

**READY RECKONER
ON
PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012
FOR
INVESTIGATING OFFICERS IN ODISHA**



CRIME AGAINST WOMEN AND CHILDREN WING
BHUBANESWAR, ODISHA

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for every child



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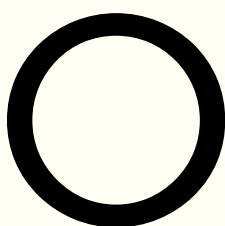
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FOREWARD



One of the worst forms of violence against children is sexual violence which is prevalent in every society, irrespective of gender, class, caste or any other identity of the individual. Children by virtue of their age, are amongst the most vulnerable section of the society facing sexual abuse. Care and protection of children by State is guaranteed under Article 21 of the Constitution of India and by the UN convention on the Rights of the Child, to which India is a signatory.

A special law, namely Protection of Children from Sexual Offences Act, 2012 (POCSO) has been enacted. Police plays the most important role of setting the justice delivery process in motion. However, expected outcomes have not been forthcoming due to attitudinal orientation, competing demands on the time of law enforcement agencies and inadequate levels of knowledge and skills. With a view of overcoming some of these constraints and acknowledging that an appropriate response requires right mix of knowledge, skill and attitude, a Ready Reckoner on the POCSO Act has been developed with the objective that field officials may use to enhance their understanding of the issues and the processes to be followed in cases of sexual violence against children.

I hope that Ready Reckoner on the POCSO Act prepared by the Crime Against Women & Children Wing, CID CB, BBSR in collaboration with UNICEF & Council to Secure Justice (CSJ) will be used widely by the Investigating Officers to effectively respond to sexual offences against children and will benefit the children who unfortunately fall prey to offenders.

A handwritten signature in blue ink, appearing to read 'Sunil', with a horizontal line underneath.

(Sunil Kumar Bansal, IPS)
Director General of Police, ODISHA

PREFACE



Over the last few years, Odisha has made steady and significant advancement in strengthening the protection systems for children and women in the State. Crime Against Women and Children Wing (CAW&CW) has been formed under CID CB, at Bhubaneswar, as a step towards this commitment of the State to prevent and respond to violence, of any form, against women and children.

Even though Constitution of India guarantees children of India, the right to care and protection, these rights are violated whenever a child is subject to abuse and violence and one of the worst forms of violence against this vulnerable section is sexual violence to which they fall prey to, by virtue of their tender age. It not only inflicts physical injuries on the body but also leaves an everlasting scar on the child's mind at a very nascent age.

The Protection of Children from Sexual Offences (POCSO) Act, 2012 came into being as most prominent legislation to respond to every form of sexual abuse of a child, while protecting the child's interest through child-friendly mechanisms for reporting, recording of evidence, investigation etc. As police officers are one of the first responders in dealing with any situation involving child, a Ready Reckoner has been prepared for Investigating Officers for dealing with cases under the Protection of Children from Sexual Offences Act, 2012, which will enable them to implement the legislation effectively by adopting the step by step approach during investigation.

I am convinced that this Ready Reckoner, prepared with the technical expertise of UNICEF and Counsel to Secure Justice (CSJ) would be a handy tool for the field officers who shall adopt a sensitive approach towards children coming in their contact and make sincere efforts to give them justice.

A handwritten signature in blue ink, consisting of a stylized 'R' and 'L' followed by a horizontal line.

(Rekha Lohani, IPS)
ADG, CAW & CW, ODISHA

List Of Abbreviations

Abbreviation	Full form
POCSO Act	Protection of Children from Sexual Offences Act, 2012.
IPC	Indian Penal Code
CWC	Child Welfare Committee
FIR	First Information Report
CWPO	Child Welfare Police Officer
IO	Investigating Officer
MTP	Medical Termination of Pregnancy
DLSA	District Legal Services Authority
DCPU	District Child Protection Unit
SJPU	Special Juvenile Police Unit
CrPC	Code of Criminal Procedure
SFSL	State Forensic Science Laboratory
TIP	Test Identification Parade
CCI	Child Care Institution
CNCP	Child in Need of Care and Protection
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2015
Special PP	Special Public Prosecutor
Dy. SP	Deputy Superintendent of Police
Addl. SP	Additional Superintendent of Police
SP	Superintendent of Police
PHC	Primary Health Centre

Ready Reckoner on Protection of Children From Sexual Offences Act, 2012 for Investigating Officers in Odisha

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I. OVERVIEW AND OBJECTIVE OF POCSO ACT

The main legislations that deal with cases of child sexual abuse are the Protection of Children from Sexual Offences (POCSO) Act 2012 and Rules, and Indian Penal Code, 1860. Article 15 of the Indian Constitution read with Article 39, India's ratification of 'The United Nations Convention on the Rights of the Child. Child Rights of Children' and the data collected by National Crime Records Bureau corroborated by 'Study on Child Abuse: India 2007' conducted by Ministry of Women and Child Development as well as the need to adequately address sexual offences against children led to the introduction of the POCSO Act.

