared but you were brave to tell people about it—I am sure your parents are proud of you...I am too.”*
- *“Is there anything else you think I should know?”*
- *“Is there anything else you want to tell me?”*
- *“Are there any questions you want to ask me?”*

It is essential to bring the interaction to a close by thanking the child for coming all the way to interact with you/ the magistrate/judge. It is also recommended that the magistrate/judge appreciates the child for providing the statement.

Asking if the child has any further information or thoughts to share is also a useful way to ensuring that nothing has been missed out in the statement recording. At this stage, one must be prepared for any questions that children may have about how the statement will be used and/or what will happen to the perpetrator (a question that children commonly ask). Here is an example of possible responses: “As I said earlier, no is allowed to hurt children or make them uncomfortable. If anyone does this, there will be actions taken against him/ her. I have noted what you have told me and this will be shared with people who will take actions against the person you have spoken about. I do not know at this point what those actions will be—that will be decided later—but I can assure you that they will be actions that will not allow him/her to hurt children anymore.’

You may notice that this response does not contain words such as ‘punishment’ or state that the ‘perpetrator will be punished’. This is because where CSA processes have been by known and trusted persons, through processes of lure and manipulation, children are likely to be in a state of confusion; telling them that the perpetrator is going to be punished as a result of the child’s report may make a child who is confused and unclear on abuse processes feel guilty, thereby traumatizing the child further or even leading him/her to retract the statement either in the magistrate/judge’s office or at a later stage of legal procedures.

Activity A: Practice Eliciting Narratives of Sexual Abuse from Children

Method: Role Play

Materials: Case studies used for the inner voice activity.

Process:

- Request participants to get into pairs.
- One person assumes the role of the child and the other that of the magistrate/judge—who has to elicit the Section 164 statement from the child. [They may select any one of the 3 cases used in the inner voice exercise—of Saira, Nikhil or Sunita].
- Tell them: ‘imagine that the child is sitting before you now, in your (court) room’.
- Give the participants 15 minutes to discuss how they would elicit the statement and briefly rehearse, if necessary, the implementation of the statement recording steps (as outlined above).
- Ask any 3 pairs (or more if time permits) to volunteer and role play the statement recording process in plenary.

Discussion:

Ask the participants to observe each role play carefully and discuss the following in plenary:

- Were the steps outlined above effectively implemented?
- Which ones were and which ones not?
- Suggestions for doing things differently?
- Remind participants (as appropriate) of various issues and concepts discussed through the earlier parts of the workshop and how they apply in practice.

Activity B: Demonstration of Eliciting Statements & Evidence of Sexual Abuse from Children

Method: Video clip viewing and discussion

Materials: Video clip (developed by NIMHANS team)

Process:

- Screen the video clip.

Discussion:

- Ask participants for their comments.
- Which steps outlined in statement recording were observable?
- Participants have sometimes felt (based on the video), that too much time being asked of them, to engage in the processes of evidence gathering, and that 'so much time' cannot be spent on rapport building etc. However, rapport building processes do not have to extend beyond about 15 to 20 minutes at most and it is time well-spent as it will enable to elicit the child's (abuse) narrative more efficiently. Further, it has been observed that instead of skilled rapport building processes, judicial personnel engage in long-drawn out conversations of persuading and convincing children to talk to them—this actually is more time-consuming, less effective and can also be akin to harassing and haranguing the child, which is unhelpful.

Note: Activity B can be done before Activity A i.e. the video clips can be viewed before the participants do a practice of how to elicit evidence from children.

Activity C: Preparing for the Reality of How it Happens...

Method: Case study analysis

Materials: Case studies (below). [It may be useful to have printed copies of the case studies to distribute to the participants for the activity].

Process:

- Request participants to get into small groups of 4 to 5 members each.
- Assign one of two cases to each group.
- Request the participants to discuss and analyse the case scenarios in accordance with the following questions:
 - What are the child's situational challenges and limitations?
 - What do you think might be the inner voices of the child?
 - Under the circumstances, how do you think the child will respond to statement recording processes? How likely is the child to provide you with a narrative on the abuse?
 - What should the circumstances have been for the child to give the statement? Or, what procedures should have been followed by various stakeholders?

Discussion:

- Request participants to share their analysis in plenary—so that everyone can contribute to the discussion.
- Emphasize how:
 - there is always a context to when children come to court to give a statement about abuse—there are many challenges they are up against.
 - The ways in which judicial or legal personnel assist children in the wake of these challenges and make the circumstances more conducive for the child may strongly impact the child's statement. [Of course despite our best efforts, a given child may still decide for reasons of his/her own not to provide the statement—but it is essential for judicial personnel to make an attempt by following necessary child-friendly procedures].
- Share guidelines to be followed by judicial personnel and other stakeholders such as the police (if required).

Case Studies:

Case 1:

Meera is a 2.5 year old child who was sexually abused by one of the cleaning staff at her school. She arrived with her parents, at the court, for the Section 164 statement recording, at 5:30 pm, following which there was another 30 minute wait in the court room. It was pouring with rain. The child had been out all day with her parents (since 9 am). First, she was at the police station and then at her school, where the lady police asked the child to show (act out) 'what that man did' to her. In the afternoon, the child had been brought to the psychiatrist/child mental health centre for a session, as the police wanted to obtain an abuse narrative from the child but did not know how to communicate with her. (Thus, the child had already provided two narratives of the abuse incident before coming to the magistrate/judge's court).

When the magistrate arrived, the child cried and refused to engage with her. The magistrate then gave her chocolate and juice, trying to persuade her to speak. The accompanying psychiatrist requested the magistrate to take the statement from the mother, explaining that this was a very young child with limited verbal abilities (due to her developmental stage), and that she was very tired and possibly hungry, after her long day out. However, the magistrate persisted with interviewing the child. The child threw the chocolate at the magistrate/judge, continued to cry and cling to her mother, pleading to go home.

Case 2:

Hemant is a 14 year old boy, an orphan, who has been living in child care institutions since he was a young child. He had been admitted to child mental health centre by the staff of the child care institution he was currently in, for some behaviour problems related to anger and aggression. During the course of treatment, it emerged that the child had been sexually abused by one of the staff of the institution. Following the filing of an FIR by the hospital, the child was called by the police, at extremely short notice, to provide the judge's statement under Section 164. The police's instruction was for the hospital staff to drop the child at the police station from where they would take him to the court. However, the child mental health centre staff said that they would accompany the child to court.

A few minutes before the child was scheduled to leave the hospital, a lady who claimed to be his aunt arrived, demanding to meet him. The aunt also created a problem at the hospital, saying that the child was a liar and that a trouble-maker and that she needed to speak to him. The child confirmed that it was his aunt whom he had not seen her in years; despite her accusations, he wished to see her. Eventually, the staff explained to the child that they had to go to court now and that they did not want anyone to upset him in any way...that he could certainly meet her later with relevant permissions.

The child was asked to wait at the police station, in the room where the lady police officer who was to accompany the child (and hospital staff) to court was seated, discussing various criminal cases of murder and theft. After over an hour's wait, the child was permitted to go out and eat lunch, after which he had to return to the police station and wait again as he was told that the sub-inspector wanted to meet him. The sub-inspector said in a loud and authoritative voice: 'so...are you ready for the court? you must tell the truth ok?!' The child, intimidated, was silent and did not respond. Thus, after another 30 minute delay as the police tried to organize a video camera, the child and hospital staff, along with the police left for the court (nearly 4 hours after leaving the hospital itself).

When they arrived at the court's parking area, the aunt was there, shouting and threatening the child. The police did nothing to stop her as she followed the child and staff into the court. Eventually, the staff told her to leave. The child mental health centre staff presented the magistrate with a letter from the institute, requesting permission to be near the child (at least to sit at the back of the room) as he gave the statement, because this was an institutionalized child who had no family support, and was anxious. The magistrate, however, refused to entertain the request, and took the child in alone, to take the statement.

A few days later, the child disclosed to his counsellors at the child mental health centre that the following had occurred on the day he had gone to give the magistrate statement: (i) the warden and lawyer of his institution had been standing outside the police station and gesticulating to him 'to say nothing and to close the case'—and that they had similarly appeared at the court window to signal to him; (ii) enroute to the court, he had observed his aunt on a two wheeler, following the police vehicle in which he was. He reported, therefore, that he had been too afraid to provide an accurate statement to the magistrate—and that he had therefore 'told him only part of what really happened'.

Guidelines for Police

As soon as the affected child reports to the police station, the police must:

- Register an FIR (First Information Report).
- Try to ensure that a member of the SJPU communicates with the child and family.
- Upon receiving the FIR, to report the matter within a maximum time limit of 24 hours not only to the special court but also the child welfare committee. While reporting, it is expected to report about the need of care and protection to the child and steps taken in this regard.
- Direct the child and family to seek assistance from Registered Medical Practitioners (RMP) in government hospitals, for the following:
 - Medical examination
 - Forensic interviewing
 - Acute and on-going provision of psychosocial care
- In the immediate aftermath of trauma, when there is non -availability of a trained person within the police forces for sensitive interviewing of the child, they need to refer to an expert in agencies such as NIMHANS, where forensic interview protocols are followed in the context of healing interventions.

During the healing and investigation process:

- As per POCSO Act, as far as practicable, the statement of the victim is to be recorded:
 - By a woman police officer, who is not below the rank of Sub-Inspector that too without uniform.
 - At residence of the victim or in any place of the choice of the victim.
 - In the presence of the parent or representative of the child (using audio-video if possible); A copy of the final report is to be given to the child, parents or the representative of the child.
 - With the assistance of a translator or interpreter having requisite qualification and experience. [If the child has mental or physical disability the assistance of the special educator or an expert in the field having necessary qualification may be taken].
 - With investigations to be conclude within three months from the date the registration of the FIR.
- Do not hasten interview processes with children. This can increase the trauma and be detrimental to the child's well-being. Forensic interview protocols have to be part of a larger healing process.
- Never take a child back to the scene of crime and ask him/her to explain or demonstrate what happened.
- Ensure that investigative processes are planned and not repetitive.
- Collaborate with child mental health experts in government institutions to ensure that evidence-gathering is done in the context of psychosocial assistance and healing processes that are in the best interests of the child.
- Be aware of POCSO provisions and how children should not be taken to the police station and questioned by various police personnel.

Last Thoughts...Things to Remember

NEVER...

- Hurry children to talk.
- Get directly into questions about the abuse incidents (no matter how pressured you are or little time you have!) without building some rapport with the child.
- Persuade child to provide information through insistence/ use of sweets, toys, chocolate. Such actions may associate you with the perpetrator of abuse and confuse and frighten the child.
- Persuade children with statements beginning 'you are a good girl, right...so now tell me...' Avoid using words such as 'good' and 'bad'—these are moral terms and when children feel judged, they are unlikely to want to engage with you.
- Ask children to enact what happened.
- Probe for details of how the child felt at time of abuse as unnecessary detailing will re-traumatize child.
- Touch the child unnecessarily.
- Allow for aggressive, irrelevant questioning of the child, including questions and statements that are defamatory to the child's identity and character.

ALWAYS...

- Be cognizant of the age of the child and communicate accordingly—no big legal words for young children and no baby talk with adolescents!
- Be aware of the child's inner voice (his/her thoughts, anxieties and confusions).
- Make the necessary and reasonable exceptions to statement recording with regard to certain types of children, based on developmental disability and emotional states.
- Ask for specialized assistance from child mental health professionals—it will help, not hinder the eliciting of valid and reliable testimony.
- Keep your magic bag ready and use it!
- Speak slowly and clearly so children understand you.
- Ask only one question at a time; wait for the child's response before asking the next question.
- Try to find alternative ways of phrasing a question if not understood the first time i.e. avoid repeating a question if it is not answered.
- Think of the statement recording process as a child's story (of abuse and trauma) and how you are there to listen and understand it. This will create a more natural flow of conversation, making it easier to elicit the child's statement.
- Always prioritize the child's well-being, including his/her mental health and psychosocial state—a child will not perceive your actions to be just unless you are able to convey to him/her that his/her feelings and perceptions are critical to you.
- Refer all children for mental health assessment and counselling and other psychosocial care/ support systems and services. No law that is enacted to assist vulnerable children would forbid assistance to them.

Annex 1:

Materials for Child Development Pile Sorting Activity

Make the cards by enlarging, printing and cutting out the cards (below).

It might also be necessary to translate them into the local language (as spoken by participants, particularly if they do not read or understand English)—in which case, keep the translations simple, colloquial and non-technical.

Physical Development	Social Development	Emotional Development	Cognitive Development	Speech & Language Development
0 to 12 months	0 to 12 months	0 to 12 months	0 to 12 months	0 to 12 months
1 to 3 years	1 to 3 years	1 to 3 years	1 to 3 years	1 to 3 years
3 to 6 years	3 to 6 years	3 to 6 years	3 to 6 years	3 to 6 years
6 to 12 years	6 to 12 years	6 to 12 years	6 to 12 years	6 to 12 years
13 to 18 years	13 to 18 years	13 to 18 years	13 to 18 years	13 to 18 years
Needs & Opportunities	Needs & Opportunities	Needs & Opportunities	Needs & Opportunities	Needs & Opportunities
Sits without Support if made to Sit	Stands Without Support/ Starts Walking	Reaches for/Grasps Dangling Objects	Grasps Small Objects Using Two Fingers (Thumb & Index Finger)	Screws and Unscrews Jar, Lids, Nuts, & Bolts
Runs Easily	Climbs onto / down from Furniture Unsupported	Walks Up and Down Stairs with Support	Can Drink From Open Cup, With Some Spilling	Puts into /Takes Out Objects from Container

Turns Pages of Book	Makes Vertical, Horizontal, Circular Strokes with Pencil/Crayon	Goes to Toilet during Day Time with Some Help	Fine Motor Skills: pre-writing skills, transfer functions, eye-hand coordination	Gross Motor Skills: Mobility, Ability to Handle Objects
Physical skills necessary self- help: buttoning, brushing, feeding etc.	Fine motor tasks easily achieved.	Full independence in self-care.	Development of secondary sexual characteristics.	Menstruation in girls
Makes Cooing Noises & Reacts to Sound	Babbles "Dadada...." "Mamama...."	Laughing & Squealing	Responds to Simple Verbal Requests, such as "Give Me"	Follows Simple, One-Step Instructions
Repeats Words Overheard in Conversations & Uses Two-Word Sentences	Says 4-5 Meaningful, Single Words	Understands Simple Sentences	Says "No" With Meaning	Expresses needs
Increased Fund of Words	Uses Words to Communicate Wants & Needs	Ability to Construct Short Sentences	Ability to Describe	Language Used For Higher Levels of Communication—To Report Experiences
Language Used for Complex Social Transactions, incl. Life Skills like Refusal Skills/ Assertive Skills/ Negotiation	To Process Complex Feelings & Relationship Dynamics	To articulate opinions and choices	Makes Eye Contact	Smiles at Others When Smiled At
Plays Peek-A-Boo	Shy Of/Anxious About Strangers	Recognizing Familiar People & Places	Enjoys Imitating People in Play	Enjoys Looking at Pictures in Books

Uses the Word "Mine" Often	Likes To Play With Other Children	Understanding of Sequences & Routines	Understanding of Spaces (& What Happens There)	Understanding Rules of Play
Development of Gender Identity	Pretend/ Imaginative Play, Group Play	Same Sex/ Peer-group play	Self-identity/ Individuality	Clarity on Future Orientation
Questioning Parental/ Adult Authority	Peer Group Interactions All Important ('Need to Fit In')	Recognizes bottle or breast	Repeats actions but unaware of ability to cause actions	Learns through sensory experiences
Notices Difference	Understands cause and effect (Pick up a rattle, shake it, makes sound)	Searches for/ can find partly Hidden Object	Recognizes and Identifies Common Objects & Pictures	Identifies Two to Three Body Parts
Imitates Behaviour of Others, Especially Adults & Older Children	Will Listen to Short Story Book with Pictures	Begins to Sort Shapes & Colours	Increasing Fund of information	Ability to understand concepts such as shape, size, distance, directions
Knowledge of Use of Objects	Sequencing and Organizing Abilities	Ability to Form Categories	Understands Concept Of "Two"	Knows Several Body Parts

Completes Puzzles with 3 or 4 Pieces	Learn the Difference between 'Right' & Wrong'	Ability to Think and Reason from Concrete Visible Events	Less likely to Accept what is Stated by Others/ More Likely to Question	Ability for Self-Inspection, Analysis, Judgement
Creative Thinking/Abstract Abilities—Can Generalize from Specific Situations	Attachment and bonding	Cries When Caregiver Leaves	Can Be Soothed When Upset Through Use of Distraction/ Physical Calming	Ability to regulate emotions (responsiveness to soothing/ distress states not prolonged/ separation from attachment figure)
Shows Specific Preferences for Certain People and Toys	Begins to Show Defiant Behaviour	Enjoys Playing with Other People and May Cry When Playing Stops	Objects to Major Changes in Routine, but is Becoming More Compliant	Starts to Show & Identify Emotions
Ability to Identify Emotions	Ability to Recognize Emotional State of another Person and Ascribe Simple Reasons to Causality	Differentiating Between Positive & Negative Emotions	Begins To Separate More Easily From Parents	Ability to Provide Positive Emotional Response (Comfort)
Development of Empathy	Emotional Regulation (Control of Difficult Emotions...Anger, Anxiety...)	Ability to Cope with Stress	Happy, Healthy, Responsible Sexual Behaviour	Dealing with Peer Pressure
Relationship Satisfaction	Developing and Making Decisions about Attraction/ Intimate/ Sexual Relationships		Resilient Handling of Role Task, Relational & Emotional Challenges	

Annex 2:

Standard Operating Procedure for Implementation of POCSO: Incorporating Child Psychosocial & Mental Health Care Aspects

This document was developed by the Community Child & Adolescent Mental Health Service Project, Dept. of Child & Psychiatry, NIMHANS, Bangalore, for Karnataka State Commission for Protection of Child Rights, as part of a larger process of developing standard operating protocols for more effective implementation of POCSO, March 2017. It is based on the protocols followed by Dept. of Child & Psychiatry, NIMHANS.

