



CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN INDIA **National Report for AIMJF's Comparative and Collaborative Research.**

La participación de niños como víctimas o testigos en causas penales en India
Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants en tant que victimes ou témoins dans des affaires pénales en Inde
Rapport national pour la recherche comparative et collaborative de l'AIMJF

Justice Ananya Bandyopadhyay¹

Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in India.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en India

Résumé: Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Inde.

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

¹ Secured first position in obtaining Masters in Law from Calcutta University
Thereafter practised for 12 years... Joined the West Bengal Judicial Service in the year 2009 through an examination...Had topped in the written examination... However obtained second position in the viva voce examination for the year 2009 and was recruited in the cadre of District Judge Entry Level on 29.10.2009...
Functioned as the Additional District and Sessions Judge at Alipore in the District of South 24 Parganas and Siliguri in the District of Darjeeling... Thereafter functioned as the Principal District Judge of Uttar Dinajpur and Paschim Midnapur.. I was also deputed as the Director of West Bengal Judicial Academy for three distinct tenures... I also functioned as the Registrar General of the High Court at Calcutta... On 18.05.22 I was appointed as the Additional Judge of Calcutta High Court... On 6.05.24 I was appointed as the permanent Judge of Calcutta High Court.



This national report is based on a questionnaire prepared by AIMJF.

Questionnaire

1. Right to be heard:

1.1 Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?

Ans: Children are presumed to be capable witnesses under the Indian Evidence Act, 1872. The provision governing as to who may testify is contained in Sec. 118 of the said Act.

118. Who may testify: 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.

Explanation: A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

However, the said provision cast a duty on the Court before which the said child is to testify mandating that the Court shall evaluate that the witness is not prevented from understanding the questions put to him or from giving rational answers thereto by virtue of his/her tender age. The Courts generally record the testimony of a child witness after testing the intellectual capacity of child to understand the questions put to him and give rational answers to it. Competency of young children are ascertained by putting few questions to them in order to find out whether they are intelligent enough to understand what they had seen and afterwards inform Court thereof.

The following are the questions that are generally asked to a child witness to ascertain his/her level of mental maturity:

- (a) What is your name?
- (b) What is your father's/mother's name?
- (c) How old are you?
- (d) How many members are there in your family?
- (e) Do you know where have you come now?
- (f) Do you know who I am?
- (g) What is the name of your school?
- (h) What is today's date, which day of the week it is today?
- (i) What is your favourite colour/food?
- (j) Have you been induced/coerced/threatened by anyone into making this statement?
- (k) What is the occupation of your father?

As regards the evidentiary value of the testimony of a child witness, it is well settled proposition of law that merit of evidence has to be judged on the touchstone of its own inherent intrinsic worth. This

view finds concurrence in a judgment reported in **ILR 2018 Chhattisgarh(SN) 376**. While appreciating the evidence of a child witness, the Courts are required to rule out the possibility of the child being tutored.

There are catena of decisions of the Hon'ble Supreme Court of India on this score.

The Hon'ble Supreme Court in a decision reported in **2023 SCC Online SC 777** has held that the principle of corroborating testimony of a child witness is not a rule but a measure of caution and prudence, since a child witness of tender age is easily susceptible to tutoring.

In another decision reported as **2023 SCC Online Bom 2594** the hon'ble Bombay High Court has been pleased to uphold the order of conviction passed by the Ld. Sessions Court relying on the credible testimony of a child witness. The Hon'ble Court was pleased to hold that the child witness account needs to be carefully appreciated and should not be directly relied on unless there is another corroborating or incriminating material. If the child witness account inspires confidence, the same can be acted upon.

1.2. Are there any restrictions to the right to be heard(minimum age or other criteria)?

Ans: The Indian legal framework does not carve out any restriction on the basis of age or other factors in extending the right of hearing to a person. Their right of hearing is not fettered by any legal impediment. The only requirement is that for initiating any legal proceeding wherein the rights of a child have been infringed, the same would be set into motion by the legal guardian of the said child or his legal heir in absence of which the state functionaries, public spirited individuals and even NGOs in representative capacity can fit into his shoes.

The right to be heard is a fundamental right enshrined in the Constitution of India and Articles 14, 20 and 21 are the focal points to it.

The right to hearing has also been extended to children in conflict with law under the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 3(iii) of the said Act in the form of principle of participation stipulates that every child shall have a right to be heard and to participate in all processes and decisions effecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.

Moreover, section 3(xvi) of the said Act in the form of principles of natural justice stipulates that basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

1.3. Are children allowed to refuse to make a statement? If so, in which cases?

Ans: Indian laws ranging from the Constitution to the Code of Criminal Procedure accord protection to a person accused of commission of a crime against self incriminating statements. In the Indian Evidence Act it has also been stipulated that any confession made by a person before a Police officer is not admissible in evidence. Similar protection has also been extended to the children in conflict with law under the Juvenile justice system and they are shielded from making self accusatory statements. In other words, the right to silence of children remains recognised under the Indian laws. Rule 8(3)(v) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 stipulate that the Police officer

apprehending a child shall not compel the child to confess his guilt. Further, Rule 8(3)(vi) provides that the Police officer apprehending a child shall not ask the child to sign any statement.

2. Broad perspective of the legal framework and procedure:

2.1. Is there a specific legal framework that defines how to treat child victims/ witnesses of crime (eg. Special norms in the Criminal Procedure Code, Special Child Code, Special Victims Code etc)?

Ans: Till date, there exists no uniform SOP in treating child victims/witnesses of crime. However, for sexual offences, the Code of Criminal Procedure u/s 164A provides for the medical examination of a rape victim and this is also followed u/s 27 of POCSO Act.

Section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2015 also lays down the procedure in relation to the production of children in need of care and protection before the Child Welfare Committee. The provision is produced hereinafter:

***Production before Committee.**—(1) Any child in need of care and protection may be produced before the Committee by any of the following persons, namely:—*

(i) *any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;*

(ii) *any public servant;*

(iii) *Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;*

(iv) *Child Welfare Officer or probation officer;*

(v) *any social worker or a public spirited citizen;*

(vi) *by the child himself; or*

(vii) *any nurse, doctor or management of a nursing home, hospital or maternity home:*

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children's home or fit facility or fit person, as the case may be, during the period of the inquiry.

Child-friendly Courts have also been established in tune with these directives.

For ameliorating the agony suffered by the victim, the Code of Criminal Procedure u/s 357A provides for extending monetary compensation to such victims of violence. This can also be availed by the victims of sexual violence. Over and above that, many Indian states including the State of West Bengal have evolved their own Victim Compensation Schemes. Apart from extending monetary help, the said scheme also helps the victim to rehabilitate and undergo vocational training etc.

The child victims may also be lodged in Homes which are run by the government/NGOs and provided with different trainings for development of their skills.

2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention) including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?

Ans: At present under the existing legal framework of our country, there hardly exists any coordination between the different role players to initiate legal proceedings and coordinate response. Of late, a welcome change in this regard can be traced to Section 19 of POCSO Act which engrafts the duty of mandatory reporting of cases of sexual violence upon child victims upon the relevant stake holder. Penal consequences have also been included for violation of this provision. It is this reporting which usually sets the criminal law into motion. Another dedicated framework under the aegis of 'Childline' exists throughout the country which works in close association with police and other connected government agencies and is instrumental in rescuing victims and getting them the access to justice. Instances are there of educational institutions reporting child marriage of female students studying therein to the police and administration for initiation of legal proceedings.

2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

Ans: Criminal cases under the Indian laws do not layout any distinction between trial of cases involving child victims or witnesses qua their adult counterparts. The physical presence of a child victim or a witness in a trial is mainly required at the time of adding of evidence. The presence of such a victim/witness may also be required during the process of investigation as they might be called for production of evidence, for recording of judicial statement or for participating in a Test Identification Parade for identification of the accused. The usual procedure that is adopted and followed is summarised hereinunder:

(a) Apprehension/appearance of accused before the Courts of law: Whenever the accused is produced or appears before a Court of law, his bail hearing is taken up. The outcome of the same depends upon a host of factors like the nature of offence committed (petty/serious/grave/bailable/non-bailable), progress of investigation, the availability of surety, the threat potential of the accused, the chance of absconsion of the accused, the possibility of his tampering with the evidence and the likelihood of his threatening the witnesses. The Judge accordingly decides the bail plea having due regard to the aforementioned factors and determines the custody of the accused. Upon bail being allowed, the accused is released from custody while a rejection of bail paves the way for his custodial detention. In the event of release on bail, the following procedures are adopted.

(b) Supply of copy of chargesheet: Upon completion of investigation, police files report in final form, also known as a charge sheet u/s 173 of the Code of Criminal Procedure. If police after investigation is unable to gather sufficient evidence for establishing the culpability of the accused, it files a Closure Report recommending therein the discharge of the accused from that case. It is pertinent to mention that

the de-facto complainant of the case is afforded an opportunity to contest the findings of Closure Report by preferring a Protest Petition and if the de-facto complainant succeeds in convincing the Court about the futility of the Closure Report submitted by the police, further investigation into the case is ordered by the Court. However, if the de-facto complainant concurs with the finding of the Closure Report, the Court accepts the Closure Report thereby discharging the accused from the case.

In the event of police finding substantial evidence to prima facie book the accused for commission of the alleged crime, the copy of charge sheet containing the statements of witnesses including judicial statements, reports of scientific investigation like medico-legal test, forensic test findings etc, is handed over to the accused for enabling him to set up his defence. This process acts as a precursor to the process of actual trial before the Courts of law.

(c) Framing of charge/plea: Section 240 of the Code of Criminal Procedure provides for framing of charge while section 251 of the Code of Criminal Procedure accounts for framing of plea. This takes place before the Court of law which is trying the case of the accused. The Judge concerned reads over and explains the substance of accusation to the accused in the language which is understood by the accused and asks him if he pleads guilty to the charges levelled or claims innocence. The outcome of trial completely depends upon the answer given by the accused to this query by the Judge. In the event of the accused pleading guilty to the charges levelled, the Judge may convict the accused upon accepting his plea of guilt.

If the accused does not plead guilty and pleads innocence, the stage is set for adducing of evidence by the prosecution.

(d) Adducing of evidence: Prosecution produces all its witnesses including experts and police officers one by one who are initially examined in chief by the Public Prosecutor and later cross examined by the defence counsel. Section 242 of the Code of Criminal Procedure provides for evidence for prosecution while sec. 243 of the Code of Criminal Procedure governs the adducing of defence evidence. All other corroborative pieces of evidence in the form of documentary, forensic and technical evidence are also adduced at this stage. When the prosecution completes the adducing of all its witnesses, prosecution evidence stands closed.

(e) Examination of accused u/s 313 of the Code of Criminal Procedure: Next, the accused is examined u/s 313 Cr.P.C. by the Judge concerned wherein the Judge puts forward before the former all such incriminating evidence which has been adduced by the prosecution with his attention being drawn to the same. The Judge also asks him questions regarding those incriminating contents and the accused may choose to answer them or he may even remain silent. The answers elicited from him are reduced into writing by the Judge in the designated form which is signed both by the Judge and the accused. Then he is also asked if he wishes to adduce his defence witness and if he answers it in the affirmative, he is called upon to make his witness testify before the Court who would be cross examined by the Public Prosecutor. Upon completion of such evidence, the case would proceed for hearing of argument.

(f) Argument: Sec. 314 of the Code of Criminal Procedure governs the process of hearing of arguments. During argument, both the public prosecutor and the defence counsel would place their respective submissions including written notes, if any, before the Judge concerned and on completion of the same, the Judge would assign a date for pronouncement of judgment.

(g) Pronouncement of judgment: Sec. 353 of the Code of Criminal Procedure lays down the modalities of delivery of judgment. This concludes a legal proceeding as the Judge either holds the accused guilty or innocent. If the accused is found not guilty, he stands acquitted of all charges and is set at liberty. When the accused is found guilty, he stands convicted and the Judge then decides the quantum of punishment to be sentenced having due regard to the aggravating and mitigating circumstances and accordingly punishes the convict with sentence and/or fine. The convict has to serve the quantum of sentence and/or pay the amount of fine imposed. However, he can appeal against that sentence before the appellate Courts of law.

2.4. In which moment(s) can a child be heard in this procedure?

Ans: As explained in the foregoing paragraphs, a child victim has the right to be heard mandatorily in bail hearings of POCSO cases involving commission of sexual offences upon a child. This right of being heard in disposing the bail prayer of an accused has also been extended to the child victim in other cases as well by accommodating the term 'victim' in the Code of Criminal Procedure. Other than this, the victim has got a right of hearing at the evidence stage where he can testify before the Courts of law. The child victim has another mandatory right of hearing when the case is taken up for deciding the quantum of compensation to be awarded to him including interim compensation.

2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?

Ans: It has already been discussed that under the Indian laws, a child does not have the locus standi to initiate a criminal prosecution on his own but it can be initiated on his behalf by his legal guardian, legal heir or anyone else. In India, every offence committed is construed to be committed against the state as the State performs the role of the prosecution. As such, the child does not possess the immediate authority to suspend or terminate the criminal procedure but it can be done at his behest by his legal guardian, legal heir or anyone else. For this to happen, it is imperative to ensure the concurrence of the State who acts as the prosecution.

3. Preparation for the child participation:

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc.)? If so can you please share them?

Ans: There are specific child-friendly information materials available in print as well as in electronic form. These are published by the Child Protection statutory bodies/institutions such as National Commission for Protection of Child Rights and State Commission for Protection of Child Rights, police, various Government departments entrusted with the care and protection of children as well as NGOs.

3.2. How do children have access to those materials? (e.g. brochure available at police station/Court; brochure sent to the child together with summon; witness preparation conducted in Court with support of a video, or with support of a special professional; investigator/Judge orally

explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen?

Ans: These materials are available in Police stations, Courts, Child Welfare Institutions, Child Welfare Committee and the Juvenile Justice Boards. However, till date there exists no legal concurrence for attaching such brochures together with the summon.

There exists set up in the Courts for witness preparation with video support. Even there exists a system of regular support of a special professional and if the concerned victim/witness suffers from physical challenge or cognitive disorder, experts, interpreters, special educators, translators and support persons are appointed for aiding them to testify. This provision has been engrafted under section 38 of the Protection of Children from Sexual Offences Act, 2012 which is reproduced below:

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

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

In cases involving sexual violence with minors, there is a special procedure followed in Courts. The defence is not allowed to directly confront the survivor during cross examination but they have to submit the questions they intend to put to the witness in the form of a questionnaire before the Judge concerned who then poses these to the witness in a child friendly language. Section 33 of the Protection of Children from Sexual Offences Act, 2012 lays down the same which is reproduced below:

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

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

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

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

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

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

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

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

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

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

(8) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.

There is however no set time frame as to when these procedures are to be adopted and these are activated as per expediency. Usually, such assistance is rendered prior to and during recording of evidence.

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed/for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced?

Ans: The Juvenile Justice (Care and Protection of Children) Act, 2015 has incorporated a mandatory provision u/s 15 of the said Act where a juvenile alleged to have committed a heinous offence has to undergo preliminary assessment by the Juvenile Justice Board prior to his being interviewed/heard. The said provision is reproduced hereinafter:

Preliminary assessment into heinous offences by Board.—(1) *In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:*

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

The hon'ble Supreme Court of India in the epoch-making judgment delivered in the case of **Barun Chandra Thakur v Master Bholu (2022 SCC Online SC 870)** has underlined the importance of this exercise and has called upon the Courts and Juvenile Justice Boards to decide the issue of ascertainment of proper forum of trial for child offenders in tune with such findings. The usual course that is adopted is that pursuant to passing of an order by the Juvenile Justice Board mandating conducting of preliminary assessment, the Department of Health and Family Welfare constitutes a Medical Board comprising of doctors who are experts in different branches of medicine like Psychiatry and Psychology, Medicine, Orthopaedics etc. who conduct different tests upon the child for ascertaining his physical and mental competency for commission of the alleged offence and prepare a comprehensive report. After this report is received by the Juvenile Justice Board, the Board then has an interaction with the child concerned in a child friendly manner. Rule 10A of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 also empowers the Juvenile Justice Board to take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances for conducting preliminary assessment. In such interaction, the Board takes into account his/her socio-economic, cultural and educational background as also circumstances which led to the commission of the alleged offence by him/her. The Board also assesses his/her capability to participate in such process and takes into account his/ her capacity to handle interview. The Board is also obligated to consider the Social Investigation Report prepared and submitted by the Probation Officer. The report tabled by the medical experts contains an opinion with regard to the physical and mental competency of the child to understand the nature and consequences of the alleged act committed by him. This finding is juxtaposed with the finding of the Board and upon consideration of the same, the Juvenile Justice Board decides as to whether the child would be tried before it or sent to a Children's Court for trial.

The Juvenile Justice Board consists of a Principal Magistrate who is a Judicial Magistrate of the First Class with at least three years of experience of being a Magistrate. The said official belongs to the District Judiciary.

A copy of the order of preliminary assessment passed by the Juvenile Justice Board is handed over to the child/his guardian/counsel.

3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

Ans: The parents or legal guardians of such children are allowed to inspect the case records and talk to the Counsellor attached to the Juvenile Justice Board and even the Probation Officer for ensuring the

welfare of the child. They can also speak to the Juvenile Justice Board with regard to the process of enquiry and preliminary assessment.

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/ hearing?

Ans: Yes, the child is allowed to visit the facilities where he or she will be heard prior to the interview/ hearing.

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

Ans: The child is extended mandatory legal support at State expense prior to the interview/hearing if his family is unable to engage a counsel on their own. If the child requires any other support, assistance of support persons are also extended to him/her.

4. Protection and Support:

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please? 4.2. In case of identification of risks, what kind of protective measures are available in your country?

