



# **Draft Bill on CHILD SEXUAL ABUSE PREVENTION ACT OF 2010**



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(Act No.)

[DATE]

An Act aimed at preventing the sexual abuse of children by providing definitions, preventative mechanisms, victim protection, incident reporting and registration mechanisms, investigative protocol, court procedures, and evidence provisions to serve the best interest of children and for their ultimate rehabilitation and the punishment of perpetrators of sexual crimes against children through various institutions established under this enactment.

WHEREAS the Constitution has, in Article 39, imposed on the State a primary responsibility of ensuring that appropriate State action in the form of legislation, administration, social and educational measures be in place to protect and respond to child sexual abuse and exploitation and ensure the safety and rehabilitation of the child;

AND WHEREAS, the General Assembly of the United Nations has adopted the Convention on the Rights of the Child on the 20th November, 1989;

AND WHEREAS, the United Nations Convention on the Rights of the Child has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child;

AND WHEREAS, the Government of India has ratified the Convention on the 11th December, 1992;

AND WHEREAS, it is expedient to enact the law relating to sexual abuse of children bearing in mind the standards prescribed in the United Nations Convention on the Rights of the Child, the Universal Declaration of Human Rights, and all other relevant international instruments.

Be it enacted by Parliament in the YEAR of the Republic of India as follows:

CHILDLINE India Foundation.

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## CHAPTER I

### PRELIMINARY

#### 1. Short title, extent and commencement

- (1) This Act may be called the Child Sexual Abuse Prevention Act, 2010.
- (2) It extends to the Whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

#### 2. Definitions

In this Act, unless the context otherwise requires,

- (a) "guardian", in relation to a child, means his natural guardian or any person having the actual charge or control over the child or any person recognised by the competent authority as a guardian in course of proceedings before that authority;
  - (i) This includes de facto or de jure guardians.
- (b) "child" means a person who has not completed eighteen years of age;
  - (i) This includes the term "young child" as defined in this Act;
- (c) "position of trust over a child" means:
  - (i) a person who is a guardian as defined in this Act;
  - (ii) a person who looks after a child resident in the person's home or workplace;
    - i. This includes and is not limited to the following types of institutions: hospitals, independent clinics, care homes, voluntary homes, children's homes.
  - (iii) a person who works with or for a child at an educational institution;
  - (iv) a person who supervises the child in a workplace capacity;

- (v) a person who otherwise provides services to a child and thereby has regular unsupervised contact with a child;
- i. This includes and is not limited to the following types of contact of a child with: a doctor, nurse, social worker, police officer, servant, or counselor.
- (vi) a person appointed by a Court to speak on a child’s behalf;
- (vii) Persons who are family members as defined in this Act do not fall within the purview of this section.
- (d) “family member” means a person, whether through blood or legal adoption or marriage, with relation to a child, is a child’s:
- (i) parent, grandparent, brother, sister, half-brother, half-sister, aunt, uncle; or
- (ii) has been a foster parent to the child; or
- (iii) has lived in the same household as the child and been regularly involved in the child’s care, training or supervision, which includes and is not limited to a step-parent, cousin, step-brother, or step-sister.
- (e) “authority” means a local authority, union authority, international, or private authority that has been legally entitled by the Government, through law, treaty or other legal agreement;
- (f) "local authority" means Panchayats at the village and Zila Parishad at the district level and shall also include a Municipal Committee or Corporation or a Cantonment Board or such other body legally entitled to function as local authority by the Government;
- (g) “residency” means any address or residence in India, or if no such residence, any address or location where a person can typically be found, whether a house, apartment, shelter, slum, street corner, etc;
- (h) “child victim” means a child who is a victim or alleged victim of sexual abuse, as defined in this Act;
- (i) “young child” means a child who has not yet attained 16 years of age;

(j) "reasonable suspicion" means it is objectively reasonable for a person to have suspicion based on facts that could cause a reasonable person in a like position, drawing on training and experience, to suspect child sex abuse;

(k) "sexual parts of the body" means buttocks, anus, genital area, and breasts;

(l) "genital area" means vulva, vagina, penis and scrotum;

(m) "sexual contact" means intentional direct or indirect touching of sexual parts of the body with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of a person; penetration need not occur;

(i) Explanation. "Indirect" touching may be through clothing or with an object.

(n) "sexual act" means:

(i) contact between the genital area of a person and the genital area of a person or a child;

(ii) contact between the genital area and the mouth of a person and a child;

(iii) contact between the genital area and the mouth of a person and another person;

(iv) penetration of a sexual part of the body of a child or person by any body part or any object, with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of a child or person;

(v) penetration of a sexual part of the body of a child by any body part or any object, with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of a person;

(vi) penetration of a sexual part of the body by a child, whether by any body part or any object, with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of a person;

(vii) intentional direct or indirect touching of sexual parts of the body of a child with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of a person;

(viii) intentional direct or indirect touching of sexual parts of the body of a person with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of a child;

(ix) may be a series of acts.

(o) “private act” means:

(i) a person or child is in a state of undress, using the toilet, showering or bathing, or engaged in any activity not ordinarily done in public, and the circumstances are such that a reasonable person would expect to be afforded privacy;

(ii) may be a series of acts.