The POCSO Act came into force on 14th November, 2012 with the aim to effectively address child sexual abuse and exploitation while safeguarding the interests of the child at every stage by incorporating child friendly mechanisms for reporting, medical examination and treatment, investigation, recording of evidence, rehabilitation and speedy trial of offences. The primary objective of the Act is to protect children from various types of sexual offences and for this purpose, this Act provides for establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process.

II. SALIENT FEATURES OF THE ACT

☛ Definition of Child

Any person below the age of eighteen years is defined as "child" under section 2(d) of POCSO Act.

☛ Gender Neutral

The Act is gender neutral, hence, children of all genders whether male, female or transgender are afforded protection under the Act.¹ Married children are also covered under the ambit of the Act. The Act is gender neutral with respect to the gender of the accused as well.

☛ Child Friendly Measures

The Act prescribes child friendly measures to be observed, at investigation, pretrial and trial stage, by different stakeholders, including police, judiciary, Child Welfare Committees, Support Persons, medical professionals, District Child Protection Unit. 'Child friendly' means any behavior, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child.²

☛ Mandatory Reporting

POCSO Act mandates all persons above the age of 18 years who have knowledge or apprehension of an offence being committed under POCSO, must report the same to Police or Special Juvenile Police Unit (SJPU) and makes any non-reporting of such instances cognizable. It is mandatory for Police to record FIR and failure to do so is also a cognizable offence.³

¹Independent thought v. Union of India (2017) 10 SCC 800

²Section 2 (15) of Juvenile Justice (Care and Protection of Children) Act, 2015 (Referred to hereinafter as JJ Act)

³Section 166 of IPC

False Reporting

If any person above the age of 18 years gives a false complaint/information regarding offences under section 3, 5, 7 and 9 of POCSO Act, with the intention to humiliate, extort, threaten or defame, they shall be punished.⁴ However, false complaint/information by a child is not punishable.

Burden of Proof

Unlike other criminal cases, the burden of proof for offences relating to Section 3, 5,7,9 lies on the accused person.⁵ Culpable mental state is presumed for all offences.⁶

Confidentiality

Confidentiality is to be maintained at all stages by police officials,⁷ media⁸ and the court⁹. No identifying information relating to the child such as name, address, details of family etc. should be revealed to the public.

Alternate Punishment

Where an accused is found guilty of an act which constitutes an offence punishable under POCSO Act, IPC and any other laws in force, he shall be punished under that Act or law, which provides for graver punishment.¹⁰ The POCSO Act shall be in addition to and not in derogation of the provisions of any other law. In the event of any inconsistency, the provisions of the POCSO Act shall prevail.¹¹

Child Welfare Committee

The CWC is a statutory body constituted under the Juvenile Justice (Care and Protection of Children) Act, 2015, tasked with care, protection and rehabilitation of Children in Need of Care and Protection(CNCP). CWC can determine a suitable placement for the victim, either on its own or with the assistance of a social worker.

Support Person

Support Person means a person assigned by the CWC to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act.¹²

Timeline of action by stakeholders

The Act specifies time bound action to be taken by the stakeholders

⁴Section 22 of POCSO Act

⁵Section 29 POCSO Act

⁶Section 30 POCSO Act

⁷Section 24(5) of POCSO Act

⁸Section 23 of POCSO

⁹Section 33(7) of POCSO Act

¹⁰Section 42 of POCSO Act

¹¹Section 42 A of POCSO Act

¹²Rule 2(f) of POCSO Rules, 2020

Action	Time line
Registration of FIR & recording of the statement of the victim	Immediately on receipt of information
Medical Examination of the child	Within 24 hours of registration of FIR.
Communication of the FIR to Special Court and CWC	Within 24 hours of registration of FIR
Submission of Final Report/ Chargesheet	Within 60 days of registration of FIR in case of penetrative sexual assault amounting to rape
Evidence of the child	Within 30 days of the Special Court taking cognizance
Completion of the Trial	Within 1 year of the Special Court taking cognizance

Sexual offences under the Act and Punishment

Section 3: Penetrative Sexual Assault includes penetration, insertion, manipulation with the penis, any body part, or any object into the vagina, mouth urethra or anus of a child, irrespective of the depth of the penetration/insertion. It also includes the act when a person applies mouth to the penis, vagina, urethra or anus of a child. Any person who does the above-mentioned acts to a child or makes the child do the above to themselves or any other person is liable to be punished.

Section 5: Aggravated Penetrative Sexual Assault states that if a person in authority commits penetrative sexual assault as defined above and /or causes additional harm or injury to the child, such person is liable to be punished.