Ans: Upon receipt of information about commission of a crime on a child victim/ witness, various stake holders like local police, Special Juvenile Police Unit, Child Welfare Committee etc. are activated and they have to comply the directions as provided under Rule 4 of the POCSO Rules, 2020 which is provided hereinunder:

4. Procedure regarding care and protection of child.— (1) Where any Special Juvenile Police Unit (hereafter referred to as “SJPU”) or the local police receives any information under sub-section (1) of section 19 of the Act from any person including the child, the SJPU or local police receiving the report of such information shall forthwith disclose to the person making the report, the following details:- (i) his or her name and designation; (ii) the address and telephone number; (iii) the name, designation and contact details of the officer who supervises the officer receiving the information. (2) If any such information regarding the commission of an offence under the provisions of the Act is received by the child helpline-1098, the child helpline shall immediately report such information to SJPU or Local Police. (3) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, — (a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of that Code; (b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 6; (c) take the child to the hospital for the medical examination in accordance with section 27 of the Act; (d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory immediately; (e) inform

the child and child's parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief; (f) inform the child and child's parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act. (4) Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC. (5) Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2015 (2 of 2016), to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of child's family or shared household and placed in a children's home or a shelter home. (6) In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations, namely:— (i) the capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counselling; (ii) the need for the child to remain in the care of parent's, family and extended family and to maintain a connection with them; (iii) the child's age and level of maturity, gender, and social and economic background; (iv) disability of the child, if any; (v) any chronic illness from which a child may suffer; (vi) any history of family violence involving the child or a family member of the child; and, (vii) any other relevant factors that may have a bearing on the best interests of the child: Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience. (7) The child and child's parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered. (8) The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and child's parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, and shall immediately inform the SJPU or Local Police about providing a support person to the child. (9) The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he or she has access and shall keep the child and child's parent or guardian or other person in whom the child has trust and confidence, informed regarding the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. The Support person shall also inform the child of the role the

Support person may play in the judicial process and ensure that any concerns that the child may have, regarding child's safety in relation to the accused and the manner in which the Support person would like to provide child's testimony, are conveyed to the relevant authorities. (10) Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing. (11) The services of the support person may be terminated by the CWC upon request by the child and child's parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information. (12) The CWC shall also Seek monthly reports from support person till the completion of trial, with respect to condition and care of child, including the family situation focusing on the physical, emotional and mental wellbeing, and progress towards healing from trauma; engage with medical care facilities, in coordination with the support person, to ensure need-based continued medical support to the child, including psychological care and counselling; and shall ensure resumption of education of the child, or continued education of the child, or shifting of the child to a new school, if required. (13) It shall be the responsibility of the SJPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings. (14) SJPU or the local police shall also inform the child and child's parents or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act or any other law for the time being applicable as per Form-A. It shall also complete the Preliminary Assessment Report in Form B within 24 hours of the registration of the First Information Report and submit it to the CWC. (15) The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:- (i) the availability of public and private emergency and crisis services; (ii) the procedural steps involved in a criminal prosecution; (iii) the availability of victim's compensation benefits; (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation; (v) the arrest of a suspected offender; (vi) the filing of charges against a suspected offender; (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend; (viii) the bail, release or detention status of an offender or suspected offender; (ix) the rendering of a verdict after trial; and (x) the sentence imposed on an offender.

4.3. What kind of support measures are available for child victims/witnesses of crime (psychological, medical, legal) before, during, after the judicial process?

Ans: The child victims/witnesses are entitled to get psychological, medical and legal support as per the provisions of Rules 5, 6 and 7 of POCSO Rules, 2020 which are reproduced below:

5. Interpreters, translators, special educators, experts and support persons.—(1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators, experts, special educators and support persons for the purposes of the Act, and this register

shall be made available to the SJPU, local police, magistrate or Special Court, as and when required. (2) The qualifications and experience of the interpreters, translators, special educators, experts and support persons engaged for the purposes of sub-section (4) of section 19, sub-sections (3) and (4) of section 26 and section 38 of the Act, and rule 4 respectively shall be as indicated in these rules. (3) Where an interpreter, translator, or special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on evidence of relevant experience or formal education or training or demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, Special Court or other authority concerned. (4) Interpreters and translators engaged under sub-rule (1) should have functional familiarity with language spoken by the child as well as the official language of the state, either by virtue of such language being child's mother tongue or medium of instruction at school at least up to primary school level, or by the interpreter or translator having acquired knowledge of such language through child's vocation, profession, or residence in the area where that language is spoken. (5) Sign language interpreters, special educators and experts entered in the register under sub-rule(1) should have relevant qualifications in sign language or special education, or in the case of an expert, in the relevant discipline, from a recognised University or an institution recognised by the Rehabilitation Council of India. (6) Support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU: Provided that nothing in these rules shall prevent the child and child's parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act. (7) Payment for the services of an interpreter, translator, special educator, expert or support person whose name is enrolled in the register maintained under sub-rule (1) or otherwise, shall be made by the State Government from the Fund maintained under section 105 of the Juvenile Justice Act, 2015 (2 of 2016), or from other funds placed at the disposal of the DCPU. (8) Any interpreter, translator, special educator, expert or support person engaged for the purpose of assisting a child under this Act, shall be paid a fee which shall be prescribed by the State Government, but which, shall not be less than the amount prescribed for a skilled worker under the Minimum Wages Act, 1948 (11 of 1948). (9) Any preference expressed by the child at any stage after information is received under sub-section(1) of section 19 of the Act, as to the gender of the interpreter, translator, special educator, expert or support person, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child. (10) The interpreter, translator, special educator, expert, support person or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest and shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973 (2 of 1974). (11) In proceedings under section 38, the Special Court shall ascertain whether the child speaks the language of the court adequately, and that the engagement of any interpreter, translator, special educator, expert, support person or other person familiar with the manner of communication of the child, who has been engaged to facilitate communication with the child, does not

involve any conflict of interest. (12) Any interpreter, translator, special educator, expert or support person appointed under the Act shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872 (1 of 1872).

6. Medical aid and care.—(1) *Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, such officer, or as the case may be, the local police shall, within 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility center for emergency medical care: Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care. (2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence. (3) No medical practitioner, hospital or other medical facility center rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care. (4) The registered medical practitioner rendering medical care shall attend to the needs of the child, including: (a) treatment for cuts, bruises, and other injuries including genital injuries, if any; (b) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs; (c) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts; (d) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and, (e) wherever necessary, a referral or consultation for mental or psychological health needs, or other counseling, or drug de-addiction services and programmes should be made. (5) The registered medical practitioner shall submit the report on the condition of the child within 24 hrs to the SJPU or Local Police. (6) Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act. (7) If the child is found to be pregnant, then the registered medical practitioner shall counsel the child, and her parents or guardians, or support person, regarding the various lawful options available to the child as per the Medical Termination of Pregnancy Act 1971 and the Juvenile Justice (Care and Protection of Children) Act 2015 (2 of 2016). (8) If the child is found to have been administered any drugs or other intoxicating substances, access to drug deaddiction programme shall be ensured. (9) If the Child is a divyang (person with disability), suitable measure and care shall be taken as per the provisions of The Rights of Persons with Disabilities Act, 2016 (49 of 2016).*

7. Legal aid and assistance.—(1) *The CWC shall make a recommendation to District Legal Services Authority (hereafter referred to as “DLSA”) for legal aid and assistance. (2) The legal aid and assistance shall be provided to the child in accordance with the provisions of the Legal Services Authorities Act, 1987 (39 of 1987).*

4.4. In case of intrafamilial violence, which measures can be/are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?

Ans: In case of intrafamilial violence, there exist facilities for granting the child security. If it is found that the concerned child is a victim and he/she has no one to care for him/her, police would produce him/her before the concerned Child Welfare Committee where counsellors would evaluate him/her. His/her interim custody may be given to his/her grand parents or any other close relative if the same is beneficial to his/her interest. If no such person is available, the child is sent to a Home managed by the State/NGOs where his well being is taken care of. The child is also counselled there to free his/her mind of the trauma undergone by him/her and help him/her tide over the situation.

In such a case, other members of the child's family are counselled for ensuring the betterment of the child.

5. Environment:

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/ trial phase?

Ans: In the pre-trial/trial phase, the child is interviewed in Juvenile Justice Boards, Child Welfare Committee as well as by Special Juvenile Police Units. It is mandated that the environment of a place where a child will be interviewed should be a child friendly one. Use of accusatory words against the child is prohibited.

5.2. Is there any specificity in this environment to adapt for the children?(e.g. separate 'building' specifically for children; non-child specific building but separate entrance for children; separate interview/hearing room for children)?

Ans: There exist specific guidelines which are to be followed in construction of buildings where children are interviewed. It is mandated that the said place should not operate from any Court or Jail premises. There are separate interview/hearing room for the children. Moreover, it should not resemble a conventional Court building. To facilitate the movement of child victim who may be physically challenged, wheelchair-friendly ramps are positioned at the entrance and exit points. Even special washrooms for use by the wheelchair-bound children are also there.

5.3. Are there guidelines for the environment where the child is interviewed/heard? (Architecture, setting)? If so, can you please share it? Can you share a photo of this space?

Ans: Rule 6 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 inter alia, provides for the guidelines of the architecture and setting of such a facility. It provides that the Board shall ensure that any person not connected with the case shall not remain present in the room when the case is in progress. The Board shall ensure that only those persons, in the presence of whom the child feels comfortable, are allowed to remain present during the sitting. It has also been mandated that the Board shall hold its sittings in a child-friendly premises which shall not look like a Court room in any manner and the sitting arrangement should be such to enable the Board to interact with the child face to

face. That apart, while communicating with the child, the Board shall use child friendly techniques through its conduct and shall adopt a child friendly attitude with regard to body language, facial expression, eye contact, intonation and volume of voice while addressing the child.

With regard to setting, it has been mandated that the Board shall not sit on a raised platform and there shall be no barriers, such as witness boxes or bars between the Board and the child.

5.4. Is there a specific waiting area for the child?

Ans: Yes, there exists a specific waiting area for the child. There are separate spaces where child offenders and child victims/witnesses are accommodated. It is ensured that these are not situated within the vicinity of each other. Separate entry and exit points for accessing the said facility are there.

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? If so, what kind? (e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc.) ?

Ans: The child victim/witness is considered to be a vulnerable witness and Vulnerable Witness Deposition Centres are being established inside the Court complexes as per the solemn direction of the hon'ble Supreme Court of India initially passed in **State of Maharashtra v Bandu@ Daulat** as reported in (2018) 11 SCC 163 and re-iterated in **Smruti Tukaram Badade v State of Maharashtra and another**.

In case of child victims/witnesses under the POCSO Act, the entire proceedings are done in-camera and child does not get to see the offender at the time of her testifying. The enabling provisions regarding the same can be traced to sections 36 and 37 of the said Act. The said provisions are reproduced below:

36. Child not to see accused at the time of testifying.—(1) *The Special Court shall ensure that the child is not exposed in anyway to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with hisadvocate.*

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

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

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973 (2 of 1974).

There exist separate entrance and waiting area for such victims and their testimony is also recorded by audio visual means using video link.

5.6. In case identification of the offender is needed, how is this conducted, and where?

Ans: As the POCSO Act does not permit direct contact of the victim with the offender, in case of such offences identification is effected through audio-visual means taking the help of video conferencing facilities. The victim looks up at the screen where the image of the offender stationed inside the designated space and identifies it before the Judge thereby effecting identification.

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?

Ans: The Indian law recognises the provision of testifying through audio visual means by video conferencing. Courts have also got Vulnerable Witness Deposition Centres (VWDC) within their premises. If the child witness resides in a different city, she/he need not visit the place of enquiry. She/he can visit the nearest VWDC and testify. If the said child happens to be a juvenile facing inquiry, he need not physically visit the place of inquiry at all times. His physical presence is mandatory on the dates of framing of plea, preliminary assessment, his examination u/s 313 of the Code of Criminal Procedure and pronouncement of judgment. There are enabling provisions in the Code of Criminal Procedure in the form of sections 205 and 317 which accords him the benefit of his representation by his counsel. The said provisions are reproduced hereinafter:

Sec. 205- Magistrate may dispense with personal attendance of accused:

Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

Sec. 317- Provision for inquiries and trial being held in the absence of accused in certain cases:

At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any/which special security measures (are) adopted?

Ans: There are facilities available in India for virtual conducting of interviews with the child and the interviewer being stationed at different places through video conferencing. These can be resorted to in the following cases:

- (a) Where the child is not physically fit to traverse the distance to the place of interview.

- (b) Where there lies a serious threat to his and his family member's security.
- (c) Where the place of interview is situated at a far off place from the residence of the child.

In **Sujay Mitra v State of West Bengal (CRR No. 1285 of 2015)** the Hon'ble Calcutta High Court has laid down some guidelines which a trial Court must keep in mind while recording evidence through video conferencing:

- (i) The Court must satisfy itself regarding the identity of the witness.
- (ii) The oath must be administered to witness before recording his evidence.
- (iii) The witness can only be examined during the working hours of Indian Courts.
- (iv) Copies of the documents to be proved must be provided to witnesses well in advance.
- (v) It must be ensured by the Court that the witness is alone in the room of Indian Embassy from where he is giving evidence through video conferencing.
- (vi) The demeanor of the witness must be recorded by the Court which is relevant for the purpose of evaluation of the evidence.
- (vii) Once the recording of the evidence is started through video conferencing, it must be continued on day by day basis till evidence of such witness is recorded completely.
- (viii) Other conditions can be imposed by the Court to ensure smooth recording of evidence through VC.

5.9. Must a child appear in Court to be interviewed or are recorded investigative interviews admitted as evidence in Court? If the child has to appear in Court, which circumstances are determinant?

Ans: Under normal circumstances, a child appears in Court to be interviewed. Investigative interviews done by police in the form of confessional statement are not admissible in the Courts of law. However, if the child makes a judicial statement before a Magistrate, it becomes admissible in law.

A child has to compulsorily appear in Court for obtaining bail, on the date of framing of his plea, on the date of his examination u/s 313 Cr.P.C. and on the date of pronouncement of judgment.

6. Specific legal guarantees for the child

6.1 Does the child have the right to legal assistance for free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case/during the first interviews/ only in court/other)

Yes, in India, children have the right to free legal assistance. Under Section 12(1)(c) the Legal Services Authorities Act, 1987, a child is eligible for legal aid through the District Legal Services Authority/ State Legal Services Authority and can access legal assistance free of cost in order to protect their rights and interests. Whether it's a legal dispute, criminal matter, or any other legal issue, the Legal Services Authorities Act, 1987 ensures that children can seek help from legal services authorities to protect and safeguard their rights. Section 12 of the said Act lays down:

12. Criteria for giving legal services.—

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is—(a) a member of a Scheduled Caste or Scheduled Tribe; (b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution; (c) a woman or a child; (d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996); (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or (f) an industrial workman; or (g) in custody, including custody in a

protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

The Constitution of India also provides several safeguards to ensure that every child has access to legal aid. Article 39A, inserted by the 42nd Amendment in 1976, obligates the State to ensure that the legal system promotes justice on the basis of equal opportunity. It specifically mandates the State to provide free legal aid to the poor and marginalized sections of society, ensuring that opportunities for securing justice are not denied due to economic or other disabilities. Article 39A states:

39A. Equal justice and free legal aid

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Additionally, Article 14 guarantees equality before the law and the equal protection of the laws to all individuals within the territory of India. It states:

Article 14. Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

This implies that every person, including a child, has the right to seek legal redressal. Moreover, in addition to Article 14, Article 22(1) ensures that every person who is arrested has the right to be defended by a legal practitioner of their choice, which indirectly supports the provision of legal aid to those who cannot afford it.

22. Protection against arrest and detention in certain cases

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

These constitutional provisions form the cornerstone of the legal aid system in India, ensuring that access to justice is not a privilege of the affluent alone but a fundamental right available to all citizens, irrespective of their age, gender, economic or social status.

The right to avail legal aid is also safeguarded by criminal laws. The Code of Criminal Procedure under Section 304 mentions that it is the Constitutional duty to provide legal aid (at state expenses) which arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand.

Section 304(1): Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State

Moreover, in cases of children in conflict with the law, it's the responsibility of the Juvenile Justice Board to take necessary steps to ensure completion of inquiry and provide legal aid as well as counselling to the child victim.²

The Juvenile Justice (Care and Protection of Children) Act and the Rules framed thereunder also places responsibilities upon person-in-charge of a Child Care Institution to co-ordinate with the legal cum Probation Officer in the District Child Protection Unit or the District or State Legal Services Authority to ensure that every child is legally represented and provided free legal aid and other necessary support.³

² Rule 76(iv) Juvenile Justice(Care and Protection of Children) Model Rules, 2016 (<https://cara.wcd.gov.in/PDF/english%20model%20rule.pdf>)

³ Rule 61(3)(xxxi) of the Juvenile Justice(Care and Protection of Children) Model Rules, 2016

As per Section 40 of the Protection of Children from Sexual Offences Act, the Legal Services Authority is obligated to provide legal representation to the child's family or guardian when they are financially incapable of hiring a lawyer.

Section 40 - Right of child to take assistance of legal practitioner:

Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act :Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

Is the assistance specialized? Authorities functioning at various levels ensure that the legal assistance available to children is specialized. The National Legal Services Authority (NALSA) has, in this regard, published the Child Friendly Legal Services to Children and their Protection Scheme, 2015,⁴ which provides comprehensive legal aid provisions for children. The scheme acknowledges that children are among the most vulnerable sections of society and emphasizes the need to provide them with opportunities, including specialized legal services, to develop fully. It lays down:

- (a) State Legal Services Authorities (SLSAs) shall set up Legal Services Clinic at every Juvenile Justice Board and Child Welfare Committee in each district in the State.
- (b) Opening of Legal Services Clinic shall be communicated to all Government bodies, departments including Police, Non Governmental Organizations along with relevant contact numbers and addresses of the clinics.
- (c) Para Legal Volunteers shall be deputed in such clinics.
- (d) SLSAs shall display the contact number and other information of the clinic in all its offices at state, district and Taluka (sub-division of a district) service levels.
- (e) The legal services clinics so established shall be governed by the National Legal Services Authority (Legal Aid Clinics) Regulations, 2011 in respect of their functioning, infrastructural facilities, maintenance of record and register, visit of panel lawyers, deputing of Para Legal Volunteers and control over such clinic.
- (f) All District Legal Services Authorities (DLSAs) shall set up legal literacy club in each of the schools in the District under the control of DLSA with co-ordination with the principals.

MOMENT WHEN THE ASSISTANCE COMES IN: The moment the aforesaid legal assistance comes into play is when a child requires legal representation or advice, such as during legal proceedings or when facing legal challenges. For instance, the Guidelines for Police Officers of the Special Juvenile Police Unit⁵, in relation to Children in Need of Care and Protection (CNCP) issued by the Special Police Unit for Women and Children, Delhi states that while dealing with any child in need of care and protection (CNCP), the concerned police officer immediately should get in touch with an NGO working for children so that necessary emotional and legal support can be provided to children. The guidelines further lay down that a Child in Conflict with Law (CCL) should be informed promptly and directly of charges against him/her, if appropriate, through his/her parent or legal guardian. In case formal FIR (First Information Report) is registered then copy of said FIR should be made available, to the child and/or his/her parents and/or his/her guardian, at the earliest to enable the child to explain the circumstances which resulted in the child coming in a situation of conflict with law⁶. The Child in Conflict with Law should be given an opportunity of being heard and to express his/her views/defence freely.