(p) “at the time of or immediately preceding the relevant act” refers to an act that is part of a series of sexual acts or private acts, and the reference time is soon before the first such act began.

(q) “institution” means an institution that employs a person who is in a position of trust over a child as defined by this Act;

(r) “sex offender” means a person over the age of 18 years who has been determined by a court to be guilty of an offense under this Act, whether on acceptance of a guilty plea or on a finding of guilt.

(r) “child sex offender” means a person under the age of 18 years who has been determined by a court to be guilty of an offense under this Act, whether on acceptance of a guilty plea or on a finding of guilt;

(s) “child sex offender registry” means a database of child sex offenders maintained by authority;

(t) “child pornography” means any visual or auditory representation, including photography, film, video, cassette, recording, picture, computer, phone or computing device, a device-generated image and/or recording,

made or produced by electronic, mechanic or other means that depicts actual or simulated:

- (i) sexual contact or a sexual act as defined in this Act;
- (ii) masturbation;
- (iii) torture, cruelty or physical abuse, whether sexual or not;
- (iv) genital area exhibition.

and:

- (v) the production of such depiction involves the use of a child engaging in (i), (ii), (iii), and/or (iv) of this definition;
- (vi) such depiction is indistinguishable from a child engaging in (i), (ii), (iii), and/or (iv) of this definition;
- (vii) such depiction has been created, adapted or modified to appear that a child is engaging in (i), (ii), (iii), and/or (iv) of this definition.

(u) “producing” means producing, directing, manufacturing, distributing, publishing, advertising or entering into an agreement to do so;

(v) “disseminating” means sending, supplying, exhibiting, transmitting, communicating or making accessible to another person, or entering into an agreement to do so;

(w) “serious bodily injury” means bodily injury involving substantial risk of death, unconsciousness, extreme physical pain, disfigurement, loss or impairment of a bodily member, organ or mental faculty to the person or child or family member;

(x) “child sexual communication” means communicating with a child in person, through internet, phone or computing device, or other means concerning:

- (i) sexual contact or a sexual act as defined in this Act;
- (ii) masturbation;
- (iii) torture, cruelty or physical abuse, whether sexual or not;
- (iv) genital area exhibition.

(y) Communication may be through any visual or auditory medium, including photography, film, video, cassette, recording, picture, computer, phone or computing device, a device-generated image or recording, made or produced by electronic, mechanic or other means.

(z) “financial gain” means:

(i) any financial advantage, including discharge of obligation to pay or provide services or goods;

(ii) an attempt to attain the goodwill of a person which is likely or appears likely to result in a financial advantage at any time in the future.

(aa) “mental disability” shall mean:

(i) a physical or mental impairment which limits one or more major life activities;

(ii) a psychological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more bodily systems;

(iii) a mental or psychological disorder and learning disability.

(bb) "State Government," in relation to a Union territory, means the Administrator of that Union territory appointed by the President under article 239 of the Constitution;

(cc) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that code.

(dd) all words and expressions used but not defined in this Act and defined in the Indian Evidence Act, 1872, shall have the meanings respectively assigned to them in that code.

(ee) “guardian ad litem” is a person appointed by the court to represent the best interests of a child in a proceeding as provided for by law and includes the following: a court-certified volunteer, a court-appointed advocate, or a responsible adult appointed by the court,.



## CHAPTER 2

### CONTACT SEXUAL ACTS

#### 1. Child Sexual Assault

(1) It is an offence to intentionally engage in a sexual act or have sexual contact with:

- a. a young child; or
- b. a child who is not legally married to the person;

(2) A person guilty of this offence involving a young child is liable, on conviction to a fine and imprisonment not less than 12 years but which may extend to 15 years.

(3) A person guilty of this offence involving a child is liable, on conviction, to a fine and imprisonment for a term not less than 10 years but which may extend to 12 years.

#### 2. Inciting or Causing Child Sexual Activity

(1) It is an offence to:

- a. persuade, threaten, otherwise coerce or allow a child to engage in a sexual act or sexual contact;
- b. for a parent or guardian to knowingly permit a child to engage in a sexual act or have sexual contact;

(2) A person guilty of this offence involving a young child is liable, on conviction, to a fine and imprisonment for a term not less than 12 years but which may extend to 15 years.

(3) A person guilty of this offence involving a child is liable, on conviction, to to a fine and imprisonment for a term not less than 10 years but which may extend to 12 years.

### 3. Child Sexual Assault with Force

(1) It is an offence to engage in a sexual act or have sexual contact with:

- a. a young child; or
- b. a child who is not legally married to the person;

through the use of force against a child and/or child's parent or guardian; or through threatening or placing a child and/or child's parent or guardian in fear of death, serious bodily injury, or kidnapping, or attempting to do so.

(2) A person guilty of this offence involving a young child is liable, on conviction, to a fine and imprisonment for a term not less than 12 years but which may extend to 15 years.

(3) A person guilty of this offence involving a child is liable, on conviction, to a fine and imprisonment for a term not less than 10 years but which may extend to 12 years.

