

STANDARD OPERATING PROCEDURE FOR POCSO COURTS

Prepared By: Juvenile Justice Monitoring Committee, Patna High Court

Recording of Statement by the Court

Sl. No.	SOP	Basis
i.	The Magistrate shall record the statement in the presence of parents/guardian and/or any other person in whom the child has trust or confidence.	Sections 26(1) of Protection of Children from Sexual Offences Act, 2012.
ii.	The statement shall be recorded verbatim as spoken by the child	Sections 25(1), 26(1) of Protection of Children from Sexual Offences Act, 2012.
iii.	The Magistrate, wherever necessary, may take the assistance of a translator and/or interpreter and/or special educator.	Section 26 (2) and (3) of Protection of Children from Sexual Offences Act, 2012. Rule 5 of Protection of Children from Sexual Offences Rules, 2020.
iv.	The Magistrate should ensure that the statement of the child is also recorded by audio/video means, wherever possible.	Section 26(4) of Protection of Children from Sexual Offences Act, 2012.
v.	The statement made by a child with temporary or permanent mental or physical disability and with the assistance of an interpreter / special educator before the Magistrate shall be video graphed.	Section 164(5A)(a) of Code of Criminal Procedure, 1973.
vi.	Statement of a child with temporary or permanent mental or physical disability made before the Magistrate shall be considered as the examination in chief.	Section 164(5A)(b) of Code of Criminal Procedure, 1973.
vii.	Advocate of accused shall not be present during recording of statement before the Magistrate.	Proviso of Section 25(1) Protection of Children from Sexual Offences Act, 2012.

Jurisdiction		
Sl. No.	SOP	Basis
i.	Sexual offences alleged to have been committed by a child shall be referred to the Juvenile Justice Board.	Section 34(1) of Protection of Children from Sexual Offences Act, 2012.
ii.	<p>If a question arises in any proceeding before the Special Court, whether the person is a child or not, the question shall be determined by the Court after satisfying itself about the age of such a person and record in writing the reasons for such determination.</p> <p>On reasonable doubt that a person is a child, the Court can refer to the:</p> <ul style="list-style-type: none"> • School record (for date of birth certificate) or matriculation; and when not available then • Birth certificate (by municipal corporation); and when not available then • Ossification test or Medical Age Determination Test (or other), when the above two options are unavailable. 	<p>Section 34(2) of Protection of Children from Sexual Offences Act, 2012.</p> <p>Section 94 (2) of Juvenile Justice Act, 2015</p> <p><i>Jarnail Singh v. State of Haryana</i> <i>Cr. Appeal No. 1204 of 2010;</i></p> <p><i>Ashwini Kumar Sarma v. State of M.P.</i> AIR 2013 SC 553</p>
iii.	No order made by the Special Court, pursuant to the determination of age by such Court, shall be deemed invalid, merely by any subsequent age proof of that person.	Section 34(3) of Protection of Children from Sexual Offences Act, 2012.
iv.	While trying an offence under the POCSO Act, 2012, the Special Court shall also try any other offence which the accused may be charged under Cr.P.C at the same trial.	Section 28(2) of Protection of Children from Sexual Offences Act, 2012.

Cognizance		
Sl. No.	SOP	Basis
i.	Special Court with the power of Court of Sessions will be designated to adjudicate cases under the Act.	Sections 28(1) and 33(9) of Protection of Children from Sexual Offences Act, 2012.
ii.	A Special Court has the power to take cognizance of any offence upon receiving a complaint.	Section 33(1) of Protection of Children from Sexual Offences Act, 2012.
iii.	In order to ensure that commencement of the trial is not delayed, endeavour should be made in filing of chargesheet within three months by the concerned police station.	Section 173 (1-A) of Criminal Procedure Code, 1973.
iv.	A copy of the chargesheet should be provided to the child and parent or guardian or representative of the child.	Section 25(2) of Protection of Children from Sexual Offences Act, 2012.

