

Circular No. 24/2017

Sub: Sexual offences against children – flaws in the investigation of offences under the Protection of Children from Sexual Offences Act, 2012 (POCSO) to be minimized and statutory time limit for the disposal of the case to be strictly adhered to - Instructions – reg.

Ref: (1) PHQ Circular No.06/2016 dated 01/05/2016.
(2) PHQ Circular No. 21/2017 dated 25/08/2017.
(3) PHQ Circular No. 22/2017 dated 25/08/2017.

Child sexual abuse is a multi-dimensional problem having legal, social, medical and psychological implications. Hence the Police Officers dealing with child sexual offences cases are expected to discharge their duties with a multi-sectoral approach. In most of the cases a routine investigation by the Police solely based on the oral testimony of close relatives has so far resulted in the denial of justice to the victims and consequential **low conviction rate** in the prosecution of POCSO Act cases. The POCSO Act casts the Police in the role of **child protectors**. Hence the IOs of POCSO cases shall ensure that a special type of multifaceted investigation is undertaken in each case. **POCSO offences are categorized as grave crimes** and they require meticulous and scientific investigation strictly adhering to the statutory time limit and always keeping in mind the best interest of the child. The role of the Police in a POCSO case may be limited, but if such role is made pro-active, it will bring confidence to the victim and consequentially result in successful launching of the prosecution. Sensitisation of Police is required to derive the maximum benefit out of POCSO.

02. Multi-sectoral Approach to Investigation

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

Until 2012, the only sexual offences against children recognized by the law were covered by three sections of the Indian Penal Code (IPC) not specific to children. The only crimes registered were rape (sexual intercourse without consent-section 376), outraging modesty of a woman (unspecified acts-section 354) and unnatural acts defined as “carnal intercourse against the order of nature with any man, woman or animal” (anal sex, homosexuality or bestiality-section 377). IPC does not either provide for all types of sexual offences against children or distinguish between adult and child victims while dealing with sexual offences against children.

As distinguished from the provisions in the IPC, the Protection of Children from Sexual Offences Act, 2012 (POCSO) is a special and comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of investigation and judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The Act is gender neutral in nature and defines a child as any person below eighteen year of age. The Act identifies six types of sexual offences namely:

- Penetrative Sexual Assault (Sec. 3)
- Aggravated Penetrative Sexual Assault (Sec. 5)
- Sexual Assault (Sec. 7)
- Aggravated Sexual Assault (Sec. 9)
- Sexual Harassment (Sec. 11)
- Using child for Pornographic Purposes (Sec. 13)

As each of the above is a distinct offence providing for different kinds of punishments, the IOs should be extremely careful in reporting and charging the type of offence committed in each case as any negligence in identifying and charging the exact offence under the POCSO can occasion grave injustice to the victim of the offence and result in the acquittal of the accused.

03. Reporting the Offence

The Protection of Children from Sexual Offences Act, 2012 (POCSO) under section 19 provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence. If he fails to do so, he is liable to be punished u/s 21 of the Act. Children too are under an obligation to report offences under the Act. However they cannot be punished for failure to report an offence. Upon receiving information, the key duties of the Police/ Special Juvenile Police Unit will be to:

- 1) Record information
- 2) Conduct preliminary assessment
- 3) Report the case within twenty four hours before Special Court and the Child Welfare Committee (CWC).
- 4) Produce the child before the CWC within twenty four hours, if found required
- 5) Mandatorily adhere to the medical needs of the child
- 6) Keep parent/guardian informed.

The detailed provisions upon receipt of information are provided under rule 4 of the POCSO Rules, 2012.

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

- a) his name and designation;*
- b) the address and telephone number;*
- c) the name, designation and contact details of the officer who supervises the officer receiving the information.*

(2) Where an SJPU or the local Police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in 140 respect of an

offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, -

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

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

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

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

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

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

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

04. Compliance with statutory time limit

It is noticed that despite the issuance of detailed instructions vide references cited, there is delay in registering FIR, in commencing investigation and in the filing of charge sheet, further delaying the disposal of each of such POCSO case. It is brought to the notice of all officers concerned that as per section 35(2) of the Act, the trial of a POCSO case is to be completed, as far as possible, within a period of one year from the date of taking cognizance of the offence. For speedy trial, the evidence of the child is to be recorded within a period of thirty days. Hence all officers are directed to strictly adhere to the statutory time limit for the disposal of the case.