### 4. Causing a Child to Watch a Sexual Act

(1) It is an offence to:

- a. engage in a sexual act or act of sexual contact with another person or child; and
- b. intentionally cause a child to watch a person or child engaging in a sexual act or act of sexual contact;
- c. or be aware that a child or person is watching one engage in a sexual act or act of sexual contact with a person or child;
  - i. The sexual act or sexual contact may be in person or through any visual representation; and
- d. The person intends to abuse, humiliate, harass, degrade, or arouse the child.

(4) A person guilty of this offence involving a young child is liable, on conviction, to a fine and imprisonment for a term not less than 6 years but which may extend to 10 years.

(5) A person guilty of this offence involving a child is liable, on conviction, to a fine and imprisonment for a term not less than 4 years but which may extend to 8 years.

## 5. Arranging or Facilitating Child Sexual Offence

(1) It is an offence to:

- a. intentionally arrange or facilitate an act in violation of this Act;
- b. intentionally arrange or facilitate an act intended by another person in violation of this Act.

(2) In any proceedings for an offence against this section, it is necessary to prove that the child was or was to be procured for unlawful sexual activity, but it is not necessary to specify or to prove any particular unlawful sexual activity.

(3) It is a defence in proceedings for an offence against this section if the accused reasonably believed that the other person was not a child.

(4) A person, such as an undercover authority, does not commit this offence if the person:

a. Does not actually intend to commit an offence in violation of this Act;

and

b. Proves the necessity of committing an offence in violation of this Act;

c. Was at the time of the offence a person of authority as defined in this Act and acting reasonably and within the scope of the person's professional duty.

d. Is acting under written authority from his superior or a warrant from the court to commit this offence under the Act;

- (5) A person does not commit an offence under this section if—
- (a) he arranges or facilitates something that he believes another person will do, but that he does not intend to do or intend another person to do, and
  - (b) the person acts in good faith to protect a child he is bound to protect.
- (6) A person guilty of this offence involving a young child is liable, on conviction, to a fine and imprisonment not less than 10 years but which may extend to 12 years;
- (7) A person guilty of this offence involving a child is liable, on conviction, to a fine and imprisonment not less than 8 years but which may extend to 10 years.

## 6. Child Grooming

- (1) It is an offence to engage in child sexual communication, or to provide a child with an intoxicating substance or drug, with the intention of making it easier to procure the child to violate this Act with that or any other person;
- (2) In any proceedings for an offence against this section, it is necessary to prove that the child was or was to be procured for unlawful sexual activity, but it is not necessary to specify or to prove any particular unlawful sexual activity.
- (3) It is a defence in proceedings for an offence against this section if the accused reasonably believed that the other person was not a child.
- (4) A person guilty of this offence involving a young child is liable, on conviction, to a fine and imprisonment not less than 12 years but which may extend to 15 years;
- (5) A person guilty of this offence involving a child is liable, on conviction, to a fine and imprisonment for a term not less than 8 years but which may extend to 10 years.

## **7. Child Procuring**

- (1) It is an offence to procure a child with the intention of acting or arranging or facilitating another person to act in violation of this Act;
- (2) In any proceedings for an offence against this section, it is necessary to prove that the child was or was to be procured for unlawful sexual activity, but it is not necessary to specify or to prove any particular unlawful sexual activity.
- (3) It is a defence in proceedings for an offence against this section if the accused reasonably believed that the other person was not a child.
- (4) A person guilty of this offence involving a young child is liable, on conviction, to a fine and imprisonment for a term not less than 12 years but which may extend to 15 years;
- (5) A person guilty of this offence involving a child is liable, on conviction, to a fine and imprisonment for a term not less than 8 years but which may extend to 12 years.
- (6) A person, such as an undercover authority, does not commit this offence if the person:
  - a. Does not actually intend to commit an offence in violation of this Act;  
and
  - b. Proves the necessity of committing an offence in violation of this Act;
  - c. Was at the time of the offence a person of authority as defined in this Act and acting reasonably and within the scope of the person's professional duty;
  - d. Proves the necessity of committing an offence in violation of this Act for criminal proceedings in any part of the world;

## **8. Child Meeting Following Grooming**

- (1) A person commits this offence if a person having met or at least twice communicated with a child:

- a. intentionally meets the child or travels with the intention of meeting the child in any part of the world, in order to do anything to or regarding the child in any part of the world in violation of this Act;
- (2) In any proceedings for an offence against this section, it is necessary to prove that the child was or was to be procured for unlawful sexual activity, but it is not necessary to specify or to prove any particular unlawful sexual activity.
- (3) It is a defence in proceedings for an offence against this section if the accused reasonably believed that the other person was not a child.
- (4) A person, such as an undercover authority, does not commit this offence if the person:
- Does not actually intend to commit an offence in violation of this Act;
  - and
  - Proves the necessity of committing an offence in violation of this Act;
  - Was at the time of the offence a person of authority as defined in this Act and acting reasonably and within the scope of the person's professional duty;
  - Is acting under written authority from his superior or a warrant from the court to commit this offence under the Act;
- (5) A person guilty of this offence involving a young child is liable, on conviction, to a fine and imprisonment for a term not less than 12 years but which may extend to 15 years;
- (6) A person guilty of this offence involving a child is liable, on conviction, to a fine and imprisonment not less than 8 years but which extend to 12 years.