Table 1: Definition-Persons with Authority¹³

Sections	Category of persons with authority
5(a)	Police Officers
5(b)	Armed / Security Forces
5(c)	Public Servants
5(d)	Management or staff of a jail, remand home, protection home, observation home or any other place of custody or care and protection.
5(e)	Management or staff of Government or private hospital
5(f)	Management or staff of educational or religious institution
5(n)	Relative of a child through blood, adoption, marriage, guardianship, foster care, or having a domestic relationship with a parent of the child or living in the same or shared household with the child.
5(o)	Person in ownership or management or staff of any institution providing services to the child.
5(p)	Person in position of trust or authority in an institution or home of the child.

¹³The format of the table has been drawn from 'Standard Operating Procedures for stakeholders under POCSO Act' commissioned by UNICEF Odisha and prepared by Rati Foundation for Social Change, Mumbai, February 2021 read with POCSO Act.

Table 2: Definition - Additional Harm and Injury to the child

Sections	Category of persons with authority
5(g)	Gang rape - more than one person, in furtherance of a common intention.
5(h)	Harm or injury caused using deadly weapons, fire, heated substance, or corrosive substance.
5(i)	Grievous hurt, bodily harm and injury or injury to sexual organs of the child.
5(j)(i)	Physically incapacitating the child or causing the child to become mentally ill or causing impairment rendering the child unable to perform regular tasks, temporarily or permanently.
5(j)(ii)	In case of a female child, making her pregnant.
5(j)(iii)	Inflicting the child with HIV, any life-threatening disease or infection.
5(j)(iv)	Causing death of the child.
5(k)	Taking advantage of a child's mental or physical disability.
5(l)	Commits penetrative sexual assault more than once or repeatedly.
5(m)	Commits penetrative sexual assault on a child below 12 years of age.
5(r)	Commits penetrative sexual assault on a child and attempts to murder the child.
5(q)	Commits penetrative sexual assault on a child knowing the child is pregnant
5(s)	Commits sexual offence on a child in the course of communal or sectarian violence or any natural calamity or in a similar situation.
5(t)	Commits sexual offence on a child and has been previously convicted under this law or for any sexual offence under any law for the time being in force.
5(u)	Commits sexual offence on a child and makes the child to strip or parade naked in public.

Section 11: Sexual Harassment includes following acts of a person:

- utterance of any word, sound, gesture or exhibiting any object or part of the body with the intention that such word or sound be heard or seen by the child;
- making a child exhibit their body or any part of their body so as it is seen by such person or another person;
- showing any object to a child in any form or media for pornographic purpose;
- following, watching, or contacting a child, directly or through electronic, digital or any other means;
- threat to use any body part of child in any form of media, a real or fabricated depiction through electronic, film, digital etc. or the involvement of a child in a sexual act; and
- enticing a child for pornographic purposes or giving gratification

Explanation - Any question which involves "Sexual intent" shall be a question of fact.

Section 13: Use a child for pornographic purposes includes the act of using a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, irrespective of whether it is intended for personal use or distribution) for the purposes of sexual gratification, involving:

- representation of sexual organs of a child;
- using a child engaged in real/stimulated sexual acts, with or without penetration; and
- indecent or obscene representation of a child.

Section 15: Storing of pornographic material involving a child punishes acts of:

- any person who stores or possesses pornographic material in any form involving a child but fails to delete or destroy or report the same to the designated authority, with an intention to share or transmit child pornography;
- any person who stores or possesses pornographic material in any form involving a child for transmitting in any manner at any time except for the purpose of reporting or for the use of evidence in Court; and
- any person who stores or possesses pornographic material in any form involving a child for commercial purpose.

☛ **Related offences under the Indian Penal Code (IPC)**

Section 376AB: Rape on a woman under 12 years: Whenever a woman under the age of 12 years is raped, the accused shall be punished with a rigorous imprisonment and fine.

Section 376DA: Gang Rape on a woman under 16 years: Where a woman under 16 years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be liable for punishment for committing the offence of rape.

Section 376DB: Gang Rape on a woman under 12 years: Where a woman under 12 years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be liable for punishment for committing the offence of rape.

Punishment of offences

All offences under the POCSO Act are cognizable, non-compoundable and non-bailable. The under-mentioned table lists out punishment for POCSO and other related IPC offences.

Section	Offence	Punishment
S.4	Penetrative Sexual Assault	Minimum 10 years and Maximum for life* & fine* If the child is below 16 years, minimum 20 years and maximum for life* & fine*
S.6	Aggravated Penetrative Sexual Assault	Minimum 20 years and Maximum for life* & fine* or death
S.8	Sexual Assault	Minimum 3 years, Maximum 5 years & fine
S.10	Aggravated Sexual Assault	Minimum 5 years, Maximum 7 years & fine
S.12	Sexual Harassment	Maximum 3 years & fine
S.14	Use of Child in Pornography	Minimum 5 years & fine Subsequent Conviction: Minimum 7 years & fine.