In October 2011, the Hon'ble Supreme Court of India, in Sampurna Behrua v. Union of India & Ors. W.P.(C) No.473/2005 (2018) 4 SCC 433,¹ directed the Directors General of Police of the States to designate one police officer in each police station as juvenile/child welfare officer. The Court directed legal services authorities to train such police officials and give free legal services to all children in conflict with law on an incremental basis, starting with the State capital cities. In the said order dated 19.08.2011, Hon'ble Supreme Court of India directed the National Legal Services Authority to put in place Legal Aid Centres attached to the Juvenile Justice Board(s) in the State capitals where there is a high pendency. The order further states, that the State Legal Services Authority shall establish Legal Aid Centre(s) attached to the Juvenile Justice Board (s) in the State/Union Territory Capitals immediately.

⁴ <https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes/nalsa-child-friendly-legal-services-to-children-and-their-protection-scheme-2015>

⁵ https://wcd.delhi.gov.in/sites/default/files/WCD/generic_multiple_files/1.pdf

⁶ <https://jcdhc.nic.in/wp-content/uploads/2021/02/2018-4-SCC-433.pdf>

6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child)?

Legal assistants/legal aid counsels play a significant role in safeguarding children's rights, providing legal support, and advocating for their best interests. The Protection of Children from Sexual Offences (POCSO) Model Guidelines published by the Ministry of Woman and Child Development in the year 2013⁷, states that while it is the Special Public Prosecutor appointed under the POCSO Act, 2012 who are essentially in charge of the trial in the Special Court, the child's legal assistant or legal aid counsel is entrusted with the task of ensuring that the child's interest is protected. Thus, his/her role extends to representing the child, helping uncover the nature and extent of abuse, identifying responsible parties and securing damages to compensate the victim and facilitate the healing process.

In addition to this, the legal aid counsel/legal assistant/lawyer should also be able to build a good rapport with the Special Public Prosecutor, as this would ensure that all concerns in respect of the child are raised before the Court in the course of the trial.

As per the Model Guidelines under the Protection of Children from Sexual Offences (POCSO) Act, the role of a legal assistant/ legal aid lawyer includes several key responsibilities such as:

- i) The lawyer must provide independent representation and advice to the child.
- ii) The lawyer has a duty to put before the Court the views of the child, but should not require the child to express a view if he does not want to do so. However, the lawyer shall not be required to put before the Court any views expressed to him in confidence.
- iii) Where a lawyer has been appointed to represent a number of children, some of whom are able to provide a view as to representation and some of whom are unable to do so, the lawyer must be alert to the possibility of conflict. In some cases the lawyer may be obliged to seek separate representation for one or more of the children.
- iv) Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or care-givers are the alleged offenders.
- v) Where a conflict arises between a child's views and information relevant to the welfare and best interests of the child, the lawyer should: a) discuss the issues and the lawyer's obligations with the child; b) attempt to resolve the conflict with the child; and c) advise the Court of the lawyer's position and, in the case where the lawyer is unable to resolve the conflict and as a matter of professional judgement can advocate only the child's views, invite the Court to appoint another lawyer.

The Model Guidelines further state that the lawyer shall represent the child in accordance with the child's welfare and best interests. It states that where a child is: i) by virtue of his/her age, maturity or disability, unable to express a view; or ii) able to express a view but his/her age, maturity or disability are such that any view should be treated with caution; or iii) unable or unwilling to express a view or in any way guide representation, in such cases, the lawyer may be guided by the following general guidance:

- i) The older the child, the more weightage should be given to the child's instructions. The younger the child, the more representation shall be in accordance with the child's welfare and best interests.
- ii) The lawyer has a duty to see that all factors that impact on the child's welfare and best interests are put before the Court.
- iii) In determining what best serves the child's welfare and best interests, the lawyer must take into account the principle that decisions affecting the child should be made and implemented within a timeframe that is appropriate to the child's sense of time.
- iv) The lawyer must meet with the child he is appointed to represent, unless there are exceptional circumstances to prevent this. The timing and venue for such meeting and any further meetings should be at the discretion of the lawyer. However, the lawyer shall meet with the child at a time

⁷ <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>

which ensures that the child's views are up to date at the time of the hearing so that they can be taken into account by the Court.

v) As a general rule, the lawyer shall act in terms of the child's instructions, conveying them to the Court by direct evidence if possible, call such witnesses as are required to carry out those instructions and examine and cross-examine and make submissions on behalf of the child.

vi) The Protection of Children from Sexual Offences Act provides under Section 33(8) that the Special Court may award compensation to the child. The lawyer should ensure that the child and his/her family are aware of this, and should make the appropriate applications for interim and final compensation.

The Model POCSO Guidelines further state that at a hearing, the lawyer should:

i) Identify all relevant issues which need to be determined in regard to the child's welfare and best interests;

ii) Ensure that the Court has all the necessary information that is relevant to the welfare and best interests of the child, including the views of the child, so that an informed decision can be made;

iii) Call evidence where appropriate (other than any Court's witness), for example, from psychological and/or medical professionals and teachers;

iv) Ensure the lawyer does not give evidence himself or herself;

v) Cross-examine to ensure all relevant issues are fully explored; and

vi) Make submissions on behalf of the child.

The guideline further state that after the conclusion of the trial:

i) The lawyer should communicate and explain the given decision or judgment to the child in a language adapted to the child's level of understanding. He should give the necessary information on possible measures that could be taken, such as appeal or other mechanisms for complaints as well as compensation.

ii) When a decision has not been enforced, the child should be informed through his/her lawyer of available remedies either through non-judicial mechanisms or access to justice.

iii) The child's lawyer, guardian or legal representative should take all necessary steps to claim compensation for the child. Rule 7(6) provides that nothing shall prevent a child or his/her parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government. Thus, if there is any additional scheme for compensation, the child's lawyer should inform the child of this and seek instructions on how to proceed further.

In addition to the above, the legal assistant/ legal aid counsel shall ensure that the child gets the following free legal services:

- a) Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
- b) Providing service of lawyers in legal proceedings;
- c) Obtaining and supply of certified copies of orders and other documents in legal proceedings.
- d) Preparation of appeal, paper book including printing and translation of documents in legal proceedings.

6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this support person? What is this person entitled to do in support of the child?

Under the Protection of Children from Sexual Offences (POCSO) Act, 2012 a child has the right to be accompanied by a support person during legal proceedings. The support person acts as a liaison between the child and the various authorities involved in the legal system. The support person ensures that the child's experience is as non-traumatic as possible.

Rule 4(8) of the POCSO Rules, 2020 states:

The Child Welfare Committee, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and child's parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, and shall immediately inform the Special Juvenile Police Unit (SJPU) or Local Police about providing a support person to the child.

Support person may be a person or organization working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the District Child Protection Unit. However, the child and child's parents or guardian or other person in



whom the child has trust and confidence shall not be prevented from seeking the assistance of any person or organization for proceedings under the Act.⁸

ROLE OF THE SUPPORT PERSON The duties and role of a support person are given under Rule 4 of the POCSO Rules, 2020. The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he or she has access and shall keep the child and child's parent or guardian or other person in whom the child has trust and confidence, informed regarding the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. The Support person shall also inform the child of the role the Support person may play in the judicial process and ensure that any concerns that the child may have, regarding child's safety in relation to the accused and the manner in which the Support person would like to provide child's testimony, are conveyed to the relevant authorities.⁹

WHAT IS THE SUPPORT PERSON ENTITLED TO DO IN SUPPORT OF THE CHILD:

The support person is instrumental in maintaining the link between the child and law enforcement authorities by providing information to the child and his/her family about the progress of the case. It is to be remembered that the successful rehabilitation of the child is dependent on the degree of sensitivity with which the support persons deals with the child while addressing his/her problems. In this regard, a significant initiative was taken by the Ministry of Women and Child Development in India by publishing the "Scheme for Care and Support to Victims under Section 4 & 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012". The scheme is designed to provide comprehensive care and support to child victims of sexual offences, particularly addressing the needs of minor pregnant girl child victims. In accordance with the "Scheme for Care and Support to Victims under Section 4 & 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012"¹⁰, the support person shall:

- a. Explain to the child about the legal process
- b. Prepare the child for court proceedings including visit to the court to familiarize him/her with the court atmosphere
- c. Provide professional counselling and mental health services
- d. Ensure the child's continued education
- e. Understand the child's interests and guide the child about vocational skills
- f. Monitor the progress of the Individual Care Plan prepared under the Juvenile Justice (Care and Protection of Children) Act, 2015
- g. Expedite the process of compensation including interim compensation especially under the NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018
- h. Report the progress of the child every month to the Child Welfare Committee
- i. Open a bank account for the girl child
- j. Inform about the various benefits under the Central and State Government Schemes
- k. Ensure the confidentiality and privacy of the child and protect her from media
- l. render assistance to the child in all possible manner throughout the process of investigation and trial including about the developments, the arrest of the accused, applications filed and other court proceedings
- m. Counsel the child regarding the various lawful options available to the child as per the Medical Termination of Pregnancy Act 1971 and the Juvenile Justice (Care and Protection of Children) Act 2015 (as amended in 2021).

In *Bachpan Bachao Andolan v. Union of India*, 2023 SCC OnLine SC 1031¹¹, decided on 18.08.2023, the bench of Hon'ble Justice S. Ravindra Bhat and Hon'ble Justice Aravind Kumar, has taken note of the fact that the role of a 'support person' as envisaged in the Protection of Children from Sexual Offences Rules, 2020, despite being a progressive step – remains unfulfilled, or is given effect to, in a partial or ad-hoc manner, thus limiting its positive potential in offering support to victims and their families. The Hon'ble Court observed that, "From the point of registering an FIR/complaint under the POCSO Act, the victim and their family are required to interact with the police machinery, medical officers and hospitals, the Magistrate, Special Court and/or Juvenile Justice Board (JJB), the concerned Child Welfare Committee

⁸ Rule 5(6) of the Protection of Children from Sexual Offences Rules, 2020

⁹ Rule 4(9) of the Protection of Children from Sexual Offences Rules, 2020

¹⁰ <https://wcd.nic.in/sites/default/files/Scheme%20for%20Care%20and%20Support%20to%20Victims%20under%20Section%204%20%26%206%20of%20the%20Protection%20of%20Children%20from%20Sexual%20Offences%20%28POCSO%29%20Act%2C%202012%20%281%29%20%281%29.pdf>

¹¹ <https://indiankanoon.org/doc/1849142/>



(CWC), and other stakeholders – which in itself can be daunting and overwhelming (over and above the already traumatic experience of the crime itself), often dissuading them from pursuing the case altogether.”

The Hon’ble Court further observed that “in crimes against children, it is not only the initiating horror or trauma that is deeply scarring; that is aggravated by the lack of support and handholding in the days that follow. In such crimes, true justice is achieved not merely by nabbing the culprit and bringing him to justice, or the severity of punishment meted out, but the support, care, and security to the victim (or vulnerable witness), as provided by the state and all its authorities in assuring a painless, as less an ordeal an experience as is possible, during the entire process of investigation, and trial. The support and care provided through state institutions and offices is vital during this period. Furthermore, justice can be said to have been approximated only when the victims are brought back to society, made to feel secure, their worth and dignity, restored. Without this, justice is an empty phrase, an illusion.”

6.3 What is the role of parents/legal representative?

In India, the role of parents or legal representatives during a trial, especially in cases involving children, is defined under the Protection of Children from Sexual Offences (POCSO) Act and the Juvenile Justice (Care and Protection of Children) Act. Parents or legal representatives can provide support to the child during the trial. They may be present during the child’s testimony to offer emotional support. They can help the child access free legal aid services provided by the state. Parents or legal representatives ensure that the trial procedures are child-friendly, as mandated by the act. They can request the assistance of an interpreter, special educator, or other professional while the child gives evidence.

Under the Juvenile Justice (Care and Protection of Children) Act, 2015 also parents or legal representatives are expected to actively participate in the proceedings and ensure that the rights of the child are protected throughout the process.

Since both acts emphasize the importance of a supportive and protective environment for the child during legal proceedings, the involvement of parents or legal representatives is crucial in ensuring that the child’s rights and best interests are upheld during the process of inquiry and trial.

Moreover, under Section 19 of the POCSO Act, all persons have been made duty-bound to report sexual offences against children. These offences range from harassment to assault, and to the use of children for pornographic purposes. Failure to report is punishable with imprisonment that may extend to six months or fine or both under Section 21 of the Act. Section 19 and 21 of the POCSO Act, 2012 are reproduced hereunder for reference:

19. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person (including the child), when has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,-- (a) the Special Juvenile Police Unit; or (b) the local police. (2) Every report given under sub-section (1) shall be— (a) ascribed an entry number and recorded in writing; (b) be read over to the informant; (c) shall be entered in a book to be kept by the Police Unit.

21. (1) Any person, who fails to report the commission of an offence under subsection (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both. (2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine. (3) The provisions of sub-section (/) shall not apply to a child under this Act.

In addition to the above, the Hon’ble High Court at Calcutta has made the following provisions for appointment of Guardian ad litem in its Guidelines issued in connection with the Recording of Evidence of Vulnerable Witnesses¹²:

Appointment of Guardian ad litem. — The court may appoint any person as guardian ad litem as per law to a vulnerable child witness who is a victim of, or a witness to a crime having regard to their best interests, after considering the background of the guardian ad litem and their familiarity with the judicial process, social service programs, and human development, giving preference to the parents of the child,

¹² <https://www.calcuttahighcourt.gov.in/Notice-Files/general-notice/6108>

if qualified. The guardian ad litem may be a member of bar / practicing advocate, except a person who is a witness in any proceeding involving the vulnerable witness.

Duties of guardian ad litem: It shall be the duty of the guardian ad litem of the vulnerable child witness so appointed by court to:

- a. attend all depositions, hearings, and trial proceedings in which a vulnerable witness participates.
- b. make recommendations to the court concerning the best interest of the vulnerable witness keeping in view the needs of the witness and observing the impact of the proceedings on the witness.
- c. explain in a language understandable to the vulnerable witness, all legal proceedings, including police investigations, status and progress of the trial, child friendly measures and rights, and witness protection measures, in which the vulnerable witness is involved;
- d. assist the vulnerable witness and their family in coping with the emotional effects of participating in any case/proceedings, especially the crime and subsequent criminal or non-criminal proceedings in which the vulnerable witness is involved;
- e. remain with the vulnerable witness while the vulnerable witness waits to testify.

6.3.1 When are parents/ legal representatives excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests)?

In India, there are specific provisions under the Protection of Children from Sexual Offences (POCSO) Act, 2012 and the Juvenile Justice (Care and Protection of Children) Act, 2015 that address the exclusion of parents or legal representatives from the trial/inquiry process in certain situations. The child's best interest is always the primary consideration, and any situation where the parent or legal representative could influence, exploit, or otherwise harm the child's interests leads to their exclusion.

As per Rule 50(18) of the West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2017, During a trial involving children, as far as possible, parents or guardian(s) are permitted to accompany the child at all times (only if it is in the best interest of the child) to keep the atmosphere as child-friendly as possible. However, if the said person has a conflict of interest, another person of the child's choice, or fit person, or representative of the fit institution identified, or psychologist appointed by the Committee or Court, shall accompany the child at all times, on approval of the Court. In a situation where parents or guardians may have been involved in the commission of the crime, or where the child is living in a place where the child is at risk of further trauma, and the same is brought to the notice of the Court, or the Court on its own motion shall direct the child to be taken out of the custody or care, or out of such situation and the child should be immediately produced before the Child Welfare Committee.

Rule 55(4) of the West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2017, stipulates that if a child's parent, guardian, or custodian violates Section 81 of the Act, the Child Welfare Committee is required to take decisive action. This includes determining the most suitable environment for the child, which could be a Child Care Institution, a recognized fit institution, or the care of a certified fit person, depending on what is deemed most beneficial for the child's welfare.

Rule 55(4): Where any offence under section 81 of the Act is committed by a parent or a guardian of the child or any other person having actual charge or custody of the child, the Committee shall pass appropriate orders for placing the child in a Child Care Institution or fit institution or with a fit person, as the case may be.

6.3.2 If excluded, is there another legal representative appointed/ if so by whom?

Yes, if parents or legal representatives are excluded from a child's trial or inquiry process, another legal representative is appointed.

Under Rule 50(18) of the West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2017, the following provisions are made to ensure a supportive environment for children during trials:

In cases where the parent or guardian has a conflict of interest, the court may authorize another representative for the child. This could be a person chosen by the child, a suitable individual, a representative from a recognized institution, or a psychologist designated by the Committee or Court. If it is discovered that the parents or guardians are themselves involved in the crime, or if the child's present living conditions pose a risk of additional trauma, the court can intervene. The child victim/witness will be removed from such environment and produced before the Child Welfare Committee for protection and care.

According to Rule 55(4) of the West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2017, where an offence outlined in section 81 of the Act is perpetrated by the child's parent, guardian, or custodian, the Child Welfare Committee is mandated to issue orders that serve the child's best interest. This may involve relocating the child to a suitable Child Care Institution, entrusting them to a fit institution, or placing them under the care of a fit person, depending on the circumstances. The primary objective is to ensure the child's safety and well-being in the wake of such offences.

In this regard, the Protection of Children from Sexual Offences Act (POCSO) Guidelines¹³ enunciate that if it is considered necessary by the Child Welfare Committee to remove a child from his/her parents/caregivers or their homes, then the following must be considered:

- i) In the first instance, all possible efforts should be made to place the child in a situation that is familiar, preferably with family or friends
- ii) As far as possible, the timing of the move should be sensitively handled.
- iii) The child's parents/caregivers should be informed of the action proposed, unless doing so would endanger the child or jeopardise the placement process.
- iv) The child should be informed of the proposed action if he or she has not been involved in the decision.
- v) The child's parents/caregivers should be informed of the child's location, unless otherwise directed by the Court.
- vi) The child's parents/caregivers should be advised about and assisted in obtaining legal advice. [Rule 4(5) and (6) of POCSO Rules, 2012 state that prior to making a determination as to whether the child needs to be taken out of the custody of his/her family or shared household, the inquiry should be conducted in a manner that does not unnecessarily expose the child to injury or inconvenience. Hence, these considerations would help ascertain the same.]

6.4 What kind of measures are adopted to grant the right to privacy/confidentiality (public excluded/ in all cases/ in which cases? Press statements so that the child cannot be identified?)