This document is written for agencies providing psychosocial and mental health care to children and adolescents presenting with an alleged history of sexual abuse. However, it is also for agencies that may be working with sexually abused children on legal and other care issues (even if not directly in psychosocial care) so that they understand what the processes are in psychosocial care in CSA, thus knowing what to expect and ensure that the child receives appropriate psychosocial and mental health care and assistance.

1. Psychosocial and Mental Health Assessment

It is important to obtain a detailed history and assessment of the child, including information on family and school context, developmental level and functionality, emotional and behavioural issues (pre and post sexual abuse), circumstances of the alleged abuse, the child's experience and understanding of the abuse and other related problems. Treatment and interventions for abuse must be developed based on the complete assessment of the child's context and issues; this is because every child is unique and has his/her own unique ways, based on age, developmental stage, personality and temperament, family and social circumstances, and the nature of abuse, of processing the abuse experience. Information requires to be obtained through assessment of the child and family/caregivers in two parts: A) Psychosocial & Mental Health History of the Child; B) Abuse Inquiry.

1.1. Demographic Details:

Name, Gender, Age, Date of Birth, Gender, Place of Residence/Address, Who the Informant is and how he/she is related to the child

1.2. Referral

- Agency Referral (CWC/KSCRPC, other medical specialists such as GP/Paediatrician/Gynaecologist): A letter from referral service/agency should be requested/filed, including the date and time of referral and the time lag between this and the initial consultation with the mental health/ other medical services; The Letter from the referral agency should state circumstances of referral, whether a case has been filed, and the current status of the case. If a case has been filed a copy of the First Information Report (FIR), Sexual Offence Report is required for our case file.
- Self-referral—by child's parents: whether parent or primary caregiver is present at the time of initial and subsequent consultations should be noted; in case only one parent is available, information about the other parent and his/her absence, possible parental marital conflict/ separation/ divorce issues, or the fact that the alleged perpetrator of CSA could be one of the parents, need to be documented; relevant identification and contact numbers of

persons accompanying the child/adolescent should be noted. [Again, if parents/ caregivers have filed an FIR, a copy of this must be placed in the file].

1.3. Initial Account of Abuse Incident(s)

Documentation should include information (obtained from persons accompanying the child and/or child if child is willing to provide the information) regarding:

- **Circumstances of the alleged abuse**

- Who was the alleged perpetrator?
- What happened?
- Where it happened?
- When it started, the number of times abuse occurred?
- How disclosure came about and circumstances following disclosure?
- Where and with whom is the child living now? Is he/she safe there?

- Agencies that the child and family have been in contact with prior to the referral to NIMHANS/ pathway to referral to NIMHANS (eg: Police, CWC, Child Protection Services, Other hospitals, NGO)

- Collateral information from other sources (eg: Police, CWC)

Note: This is not the time for asking the child to provide the abuse narrative in great detail as this is likely to distress and traumatize the child further; the objective at this point is to establish that abuse has occurred and to know the nature of abuse i.e. contact versus non-contact, penetrative versus non-penetrative abuse with a view to making decisions regarding medical interventions.

Preparing Children & Adolescents for Medical Evaluations and Procedures: What to Tell Them

We want to ensure that your health is alright. When children have been in unsafe circumstances and have been hurt/ abused, they may acquire some infections. Testing for this will help us identify if the infection is indeed present and start the appropriate treatment fast. Unprotected sex with known/unknown (or more than one person) can result in injury and disease—especially as we do not know what infections those people have. So, we need to do some tests to check for any possible infection so we can treat it.

Since you have been hurt and abused by someone in ways that are physical and sexual, there are chances of your being pregnant. It would be important to do a test and find out if you are pregnant, for a few different reasons: i) doing a test early enough may help you terminate the pregnancy in case you do not want to continue with the pregnancy/ keep the baby i.e. if we delay finding out, it may be hard to implement the medical processes necessary to terminate the pregnancy; ii) in case you wish to keep the baby, then it will be critical for you to maintain your health and your baby's health in certain ways—so finding out early will help us guide you on how to do this. So, finding out sooner about whether or not you are pregnant will help you make some decisions comfortably... and offer you more options in this regard. (For children/ adolescents at risk of pregnancy).

1.4. Medical Evaluation

In case a child is referred immediately after abuse i.e. within a few hours or days), it is necessary to first proceed with a medical evaluation and requisite medical interventions as a priority. Treatment history and response to treatment (in case the child has already undergone or is undergoing treatment) should be recorded.

- **Physical Examination:**

- Physical examination of child to be conducted including 2 ID marks
- The child's family or caregiver should be present in the room during the examination.
- Permission of the child and consent of the parent to be taken before examination
- What physical symptoms does the child have at present/ (eg: burning sensation duringmicturition, WDPV, itching in the perineal area, bleeding, any injury, pain in any area etc.)

- **Post-exposure Prophylaxis (PEP)**

If child is within the 36-hour window period (especially in case of penetrative abuse):

- Has the child received Post-exposure prophylaxis (within 36 hours) in case of penetrative abuse?
- If not, refer to Paediatric ART Centre⁵ for Post-exposure Prophylaxis (PEP);
- Even if child is not in the window period and the penetrative abuse has occurred within a month, refer to the Paediatric ART Centre so that a decision can be taken regarding initiation of PEP.
- Ensure that the child/adolescent has received oral contraceptive pills to prevent pregnancy.
- Ensure that child has been medically evaluated by a Registered Medical Practitioner, namely a paediatrician or gynaecologist from a government hospital, for sexually transmitted diseases (STDs), urinary tract infection and/or injuries⁶. The STD investigation must be repeated at the end of 4 weeks, 3 months and 6 months.

- **Forensic Examination**

Check whether an additional specific forensic evaluation has been done (examination requested by police documenting abuse, if swabs have been taken in case of penetrative abuse), and if so, whether the report available. Obtain the report from the relevant source.

- **Pregnancy Tests**

- Ensure that a urine pregnancy test has been done.
- In case the results are false negative, it would be best to obtain an additional gynaecological opinion.
- In case the child/adolescent is under 20 weeks pregnant, discussions about abortion may need to be done with the child/adolescent and her caregivers. It is also advisable to liaise with an obstetrician at this time.

5. In Bangalore city, Pediatric ART centres are located in Indira Gandhi Institute of Child Health, Bowring & Lady Curzon Hospital, and Vani Vilas Hospital. Similarly, pediatric ART centres will need to be identified and contacted in case of penetrative sexual abuse.

6. In Bangalore city, the child may be referred to Indira Gandhi Institute of Child Health or Vani Vilas Hospital.

- **Preparing the Child/ Adolescent for Medical Tests and Treatment**

Always prepare children and adolescents for medical evaluations and procedures as these can be frightening and invasive for them; in fact, they can be almost as frightening and feel as invasive as the abuse experience. It is necessary therefore to reassure them on their safety, ensure their comfort during medical evaluations by having known/familiar/trusted people or caregivers with them; and it is important to give children information on the medical tests and procedures in simple, comprehensible ways so that they feel that they have some predictability and control over an otherwise difficult and frightening situation.

1.5. Emotional and Behavioural Symptoms

Ask the parents/caregivers about emotional and behavioural responses and changes in the child following the abuse incidents; older children and adolescents may be interviewed directly to understand emotional and behavioural changes.

Emotional & Behavioural Signs & Symptoms in Child Sexual Abuse	
Younger Children	Older Children & Adolescents
<ul style="list-style-type: none"> • Sexualized behaviour • Avoidance of specific adults • Nightmares/ Sleep disturbance • Clingy behaviour/ separation anxiety • Fearfulness and anxiety • Bedwetting • School refusal • Decreased scholastic performance • Medically unexplained body aches and pains 	<ul style="list-style-type: none"> • Self-harm • Depression/ isolation • Anger • Fearfulness and anxiety • Sleep disturbance/ nightmares/ flashbacks • Avoidance of specific adults • School refusal • Decreased scholastic performance • Medically unexplained body aches and pains/ fainting attacks • High risk behaviours—sexual behaviour/ substance abuse/ runaway

It is important to understand any emotional and behavioural issues the child had prior to the abuse and compare these to those that may have occurred post-abuse. This is because i) we need to understand exactly which emotional and behavioural problems that are attributable to abuse; ii) we need to understand how pre-abuse emotional and behavioural issues may have determined the ways in which the child has processed the abuse experience and been impacted by it. In either case, the child would need to receive treatment and assistance for all emotional and behavioural issues, both pre-existing ones as well as those that developed as a result of the abuse.

1.6. Academic and School History

This includes the child's educational and school status, the child's academic performance (both current and past) and any learning issues/ disabilities the child may have.

1.7. Family History

This includes basic demographic information on the child's parents/ caregivers (in terms of their educational qualification, occupation and income level) as well as the child's living arrangements, parental relationships, child's emotional relationship & attachment to parents, illness & alcoholism in parents, parental marital conflict, single-parenting, any loss experience suffered by child of primary caregiver.

1.8. Institutional History

This includes information on places the child has lived in other than the family home-- which institutions child has lived in or is living in currently, for what periods of time, reasons for institutionalization.

1.9. Mental Status Examination

Upon first contact or during the first meeting with the child, he/she should be assessed for:

- General appearance
- Assess speech, mood, thought, suicidal ideation, perceptual disturbances, orientation

Specific observations should look for signs of subjective distress, clinging, crying, reactions to touch, intrusive images, thoughts, "flashbacks", other felt disturbances, and somatic symptoms (physical pain and fatigue).

1.10. Child's Version of Events

This includes interviewing the child so as to obtain information on the sequence of abuse events and how they occurred according to the child, and how the child perceived and understood the abuse. The interview may have to be carried out in well-planned sessions, over a period of time, especially in case of younger children or children with post-traumatic disorder. Creative play methods, such as stories, art and toys/dolls may have to be used to elicit children's narratives. Such indirect methods are gentle and non-threatening and also allow younger children with less developed verbal abilities to communicate their experiences of abuse. During these sessions, while eliciting children's abuse narratives, open-ended questions that encourage children to express themselves freely, should be used. A detailed verbatim recording of the interview should be done—through written documentation as well as video recordings in case of play sessions with young children, so that these can also be used for legal proceedings.

[See Annexe 2 for a detailed document on CSA inquiry procedure].

2. Psychosocial and Mental Health Interventions

Based on the detailed assessment and history of the child, a plan of management must be developed. This includes: child counselling / therapy, family counselling, pharmacotherapy (if required for any specific psychiatric disorders), consultation / liaison with other agencies and personnel such as CWC, police, NGOs.

2.1. Counselling and Therapy for the Child

a) First Level Responses are initial responses provided to the child in the immediate aftermath of the abuse and trauma experiences. They are a means of temporarily suppressing bothersome feelings and memories to shield the child from the immediate impact of abuse. They are used when the child may be too overwhelmed to address the issues and feelings at hand, so as keep the child from extreme levels of anxiety as increasing anxiety that might lead her to be dysfunctional or to developing more severe mental health issues. First level responses therefore focus on the following:

- Reassuring child about safety and help.
- Getting the child to practice containment techniques such as relaxation and recreation (deep breathing, yoga, art, play...activities the child likes to do and finds relaxing).
- Enabling the family/ caregivers to be supportive and to spend quality time playing with and reassuring the child.
- Ensuring that the child's developmental needs are met so that the child has some sense of predictability and control once again i.e. gradually enabling child to resume normal routine activities such as going to school, playing with other children and other activities he child used to perform before the abuse events.

Asking questions about the abuse and attempting to establish depth interventions when the child is facing a crisis is not a useful beginning. This is not the time to for detailed inquiry. If there are serious and disruptive manifestations --like self-harm behaviours, incapacitating anxiety, post-traumatic stress disorder (PTSD) symptoms with severe panic, appropriate psychiatric referral is important.

b) Interventions for Long Term Healing and Recovery

Longer term therapy entails regular sessions between a trained therapist or mental health professional (psychiatrist/ psychologist/ social worker) who has the skills to engage the child in reflection and dialogue to process and resolve the abuse experiences. The purpose of therapy with a sexually abused children or adolescents is NOT to help them 'forget' the experience and 'get past it'. The objectives of depth therapeutic interventions for sexually abused children and adolescents are:

- Inquiry: Helping child to detail/provide a narrative on sexual abuse experience in a gentle non-threatening manner.
- Healing & Recovery: Enabling child to overcome abuse trauma and move from confusion to clarity; empowering child to develop coping & survivor skills.
- Personal Safety & Abuse Prevention: Identifying ways to cope/respond in case abuse is imminent or after abuse has occurred (for children); acquire life skills such as decision-making, assertiveness, negotiation (for adolescents).

Therapeutic methods need to be innovative and age-appropriate. Thus, multiple creative methods that allow for children & adolescents to understand and reflect on situations and experiences require to be used (versus mere information and instruction giving).

**The Community Child and Adolescent Service Project, Dept. of Child & Adolescent Psychiatry, NIMHANS has developed 3 activity workbooks on CSA and personal safety use with children/ adolescents: i) Child Sexual Abuse Prevention and Personal Safety (for Children aged 4 to 7 years); ii) Child Sexual Abuse Prevention and Personal Safety (for Children aged 7 to 12 years); iii) Life Skills for Adolescents*

Series: Sexuality & Relationships. The activity books use age-appropriate methods such as movement games, body mapping, art, board games, adaptation of children's games (hopscotch/ kuntebillay), story-telling and narratives and film clips. (These materials are available, upon request, to child care service providers].

c) Pharmacotherapy for the Child

As mentioned already, if a child develops post-traumatic stress disorder (PTSD) symptoms, including severe anxiety and/or self-harm behaviours, and thus becomes dysfunctional (i.e. is unable to resume routine/ daily activities), psychiatric medication may need to be considered for a certain period of time, until the child is able to return to normal levels of functioning. When the child is in this state, psychotherapy and counselling methods alone will not suffice as the child is unlikely to be receptive to such methods. Thus, medication may need to be started, along with some containment techniques, followed by other psychotherapeutic interventions.

2.2. Family Counselling

a) Initial Response and Guidance

In the immediate aftermath of abuse, parents and caregivers of sexually abused children may also be confused and anxious about how to respond to the child and the situation in general. The following guidance may be provided to families and caregivers of sexually abused children:

- Do not ignore or undermine a child's statements and innocuous remarks.
- Believe what your child tells you.
- Do not to blame the child.
- Contact Childline (1098) for assistance on how to report to police, Child Welfare Committee and medical/ psychological help systems.
- File an FIR or police report.
- Ensure that the child is provided with emergency medical services (EMS) (within 24 hours of filing the FIR) provided by state Registered Medical Practitioners (RMP) in government hospitals.
- Seek counselling from child mental health experts in government institutions to ensure that psychosocial assistance and healing interventions are provided to the child; and that evidence gathering and other legal processes are embedded within the healing context.
- Tell the child that the abuse was not the child's fault. Explain to the child about the measures that are being taken to make the child feel safe at home and at school.
- Show openness to the child sharing his/her experiences by saying, "When you want to tell me about what happened, how you feel about it, I am ready to listen."
- Get the child back to maintaining regular home (mealtime, bedtime, play time) and school routines, for, normalizing processes are essential to recovery.

b) Guidance on Mandatory Reporting

The purpose of mandatory reporting, under POCSO, is to ensure that sexual offence comes to light and gets punished, to ensure that the child (especially when abuse takes place within the family) is safe and does not continue to suffer abuse, to provide justice to the child concerned and prevent abuse of other children. As justified as it is in its intent, the stipulation of mandatory reporting is ridden with

dilemmas and is often difficult to implement. Parents and caregivers are often reluctant to report child sexual abuse for reasons ranging from stigma and discrimination associated with sexual abuse to fear of legal procedures and systems.