**9. For the purposes of Offences 5, 6, 7, and 8:**

- (1) The person is liable for these offences if he intends the act in violation of this Act;
- (2) The person need not commit the act in violation of this Act;



(3) The definition of “child” shall additionally include a person, such as an undercover authority, pretending to be a child, if the accused believed the person to be a child as defined by this Act;

(4) It is a defence if the accused reasonably believed the other person was not a child.

## **CHAPTER 3**

### **NON-CONTACT SEXUAL ACTS**

#### **1. Child Pornography**

(1) It is an offence:

- a. to intentionally persuade, threaten, otherwise coerce or allow a child to engage in a child pornography;
- b. to arrange or facilitate child pornography;
- c. for a parent or guardian to knowingly permit a child to engage in child pornography;
- d. to produce or disseminate child pornography;

unless the offender reasonably believes a child is not a child as defined by this Act;

(2) A person guilty of this offence involving a young child is liable, on conviction, to a fine, imprisonment for a term not less than 12 years but which may extend to 15 years;

(3) A person guilty of this offence involving a child is liable, on conviction, to a fine, to imprisonment for a term not less than 8 years but which may extend to 10 years.

#### **2. Sexual Exposure**

(1) It is an offence to exposes one’s genital area with the intent that a child will see.

(2) A person guilty of this offence involving a young child is liable, on conviction, to a fine and imprisonment for a term not less than 5 years but which may extend to 10 years;

(3) A person guilty of this offence involving a child is liable, on conviction, to a fine and to imprisonment for a term not less than 4 years but which may extend to 8 years.

### **3. Sexual Voyeurism**

(1) A person commits this offence if the person knows or reasonably should know the child does not consent to being observed, and:

- a. observes a child doing a private act, for the person's own gratification; or
- b. aids or enables another person to do or observe a child doing a private act, for that or another person's gratification;
  - i. This includes and is not limited to: operating or installing equipment, any visual or auditory representation, or constructing or adapting a structure or part of a structure.

(2) A person guilty of this offence involving a young child is liable, on conviction, to a fine and imprisonment for a term not less than 5 years but which may extend to 10 years;

(3) A person guilty of this offence involving a child is liable, on conviction, to a fine and to imprisonment for a term not less than 4 years but which may extend to 8 years.

## **CHAPTER 4**

### **ADDITIONAL GENERAL OFFENCES**

#### **1. Abuse of a Position of Trust Over a Child**

(1) If an offence under this Act is committed by a person in a position of trust over a child, apart from the sentence imposed for the offence, the



court shall impose an additional sentence of imprisonment not less than 3 years but which may extend to 5 years.

(2) It shall be a defence under this Act that a legal sexual relationship predated the position of trust

## **2. Abuse by a Family Member of a Child**

(1) If an offence under this Act is committed by a family member of the child, apart from the sentence imposed for the offence, the court must impose an additional sentence of imprisonment not less than 3 years but which may extend to 5 years.

(2) It shall be a defence under this Act that a legal sexual relationship predated the family relationship.

(3) If an offence under this Act is committed by a family member against a child, then the Court shall appoint, at the earliest possible time, a guardian in litem for the child; the guardian in litem will protect the child's interest against all other interests and will make recommendations to the court on the well-being of the child.

(4) A guardian ad litem participating in a civil or criminal judicial proceeding resulting from such appointment shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

(5) In those cases in which parents are financially able, the parent or parents of the child shall reimburse the court, in part or in whole, for the cost of provision of guardian ad litem services. Reimbursement to the individual providing guardian ad litem services shall not be contingent on successful collection by the court from the parents or guardians.

## **3. Abuse by a Medical Professional**

(1) If an offence under the Act is committed by a person who works in a hospital, an independent clinic, a care home, residential care home, private

hospital, community home, voluntary home, children's home, or any other medical care facility or institution,, apart from the sentence imposed for the offence, the court must impose an additional sentence of imprisonment not less than 3 years but which may extend to 5 years.

#### **4. Offence against Child with Mental Disability**

(1) A person commits this offence if:

- a. A person commits an offence under this Act on a child victim who has a mental disability; and
- b. The person knows or could reasonably know the child victim has a mental disability as defined by this Act.

(2) If an offence under the Act is committed on a child who has a mental disability, apart from the sentence for the offence, the court must impose an additional sentence of imprisonment of not less than 4 years but which may extend to 8 years.

(3) It will be a defense under this section that the offender did not know and could not reasonably know that the child victim had a mental disability.

#### **5. Abuse by a police officer**

(1) If an offence under the Act is committed by a police officer,

- a. through misuse of his authority as a police officer; or
- b. on a child who has come into contact with him in his capacity as a police officer

apart from the sentence imposed for the offence, the court must impose an additional sentence of imprisonment of not less than 4 years but which may extend to 8 years.

## **6. Committing an Offence with Intent to Commit a Sexual Offence**

(1) A person commits this offence if a person commits any offence under the Indian Penal Code, or any other statute with the intent of committing an offence under this Act at any time in the future;

a. This includes and is not limited to: trespass, kidnapping, false imprisonment, administering a substance to or causing a substance to be taken by a child or guardian to overcome the child or guardian.

(2) Apart from the sentence imposed for the offence under the Indian Penal Code or any other statute, the court must impose an additional sentence of imprisonment not less than 2 years but which may extend to 5 years.