Several measures are in place to ensure the child's right to privacy and confidentiality during inquiries and trials. In cases involving children, particularly under the Protection of Children from Sexual Offences (POCSO) Act, 2012 the public is generally excluded from the courtroom to protect the child's identity and privacy. Courts have to strictly ensure that trials involving child victims are conducted 'in camera', meaning they are not open to the public, and only the parties connected with the case are present. The media is prohibited from disclosing any personal information that could lead to the potential identification of a child victim. This includes the child's name, address, photograph, family details, educational institution, or any other particulars.

These measures are designed to protect the child's identity and privacy, ensuring that they are not subjected to further harm or stigmatization as a result of their involvement in legal proceedings.

In this regard, in the light of the directions issued by the Supreme Court of India in *Smruti Tukaram Badade Vs. State of Maharashtra & Anr.*¹⁴ in Miscellaneous Application No. 1852 of 2019 in Criminal Appeal No. 1101 of 2019, the Hon'ble High Court at Calcutta formulated the following elaborate Guidelines for Recording of Evidence of Vulnerable Witnesses¹⁵ with the objective of ensuring a safe and conducive environment for recording the evidence of Vulnerable Witnesses, including children

- a. concealing from the public record any names, addresses, workplaces, professions or any other information that could lead to the identification of the child victim or witness in orders, judgments, or any case records accessible to the public;
- b. prohibiting the defence lawyer and persons present in the court room from revealing the identity of the vulnerable witness or disclosing any material or information that would lead to the identification of the vulnerable witness in the media;
- c. protecting the identity of child victims and permitting disclosure in accordance with relevant statutory provisions and judicial precedents.;
- d. assigning a pseudonym or a number to a child victim in cases of sexual offences, in which case the full name and date of birth of the child shall be revealed to the accused for the preparation of their defence. In other cases, a pseudonym may be assigned as per request of the parties;
- e. avoiding exposure to the accused by using screens or single visibility mirror;

¹³ <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>

¹⁴ https://www.livelaw.in/pdf_upload/smruti-tukaram-badade-v-the-state-of-maharashtra-and-anr-vulnerable-witness-deposition-guidelines-408174.pdf

¹⁵ <https://www.calcuttahighcourt.gov.in/Notice-Files/general-notice/6108>

f. through examination in another place, transmitted simultaneously to the courtroom by means of video link; through a qualified and suitable facilitator, such as, but not limited to, an interpreter for vulnerable witness with hearing, sight, speech or other disabilities;

g. holding in-camera trials;

h. if the child victim or witness refuses to give testimony in the presence of the accused or if circumstances show that the child may be inhibited from speaking freely in that person's presence, the court shall give orders to temporarily remove the accused from the courtroom to an adjacent room with a video link or a one-way mirror visibility into the courtroom. In such cases, the defence lawyer shall remain in the courtroom and question the vulnerable witness, and the accused's right of confrontation shall thus be guaranteed;

i. taking any other measure that the court may deem necessary to advance the right to privacy, including, where applicable, anonymity, taking into account the best interests of the child witness and the rights of the accused. (iii) Orders and judgments pertaining to cases involving vulnerable child witnesses shall be made available on e-courts or on the official portal of the court after suppressing their identifying information.

Moreover, under Section 33(7) of the Protection of Children from Sexual Offences Act, 2012 the Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial: Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Similarly, Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 encapsulates some prohibitions on disclosure of identities of children. The prohibitions are as follows:

Section 74:(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published: Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

(2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in the pending case or in the case which has been closed or disposed of.

(3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

That aside, the Parliament of India vide Criminal Law Amendment Act, 1983 inserted **Section 228A into the Indian Penal Code** to prevent victimization of victims of sexual offences. The said section, which was again amended in the year 2018, lays down

228A. Disclosure of identity of the victim of certain offences: Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA and section 376DB[1] is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is— (a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or (b) by, or with the authorization in writing of, the victim; or (c) where the victim is dead or minor or of unsound mind, by, or with the authorization in writing of, the next of kin of the victim: Provided that no such authorization shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognized welfare institution or organization. For the purposes of this sub-section, "recognized welfare institution or organization" means a social welfare institution or organization recognized in this behalf by the Central or State Government.

Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

The Code of Criminal Procedure also lays down some protective measures. Section 327 lays down:

327 (1) The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room building used by the Court.

(2) Notwithstanding anything contained in Sub-Section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) shall be conducted in camera¹:

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court.

Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.

(3) Where any proceedings are held under Sub-Section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court.

Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.

In *Nipun Saxena vs. Union of India*¹⁶ Writ Petition (Civil) No. 565 of 2012, in order to protect the confidentiality and privacy of witnesses, particularly in cases involving sexual offences, the following directions were issued by the Hon'ble Supreme Court:

1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.
2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.
3. FIRs relating to offences under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of IPC and offences under POCSO shall not be put in the public domain.
4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.
5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.
6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.
7. An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228A(2)(c) of IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228A(2)(c) and lays down a criteria as per our directions for identifying such social welfare institutions or organisations.
8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

¹⁶ <https://indiankanoon.org/doc/143288964/>

These directions were issued to ensure that victims of sexual offences, including children, are protected from unnecessary ridicule, social ostracization, and harassment, and to maintain their dignity and privacy throughout the judicial process.

6.5 Is the child allowed to plea for cautionary measures?

In legal proceedings involving children in India, there are provisions to ensure cautionary measures in order to protect the child's best interests. The Protection of Children from Sexual Offences (POCSO) Act, 2012 recognizes the child's right to privacy and confidentiality during the trial. Cautionary measures are taken to prevent the child's identity from being disclosed publicly. Furthermore, the trial is conducted 'in camera,' excluding the public from the courtroom. In order to prevent disclosure of any information that might lead to exposure of the child's identity in the public domain, media reporting is also restricted. While the child may not directly plea for cautionary measures, courts and other stakeholders ensure that the child's privacy and well-being is protected throughout the process of inquiry, investigation and trial. In this regard, the Guidelines for Recording of Evidence of Vulnerable Witnesses published by the Hon'ble High Court at Calcutta¹⁷ lay down:

“At any stage in the justice process where the safety of a vulnerable witness is deemed to be at risk, depending upon the intensity of the threat perception, the court shall suo motu arrange to have protective measures put in place for the vulnerable witness or refer the matter to the Competent Authority under the Witness Protection Scheme, 2018. Those measures may include the following:

- prohibiting direct or indirect contact between a vulnerable witness and the accused/opposite party at any point in the justice process;
- restraint orders;
- direct continuation of bail conditions during trial;
- protection for a vulnerable witness by the police or other relevant agencies and safeguarding the whereabouts of the vulnerable witness from disclosure;
- any other protective measures that may be deemed appropriate, including those stipulated under the Witness Protection Scheme, 2018.”

The Honorable Supreme Court of India in the case of Mahendra Chawla v. Union of India¹⁸ W.P. (Cr.) No. 156 of 2016, decided on 5th December 2018, approved the Draft Witness Protection Scheme which was prepared by the inputs from 18 States and Union Territories, various open sources inviting suggestions from police personnel, judges and civil society members which was ultimately finalized by the National Legal Services Authority (NALSA). In the said landmark pronouncement, a bench comprising of Honorable Justice A.K. Sikri and Justice S. Abdul Nazeer held that the right to testify in courts in a free and fair manner without any pressure and threat whatsoever is under serious attack today. If one is unable to testify in courts due to threats or other pressures, then it is a clear violation of Article 21 of the Constitution. The right to life guaranteed to the people of this country also includes in its fold the right to live in a society, which is free from crime and fear and right of witnesses to testify in courts without fear or pressure. The Hon'ble Court directed that the Union of India, as well as the States and the Union Territories, shall enforce the Witness Protection Scheme, 2018 and held the same to be law under Article 141/142 of the Constitution until a suitable legislation is enacted on the subject.

The Witness Protection Scheme, 2018¹⁹, it is to be noted, is the first attempt to provide comprehensive witness protection, that shall contribute to eliminating any kind of threat or intimidation or loss of property and person of the witness. The witness protection measures ordered shall be proportionate to the threat and shall be for a specific duration on need basis which is to be reviewed regularly. These may include :

1. Ensuring that witness and accused do not come face to face during investigation or trial;
2. Monitoring of mail and telephone calls;
3. Arrangement with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number;
4. Installation of security devices in the witness's home such as security doors, CCTV, alarms, fencing etc.;

¹⁷ <https://www.calcuttahighcourt.gov.in/Notice-Files/general-notice/6108>

¹⁸ <https://indiankanoon.org/doc/80302994/>

¹⁹ https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf

5. Concealment of identity of the witness by referring to him/her with the changed name or alphabet;
6. Emergency contact persons for the witness;
7. Close protection, regular patrolling around the witness's house;
8. Temporary change of residence to a relative's house or a nearby town;
9. Escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing;
10. Holding of in-camera trials;
11. Allowing a support person to remain present during recording of statement and deposition;
12. Usage of specially designed vulnerable witness court rooms which have special arrangements like live links, one way mirrors and screens apart from separate passages for witnesses and accused, with option to modify the image of face of the witness and to modify the audio feed of the witness' voice, so that he/she is not identifiable;
13. Ensuring expeditious recording of deposition during trial on day to day basis without adjournments; Awarding time to time periodical financial aids/grants to the witness from Witness Protection Fund for the purpose of re-location, sustenance or starting new vocation/profession, as may be considered necessary;
14. Any other form of protection measures considered necessary, and specifically, those requested by the witness can be ordered by Competent Authority

6.6 Does the child have the right to appeal any decision?

So far as the powers of appeal under the Juvenile Justice (Care and Protection of Children) Act is concerned, the same is provided under Sections 101, which read as under:

“101. Appeal.-- (1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate: Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

(2) An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

(3) No appeal shall lie from,— (a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or (b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

(4) No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973.

Moreover, keeping in view the recommendation of Law Commission and the Malimath Committee the Legislature has passed the Code of Criminal Procedure Amendment Act 2008. The amendment act has made several changes in the Code the most significant being the definition of the word 'victim' and victim's right to appeal.

The amendment act has made several changes in the Code the most significant being the definition of the word 'victim' and victim's right to appeal. Section 2 (wa) of the of the code defined victim as under: “Victims means a person, who has suffered any loss or injury caused by reason of the act or omission for

which the accused person has been charged and the expression victim includes his or her legal heir.” With the added proviso, Section 372 of the Code reads as under –

372. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this code or by any other law for the time being in force. Provided that the Victim shall have a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

7. Interviewing structure and Procedure

7.1 Who hears the child victim/witness in the pre-trial phase/who in the trial phase? How often is the child usually heard in total (pre-trial and trial) ? Does the law limit the total number of interviews/ hearings conducted?

In India, the process of hearing a child victim or witness during the pre-trial and trial phases is designed to be sensitive to the child’s needs and rights. The following stakeholders are involved in the process:

1. Counsellors: As per the Protection of Children from Sexual Offences (POCSO) Model Guidelines, where the Special Juvenile Police Unit or the local police receives any information under sub-section (1) of section 19 of the Protection of Children from Sexual Offences Act, they must inform the child and his/her parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief. The counsellor’s duties, during such interaction, will include: i) To understand the child's physical and emotional state ii) To resolve trauma and foster healing and growth iii) To hear the child's version of the circumstances leading to the concern iv) To respond appropriately to the child when in crisis v) To provide counselling, support, and group-based programs to children referred to them vi) To improve and enhance the child’s overall personal and social development, and his/her health and wellbeing vii) To facilitate the reintegration of the child into his/her family/community.

2. Interpreters: Interpreters may be needed during both the investigation and trial of cases of child sexual abuse. They may be needed for witnesses and for parties who speak a language different from that of the Court in that State, or for witnesses and parties who have speech or hearing impairments or other communication difficulties. The police or SJPU may contact the District Child Protection Unit (DCPU), whose responsibility it is under the POCSO Act and Rules, 2012 to provide interpreters, translators, etc. Where an interpreter is not available, a non-professional may be asked to interpret for the child; however, in these cases, it must be ensured that there is no conflict of interest. For example, where there is an allegation of child sexual abuse against the child’s father, the mother should not be asked to interpret.

3. Social Workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC: As per Section 19(6) of the POCSO Act, 2012 where an F.I.R. has been registered before the Special Juvenile Police Unit (SJPU) or local police station in respect of any offence committed against a child under the said Act, the case should be reported by the SJPU or the local police to the Child Welfare Committee (CWC) within 24 hours. The CWC shall conduct inquiry in such a way that the child is not unnecessarily exposed to injury or inconvenience. In this regard, the Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC shall prepare his/her report after interviewing the child and other affected persons to determine the following: (i) the child's physical and emotional state; (ii) whether the child needs any urgent care such as medical/mental health intervention, shelter, etc.; (iii) to hear the child's version of the circumstances leading to the concern; (iv) to get an insight into the child's relationship with his/her parents or guardian or other person in whom the child has trust and confidence; (v) to support the child to participate in decisions affecting him according to his/her age and level of maturity.

3. Support persons: The Protection of Children from Sexual Offences Act, 2012 introduces the concept of a support person, who shall provide support to the child through the pre-trial and trial process. The support person is, in a way, a guardian ad litem for a child. He/she can be a useful intermediary between the authorities and the child.

4. Child Welfare Committee: When a child is brought before the Child Welfare Committee, the Chairperson and Members of the Committee interact with the child and direct the Probation Officer /Social Worker/Case worker to prepare a Social Investigation Report (SIR) based on which the Committee could decide in consultation with the child on what could be the best possible/rehabilitation/reintegration plan to be adopted. SIR involves activities like speaking to the child,

relatives, home visits to understand their living conditions and background and if the case requires to also visit institution like school, college or workspace.

5. Judicial Magistrate: During the pre-trial phase, the child's statement is recorded by a Judicial Magistrate under Section 164 of the Criminal Procedure Code. The Magistrate records the statement of the child under section 164 of the Code of Criminal Procedure, 1973 in the Children's room or, if possible in the child's place of residence including, home or institution where he or she is residing.²⁰ If the child is in another District/State/Country, the statement or interview or deposition of the child may also be recorded through video conferencing.²¹

6. Police/Investigating Authority: A Police Officer dealing with Children in Need of Care and Protection should strictly follow the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015.

In case, where the victim is a minor, consent and presence of parents may be taken at the time of recording of her statement or FIR. If the guardian is not available, consent and presence of a representative of an NGO or a member of the Child Welfare Committee may be taken during recording of the statement or FIR.

- The Investigating Officer shall wear plain clothes during interview/investigation.²²
- The Police Officer, while examining/interviewing the child, shall ensure that at no point of time, the child comes in contact with the accused, in any manner, whatsoever.²³
- The Police Officer shall not detain any child at night in the police station for any reason.²⁴

Herein, it would be appropriate to have reference to Section 24 of the Protection of Children from Sexual Offences Act, 2012 which stipulates

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

- (2) The police officer while recording the statement of the child shall not be in uniform.
- (3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.
- (4) No child shall be detained in the police station in the night for any reason.
- (5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

BAIL HEARING: Whenever an accused, booked for an offence under the Protection of Children from Sexual Offences Act, applies for bail, the court is required to issue a notice upon the victim and grant an opportunity of hearing to the child victim/survivor prior to passing any order in connection with the said application. The child, in such cases, is heard by the Presiding Judge of the Court or the Juvenile Justice Board, depending upon where the matter is sub-judice.

It is to be mentioned here that the principles governing bail of a juvenile is laid down under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The said section enunciates:

Section 12. Bail to a person who is apparently a child alleged to be in conflict with law.

(1) When any person, who is apparently a child and is alleged to have committed a available or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the persons release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation

²⁰ Rule 54(13)(i) of Juvenile Justice Model Rules, 2016 and Rule 54 (15) of Juvenile Justice Model Rules.

²¹ Sections 25(1), 26(1) of Protection of Children from Sexual Offences Act, 2012; Rule 54(13)(ii) of Juvenile Justice Model Rules, 2016.

²² Section-24(2), POCSO Act, 2012

²³ Section- 24(3)& 36, POCSO Act r/w Section-273, Cr.P.C.

²⁴ Section-24(4), POCSO Act

home 1[or a place of safety, as the case may be] in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail. The aforesaid provisions shall be adhered to by the Juvenile Justice Board while disposing of bail petitions filed under the Act.

Trial/Inquiry Phase: Under the POCSO Act, trials involving child victims are conducted by Special Courts. If the perpetrator is a juvenile, then the inquiry shall be conducted by the concerned Juvenile Justice Board/Children's Court having jurisdiction over the matter. It is Presiding Judge/ Principal Magistrate and Members of the Juvenile Justice Board who hears the child victim/witness.

The Guidelines issued by the Hon'ble High Court at Calcutta with regard to recording of evidence of vulnerable witnesses states that in order to facilitate the ascertainment of the truth the court shall exercise control over the questioning of vulnerable witnesses and may do so by:

- a. ensuring that questions are kept simple and stated in a form appropriate to the comprehension and developmental level of the vulnerable witness;
- b. protecting vulnerable witness from harassment or undue embarrassment, character assassination, aggressive questioning, and ensure that dignity of the witness is maintained at all times during the trial;
- c. avoiding waste of time by declining questions which the court considers unacceptable due to their being improper, unfair, misleading, needless, unconnected to the case, repetitive or expressed in language that is too complicated for the witness to understand.
- d. allowing the vulnerable witness to testify in a narrative form.
- e. in cases involving multiple accused persons or defendants, take steps to minimize repetition of questions, and the court may require counsels for different parties to provide questions in advance from all the counsels.
- f. in cases involving sexual offences against child victims, ensuring that questions are put to the child victim only through the court.

Frequency of Hearings:

There is no specific provision on the exact number of times a child can be heard or summoned. However, the law aims to minimize the number of times a child has to recount their experience to reduce trauma.

Limit on Interviews/Hearings:

The law does not specify a strict limit on the total number of interviews or hearings. However, guidelines and best practices suggest that the number of interviews should be limited to avoid re-traumatization of the child. In addition, the law emphasizes the importance of conducting proceedings in a manner that is non-intimidating and protective of the child's rights and dignity.

7.2 Is it mandatory that this professional has specific training for child interview?

In India, the legal provisions ensure that professionals who interview child victims or witnesses are adequately trained to handle the sensitive nature of their duties. The following are the specific references to Indian laws and guidelines:

POCSO Act and Rules: The Protection of Children from Sexual Offences (POCSO) Act, 2012, mandates that the statement of a child should be recorded by a woman police officer not below the rank of sub-inspector. The police officer is required to be trained to handle child victims sensitively and without causing additional trauma. Additionally, the POCSO Guidelines require that professionals such as the support person should fulfill the requirements of having basic training in communicating with and assisting children of different ages and backgrounds to prevent the risks of re-victimization and secondary victimization. Furthermore, the support person must have an understanding of the legal and Court procedures involved in the conduct of a case under the POCSO Act, 2012. He/she has to be able to render concrete support to the child and facilitate his/her active participation, while not disturbing the proceedings by his/her presence. To ensure this, the District Child Protection Unit is required to arrange for periodic training modules to impart this knowledge to those professionals registered with it or with the CWC for engagement as support persons.