It is recommended therefore that mandatory reporting is not a one-off procedure but that it follows a process which entails the following:

- Written documentation of the child's (or family's) report/ account of sexual abuse in an official manner i.e. there should be nothing loose or informal about documentation, which must also be done in a clear and meticulous way.
- Explaining to the child and family that there are laws about child sexual abuse (POCSO) and that it is recommended that they report the abuse—with reasons for how and why it could be advantageous to them i.e. how it would ensure safety of the child/ other children, get the perpetrator to be punished etc.
- Reassuring the child and family that there would be no pressure or coercion—that ultimately no report would be made without their consent and that were they to choose, in due course/ after due consideration, to report, we will assist them to do so.
- Understanding the child and family's hesitancy to report i.e. to elicit the reasons and fears they have not to want to report, and then to try and address these fears and concerns one-by-one. (Should their concerns be addressed, they might be more willing to go ahead with the reporting process).
- Assuring the child and family that confidentiality would be maintained through the processes of reporting i.e. the press/media/ school/general public would not be aware of the identity of the child.
- Explaining all processes involved in reporting, to child and family i.e. to guide and assist them through the gamut of agencies involved, from the police to child welfare committee and the magistrate/judge; preparing the family and child about the sequence and type of reporting that would be necessary at each stage gives them greater clarity and reassurance and increases the likelihood of their reporting abuse.
- To start with healing interventions and tell the child that we can re-visit the reporting issue at a later point, when he/she feels ready to do so.

Thus, it is recommended that reporting be embedded in the process of psychosocial interventions for the child and family rather than a disconnected, stand-alone process that needs to be done immediately—and which then only serves to exacerbate the confusion and trauma that the child and family is already experiencing soon after the abuse incident/ disclosure or discovery. The POCSO Act would be more realistic if it acknowledged and took into consideration the dilemmas of mandatory reporting in practice and allowed for it to be a process of gentle persuasion, a discussion rather than an instruction, that could occur over time, within larger healing and recovery processes, instead of insisting on a more immediate reporting method and expecting it to be followed by all.

2.3. Consultation and Liaison with Other Agencies

The mental health services must coordinate with other agencies such as medical services, child care institutions, schools, and child welfare committees with a view to assisting the children with health, placements, return to school and other advocacy issues respectively. The main aim of coordinating with such agencies is to facilitate

(psycho) social rehabilitation of children and enable them to heal in predictable and sensitive ways that address their basic needs of health, shelter, education, and protection. All such coordination initiatives must be documented by the mental health agency. Further, children and families must be consulted and informed about all coordination initiatives and decisions i.e. children's concerns and decisions may not be over-ruled without adequate discussion with them/ their families.

3. Systems Issues and Reporting

A critical aspect of child protection, CSA warrants systemic approaches that are uncompromisingly child-centric. When an event occurs, it is addressed by systems of criminal justice, police, schools, families, and healthcare. However, in attempting to conduct inquiry, interrogation and detailing of the event to verify it and then bring the perpetrator to book, the child's best interests cannot be compromised. The balance between the need for justice and empowered recovery of the child becomes precarious. There is thus an urgent need to develop a protocol-based systemic response ensuring that the child's agenda i.e. healing and recovery, is at the core of it. Processes involving medico-legal systems for the child and the family must be devised in a manner as to avoid further traumatization of the child. In fact, inquiry with the child should be conducted once instead of multiple times, and only by mental health professionals and/or police personnel/SJPU trained in CSA work and forensic interviewing with children (to avoid re-traumatization)—again, as part of the psychosocial and healing processes.

3.1. Protocol for Place & Sequence of Reporting Abuse

A clear protocol to be developed as to where and in what sequence the child and family can seek assistance. Ideally, this should be as follows:

- First, the child should obtain medical assistance and treatment of injuries/PEP kit administration for pregnancy/STD/ HIV prevention (even if they report to the police first, they need to be sent for medical aid immediately).
- This should be followed by referral to mental health services—to address post-traumatic stress issues (through supportive work/therapy with child & family).

3.2. Police Inquiry

Police and legal inquiry should be **embedded within the psychosocial assistance processes** (the idea is not to obtain legal evidence first and 'let counselling carry on' as police personnel have often understood).

Child interviews can be conducted in child's home/ place of residence or a neutral space such as Police Commissioner's Office if a child-friendly space is created there, or at the mental health services/ facility wherein the child is being assisted. Children should not be interviewed in police station, nor, at any point during the initial or later stages of inquiry processes, should they ever be taken to the police station.

Police interviewing must avoid:

- Having the perpetrator and the child come face to face.
- Repeated questioning.
- Taking the child to the scene of crime and/or re-enacting event.
- Persuading child to provide information through insistence/ use of sweets, toys, chocolate.
- Touching the child unnecessarily.

3.3. Magistrate's Statement/ Trial Proceedings in Special Court

As per Section 164, children and adolescents are required to give a statement to the magistrate/judge, regarding the abuse. As already stated, repeated inquiry regarding the abuse may result in further traumatization of the child. However, given that the law mandates the magistrate/judge's statement, it is important that the magistrate/judges be trained in sensitive and child-friendly ways to elicit the child's narrative and record the statement.

a) Child's Developmental Ability to Provide a Statement

It must be recognized that narration or giving of a statement is a function of child development. The child's ability to give a statement therefore depends on his/her age and developmental level i.e. abilities and skills in the five domains of child development --loco-motor, speech and language, cognitive, social and emotional development. Narration is a function of speech & language abilities, which immediately exempts very young children from providing statements. But narration is also a function of social and cognitive skills i.e. a child may have no physical problems but due to poor cognitive development, be unable to give a full statement; or a child may have physical and cognitive abilities but due to poor social skills, be unable to engage with other people, thereby affecting his/her ability to give a statement. In the light of this, the following are recommendations for recording the magistrate/judge's statement:

- Very young children, (ages 0 to 3.5 years) will be unable to provide a statement.
- At a minimum, a child has to be about 3.5 years of age, to even attempt taking a statement. (Even then, some children will have language delays and be unable to report).
- A systematic developmental assessment of the child needs to be conducted (by a mental health professional) to establish the ability of the child to be able to provide a statement.
- Children with intellectual disability will need to be assessed to understand what their abilities and deficits are, and if they can report. Those with moderate to severe intellectual disability may find it especially hard to provide a statement.
- Children with severe trauma/ post-traumatic stress disorder and associated dysfunctionality, no matter what the age and developmental ability, may be unable to provide the statement, or at least not within the stipulated time or until psychosocial assistance is well underway.
- In the above instances, it is recommended that the magistrate/judges make the exception and attempt to obtain the statement by:
 - Allowing child development/ mental health professional to assist with statement recording in spaces comfortable to children (i.e. outside the court), using play and other creative methods to elicit narratives (especially from young children with limited verbal abilities and/or children with intellectual disability or trauma).
 - Permitting of use of audio-visual recording of child's statement, especially when it is recorded by mental health professionals in spaces other than the court (such as in hospital playrooms and therapeutic spaces).

- Ask for additional/specialised assistance by way of interpreters, translators, sign language experts and special educators for children with disability.
- Allowing family and caregivers to accompany the child and remain with the child during the magistrate/judge's statement recording; this especially applies to institutionalized children, who often have no family to accompany them and wherein the child's caregiver and/or therapist/counsellor should be allowed to be with the child during the statement recording.
- Accepting statements from the child's family and caregivers (especially in case of very young or disabled children).

b) Use of Child-Friendly Methods for Recording of Statement

Given children's age, developmental stage and their fears and bewilderments with regard to legal and systemic processes, a direct approach to elicit a report on the abuse would invariably fail. In fact, such an approach may lead the child to retract his/her statement and thus nullify the entire effort at justice. It is therefore important to train magistrate/judges in the basics of child interviewing skills so that they can follow a systematic, structured method of statement recording that allows the child to be relaxed and comfortable and that then enables the child to provide the statement on abuse. Broadly, the steps in statement recording would include:

- Rapport Building with a Young Child (greeting the child, use of toys and play activities and neutral conversations with child)
- Introduction of the magistrate/judge and the space (explaining in very simple terms what the function of the court and magistrate/judge are and why the child had been asked to come there).
- Assuaging the child's fears & anxieties
- Taking the Statement (inquiring about the abuse through use of neutral, open-ended questions and gentle probes and use of pictures)

Additionally, the magistrate's statement or Special Court trial procedures must avoid:

- Hurrying the child to talk.
- Persuading the child to provide information through insistence/ use of sweets, toys, chocolate.
- Asking children to enact what happened.
- Probing for details of how the child felt at time of abuse (unnecessary details that might re-traumatize child).
- Touching the child unnecessarily.

4. Capacity Building of Service Providers

As described in various sections above, different types of service providers, from mental health service providers to police and legal service providers and child protection staff, are involved in assisting sexually abused children and adolescents. Below is a table suggesting the various types and cadres of staff who require to be trained in child sexual abuse work, including the training objectives and content, and the training time required.

Training content should centre around understanding children, childhood and child development in a broad sense, and then to locate child sexual abuse within larger contexts of children's issues i.e. training should not be narrowed to sexual abuse

alone as it will not be useful to service providers who then will be unable to position themselves within a broader child protection context. Also, training should help service providers to develop skills, predicated on strong conceptual frameworks. Disjointed sessions by varied and diverse professionals, focussing purely on issues and theories on children and sexual abuse, using lecture and discussion methods should be avoided. Instead, training programs should be participatory in nature, using creative methodologies, to enable service providers to develop the skills and methods required to work in contexts of abuse and trauma.

Suggested Capacity Building Initiatives for CSA Service Providers

Target group	Objectives & Content	No. of days
Police officers / SJPU	<p>To enhance the quality of child protection services by:</p> <ul style="list-style-type: none"> • Sensitizing them to children who have undergone sexual abuse and trauma. • Enabling them to develop basic communication and interviewing skills to facilitate supportive child relationships with children. • Helping them to assist children in legal processes such as 164 statement and court proceedings in accordance with POCSO, in child-friendly ways. 	2 days (1 day classroom conceptual training + 1 day practical skill training)
Magistrate/judges/ Special court Judges/ Child Welfare Committee Members	<p>To enhance the quality of child protection and psychosocial care services,</p> <ul style="list-style-type: none"> • Sensitizing them to children who have undergone sexual abuse and trauma. • Enabling them to develop basic interviewing skills to be able to record children's statement. 	1 day
Counsellors/ Social workers/ Child Care Institution Staff	<p>To enhance the quality of child protection and psychosocial care services available to sexually abused children by enabling them to:</p> <ul style="list-style-type: none"> • Develop basic communication skills to facilitate supportive care worker-child relationships. • Identify/interview/ assess children who have undergone sexual abuse. • Provide first level responses to abused children in a state of trauma. • Facilitate longer term healing and recovery processes for abused children. • Provide special interventions to children living in difficult contexts. • Provide systemic recommendations to CWC and other child protection/education/legal personnel. 	3 days (classroom training) + 14 days supervised practical field training.

**The Community Child & Adolescent Service Project, Dept. of Child & Adolescent Psychiatry, NIMHANS has already developed training methods, materials and manuals for use with children's service providers. These have been adapted for use with various types of service providers and can be shared upon request, with trainers and/or training could be undertaken by the NIMHANS team.*

Annex 3:

Additional Guidelines for Conducting Child Sexual Abuse Inquiry by Mental Health Services

1. Process of Inquiry

1. 1. Introduction

Introduce yourself, explain need for video cam/ microphone. *[As you can see, we have a video-camera and microphones here. They will record our conversation so I can remember everything you tell me. Sometimes I forget things and the recorder allows me to listen to you without having to write everything down.]*

2. Ensuring Accurate Reporting

Establish the need for telling the truth, capacity to differentiate between what's true or not and to say 'I don't understand' or to tell examiner when he makes a wrong statement. *[1. 'Part of my job is to talk to children[teenagers]about things that have happened to them. I meet with lots of children [teenagers] so that they can tell me the truth about things that have happened to them. So, before we begin, I want to make sure that you understand how important it is to tell the truth.'2. [For younger children, explain: 'What is true and what is not true?'. 'If I say that my shoes are red (or green) is that true or not true?' [Wait for an answer, then say:] 'That would not be true, because my shoes are really [black/ blue/etc.].And if I say that I am sitting down now, would that be true or not true [right or not right]?' [Wait for an answer.] 3. 'It would be [true/right], because you can see I am really sitting down.' 'I see that you understand what telling the truth means. It is very important that you only tell me the truth today. You should only tell me about things that really happened to you.' [Pause.] 4. 'If I ask a question that you don't understand, just say, "I don't understand." Okay?' [Pause] 'If I don't understand what you say, I'll ask you to explain. 'What would you say if I made a mistake and called you a 2-year-old girl [when interviewing a 5-year-old boy, etc.]?' [Wait for an answer.] 'That's right. Now you know you should tell me if I make a mistake or say something that is not right.*

Capacity to differentiated 'truth' established	Yes	No
Capacity to say 'I don't understand' established	Yes	No
Capacity to tell interviewer that she/ he 'is not right' established	Yes	No

3. Rapport Building with Child

Build rapport with the child. *[1. 'I really want to know you better. I need you to tell me about the things you like to do.' [Wait for an answer.] 2. 'Tell me more about [activity the child has mentioned in his/her account. AVOID FOCUSING ON TV, VIDEOS, AND FANTASY].'* [Wait for an answer.]

4. Training in episodic memory (Narrative event practice)

'It is very important that you tell me everything you remember about things that have happened to you. You can tell me both good things and bad things.'*[Identify a recent event the child experienced- first day of school, birthday party, holiday) and build up upon that using qualifiers like 'tell me, what happened next, 'Think hard about [activity or event] and tell me what happened on that day from the time you got up*

that morning until [some portion of the event mentioned by the child in response to the previous question]. 'Tell me more about [activity mentioned by the child].' [Wait for an answer.] [Note: Use this question as often as needed throughout this section.] 'Earlier you mentioned [activity mentioned by the child]. Tell me everything about that.']

5. Transition to substantive issues (Abuse enquiry)

[‘Now that I know you a little better, I want to talk about why [you are here] today.’ Use open ended questions. use a series of general prompts, or prompts based on background information, that are as non-suggestive as possible, but become gradually more focused, for example, “I heard you talked to ‘X’ about something that happened – tell me what happened,” “I see you have [a bruise, a broken arm, etc.] – tell me what happened.” “I heard you saw [the doctor, a policeman, etc.] last week – tell me how come/what you talked about,” “Is [your mom, another person] worried about something that happened to you? Tell me what she’s worried about,” “I understand someone might have bothered you – tell me what happened,” “I understand someone may have done something that wasn’t right – tell me what happened.” “I understand something may have happened at [location] – tell me what happened.”]

6. Probe for Disclosure

[‘You’ve told me why you came to talk to me today. You’ve given me lots of information and that really helps me to understand what happened.’ [If child has mentioned telling someone about the incident(s), ask details, if not then probe about possible immediate disclosure by saying: ‘Does anybody else know what happened?’ How did they come to know?]

7. Closing the Interview

Provide opportunity for further disclosure and contact information.[[Say:] ‘You have told me lots of things today, and I want to thank you for helping me.’ 1. ‘Is there anything else you think I should know?’ [Wait for an answer.] 2. ‘Is there anything you want to tell me?’ [Wait for an answer. ‘Are there any questions you want to ask me?’ [Wait for an answer.] 4. ‘If you want to talk to me again, you can call me at this phone number.’][Hand the child a card with your name and phone number.]

2. Additional Guidelines for Inquiry

- 2.1. Children have capacity to remember which can be established earlier in the interview process by the interviewer to describe specific events, thus determining whether the child can retrieve information from episodic memory or does not understand the task.
- 2.2. Developmentally immature children too have memories but have difficulty in retrieving them. Thus, a technique of scaffolding is used in which a series of detail-oriented questions are asked e.g. – “Did you do anything when you were at that house?” “What did you do?” “Was someone there when you did [what the child reported]?” The interviewer thus offers “cues” or “cognitive supports” that allow the child to access his or her memory. This process is perceived to be developmentally appropriate because, as previously mentioned, even very young children are believed to possess the capacity for recognition memory through the use of scaffolding.
- 2.3. Attention and accuracy of recall: Quality of information provided by young children begins to decrease with increased attempts to refocus. In other words, once a three-year old has lost interest and has been refocused to the interview process several times, she or he may begin to answer questions randomly, without thought or consideration of the questions posed. Thus, the

following guidelines could be used to keep the time limit while interviewing children.