05. Familiarity with legal Provisions and the guidelines issued

The IOs of POCSO offences shall be well versed and thorough with the special procedure prescribed for the Police under,-

- the POCSO Act, 2012,
- the POCSO Rules, 2012,

- the guidelines issued by the State Government under section 39 of the POCSO Act vide G.O. (P) No.28/2015/SJD dated 20-04-2015,
- the Juvenile Justice (Care and Protection of Children) Act, 2015; and
- the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

This is found mandatory so as to avert unnecessary delay in registering the case and in conducting the investigation.

06. Recording of statement of a child-Forensic Interview Protocol to be observed

Children who have been sexually abused are traumatised as a result of their experience. They will be facing severe psychological and family problems. Hence there is every chance that such children will not respond to a routine questioning by the Police. If the IOs are not aware of this significant point, that will affect the quality of trial and evidence and trial process. The child is subjected in such cases to repeated probing and questioning, made to remember and state the traumatic incident again and again. This will make the child at the risk of secondary victimisation at the hands of the judicial process and will not be in the best interest of the child. Hence the interview with the child is to be conducted in such a way as to obtain a statement from the child in a manner that is developmentally sensitive, unbiased and truth-seeking. The statement so obtained alone can support accurate and fair decision making. Hence such interview is to be termed as investigative or forensic. In order to conduct such interview, guidelines have been formulated under Chapter IV of the Guidelines issued by the State Government under the POCSO which is termed as the '**Forensic Interview Protocol**'. The statement so taken at the interview shall be in compliance with the provisions under section 24 of the POCSO Act, 2012, as provided below:-

- 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.

07. Medical Examination and Consent

If the child refuses to undergo medical examination but the family member or investigating officer is insisting for the medical examination, the POCSO Act is silent and does not give clear direction. However, it would be prudent to take informed consent from parent when the survivor is a child (below 12 yr) and consent from both parent and the child victim, if the survivor is an adolescent (age group from 12 -18 yr). However, emergency treatment needs to be initiated without getting into this consent issues or legality to protect the life of the child.

If the victim is not giving his/her consent for medical examination, the service of a professionally trained counsellor shall be made available to the victim immediately so that medical examination can be conducted without delay. As per section 27 of POCSO, medical examination shall be conducted notwithstanding the fact that an FIR or complaint has not been registered and it shall be conducted in accordance with section 164A Cr PC. In case the victim is a

girl child, the medical examination shall be conducted by a lady doctor in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

The POCSO Act, Section 27(2) mandates that in case of a girl child, the medical examination should be done by a female doctor. However, the law as provided under section 166A IPC r/w 164A and 357C Cr PC mandates the available medical officer on duty to provide emergency medical care even in the case of rape victims. It is to be noted that in this aspect, the provisions under section 27(2) of the POCSO, being a special provision in a special law will prevail.

Child sexual abuse can result in both short-term and long-term harmful mental health impact. Mental health professionals need to be involved in follow up care of the victim with regard to emergence of psychiatric disorders, by providing individual counselling, family therapy and rehabilitation.

08. Immediate recording of statement of the victim and/or the interpreter/special educator/counselor also in the room with the victim under section 164 CrPC

As per section 164 (5A) (a) Cr PC the Judicial Magistrate shall record the statement of the victim as soon as the commission of the offence is brought to the notice of the Police. At present the 164 statement of the child victim is recorded before a Magistrate after much delay. That is a crucial period in which the child victim and family can be influenced and threatened to withdraw his/her complaint. This is especially true in cases where accused are known to the victims. Hence the recording of 164 statements in POCSO cases should be immediately done.

09. Statements of the doctor, NGO, authorities at the rehabilitation centre etc. to be mandatorily obtained.

When the accused is a family member in a POCSO offence, the witnesses who are from the same family almost always turn hostile resulting in the acquittal of the accused. Hence every effort should be made to mandatorily include the 161 statement of witnesses from outside the family, especially the doctor who examined the child, any social worker involved, interpreter, translator, authorities from Rehabilitation centers, Child Care Institutions etc. where the victim is sent. This requirement is mandatory for ensuring that the accused will never go unpunished.

10. Absence of documents to prove date of birth

In many of the cases, it is seen reported that there is no document to prove the date of birth of the child victim so as to attract the provisions under the POCSO. It was held by the Hon'ble Supreme Court in the case *Mukarrab Etc vs State of U.P.*, [2017 (2) SCC 210] that medical evidence as to the age of a person though a very useful guiding factor is not conclusive and has to be considered along with other circumstances. In the case *State of Madhya Pradesh v. Anoop Singh* [(2015) 7 SCC 773] it was held that the ossification test is not the sole criteria for age determination. Hence in the absence of documents, age is to be estimated on the basis of other evidence in addition to medical evidence, and left to the concerned court to decide. It will be appropriate to obtain the documents to prove date of birth at the earliest possible, as the prosecution of any offence under POCSO is entirely dependent upon the age of the child victim.

