

बालकांचे लैंगिक शोषणापासून
प्रतिबंध अधिनियम २०१२
(Protection of Children from
Sexual Offences Act २०१२)
अंतर्गत कलम ३९ मधील
तरतुदीनुसार मार्गदर्शक सूचना.

महाराष्ट्र शासन
महिला व बाल विकास विभाग
शासन निर्णय क्रमांक: POCISO-२०१२/प्र.क्र. २१४(भाग-२)/का-३.

नविन प्रशासन भवन, ३ रा मजला,
मादाम कामा रोड, हुतात्मा राजगुरु चौक,
मंत्रालय, मुंबई-४०००३२.
तारीख: ६ मे, २०१५.

शासन निर्णय:-

बालकांचे लैंगिक शोषणापासून प्रतिबंध अधिनियम २०१२ (POCISO Act २०१२) मधील कलम ३९ मध्ये स्वयंसेवी संस्था, बाल तज्ञ, बालमानस तज्ञ, बाल कल्याण क्षेत्रात कार्यरत सामाजिक कार्यकर्ते व इतर संबंधित घटकांच्या उपयोगाकरीता या कायद्याची अंमलबजावणी करताना उद्धभवणाऱ्या न्यायालयीन प्रकरणात बालकांना सहाय्य व्हावे, यासाठी संबंधित राज्य शासनाने मार्गदर्शक सूचना तयार करण्यात याव्यात, अशी तरतूद करण्यात आली आहे.

२. उपरोक्त तरतुदीच्या अनुषंगाने मार्गदर्शक सूचना तयार करण्यासाठी सचिव, बाल हक्क संरक्षण आयोग, मुंबई यांच्या अध्यक्षतेखाली समिती गठीत करण्यात आली होती. या समितीने सर्व संबंधित घटकांशी विचारविनिमय करून तयार केलेल्या मार्गदर्शक सूचनांचा इंग्रजी मसुदा विधी व न्याय विभागाकडून प्रमाणित (vet) करण्यात आला आहे. सदर मार्गदर्शक सूचनांबाबत (Guidelines) जोडपत्र -अ या सोबत जोडले आहे.

३. सदर मार्गदर्शक सूचना सर्व संबंधितांना या कायद्याच्या अंमलबजावणीकरीता या शासन निर्णयाच्या दिनांकापासून लागू करण्यात येत आहेत.

सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१५०५०६११२५२२७१३० असा आहे. हा आदेश डिजीटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

दि. बा. पाटील
कक्ष अधिकारी, महाराष्ट्र शासन

प्रत,

मा.मंत्री, महिला व बाल विकास यांचे खाजगी सचिव, मंत्रालय, मुंबई.

मा.राज्यमंत्री, महिला व बाल विकास यांचे खाजगी सचिव, मंत्रालय, मुंबई.

सर्व अपर मुख्य सचिव / प्रधान सचिव / सचिव

महाअधिवक्ता, महाराष्ट्र राज्य, मुंबई.

अध्यक्ष, राज्य सल्लागार मंडळ, महाराष्ट्र राज्य.

सर्व मंत्रालयीन विभाग

महाप्रबंधक, मा.उच्च न्यायालय, मुंबई.

महाप्रबंधक, उपलोकायुक्त व लोकायुक्त यांचे कार्यालय, मुंबई.

सर्व निबंधक, मा.उच्च न्यायालय, खंडपीठ, नागपूर / औरंगाबाद.

सर्व जिल्हा न्यायाधीश, जिल्हा न्यायालय.

सरकारी वकील, उच्च न्यायालय, मुंबई / नागपूर / औरंगाबाद

सचिव, महाराष्ट्र राज्य बाल हक्क संरक्षण आयोग, वरळी, मुंबई.

आयुक्त, महिला व बाल विकास, पुणे.

सर्व उप सचिव, अवर सचिव, कक्ष अधिकारी, महिला व बाल विकास विभाग, मंत्रालय, मुंबई.

सर्व विभागीय महिला व बाल विकास अधिकारी,

सर्व जिल्हा महिला व बाल विकास अधिकारी.