Framing of Charge		
Sl. No.	SOP	Basis
i.	Against any person who has information of a child being abused and fails to report the same.	Section 21 of Protection of Children from Sexual Offences Act, 2012.
ii.	Against any media, studio and photographic facility / personnel / publisher / owner / organization which fails to report any sexually explicit material or object involving a child.	Section 20 of Protection of Children from Sexual Offences Act, 2012.

iii.	Against any person who made any report or present comments on any child from any form of media / studio / photographic facilities having effect of lowering the reputation or infringing upon the privacy of a child.	Section 23 (1) of Protection of Children from Sexual Offences Act, 2012.
iv.	Against any media personnel publishing, without permission of the Special Court, information which discloses the identity of the child.	Section 23 (2) of Protection of Children from Sexual Offences Act, 2012.

Testimony of Child Victim & Procedure

Sl. No.	SOP	Basis
i.	The Special Court should record the evidence of the child within 30 days of taking cognizance of the offence.	Section 35 (1) of Protection of Children from Sexual Offences Act, 2012.
ii.	The child should not be repeatedly called for recording his / her testimony.	Section 33(5) of Protection of Children from Sexual Offences Act, 2012.
iii.	The Court shall ensure as to whether the child speaks the language of the Court adequately and if it is necessary, the Court may take the assistance of a translator or interpreter having such qualification and experience – while recording the evidence of the child. In cases of physical or mentally disabled child the Court may take the assistance of special educator or any person familiar with the manner of communication of the child or an expert in that field.	Section 38 of Protection of Children from Sexual Offences Act, 2012. Rule 5 of Protection of Children from Sexual Offences Rules, 2020.
iv.	Preference may be given to the choice of gender of interpreter, translator, special	Rule 5(9) of Protection of Children from

	educator or expert – as expressed by the child victim.	Sexual Offences Rules, 2020.
v.	The Special Public Prosecutor or the counsel for the accused shall not directly pose questions before a child. The questions shall be routed through the Special Court.	Section 33 (2) of Protection of Children from Sexual Offences Act, 2012.
vi.	Aggressive questioning or character assassination of the child shall not be permitted by the Special Court. The dignity of the child shall be maintained at all times during the trial.	Section 33 (6) of Protection of Children from Sexual Offences Act, 2012.
vii.	The Special Court must ensure that the child is not exposed to the accused at the time of recording of evidence while at the same time must also ensure that the accused can hear the statement of the child victim and communicate with his advocate.	Section 36 (1) of Protection of Children from Sexual Offences Act, 2012.
viii.	The Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.	Section 37 of Protection of Children from Sexual Offences Act, 2012.
ix.	If the Court is of the opinion that the child needs to be examined at a place other than the Court, it shall proceed to issue a commission in accordance with the provisions of section 284 of Code of Criminal Procedure, 1973.	Proviso to section 37 of Protection of Children from Sexual Offences Act, 2012.

Maintaining Child Friendly Atmosphere

Sl. No.	SOP	Basis
i.	The Special Court must ensure a child friendly atmosphere and shall allow the family member, guardian, friend or relatives of the child, on whom the child has trust or confidence, to be present in the Court.	Section 33(4) of Protection of Children from Sexual Offences Act, 2012.

ii.	If the Special Court feels necessary it may take frequent breaks for the child during trial.	Section 33 (3) of Protection of Children from Sexual Offences Act, 2012.
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Right to Privacy & Confidentiality

Sl. No.	SOP	Basis
i.	No person shall make any report or present comments on any child from any form of media / studio / photographic facilities having effect of lowering the reputation or infringing upon the privacy of a child.	Section 23 (1) of Protection of Children from Sexual Offences Act, 2012.
ii.	No media personnel shall publish, without permission of the Special Court, information which discloses the identity of the child. Term " <i>Identity of the Child</i> " includes – identity of child’s family, school, relatives, neighbourhood, or any such information by which identity of the child may be traced.	Section 23 (2) of Protection of Children from Sexual Offences Act, 2012.
iii.	The Special Court shall ensure that the identity of the Child is not disclosed at any time during investigation or trial. Term " <i>Identity of the Child</i> " includes – identity of child’s family, school, relatives, neighbourhood, or any such information by which identity of the child may be traced.	Section 33 (7) of Protection of Children from Sexual Offences Act, 2012.