S.15	Storage of Pornographic Material Storage and Possession of Pornographic material involving a child Transmitting, propagating, displaying, distributing, pornographic material involving a child Storage and possession of pornographic material involving a child for commercial use	Fine not less than Rs. 5,000/- Subsequent Conviction: Fine not less than Rs. 10,000/- Minimum 3 years, or with fine or both Subsequent Conviction: Minimum 5 years, Maximum 7 years & fine
S.17	Abetment	Same as the punishment provided for offence.
S.18	Attempt	Same as the punishment provided for offence
S.21	Mandatory Reporting Failure to report or record In-charge of company / institution Person fails to report	Maximum six months or fine or both Maximum 1 year & fine
S.22	False Complaint / false information against a person with the intention to humiliate, extort, threaten, or defame such person False Complaint / false information against a child for the purpose of victimization	Maximum six months or fine or both Maximum 1 year or fine or both
S.23	Violation of Confidentiality by Media	Minimum six months, Maximum 1 year or fine or both
S.376 AB IPC	Rape on a woman under 12 years	Minimum 20 years, Maximum life*
S.376 DA IPC	Gang Rape on a woman under 16 years	Minimum life* & fine**
Section 376 DB IPC	Gang Rape on a woman under 12 years	Minimum life* & fine** or death

* Imprisonment for life means imprisonment for the remainder of natural life.

** Fine imposed shall be just and reasonable and paid to the child to meet the medical expenses and rehabilitation of the child.

III. STANDARD OPERATING PROCEDURE TO BE FOLLOWED BY INVESTIGATING OFFICERS (IOs)

☛ Registration of First Information Report (FIR) :¹⁴

- Any person who has knowledge that a child has been sexually abused or is likely to be sexually abused can report offence under POCSO Act to police. Physical presence of child/guardian is not required at the time of registration of FIR.
- If a child is making the complaint, designated Child Welfare Police Officer (CWPO)¹⁵ should preferably record the complaint and interact with the child.
- The Police shall not refuse to register an FIR on the ground of jurisdiction. If the place of the offence is not under their Police Station's jurisdiction, a 'zero' FIR is to be registered.
- IO also has to make sure that all ingredients of an FIR i.e., the answers of 5 Ws and 1 H (Where, What, When, Why, Who and How), with respect to the crime are included.
- If the accused is a known person, their name, address and details along with the relationship of the accused to the child is to be stated as well. For example, father, teacher, neighbour etc.
- If the accused is an unknown person, a detailed description of the accused, as given by the complainant/child is to be recorded. Whether child can identify the accused, if they see them again, should be reflected in the FIR.
- If the complainant / child / accused / place of offence are known by any other name, specify the same.
- The FIR shall contain a brief description of the incident and places of offence as "seen by the complainant" / "explained / informed by the child to the complainant."
- If the complainant is a child, then complaint/FIR shall be recorded in simple language, and in the language that the child uses and understands.¹⁶ If the child is illiterate, reduce the narration into writing. Read over to them in the presence of their parents/guardian, or anyone they trust.
- In case contents are being recorded in a language that the child does not understand, or in cases where the child needs it, a translator or an interpreter should be provided to the child.¹⁷ In case the child has special needs, a special educator should be provided. A list of translators and interpreters should be available with the District Child Protection Unit.¹⁸

Steps to be taken by police within 24 hours after registration of FIR:

i. Medical Care and Examination of child victim:

- Medical treatment must be prioritized over medical examination.¹⁹ Emergency medical care should be arranged for the child, if necessary, at the nearest hospital.²⁰ No legal or magisterial requisition or other documentation is required to provide such care.

¹⁴Section 154 Code of Criminal Procedure (Cr. P.C), 1973

¹⁵Section 107, Juvenile Justice (Care and Protection of Children) Act, 2015

¹⁶Section 19(3) POCSO Act

¹⁷Section 19(4) POCSO Act

¹⁸Rule 100 (xx), Odisha JJ Rules 2018

¹⁹Health Consequences and Role of Health Professionals, Guidelines and Protocols, Medico Legal Care for survivors/victims of Sexual Violence, Ministry of Health and Family Welfare, 2014

²⁰ Rule 6, POCSO Rules, 2020

- For any child above 12 years, the medical examination shall be done with their informed consent. If the child is under 12 years of age, consent of the parent or the guardian or any other person whom the child trusts is necessary. If a child or parent/guardian/trusted person refuses consent, that must be documented by the Medical Officer.²¹
- In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.²² In case a woman doctor is not available, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.²³
- The Police shall provide support to the child irrespective of the resident State/Nation of the child. If the child is in a child care institution and needs hospitalization, the CWC can pass an order for police escort during the child's stay in the hospital and the same shall be provided, even if the child is from another district, state or Nation.
- If the child is pregnant due to the offence and delivers a baby, DNA examination of the baby delivered shall be conducted to prove the paternity of the accused. If the child is pregnant due to the offence and a medical termination of pregnancy is conducted, then a DNA examination of aborted foetus should be conducted. For that, biological sample handed over by the medical officer should be seized and sent to Forensic Laboratory for examination along with samples of victim-child and accused.