निवड नस्ती / का-३

Annexure - A

Guidelines issued under Section 39 of the Protection from Children Against Sexual Offences Act 2012, (32 of 2012).

1) Preamble

Child being vulnerable witness, find the criminal justice system intimidating, particularly the courtroom experience. Thus under these circumstances, a child may be a poor witness, providing weak testimony and contributing less information than should have been elicited. Further, the lengthy process of navigation, the formal and adversarial criminal justice system can affect the children's psychological development and disable their sensitivity in significant and long-lasting ways. Therefore, the purpose of this protocol is to give guidelines and mandatory recommendations, to improve the response of non-Governmental Organisations, professionals and experts in the field of psychology, social work, physical health, mental health and child development for justice dispensation system to child, needed in case of pre-trial and trial stage to assist the child and this protocol also gives guidelines while recording depositions of children in order to enable them to give their best evidence in criminal proceedings.

2. Objectives of these guidelines

1. To minimize harm or secondary victimization of child in anticipation and as a result of participation in the criminal justice system;
2. To elicit and secure complete, accurate and reliable evidence from child;
3. To ensure that the accused's right to a fair trial is maintained;
4. To ensure that children who have been sexually abused not to be victimized at the hands of criminal judicial process.

3. Applicability

Unless otherwise provided, these guidelines shall govern role of non-Governmental Organisations, professionals and experts or person having knowledge of psychology, social work, and child development dealing with the vulnerable victim during pre-trial and trial stage

4. Short title, extent and commencement:

These guidelines shall be called - Guidelines for role of non- Governmental Organisations, professionals, experts or person having knowledge of psychology, social work, sociology, law, child development and associated with the pre-trial and trial stages. These guidelines shall apply to the whole State of Maharashtra and shall come into force on such date as per the Government Resolution of the Women and Child Development Department, Government of Maharashtra.

5. Construction of guidelines

These guidelines shall be liberally construed to uphold the interests of child and to promote their maximum accommodation.

6) Definitions

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

(b) “Child” means any person below the age of eighteen years;

(c) “Expert” means a person trained in Mental Health, Medicine, Psychology (specially in child psychology), Occupational Therapy, Speech Therapy, Psycho Therapy, Language Expert, Child Development or other related discipline , who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability;

(d) “In-Camera Proceedings” means criminal matters or part thereof wherein the public and press are not allowed to participate;

(e) “Live link” means and includes a live television link, audio-video electronic means or other arrangement whereby a witness, while absent from the courtroom is nevertheless present in the court room by remote communication using technology to give evidence and be cross-examined;

(f) “non- Government Organisation” means any organization registered either under the Societies Registration Act 1860 or Mumbai Public Trust Act 1950 or under section 25-A of Companies Act, 1956 or Indian Registration Act, 1908 working on the issue of Child Protection and Child Sexual Abuse and having experience of at least three years, in the field of child right issues;

(g) “Pre-trial” means a proceeding held before an official trial, especially to clarify points of law and facts;

(h) “Professionals” means Individuals having an academic qualification (diploma or graduation or post-graduation or doctoral) from any University or Deemed University or Institute, with at least three years of experience in the respective fields such as Medicine, Law, Psychology, Sociology, Social Work, Language Expert, Occupational Therapy, Speech Therapy;

(i) “Special court” means a court constituted either under the section 28 of the Act or a court notified as a children’s court under section 25 of Commission for Protection of Child Right Act, 2005;

(j) “Support Person” means the person assigned by a Child Welfare Committee in accordance with sub rule 7 of rule 4 of the Protection of Children from Sexual Offences Rules, 2012, 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; which includes interpreter, translator, special educator, expert, or person familiar with the manner of communication of the child, and any other person appointed by the Government or by the court to provide support, accompany and assist the child;

(k) “Trial” means a formal judicial examination and evidence and determination of legal claim in an adversary proceeding.