7. Whoever, dedicates any child, to the service of any deity, idol, object of worship, temple or any other religious institution or place, with the knowledge that such child is likely to be sexually assaulted or subject to unlawful sexual contact at any age, shall be liable to rigorous imprisonment that may extend for fourteen years and shall also be liable to fine.

## **CHAPTER 5**

### **THIRD PARTY OBLIGATIONS**

#### **1. Legal Obligation of Hotels and other like establishments**

(a) All Hotels, and other establishments, which provide boarding or lodging or any similar facility shall ensure that children are not at risk of child abuse within their premises including all adjoining beaches, parks etc. if they have access from such establishment.



(b) No child shall be allowed to enter any room of any hotel or establishment which provides boarding or lodging or any similar facility unless the child is registered as staying in that room with family, relatives or person related by blood or as a part of a school group with written authorization from the school.

(c) All Hotels and other establishments which provide boarding or lodging or any similar facility shall ensure that no child has access to any internet facilities which are not fitted with filters and to any objectionable material including through film or videos, disc-players, cable or any other medium provided by that establishment.

(d) The owner and the manager of the hotel or establishment shall be held responsible for any violation of this section.

(e) The owner and the manager of the hotel or establishment guilty of an offence under this section involving a child or a young child is liable, on conviction, to a fine and to imprisonment for a term not less than 4 years but which may extend to 8 years.

(f) For an offence under this section it is not necessary to prove intention on the part of the owner or manager.

## **2. Legal Obligation of Studio or Photographer:**

(1) Any studio or photographic facilities, by whatever name it is called, on becoming aware of any sexually related, pornographic or obscene representation of a child or children, through the use of any medium, shall provide such information in writing within 48 hours to the police under Section 154 of the Code of Criminal Procedure, 1973 and the Child Welfare Committee.



- (2) Failure to provide such information shall render all persons who have become aware of the pornographic or obscene representation to imprisonment that can extend to four years and fine.

## **CHAPTER 6**

### **MISCELLANEOUS**

#### **1. Child Sex Offender**

(1) For the purposes of this Act, the term “a person” may include “child” as defined by this Act if:

- a. The child offender is found to be mentally capable of having the intent to commit a crime under this Act; and
- b. The following is not true: the child offender and child victim are both older than age 16 and younger than age 21, and the child victim admits consent to the alleged offence;

(2) Legal action against a child under this Act shall be commensurate with the Juvenile Justice Act of 2000;

(3) Sentencing terms under this Act shall not be presumed to supersede the Juvenile Justice Act of 2000 or any other Act or Treaty relating to juvenile justice.

#### **2. Offence Committed for Financial Gain**

(1) If a person commits any offence under this Act with the expectation of financial gain as defined in this Act for that person or another person, then apart from the sentence for the offence, the court shall impose an additional sentence of not less than 5 years but which may extend to 10 years and a fine commensurate with the financial gain.

### **3. Repeat Offenders**

(1) The maximum term of imprisonment shall be doubled for a previous offender convicted of any offence under this Act.

### **4. Exceptions for Criminal Proceedings, Investigations, etc.**

(1) A person does not commit an offence under this Act if the person does no more injury to a child than is necessary to:

- a. protect a child from a sexually transmitted disease;
- b. protect a child's physical safety;
- c. prevent a child from becoming pregnant;
- d. to promote the child's well-being by giving advice, and not to obtain gratification or to cause or incite activity resulting in an offence.

## **CHAPTER 7**

### **SPECIAL COURTS AND PUBLIC PROSECUTORS**

#### **1. Special Courts**

For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court for each district, a Court of Session to be a Children's Court to try the said offences.

#### **2. Public Prosecutors**

For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

## CHAPTER 8

### EVIDENCE

#### 1. Presumptions about Consent

(1) Consent is no defense to an offence to which this Act applies if the child involved is below the age of 16 years unless the child is legally married to the alleged perpetrator.

(2) If the child is legally married to the alleged perpetrator consent is a defense only to an act committed against a child who has completed 15 years.

(3) In cases other than those which fall under sub-section (1) consent may be raised as a defense. However, if any of the following circumstances exist:

- a. A person used violence against the child victim or another person, or caused the child victim to fear the use of violence or serious bodily injury toward the child victim or another person;
- b. If the child victim or child's family member or guardian was unlawfully detained;
- c. If the child victim was asleep or otherwise unconscious;
- d. If because of age or disability the child victim would not have been able to communicate consent to the relevant act;
- e. If any person caused a child to take in a substance enabling or in an effort to enable the child victim to be overpowered;

In these circumstances, the child victim is to be presumed to have not consented to the relevant act.

## 2. Child Testimony

(1) All child testimony concerning child sex abuse shall be conducted in camera or through audio or video recording, out of sight and earshot of the alleged child sex offender.

(2) A child's testimony shall be completed at one sitting. No adjournment shall be granted for any reason whatsoever, except in the best interests of the child.

(3) If the accused seeks an adjournment due to non-appearance of the defense counsel, the court may conduct the cross-examination.

(4) If the defense seeks an adjournment due to non-appearance of the accused, the court may grant an adjournment but cancel the bail of the accused. In such a case, the Court shall direct that the accused pay costs not less than Rs. 3000 to the child through the guardian or guardian ad litem.