General Reference:Duration of Engagement	
3-year olds	15 minutes
4 – 5-year olds	20 to 25 minutes
6 – 10-year olds	30 to 45 minutes
10 – 12-year olds	Up to an hour

- 2.4. Accuracy of information and competency of child: primary principles of forensic interviewing is to allow for the competency of the child. In order to give an accurate response, children need to both understand and remember the question in its entirety. Compound questions (e.g., “Where were you and what were you doing?”); embedded questions (e.g., “Do you remember what you were doing?”); questions that include prepositions (“Was that before or after your birthday?”); indexical words (“Did you know that?”); or any sophisticated linguistic structures are all examples of inquiries too complex for children under age five and thus should be avoided. In addition, ambiguous questions too are problematic for pre-schoolers (e.g., “How were your clothes?”). A follow-up question might be, “Were your clothes on, or off, or something else?”
- 2.5. Concrete Versus abstract: Preschool children have specific and literal thought processes of and thus use of questions that are simple and concrete, not abstract or complex are advocated. Pre-schoolers have difficulty in grasping abstract and relational concepts eg. familial connections or relationships; time or sequence; and various forms of measurement, such as speed, distance, dimension, or quantity. Higher order words (e.g., “move” or “touch”) are also too abstract, because they encompass a wide range of meanings. Children who think in terms of the more specific lower order words may deny that they were “touched,” but acknowledge that they were “tickled” or “licked.”
- 2.6. Providing context: Even when lower order words and simple sentence structures are used in the interviewer’s questioning, younger children may become confused by questions without context. Thus, it is important that interviewers provide a context for each question asked, using the child’s identification of that context (“When you were at the park . . .”). Similarly, it is important for interviewers to inform children any time the interviewer intends to change topics, allowing the child to transition into a new context along with the interviewer.

Annex 4:

POCSO 2012 in Action: When and Why it Does Not Work

*This document was developed by the Community Child & Adolescent Mental Health Service Project, Dept. of Child & Psychiatry, NIMHANS, Bangalore, for Karnataka State Commission for Protection of Child Rights, as part of Review & Recommendations Meeting for Effective Implementation of POCSO Act 2012, December 2016.

1. Mandatory Reporting Dilemmas

The purpose of mandatory reporting, under POCSO, is to ensure that sexual offence comes to light and gets punished, to ensure that the child (especially when abuse takes place within the family) is safe and does not continue to suffer abuse, to provide justice to the child concerned and prevent abuse of other children. As justified as it is in its intent, the stipulation of mandatory reporting is ridden with dilemmas. Mandatory reporting is not as straightforward and simplistic as POCSO assumes it to be because of the sensitivity of the issue.

In a society where there are still many taboos that surround sexuality-related issues, adults do not talk to each other about sexuality issues, even in a positive/ celebratory way, let alone in a problem context. Add to this the issue of adult-child relationships, which are largely governed by instruction, order and expectations located in a culture of obedience rather than a culture of conversations, and there is lack of disclosure at a first level on the part of children. When children do choose to disclose, usually to trusted adults (including mental health professionals), it is still with much hesitancy and trepidation. In such a situation, if an adult were to insist on a police complaint due to the mandatory reporting clause in POCSO, children may for reasons of fear, stigma and shame not want the complaint to be made. Reporting without the consent of the child would break the trust of the child in the adult; In NIMHANS, not just children but families have also failed to return for subsequent therapy/ intervention sessions when they have been told that it is mandatory for them/ hospital staff to report CSA. It is also against the rights of the child to report without consent.

If considered from an abuse perspective, the experience of sexual abuse itself is one that undermines the agency of the child and renders the child helpless and powerless; what also takes place is betrayal of trust, in cases where the perpetrator is a known adult/ family member, who instead of caring for and nurturing the child, hurts and exploits him/her. If sexual abuse were reported without the consent of the child, the same issues of helplessness, powerlessness, and betrayal would play out, ironically in a situation wherein the child was actually supposed to receive assistance; so the child would end up feeling more traumatized than comforted or reassured and this is problematic from a healing and recovery perspective. As important as justice is in the healing process, it is also not necessarily true that every survivor of child sexual abuse will definitely heal better from knowing that the perpetrator is being punished...some might and some might not i.e. each individual defines what healing and recovery means to him/her and while there are commonalities, there also variations in recovery goals and processes (depending on the nature of sexual abuse, the dynamics and methods of abuse, the child's internalization of the abuse, not to mention the child's age, developmental stage and personality and temperament). So, when the child's best interests mean healing and recovery (as they do in child sexual abuse cases), it may be problematic to assume punishment of the perpetrator as being a major component of healing and recovery in all sexually abused children.

Finally, when mandatory reporting entails coercion of the child and family, it could be counter-productive—for, if the child and family chose to withdraw the case altogether because they are fearful or not convinced about reporting, then the purpose is not achieved anyway. Thus, while in theory the mandatory reporting is good and necessary as in practice, it is ridden with problems.

Recommendation:

All this is not to say that we should be dismissive of the importance of reporting. Reporting of child sexual abuse is important for the afore-mentioned reasons. The question is: what must we do (as professionals) in a situation where on the one hand there is POCSO which mandates reporting of CSA to the police and on the other hand is a child (or family) pleading with us not to report? How do we bridge this gap? We recommend therefore that mandatory reporting is not a one-off procedure but that it follows a process which entails the following:

- Written documentation of the child's (or family's) report/ account of sexual abuse in an official manner i.e. there should be nothing loose or informal about documentation, which must also be done in a clear and meticulous way.
- Explain to the child and family that there are laws about child sexual abuse (POCSO) and that it is recommended that they report the abuse—with reasons for how and why it could be advantageous to them i.e. how it would ensure safety of the child/ other children, get the perpetrator to be punished etc.
- To also however explain to the child and family that there would be no pressure or coercion—that ultimately no report would be made without their consent and that were they to choose, in due course/ after due consideration, to report, we will assist them to do so.
- To understand the child and family's hesitancy to report i.e. to elicit the reasons and fears they have not to want to report, and then to try and address these fears and concerns one-by-one. (Should their concerns be addressed, they might be more willing to go ahead with the reporting process).
- To start with healing interventions and tell the child that we can re-visit the reporting issue at a later point, when he/she feels ready to do so.

Thus, we recommend that reporting be embedded in the process of psychosocial interventions for the child and family rather than a disconnected, stand-alone process that needs to be done immediately—and which then only serves to exacerbate the confusion and trauma that the child and family is already experiencing soon after the abuse incident/ disclosure or discovery. The POCSO Act would be more realistic if it acknowledged and took into consideration the dilemmas of mandatory reporting in practice and allowed for it to be a process of gentle persuasion, a discussion rather than an instruction, that could occur over time, within larger healing and recovery processes, instead of insisting on a more immediate reporting method and expecting it to be followed by all.

2. The Need for Child-Friendly Medico-Legal Processes in CSA Enquiry.

A critical aspect of child protection, CSA warrants systemic approaches that are uncompromisingly child-centric.

When an event occurs, it is addressed by systems of criminal justice, police, schools, families, and healthcare, which generate a flurry of incoherent activity, albeit in good faith, thereby compromising the child's best interests. The major emphasis of these

activities are directed towards the child 'victim' through enquiry, interrogation and intrusive detailing of the event to verify it and then bring the perpetrator to book.

Over the past year, the Dept. of Child & Adolescent Psychiatry at NIMHANS has received several children with CSA issues. When they come for help, they are extremely overwhelmed after visits to the Child Welfare Committee, police station, the hospital; by then, the child has been subjected to questioning on multiple occasions and therefore to re-traumatization. There are many areas which have to be systematically addressed namely, the child's reaction to the abuse, ensuring the child's immediate safety, medical and mental health needs of the child, and the concerns of the family. On the other hand, there is a sense of urgency to in legal procedures. Towards this, there is an understandable emphasis by the police on evidence and enquiry processes and related pressure from media and civil society, raising questions on the timely nature and effectiveness of these processes.

In all this, the balance between the need for justice and empowered recovery of the child becomes precarious. There is thus an urgent need to develop a protocol-based systemic response ensuring that the child's agenda i.e. healing and recovery, is at the core of it. The focus of initiative and consultation is to device processes involving medico-legal systems for the child and the family.

Recommendation:

- Clear protocol to be developed by POCSO as to where child/family goes first, next...
 - First, child should go for medical assistance and treatment of injuries/PEP kit administration for pregnancy/STD/ HIV prevention (even if they report to the police first, they need to be sent for medical aid immediately);
 - this should be followed by referral to mental health services—to address post-traumatic stress issues (through supportive work/therapy with child & family); police/legal inquiry should be EMBEDDED WITHIN THE PSYCHOSOCIAL ASSISTANCE PROCESSES (the idea is not to obtain legal evidence first and 'let counselling carry on' as police personnel have often told us).
- Inquiry with the child be conducted once instead of multiple times, and only by mental health professionals and/or police personnel/SJPU trained in CSA/ forensic interviewing with children (to avoid re-traumatization)—again, as part of the psychosocial and healing processes.
- POCSO needs to streamline all the stakeholders/ those who assist child after abuse incident so that each of them has role clarity and functions in a systematic way to aid the child's recovery.

3. Rejection of Adolescent Sexual Rights

The issue of boys/ adolescents being charged under POCSO is a complex one and has several implications. First, when applied to cases wherein adolescents are in mutually consenting sexual and romantic relationships with their (female) peers, the use of POCSO to convict them of an offence speaks of a society wherein adolescent sexual rights are not respected; convicting adolescents who are in mutually consenting sexual relationships reeks of the 'moral policing' that some sub-groups within our society are up in arms against in other (adult) contexts of romance and sexuality.

If the issue of complaint really is that adolescents should not be engaging in sexual relations and all those adolescents who are doing so should be convicted, then thousands of adolescent boys (and girls if the law was unbiased) would have to be convicted for 'being in love' and engaging in sexual activities—and the existing numbers of Observation Homes in the country would be unable to accommodate them!

4. Gender Bias

In addition to coming from a strongly moral position, with pre-conceived notions and prejudices about adolescent sexuality and sexual rights, the application of the law is extremely gendered. Where there are mutually consenting sexual relationships between adolescents, and conflicts and disagreements around this, only the boy seems to be culpable as he is convicted, not the girl; the girl does not seem to have to be (legally) accountable or responsible for decisions jointly made by both boy and girl. In fact, in many cases reported at the observation home, the girl was reported to have 'pressured' the boy to run away/ 'take her away' due to her family conflicts and fears that she may be married off elsewhere. The law does not take into account the girl's role and decision at all. Thus, the law becomes extremely gendered in its implementation, ensuring that only boys are convicted, irrespective of the role girls play in mutually consenting relationships.

POCSO as it is implemented currently has serious implications for the implementation for the new Juvenile Justice Act 2015 that contains the amendment regarding transfer of 16 to 18-year olds to the adult system for heinous crimes. Precipitated by the Nirbhaya case and the alleged role of the 16 year old in the gang rape, the JJ amendment has a list of heinous crimes for which adolescents can be tried as an adult—and sexual abuse is one of them...all the more reason to be careful as to what we define as sexual abuse under POCSO or what we judge to be sexual abuse, as this has life-changing consequences for a child charged with POCSO.

5. Not Cognizant of Children's Developmental Milestones and Needs

The above issues of adolescent sexual rights lead to a key question: how is child sexual abuse defined or understood as per POCSO? A key element that determines sexual abuse is the issue of consent. It is therefore fully agreed that the law should apply to young children who, due to their developmental stage and cognitive processing, would not be able to give informed consent and of course are not biologically or emotionally prepared for sexual relationships. But can the same be said of an adolescent—who is at a different stage in his/her life cycle, with developmental needs and abilities that are so different from that of a younger child? POCSO therefore does not acknowledge or make the distinction between the developmental needs and abilities of a 6-year-old versus a 15-year-old—and this is problematic because a blanket application of a law, without consideration of age, child and adolescent development and psychology leads to unfair conviction of adolescents, thereby violating their rights.

(Note: This discussion does not apply to an adolescent who may have legitimate sexual needs and desires but coerces or assaults another child or adolescent/peer in order to meet his needs—in which case the issue is unequivocally one of sexual abuse).

Recommendations for Issues 3,4 and 5:

- POCSO needs to recognize the developmental age and stage of children versus adolescents. In case of children, let us say below age 12 (pre-adolescence), POCSO can apply as it because i) children are not physiologically ready for sexual engagement; ii) they have not developed the

requisite knowledge and understanding of sex and sexuality—consequently, they are not psychologically ready for physical intimacy, nor do they have the capacity for (informed) consent. Therefore, for any child under age 12 who is engaged in sexual activity, it must be considered as sexual abuse and POCSO must apply. But for adolescents, a more nuanced understanding of the situation is required—taking into consideration that adolescents are at a life stage wherein they are (unlike children) physiologically ready for physical intimacy and there is an emotional need and desire that makes them feel ready for sexual involvement. (See next point for further details).

- POCSO needs to make the distinction between situations of abuse and mutually consenting sexual relationships between adolescents. The key difference is the issue of consent—an element that is absent in case of abuse. The adolescents concerned can be interviewed to understand whether or not there was consent to engage in sexual acts/ physical intimacy. This means that boys and girls both need to be interviewed/ assessed to establish the nature of the relationship, whether or not there was consent by both parties—the onus of the relationship/ sexual act decision cannot be only on
- boys. Such interviewing may be done by mental health professionals. Where there is mutual consent, both the boy and girl need to continue to receive psychosocial and mental health interventions on life skills in the context of relationships and sexuality.

**The Community Child & Adolescent Mental Health Service Project, Dept. of Child & Adolescent Psychiatry/NIMHANS has developed an intervention module on this and has been successfully using it with vulnerable adolescents in various child care institutions, enabling them to acquire assertiveness, negotiation, refusal, problem-solving skills in the context of relationships and sexuality, including reflecting on issues of running away/ early marriage/ coercion and other health, safety and relationship issues. This intervention module is based on a recognition and acknowledgement of adolescent sexual rights but provides them with a clear framework for decision-making in the context of love/relationships and sexuality.*

6. Low Conviction Rates of Adult Perpetrators of Child Sexual Abuse

The continual reporting of child sexual abuse (CSA), while it has prompted many discussions and recommendations for prevention, has largely left unaddressed the challenge of how to respond when an incident occurs. What is both interesting and saddening is that there are exceedingly low conviction rates for adults who have committed child sexual abuse and been charged under POCSO. However, children/ adolescents seem to be quickly and easily convicted under POCSO, not granted bail even when they have been in mutually consenting romantic and sexual relationships with their peers (in fact, there appears to be little inquiry and evidence gathering around this, especially to get the peer-partner's point of view). What this shows is that a law that is essentially meant to protect children/ adolescents from abuse is being unjustly and whimsically used to convict and detain adolescents, in violation of their rights—is this really a legitimate use of a law meant to protect the rights and safety of children and adolescents?

Again, unless there is a strong response system, and this includes convicting adult perpetrators of child sexual abuse, the law in itself cannot prevent or act as a deterrent to child sexual abuse.

Annex 5:

Our Failure to Protect Sexually Abused Children: Where is our 'Willing Suspension of Disbelief'?

VIEWPOINT

Our failure to protect sexually abused children: Where is our 'willing suspension of disbelief'?

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An adolescent institutionalized boy is admitted to a hospital for behavior problems. During treatment and therapy, he disclosed that he and other children in the institution were being sexually abused by a volunteer working there. The

treating team discusses the matter with the child, persuades him to allow them to report the matter to relevant authorities, and thus informs the Child Welfare Committee and the Special juvenile Police Unit; the latter takes immediate action and arrests the volunteer, i.e., the alleged perpetrator of abuse. Following this, the institution staff come to the hospital, vent their fury on the child, ask him why he said such things about the volunteer, also pleading with the treating team to "please believe" them and stating that the child was a known liar and that the volunteer was "not that kind of person" and was incapable of abusing children. It also turns out that the child had reported the abuse earlier at the institution, wherein after some apparently desultory enquiry, the response of the institution was that "children often lie about things."

Consider the above situation, in terms of what it means for child protection in the context of sexual abuse (CSA). In recent years, with increasing reports of CSA incidents, the discourse on CSA prevention and response has been propelled into legal, educational, medical, institutional, and public policy domains; a law against child sexual abuse has come into existence (POCSO 2012); medical and forensic protocols have been developed; schools conduct abuse prevention programs; child care institution staff are trained in identification of and systemic and psychosocial responses to child sexual abuse; the government has put forth a child protection policy as well as has mechanisms such as the Integrated Child Protection Scheme to monitor children's safety; large nongovernmental organizations (NGOs) such as Childline have been setup to report child sexual abuse incidents; and some NGOs even exclusively work on CSA assistance and advocacy. The discourse has entered public spaces, and people's homes with social and print media providing awareness messages on the issue; innumerable conferences, workshops and

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meetings have been held by government departments, academic institutions, NGOs and other civil society groups to critique, discuss and disseminate information, and decide on appropriate action on CSA issues. Yet, when an individual child is abused, the story still plays out as if we live in times of pre-POCSO and no public awareness of CSA. Why is this so?