7. Qualification of Professional and Experts

1. Professionals:

A professional shall have at least post- graduate degree in Social work or Sociology or Psychology (child psychology) or Medicine and shall possess five years of experience in the field of child right, working either with a reputed and registered non-Government Organisation or any Government or Semi Government organisation for a period of 5 years in case of legal professional, he shall have bachelor degree in law and registered as an Advocate on the register of Bar Council of Maharashtra and also possessing five years experience in judicial process at trial and pre-trial stage specially worked on child right issues.

2. **Experts :-**

An Expert shall have a degree or diploma in the relevant field with five years experience, working with reputed non-Government Organisation, Government organisations or Semi Government organisations.

8 **Identification of Stress causing factors on child:**

Factors which cause stress on child witness, rendering them further vulnerable witnesses, and impeding complete disclosure by them shall, amongst others, include:

- (i) Multiple depositions and not using developmentally appropriate language.
- (ii) Delays and continuances;
- (iii) Testifying more than once;
- (iv) Prolonged or protracted court proceedings;
- (v) Lack of communication between professionals including police, doctors, lawyers, prosecutors, investigators, psychologists, etc;
- (vi) Fear of public exposure;
- (vii) Lack of understanding of complex legal procedures;
- (viii) Face-to-face contact with the accused;
- (ix) Practices are insensitive to development needs;
- (x) Inappropriate cross-examination;
- (xi) Lack of adequate support and victims services;
- (xii) Sequestration of witnesses who may be supportive to the child;
- (xiii) Placement that exposes the child to intimidation and pressure or continued abuse;
- (xiv) Inadequate preparation for fearless and robust testifying;
- (xv) Worry about not being believed especially when there is no evidence other than the testimony of the vulnerable witness;
- (xvi) Formality of court proceedings and surroundings including formal dress of members of the judiciary and legal personnel.

9. Developmentally appropriate questions

The questions asked to assess the competency of the child shall be appropriate to the age and developmental level of the child and shall focus on the ability of the child to remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully.

10. Pre-trial visit of representation of non- Government Organisations, Professional and Experts.

Child witness shall be allowed a pre trial court visit along with the support person to enable such witnesses to familiarize themselves with the environment of the court, and may include visit to and explanation of the following:

- (i) The location of the accused in the dock;
- (ii) Court officials (what their roles are and where they sit);
- (iii) Who else might be in the court, for example those in the public gallery;
- (iv) The location of the witness box;
- (v) A run-through of basic court procedure;
- (vi) Facilities available in the court;
- (vii) Discussion of any particular fears or concerns with the intermediaries, prosecutors and the judge to dispel the fear, trauma and anxiety in connection with the prospective deposition at court;
- (viii) Demonstration of any special measures applied for and/or granted, for example practising on the live link and explaining who will be able to see them in the courtroom, and showing the use of screens where it is practical and convenient to do so.

11. Duties of child professionals and experts

Background

The Protection of Children from Sexual Offences Act, 2012 provides for child-friendly pre-trial and trial procedures to minimize the trauma felt by child victims and

to eliminate the possibility of re-victimization at the time of trial. The child-friendly pre-trial procedures cast duties on the police and are to be implemented at the time of reporting of offences and recording of the child's statement as per the provisions of the said Act.

The child-friendly procedures during the trial are to be followed by the Special Courts set up under sub-section (l) of Section 28 to try offences under the said Act. They aim to ensure that the child is protected from intimidation, whether intentional or not. All legal representatives, whether representing the accused or the child, must be aware of these provisions. Given the particular vulnerabilities of children, additional measures should also be made available and utilized even in normal circumstances. The detailed provisions regarding child-friendly trial are provided in Section 33 to Section 38 of the said Act.