Medical Termination of Pregnancy: As per Medical Termination of Pregnancy (MTP) Amendment Act, 2021, a pregnancy may be terminated by one registered medical practitioner if the length of the pregnancy does not exceed 20 weeks, and by two registered medical practitioners if pregnancy exceeds 20 weeks but does not exceed 24 weeks, provided continuance of the pregnancy involves a risk to her life or can cause grave injury to her physical or mental health. Any anguish due to pregnancy caused by rape shall be presumed to constitute a grave injury to the mental health of the pregnant woman. The Medical Officer should counsel the child, her parents/guardian/Support Person with respect to her lawful options under MTP Act and JJ Act. There is no requirement for permission from any other authority apart from the guardian of the child, for conducting an MTP after fulfilling the above stated requirements. If the child is in a shelter home, then the CWC may direct the Superintendent of the Home to act as guardian for the purpose of an MTP, if the child desires one. The CWC can also act as the guardian or nominate any person whom the child trusts, as a guardian for such purpose.

ii. Spot Visit and Forensic Evidence collection:

- IO should immediately requisition the District Forensic Science Laboratory (DFSL) team and till its arrival at the spot, crime scene should be secured to prevent contamination or loss of evidence.
- Photographs of the crime scene must be taken from all angles including close-ups of the evidence such as, footprints, tyre-marks etc.
- In case of multiple places of offence, a spot map of each place should be prepared and a detailed sketch of the place should be made recording exact dimensions, measurements and indicating position of eye witnesses.

²¹ Responding to Children, Guidelines and Protocols, Medico Legal Care for survivors/victims of Sexual Violence, Ministry of Health and Family Welfare, 2014

²² Section 27 (3), POCSO

²³ Section 27 (4), POCSO

Following evidence must be seized from scene of crime:

- **Biological evidence:** Blood, hair, saliva, sanitary napkins, fiber, semen droppings, toilet tissues etc.
- **Physical evidence:** Broken bangles, buttons, fingerprints, condom, lubricant, Viagra tablets, cigarette butts, soil containing blood stains and sample soil (from the scene, without blood stains), glass, weapon used for assault / threat, apparels of the victim and accused worn at the time of the offence, bedsheet & towel containing or suspected to contain blood /semen stains etc.
- **Digital evidence:** CCTV footages, pornographic material in phone, laptop, or electronic device like camera used for taking objectionable pictures/videos etc. be seized. Such evidence extracted from the devices and saved in pen drive/CD/DVD as per procedure, should be seized along with certificate U/S 65 -B IE Act.
- All items seized from the scene of crime and all biological exhibits handed over by doctor conducting medical examinations, should be sent to SFSL. Statement of the police personnel carrying above samples to SFSL should be recorded.
- To prove that chain of custody has been maintained, a covering letter for submission of the samples to the forensic laboratory and an endorsement acknowledging the same should be submitted as a part of the charge sheet / final report.

iii. Intimation to CWC and Special Court-

- IO should complete a Preliminary Assessment Report, as required under Form B (Annexure-B), of the POCSO Rules within 24 hours of registration of the FIR and submit it to the CWC.²⁴
- The child is to be produced before CWC for detailed assessment, and declaration as a 'Child in Need of Care and Protection'²⁵ only if -²⁶
 - the child is living in a child care institution; or
 - the child is homeless, without parental support; or
 - the accused lives in the same or shared household with the child.
- IO should inform the child and child's parents/guardian/other person in whom the child has trust and confidence about their entitlements and services available to the child under POCSO Act / any other law in force as per Form A of the POCSO Rules (Annexure A).²⁷
- Inform the Special Court by way of FIR within 24 hours of registration of FIR.
- In case, a Support Person is assigned by the CWC to render assistance to the child during investigation and trial, IO should inform the Special Court in writing within 24 hours of assignment.²⁸
- If a child in need of care and protection cannot be produced before the CWC due to certain unavoidable circumstances, IO after recording the reasons in writing, shall make immediate arrangements for admitting the child into a shelter home or taking them to the nearest hospital

²⁴Rule 4(14), POCSO Rules,2020

²⁵Section 2(14), JJ Act

²⁶Rule 4(4), POCSO Rules,2020

²⁷Rule 4(14), POCSO Rules, 2020

²⁸Rule 4(10), POCSO Rules,2020

if required, within 24 hours of the report.²⁹

- IO should send a copy of the FIR to the District Legal Services Authority (DLSA) for interim compensation which can be ordered by the Special Court at any time after the FIR.³⁰
- Inform the appointed Support Person, CWC and/or DCPU if the child or their family is in need of any special assistance, like counselling, education etc.