11. Accused is also a child

Where the accused is also a child as per POCSO Act, such accused child will be treated as a child in conflict with law and produced before the Juvenile Justice Board as per Juvenile Justice (Care and Protection of Children) Act, 2015. The sexual offences, where prescribed punishment under POCSO Act 2012, is more than 7 years, will be treated as heinous offence.

12. Flawless appreciation of evidence

The IOs shall mandatorily ensure that all scientific evidence (FSL/Chemical Examiner) etc. is properly collected and timely examination ensured by the appropriate authorities keeping in mind the statutory time limit.

In all cases of sexual offences against children, the Investigating Officers are hereby also instructed:

- 1) to get acquainted with the model guidelines issued by the State Government under section 39 of the POCSO Act vide G.O. (P) No.28/2015/SJD dated 20/04/2015 published as S.R.O. No.290/2015 in the Kerala Gazette Extraordinary No.1094 dated 05/05/2015 in the detection of offences against children, for safeguarding child rights.
- 2) When the accused is a relative of the child victim, care should be taken during collection of evidence. It can be safely presumed that relatives will turn hostile during the trial - therefore, 'back up' circumstantial evidence must be collected during the investigation.
- 3) It is desirable that competent advocates are appointed as Special Prosecutors for conducting trial. DPCs concerned to take pro-active action. DPCs should prepare a list of advocates who can be empanelled as Spl. Prosecutors in every district for POCSO cases. They must take action for their empanelment.
- 4) No case registered under the POCSO Act & Rules shall be charge sheeted or referred without the approval of the Range IsGP.
- 5) In all sexual offence cases against children, they shall be treated with dignity and compassion and their privacy safeguarded by all means keeping in mind the best interest of the child.

Sd/ (03.10.17)

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Distribution:

All Officers in List 'D' - for information and urgent necessary action.

Copy to:

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DOs AND DON'Ts FOR THE POLICE IN POCSO CASES

Sl. No.	Do's	Dont's
1.	Police to have a pro-active role in dealing with POCSO cases and a friendly approach to the child victim is mandatory.	The Police shall not be in uniform while dealing with a child victim.
2.	Give food to the child if he/she has not had his/her meals	In no case send the child to lock-up or jail or keep him with adult accused
3.	Disclose to the person giving information/report including the child in a POCSO case, the name, designation, address and telephone number of the officer receiving the information and also the name, designation and contact details of the officer who supervises the officer receiving the information (in addition to the furnishing of a copy of the FIR free of cost to the person making the report).	If the accused is a child in conflict with law, not to hand-cuff, chain or otherwise fetter a child and, not to delay his charge being transferred to the Child Welfare Police Officer from the nearest Police station.
4.	Cases shall be mandatorily reported and recorded protecting the privacy of the child.	The service of interpreters, translators, Special Educators and Counselors shall be mandatorily obtained as per the requirement of the child victim.
5.	Statement shall be recorded as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.	Derogatory semantics not permitted.
6.	Statement 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 possible by a woman Police officer not below the rank of sub-inspector.	Direct questions leading to the traumatic incident shall not be asked to the child.
7.	The 'Forensic Interview Protocol' shall be observed at the time of interviewing the child victim.	At no point of time the child shall come in the contact in any way with the accused.
8.	The identity of the child shall be protected from the public media unless otherwise directed by the Court.	Medical examination of a girl child shall not be conducted without a lady doctor and in the absence of her parents or any other person in whom the child has trust or confidence.

9.	Institutionalisation shall be the last option for a child victim. Every child shall have the right to be reunited with his family at the earliest.	No aggressive questioning or character assassination of the child permitted.
10.	Where the child needs emergency medical care, arrange for the same immediately, that is, within 24 hours of receiving such information or to take him/her to hospital for the medical examination u/s 27 of POCSO.	No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering emergency medical care.
11.	Relevant copies of documents which are essential for the care and upkeep of the child should be shared with the counselor or other professional who are entrusted with the care of the child judiciously, keeping in mind the best interest of the child.	The collection of evidence from the child shall not be delayed beyond thirty days of the court taking cognizance of the offence.
12.	Wherever possible, the statement of the child, shall also be recorded by audio-video electronic means.	No past records of any child in conflict with law or the child victim shall be kept by the Police except in special circumstances.
13.	The 161 statements of witnesses from outside the family, especially the doctor who examined the child, any social worker involved, interpreter, translator, authorities from Rehabilitation centers, Child Care Institutions etc. where the child victim is sent, to be mandatorily recorded.	No negative step to be taken against the best interest of the child unless otherwise directed by court or CWC etc.


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 State Police Chief, Kerala