(5) A child older than five years may testify in camera under oath if a court finds:

a. That the child appreciates the difference between truth and falsehood; and

b. That the child understands the necessity of telling the truth.

(6) A child shall be afforded the opportunity before an interview to familiarize him or herself with the courtroom and judge's chambers or area where the testimony will take place, and the roles of different parties in the courtroom and legal process shall be explained to the child in an age-appropriate manner.

(7) A child victim may request a support person be present during testimony, including a family member, guardian, victim's advocate, or other trusted adult.

a. A magistrate or judge may deny participation of the support person if the requested support person is a witness or otherwise



inappropriate such that the magistrate or judge finds participation not to be in the interest of justice.

b. A support person may not communicate with the child victim during testimony.

c. A support person shall be instructed not to discuss the testimony with the child.

(8) Presence of a support person shall lead to no adverse inferences.

(9) A child shall not be compelled to testify against the child's will.

(10) No adverse inferences may be drawn from the absence of child testimony unless the court thinks fit.

(11) Cross-examination of a child victim shall be conducted in the following manner:

a. The defense counsel shall submit a list of questions to the judge.

b. The judge shall put the questions to the child.

c. The judge will have discretion to disallow any question designed to confuse or harass the child and to direct the defense counsel to re-phrase the question.

(12) During questioning, protocol and questioning techniques in Chapter 8 of this Act shall be followed as closely as possible, and as regulations may prescribe.

### **3. Hearsay Exceptions**

(1) Hearsay exceptions shall be construed liberally concerning in camera child testimony, out-of-court statements to medical and other professionals, child statements recorded through video or audio methods by law enforcement, professionals or other authority.

### **4. Challenges to reliability of child testimony and hearsay evidence shall include an analysis of:**

(1) Atmosphere and circumstances under which statement was made;

(2) Spontaneity of statement;

- (3) Child's age;
- (4) Child's general demeanor;
- (5) Child's physical or emotional condition;
- (6) Presence or absence of threats or promise of benefits;
- (7) Presence or absence of drugs or alcohol;
- (8) Child's general credibility;
- (9) Presence or absence of any coaching and type of coaching;
- (10) Nature of statement and type of language used; and
- (11) Consistency between repeated out-of-court statements.

and shall be liberally construed to encourage use of child testimony, or part of a child's testimony found to be reliable.

## **CHAPTER 9**

### **NOTIFICATION AND REGISTRATION**

#### **1. National Child Sex Offender Registry**

(a) Local, state, and union authorities shall work together and within their own jurisdictions, and with Childline India Foundation and other appropriate NGOs and authorities, to create, update, and maintain a national child sex offender registry.

(b) Local, state and union authorities shall work together and with international authorities to create a system to inform and register foreigners and Indian nationals entering India who have been convicted abroad of child sex offences.

(c) The government shall appropriate funds as necessary to implement, maintain and update the registry.

#### **2. Local Child Sex Offender Registries**

Until such time a national child sex offender registry is in place or as regulations may prescribe, law enforcement shall maintain local child sex



offender registries at all police stations and prisons, and shall provide the child sex offender with a dated receipt as proof of registration or as regulations may provide.

### 3. Registry Contents

(i) A registry shall be a separate written or computerized log including the following information about child-sex offenders convicted under this Act:

- a. The name of the child-sex offender and any aliases used;
- b. Date of birth;
- c. As many of the following as applicable: Birth certificate, PAN, Unique ID, Passport, Driver's License, vehicle license plate, and other identification numbers;
- d. Address of each residence;
- e. Address or area where employed or often working;
- f. Address where a student, even if not full-time;
- g. A physical description;
- h. Text of the law defining the criminal offence of conviction;
- i. Criminal history;
- j. Current photograph;
- k. If possible at the police station or prison, fingerprints and DNA sample;
- l. Nearby relative, guardian, or other contact information;
- m. Other information the authority deems useful or as regulations may prescribe, except this shall not include any information about a child victim other than the child's age or gender.

(ii) Registry records shall be kept for the period of required registry for the offenders, as enumerated in this Act.

(iii) With the exception of information authority deems appropriate or as regulations prescribe, registry records shall generally be made available to:

- a. Schools and nurseries;

- b. Other law enforcement and authority;
- c. Childline India Foundation, appropriate NGO's, children's homes, and other organizations that work with or take volunteers to work with children;
- d. Hospitals;
- e. Colleges and universities;
- f. Any other organization or employer may request such information, to be disseminated as per regulation, or without regulation as authority or law enforcement deems fit.

All recipients of registry information shall sign a form, which may be electronic or on paper, listing records received, a copy of which shall be retained by the authority or law enforcement, and the form shall additionally inform recipients that the records may not be used to harass, injure, or commit a crime against anyone on the registry or associated with anyone on the registry.

#### **4. Informing about Notification Requirements**

- (a) Criminal conviction orders under this Act shall include language notifying the child sex offender of the obligation to register under this Act and shall be read aloud to the child sex offender or legal authority in court, attorney or authority or as regulations prescribe.
- (b) Child sex offenders shall be required to read and sign a form informing about registry responsibilities under this Act. The form may be part of a plea or other court document.
- (c) A parent or guardian or legal representative of a child sex offender who is a child shall be notified in addition to the child, and a court may require the parent or guardian to register on the child's behalf or as regulations may prescribe.