During the investigation, the minimum levels of protection are required in relation to any interviews with the victim and the same shall be carried out with sensitivity. The Advocates as well as law enforcement officials shall be specially trained to this end. Such training shall ensure that these persons know the appropriate methods of interviewing which will take account of a victim's particular situation, minimize distress and maximize the collection of high-quality evidence. In order to ensure that the child-friendly trial procedures established under the Act are optimized, so also the following factors shall be kept in mind by the legal representatives of a child who has been a victim of an offence under the said Act:

1. Pre-trial stage:

- (a) To provide Counsellor support to the child to understand or report sequence of events.
- (b) To take the child into confidence, making the child feel at ease and comfortable to be able to speak freely and share his views. .
- (c) To use alternative methods to help child open up (play, drawing, toys, etc.)
- (d) To provide the services of Child Guidance Centre (CGC) in the case of the child with trauma or behaviour related responses.
- (e) To facilitate provision so that police or Special Juvenile Police Unit (SJPU) to meet the child in a place where child feels safe and comfortable to talk.

- (f) To prepare child to give statement (law enforcement).
- (g) To prepare child for medical examination.
- (h) To accompany the child for medical examination.
- (i) To provide the services of Female Police Officer, not below the rank of Police Sub Inspector
- (j) To facilitate for using the simple language which the child understands and in the presence of any person whom child trusts.
- (k) Use of audio or video or electronic means for recording the statement if required
- (l) To facilitate escalation of recording of statement by Magistrate under section 164 of the Code of Criminal Procedure, 1973 (2 of 1974)
- (m) To identify the need for specialized referral services required and assist Child Welfare Committee in accessing the child.
- (n) To assure the protection for the child witness, child victim and the support person
- (o) To provide medical assistance.
- (p) To provide support for opting with Post Traumatic Stress Disorder
- (q) To secure opportunity to visit the court to familiarize child with it before the trial
Explanation I : This will enable the child to be familiar to the atmosphere of Court so that he is not intimidated at the trial . It will also allow him to express an informed view about the special measures, so that a revised application can be made, if necessary, in advance of trial.
Explanation II: The expression “Special Measure” means and includes the use of any mode, method and instrument, etc., considered necessary for providing assistance in recording deposition of child.
- (r) To make request so that the child sees or can be briefed on his statement for the purpose of memory-refreshing before trial
- (s) Consider the witness’s access to the building and suitability of waiting areas. : Where it is difficult to segregate young witnesses from defendants within and around the building, consider standby arrangements or the use of remote live - links.

II) Trial stage:

- a) Try to list cases for hearing as soon as possible and avoid adjournments .

It is in the interest of the child that the trial is concluded as quickly as possible. Prolonging the judicial process will only cause more trauma to the child.

- b) Try to assure that children must be given a reasonable opportunity to express their views all matters affecting him and his views should be taken into account. The child should also be allowed to provide initial and further information, views or evidence during the proceedings. In case the child has a mental or physical disability, the Special Court shall take the assistance of Special Educational Expert.

- c) To ensure that the child is able to exercise his right to be accompanied by an adult in whom he has trust and confidence.

Explanation: The adult may be the child's parent, guardian, or he may be other person or the support person appointed by the Child Welfare Committee.

- d) To prepare chart of all stages of children's evidence to minimize time at court and give them a fresh start in the morning.

Explanation: The start of children's testimony should not be delayed by other matters on the court list. It is best to make an estimate of the amount of time the child will have to be present in Court, and in doing this, to bear in mind his concentration span, the length of any recording, the best time to view it and the need for breaks. Request the Special Court to accommodate these requirements.

- e) To ensure that special measures may be taken in light of the child's wishes and needs.

Explanation: Make whatever applications are necessary to ensure that the child receives the benefit of existing child-friendly measures and also ensure that the applications are made within a time provided therefore so that the child can be informed of decisions before trial.

- f) To ensure that the child is able to understand.

Explanation: The majority of young witnesses experience communication difficulties while giving evidence, often because questioning is developmentally or otherwise inappropriate. Before a child gives the evidence,

try to have a conversation with him so that an Expert will have an idea about his communication abilities and concentration span.

- g) To provide such an aid, assistance and an advice to the complainant as well as send its legal opinion in such cases to the concerned Government authorities, non Government Organisation members of civil society and institutions for suitable action.
- h) To provide requisite information and advice to the concerned persons regarding the legal options available for protecting the interests of the child.
- i) To assist the concerned in making a decision regarding various options available to pursue the case and if required help in formulation of complaints, petitions, etc.
- j) To ensure ahead of time that equipment (in case of live link) is working, recordings can be played and that camera angles will not permit the witness to see the defendant.