National Commission for Protection of Child Rights (NCPCR): The NCPCR, under the Commissions for Protection of Child Rights (CPCR) Act, 2005, recommends training for various professionals,

including those dealing with children, to ensure they are equipped to uphold the rights of child victims or witnesses. Keeping the said objective in mind NCPCR has developed an exhaustive training module for functionaries under the Juvenile Justice(Care and Protection of Children)Act, 2015. The training module states:

“The National Commission for Protection of Child Rights (NCPCR) has also been working towards making it a collective endeavour where all authorities and administrations including Centre, State, District Administrations and Local Authorities; all functionaries of child protection mechanism put in collective effort to protect children and in taking right decisions in the best interest of the children. Following its mandate under Rule 91 (vii) of the Juvenile Justice Rules, 2016 (as amended in 2021). NCPCR has initiated the process of developing training modules for all functionaries under the Juvenile Justice Act, 2015.”²⁵

Model Guidelines under Section 39 of the POCSO Act: These guidelines suggest that support persons, including those who may interact with the child during the legal process, should receive adequate training to perform their role effectively.

Juvenile Justice (Care and Protection of Children) Act: The Act emphasizes the need for specialized training for all stakeholders involved in the juvenile justice system, including those interviewing or interacting with child victims and witnesses. As per Rule 91 of the J.J. Model Rules 2016 (as amended in 2021), one of the functions of NCPCR is to develop training module for stakeholders under the Juvenile Justice Act, 2015. Furthermore, as per Rule 89 the Juvenile Justice Model Rules 2016 (as amended in 2021):

(1)the State Government shall provide for training of personnel appointed under the Act and the rules and each category of staff, keeping in view with their statutory responsibilities and specific jobs requirements.

(2) The training program shall include: (i) introduction of the Act and the rules made thereunder; (ii) orientation on child welfare, care, protection and child rights; (iii) induction training of the newly recruited personnel; (iv) refresher training courses and skill enhancement program, documentation and sharing of good practices; and (v) conferences, seminars and workshops.

All in all, the legal framework in India recognizes the importance of specialized training for professionals who interact and deal with child victims or witnesses. The existing framework ensures that such interactions are conducted in a manner that is both legally sound and sensitive to the needs of the child.

7.3 Is any interview protocol adopted in your country (pre-trial and/or trial stage) If so, which one? If so, could you please share it?

India has adopted specific interview protocols for child victims, particularly during the pre-trial and trial stages, as outlined in the Model Guidelines under Section 39 of the Protection of Children from Sexual Offences Act, 2012. These guidelines provide a framework for the use of professionals and experts when assisting children during these stages.

Guidelines on Interviewing a Child

(As outlined in the Model Guidelines under Section 39 of the Protection of Children from Sexual Offences Act, 2012²⁶):

There are two distinct aspects to the gathering of information from the child (or attending adults) in cases of alleged child sexual abuse: (a) the medical history and (b) the interview. The interview stage of the assessment goes beyond the medical history in that it seeks to obtain information directly related to the alleged sexual abuse, for example, details of the assault, including the time and place, frequency, description of clothing worn and so on. Interviewing of children is a specialized skill and, if possible, should be conducted by a trained professional. In the context of the POCSO Act, 2012 interviews may need to be conducted by a variety of professionals, including police or investigative agencies. These are forensic rather than therapeutic interviews, with the objective being to obtain a statement from the child in a manner that is developmentally-sensitive, unbiased, and truth-seeking, that will support accurate and fair decision-making in the criminal justice and child welfare systems. Information obtained from an investigative or forensic interview may be useful for making treatment decisions, but the interview is not part of a treatment process. The following are some basic guidelines that should be kept in mind while conducting the forensic interview to ensure that the interview process does not become traumatic for the child. Regardless of who is responsible for the medical history and interview, the two aspects of information gathering should be conducted in a coordinated manner so that the child is not further traumatized by unnecessary repetition of questioning and information is not lost or distorted

²⁵ https://ncpcr.gov.in/uploads/1668950434637a29a2d3cd9_cwc-module-updated.pdf

²⁶ <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>

1.1 Interview setting: The more comfortable a child is, the more information he is likely to share. Also, children may be too embarrassed to share intimate details when they believe that others can overhear what they are saying. As far as possible, interviews should be conducted in a safe, neutral and child-friendly environment. The interviewer can incorporate elements to make a room appear child-friendly, such as toys, art material or other props. Distractions like ringing phones, other people's voices and elaborate play material should be removed as far as possible.

1.2 Things to be kept in mind while interviewing a child

- i) All children should be approached with extreme sensitivity and their vulnerability recognized and understood.
- ii) Try to establish a neutral environment and rapport with the child before beginning the interview. For example, if the interview must be conducted in the child's home, select a private location away from parents or siblings that appears to be the most neutral spot.
- iii) Try to select locations that are away from traffic, noise, or other disruptions. Items such as telephones, cell phones, televisions, and other potential distractions should be temporarily turned off.
- iv) The interview location should be as simple and uncluttered as possible, containing a table and chairs. Avoid playrooms or other locations with visible toys and books that will distract children.
- v) Always identify yourself as a helping person and try to build a rapport with the child.
- vi) Make the child comfortable with the interview setting. Gather preliminary information about the child's verbal skills and cognitive maturity. Convey that the goal of the interview is for the child to talk and ask questions that invite the child to talk (e.g., "tell me about your family").
- vii) Ask the child if he/she knows why they have come to see you. Children are often confused about the purpose of the interview or worried that they are in trouble.
- viii) Convey and maintain a relaxed, friendly atmosphere. Do not express surprise, disgust, disbelief, or other emotional reactions to descriptions of the abuse.
- ix) Avoid touching the child and respect the child's personal space. Do not stare at the child or sit uncomfortably close.
- x) Do not suggest feelings or responses to the child. For example, do not say, "I know how difficult this must be for you."
- xi) Do not make false promises. For example, do not say, "Everything will be okay" or "You will never have to talk about this again."
- xii) Establish ground rules for the interview, including permission for the child to say he/she doesn't know and permission to correct the interviewer.
- xiii) Ask the child to describe what happened, or is happening, to them in their own words. The interviewer should, as far as possible, follow the child's lead; however, he may have to delicately introduce the topics of the abuse.
- xiv) Always begin with open-ended questions. Avoid asking the child a direct question, such as "Did somebody touch your privates last week?". Instead, try "I understand something has been bothering you. Tell me about it."
- xv) After initially starting like this, move on to allow the child to use free narrative. For example, you can say, "I want to understand everything about [refer back to child's statement]. Start with the first thing that happened and tell me everything you can, even things you don't think are very important."
- xvi) Avoid the use of leading questions that imply an answer or assume facts that might be in dispute and use direct questioning only when open-ended questioning/free narrative has been exhausted.
- xvii) The interviewer should clarify the following:
 - a) Descriptions of events.
 - b) The identity of the perpetrator(s).
 - c) Whether allegations involve a single event or multiple events.
 - d) The presence and identities of other witnesses.
 - e) Whether similar events have happened to other children.
 - f) Whether the child told anyone about the event(s).
 - g) The time frame and location/venue.
 - h) Alternative explanations for the allegations.
- xviii) However, interviewers should avoid probing for unnecessary details. For example, it may not be essential to get a detailed description of an alleged perpetrator if he/she is someone who is familiar to the child (e.g., a relative or teacher). Although it is useful if the child can recall when and where each event occurred, children may have difficulty specifying this information if they are young, if the event happened a long time ago, or if there has been ongoing abuse over a period of time

xix) The child may get exhausted frequently and easily; in such an event, it is advisable not to prolong the inquiry, but rather to divert the child's mind and come back to the sexual abuse when the child is refreshed.

xx) Regularly check if the child is hungry or thirsty, tired or sleepy, and address these needs immediately.

xxi) Let the child do the talking and answer any questions the child may have in a direct manner.

xxii) Avoid questioning the child as to why he behaved in a particular way (e.g., "Why didn't you tell your mother that night?"). Young children have difficulty answering such questions and may feel that you are blaming them for the situation.

xxiii) Avoid correcting the child's behaviour unnecessarily during the interview. It can be helpful to direct the child's attention with meaningful explanations (e.g., "I have a little trouble hearing, so it helps me a lot if you look at me when you are talking so that I can hear you") but avoid correcting nervous behaviour that may be slowing the pace of the interview or even preventing it from proceeding.

xxiv) When two professionals will be present, it is best to appoint one as the primary interviewer, with the second professional taking notes or suggesting additional questions when the interview is drawing to a close.

xxv) Interviewers should not discuss the case in front of the child.

xxvi) Individuals who might be accused of influencing children to discuss abuse, such as parents involved in custody disputes or therapists, should not be allowed to sit with children during interviews.

xxvii) In some cases, the interviewer may consider it appropriate to allow a support person to sit in on the interview; but in these situations, such a person be instructed that only the child is allowed to talk unless a question is directed to the support person. Also, the support person should be seated out of the child's line of vision to avoid allegations that the child was reacting to nonverbal signals from a trusted adult.

xxviii) When planning investigative strategies, consider other children (boys as well as girls) that may have had contact with the alleged perpetrator. For example, there may be an indication to examine the child's siblings. Also consider interviewing the parent or guardian or other family member of the child, without the child present.

xxix) The interviewer should convey to all parties that no assumptions have been made about whether abuse has occurred.

xxx) The interviewer should take the time necessary to perform a complete evaluation and should avoid any coercive quality to the interview.

xxxi) Interview procedures may be modified in cases involving very young, minimally verbal children or children with special needs (e.g., developmentally delayed, electively mute, non-native speakers).

xxxii) Try to establish the child's developmental level in order to understand any limitations as well as appropriate interactions. It is important to realize that young children have little or no concept of numbers or time, and that they have limited vocabulary and may use terminology differently to adults, making interpretation of questions and answers a sensitive matter.

xxxiii) A variety of non-verbal tools may be used to assist young children in communication, including drawings, toys, dollhouses, dolls, puppets, etc. Since such materials have the potential to be distracting or misleading they should be used with care. They are discretionary for older children.

xxxiv) Storybooks, colouring books or videos that contain explicit descriptions of abuse situations are potentially suggestive and are primary teaching tools. They are typically not appropriate for information-gathering purposes. In certain situations, the interviewer may consider it appropriate to interview the child victim together with his/her parent or guardian or other person in whom the child has trust and confidence. In such cases, the following guidance may be useful:

i) When possible, interviewing the primary caregiver and reviewing other collateral data first to gather background information may facilitate the evaluation process.

ii) The child should be seen individually, except when the child refuses to separate from a parent/guardian. Discussion of possible abuse with the child in the presence of the caregiver during evaluation interviews should be avoided except when necessary to elicit information from the child. In such cases, the interview setting should be structured to reduce the possibility of improper influence by the caregiver on the child's behaviour or statements.

iii) In some cases, joint sessions with the child and the non-accused caregiver or accused or suspected individual might be helpful to obtain information regarding the overall

quality of the relationships. Such joint sessions should not be conducted for the purpose of determining whether abuse occurred based on the child's reactions to the participating adult. Joint sessions should not be conducted if they will cause significant distress for the child.

2. Children with special needs

- i) It is important to understand that children may have special physical or mental needs, or a combination of both.
- ii) Be aware that the risk of criminal victimization (including sexual assault) for children with special needs appears to be much higher than for those without such needs. Children with special needs are often victimized repeatedly by the same offender. Caretakers, family members, or friends may be responsible for the sexual abuse.
- iii) Respect the child's wishes to have or not have caretakers, family members, or friends present during the interview. Although these persons may be accustomed to speaking on behalf of the child, it is critical that they not influence the statements of the child. If professional assistance is required (e.g., from a language interpreter or mental health professional) this should be arranged.
- iv) Ideally those providing assistance should not be associated with the child. Thus as far as possible, avoid using a relative or friend of the child as an interpreter.
- v) When preparing for the interview, consult with the adults in the child's world who understand the nature of his/her disability and are familiar with how the child communicates. Teachers and other professionals or paraprofessionals who have had experience in communicating with the child can be an invaluable resource to the interview team. This may include speech/language pathologists, educational psychologists, counsellors, teachers, clinical psychologists, social workers, nurses, child and adolescent psychiatrists, paediatricians, etc.
- vi) Speak directly to a child with special needs, even when interpreters, intermediaries, or guardians are present. Assess the child's level of ability and need for assistance during the interview process.
- vii) Note that not all children who are deaf or hard-of-hearing understand sign language or can read lips. Not all blind persons can read Braille. Be aware that a child with sensory disabilities may prefer communicating through an intermediary who is familiar with his/her patterns of speech. Ideally, this would be someone not associated with the child, but in some cases this may be necessary.
- viii) The child may experience difficulty with the concept of time, such as the concept of before and after, and being able to sequence events. The child may not be able to accurately define when something happened. It may be helpful to link events with major activities in the child's life, school events, or routines such as mealtimes.
- ix) Allow extra time for the interpreter to transfer the complete message to the child and for the child to form answers.
- x) Recognize that the child may have also some degree of cognitive disability: mental retardation, mental illness, developmental disabilities, traumatic brain injury, etc. Note however that not all developmental disabilities affect cognitive ability (e.g., cerebral palsy may result in physical rather than mental impairment). Be aware that a child with cognitive disabilities may be easily distracted and have difficulty focusing. Speak to the child in a clear, calm voice and ask very specific, concrete questions. Be exact when explaining what will happen during the medical examination process and why.
- xi) Keep in mind that children with special needs may be reluctant to report the crime or consent to the examination for fear of losing their independence. For example, they may have to enter a long-term care facility if their caretakers assaulted them or may need extended hospitalization to treat and allow injuries to heal.
- xii) While a child's special need may have resulted in him being more vulnerable to abuse, it is important to listen to his/her concerns about the assault and what the experience was like for them, and not focus on the role of his/her special need.
- xiii) Assure the child that it is not his/her fault that he was sexually assaulted. If needed, encourage discussion in a counselling/advocacy setting if he/she is concerned about their safety in the future.

7.4 Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child/who is sitting in another room, if any?

During interviews or hearings involving a child victim or witness, the presence of individuals is carefully controlled to protect the child's privacy and ensure a supportive environment.

PARTICIPATION IN INTERVIEWS/HEARINGS AND SITTING ARRANGEMENTS:

BEFORE THE JUDICIAL MAGISTRATE

- The Magistrate shall record the statement in the presence of parents/guardian and/or any other person in whom the child has trust or confidence.
- The Magistrate where necessary, may take the assistance of a translator and/or interpreter and/or special educator.
- The Magistrate should ensure that the statement of the child is also recorded by audio/video means, wherever possible.²⁷
- The statement made by a child with temporary or permanent mental or physical disability and with the assistance of an interpreter/special educator before the Magistrate shall be videographed.²⁸
- Advocate of accused shall not be present during recording of statement before the Magistrate.

BEFORE THE POLICE/INVESTIGATING AUTHORITY

- As per Section 24(1) of the Protection of Children from Sexual Offences Act, 2012, “the statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector”. Moreover, in accordance with Section 24(2), “the police officer while recording the statement of the child shall not be in uniform”.²⁹
- If the child does not speak the language of the state, the police can take assistance of a translator and/or interpreter with necessary qualification and experience [Sections 19(4) and 26(2) of Protection of Children from Sexual Offences Act, 2012.]
- If the child has any mental or physical disability, the police can take the assistance of a special educator. [Section 26(3) of Protection of Children from Sexual Offences Act, 2012.]
- If the child prefers translator, interpreter or special educator of a particular gender, the same must be respected. [Rule 3(7) of Protection of Children from Sexual Offences Rules, 2012.]
- Police will record statement using audio-video electronic means when possible.
- During the recording of statements the child victim should be accompanied at all times by some person the victim trusts. Such person can include a member of the victim’s family or in the case where the perpetrator is a member of the victim’s family, by a trained lady member of a recognized welfare institution.

BEFORE THE CHILD WELFARE COMMITTEE

- Child Welfare Committee shall interview the child sensitively and in child-friendly manner. The tone should not be accusatory and should not have adversarial impact.[Rule 19(6) of Juvenile Justice Model Rule, 2016.] The CWC shall ensure that no person unconnected with the case is present in the room during the sitting. A support person, with whom the child feels comfortable, may be present during the sitting. The CWC shall ensure that only those people shall remain in the room, before whom the child is comfortable.

The child friendly approaches include ensuring:

- no person(s) un-connected with the case are present in the room during sitting
- only person(s), with whom the child feels comfortable, are present during the sitting
- premises do not look like a court room
- sitting arrangement is such to enable the Committee to interact with the child face to face
- chairperson and members do not sit on a raised platform
- No barriers, such as witness boxes or bars are kept between the Committee and the children
- Reaching out to children, who cannot be produced before them and hold its sittings at a place convenient for such children
- Usage of child friendly conduct and adoption of child friendly attitude with regard to body language, facial expression, eye contact, intonation and volume of voice while addressing the child
- Informed participation of the child and parent or guardian
- Interview of the child is conducted sensitively
- No usage of any adversarial or accusatory words that adversely impact the dignity or self esteem of the child.³⁰

Special educators, Translators Interpreters

- Child must be informed of the availability of Support persons Translators, Interpreters, Counsellors and Special Educators [Rule 4 (7) of the Protection of Children from Sexual Offences Rules, 2012.]
- Translators, interpreters, special educators and counsellors shall be bound by confidentiality [Rule 3(10) of Protection of Children from Sexual Offences Rules, 2012]

²⁷ Section 164(5A) of Criminal Procedure Code, 1973.

²⁸ Proviso of Section 25(1) Protection of Children from Sexual Offences Act, 2012. Rule 54(14) of Juvenile Justice Model Rules, 2016.

²⁹ [Section 24 (1) and (2) of Protection of Children from Sexual Offences Act, 2012]

³⁰ [faq-on-cwc.pdf\(satyarthi.org.in\)](http://faq-on-cwc.pdf(satyarthi.org.in))

SUPPORT PERSONS

The Child Welfare Committee shall appoint a support person with the consent of the child and child's parent or guardian [Rule 4(7) of Protection of Children from Sexual Offences Rules, 2012.]