Many critiques on CSA responses focus on systemic failures to protect the child following abuse—and indeed these are legitimate: lack of protocols for CSA response in child care/educational institutions, families not knowing whom to approach when CSA happens, and poor coordination between institutions and teams providing medical, psychosocial and legal assistance to the child occur, result in poor quality assistance, and further traumatization of the child. However, there is something far more germane to child sexual abuse reporting and response: that of adult (dis) belief in the child.

WHY CHILDREN LIE

Adult belief that children tell lies (i.e., not tell the truth) may easily be countered by the fact that adults tell lies too—in fact, more so than children and with less justification than children have for lying! Let us examine why children lie. In most instances, children lie to hide things, out of a fear of something or someone; they are afraid that if they tell the truth, they will not be believed and/or they will be admonished and punished. This is exactly what happens in the context of child sexual abuse also: children hide the abuse and do not report it because they are afraid they will be disbelieved and/or punished for it.

In fact, for those children who report sexual abuse, they start to retract their original statement because of pressure from disbelieving adults, which results in fear and anxiety in the child. Hence, retraction of the child's statement is not only because of the child's fear of the perpetrator (which undoubtedly is also true in many instances); it is the so-called caregivers and protectors of the child, who are responsible for the child's failure to disclose abuse and for his/her retraction of the abuse statement later on—because of their intrinsic lack of belief in the child's experience and account.

WHAT CHILDREN (DO NOT) LIE ABOUT

Next, let us examine the nature of children's lies and what the implications are for CSA. Children's lies are usually regarding: complaints about other children/people's aggressive or violent behaviors toward them (if children do want to lie about adults, it is most likely to be about verbal and physical abuse), having aggressed on or bullied others themselves, being in places they were not actually in, homework and other activities they should have done but have not, sexual and romantic interests (in case of adolescents), and having taken something that did not belong to them.

You will notice that all these are situations that tend to have a social desirability factor, i.e., children lie about them because they recognize that these might not be socially appropriate or acceptable behaviors and they fear punishment (by adults) if they were to tell the truth. Children also tend to lie when they have been victims of sexual abuse, for the same reasons—because they have a sense that sexual behaviors (by anyone) are not socially appropriate or acceptable. Therefore, ironically, children are more likely to lie that they have NOT been abused when they have been abused! Indeed, many children simply deny that they have been abused even when there is evidence to the contrary. Consequently, given the nature of what children lie about, and their reluctance to tell the truth when they have been abused, if they do disclose sexual abuse experiences, they are unlikely to be lies.

CHILDREN'S ABILITIES TO "MAKE UP STORIES" ON SEXUAL ABUSE

If viewed through the child development lens, younger children (under the age of 12), physiologically, cognitively, and emotionally are not ready for sexual activity in that they also have little knowledge and awareness about sex and sexuality. It is therefore absurd to say that children are "making up stories" about sexual abuse—how can a child concoct stories about an issue he/she knows nothing about? And for this reason, when young children are observed to be engaging in behaviors that appear sexual, it is likely that they have witnessed sexual behaviour or that someone has performed these behaviours with them—someone doing them to another person—which is when we suspect that a child has been sexually abused versus blaming the child for engaging in socially inappropriate behaviors.

TABOOS ABOUT THE BODY AND SEXUALITY—HOW THEY AFFECT CHILDREN'S DISCLOSURE ABOUT SEXUAL ABUSE

In addition to not being at the developmental stage to be able to know about sex and sexuality issues, children most often do not recognize the abuse experience as being (sexually) abusive. They are just reporting what was done to them, i.e., there is no awareness that what was done to them was abusive or exploitative, especially where abuse processes entail lure and grooming; at best, they feel 'dirty' or uncomfortable, that too because of the taboos and shame socio-culturally associated with touching or talking about the human body, private parts, and sexual issues. In fact, it is this discomfort (inculcated in them by the adult world that socializes and educates children) that also causes them to lie when they have been abused, i.e., it would be inappropriate, they feel, to say that they have been touched in the ("dirty") private parts by someone. This feeling is heightened in older children or adolescents, who even if they have some understanding of sexuality issues and of sexual abuse, are unwilling to disclose and report the abuse.

Where CSA processes entailed violence and coercion, younger children are merely reporting hurt and injury and associated feelings of fear—again, they are unlikely to see the act of abuse as being exploitative, abusive (let alone criminal). Interestingly, when children report hurt and injury caused by means other than sexual abuse, adults readily believe them and are sympathetic and helpful. Surprisingly and disappointingly, when this hurt and injury is caused by sexual abuse, adults tend to be less sympathetic and helpful—in fact, they do not want to believe or even know more about how it happened. Adults' disbelief and denial may be attributed to their own fears, confusions, and discomforts around the issue and how to respond to CSA, especially when it is by a known person or family member/ caregiver. However, no matter how legitimate adults' fears and confusions, how can they be greater than the fears and confusions -of a child who has experienced the trauma of sexual abuse? And how in the world can they justify adults' positions of disbelief in the child's experience?

Annex 6:

Salient Features in Investigation, Prosecution and Trial of Cases under POCSO ACT ~ 2012.

A paper by Hon'ble Mr. Justice A.V. Chandra Shekar, Former Judge, High Court of Karnataka

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

(Act 32/2012)

The Act is a central legislation, which has come into effect from 14.11.2012 as per the Gazette Notification of the Ministry of Women and Child development Government of India dated 09.11.201.

INTRODUCTION

Being a signatory to the convention on the rights of children adopted by the UNO, our country has brought this legislation into force. The act in question aims at ensuring the physical, emotional, intellectual and social development of the child. Hence state is expected to take all 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;

Being a special penal legislation providing for special provisions for children as per Articles 15(3) of the Constitution of India, the intention of the special legislature will have to be kept in mind while applying the provisions of this act. For effective implementation of the provisions of this act, a coordinated effort is required by the Investigation Agency, Prosecuting Agency and the Criminal Courts dealing with the matter. The act differs substantially from the criminal cases arising out of violation of various provisions of Indian Penal Code. Some of the salient features of this act are in respect

- (a) Reporting of cases and registration of the cases and the obligation of the police to report to the Special Court and the child welfare committee.
- (b) Recording the statements of the victim by the investigating officer and the precautions to be taken by the investigating officer.
- (c) Not allowing the advocates of the accused by the magistrate at the time of recording the statement of witnesses u/s 164 of Cr.P.C.
- (d) Provision for audio-video recording of the victim during the investigation.
- (e) Provision for establishment of Special Courts to be presided over by a sessions judge and prosecuting the case by a public prosecutor and the jurisdiction of the Special Court to try even the offence punishable u/s 67-B of The Information Technology Act 2000.
- (f) Mode of recording the evidence of abused child and time schedule to record such evidence and the steps to be taken for creating comfortable atmosphere to the child.

- (g) Power to take the assistance or guidance of experts or persons having knowledge about the child welfare.
- (h) Provision for awarding adequate compensation and interim compensation to the abused child.
- (i) Mandatory presumption in respect of the offences u/ss 3, 5, 7 and 9 of this Act the moment case is prosecuted.
- (j) Provision for alternative punishment to the accused and punishment for false reporting or lodging false complaints.
- (k) Obligation of government in creating awareness about the act and monitoring the implementation of the Act and imparting training to the concerned.
- (l) Power of Special Court to decide as to whether the accused alleged of the offence is a child or not and effect of such an order.

Investigation is a critical component in any criminal case. Any criminal case dealing with sexual offence, more particularly against child, needs effective investigation at the hands of the police. Similarly effective prosecution is a *sine-qua-non* to take the case to its logical end. Judge dealing with a case like needs to be sensitive. This act has provided for several measures to safeguard the interest of the abused child. Several provisions in this act are based on the guidelines given by the Hon'ble Supreme Court in *Sakshi's Case reported in AIR 2004 SC page 3566 and Gurmit sing's cas reported in AIR 1996 SC paged 1393*.

Various kinds of offences have been defined in section 3, 5, 7, 9, 11, 13, 14, 15 and 17 of the Act. Punishments have also been contemplated for the offences defined and they include punishment for abetment and attempt to commit an offence.

INVESTIGATION-

Investigation in a criminal case commences with the lodging of the First Information to the police and registration of a case by the police and lodging of FIR. Sections 154 and 156 of Cr.PC deal with the same.

Section 9 of this act starts with a non-obstante clause providing for lodging the First Information either to the local police or to the Special Juvenile Police unit. Sub-section (5) of section 19 mandates the police to provide immediate care and protection either by taking the child abused to a shelter home or to the nearest hospital, if the child is in urgent need of the same. It is obligatory on the part of the police receiving the First Information to report the matter within a maximum time limit of 24 hours not only to the special court but also the child welfare committee. While reporting, it is expected to report about the need of care and protection to the child and steps taken in this regard.

Section 20 mandates the media, or hotel or lodge or hospital or club or studio or company to inform the police about coming across any material or object which is sexually exploitative of the child and non-reporting of the same is punishable u/s 21 of the Act. Furnishing false information or lodging false complaint is punishable u/s 22 of the act. The identity of the child sexually abused can not be disclosed in any manner and violation of the same is punishable u/s 23 of the Act.

Recording the statement of the child is covered u/s 24 of the Act. As far as practicable the statement of the victim is to be recorded by a woman police officer, who is not below the rank of Sub-Inspector that too without uniform. Statement of the victim has to be recorded in the presence of the parent or representative of the child. As far as possible statement of the victim is to be recorded through audio-video. A

copy of the final report is to be given to the child, parents or the representative of the child.

As per section 27 of the Act, medical examination of the child has to be conducted by a woman doctor in accordance with section 164-A of Cr.P.C. that too in the presence of the parent or any other person in whom child reposes trust or confidence. Whether a First Information report is registered for the offences under this Act or not, medical examination of the child is a requirement and the same has to be done in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

Section 53-A of Cr.P.C. mandates that the police can subject the accused to undergo medical examination by a medical practitioner of a government hospital if there are reasonable grounds for believing that the examination of the person will afford evidence as to the commission of such offence. Such report must be submitted to the police and it should form a part of the final report.

Proviso to section 157 of Cr.P.C. mandates that the statement of the victim of rape should be recorded at residence of the victim or in any place of the choice of the victim as far as possible, by a woman officer in the presence of the parents of the victim. While recording the statement of the child, the police officer should not be in uniform and take all steps to protect the child from the public media. The recording of the statement should be as spoken by the child. The police officer or magistrate recording the statement of the child may take the assistance of a translator or an interpreter having requisite qualification and experience. If the child has mental or physical disability the assistance of the special educator or an expert in the field having necessary qualification may be taken.

Section 173 (1A) of Cr.P.C. mandates the police investigating the offence of rape against the minor child to conclude within three months from the date the registration of the FIR.

Recording statements of witnesses under section 164(1) of Cr.P.C. by the Judicial Magistrate will have a more probative value even if such witnesses were to renege from their statement made before the Magistrate u/s 164 (1) Cr.P.C. Normally, such witness will hesitate to depose before the court contrary to the statement made before the Magistrate u/s 164(1) of Cr.P.C.

It is preferable that the charge-sheet in a rape case be vetted by the Superintendent of Police of the District in which the offence has taken place. This helps the senior police officer in the District to know about the manner in which the investigation has been conducted and make sure that the investigating officer will be accountable for serious lapses, if any. It is also preferable that a special wing in the District Crime Branch be earmarked for investigation of serious offences against woman and child as is done by the C.O.D. wing of the state in dowry death cases.

PROSECUTION:

EFFECTIVE PROSECUTION

Effective prosecution of a criminal case before the criminal court is a *sine-qua-non* for inspiring confidence in the minds of the public. Normally the accused will engage an experienced and competent advocate to defend him/her. Therefore, the prosecution must discharge its duty through an able and competent public prosecutor to prosecute a case in which a child is sexually abused or a woman is raped, before the Sessions Court/Special Court. Such public prosecutor must be sensitive enough to know the intricacies of a Trial in a case of rape or sexual abuse of a child and the legal position in regard to the relevancy of statements of the witness and the relevant provisions of law and leading decisions dealing with cases.

In this regard, the Department of Prosecution has to sensitize all its prosecutors about the cases relating to various types of offences against women and children. As sufficient amount is granted under the 13th and 14th Finance Commission by the central government for training prosecutors, the department of prosecution in association with the respective judicial academies can arrange training programmes and workshops for prosecutors on various aspects pertaining to offences against women and children and including medical and forensic evidence. It is also preferable to include the representatives of Non-Governmental Organizations actively involved in the protection of women and children, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development. They will play a vital role in assisting the child both during the trial and pre trial state. The public prosecutor who is in-charge of prosecuting the case must be thorough with the nitty gritty of a trial of a case of this magnitude. In a case where the allegation is of rape or having sexually abused the child, the accused will normally raise the following pleas.

- i. **Inordinate delay in lodging the FIR by the victim to the police and the delay in lodging the FIR by the police to the court.**
- ii. **Absence of proper medical evidence to connect the allegations of rape.**
- iii. **Admissibility of the evidence a child witness.**
- iv. **Non-Corroboation of the version of the prosecutrix by an independent witness.**

Since the offence of a rape or abusing child sexually is a grave offence, Hon'ble Supreme Court has held that any delay in lodging the FIR by the victim or the parents of the victim to the police should not be blown out of proportion to doubt the veracity of the victim in a rape case. (See State of Punjab Vs. Gurmit Singh's case AIR 1996 SC P 3093.

Corroboration is not a rule of evidence but a rule of prudence. There is no legal inhibition for the court to convict the person accused of rape on the uncorroborated version of the prosecutrix if the same inspires the confidence of the court and appears to be absolutely trust worthy.

In regard to the evidentiary value of a child witness, Sec.118 of the Evidence Act states that even a child is also competent to give evidence and the evidence of a child is admissible. The child of tender age can be allowed to testify if he or she has psychological capacity to understand questions and give rational answers thereto. Therefore, the evidence of a child witness is not required to be rejected per se. The only caution to the court is that such evidence of a child must be scrutinized with care and caution. (See AIR 2008 SC P 1842, GollaEluguGovindu Vs. State of Andhra Pradesh).

Similarly, the evidence given by a dumb witness is also admissible under section 119 of the Evidence Act as such evidence will be deemed to be oral evidence.

Medical evidence indicating the presence of semen of the accused on the body or garment of the victim and rupture of hymen and some scratch marks on the back of the victim or bite marks on the face, lips and breasts of the victim are good evidence in regard to the allegation of rape or sexual abuse of a child. But the presence of these is not an absolute requirement, more particularly when the victim is a married lady or a girl who is an athlete of the victim or when the victim is unable to resist. Presence of medical evidence further strengthens the case of the prosecution. Loose character of the victim is no more a ground of defence. In view of latest amendment to section 154 of the Evidence Act by deleting sub-section 4.

The word 'child' is defined in section 2 (d) of the Protection of Children from Sexual Offences Act 2012. 'A child means any person below the age of 18 years'. Similarly section 375 of IPC- *Sixthly* has also been amended raising the age from 16 to 18 in regard to the consensual sexual intercourse vide Criminal Law (Amendment) Act 2013 which has come into effect from 02.04.2013.

Prosecutor is expected to assist the Sessions Court/Special Court in framing proper questions to be put to the accused. Under section 313 (5) of Cr.P.C., which has come into effect on 31.12.2009, it is the duty of the prosecutor to assist the court in putting all the incriminating aspects to the accused, lest it would be a ground for the accused in the appeal alleging that incriminating circumstances were not brought to his notice at the time of examination of the witness under section 313 of Cr.P.C.

Many a times it will be argued that there are several lacunae in the investigation conducted by the prosecution. Just because investigation in a case of rape or sexual abuse of a child is not proper or that the investigating officer was not diligent, it alone cannot be a ground to disregard the testimony of the prosecutrix in a case of rape or sexual abuse of a child. In Gurmit Singh's case reported in AIR 1996 SC 1393, the victim had not said anything about the rape to her friends, but had narrated about the incident only to her mother that too after reaching home. The conduct of the victim was found to be natural and it was held that her evidence was not to be doubted on the ground that she did not complain either to her lady teachers or to her girlfriends.

It is in this regard, section 6 of the Evidence Act which deals with res-geste is to be considered in proper perspective. Section 6 is an exception to the rule of admissibility of hearsay evidence. For bringing hearsay evidence within the ambit of Section 6 of the Evidence Act, it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication.

TRIAL:

Rape or sexual abuse of a child is the worst form of violence that can be committed against a woman or a child. Sessions Judges dealing with rape cases are expected to be sensitized about the various intricacies involved in a case of this nature. Tendering evidence by the parties to the allegations is the process by which truth will be known. Hence recording of evidence, oral as well as documentary, is the most vital function of the trial judge and would occupy major portion of the time of the court every day. The judge is not only expected to know about the law dealing with the case of rape or sexual abuse of a child but also with various provisions of the Criminal Procedure Code with regard to the manner in which the trial is to be conducted and the relevant provisions of the Evidence Act.