Explanation : Where a live link is being used during the child's testimony, ensure that they are able to see all of the questioner's face.

- k) Try to explain that the judge or magistrates can always see the witness over the live video link.

12) Duty to provide comfortable environment.

- a) Judges and Magistrates may also ask whether the child would like to meet them before the trial starts, so as to help to establish rapport and put the child at ease. The questions to the child should be familiar with their manner of conversation, and vice versa.
- b) Encourage the child to let the court know if they have a problem.

Explanation : Child may not understand a question or questions that are too fast, or they may need a break. However, many children would not state that they do not understand the question, even when told to do so. Professional vigilance is, therefore, always necessary to identify potential miscommunication, and it is the child's counsel who will have to be mindful of any instance where the child is losing concentration, feeling ill, etc.

- c) Do not ask the child at trial to demonstrate intimate touching on his own body. This may be construed as abusive. The child can instead be asked to point to a body outline diagram provided to him at that point of time.

13) Precautions to be taken during trial stage:

- (a) Identify all relevant issues which need to be determined in regard to the child's welfare and best interests;
- (b) 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;
- (c) Call evidence where appropriate (other than any Court's witness), for example, from psychological or medical professionals and teachers;
- (d) Ensure that the legal representative does not give evidence himself or herself;
- (e) Cross-examine to ensure all relevant issues are fully explored;
- (f) Make submissions on behalf of the child;
- (g) There should be in-camera trial and it should be in the presence of family member, friend, relative or any person whom the child trusts
- (h) To ensure that within thirty days of cognizance taken by the Special Court trial shall be started.
- (i) To ask developmentally appropriate questions. Child's dignity to be maintained at the time of trial.
- (j) To take frequent breaks while child is testifying.
- (k) To interpret or explain questions asked by Public Prosecutor or Advocate of the accused through Court to the child
- (l) Child should not come face to face with the abuser.

14) Right to be informed

Children have the right to information about the case in which they are involved, including information on the progress and outcome of the case, unless the legal representative considers that it would be contrary to the welfare and best interests of the child. It would be appropriate if the legal representative coordinates with other persons or agencies concerned with the child's welfare, such as the support

person, so that this information is conveyed in the most effective manner. Victims should receive the most appropriate information on the proceedings from all their representatives, and the assistance of a support person appointed under clause 7 of Rule 4 of the Protection of Children from Sexual Offences Rules, 2012, most often constitutes the best practice in ensuring that full information is conveyed to the victim.

Explanation : **Information shall include:**

- (a) charges brought against the accused or, if none, the stay of the proceedings against him;
- (b) progress and results of the investigation;
- (c) progress of the case;
- (d) status of the accused, including his bail, temporary release, parole or pardon, escape, absconding from prison or death;
- (e) available evidence;
- (f) child's role in the proceedings;
- (g) child's right to express their views and concerns in relation to the proceedings;
- (h) scheduling of the case;
- (i) knowledge of all decisions, or at least, those decisions affecting their interests;
- (j) their right to challenge or appeal against the decisions and the modalities of such appeal;
- (k) status of convicted offenders and the enforcement of their sentence, including their possible release transfer escape or death.

15. Procedure of appointment of Non Government Organisation, Professionals and Experts empanelment of the Non Government Organisations , Professionals and Experts:

- 1) The State shall issue an advertisement about the vacancy posting -
 - a) in at least two of the leading newspapers circulated in the State;
 - b) on the Department website with features to send applications online;

- 2) These applications shall be received by the District Women and Child Development Officer (DWCDO). The application shall be scrutinized by such officer with the help of District Child Protection Unit.
- 3) The final decision of selection of the Experts or Professionals lies with the Selection Committee headed by the District Collector. The District Women and Child Development Officer shall be the Member Secretary of the Committee. The Committee shall consist of Superintendent of Police or Deputy Superintendent of Police and Civil Surgeon.
- 4) The selection shall be reviewed every three years.
- 5) Resignation of any of the panelist would have to be done via one month's notice in writing to the District Women and Child Development Officer.
- 6) At least 30 per cent of the Professionals should be women
- 7) A Professional shall not be below the age of 25 yrs.
- 8) Once the empanelment is done, all the lists would be uploaded on the website of the District Women and Child Development Officer, district wise.
- 9) Number of experts in each category shall be based on need at district level with each Expert shall not be handling more than 5 cases.