(d) A child sex offender found guilty by reason of insanity or disability shall be appointed a legal guardian or representative to comply with this Chapter of this Act or as regulations may prescribe.

## 5. Notification Timeline

(i) A child sex offender or a child sex offender's parent or guardian or legal representative:

a. Shall within 14 days of conviction, upon release from prison, or upon any shifting, be required to notify all police stations within five kilometers, or if none or one police station is within five kilometers, at least the nearest two police stations, and if more than five police stations are within five kilometers the nearest ten police stations, of the child sex offender's:

- i. Residencies;
- ii. Places of schooling and employment;
- iii. If different from the above, location of commission of the child sex offence;

and shall inform all prisons upon arrival to enter information into the prison child sex offender registry, or as regulations prescribe.

b. Re-notification is not necessary if a child sex offender is already notifying due to a previous offence.

c. The 14-day time period does not include time a child sex offender is in custody, serving a sentence in prison, detained in a hospital or mental health or similar facility, or outside of India.

d. A child sex offender may notify before the 14-day period and specify relevant future dates.

(ii) The child sex offender or a child sex offender's parent or guardian or legal representative, shall be required to comply with notification requirements for a minimum period of 5 years. The Court sentencing the offender may require the child sex offender or parent or guardian or legal



representative to notify for a period of more than 5 years, if it thinks fit, and for reasons to be recorded.

(iii) Notification shall be done in person by the child sex offender unless in prison or otherwise unable to travel, in which case notification shall be by registered post or as regulations may prescribe.

(iv) Child sex offenders shall notify to update the registry with all changes, and shall re-notify to update and maintain the registry at least once per year or as regulations may prescribe.

## **6. State and Local Authority Compliance**

State and local authorities shall take appropriate actions to ensure compliance of this Chapter, including creating penalties for sex offender failure to notify and police station and prison failure to maintain registries within two years of the passage of this Act, and may alter this Chapter of the Act if necessary to comply with local or state law.

a. The union government may establish and implement a program to help fund implementation of the registry, and may extend compliance timelines and allow states to alter the Act if necessary under state and local law.

b. The union government may also award state or local authority for excellent and speedy compliance with additional funding.

## **7. Good Faith Conduct Immunity**

Law enforcement and authority officials, their employees, officers and agents, Childline India officials and employees, and other NGO's and organizations' employees and officials working with authorities who act in good faith shall be immune from liability under this Chapter.

## 8. Travel Outside of India

The union government may make regulations and provisions requiring child sex offenders to give notification or obtain permission before they leave India and upon their return, including:

- a. The date the child sex offender is leaving;
- b. The country or countries the child sex offender is visiting;
- c. And any other relevant information.

## 9. Notification Offences

(i) A person commits this offence if:

- a. being sentenced under this Act or a child sex offender, or parent or guardian of a child sex offender, fails, without reasonable excuse, to comply with this Chapter of this Act or as regulations may prescribe;
- b. Notifies in purported compliance and knowingly provides any false information.

(ii) A person guilty of this offence is liable, on conviction, to a fine, to imprisonment for a term of up to 2 years, or both.

## 10. Foreign Child Sex Offenders

(i) If a foreign citizen or an Indian national living outside of India has been convicted of an offence outside of India which would have constituted an offence under this Act and constituted an offence under the law of the foreign state, then when such a person is in India, law enforcement or other authority may petition a court for a notification order requiring such person to notify and enter the child sex offender registry, or as regulations may prescribe.

(ii) A court shall issue a notification order requiring a person to notify and enter the child sex offender registry if:



- a. A person has been convicted of an offence outside of India which would have constituted an offence under this Act; and
- b. Such conviction was not for reason of insanity or another disability; and
- c. The person still falls within the notification timeline of this Chapter for the offence.

(iii) A notification order shall follow informing, timeline, and other applicable protocol of this Chapter, or as regulation may prescribe.

(iv) A court may issue an interim notification order for a fixed time period not to exceed 2 years, which a person or the person's legal guardian or representative may appeal. Pending appeal, the interim notification order shall remain in effect.

## **CHAPTER 10**

### **VICTIM PROTECTION**

#### **1. Protection Order**

The Court may, in cases where the offender/abuser is a parent, guardian or a member of the family, and in any other case where it considers it necessary, pass appropriate protection order for preventing further violence/abuse on the child, protecting the child from access by the offender/abuser, protecting the right of the child to confidentiality or any other relief considered necessary in the best interest of the child. These steps shall include but not be restricted to placing the child in State protective custody.

#### **2. Child Sexual Offences Prevention Orders**

(i) If a person:

- a. Was found not guilty of an offence under this Act, or a foreign or other law that would constitute an offence under this Act, by reason of insanity or another disability; or



- b. Was found guilty of an offence under this Act or a foreign or other law that would constitute an offence under this Act;
- c. Is suffering from insanity or another disability or is suspected to be a potential danger to maintaining the safety of children under this Act;

Then:

- d. Law enforcement or other authority may petition a court for a child sexual offences prevention order; or
- e. A court may include such order in any disposition, including concerning bail, whether pre- or post-conviction;
- f. Or as regulations may prescribe.