☛ Recording the child's statement under S. 161 of the CrPC :

- The statement shall be recorded at the child's residence, or at a location chosen by the child where they are comfortable. Wherever possible, the statement shall be recorded in audio-video electronic means considering child's comfort and seeking consent of the child/parent/guardian.
- As far as possible, the recording must be done by a woman police officer not below the rank of sub-inspector and in presence of a parent or a person that the child trusts. While recording the statement, the police officer shall not be in uniform.
- The statement shall be recorded preferably in a question-and-answer format, in a language that the child is comfortable and familiar with.
- If the child is not comfortable with the local language, statement shall be recorded with the assistance of a translator. If the child suffers from mental or physical disability, statement shall be recorded with the assistance of a special educator.
- IO can obtain list of translators, interpreters or special educators from DCPU who shall bear the expense or may claim reimbursement from the fund maintained under s. 105 of JJ Act.³¹ Preference expressed by the child as to the gender of such assisting personnel should be respected.
- If the accused is unknown, then detailed description of physical features of the accused, including their clothes etc. should be recorded. It should also be specified if the child will be able to identify the accused in future.
- If it was a repeated offence, all dates with reference to month / season are to be recorded.
- Inquire if there is any type of inducement given: Chocolates, promise of job, marriage etc.
- Inquire if any objects were used in the act of penetration. E.g.: pencil, bottle, etc. Use of weapons, sharp objects, etc should be specified and appropriate sections should be added. Inquire if any injury / bruises were inflicted by the accused or any threat to inflict the same was given.
- Inquire if the victim was blackmailed about making his/her pictures or videos public. Details of make/brand and other identifying details of the electronic device, if any, through which photos or videos were captured by the accused should be elicited.
- Details like use of condom or lubricant, and use of intoxicants, drugs like Viagra by the accused, description of the material used for wiping themselves or the victim should be elicited.

²⁹Section 19(5), POCSO Act

³⁰Rule 9, POCSO Rules, 2020

³¹Rule 4(7), POCSO Rules,2020

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- In the event the child succumbs to injuries, a dying declaration of the victim, wherever the situation so warrants, should be recorded on video.

☛ Recording of child's statement u/s 164 CrPC: ³²

- IO should facilitate recording of child's Statement under S. 164 of CrPC by the Magistrate. The date/time when IO learnt about the offence and date/time at which the child was taken for 164 CrPC statement should be recorded in the case diary. In case there is delay in taking the child for 164 CrPC statement, the reasons for the same should be recorded in Case Diary.
- The statement shall be recorded as spoken by the child and in the presence of the parents of the child or any other person the child trusts.
- The assistance of a special educator, translator or interpreter may be sought if the need arises for recording of statement of the child.

Guidelines for IO for interacting with children

- As far as possible, no child shall be brought to police station. There should be a separate child friendly section/corner/room in the police station for interaction with children, with space and furniture available for children to sit comfortably on.
- Build a bond with the child by asking simple questions about their day, things they like to do, their hobbies, their dreams and hopes etc. to make them feel comfortable.
- The child should not come in contact with the accused at any point of time.
- Reduce the number of professionals present while interviewing the child.
- The child must be offered frequent breaks for water, wash room, engaging in a relaxing activity, during the interview to ensure they don't get overwhelmed or exhausted.
- Do not question the child's judgment or actions, for instance, about not disclosing the incident to anyone earlier.
- No reference should be made regarding the child's character.
- In some cases, there will be additional disclosure after a time gap which is acceptable. Do not blame the child or get angry with the child or make the child feel they are making up stories.
- Take help of anatomical dolls or images for helping children in pointing/specifying where the accused touch/penetrated/tried to touch etc
- Acknowledge that children may not be able to share details in a chronological order because of the impact of the experience. The child should not be forced to talk about details they don't remember.
- No child shall be kept at the police station overnight under any circumstances.

☛ Arrest and Medical examination of accused:

- As soon as the accused is arrested, an inspection memo and arrest memo indicating date,

³²Read with s. 26 of POCSO Act

time of arrest should be prepared. The Inspection memo to be prepared is to indicate presence of any physical injury on the person arrested.