- Family can choose a support person of their choice [Rule 4(7) Proviso Protection of Children from Sexual Offences Rules, 2012.]
- The support person will address all concerns of the child and parents/guardians and inform them about update in court proceedings, available assistance under the Act, judicial procedure, potential outcome of the case, role of the child during testimony. Rule 4(8) of Protection of Children from Sexual Offences Rules, 2012.
- Support person is bound to maintain confidentiality of the child [Rule 4(8) of Protection of Children from Sexual Offences Rules, 2012.]

BEFORE COURTS

The Guidelines issued by the Hon'ble High Court at Calcutta in relation to Recording of Evidence of Vulnerable Witnesses³¹ provide that the mandatory requirement of in camera trials as per section 327 CrPC and Section 37 of the POCSO Act shall be ensured and recorded in the orders passed in such cases. In all other cases, the court may, at the time of testimony of a vulnerable witness, order in writing the exclusion from the courtroom of all persons, who do not have a direct interest in the case including members of the press. Such an order may be made to protect the right to privacy of the vulnerable witness or if the court is of the opinion that requiring the vulnerable witness to testify in open court would cause psychological harm to them, hinder the ascertainment of truth, or result in their inability to effectively communicate due to embarrassment, fear, or timidity. (ii) In making its order, the court shall consider the developmental level of the vulnerable child witness, the nature of the crime, the nature of testimony regarding the crime, the relationship of the child witness to the accused and to persons attending the trial, their wishes, and the interests of their parents or legal guardian.

The guidelines also make the following provisions for utilization of live links and testimonial aids.

Live-link television testimony in criminal cases where the vulnerable witness is involved – (i) Any party in the case, the prosecutor, counsel or the guardian ad litem may apply for an order that the testimony of the vulnerable witness be taken in a room outside the courtroom and be televised to the courtroom by live-link television. (ii) In order to take a decision of usage of a live-link the judge may question the vulnerable witness in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian ad litem, prosecutor, and counsel for the parties. The questions of the judge shall not be related to the issues at trial but to the feelings of the vulnerable witness about testifying in the courtroom. (iii) The court on its own motion, if deemed appropriate, may pass orders in terms of (i) or any other suitable directions for recording the evidence of a vulnerable witness.

Provision of testimonial aids to prevent exposure of vulnerable witness to the accused: The court may suo motu or on an application made even by the vulnerable witness, prosecutor or counsel or the guardian ad litem order testimonial aid such as screens, one-way mirror, curtains or other devices to be placed in the courtroom in such a manner that the vulnerable witness cannot see the accused/opposite party while testifying and at the same time ensuring that the opposite party/accused is in a position to hear the statement of the vulnerable witness and communicate with their advocate. The court shall issue an order in writing stating the reasons and describing the approved courtroom arrangement in the judgment.

These arrangements are made to minimize the child's discomfort and ensure that the interview or hearing is conducted in a child-friendly manner.

7.5 Who is addressing the child victim/witness: only the interviewer? Cross-examination allowed? If only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?

In India, during legal proceedings involving a child victim or witness, the process of addressing and questioning the child is handled with special care to protect the child's rights and ensure a child-friendly environment:

Who Addresses the Child:

Typically, the child is addressed by the interviewer or the magistrate during the pre-trial phase, and by the judge, presiding magistrate or special public prosecutor during the trial phase.

³¹ <https://www.calcuttahighcourt.gov.in/Notice-Files/general-notice/6108>

To facilitate the ascertainment of the truth, the court exercises control over the questioning of vulnerable witnesses by:

- a. ensuring that questions are kept simple and stated in a form appropriate to the comprehension and developmental level of the vulnerable witness;
- b. protecting vulnerable witness from harassment or undue embarrassment, character assassination, aggressive questioning, and ensure that dignity of the witness is maintained at all times during the trial;
- c. avoiding waste of time by declining questions which the court considers unacceptable due to their being improper, unfair, misleading, needless, unconnected to the case, repetitive or expressed in language that is too complicated for the witness to understand.
- d. allowing the vulnerable witness to testify in a narrative form.
- e. in cases involving multiple accused persons or defendants, take steps to minimize repetition of questions, and the court may require counsels for different parties to provide questions in advance from all the counsels.
- f. in cases involving sexual offences against child victims, ensuring that questions are put to the child victim only through the court.

Cross-Examination:

The guidelines issued by the Hon'ble High Court at Calcutta in relation to Recording of Evidence of Vulnerable Witnesses³² state that in case of a victim of a sexual offence, care should be taken to avoid exposure of the victim to the accused at the time of recording the evidence, while ensuring the right of cross-examination of the accused and that the accused is in a position to hear the statement of the child and communicate with their advocate.

Judges shall carefully monitor the examination and cross examination of the victim or vulnerable witnesses to avoid any harassment or intimidation to the victim or vulnerable witness.

Judges shall ensure that the requisite guidelines and Standard Operating Procedures affirmed by the Hon'ble Supreme Court in respect of recording of evidence of vulnerable witnesses is followed.

Protocol for Other Participants:

During trial/inquiry, if other participants, such as the defense counsel, have questions for the child, they must submit their questions to the court. The court will then ask these questions to the child in a manner deemed appropriate and non-intimidating.

This protocol ensures that the child is not directly exposed to the adversarial nature of the legal process and that their testimony is taken in a supportive and protective atmosphere.

Communication Tools:

One-Way Mirror: A one-way mirror is often used, allowing observers to see and hear the interview without being seen themselves.

Audio-Visual Equipment: Observers can listen to the interview through speakers and communicate with the interviewer via intercoms or other audio devices if necessary.

Written Notes: Observers may pass written notes to the interviewer with questions or comments to avoid verbal interruptions.

Interviewer's Discretion: The interviewer has the discretion to decide which questions are appropriate and may rephrase or omit questions to ensure the child's well-being.

The use of these communication tools ensures that the child's interview is conducted in a supportive environment, while also allowing for necessary observation and input from legal professionals involved in the case.

7.6 Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?

In the context of Indian legal proceedings involving child victims or witnesses, the interviewer has certain responsibilities and discretions:

Discretion Not to Ask Questions:

The interviewer, typically a magistrate or judge, may use their discretion not to ask questions that are inappropriate or could cause distress to the child. The primary concern is the child's well-being, and questions that may harm the child's psychological state can be omitted.

Rephrasing Questions:

The Judge or the Presiding Magistrate may rephrase questions raised by others to make them more understandable and non-intimidating for the child. The rephrasing is done to ensure that the child comprehends the questions and is able to answer them in a child-friendly environment.

³² <https://www.calcuttahighcourt.gov.in/Notice-Files/general-notice/6108>

The Judge's role is crucial in safeguarding the child's rights and ensuring that the child's testimony is taken in a supportive environment that minimizes potential trauma. In this regard, the guidelines issued by the Hon'ble High Court at Calcutta in relation to Recording of Evidence of Vulnerable Witnesses³³ lay down the following provisions:

ii) Objections to questions should be couched in a manner so as not to mislead, confuse, frighten a vulnerable witness. (iii) The court should allow the questions to be put in simple language avoiding slang, esoteric jargon, proverbs, metaphors and acronyms. The court should ascertain the spoken language of the victim or vulnerable witness and the range of their vocabulary before recording the evidence. The court must not allow the question carrying words capable of multiple meanings, questions having use of both past and present in one sentence, or multiple questions, which is likely to confuse a witness. Where the witness seems confused, instead of repetition of the same question, the court should direct its re-phrasing.

7.7 Is the interview audio or video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?

Under the Code of Criminal Procedure, the statement of a child victim or witness is often audio or video recorded, and this practice is guided by specific legal provisions. Section 164 of the Code lays down the following provisions:

(1) Any Metropolitan Magistrate or Judicial Magistrate, irrespective of jurisdiction in the case, is empowered to record any confession or statement made to them during an investigation under this Chapter or any other prevailing law, or at any time thereafter before the commencement of the inquiry or trial:

[Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the accused person's advocate:]

Accuracy of Statement: The recording under Section 164 of the Criminal Procedure Code serves as a reliable record of the child's testimony.

Use as Evidence in Court and other Courts/Juvenile Justice Boards:

The statement recorded under Section 164 of Cr.P.C is not considered substantive evidence. It is primarily used for corroboration or contradiction of the victim's testimony during the trial.

7.7.1 In case the recording is admitted as evidence in court what protection measures can be applied (e.g., image and voice distortion, child heard in separate room etc)?

When a recording of a child's statement under Section 164 of the Criminal Procedure Code is introduced as evidence in court in India, several protection measures can be applied to safeguard the child's identity and privacy:

Image and Voice Distortion:

The child's image and voice may be distorted or modified when the recording is played in court to protect identity.

In Camera Proceedings:

In order to ensure confidentiality of proceedings, the trial involving a child victim is conducted 'in camera', meaning it is not open to the public, and only the parties concerned are present.

Child Heard in Separate Room:

The child may give their testimony from a separate room using video conferencing technology to avoid direct confrontation with the accused and the courtroom environment.

Anonymity:

Measures are taken to ensure that the child's name and identity are not disclosed during the proceedings, maintaining the child's right to confidentiality.

These measures are in place to protect the child from further trauma and to respect their right to privacy throughout the judicial process.

In addition to this the Guidelines issued by the Hon'ble High Court at Calcutta in connection with the Recording of Evidence of Vulnerable Witnesses provides for the following protective measures:

Protective order. —The depositions of the vulnerable witness recorded by video link shall not be video recorded except under reasoned order requiring the special measures by the judge. However, where any video or audio recording of a vulnerable witness is made, it shall be under a protective order that provides as follows: (i) A transcript of the testimony of the vulnerable witness shall be prepared and maintained on record of the case. Copies of such transcript shall be furnished to the parties of the case. (ii) Recording may be viewed only by parties, their counsel, their expert witness, and the guardian ad litem in the office

³³ <https://www.calcuttahighcourt.gov.in/Notice-Files/general-notice/6108>

of the court, following a procedure similar to inspection of documents. (iii) No person shall be granted access to the recording, or any part thereof unless they sign a written affirmation that they have received and read a copy of the protective order; that they submit to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, they will be subject to the penalties provided by law. (iv) Any recording, if made available to the parties or their counsel, shall bear the following cautionary notice: “This object or document and the contents thereof are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portion shall be made, given, sold, or shown to any person without prior court order. Any person violating such protective order is subject to the contempt power of the court and other penalties prescribed by law.” (v) No recording shall be given, loaned, sold, or shown to any person except as ordered by the court. This protective order shall remain in full force and effect until further order of the court.

The Protection of Children against Sexual Offences (POCSO) Model Guidelines also calls for ensuring privacy of children during their participation in trial proceedings. The guidelines lay emphasis on making endeavours to strengthen protective measures during the justice process. The relevant paragraphs of the guidelines are reproduced hereunder for reference:

“The right to privacy—The child’s privacy and identity must be protected at all stages of the pre-trial and trial process. The release of information about a child victim or witness, in particular in the media, may endanger the child’s safety, cause the child intense shame and humiliation, discourage him from telling what happened and cause him severe emotional harm. Release of information about a child victim or witness may put a strain on the relationships of the child with family, peers and community, especially in cases of sexual abuse. In some cases it might also lead to stigmatization by the community, thereby aggravating secondary victimization of the child. There are two essential ways of protecting the privacy of child victims and witnesses: firstly, by restricting the disclosure of information on child victims and witnesses and secondly, by restricting the attendance of the general public or non-essential persons in courtrooms.

The right to be protected from hardship during the justice process - Throughout the justice process, child victims are exposed to hardship, also referred to as secondary victimization: this can occur while reporting the crime and recounting what has happened, while awaiting trial and while testifying in court. The judicial process is a very stressful one for the child; as far as possible, any stress the child may have as a result of the process should be minimized.

The right to safety - Where the safety of a child victim may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child.

The Witness Protection Scheme³⁴ also underlines some measures to protect the privacy of child victims/vulnerable witnesses. It provides for usage of specially designed vulnerable witness court rooms which have special arrangements like live video links, one way mirrors and screens apart from separate passages for witnesses and accused, with option to modify the image of face of the witness and to modify the audio feed of the witness’ voice, so that he/she is not identifiable”.

In *Sakshi vs Union of India*³⁵, the Supreme Court ordered the use of extensive measures to protect children during sexual abuse trials.

(1) The provisions of sub-section (2) of section 327 Cr.P.C. shall in addition to the offences mentioned in the sub-section would also apply in inquiry or trial offences under sections 354 and 377 IPC.

(2) In holding trial of child sex abuse or rape :

(a) 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, in so far as they relate directly to the incident, should be given in writing to the President 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.

³⁴ https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf

³⁵ <https://indiankanoon.org/doc/1103956/>

7.8 How is the quality of the recording? In case of failure in the recording, what are the measures adopted?

The quality of audio or video recordings of statements under Section 164 CrPC is expected to be clear and reliable to ensure that the child's statement is accurately captured. The recordings are typically made using equipment that meets certain standards to maintain the integrity of the evidence.

In case of a failure in the recording, the following measures are adopted:

Backup Systems: Courts and law enforcement agencies are encouraged to have backup recording systems in place to prevent loss of data.

Documentation: The statement under Section 164 of the Code of Criminal Procedure is always taken down in writing. The verbatim note is kept in a sealed envelope as a supplementary record to support the child's statement if the recording fails.

7.9 If no audio/video recording is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement/recording?

Review and Correction:

While there is no provision in law explicitly mentioning the child's right to review and correct their statements, it is generally understood that the child should be able to provide an accurate account.

Copy of Statement:

The legal representative of the child has the right to obtain a copy of the recorded statement. This ensures transparency and allows for verification of the recorded content.

7.10 If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness/ are there still adaptations in this case?

In India, there are specific provisions and adaptations for hearing child victims and witnesses in legal proceedings. The Protection of Children from Sexual Offences (POCSO) Act, for instance, recognizes the need for a child-friendly approach in the adjudication and disposal of matters concerning children. Section 33 of the POCSO Act provides a special procedure for recording the evidence of a child witness. While it is not mandatory for a child to participate in a specific way, the law emphasizes the child's right to be heard in a manner that is sensitive and protective. Such participation is guided by the principles of justice, fairness, and the child's best interests. Section 33 POCSO Act (The Protection of Children from Sexual Offences Act, 2012) lays down the procedure and powers of Special Courts in this context.

Procedure and Powers of Special Courts. –

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

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

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

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

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

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

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial : Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child. Explanation.-For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

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

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

Adaptations and Considerations:

The court considers the child's age, maturity, and emotional state when determining the procedure for hearing.

Adaptations may include:

Closed Courtroom: Proceedings are often held in-camera (not open to the public) to protect the child's privacy.

Video Conferencing: Child witnesses may testify through video conferencing to avoid direct confrontation with the accused.

Support Persons: Child witnesses are entitled to the presence of a support person during their testimony.

Child-Centric Approach: The child's testimony is carefully evaluated, considering their unique perspective and limitations.

Rights of the Child Witness:

The child has the right to be heard, understood, and protected throughout the legal process.

The court aims to strike a balance between the child's rights and the accused's right to a fair trial.

In summary, while there is a special procedure for child witnesses, the child's participation is guided by their best interests, and adaptations are made to ensure a child-friendly approach.

8. Offender's right during or after the interview

8.1 Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?

The alleged offender (the accused) is not allowed to directly participate in the interview of the child witness. The primary reason for this restriction is to protect the child from any potential intimidation, coercion, or undue influence by the accused. The defense attorney may not directly participate in the interview either.

However, during the trial, the defense attorney/counsel has the opportunity to cross-examine the child witness in court. Cross-examination is a crucial part of the legal process, allowing the defense to challenge the credibility and accuracy of the child's testimony.

Mandatory Participation:

Neither the alleged offender nor their defense attorney is mandatory participants during the child witness interview.

The child's testimony is primarily recorded by the investigating authorities (such as the police) or during the trial proceedings.

In summary, the participation of the alleged offender and their defense attorney is not allowed during the child witness interview, but they have the opportunity to cross-examine the child witness during the trial.

Moreover, in the Guidelines for Recording of Evidence of Vulnerable Witnesses, the Hon'ble High Court at Calcutta has mandated that if the child victim or witness refuses to give testimony in the presence of the accused or if circumstances show that the child may be inhibited from speaking freely in that person's presence, the court shall give orders to temporarily remove the accused from the courtroom to an adjacent room with a video link or a one-way mirror visibility into the courtroom. In such cases, the defence lawyer shall remain in the courtroom and question the vulnerable witness, and the accused's right of confrontation shall thus be guaranteed.

8.2 If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?

In India, the alleged offender is not present during the interview/ recording of statements of the child witness under Section 161 and 164 of the Code of Criminal Procedure. However, if the defense wishes to contradict the child's statements, they can do so during the cross-examination phase of the trial. The defense attorney can point out inconsistencies or contradictions in the child's testimony compared to earlier statements or evidence presented. The accused's attorney is allowed to cross-examine the child witness directly or through the judge. The judge will pose the questions to the child in a manner that is sensitive to the child's age and understanding.

Recording as Evidence:

If the child's statement is recorded under Section 164 of the Code of Criminal Procedure, the defense is entitled to access to a copy of the statement recorded in writing by the Judicial Magistrate. This privilege is allowed to the defence in order to enable it to prepare for cross-examination or to highlight discrepancies during the trial. That aside, these safeguards ensure that the rights of the accused are balanced with the need to protect the child witness from potential trauma.

In case of a victim of a sexual offence, care is taken to avoid exposure of the victim to the accused at the time of recording the evidence, while ensuring the right of cross-examination of the accused and that the accused is in a position to hear the statement of the child and communicate with their advocate.[POCSO Act 2012, Section 36(1); JJ Model Rules 2016, Rule 54(18(xi))]

Judges shall carefully monitor the examination and cross examination of the victim or vulnerable witnesses to avoid any harassment or intimidation to the victim or vulnerable witness.

It is to be noted that the statements recorded by the police u/s.161 CrPC and by the Judicial Magistrates under Section 164 CrPC are not substantive evidence for prosecution. They can be used by the defence for contradicting the prosecution witnesses. Therefore, the purpose of contradiction between evidence of a witness before the court and the statement recorded under section 161 and 164 of Cr.P.C is primarily to shake credit of the witness.

9. Parallel proceedings-coordination

9.1 In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?

In the Indian legal framework, the Juvenile Justice (Care and Protection of Children) Act, 2015, along with other relevant laws, ensures a systematic approach to dealing with cases involving child victims. The approach facilitates independent yet harmonized inquiries and proceedings by various authorities, such as the Court, Juvenile Justice Board, and Child Welfare Committee, without any discrimination or overlapping of jurisdiction.

