

## **Suggestion for Practice Directions for Special Courts under the POCSO Act, 2012**

Enfold Proactive Health Trust

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High Courts may consider issuing the following guidelines or practice directions to Special Courts under the POCSO Act, 2012, to ensure that child-friendly procedures are complied with during COVID-19. The following directions should also be followed by JJBs while conducting inquiries in cases under the POCSO Act:

- 1) **Safety measures:** Children and their family members should be provided with protective gear for appearance before the court by the police in coordination with the DCPU. Assistance should also be provided for transport of children to their families by the police and the District Child Protection Unit (DCPU).
- 2) **Schedule for POCSO cases:** The Special Court may be instructed to prepare a schedule for hearing POCSO cases and indicate time slots for the examination of child victims and witnesses. The examination-in-chief and cross-examination of a child should be completed on the same day, as far as possible and the child should not be called repeatedly to testify in court.<sup>1</sup> Breaks should be allowed, if necessary. Care should be taken to ensure that the child is not kept waiting for lengthy periods of time on the day of the testimony.
- 3) **Adherence to child-friendly procedures:**
  - a) Special Courts should ensure that frequent breaks<sup>2</sup> are given during the examination or cross-examination.
  - b) Questions should be routed only through the Special Court<sup>3</sup> and direct questions by the Prosecutor or defence lawyer should be avoided.<sup>4</sup>
  - c) No aggressive questioning or character assassination should be permitted by the Special Court and the dignity of the child should be maintained at all times.<sup>5</sup> For this purpose, the Special Courts may be instructed to refer to '*Development & Mental Health Implications for Eliciting Evidence under the Protection of Children from Sexual Offences Act, 2012* -Training Manual for Judicial Personnel' by Community Child & Adolescent Mental Health Service Project, Department of Child and Adolescent Psychiatry, NIMHANS.
  - d) The child should not be exposed to the accused inside or outside the court or via video-conference.<sup>6</sup>
  - e) The child should be examined in the presence of a family member, guardian, friend, or relative, in whom the child has trust or confidence.<sup>7</sup>

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<sup>1</sup> POCSO Act, 2012, Section 33(5).

<sup>2</sup> POCSO Act, 2012, Section 33(3).

<sup>3</sup> POCSO Act, 2012, Section 33(2).

<sup>4</sup> POCSO Act, 2012, Section 33(2).

<sup>5</sup> POCSO Act, 2012, Section 33(6).

<sup>6</sup> POCSO Act, 2012, Section 36(1).

<sup>7</sup> POCSO Act, 2012, Section 33(4).

- f) Assistance of qualified and experienced translators or interpreters should be taken while recording evidence of the child.<sup>8</sup> The Special Courts can seek the directory of experts maintained by the District Child Protection Unit for this purpose.
  - g) Where the child victim is also a child in need of care and protection, the Special Court should ensure that the Child Welfare Committee under the Juvenile Justice (Care and Protection of Children) Act, 2015, has been informed by the police or SJPU, and a Support Person has been appointed.<sup>9</sup>
  - h) A specific waiting area for children and their families should be designated within the court complex and should be sanitized at regular intervals.
  - i) Privacy and confidentiality should be maintained at all times, and protocols need to be developed for the recording, storing, sharing, and custody of audio-visual statements of child victims and witnesses.
- 4) **Disability-sensitive procedures:** The Special Courts should admit the statement of a child with disability recorded under Section 164(5A)(a) Cr.P.C as examination-in-chief.<sup>10</sup> Assistance of a special educator or a person familiar with the manner of communication of children in every case of a child with an intellectual disability, mental retardation, or any other disability.<sup>11</sup>
  - 5) **Vulnerable Witness Deposition Complex/Room (VWDC/R):** Wherever VWDC/R exist, administrative staff of VWDC/R may be directed to prepare such a schedule that ensures that not more than one child or family is in the deposition room or waiting area at any given point of time. Disinfectants may be used after each hearing.
  - 6) **Presence of informant and PP during bail application:** In accordance with Section 439(1-A), Cr.P.C, all courts should ensure the presence of the informant or a person authorized by them at the time of hearing a bail application under Sections 376(3), 376AB, 376DA, or 376DB of the IPC.<sup>12</sup> Notice of the bail application in such cases should be given to the Public Prosecutor within 15 days of receipt of the notice of such application.<sup>13</sup>
  - 7) **Compensation:** Upon receiving information about the registration of a FIR under the POCSO Act, 2012, the Special Court should consider passing a direction for interim compensation to meet the needs of the child for relief or rehabilitation and direct its payment from the State Victim Compensation Fund or by the State Government.<sup>14</sup> **Payment of interim compensation should be considered in all pending cases as COVID-19 has placed many child victims and their families in further distress.** The Special Court should proactively consider award of final compensation in every case under the POCSO Act and state reasons for grant or refusal. A compliance report should be sought from the DLSA and the proceedings should be kept open till such a report is received.<sup>15</sup>

<sup>8</sup> POCSO Act, Section 38(1).

<sup>9</sup> POCSO Rules, 2020, Rules 4(4) and 4(8).

<sup>10</sup> Code of Criminal Procedure, 1973, Section 164(5-A)(b).

<sup>11</sup> POCSO Act, 2012, Section 38.

<sup>12</sup> *Miss G (minor) through her mother v. State of NCT of Delhi*, CrI.M.C. 1474/2020 decided by the Delhi High Court on 14.05.20. *Reena Jha & Anr. v. Union of India & Ors*, W.P.(C) No.5011/2017, decided by the Delhi High Court on 25.11.19.

<sup>13</sup> Section 439(1)(a) second proviso, Cr.P.C.

<sup>14</sup> POCSO Act, 2012, Section 33(8) read with POCSO Rules, 2020, Rules 9(1) and 9(4).

<sup>15</sup> *Gaya Prasad Pal v. State*, CrI. A. 538/2016 Delhi High Court judgment dated 09.12.16.