- The medical examination of the accused is to be conducted including potency test and the reports of the same should be made part of the chargesheet/final report.
- Clothes worn by the accused at time of the offence are to be collected and a seizure memo is to be prepared noting the description and type of clothes. The clothes should also be closely examined for presence of any blood, semen and other bodily fluids and the same should be noted in the seizure memo. The seized clothes should be sealed properly in a dry condition with correct labeling.
- The chain of custody for sending the exhibits (both physical and biological) for examination to SFSL should be maintained and the same should be reflected in the chargesheet.

☛ **Age Determination:**

The age determination of a child (victim or accused) is to be done by the Child Welfare Committee or the Juvenile Justice Board, as the case may be. The IO is NOT supposed to initiate any age determination process on their own, but only collect relevant documentation on the age of the child³³.

The age of the victim child must be established through³⁴.

- (i) The date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board.
- (ii) In absence of the certificate from school, age is to be established by birth certificate given by a corporation or a municipal authority or a panchayat;
- (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test, to be conducted strictly on the orders of CWC within 15 days from the date of such order by CWC.

The person or professional attesting to the age of the child (e.g., School authority, municipal authority, doctor) should be cited as a witness in the Final Form to prove the age document.

Test Identification Parade:

In case the accused/suspect's identity was unknown at the time of FIR by IO during investigation:

- IO shall request the TIP to be conducted by a Magistrate.
- IO should ensure that the child is accompanied by parents / guardian / Support Person.
- TIP may be conducted for other witnesses too who have seen the accused before / after the offence.
- At no point of time, child should be exposed to accused during TIP.
- The IO should not expose face of accused in video/photograph before the TIP is completed.

³³Section 94 of JJ Act

³⁴Section 94 of JJ Act

IV. ROLE OF POLICE VIS-A-VIS CWC AND SUPPORT PERSONS

- Within 24 hours of registration of FIR, the Police shall complete the Preliminary Assessment Report in Form B and inform the CWC ³⁵
- However, in case when:
 - i the child is living in a Child Care Institution or,
 - ii the child is homeless, without parental support or
 - iii the accused lives in the same or shared household with the child,Police shall produce the child before the CWC within 24 hours of registration of the FIR.
- The CWC shall conduct an inquiry and determine within three days of receiving the information, if the child needs to be taken out of the custody of the family or shared household and placed in a Child Care Institution.
- The CWC shall provide “special relief” for needs such as food, clothes, transport and other essential needs. CWC may recommend to DLSA for immediate payment of such amount at any stage under S. 357A CrPC, or direct DCPU for payment from state funds and funds maintained under S. 105 JJ Act.³⁶
- The CWC shall ensure that services such as mental health counselling, education and vocational training are provided to the child.
- The CWC will facilitate the opening of bank accounts, arranging identity proof documentation etc. of the child with assistance from DCPU or Support Person.
- The CWC can also appoint a Support Person to assist the child through the investigation and trial³⁷ to ensure that the victim is not re-traumatised by the process.³⁸ The services of the support person may be terminated by the CWC on the request of child, child’s parent/guardian/person of trust. The child is not required to assign any reason for such request. This information will be furnished by the IO to the Special Court in writing.³⁹

V. ROLE OF COURT VIS-À-VIS POCSO ACT

- Special Court should ensure ‘child-friendly’ atmosphere by allowing a family member, guardian, friend or relative, or person of child’s trust, to be present with the child in court.⁴⁰
- The child’s evidence should be recorded in-camera.⁴¹
- The child should be taken directly to the designated waiting room/ Special Public Prosecutor’s office or Judges’ Chamber to protect the child’s identity.
- The child should not be exposed to the accused at the time of recording of evidence.⁴²

³⁵Rule 4 (14) of POCSO Rules, 2020

³⁶Rule 8 of POCSO Rules, 2020

³⁷Rule 4(8) of POCSO Rules, 2020

³⁸Rule 4(9) of POCSO Rules, 2020

³⁹Rule 4(11) of POCSO Rules,2020

⁴⁰Section 33(4) of POCSO Act

⁴¹Section 37 of POCSO Act

⁴²Section 36 of POCSO Act

- The Special PP and Defense Counsel shall communicate the questions to be put to the child to the Special Court which shall, in turn, put those questions to the child.⁴³
- Victim is entitled to the assistance of a lawyer of their choice. If the family is unable to afford a legal counsel, DLSA shall provide a lawyer for them.⁴⁴
- Evidence of the child to be recorded within 30 days of cognizance by the court.
- Trial to be completed within one year from the date of taking cognizance of the offence.⁴⁵
- Interim compensation may be awarded for relief or rehabilitation at any stage after registration of FIR, with amount to be adjusted against final compensation.⁴⁶
- Compensation may also be recommended where the accused is convicted, where the case ends in acquittal/discharge, or the accused is untraced/unidentified, but in the Court's opinion, child has suffered loss or injury as a result of that offence.⁴⁷

Witness Protection

If the investigating officer believes that the child is in need of protection in the following categories, they may apply for witness protection under the Witness Protection Scheme in 2018:

- (i) Where the threat extends to the life of the witness or their family members during an investigation, trial or thereafter.
- (ii) Where the threat extends to the life of the witness or their family members during an investigation, trial or thereafter.
- (iii) Where the threat perception extends to the safety, reputation or property of the witness or their family members during the investigation or trial.