Section 118 of the Evidence Act provides that all persons shall be competent to testify unless the court considers that they are prevented from the questions put to them, or from giving rational answers of those questions, by tender years, extreme old age, disease, whether of body or mind. Section 135 of the Evidence Act deals with the order of production and examination of witnesses as there is no specific provision in Cr.P.C. regarding the order and production of examination of witnesses in a criminal case.

The Special Court constituted under section 28 of this Act provides for trying offences u/s 67-B of the Information Technology Act. This is a special feature under this Act so as to take up matters pertaining to the publication or transmission or sexually explicit material depicting children in any act or conduct or manner or facilitating abuse of children online.

A Special Court dealing with child who is sexually abused, will take cognizance of the offence as there is no procedure for committal to it for trial under

section 209 of Cr.P.C. section 33 of the Act deals with the manner in which the evidence of the sexually abused child must be recorded. It is the duty of the Special Court to permit frequent breaks to the child during the trial and to create and a child-friendly atmosphere by allowing a family member or a guardian or a friend or relative in whom the child has trust or confidence, to be present in the court. It is expected of the Special Court to avoid aggressive questioning or character assassination of the child by the counsel for the accused. It must ensure that the dignity of the child is maintained at any cost. The identity of the child should not be disclosed at any time during the course of investigation or trial unless the Special Court may permit such disclosure of identity that too on reasons being recorded.

Whenever any question arises as to the age of the accused, the special court will have to determine the age of the accused by recording reasons in writing and such finding will not become invalid by any subsequent proof that the age of a person as determined by the Special Court under sub section 2 of section 34 was not the correct age of the person.

It is mandatory for the Special court to record the entire evidence of child within a period of 30 days from the date of taking cognizance of the offence and the entire trial is to be concluded within a period of 1 year from the date of taking cognizance of offence, under section 35 (1) and (2) of the Act. As per section 36 the special court should ensure that the child is not exposed in any way to the accused at the time of recording the evidence except ensuring that the accused is in a position to hear the statement of the child and could communicate with the accused. The entire trial under this Act will have to be held *in-camera*. The Special Court has the power to record the evidence of child in any place other than the court after forming a prior opinion to that effect as per section 284 of Cr.P.C. The Special Court has the power to take the assistance of a translator or an interpreter having such qualifications and experience and if the child has any mental or physical disability, the special court may taken the assistance the special educator or any person familiar with the manner of communication of the child, as per section 38 of the act.

The sexually abused child has the right to take the assistance of a legal counsel of her choice and if the family members are the guardian of the child are unable to afford a legal counsel, it is the duty of the court to provide a competent lawyer from the panel of Legal Services Authority.

The judge is expected to properly prepare before commencing the recording of evidence in open Court. Proper charge has to be framed before the Trial commences since charge is the foundation of a criminal trial. Before framing of charge, the learned judge is expected to look into as to whether the Investigating Agency has produced all the documents that are referred to in the charge sheet. The learned judge is expected to make sure that all the material objects referred to in the final report are placed before the Court. If there are valuables kept in the treasury box, then they are to be secured at the earliest. If the valuables are already returned to the interim custody of the party or parties, the respective witnesses should be intimated well in advance to produce the valuables given to their interim custody for purpose of identification of the same by the witnesses.

Administration of oath as per the Oaths Act is sine qua non before the witness is asked to tender evidence. When the witness steps into the witness box to give the evidence, the first duty of the judge is to administer oath in accordance with the Oaths Act, 1969. When the witness gives evidence in a language not understood by the Court or parties, an interpreter who knows the language of both, has to be appointed by the Court for purposes of interpreting to the witness, questions put and evidence given by witness. The form of oath to be administered to the witness and the interpreter is found incorporated in the schedule to the Oaths Act.

ADMINISTRING OATH TO A CHILD WITNESS

- (i) A child under the age of 12 years should not be administered oath if the Court is of the opinion that it does not understand the meaning of oath or affirmation even if the child witness understands the duty to speak the truth (vide section 4(1) of the Oaths Act). To know whether the child witness understands the implications of oath, the Judge has first to put questions to the child whether he/she understands what is meant by oath and further ask what the consequences would be of not speaking the truth after taking oath. For example, if the child answer that it would invite god's wrath or it is a sin to lie or that it knows it is wrong to tell a lie, the Court can conclude that the child understands the implications of oath and proceed to administer the oath to the child witness. Even otherwise if the court is satisfied that the child understands that it has a duty to speak the truth, its evidence can be recorded.
- (ii) The judge should make a brief record of the preliminary steps taken as stated above and his opinion as to why oath is or is not administered, in the deposition sheet. The Judge should thereafter proceed to record the evidence of the child. The obligation of the child witness to speak the truth is not in any way minimized. The manner in which the child witness gives evidence should be carefully observed by the Judge to find out whether it is tutored and make a record of the same. The likelihood of the Child witness being tutored is a factor that the Judge has to take into consideration in appreciating its evidence. It is the duty of the Court to observe the child witness carefully and if the Court feels that the manner in which the deposition is given is parrot like repetition of whatsoever is tutored, the Court should make a note of such demeanour. The Court should carefully observe if any one accompanying it tries to make signs or gestures to influence the witness and take immediate steps to prevent the same. The Court should make a record of the same in the deposition, which it can be taken into account while assessing the evidence of the child witness. Once the Court is satisfied that the child is speaking the truth, it can rest its decision entirely on such evidence even if the child is a sole witness. The evidence of a single child witness is enough to sustain a conviction in a criminal case if it is trustworthy and inspires confidence as a truthful witness even when there is no witness to corroborate it.
- (iii) In the case of *Rameshwar S/o Kalyan Singh v. The State of Rajasthan AIR 1952 SUPREME COURT 54 (SAIYID FAZL ALI AND VIVIAN BOSE, JJ.)* it is observed as follows:

(A)Oaths Act (10 of 1873), S.5, S.13 – Evidence Act (1 of 1872), S.118 – OATH – EVIDENCE – Evidence of a child – Omission to certify understanding duty to speak truth – Effect on admissibility of evidence.

A Judge who recorded the statement of a girl of seven or eight years certified that she did not understand the sanctity of an oath and accordingly he did not administer one to her. He, however, did not certify that the child understood the duty of speaking the truth. The question was whether this omission rendered her evidence inadmissible.

Held, (1) An omission to administer, an oath, even to an adult, goes only to the credibility of the witness and not his competency. The question of competency is dealt with in S.118, Evidence Act. The Oaths Act does not deal with competency and under S.13 of that Act omission to take oath does not affect the admissibility of the

evidence. It therefore follows that the irregularity in question cannot affect the admissibility of the evidence of the girl: A.I.R. (33) 1946 P.C. 3, Rel. on.

2. It is, however, desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether.

COURT'S DUTY TOWARDS THE WITNESS:

The witness who is characterized as "Eyes and ears of the Court" should be treated with utmost courtesy and should be offered a seat in the witness box. The witness should be protected from bullying or browbeating counsel, as the composure of the witness may be affected by such high handed methods. The court has a duty to see that the questions put to the witness are intelligible to the witness and should relate to fact, the answer for which is expected from him. When complex questions tend to confuse the witness, the court should ensure that such confusing questions are not put to the witness. Lady witnesses should be invariably offered seats in the witness box and counsel should not be allowed to stand close to the witness which may have an intimidating effect on her. Inferences from facts should not be allowed to be put to the witness as it is essentially in the realm of appreciation of evidence. Questions to elicit the recitals of the documents already admitted in evidence should not be allowed to be put to the witness as the recitals can be ready by anybody including the Court.

Some useful tips to be kept in mind while recording evidence are found in the report of the Committee on Induction Training Module for Civil Judges prepared by the Committee consisting of Hon'ble Dr. Justice Sri. V.S. Malimath are reproduced below:

SOME USEFUL TIPS IN RECORDING EVIDENCE:

While recording evidence a Judge will be confronted with several complex situations for which no solution/guidance will be available from the law books. He cannot postpone the process of recording of evidence to find a solution. Hence the judge has to keep his reflexes geared up to face such situations boldly and effectively. The following are some of the useful tips for the Judge to bear in mind:-

- 1) The judge is bound to receive all the evidence tendered unless the object is to impede or obstruct the ends of justice. Failure to hear material witness amounts to denial of fair trial.
- 2) The Court has discretion to direct the exclusion of witnesses from the court room while the testimony of other witnesses is being given.
- 3) The court has inherent power to regulate its business or to make any order for the ends of justice. Therefore, the Court should order the witness who has to give evidence should be present when the deposition of other witnesses is being recorded.
- 4) It is a fair course to keep witnesses of both the sides out of Court hall and only the parties remaining present in the Court during recording of evidence of witnesses.
- 5) The cross examiner must not be allowed to bully or take unfair advantage of the witness.
- 6) The court has power to ask any question to a witness at any time in the interest of justice.
- 7) It must be remembered that witnesses attend the Court to discharge sacred duty of rendering aid to justice. They are, therefore, entitled to be treated

with respect and it is for the judge to see that they feel confident and relaxed in the court hall. **AIR 1981 SC page 1036 (Ram Chander v. The State of Haryana)** wherein it is observed:-

“To be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest”

- 8) That the counsel for the parties is mainly interested in conducting the trial to secure success for his client is understandable. But the obligation of the presiding judge is to conduct the proceedings for achieving the dual objectives - search for truth and rendering a just decision expeditiously. However sensitive the subject matter of the trial may be, the court room is no place for play of passions, emotions and display of surcharged enthusiasm.
- 9) Some times an advocate may put complex questions in order to confuse the witness and to somehow get a favourable answer. If an answer unfavourable to his client comes from the witness, he may resort to bullying the witness to secure a favourable answer. In such a situation the Judge should be firm and record the actual answer given by the witness.

Section 280 of Cr.P.C. provides to record the demeanour of witness. This demeanour of witnesses will be of more relevance in a serious offence of rape as the victim will be in a state of shock due to the trauma caused at the time of the offence.

The witness may be little hesitant while speaking about the heinous crime that was committed on her. Some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. In such an evidence, the victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility, but to test her story for inconsistencies with a view to attempt to twist the interpretation of the events given by her so as to make them appear inconsistent with her allegations. The Court, therefore, should not sit as a silent spectator while the victim of the crime is being cross-examined by the defence. Court is expected to effectively control the recording of evidence in the Court. While, every latitude should be given to the defence to test the veracity of the prosecutrix and the credibility of her version through cross examination, the court must also ensure that cross examination is not made a means of harassment or causing humiliation to the victim of crime. (See Para 16, 21, and 22 of Gurmit Singh's case).

DAY TO DAY TRIAL U/S 309 OF CR.P.C.

As per first proviso to Sec. 376 mandates, the Session Court dealing with the case of rape punishable under Sec. 376 and 376 (A) to (D) of IPC must complete the proceedings within a period of two months from the date of commencement of examination of the witness. The Hon'ble Apex Court in *Akil @ Javed Vs. State NCT Delhi* (Crl. A. 1735) 09 dated 6.12.2012 has again held that trial in all criminal cases should be held on day-to-day basis and if there is any deviation from the mandatory provision to Sec. 309 of Cr.P.C., it would be a serious lapse and would be dealt on the administrative side by the High Court. Therefore, it is mandatory that the trial should be held on a day to day basis.

Examination of JMFC as a witness for the Special Court JMFC who has recorded the statement of the victim U/s 164 of Cr.P.C should not be summoned as a witness since such a statement is a public document as per Section 80 of Evidence Act. Hence it doesnot require any formal evidence (Ref paragraph - 5 of **1981 (2) SCC 224 Madi Ganga Vs. State of Orissa** and paragraph 12 of **2003 CrLJ 3252 Guruvindapalli Anna Rao & Others Vs. State of Andhra Pradesh**).

Section 33 of POCSO Act mandates that the Special Court shall create a child friendly atmosphere while recording the evidence and such evidence is to be recorded in camera without giving room for continuous examination. Section 36 of the Act mandates that Court has to take steps to see that the child would not see the accused at the time of testifying.

EXAMINATION OF THE ACCUSED

Section 313 of Cr.P.C. provides for examination of the accused after the conclusion of the evidence on behalf of the prosecution. This provides an opportunity for the accused to explain the incriminating circumstances put to him under Sec. 313 of Cr.P.C. The Court can also take the assistance of the Special Public Prosecutor and the learned advocate appearing for the accused while preparing the questions to be put to the accused under Sec. 313 of Cr.P.C. The Court should make all effort to bring out the incriminating aspects in the prosecution case to put to the accused and seek his explanation. It is true that the accused can keep silent when he is examined, but if the accused make statement supporting prosecution case in his examination, such statement can be used against him. (See AIR 2012 SC 1357 – Ramnaresh Vs. State of Chhattisgarh).

MEDICAL & FORENSIC EVIDENCE

Discovery of spermatozoa in the private part of the victim is not a must to consider it as penetration. Even slight penetration of penis into vagina without rupturing the hymen can constitute rape. (See decisions reported in 1994 (5) SCC P 728 – Narayanamma Vs. State of Karnataka and 1992 (3) SCC P 204 Madan Gopal Kakkad Vs. Naval Dubey). In case of children who are incapable of offering any resistance external mark of violence may not be found. Absence of marks of external injury by itself does not negate the prosecution case (See Modi's medical jurisprudence 22nd Edition P 502 & 509).

PRESUMPTION

Section 29 of the Act which provides for presumption as to certain offences u/s 3, 5, 9 of this Act is material in the realm of assessment of evidence as the accused is expected to effectively rebut this presumption in case main ingredients are established by the prosecution.

Section 29 of POCSO Act 2012 reads as follows:- “Section 29-Presumption as to certain offences:- 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.”

On a Main reading of Section 29, it appears that the moment a charge sheet is filed against the accused for offences punishable u/Sections 3,5,7 and 9 of the Act, the accused is to prove that he has not committed any offence alleged against him. It may be construed that the burden is on the accused to prove his innocence and that prosecution may not lead any evidence. Hence it may be argued that S.29 is highly arbitrary and unreasonable and violates the provisions of S.14 and 20(3) of the constitution. While dealing with the analogous Section 8-A from the Dowry Prohibition Act – 1961, full bench of the High Court of Karnataka has held that presumption contemplated U/S 8-A could be directed only after that initial burden for offences punishable U/Sections 3 and 4 of the Dowry Prohibition Act – 1961 is effectively discharged. It is further held that a burden cast upon the accused U/S 8-A could be discharged as the basis of the preponderance of probabilities. The full bench decision is reported in **ILR 1993 Kar 3035 Harikumar Vs. State of Karnataka**.

The analogy of the principles enunciated in the case of Hari kumar is aptly applicable even in regard to S.29 of POCSO Act 2012 as the prosecution is extracted to initially prove that the accused committed a penetrative sexual assault as defined in S.3, or aggravated penetrative sexual assault as per S.5 or a sexual assault as per S.7 of POCSO Act-2012. Relying upon a constitution bench decision in the case of **AIR 1957 SC 877 Babulal Mehta Vs. Collector of Customs, (FB)** of Karnataka High Court has held that S-8A lays down a rule of evidence casting burden on the accused only where basic ingredients of Sections 2, 3 and 4 of Dowry Prohibition Act – 1961 are proved. Paragraph 20 of the decision in Harikumars case is relevant and is extracted below:-

“20- Before parting with this discussion, we may however mention that the prime burden of proof rests on the prosecution to establish the basic facts and ingredients for bringing home to the accused the offence, under Section 3 or Section 4 of the Act and the prosecution will have to establish its case in this connection beyond reasonable doubt. Once that happens, then only the burden will shift on the accused under Section 8A of the Act, to show that he has not given or taken or abetted any giving or taking of any property or valuable security in connection with the marriage of parties or that he has not demanded directly or indirectly from the parents or the relatives of the bride or bridegroom as the case may be, any dowry, meaning thereby such demand if any is not in connection with the marriage of the said parties. The said burden of proof on the accused as contemplated in Section 8A of the Act can be discharged on preponderance of probabilities. In this connection, we may refer to the Decision of the Supreme Court in the case of **Trilok Chand Jain Vs. State of Delhi, AIR 1977 SC 666** wherein the Supreme Court dealing with presumption under Section 4(1) of the Prevention of Corruption.

BURDEN OF PROOF AND SOME LEADING DECISIONS OF THE HON’BLE SUPREME COURT

In criminal case the burden of proof proving the prosecution case is on the prosecution. The standard of proof required is “Proof beyond reasonable doubt” and this standard is higher than the “Standard of preponderance of probability” prescribed for every case. This concept of “Standard of preponderance of probability” will have to be understood in the right perspective.