16) Measures to protect privacy and wellbeing of child victim

The following measures shall be taken to protect privacy and well being of child victim:-

- (a) expunging from the public record any names, addresses, workplaces, professions or any other information that could be used to identify the child;
- (b) taking any other measures that the court may deem necessary, including where applicable an anonymity, taking into account the best interests of the child and the rights of the accused.
- (c) any information including name, parentage, age, address, etc. revealed by the child victim or witness which enables identification of the person of the child, shall be kept in a sealed cover on the record and shall not be made available for inspection to any party or person. Certified copies thereof shall also not be issued. The reference to the child victim or witness shall be only by the pseudonym assigned in the case.

17. Duty of non- Government Organisations or Experts or Professionals:

The non- Government Organisations or Experts or Professionals shall insist on -

- a) live-link television testimony in criminal cases where the vulnerable witness is involved.
- b) provision of screens, one-way mirrors, and other devices to vulnerable witness from accused.
- c) Raise objections to questions Objections to questions should be couched in a manner so as not to mislead, confuse, frighten a vulnerable witness.
- d) Ensure that questions are allowed in simple language

18. Personal details during evidence likely to cause threat to physical safety of vulnerable witness to be excluded :

A vulnerable witness has a right at any court proceeding not to testify regarding personal identifying information, including his name, address, telephone number, school, and other information that could endanger his physical safety or his family. The court may, however, require the vulnerable witness to testify regarding personal identifying information in the interest of justice.

19. Training

Experts and Professionals shall undergo continuous short term and long term training which will take into account a victim and particular situation in the particular district.

20) Payment of Non Government Organisation or Experts or Professionals

Non- Government Organisation or Experts or Professionals shall be paid for their services as per the fees determined under clause (6) of rule 3 of the Protection of Children from Sexual Offences Rules, 2012.

21. Special Public prosecutor and Legal counsellor as envisaged under section 32 and 40 the Protection of Children from Sexual Offences Act.

Section 40 of Protection of Children from Sexual Offences Rules, 2012 provides for right of child to take assistance of legal practitioner, as follows :-

“Subject to the proviso to Section 301 of the Code of Criminal Procedure 1973, the family or the guardian of a 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 Service Authority shall provide a lawyer to them.

22. Mode of selection of legal counsel to represent children who have been sexually abused:

The Maharashtra Legal Service Authority shall draw a panel of qualified and experienced advocates for each district as per need in every district to represent child victims of sexual abuse.

Qualification and Experience:

- a) This panel shall comprise of Retired judges, retired Public Prosecutors and Law Graduates having practice experience of ten years and more in criminal trials. Conviction, commitment and experience in the field of child rights shall be compulsory considerations for empanelment.
- b) Advocates shall initially be empanelled for a period of one year which can be extended on the basis of performance.
- c) Advocates shall be given minimum of five cases and maximum of ten cases.
- d) Advocates legally representing the child shall be banned from defending the accused in other child abuse cases.

23. General Guidelines to be followed by Special Public Prosecutor and legal counsel

- a) The Special Public Prosecutor or legal counsel must provide independent representation and advice to the child.
- b) The Special Public Prosecutor or legal counsel shall be duty bound 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 legal representative or public prosecutor shall not be required to put before the Court any views expressed to him in confidence.