Independent Inquiries and Proceedings: The Juvenile Justice Act, 2015, establishes the Juvenile Justice Board (JJB) and the Child Welfare Committee (CWC) as key authorities to conduct inquiries and proceedings involving children. The JJB deals with children in conflict with the law, while the CWC is responsible for children in need of care and protection.

Juvenile Justice Board: As per Section 4 of the Act, the Juvenile Justice Board conducts inquiries regarding children alleged to be in conflict with the law. The Board operates independently and is empowered to make decisions in the best interest of the child.

Child Welfare Committee(CWC): Section 27 of the Act mandates the CWC to address matters concerning children in need of care and protection. The Committee conducts its inquiries independently, ensuring the child's rights and welfare are prioritized.

Non-Discrimination in Proceedings: The Act ensures that there is no discrimination in the priority given to interviews, hearings, or proceedings among these authorities. Each body functions within its own domain, respecting the rights and dignity of the child throughout the process.

Prevention of Jurisdictional Overlap: To prevent overlapping of jurisdiction, the Act clearly delineates the roles and responsibilities of each authority. Section 23 of the Act explicitly states that no joint proceedings shall be conducted for a child in conflict with the law and a person who is not a child. This provision ensures that the inquiries and proceedings are tailored to the needs and rights of the child, separate from adult proceedings.

9.2 Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

The coordination between courts, juvenile justice boards (JJB), and child welfare committees (CWC) is crucial for ensuring the well-being and protection of child victims and witnesses. For instance, the CWC and JJB, wherever necessary, work closely to advance the best interests of the child. Section 8(3)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2015 allows the JJB to transfer to the CWC matters concerning children in conflict with the law (CCL) stated to be in need of care and protection “at any stage”. This provision recognizes that a child can be both a CCL and a child in need of care and protection (CNCP) simultaneously, necessitating the involvement of both the CWC and the JJB.

As far as the coordination procedure between various authorities is concerned, the same is detailed hereunder:

Between Child Welfare Committee (CWC) and other authorities:

The Child Welfare Committee (CWC) is an autonomous body responsible for dealing with children in need of care and protection. It consists of a Chairperson and other members appointed by the State Government. The CWC’s primary functions include assessing the needs of children, providing care and protection, and ensuring their overall well-being.

As per Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2015³⁶:

(1) The Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection. 30. The functions and responsibilities of the Committee shall include—

- (i) taking cognizance of and receiving the children produced before it;
- (ii) conducting inquiry on all issues relating to and affecting the safety and wellbeing of the children under this Act;
- (iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;
- (iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;
- (v) directing placement of a child in foster care;
- (vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child’s individual care plan and passing necessary directions to parents or guardians or fit persons or children’s homes or fit facility in this regard;
- (vii) selecting registered institution for placement of each child requiring institutional support, based on the child’s age, gender, disability and needs and keeping in mind the available capacity of the institution;
- (viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;
- (ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;
- (x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;
- (xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;
- (xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;
- (xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012;
- (xiv) dealing with cases referred by the Board under sub-section (2) of section 17;
- (xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;

³⁶ <https://cara.wcd.gov.in/PDF/JJ%20act%202015.pdf>

(xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;

(xvii) accessing appropriate legal services for children;

(xviii) such other functions and responsibilities, as may be prescribed.

Between the Juvenile Justice Board (JJB) and other authorities:

The Juvenile Justice Board comprises of a magistrate and two social workers. Its focus is on cases involving juvenile offenders. Rather than punishment, the JJB aims to rehabilitate juvenile offenders. The JJB ensures that the legal process considers the child's best interests and provides appropriate interventions. As per Rule 9 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016:

(1) The Board shall

(i) whenever necessary, the Board shall provide a translator or interpreter or special educator who shall be paid not less than Rs.1500 per day and in case of translator, not exceeding Rs.100 per page. For the said purpose, the District Child Protection Unit shall maintain a panel of translators, interpreters and special educators who shall forward the same to the Board, the qualifications of the translator, interpreter and special educator shall be as prescribed under the POCSO Act, 2012 and rules framed thereunder;

(ii) wherever required issue rehabilitation card in Form 14 to the child in conflict with law to monitor the progress made by the child;

(iii) wherever required, pass appropriate orders for re-admission or continuation of the child in school where the child has been disallowed from continuing his education in a school on account of the pendency of the inquiry or the child having stayed in a Child Care Institution for any length of time;

(iv) interact with Boards in other districts to facilitate speedy inquiry and disposal of cases through due process of law, including sending a child for the purpose of an inquiry or rehabilitation to a Board in another district or State;

(v) inspect Child Care Institutions for children in conflict with law, issue directions in cases of any noticeable lapses, suggest improvements, seek compliance and recommend suitable action, including against any employee found in dereliction of duty to the District Child Protection Unit;

(vi) maintain a suggestion box or grievance redressal box in the premises of the Board at a prominent place to encourage inputs from children and adults alike which shall be operated by the nominee of the Principal Magistrate;

(vii) ensure smooth functioning of Children's Committees in the Child Care Institutions for children in conflict with law, for realising children's participation in the affairs and management of such Child Care Institutions;

(viii) review the Children's suggestion book at least once in a month;

(ix) ensure that the Legal cum Probation Officer in the District Child Protection Unit and the State or District Legal Aid Services Authority extends free legal services to a child; and

(x) deploy, if necessary, the services of student volunteers or non-governmental organisation volunteers for para-legal and other tasks such as contacting the parents of child in conflict with law and collecting relevant social and rehabilitative information about the child.

Between Person-in-charge of a Child Care Institution and other authorities.-

As per Rule 61 of the Juvenile Justice (Care and Protection of Children) Rules, 2016:

(1) The primary responsibility of the Person-in-charge is of maintaining the Child Care Institution and of providing care and protection to the children.

(2) The Person-in-charge shall stay within the premises to be readily available as and when required by the children or the staff and in case where an accommodation is not available in the premises, he shall stay at a place in close proximity to the Child Care Institution till such time such accommodation is made available within the premises of the Child Care Institution.

(3) The general duties and functions of the Person-in-charge shall include, to:-

(i) ensure compliance with the provisions of the Act and the rules and orders made thereunder;

(ii) ensure compliance with the orders of the Board or the Committee or the Children's Court;

(iii) provide homely and enabling atmosphere of love, affection, care and concern for children;

(iv) strive for the development and welfare of the children;

(v) supervise and monitor discipline and well-being of the children and the staff;

(vi) plan, implement and coordinate all activities, programmes and operations, including training and treatment programmes or correctional activities as the case may be;

(vii) segregate a child suffering from contagious or infectious diseases on the advice of the medical officer of the institution;

(viii) segregate a child wherever required;

- (ix) ensure observance and follow-up of daily routine activities;
- (x) organize local and national festivals in the home;
- (xi) organize trips or excursions or picnics for children;
- (xii) send a list of children in Form 40 in the Child Care Institution to the Board or the Committee, as the case may be, every week and bring to the notice of the Board or the Committee, if no date is given for the production of any child before the Board or the Committee;
- (xiii) allocate duties to personnel;
- (xiv) maintain standards of care in the Child Care Institution;
- (xv) ensure proper storage and inspection of food stuffs as well as food served;
- (xvi) maintain the buildings and premises of the Child Care Institution;
- (xvii) maintain proper hygiene in the home;
- (xviii) provide accident and fire preventive measures, disaster management within the premises and also keep first aid kit;
- (xix) make stand-by arrangements for water storage, power back-up, inverters, generators;
- (xx) ensure careful handling of equipment;
- (xxi) employ appropriate security measures;
- (xxii) conduct periodical inspections, including daily inspection and rounds of the Child Care

Institutions;

- (xxiii) take prompt action to meet emergencies;
- (xxiv) ensure prompt, firm and considerate handling of all disciplinary matters; (xxv) ensure proper and timely maintenance of the case files;
- (xxvi) maintain all records and registers required under the Act and these rules;
- (xxvii) prepare the budget and maintain control over financial matters;
- (xxviii) organise the meetings of the Management Committee set up under rule 39 of these rules and provide necessary support;
- (xxix) ensure monthly verification of all records and registers by the Management Committee set up under rule 39 of the rules;
- (xxx) liaise, co-ordinate and co-operate with the State Child Protection Society and the District Child Protection Unit as and when required;
- (xxxi) co-ordinate with the legal cum Probation Officer in the District Child Protection Unit or the District or State Legal Services Authority to ensure that every child is legally represented and provided free legal aid and other necessary support.
- (xxxii) ensure the production of the child before the Board or the Committee or the Children's Court on the date of such production and to ensure that the dates for the said purpose are recorded.

(4) The Person-in-charge shall inspect the Child Care Institution as often as possible but not less than twice a day. He shall make a record of the timings of his inspection and also note his observations in a separate book maintained for the purpose, especially with regard to: (i) maintenance of hygiene and sanitation, (ii) maintenance of order, (iii) quality and quantity of food, (iv) hygienic maintenance of food articles and other supplies, (v) hygiene in the medical centre and provisions for medical care, (vi) behaviour of the children and staff, (vii) security arrangements, and (viii) maintenance of files, registers and books.

(5) Anything irregular that comes to the notice of the Person-in-charge shall be enquired into and resolved and the date, time and nature of the action taken shall be noted in the book.

(6) Where a problem of urgent nature has not been resolved within two working days, the Board or the Committee or the District Child Protection Unit shall be informed.

(7) In case the Person-in-charge is on leave or otherwise not available, the duties of the Person-in-charge shall be performed by the Child Welfare Officer as designated by the Person-in-charge

Between Child Welfare Officer or Case Worker and other authorities.-

As per Rule 62 of the Juvenile Justice (Care and Protection of Children) Rules, 2016

(1) Every Child Welfare Officer or Case Worker in the Child Care Institution shall carry out all directions given by the Board or the Committee or the Children's Court.

(2) The Child Welfare Officer or Case Worker shall establish linkages with voluntary workers and organisations to facilitate rehabilitation and social re-integration of the children and to ensure the necessary follow up.

(3) The Child Welfare Officer or Case Worker available in the Child Care Institution at the time of receiving a child shall interact with the child received with a view to put the child at ease and befriend him and shall supervise the process of receiving of the child.

(4) On receipt of information from the police or Child Welfare Police Officer or on arrival of a child in the Child Care Institution, the Child Welfare Officer or Case Worker shall forthwith conduct social investigation of the child through personal interviews with the child and his family members, social agencies and other sources, inquire into antecedents and family history of the child and collect such other material as may be relevant, and submit the Social Investigation Report to the Board or the Committee or the Children's Court, within fifteen days.

(5) All the children in the Child Care Institution shall be assigned to a Child Welfare Officer or Case Worker and such Child Welfare Officer or Case Worker shall be responsible for the child assigned to him in all respects viz. care and development of the child, reporting to the Board or the Committee or the Children's Court about the child or maintaining the child's record in the Child Care Institution.

(6) Upon assignment of the child to a Child Welfare Officer or Case Worker, the Child Welfare Officer or Case Worker shall: (i) Prepare the case file of the child; (ii) Maintain the Protective Custody Card; (iii) Prepare and maintain the medical record of the child and ensure that the treatment of the child is not interrupted or neglected; (iv) Meet the child every day to ensure his safety, welfare and development; assist the child to adjust to the life in the Child Care Institution. A newly received child shall be met more often than once a day; (v) Gather information about the child within the initial five days to ascertain the child's education, vocational status and aptitude and emotional status; (vi) Have the necessary medical or mental tests, assessments and examinations of the child conducted; (vii) Study the reports and prepare in consultation with the child and his family members, an individual care plan for the child in Form 7 for the period pending inquiry, to be placed in the case file of the child. The Child Welfare Officer or Case Worker may consult the counsellor, psychologists or such other person as he deems fit in this regard; (viii) In keeping with the individual care plan, a daily routine shall be developed for the child and explained to him; (ix) Ensure that the child adheres to the routine activities so developed and take timely reports from the caregivers in this respect; (x) Review periodically the implementation and effectiveness of the individual care plan and if necessary, suitably modify the individual care plan in Form 7 and/or the routine activities of the child with the approval of the Management Committee; (xi) Resolve the problems of the child and deal compassionately with their difficulties in life in the Home; (xii) Participate in the orientation, monitoring, education, vocational and rehabilitation programmes in respect of the child and attend parent teacher meetings in schools in respect of children assigned to them; (xiii) Attend proceedings of the Board or the Committee or the Children's Court and furnish all information and file all reports that may be called for; (xiv) On receiving the copy of the order of declaration of age, to make the necessary changes in the record as regards the age of the child if any change is required and to place the copy of the said order in the case file of the child; (xv) Participate in the pre-release programme and help the child to establish contact which can provide emotional and social support to the child after the release; (xvi) Maintain contact with the children after their release and extend help and guidance to them; (xvii) Visit regularly the residence of the child under their supervision and also places of employment or school attended by such child and submit fortnightly reports or as otherwise directed; (xviii) Accompany the child wherever possible from the Board or the Committee or the Children's Court to Child Care Institution as the case may be; (xix) Maintain record of the next date of production of the child before the Board or the Committee or the Children's Court or for medical treatment and ensure the production of the child before the Board or the Committee or the Children's Court or for medical treatment on the said date; (xx) Maintain the registers as may be specified from time to time; (xxi) Any other duty assigned by the Person-in-charge of the Child Care Institution.

(7) The Child Welfare Officer or Case Worker who has been assigned the duty of verifying the daily cleaning in the premises of Child Care Institution shall do so twice a day, one after the morning cleaning and the other after the evening cleaning. The Child Welfare Officer or Case Worker shall make a note of the same in the House-keeping register.

(8) The Child Welfare Officer or Case Worker who has been assigned the duty of verifying the daily cooking shall make a note of the same in the Meals Register, in respect of every meal.

Between House Mother or House Father and other authorities.-

As per Rule 63 of the Juvenile Justice (Care and Protection of Children) Rules, 2016

(1) Every house father or house mother shall abide by the directions of the Person-in-charge.

(2) The general duties, functions and responsibilities of a house father or house mother shall be as follows: (i) handle every child in the Child Care Institution with love and affection; (ii) take proper care of the child and ensure his welfare; (iii) provide each child upon his reception with all necessary supplies like clothing, toiletries and such other items required for daily usage.; (iv) replenish the provisions or supplies as per scale and need of the child; (v) maintain discipline among the children; (vi) ensure that the children maintain personal cleanliness and hygiene; (vii) look after maintenance, sanitation and maintain hygienic surroundings; (viii) implement the daily routine of every child in an effective manner

and ensure the participation of the children; (ix) look after safety and security arrangements in the Child Care Institution; (x) escort the children whenever they go out of the Child Care Institution for purposes other than production before the Board or the Committee or the Children's Court; (xi) report to the Person-in-charge and to the Child Welfare Officer about the child assigned to the Child Welfare Officer; (xii) maintain the registers, relevant to their duties; and (xiii) any other duty as may be assigned by the Person-in-charge of the Child Care Institution.

Between Probation Officer and other authorities –

As per Rule 64 of the Juvenile Justice (Care and Protection of Children) Rules, 2016

(1) On receipt of information from the Police or Child Welfare Police Officer under clause (ii) of sub-section (1) of section 13 of the Act, without waiting for any formal order from the Board, the Probation Officer shall inquire into the circumstances of the child as may have bearing on the inquiry by the Board and submit a social investigation report in Form 6 to the Board.

(2) The social investigation report should provide for risk assessment, including aggravating and mitigating factors highlighting the circumstances which induced vulnerability such as traffickers or abusers being in the neighbourhood, adult gangs, drug users, accessibility to weapons and drugs, exposure to age inappropriate behaviours, information and material.

(3) The Probation Officer shall carry out the directions given by the Board and shall have the following duties, functions and responsibilities: (i) To conduct social investigation of the child in Form 6; (ii) To attend the proceedings of the Board and the Children's Court and to submit reports as and when required; (iii) To clarify the problems of the child and deal with their difficulties in institutional life; (iv) To participate in the orientation, monitoring, education, vocational and rehabilitation programmes; (v) To establish co-operation and understanding between the child and the Person-in-charge; (vi) To assist the child to develop contacts with family and also provide assistance to family members; (vii) To participate in the pre-release programme and help the child to establish contacts which could provide emotional and social support to the child after release; (viii) To establish linkages with Probation Officers in other Districts and States for obtaining social investigation report, supervision and follow-up. (ix) To establish linkages with voluntary workers and organisations to facilitate rehabilitation and social reintegration of children and to ensure the necessary follow-up; (x) Regular post release follow-up of the child extending help and guidance, enabling and facilitating their return to social mainstreaming; (xi) To prepare the individual care plan and post release plan for the child; (xii) To supervise children placed on probation as per the individual care plan; (xiii) To make regular visits to the residence of the child under his supervision and places of employment or school attended by such child and submit periodic reports as per Form 10; (xiv) To accompany children where ever possible, from the office of the Board to the observation home, special home, place of safety or fit facility as the case may be; (xv) To evaluate the progress of the children in place of safety periodically and prepare the report including psycho-social and forward the same to the Children's Court; (xvi) To discharge the functions of a monitoring authority where so appointed by the Children's Court; (xvii) To maintain a diary or register to record his day to day activities such as visits made by him, social investigation reports prepared by him, follow up done by him and supervision reports prepared by him; (xviii) To identify alternatives of community services and to establish linkages with voluntary sector for facilitating rehabilitation and social reintegration of children.

Between Rehabilitation-cum-Placement Officer and other authorities.-

As per Rule 65 of the Juvenile Justice (Care and Protection of Children) Rules, 2016:

(1) A Rehabilitation-cum- Placement Officer shall be designated in all Child Care Institutions, including place of safety

(2) The Rehabilitation-cum-Placement Officer may have a Masters Degree in Social Work or Human Resource Management and at least three years experience in the field of rehabilitation, employment creation and resource mobilisation.