Legal Aid

Sl.No.	SOP	Basis
i.	The Court shall ensure that the child right to be represented by a legal counsel of his/her choice is secured.	Section 40 of Protection of Children from Sexual Offences Act, 2012.

	If the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide the same.	
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Infrastructural Establishment of Child Friendly Court

Sl. No.	SOP	Basis
i.	The Special Court shall ensure that the testimony of the child is recorded through video conferencing or with the aid of single visibility mirror or curtain so that the child does not face the accused.	Section 36(2) of Protection of Children from Sexual Offences Act, 2012.

Trial & Procedures

a. Presumptions

Sl. No.	SOP	Basis
i.	If any person is prosecuted for committing or abetting or attempting to commit any offence u/s 3,5,7 and 9 of the POCSO Act, 2012 – the Special Court shall presume that such person has committed or abetted or attempted to commit the offence unless the contrary is proved.	Section 29 of Protection of Children from Sexual Offences Act, 2012.
ii.	In any prosecution for any offence under the POCSO Act, 2012 which requires a culpable state of mind - the Special Court shall presume the existence of culpable state of mind on the part of accused unless the accused proves otherwise.	Section 30 (1) of Protection of Children from Sexual Offences Act, 2012.
iii.	Evidence on character, or previous sexual experience of the victim shall not be considered relevant.	Section 53A of Indian Evidence Act, 1872.

Completion of Trial		
Sl. No.	SOP	Basis
i.	The trial under the POCSO Act, 2012 shall, as far as possible, be completed within a period of one year from the date of taking cognizance.	Section 35(2) of Protection of Children from Sexual Offences Act, 2012

Sentencing		
Sl. No.	SOP	Basis
i.	Where the accused is found guilty under POCSO Act and also under section 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E, or 509 of IPC, the offender shall be liable for punishment which is greater in degree.	Section 42 of Protection of Children from Sexual Offences Act, 2012
ii.	A person providing false information as to the commission of offence under the POCSO Act, 2012 or making false complaint shall also be punished under this Act. However, in case a false information has been provided or false complaint has been made by a child – no punishment shall be imposed on such child.	Section 22 (1) of Protection of Children from Sexual Offences Act, 2012

Compensation		
Sl. No.	SOP	Basis
i.	The Special Court may in addition to the punishment direct payment of compensation to the child for the physical and mental trauma caused to him or for immediate rehabilitation of such child.	Section 33 (8) of Protection of Children from Sexual Offences Act, 2012
ii.	The Special Court may – on its own motion or on application – may pass an order for interim compensation for immediate needs of the child at any stage after the registration of FIR. Such compensation shall be adjusted at the time of final compensation.	Rule 9 (1) of Protection of Children from Sexual Offences Rules, 2020.
iii.	Compensation can be awarded by the Special Court even in cases of conviction of accused, acquittal or discharge of accused or even in cases where accused is not identified or traced.	Rule 9 (2) of Protection of Children from Sexual Offences Rules, 2020.
iv.	While awarding compensation to the victim the Special Court shall take into account all relevant factors like type of abuse, gravity of offence, mental or physical harm caused to victim, expenditure for medical treatment etc.	Rule 9 (3) of Protection of Children from Sexual Offences Rules, 2020.
v.	Compensation awarded by the Special Court is to be paid by the State Govt. from the Victim Compensation Fund or any other scheme or fund established for the purpose of compensating and rehabilitating the victims u/s 357A of Cr.P.C or any other law. If no such scheme/fund exist – by the State Government.	Rule 9 (4) of Protection of Children from Sexual Offences Rules, 2020.
vi.	Compensation shall be paid within 30 days of receipt of such order.	Rule 9 (5) of Protection of Children from Sexual Offences Rules, 2012.