- c) Where a Special Public Prosecutor or legal counsel have 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, Special Public Prosecutor or legal counsel must be alert to the possibility of conflict. In some cases, the legal counsel may be obliged to seek separate representation for one or more of the children.
- d) Adequate representation and the right to be represented independently from the parents shall be guaranteed, especially in proceedings where the parents, members of the family or caretakers are the alleged offenders.
- e) Where a conflict arises between a child's views and information relevant to the welfare and best interests of the child, the legal representative shall,
 - (i) discuss the issues and his obligations as the legal representative towards the child;
 - (ii) attempt to resolve the conflict with the child;
 - (iii) advise the Court as the legal representative of the child and apprise the Court about his position at what point and where he is unable to resolve the conflict, and as a matter of professional judgement he can advocate only the child's views and prayed the Court to appoint another legal representative in the matter.
- f) The Special Public Prosecutor or legal counsel shall represent the child in accordance with the child's welfare and best interests where a child is unable or unwilling to express his views or in any way guide representation on his behalf.

24. Special guidelines for Special Public Prosecutor or Legal Counsel

- (a) For the child between 12 to 18 years of age, more weightage should be given to the child's instructions. For the child below 12 years of age, more weightage shall be given to the representation made in accordance with the child's welfare and best interests.
- (b) It is the duty of the Special Public Prosecutor or legal counsel to see that all factors which has impact on the child's welfare and best interests are put forward before the Court.

- (c) In determining what best serves the child's welfare and best interests, the legal representative 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.
- (d) The Special Public Prosecutor or legal counsel shall intermittently meet the child whoever he represents. The timing and venue for such meeting and any further meetings shall be decided by the legal representative. However, the legal representative shall meet with the child at such time 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.
- (e) As a general rule, Special Public Prosecutor or legal counsel 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.
- (f) The Act provides under sub-section (8) of Section 33 that, the Special Court may award compensation to the child. The legal representative should ensure that the child and his family are aware of this, and should make the appropriate applications for interim as well as final compensation as provided under rule 7 of the Protection of Children from Sexual Offences Rules, 2012.

25. Mode of questioning

To facilitate the ascertainment of the truth the court shall exercise control over the questioning of vulnerable witness. While questioning the following shall be kept in mind:-

- (i) Ensure that questions are stated in a form appropriate to the developmental level of the vulnerable witness;
- (ii) Protect vulnerable witness from harassment or undue embarrassment; and
- (iii) Avoid waste of time by declining questions which the court considers unacceptable due to their being improper, unfair, misleading, needless, repetitive or expressed in language that is too complicated for the witness to understand.
- (iv) The court may allow the child witness to testify in a narrative form.
- (v) Questions shall be put to the witness only through the court

26. After the conclusion of trial,

- (a) The Special Public Prosecutor or legal counsel 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.
- (b) When a decision has not been enforced, the child should be informed through his legal representative of available remedies either through non-judicial mechanisms or access to justice.
- (c) The Special Public Prosecutor or legal counsel or guardian should take all necessary steps to claim compensation for the child as sub rule (6) of rule 7 of the Protection of Children from Sexual Offences Rules, 2012 provides that, nothing in the rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or schemes of the Central Government or State Government. Thus, if there is any additional scheme for compensation, the child's legal representative should inform the child about such scheme and seek instructions on how to proceed further.

27. Protection of privacy and safety

Confidentiality of records — Any record regarding a vulnerable witness shall be confidential and kept under seal. Except upon written request and order of the court, the record shall only be made available to the following:

- (i) Members of the court staff for administrative use;
- (ii) The Special Public Prosecutor or legal counsel for inspection;
- (iii) Defence counsel for inspection;
- (iv) The guardian *ad litem* for inspection; and
- (v) Other persons as determined by the court.

28. Protective measures

At any stage in the justice process where the safety of a child victim or witness is deemed to be at risk, the court shall arrange to have protective measures put in place for the child. Those measures may include the following:

(a) avoiding direct or indirect contact between a child victim or witness and the accused at any point in the justice process;

(b) restraint orders;

(c) a pre-trial detention order for the accused or with restraint or “no contact” bail conditions which may be continued during trial;

(d) protection for a child victim or witness by the police or other relevant agencies and safeguarding the whereabouts of the child from disclosure;

(e) any other protective measures that may be deemed appropriate.