(3) The Rehabilitation-cum- Placement Officer to perform the following functions: (i) Identify the skills and aptitude of the children placed in Child Care Institutions through appropriate mechanism and in consultation with the Child Welfare Officer, Case Worker, Counsellor and Vocational instructor; (ii) Identify and develop linkages with all such agencies that offer vocational and training services with job placement at the end of the course; (iii) Network with persons, corporates, recognised non-governmental organisations and other funding agencies to mobilise resources for sponsoring training program and support for self-employment; (iv) Facilitate and coordinate with agencies, individuals, corporates, recognised non-governmental organisations and other funding agencies to set up vocational training units or workshops in Child Care Institutions as per age, aptitude, interest and ability; (v) Mobilise voluntary

vocational instructors who render services to carry out the training sessions in the Child Care Institutions; (vi) Inculcate entrepreneurial skills and facilitate financial and marketing support for self-employment; (vii) Prepare rehabilitation plans keeping in mind the nature of the offence and the personality traits of the child; (viii) Maintain the Rehabilitation Card in Form 14 and monitor the progress made by the child on regular basis and submit such progress reports to the Management Committee; (ix) Facilitate the child to get certificates on completion of the education or vocational training courses; (x) Make efforts for ensuring effective placement of each eligible and trained child; (xi) Organise workshops on Rehabilitation programmes and services available under Central and State Government Schemes, spread awareness and facilitate access to such schemes and services; (xii) Organise workshops on personality development, life skill development, coping skills and stress management and other soft skills to encourage the child to become a productive and responsible citizen; and (xiii) Conduct regular visits to the agencies where the children are placed to monitor their progress and provide any other assistance as may be required.

Management Committee.-

Rule 39 of the Juvenile Justice (Care and Protection of Children) Rules, 2016 provides for constitution of a Management Committee. It states:

(1) Every Child Care Institution shall have a Management Committee for the management of the institution and monitoring the progress of every child. (2) In order to ensure proper care and treatment as per the individual care plans, children shall be grouped on the basis of age, nature of offence or kind of care required, physical and mental health and length of stay. (3) The Management Committee shall comprise of: (i) District Child Protection Officer (District Child Protection Unit)- Chairperson; (ii) Person-in-charge - Member-Secretary(iii) Probation Officer or Child Welfare Officer or Case Worker – Member; (iv) Medical Officer – Member; (v) Psychologist or Counsellor – Member; (vi) Workshop Supervisor or Vocational Instructor– Member; (vii) Teacher – Member; (viii) Social Worker Member of the Board or the Committee – Member; (ix) two child representatives from each of the Children’s Committees – Members; (x) any other special invitee with the consent of the Chairperson.

As per Rule 39(7), if there is a problem or suggestion that requires immediate attention, the Chairperson of the Management Committee shall call for an emergency meeting of the Management Committee to discuss and take necessary action. Rule 39(8) provides that the quorum for conducting emergency meetings shall be five members, including two members of Children’s Committees, Chairperson of the Management Committee, Member of the Board or the Committee, as the case may be, and the Person-in-charge of the Child Care Institution.

Between the District Child Protection Unit and other authorities

In accordance with Rule 85 of the Juvenile Justice (Care and Protection of Children) Rules, 2016:

(1) The District Child Protection Unit shall perform following functions, namely:

- (i) maintain report of quarterly information sent by the Board about children in conflict with law produced before the Board and the quarterly report sent by the Committee;
- (ii) arrange for individual or group counselling and community service for children;
- (iii) conduct follow up of the individual care plan prepared on the direction of the Children’s Court for children in the age group of sixteen to eighteen years found to be in conflict with law for committing heinous offence;
- (iv) conduct review of the child placed in the place of safety every year and forward the report to the Children’s Court;
- (v) maintain a list of persons who can be engaged as monitoring authorities and send the list of such persons to the Children’s Court along with bi-annual updates;
- (vi) maintain record of run- away children from Child Care Institutions;
- (vii) identify families at risk and children in need of care and protection;
- (viii) assess the number of children in difficult circumstances and create district-specific databases to monitor trends and patterns of children in difficult circumstances;
- (ix) periodic and regular mapping of all child related services at district for creating a resource directory and making the information available to the Committees and Boards from time to time;
- (x) facilitate the implementation of non-institutional programmes including sponsorship, foster care and after care as per the orders of the Board or the Committee or the Children’s Court;
- (xi) facilitate transfer of children at all levels for their restoration to their families;
- (xii) ensure inter-departmental coordination and liaise with the relevant departments of the State Government and State Child Protection Society of the State and other District Child Protection Units in the State;
- (xiii) network and coordinate with civil society organisations working under the Act;

- (xiv) inquire into, seek reports and take action in cases of death or suicide in child care institutions and under other institutional care and submit the reports to the State Child Protection Society;
 - (xv) look into the complaints and suggestions of the children as contained in the children's suggestion box and take appropriate action;
 - (xvi) be represented on the Management Committees within the Child Care Institutions;
 - (xvii) maintain a district level database of missing children in institutional care and uploading the same on designated portal and of children availing the facility of Open Shelter and of children placed in foster care;
 - (xviii) maintain a database of child care institutions, specialised adoption agencies, open shelter, fit persons and fit facilities, registered foster parents, after care organisations and institutions etc. at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society, as the case may be;
 - (xix) maintain a database of medical and counselling centres, de-addiction centres, hospitals, open schools, education facilities, apprenticeship and vocational training programmes and centres, recreational facilities such as performing arts, fine arts and facilities for children with special needs and other such facilities at the district level and forward the same to the Boards, the Committees, the Children's Courts and the State Child Protection Society;
 - (xx) maintain a database of special educators, mental health experts, translators, interpreters, counsellors, psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances at the district level and forward the same to the Boards and the Committees and the Children's Court and the State Child Protection Society;
 - (xxi) generate awareness and organise and conduct programmes for the implementation of the Act including training and capacity building of stakeholders under the Act;
 - (xxii) organise quarterly meeting with all stakeholders at district level to review the progress and implementation of the Act;
 - (xxiii) submit a monthly report to the State Child Protection Society;
 - (xxiv) notify the State Government about a vacancy in the Board or the Committee six months before such vacancy arises;
 - (xxv) review reports submitted by Inspection Committees and resolve the issues raised through coordination among the stakeholders;
 - (xxvi) provide secretarial staff to the Committees and the Boards;
 - (xxvii) all other functions necessary for effective implementation of the Act including liaising with community and corporates for improving the functioning of Child Care Institutions.
- (2) The District Child Protection Officer shall be the Nodal Officer in the district for the implementation of the Act and the rules.

Between Special Juvenile Police Unit and other authorities-

As per Rule 86 of the Juvenile Justice (Care and Protection of Children) Rules, 2016

- (1) The State Government shall constitute a Special Juvenile Police Unit in each district and city to co-ordinate all functions of police related to children.
- (2) The Central Government shall constitute a Special Juvenile Police Unit for the Railway Protection Force or Government Railway Police at every railway station as per requirement and where a Special Juvenile Police Unit cannot be set up, at least one Railway Protection Force or Government Railway Police Officer shall be designated as the Child Welfare Police Officer.
- (3) The Child Welfare Police Officers and other police officers of the Special Juvenile Police Unit shall be given, appropriate training and orientation to deal with matters concerning children.
- (4) The transfer and posting of the designated Child Welfare Police Officers may be within the Special Juvenile Police Units of other police stations or the district unit.
- (5) The police officer interacting with children shall be as far as possible in plain clothes and not in uniform and for dealing with girl child, woman police personnel shall be engaged.
- (6) The Child Welfare Police Officer or any other police officer shall speak in polite and soft manner and shall maintain dignity and self-esteem of the child.
- (7) Where questions that may lead to discomfort of the child are to be asked, such questions shall be asked in tactful manner.
- (8) When an FIR is registered for offence against a child, a copy of the FIR shall be handed over to the complainant or child victim and subsequent to the completion of investigation, copy of report of investigation and other relevant documents shall be handed over to the complainant or any person authorised to act on his behalf.

(9) No accused or suspected accused shall be brought in contact with the child and where the victim and the person in conflict with law are both children, they shall not be brought in contact with each other.

(10) The Special Juvenile Police Unit shall have a list of: (i) the Board and Child Welfare Committee in its due jurisdiction, their place of sitting, hours of sitting, names and contact details of Principal Magistrate and members of the Board, names and contact details of Chairperson and members of the Committee and the procedures to be followed before the Board and the Committee; and (ii) contact details of the Child Care Institutions and fit facilities in its due jurisdiction.

(11) The names and contact details of the Special Juvenile Police Unit or Child Welfare Police Officer shall be placed at a conspicuous part at the police stations, Child Care Institutions, Committees, Boards and the Children's Courts.

(12) The Special Juvenile Police Unit shall work in close co-ordination with the District Child Protection Unit, the Board and the Committee in the matters concerning the welfare of children within its jurisdiction.

(13) The Special Juvenile Police Unit may coordinate with the District Legal Services Authority to provide legal aid to children.

Monitoring by National Commission for Protection of Child Rights and State Commissions for Protection of Child Rights.-

As per Rule 91 of the Juvenile Justice (Care and Protection of Children) Rules, 2016 the **National Commission for Protection of Child Rights and State Commissions for Protection of Child Rights** shall monitor the implementation of child-specific legislations. The rule lays down:

(1) In addition to the functions specified under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), the National Commission or the State Commissions may perform following functions in consultation with the Central and State Government, namely:

(i) review setting up of institutions created under the Act;

(ii) develop Information, Education and Communication (IEC) material on child rights and gender sensitivity;

(iii) develop protocols for reformation and rehabilitation of children;

(iv) create awareness about identification and reporting of crimes against children such as drug abuse, trafficking, child sexual abuse and exploitation including child marriage, and other aspects of violence against children;

(v) conduct sensitisation workshops for panchayati raj institutions and municipal corporations on crimes against children including identification and reporting of crimes for enhanced protection;

(vi) develop information material detailing the rights of the child victims or witnesses and their families, and containing useful information in local languages, which may be provided to the victim and her/his family;

(vii) develop training module for stake holders along with the State Child Protection Societies and National Institute of Public Cooperation and Child Development etc.

High Court Juvenile Justice Committees (HC-JJC):

In the Chief Justice's Conference held on 9th and 10th March, 2006 in the Supreme Court of India, vide Item No. 22 of the Agenda under the heading "The plight of Juvenile Delinquents" the following resolution was passed:-

"That High Courts will impress upon the State Governments to set up Juvenile Justice Boards, wherever not set-up. The Chief Justices may nominate a High Court Judge to oversee the condition and functioning of the remand/observation homes established under Juvenile Justice (Care and Protection of Children) Act, 2000".

Pursuant to the resolution passed in the aforesaid Conference, the Hon'ble High Court in various States of India set up Juvenile Justice Committees to oversee and monitor the conditions of Child Care Institutions, including Children's Home and Observation Homes. These committees operate under the mandate of the Juvenile Justice Act, 2015. The HC-JJC also plays a crucial role in monitoring and evaluating the implementation of the Act.

9.3 If another court/authority has not participated in the interview and needs additional information, is the court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)

In the Indian judicial system, the procedures for handling cases involving child victims or witnesses are governed by specific provisions to ensure the protection of their rights and interests.

Availability of Statements to Court and Juvenile Justice Board: Under the Code of Criminal Procedure (CrPC), statements recorded under Section 161 and confessions or statements under Section 164 are



made available to the Court and the Juvenile Justice Board (JJB) for the purpose of inquiry or trial. These provisions facilitate the authorities in conducting a fair and informed trial of the case at hand.

Social Investigation Report and Counselling Reports: The Social Investigation Report (SIR) and the child's counselling reports are crucial documents that are made available to the Child Welfare Committee (CWC) for taking appropriate decisions. The SIR is prepared to assess the child's needs and the suitability of reunification with family or other care options.

Prohibition of Joint Trials by the Juvenile Justice Board: The Juvenile Justice (Care and Protection of Children) Act, 2015, prohibits the JJB from conducting joint trials involving a juvenile and an adult. This ensures that the child's case is handled in an environment suited to their age and maturity level.

Requirement for Child Victim/Witness to Testify separately: If a child victim or witness has already deposed before a Court, they are required to provide testimony again before the Juvenile Justice Board (JJB) for their evidence to be considered in the juvenile proceedings. The law does not allow for the reuse of the same testimony given in one court to be utilized in a similar proceeding before another court or the JJB. This is to ensure that the testimony is evaluated within the context of each unique proceeding. The provisions of the Juvenile Justice Act and the CrPC are designed to safeguard the interests of child victims and witnesses throughout the legal process. By ensuring that statements and reports are appropriately shared with the relevant authorities and by prohibiting joint trials, the law upholds the principle of a fair and protective judicial process for children.

10. Training

10.1 Are judges and magistrates trained to deal with child victims?

In India, judges and magistrates receive training to deal with child victims. The National Judicial Academy and the State Judicial Academies have designed innumerable training programs on the Treatment of Child Victims and Witnesses of Crime specifically for judges and magistrates. The programs focus on handling child victims and witnesses in a sensitive and child-friendly manner and cover topics such as child-sensitive communication, non-discrimination, and the best interests of the child. Not only this, the Judicial Academies in India have developed training modules for various functionaries under the Juvenile Justice Act, 2015. The modules are comprehensive and they serve as a valuable resource for understanding the functioning of the child protection mechanism.

10.2 Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

Yes, the training of judges in India to deal with child victims is designed to be interdisciplinary, and other professionals/stakeholders also participate in the training process. The training programs are structured to include various aspects of child rights and protection, and they often involve a range of professionals from different fields to provide a comprehensive understanding of the issues at hand.

The Training Programs are intended for judges and prosecutors and includes modules on non-discrimination, dignity, and the best interests of the child. The programs acknowledge the responsibilities of judges in cases of child victims and witnesses of crime, emphasizing the need for child-sensitive communication and protection from discrimination.

Additionally, the Judicial Academies in India support the training of a variety of professionals, including police, prosecutors, judges, lawyers, social services, and health professionals, to effectively protect children in contact with the justice system. This indicates that the training is not limited to judicial officers but extends to other professionals who are part of the child protection system.

The interdisciplinary nature of the training ensures that judges and other professionals are equipped with the necessary skills to handle cases involving child victims with the sensitivity and care they require. This collaborative approach helps in creating a justice system that is better adapted to the rights and needs of child victims and witnesses.

11. Reforms in Progress

11.1 Are there reforms in progress in your country regarding child victim's rights, the procedure among other? What is the aim and main subject of it?

India is actively pursuing reforms to enhance the rights and protections of child victims and witnesses within its legal system. The 154th Law Commission Report (1996) and the Justice Malimath Committee Report (2003) recommended justice to victims and victimology as crucial areas of reform and made recommendations, focusing on increasing victims' participatory role and for better compensatory justice. In addition to this, the practice of recording Zero FIRs whereby complainants may file an FIR,

irrespective of the area where the offence was committed is also being considered. Another important issue that is presently under consideration is giving opportunity of being heard to the victim before withdrawal of case by the prosecution. This is a significant recognition of the victim as a stakeholder in the criminal trial.

The introduction of E-FIRs is also one reform that is being considered to be introduced. The system will allow a person to register a First Information Report (FIR) in any police station where information about a cognizable offence is provided, irrespective of the area where the offence is committed. E-FIRs will allow people to file an FIR online, without having to visit a police station in person. Furthermore, it will eliminate the need for people to travel to a police station and wait in long queues to file a complaint. It will also allow people to track the status of their complaints online.

Presently, all decisions and actions taken in respect of children are based on the principles enshrined under the Juvenile Justice (Care and Protection of Children) Act 2015. As per Sec 3, the following basic principles are guiding factors in the administration of the Juvenile Justice (Care and Protection of Children) Act 2015

- i. **Principle of presumption of innocence:** Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.
- ii. **Principle of dignity and worth:** All human beings shall be treated with equal dignity and rights.
- iii. **Principle of participation:** Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.
- iv. **Principle of best interest:** All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.
- v. **Principle of family responsibility:** The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.
- vi. **Principle of safety:** All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.
- vii. **Positive measures:** All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.
- viii. **Principle of non-stigmatising semantics:** Adversarial or accusatory words are not to be used in the processes pertaining to a child.
- ix. **Principle of non-waiver of rights:** No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.
- x. **Principle of equality and non-discrimination:** There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.
- xi. **Principle of right to privacy and confidentiality:** Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.
- xii. **Principle of institutionalisation as a measure of last resort:** A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.
- xiii. **Principle of repatriation and restoration:** Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.
- xiv. **Principle of fresh start:** All past records of any child under the Juvenile Justice system should be erased except in special circumstances.
- xv. **Principle of diversion:** Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

Principle of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

That aside, the Juvenile Justice (Care and Protection of Children) Act, 2015, also includes a provision for sponsorship to support the rehabilitation and development of children in need of care and protection



as well as children in conflict with the law. The sponsorship program is designed to provide requisite support to children and their families to meet the medical, educational, and developmental needs of children. Section 45 states

(1) The State Government shall make rules for the purpose of undertaking various programmes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship. (2) The criteria for sponsorship shall include,— (i) where mother is a widow or divorced or abandoned by family; (ii) where children are orphan and are living with the extended family; (iii) where parents are victims of life threatening disease; (iv) where parents are incapacitated due to accident and unable to take care of children both financially and physically. (3) The duration of sponsorship shall be such as may be prescribed. (4) The sponsorship programme may provide supplementary support to families, to Children's Homes and to special homes to meet medical, nutritional, educational and other needs of the children, with a view to improving their quality of life.

Moreover, the Government of India has also notified the POCSO Rules, 2020. Rule-9 of the POCSO Rules provides that the Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the needs of the child for relief or rehabilitation at any stage after registration of the First Information Report (FIR). Such interim compensation paid to the child shall be adjusted against the final compensation, if any. There is also a mechanism for providing final compensation in cases.

Further, the POCSO Rules also provides that for special relief, if any, to be provided for contingencies such as food, clothes, transport and other essential needs, Child Welfare Committee may recommend immediate payment of such amount as it may assess to be required at that stage, to any of the following:

- i. The District Legal Services Authority (DLSA) under Section 357A; or;
- ii. The District Child Protection Unit DCPU, out of such funds placed at their disposal by state or;
- iii. Funds maintained under section 105 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016);

In addition to the ensuring payment of compensation to sexual abuse victims, measures have been taken to provide necessary rehabilitation to acid attack victims. Under Section 326B of this Act, attempting to throw acid on a person is punishable for a period of 5-7 years, irrespective of the nature of the damage caused to the victim. The victim is entitled to compensation, which can be up to Rs. 3 lakhs. This compensation is payable in addition to any fine imposed on the perpetrator.

In the landmark case of *Laxmi v. Union of India* (2015) 2014 SCC 2 427,³⁷ the Supreme Court mandated that a minimum of Rs. 3 lakhs should be paid to acid attack survivors, regardless of whether the perpetrator is found guilty.

These reforms are part of a broader effort to create a more child-friendly legal system that not only brings perpetrators to justice but also provides the necessary support and protection for child victims and witnesses.

³⁷ https://olsa.nic.in/wp-content/uploads/2020/02/Laxmi_vs_Union_Of_India_Ors_on_10_April_2015.pdf