Hon’ble Supreme Court in State of Uttar Pradesh Vs. Krishna Gopal – AIR 1988 SC 2154 has eloquently explained the concept of “Proof beyond reasonable doubt”.

13).....
 *“A person has, no doubt, a profound right not to be convicted to an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to “proof” is an exercise particular to each case. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense.”*

“The concepts of probability, and the degree of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust commonsense and, ultimately, on the trained institutions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.”

.....
(emphasis supplied)

12) **Justice ArijithPasayath**, has explained the concept of “Reasonable Doubt” in the following terms in 2004(13) SCC 308 State of M.P. V/s. Dharkole alias Govind Singh and others:-

“11. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case”

It is pertinent to keep in mind the statutory presumption u/s 29 of the Act while assessing the evidence. In the realm of evidence this statutory presumption through rebuttable one, plays a vital role.

Justice Krishna Iyer’s eloquent observations in **AIR 1973 SC 2622** between *ShivajiraoBhobade V/s. State of Maharashtra*, deserve to be read again and again. The relevant paragraph is reproduced:-

“The Judicial instrument has a public accountability. The cherished principle or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every lurch, hesitancy and degree of doubt. The excessive solitude reflected in the attitude that a thousand guilty men may go but once innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community.”

The above caution given by the Hon’ble Supreme Court will have to be kept in mind by the Judge while appreciating the evidence placed on record. In fact the principles enunciated in Krishna Gopal’s case has been reiterated by the Hon’ble Supreme Court in *Sucha Singh & another Vs. State of Punjab* case 2003 (3) SCC 647 and *State of Madhya Pradesh Vs. Dharkole @ Govind Singh and others – 2005 Crl.L.J. 108 SC = (2004) 13 SCC 308*. Apart from this, the Court is expected to keep in mind the salient aspects relating to the punishment to be imposed after convicting the accused for the offence of rape.

PUNISHMENT:

(In this Act minimum punishment is provided for offences punishable under section 4, 6, 8, 10, 12, 14, 15, 17 and 19 of the Act. The discretion of the court in sentencing a accused to a lesser degree is inhibited. Since offences against women and children

more especially of rape, outraging the modesty and sexual abuse are grave offences against the state, courts should be slow in taking a lenient view in the matter of imposing sentence of imprisonment and fine)

Choice of appropriate sentence is a serious matter and should not be dealt in a casual and mechanical manner. The judge is expected to consider all relevant facts and circumstances before determining the quantum of sentence even in cases where conviction is based on the plea of guilty.

In State of Madhya Pradesh Vs. Babulal – AIR 2008 SC 582, Hon'ble Supreme Court has held as follows keeping in mind the interest of the victim of the crime in particular and the impact on society in general.

“25. In justice-delivery system, sentencing is indeed a difficult and complex question. Every court must be conscious and mindful of proportion between an offence committed and penalty imposed as also its impact on society in general and the victim of the crime in particular”.

Social impact of the crime, particularly where it relates to offences against women cannot be lost sight of and per se requires exemplary treatment. Any liberal attitude of imposition meagre sentence or too sympathetic view may be counterproductive in the long run and against social interest which needs to be cared for protected and strength by string of deterrence inbuilt in the sentencing the system. (See B.G. Goswami Vs. Delhi Administration – (1974) 3 SCC 85)

When the guilt is proved and the accused is convicted in a case of rape or sexual abuse of a child, normally the accused will make a strong attempt to impress upon the Court about the extenuating or mitigating circumstances stating that the accused has no prior criminal record and that he is of a tender age and that there was no mens rea. An attempt will also be made that the accused does not have a good health and that there are number of members in his family, who depend upon him and that he has a wife and a small child or children. The prosecuting agency must keep in mind the gravity of the offence, the age of the victim, the serious difficulty to be faced by the victim like the stigma in the society. Tender age of the accused, the poor financial background of the accused, the number of persons who are dependent upon on him for their livelihood are not of much inconsequence.

Whenever, special reasons are sought to be urged on behalf of the accused seeking sentence lesser than the minimum sentence, the prosecution will have to see as to whether the accused is really entitled to a punishment lesser than the minimum sentence. Especially in a gang rape and murder of the victim, the prosecution will be entitled to seek death penalty as it would be a rarest of the rare cases. Seeking punishment lesser than the minimum prescribed under Sec. 376 of IPC is an exception to the general rule and it can be invoked in exceptional circumstances only moreso, where the conditions incorporated in the exception clause itself exist.

It is specifically held in State of Rajasthan Vs. Vinod Kumar - AIR 2012 SC 2301 as follows:

“exception clause is always required to be strictly interpreted even if there is any hardship to any individual. Exception is provided with the object of taking it out of the scope of the basic law and what is included in it and what legislature desired to be excluded. Hence, the power under the proviso to the main Section is not to be used indiscriminately in a routine or casual manner.”

Sec. 42 of this Special Act provides that where an act or omission constitute an offence punishable under this Act and also under any other 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.

COMPENSATION TO THE VICTIM:

The Special Court has got power to direct the accused who is convicted of having committed offence/s under this Act to pay compensation under Sub-Section 8 of Sec. 33 in regard to the physical or mental trauma caused to the child or for immediate rehabilitation also. Therefore, in suitable cases, the Special Court can award higher compensation than the one found in the scheme formulated by the State Governments u/s. 357–A of Cr.P.C.

Rule 7 (1) of the Protection of Children from Sexual Offence Rules, 2012 even provides the Special court to award interim compensation also meet the immediate needs of the child for relief or rehabilitation of the child at any stage after the registration of FIR.

COURTESY

Article on '**Recording Evidence**' prepared by the committee headed by **Hon'ble Dr.JusticeV.S.Malimath**, while formulating a training module to the newly recruited Civil Judges for Karnataka Judicial Academy.

Annex 7:

Important Decisions Relating to Victims of Child Sexual Abuse

- 1) State of Punjab Vs. Gurmit Singh & Others (1996) 2 SCC 384
- 2) Sakshi Vs. Union of India & Others (2004) 5 SCC 518
- 3) GollaYeluguGovindu Vs. State of Andhra Pradesh (2008) 16 SCC 769
- 4) State of Karnataka by Nonavinakere Police Vs. Shivanna @ TarakariShivanna (2014) 8 SCC 913
- 5) Court on its Own Motion Vs. State of NCT of Delhi & Another, WP (Crl) No. 930/2007 decided by the Hon'ble Delhi High Court on 14/8/2007
- 6) Virender Vs. State of NCT of Delhi, Crl. Appeal No.121/2008 decided by the Hon'ble Delhi High Court on 29/9/2009

1) **State of Punjab Vs. Gurmit Singh & Others (1996) 2 SCC 384**

In this case, the Hon'ble Supreme Court (Bench headed by Hon'ble Dr. Justice A.S. Anand) has discussed how a victim of sexual offence be treated while recording of her evidence and how to appreciate her evidence. The relevant paragraphs at 21 and 22 (at page no.402 and 403) are extracted here under:

21. *Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.*
22. *There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or*

to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as “discrepancies and contradictions” in her evidence.”

In said decision itself, the Hon'ble Apex Court at para 24 has impressed upon the trial courts not to disclose the name of the prosecutrix in their orders. The relevant portion of para 24 (at page no 405) is extracted here under:

24. *“..... The courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout. In the present case, the trial court has repeatedly used the name of the victim in its order under appeal, when it could have just referred to her as the prosecutrix. We need say no more on this aspect and hope that the trial courts would take recourse to the provisions of Sections 327(2) and (3) CrPC liberally. Trial of rape cases in camera should be the rule and an open trial in such cases an exception.”*

2) Sakshi Vs. Union of India & Others (2004) 5 SCC 518

In this decision, the Hon'ble Supreme Court at para 34 (at page no. 545) has issued directions that must be adhered to while conducting trial of child sexual abuse or rape. Paragraph 34 is as follows:

“34. The writ petition is accordingly disposed of with the following directions:

- (1) The provisions of sub-section (2) of Section 327 CrPC shall, in addition to the offences mentioned in the sub-section, also apply in inquiry or trial of offences under Sections 354 and 377 IPC.*
- (2) In holding trial of child sex abuse or rape:
 - (i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;*
 - (ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;*
 - (iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.**

*These directions are in addition to those given in **State of Punjab v. Gurmit Singh [(1996) 2 SCC 384 : 1996 SCC (Cri) 316]** .”*

3) **GollaYeluguGovindu Vs. State of Andhra Pradesh (2008) 16 SCC 769**

In this matter, the Hon'ble Apex Court at para 11 has discussed the competence of a child witness. The paragraph 11 of the judgment (at page no. 771 and 772) is extracted as under:

*"11. "6. The Evidence Act, 1872 (in short 'the Evidence Act') does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease—whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by Brewer, J. in **Wheeler v. United States [40 L Ed 244 : 159 US 523 (1895)]** . The evidence of a child witness is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. (See **Suryanarayana v. State of Karnataka [(2001) 9 SCC 129 : 2002 SCC (Cri) 413 : (2001) 1 Supreme 1]** .)*

*7. In **DattuRamraoSakhare v. State of Maharashtra [(1997) 5 SCC 341 : 1997 SCC (Cri) 685]** it was held as follows: (SCC p. 343, para 5)*

'5. ... A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored'

The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that its conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

4) **State of Karnataka by Nonavinakere Police Vs. Shivanna @ TarakariShivanna (2014) 8 SCC 913**

In this judgment, the Hon'ble Supreme Court has examined the duties of Police in case of investigations into cases of crimes against women and children and issued certain directions at para 10 of the judgment to the police officers. Para 10 of the judgment (at page no. 915 and 916) is extracted below:

"10. On considering the same, we have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of

mandamus to all the Police Stations-in-Charge in the entire country to follow the directions of this Court which are as follows:

- 10.1. Upon receipt of information relating to the commission of offence of rape, the investigating officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the investigating officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC is filed.
- 10.2. The investigating officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.
- 10.3. The investigating officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.
- 10.4. If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the investigating officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
- 10.5. Medical examination of the victim: Section 164-A CrPC inserted by Act 25 of 2005 in CrPC imposes an obligation on the part of investigating officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC.

4) Court on its Own Motion Vs. State of NCT of Delhi & Another, WP (Crl) No. 930/2007, dated 14/8/2007 decided by the Hon'ble Delhi High Court

In this case, the Hon'ble Delhi High Court converted a complaint received by it into writ petition in which instance of insensitivity on the part of various authorities while dealing the case of a child subjected to sexual abuse has been considered and elaborate directions were issued to the various authorities at para 3 of the judgments. Paragraph 3 of the judgment is extracted here under:

"3. The children by reason of their physical and mental status need special safeguards and care. Child victims of sexual abuse are to be treated with compassion and dignity. All concerned associated with Criminal Justice System need to be sensitized about their protective role to prevent further victimisation of child victims. To secure this end it is rendered imperative to lay down certain guidelines, which we do and direct as follows:

POLICE

1. On a complaint of a cognizable offence involving a child victim being made, concerned police officer shall record the complaint promptly and accurately.
2. The investigation of the case shall be referred to an officer not below the rank of Sub-Inspector, preferably a lady officer, sensitized by imparting appropriate training to deal with child victims of sexual crime.
3. The statement of the victim shall be recorded verbatim.
4. The officer recording the statement of the child victim should not be in police uniform.

5. *The statement of the child victim shall be recorded at the residence of the victim or at any other place where the victim can make a statement freely without fear.*
6. *The statement should be recorded promptly without any loss of time.*
7. *The parents of the child or any other person in whom the child reposes trust and confidence will be allowed to remain present.*
8. *The Investigating Officer to ensure that at no point should the child victim come in contact with the accused.*
9. *The child victim shall not be kept in the police station overnight on any pretext, whatsoever, including medical examination.*
10. *The Investigating Officer recording the statement of the child victim shall ensure that the victim is made comfortable before proceeding to record the statement and that the statement carries accurate narration of the incident covering all relevant aspects of the case.*
11. *In the event the Investigating Officer should so feel the necessity, he may take the assistance of a psychiatrist.*
12. *The Investigating Officer shall ensure that the child victim is medically examined at the earliest preferably within twenty four hours (in accordance with Section 164ACr.P.C) at the nearest government hospital or hospital recognized by the government.*
13. *The Investigating Officer shall ensure that the investigating team visits the site of the crime at the earliest to secure and collect all incriminating evidence available.*
14. *The Investigating Officer shall promptly refer for forensic examination clothings and articles necessary to be examined, to the forensic laboratory which shall deal with such cases on priority basis to make its report available at an early date.*
15. *The investigation of the cases involving sexually abused child may be investigated on a priority basis and completed preferably within ninety days of the registration of the case. The investigation shall be periodically supervised by senior officer/s.*
16. *The Investigating Officer shall ensure that the identity of the child victim is protected from publicity.*

MEDICAL EXAMINATION

1. *In case of a girl child victim the medical examination shall be conducted preferably by a female doctor.*
2. *In so far as it may be practical, psychiatrist help be made available to the child victim before medical examination at the hospital itself.*
3. *The report should be prepared expeditiously and signed by the doctor conducting the examination and a copy of medical report be provided to the parents/guardian of the child victim.*
4. *In the event results of examination are likely to be delayed, the same should be clearly mentioned in the medical report.*
5. *The parents/guardian/person in whom child have trust should be allowed to be present during the medical examination.*

6. *Emergency medical treatment wherever necessary should be provided to the child victim.*
7. *The child victim shall be afforded prophylactic medical treatment against STDs.*
8. *In the event the child victim is brought to a private/nursing home, the child shall be afforded immediate medical attention and the matter be reported to the nearest police station.*

RECORDING OF STATEMENT BEFORE MAGISTRATE

1. *The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing.*
2. *In the event of the child victim being in the hospital, the concerned Magistrate shall record the statement of the victim in the hospital.*
3. *To create a child friendly environment separate rooms be provided within the Court precincts where the statement of the child victim can be recorded.*
4. *The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of "Ascertaining voluntary nature of statement" unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice.*
5. *Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded.*
6. *No Court shall detain a child in an institution meant for adults.*

TRIAL COURT

1. *It shall be endeavor of the Court to create a child friendly atmosphere while conducting its proceedings in respect of a sexually abused child.*
2. *Proceedings shall be conducted in camera and appropriate measures taken to ensure that the child victim is not confronted with the accused and the directions in this regard given by the Supreme Court in 'Sakshi v. Union of India' are enforced.*
3. *Wherever possible the Court may resort to the recording of statement through video conferencing.*
4. *The Court may, if it so thinks fit, direct that the questions to be put by the accused in cross-examination to the child victim be given in writing to the Presiding Officer of the Court, who may in turn put the same to the victim in a language which is neither embarrassing nor confusing.*
5. *The Committal Court shall commit such cases to the Court of Sessions preferably within fifteen days after the filing of the chargesheet.*
6. *The concerned authorities are directed to inform themselves of the guidelines laid down by the Supreme Court in 'Delhi Domestic Working Women's Forum v. Union of India and Ors.' 'State of Punjab v. Gurmit Singh and Ors.' as also 'Sakshi v. Union of India and Ors.'*

6) Virender Vs. State of NCT of Delhi, CrI. Appeal No.121/2008 decided by the Hon'ble Delhi High Court on 29/9/2009

In this decision, the Hon'ble Delhi High Court, while deciding an appeal against the judgment of conviction passed by the Additional Sessions Judge, examined the poor nature of the evidence and the role of the court in sensitively assessing the

competence of the child witness. In this decisions, the Hon'ble Court has collated all the guidelines and directions told by the Hon'ble Supreme Court and High Court at Para 83. Paragraph 83 is extracted here under:

83. It therefore needs no further elaboration that the care which is required, whether the child is victim of the offence or is one who has witnessed the occurrence would remain the same. It is also evident that on different aspects of investigation, medical examination and trial relating to commission of offences including sexual offences wherein either the victim is a child or a child is required to appear as a witness in support of the prosecution, directions have been made and guidelines have been laid down in different judgments which have not received the attention they deserve. It would be in the interests of justice to therefore compile the same to facilitate their implementation. Upon hearing learned counsel for the parties in the present case and on a consideration of the several judgments placed by Mr. Manoj Ohri, learned APP for the state, certain additional requirements have been also noticed and set out in the preceding paragraphs. For the sake of convenience, the directions and guidelines laid down by the Apex Court and this court so far as case involving a child victim or child witness which are required to be mandatorily and urgently implemented are culled out as follows:-