Such an application is to be made using Annexure 1 of the Scheme to the Standing Committee of the concerned District.

VI. ROLE OF POLICE AFTER INVESTIGATION

Filing of chargesheet:

- The chargesheet should be filed within the statutory period of 60 days in case of penetrative sexual offences.
- The supervision of the case should preferably be done by Dy. SP, Addl. SP or SP.⁴⁸
- The chargesheet should preferably be filed after careful scrutiny by senior officers and legal officers.

⁴³Section 33(2) of POCSO Act

⁴⁴Section 40 of POCSO Act

⁴⁵Section 35(2) of POCSO Act

⁴⁶Rule 9(1) of POCSO Rules, 2020

⁴⁷Rule 9(2) of POCSO Rules, 2020

⁴⁸Odisha Police circular order 543/2013 dated 30.06.2013 titled " Standard operating procedure for investigation of crime against women"

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Bail and communication to victim's family :⁴⁹

- Ensure the Final Report / Charge sheet is filed within the statutory period to prevent the accused being granted statutory bail.
- Inform the child / parent / support person on receiving an application for bail by the accused.
- Explain the procedure for bail and consequences of bail / denial of bail to the child / parent / support person.
- If the child is below 16 years, the accused is not entitled to apply for anticipatory bail in the High Court or Sessions Court.
- The High Court or Sessions Court shall give notice to the Public Prosecutor within 15 days receipt of an application for bail.
- It is mandatory for the informant, or a person authorised by him to be present for the hearing of the bail application.
- In the event the accused is granted bail, inform the child / parent / support person about the conditions of bail.
- Inform the child / parent / support person that any violation of the bail conditions by the accused should be reported by them to the Police. Accordingly appropriate steps with respect to cancellation of bail may be taken.
- During the trial, the IO should inform the victim/guardian/support person about the schedule of court proceedings that the child is either required to attend or is entitled to attend; the rendering of a verdict after trial; and the sentence imposed on an offender.⁵⁰

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⁴⁹Standard Operating Procedures for stakeholders under POCSO Act' commissioned by UNICEF Odisha and prepared by Rati Foundation for Social Change, Mumbai, February 2021 read with Criminal Law Amendment, 2018

⁵⁰Rule4 (15) of POCSO Rules, 2020

Annexure A
FORM -A

**ENTITLEMENT OF CHILDREN WHO HAVE
SUFFERED SEXUAL ABUSE TO RECEIVE
INFORMATION & SERVICES**

1. To receive a copy of the FIR.
2. To receive adequate security and protection by Police.
3. To receive immediate and free medical examination by civil hospital/PHC etc.
4. To receive counselling and consultation for mental and psychological well-being.
5. Recording of statement of child to be by a woman police officer at child's home or any other place convenient to child.
6. To be moved to a Child Care Institution where offence was at home, or in a shared household, to the custody of a person whom child reposes faith.
7. For Immediate aid and assistance on the recommendation of CWC.
8. For being kept away from accused at all times, during trial and otherwise.
9. To have an interpreter or translator, where needed.
10. To have special educator for the child or other specialized person where child is disabled.
11. For free legal aid.
12. For Support Person to be appointed by Child Welfare Committee.
13. To continue with education.
14. To privacy and confidentiality.
15. For list of Important Contact Numbers, including that of the District Magistrate and the Superintendent of Police.

Duty Officer
(Name & Designation to be mentioned)

Date:

I have received a copy of 'Form-A'
(Signature of Victim/Parent/Guardian)

Annexure B
FORM-B

PRELIMINARY ASSESSMENT REPORT

(Note: The form may be converted in local and simple child friendly language)

PARAMETERS	COMMENT
1. Age of the victim	
2. Relationship of child to the offender	
3. Type of abuse and gravity of the offence	
4. Available details and severity of mental and physical harm/injury suffered by the child.	
5. Whether the child is disabled (physical, mental or intellectual).	
6. Details regarding economic status of victim's parents, total number of child's family members, occupation of child's parents and monthly family income.	
7. Whether the victim has undergone or is undergoing any medical treatment due to incident of the present case or needs medical treatment on account of offence.	
8. Whether there has been loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial or other reason?	
9. Whether the abuse was a single isolated incident or whether the abuse took place over a period of time?	
10. Whether the parents of victim are undergoing any treatment or have any health issues?	
11. Aadhar No. of the child, if available.	

Date:

Station House Officer