I. POLICE

- (i). *On a complaint of a cognisable offence involving a child victim being made, concerned police officer shall record the complaint promptly and accurately. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (ii). *Upon receipt of a complaint or registration of FIR for any of the aforesaid offences, immediate steps shall be taken to associate a scientist from Forensic Science Laboratory or some other Laboratory or department in the investigations. The Investigating Officer shall conduct investigations on the points suggested by him also under his guidance and advice. (Ref : Mahender Singh Chhabra vs. State of N.C.T. Of Delhi &Ors.)*
- (iii). *The investigation of the case shall be referred to an officer not below the rank of Sub-Inspector, preferably a lady officer, sensitized by imparting appropriate training to deal with child victims of sexual crime. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (iv). *The statement of the victim shall be recorded verbatim. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (v). *The officer recording the statement of the child victim should not be in police uniform. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (vi). *The statement of the child victim shall be recorded at the residence of the victim or at any other place where the victim can make a statement freely without fear. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (vii). *The statement should be recorded promptly without any loss of time. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (viii). *The parents of the child or any other person in whom the child reposes trust and confidence will be allowed to remain present. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (ix). *The Investigating Officer to ensure that at no point should the child victim come in contact with the accused. (Ref: Court On Its Own Motion vs. State &Anr.)*

- (x) *The child victim shall not be kept in the police station overnight on any pretext, whatsoever, including medical examination. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (xi). *The Investigating Officer recording the statement of the child victim shall ensure that the victim is made comfortable before proceeding to record the statement and that the statement carries accurate narration of the incident covering all relevant aspects of the case.(Ref: Court On Its Own Motion vs. State &Anr.)*
- (xii). *In the event the Investigating Officer should so feel the necessity, he may take the assistance of a psychiatrist.(Ref: Court On Its Own Motion vs. State &Anr.)*
- (xiii). *The Investigating Officer shall ensure that the child victim is medically examined at the earliest preferably within twenty four hours (in accordance with Section 164A Cr.P.C) at the nearest government hospital or hospital recognized by the government.(Ref: Court On Its Own Motion vs. State &Anr.)*
- (xiv). *The Investigating Officer shall ensure that the investigating team visits the site of the crime at the earliest to secure and collect all incriminating evidence available.(Ref: Court On Its Own Motion vs. State &Anr.)*
- (xv). *The Investigating Officer shall promptly refer for forensic examination clothings and articles necessary to be examined, to the forensic laboratory which shall deal with such cases on priority basis to make its report available at an early date.(Ref: Court On Its Own Motion vs. State &Anr.)*
- (xvi). *The investigation of the cases involving sexually abused child may be investigated on a priority basis and completed preferably within ninety days of the registration of the case. The investigation shall be periodically supervised by senior officer/s.(Ref: Court On Its Own Motion vs. State &Anr.)*
- (xvii). *The Investigating Officer shall ensure that the identity of the child victim is protected from publicity.(Ref: Court On Its Own Motion vs. State &Anr.)*
- (xviii). *To ensure that the complainant or victim of crime does not remain in dark about the investigations regarding his complaint/FIR, the complainant or victim shall be kept informed about the progress of investigations. In case the complainant gives anything in writing and requests the I.O., for investigations on any particular aspect of the matter, the same shall be adverted to by the I.O. Proper entries shall be made by I.O. in case diaries in regard to the steps taken on the basis of the request made by the complainant. The complainant, however, shall not be entitled to know the confidential matters, if any, the disclosure of which may jeopardize the investigations.(Ref : Mahender Singh Chhabra vs. State of N.C.T. Of Delhi &Ors.)*
- (xix). *Whenever the SDM/Magistrate is requested to record a dying declaration, video recording also shall be done with a view to obviate subsequent objections to the genuineness of the dying declaration.(Ref :*

Mahender Singh Chhabra vs. State of N.C.T. Of Delhi &Ors.)

- (xx). *The investigations for the aforesaid offences shall be personally supervised by the ACP of the area. The concerned DCP shall also undertake fortnightly review thereof. (Ref : Mahender Singh Chhabra vs. State of N.C.T. Of Delhi &Ors.)*
- (xxi). *The material prosecution witnesses cited in any of the aforesaid offences shall be ensured safety and protection by the SHO concerned, who shall*

personally attend to their complaints, if any. (Ref : **Mahender Singh Chhabra vs. State of N.C.T. Of Delhi &Ors.**)

- (xxii). Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded. (Ref: **Court On Its Own Motion vs. State &Anr.**)

II RECORDING OF STATEMENT BEFORE MAGISTRATE

- (i). The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing. (Ref: **Court On Its Own Motion vs. State &Anr.**)
- (ii). In the event of the child victim being in the hospital, the concerned Magistrate shall record the statement of the victim in the hospital. (Ref: **Court On Its Own Motion vs. State &Anr.**)
- (iii). To create a child friendly environment separate rooms be provided within the Court precincts where the statement of the child victim can be recorded. (Ref: **Court On Its Own Motion vs. State &Anr.**)
- (iv). The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of "Ascertaining voluntary nature of statement" unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice. (Ref: **Court On Its Own Motion vs. State &Anr.**)
- (v). Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded. (Ref: **Court On Its Own Motion vs. State &Anr.**)
- (vi). No Court shall detain a child in an institution meant for adults. (Ref: **Court On Its Own Motion vs. State &Anr.**)

III MEDICAL EXAMINATION

- (i) Orientation be given to the Doctors, who prepare MLCs or conduct post mortems to ensure that the MLCs as well as post mortem reports are up to the mark and stand judicial scrutiny in Courts. (Ref : **Mahender Singh Chhabra vs. State of N.C.T. Of Delhi &Ors.**)
- (ii) While conducting medical examination, child victim should be first made comfortable as it is difficult to make her understand as to why she is being subjected to a medical examination.
- (iii) In case of a girl child victim the medical examination shall be conducted preferably by a female doctor. (Ref: **Court On Its Own Motion vs. State &Anr.**)
- (iv). In so far as it may be practical, psychiatrist help be made available to the child victim before medical examination at the hospital itself. (Ref: **Court On Its Own Motion vs. State &Anr.**)
- (iv) The report should be prepared expeditiously and signed by the doctor conducting the examination and a copy of medical report be provided to the parents/guardian of the child victim. (Ref: **Court On Its Own Motion vs. State &Anr.**)
- (vi) In the event results of examination are likely to be delayed, the same should be clearly mentioned in the medical report. (Ref: **Court On Its Own Motion vs. State &Anr.**)

- (vii) *The parents/guardian/person in whom child have trust should be allowed to be present during the medical examination. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (viii) *Emergency medical treatment wherever necessary should be provided to the child victim. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (ix) *The child victim shall be afforded prophylactic medical treatment against STDs. (Ref: Court On Its Own Motion vs. State &Anr.)*
- (x) *In the event the child victim is brought to a private/nursing home, the child shall be afforded immediate medical attention and the matter be reported to the nearest police station. (Ref: Court On Its Own Motion vs. State &Anr.)*

IV COURT

- i) To create a child friendly environment separate rooms be provided within the Court precincts where the statement of the child victim can be recorded. (Ref : Court On Its Own Motion vs. State &Anr).*
- ii) In case of any disability of the victim or witness involving or impairing communication skills, assistance of an independent person who is in a position to relate to and communicate with such disability requires to be taken.*
- iii) The trials into allegations of commission of rape must invariably be “in camera” . No request in this behalf is necessary. (Ref : State of Punjab vs. Gurmit Singh)*
- iv) The child witness should be permitted to testify from a place in the courtroom which is other than the one normally reserved for other witnesses.*
- v) To minimise the trauma of a child victim or witness the testimony may be recorded through video conferencing or by way of a close circuit television. If this is not possible, a screen or some arrangement be made so that the victims or the child witness do not have to undergo seeing the body or face of the accused. The screen which should be used for the examination of the child witness or a victim should be effective and installed in such manner that the witness is visible to the trial judge to notice the demeanour of the witness. Single visibility mirrors may be utilised which while protecting the sensibilities of the child, shall ensure that the defendant's right to cross examination is not impaired. (Ref : Sakshi vs UOI).*
- vi) Competency of the child witness should be evaluated and order be recorded thereon.*
- vii) The trial court is required to be also satisfied and ought to record its satisfaction that the child witness understands the obligation to speak the truth in the witness box. In addition to the above, the court is required to be satisfied about the mental capacity of the child at the time of the occurrence concerning which he or she is to testify as well as an ability to receive an accurate impression thereof. The court must be satisfied that the child witness has sufficient memory to retain an independent recollection of the occurrence and a capacity to express in words or otherwise his or her memory of the same. The court has to be satisfied that the child witness has the capacity to understand simple questions which are put to it about the occurrence. There can be no manner of doubt that record of the evidence of the child witness must contain such satisfaction of the court.*

- viii) *As far as possible avoid disclosing the name of the prosecutrix in the court orders to save further embarrassment to the victim of the crime; anonymity of the victim of the crime must be maintained as far as possible throughout.*
- ix) *The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing. (Ref : **Court On Its Own Motion vs. State of N.C.T. Of Delhi**)*
- x) *The court should be satisfied that the victim is not scared and is able to reveal what has happened to her when she is subjected to examination during the recording of her evidence. The court must ensure that the child is not concealing portions of the evidence for the reason that she has bashful or ashamed of what has happened to her.*
- xi) *It should be ensured that the victim who is appearing as a witness is at ease so as to improve upon the quality of her evidence and enable her to shed hesitancy to depose frankly so that the truth is not camouflaged on account of embarrassment at detailing the occurrence and the shame being felt by the victim.*
- xii) *Questions should be put to a victim or to the child witness which are not connected to case to make him/her comfortable and to depose without any fear or pressure;*
- xiii) *The trial judge may permit, if deemed desirable to have a social worker or other friendly, independent or neutral adult in whom the child has confidence to accompany the child who is testifying (Ref **Sudesh Jakhu vs. K.C.J. &Ors**). This may include an expert supportive of the victim or child witness in whom the witness is able to develop confidence should be permitted to be present and accessible to the child at all times during his/her testimony. Care should be taken that such person does not influence the child's testimony.*
- xiv) *Persons not necessary for proceedings including extra court staff be excluded from the courtroom during the hearing.*
- xv) *Unless absolutely imperative, repeated appearance of the child witness should be prevented.*
- xvi) *It should be ensured that questions which are put in cross examination are not designed to embarrass or confuse victims of rape and sexual abuse (Ref : **Sakshi vs UOI**).*
- xvii) *Questions to be put in cross examination on behalf of the accused, in so far as they relate directly to the offence, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing. (Ref : **Sakshi vs. UOI**)*
- xviii) *The examination and cross examination of a child witness should be carefully monitored by the presiding judge to avoid any attempt to harass or intimidate the child witness.*
- xix) *It is the duty of the court to arrive at the truth and subserve the ends of justice. The courts have to take a participatory role in the trial and not act as mere tape recorders to record whatever is being stated by the witnesses. The judge has to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, the court can control the proceedings effectively so that the ultimate objective that is the truth is arrived at. The court must be conscious of serious pitfalls and dereliction of duty on*

the part of the prosecuting agency. Upon failure of the prosecuting agency showing indifference or adopting an attitude of aloofness, the judge must exercise the vast powers conferred under section 165 of the Evidence Act and section 311 of the CrPC to elicit all necessary materials by playing an active role in the evidence collecting process. (Ref : **Zahira Habibulla H. Sheikh &Anr. vs. State of Gujarat &Ors.**)

- xx) The judge is expected to actively participate in the trial, elicit necessary materials from the witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. The judge has uninhibited power to put questions to the witness either during chief examination or cross examination or even during re-examination for this purpose. If a judge feels that a witness has committed an error or slip, it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross examination. (Ref: **AIR 1997 SC 1023 (para 12) State of Rajasthan vs. Ani alias Hanif &Ors.**)
- xxi) The court should ensure that the embarrassment and reservations of all those concerned with the proceedings which includes the prosecutrix, witnesses, counsels may result in camouflage of the ingredients of the offence. The judge has to be conscious of these factors and rise above any such reservations on account of embarrassment to ensure that they do not cloud the truth and the real actions which are attributable to the accused persons.
- xxii) The court should ascertain the spoken language of the witness as well as range of vocabulary before recording the deposition. In making the record of the evidence court should avoid use of innuendos or such expressions which may be variably construed. For instance “gandiharkatein” or “batamezein” have no definite meaning. Therefore, even if it is necessary to record the words of the prosecutrix, it is essential that what those words mean to her and what is intended to be conveyed are sensitively brought out.
- xxiii) The court should ensure that there is no use of aggressive, sarcastic language or a gruelling or sexually explicit examination or cross examination of the victim or child witness. The court should come down heavily to discourage efforts to promote specifics and/or illustration by any of the means offending acts which would traumatise the victim or child witness and effect their testimony. The court to ensure that no element of vulgarity is introduced into the court room by any person or the record of the proceedings.
- xxiv) In order to elicit complete evidence, a child witness may use gestures. The courts must carefully translate such explanation or description into written record.
- xxv) The victim of child abuse or rape or a child witness, while giving testimony in court should be allowed sufficient breaks as and when required. (Ref : **Sakshi vs. UOI**)
- xxvi) Cases of sexual assaults on females be placed before lady judges wherever available. (Ref: **State of Punjab vs. Gurmit Singh**) To the extent possible, efforts be made that the staff in the courtroom concerned with such cases is also of the same gender.
- xxvii) The judge should be balanced, humane and ensure protection of the dignity of the vulnerable victim. There should be no expression of gender bias in the proceedings. No humiliation of the witness should be permitted either in the examination in chief or the cross examination.

xxviii) *A case involving a child victim or child witness should be prioritised and appropriate action taken to ensure a speedy trial to minimise the length of the time for which the child must endure the stress of involvement in a court proceeding. While considering any request for an adjournment, it is imperative that the court considers and give weight to any adverse impact which the delay or the adjournment or continuance of the trial would have on the welfare of the child.*

V GENERAL

- (i) *Effort should be made to ensure that there is continuity of persons who are handling all aspects of the case involving a child victim or witness including such proceedings which may be out of criminal justice system. This may involve all steps commencing from the investigation to the prosecutor to whom the case is assigned as well as the judge who is to conduct the trial.*
- (ii) *The police and the judge must ascertain the language with which the child is conversant and make every effort to put questions in such language. If the language is not known to the court, efforts to join an independent translator in the proceedings, especially at the stage of deposition, should be made.*
- (iii) *It must be ensured that the number of times that a child victim or witness is required to recount the occurrence is minimised to the absolutely essential. For this purpose, right at the inception, a multidisciplinary team involving the investigating officer and the police; social services resource personnel as well as the prosecutor should be created and utilised in the investigation and prosecution of such cases involving a child either as a victim or a witness. This would create and inspire a feeling of confidence and trust in the child.*
- (iv) *The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of "Ascertaining voluntary nature of statement" unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice. (Ref : **Court On Its Own Motion vs. State of N.C.T. Of Delhi**)*
- (v) *Courts in foreign countries have evolved several tools including anatomically correct illustrations and figures (as dolls). No instance of such assistance has been pointed out in this court. Extensive literature with regard to such aids being used by foreign courts is available. Subject to assistance from experts, it requires to be scrutinised whether such tools can be utilized in this country during the recording of the testimony of a child victim witness so as to accommodate the difficulty and diffidence faced. This aspect deserves serious attention of all concerned as the same may be a valuable tool in the proceedings to ensure that the complete truth is brought out.*
- (vi) *No court shall detain a child in an institution meant for adults. (Ref : **Court On Its Own Motion vs. State of N.C.T. Of Delhi**). This would apply to investigating agencies as well.*
- (i) *The judge should ensure that there is no media reporting of the camera proceedings. In any case, sensationalisation of such cases should not be permitted.*

Annex 8: Suggested Training Schedule

9:00—10:00	Setting the Tone	Re-Connecting with Childhood
10:00—12:45	The Dynamics of Reporting & Disclosure: The ABCs of Child Sexual Abuse & Its Perpetration	<ul style="list-style-type: none"> • Definitions • Impact on children (Signs & Symptoms of CSA) • Processes/ Dynamics of Child Sexual Abuse <p><i>*Including Coffee Break</i></p>
12:45—1:30	Lunch	
1:30—3:15	The Child’s Capacity for Providing Testimony: Applying the Child Development Lens	<ul style="list-style-type: none"> • Dilemmas Posed by the Indian Evidence Act and POCSO 2012 • Introduction to Child Development • Children’s Capacity to Provide Evidence, according to Age & Developmental Stage • Case Examples of Mental Health & Developmental Assessments to Establish Children’s Capacity to Provide Evidence
3:15—4:00	Developing Empathy	<ul style="list-style-type: none"> • Identifying the Child’s Inner Voice <p><i>*Including Coffee Break</i></p>
4:00—6:15	Evidence Eliciting under POCSO: Child-Friendly Methods & Techniques for Interviewing Children and Adolescents	<ul style="list-style-type: none"> • Rapport Building • Taking the Statement: How to Inquire about Abuse • Closing the interview with the child • Further Case Discussions
6:15—6:30	Summary & Wrap-Up	<ul style="list-style-type: none"> • Last Thoughts...

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