(ii) If a court finds it is necessary to protect child safety or particular children from likely violation of this Act, then:

- a. A court may issue a child sexual offences prevention order prohibiting a person from doing anything described in the order that endangers children from being child victims under this Act, for a fixed period of time, not to exceed 5 years without a further order;
- b. A court may issue an interim child sex offence prevention order prohibiting a person from doing anything described in the order that endangers children from being child victims under this Act, for a fixed period of time before conviction or before a finding that could result in a fixed child sexual offence prevention order;
  - i. The interim order shall cease to be effective upon disposition of the main application or after the time period.
- c. Or as regulations may prescribe.

(iii) The only prohibitions in a child sex offence protection order that may be imposed are those necessary to protect child safety or particular children from likely violation of this Act.

- a. Considerations for this order include and are not limited to:

- i. Length of residency in community where violation of this Act allegedly occurred;
- ii. Employment status, history, and financial condition;
- iii. Family ties and relationships;
- iv. Person's reputation and character;
- v. Prior criminal record;
- vi. Identity of responsible members of the community who would vouch for this person's reliability;
- vii. Nature of the charged offence

(iv) A person under a child sex offence prevention order, a person's legal guardian or representative, law enforcement or other authority, or as regulations may prescribe may apply to the court that made the child sex offence prevention order, whether interim or not, to have the order modified or discharged. The victim shall be give notice of and allowed representation at this hearing.

(v) The appropriate court to hear applications for child sex offence prevention orders may be:

- a. The court that previously made a child sexual offence prevention order;
- b. A court in the district where the person subject to the child sexual offence prevention order lives;
- c. A court in the district where law enforcement or other authority has made an application for the order;
- d. Another appropriate court, or as per regulations may prescribe.

(vi) A child sex offence prevention order, whether interim or not, shall be appealable, and shall remain in effect pending appeal. An appeal court may additionally modify the order as it finds necessary to protect child safety or particular children from likely violation of this Act.

(vii) If more than one child sex offence prevention order is issued, the order with the most recent date shall be the only order in effect, or as

regulations may prescribe. A non-interim order shall not be discharged completely without being in effect a minimum of one year.

(viii) Breach of a Child Sexual Offence Prevention Order

a. A person commits this offence if, without reasonable excuse, the person does anything prohibited by:

- i. A child sexual offence prevention order;
- ii. An interim child sexual prevention order;
- iii. A restraining order or other criminal or civil order relating to protection of children from becoming child victims under this Act.

b. A person guilty of this offence is liable, on conviction, to a fine, to imprisonment for a term of up to 2 years, or both.

### 3. Bail Limitations

(1) Bail shall be prohibited after conviction of any offence in this Act, regardless of a pending appeal.

(2) Offences under this Act chargeable with imprisonment of more than 3 years shall be non bailable offences.

a. If a person is released for a bailable offence before conviction, a court shall impose a Child Sexual Offences Prevention Order upon release.

(3) A child victim shall have a right to apply for cancellation of bail.

### 4. Consecutive Sentencing

(1) Consecutive sentencing is permissible for any offences under this Act and in combination with any other penal offences.

### 5. Victim Fund

(i) All fines collected under this Act, and all voluntary donations, contributions or subscriptions as may be made by any individual or



organization shall be placed into a separate fund established by each state to be used for:

- a. Child sex abuse prevention, education and outreach under the Safe Schools Chapter of this Act; and
- b. Providing free or low cost victim services, as described below;
- c. Victim compensation as provided by the Code of Criminal Procedure, other laws and regulations.

(ii) Victim Services

a. Authorities shall work with NGO's, schools, universities, hospitals, health departments, and other organizations to provide free or low-cost services to child victims and their families, including:

- i. Individual and group counseling; and
- ii. Medical care and medication; and
- iii. Burial services; and
- iv. Transportation expenses to access such services;
- v. Or as regulations may prescribe.

b. Eligibility for Victim Services

i. Child victims, their families and guardians, and others as a court may designate, or as regulations may prescribe shall be eligible for victim services as described in this Act.

(iii) All states shall create a Victim Fund within 1 year of the enactment of this Act, and designate a Fund Manager who shall receive no remuneration from the Victim Fund.

(iv) The Victim Fund shall be used to compensate victims of offences under this Act; to compensate guardians ad litem, child advocates and social workers who provide services to victims under this Act. However, the State shall not deprive any victim of the services under this Act on the grounds of lack of funds.

## 6. Victim's Advocates



(i) Local, state, and union authorities shall work together and within their own jurisdictions, and with Childline India Foundation and other appropriate NGOs and authorities, to train victim's advocates to support child victims as they navigate the justice system and to help them access victim services.

(ii) Victim's advocates shall:

- a. Explain to the child victim the nature of interviews and proceedings;
- b. Prepare the child victim for the case and assist in meetings, such as at the police station, with medical professionals, and in court;
- c. Explain how the child victim might obtain help and other victim's services, such as counselling or medical assistance; and
- d. Explain the same to the child victim's family members and guardians.
- e. Apply for State-funded compensation for the victim.

## **CHAPTER 11**

### **INVESTIGATION PROTOCOL**

#### **1. Child Sex Abuse Reporting**

(i) Local, state, and union authorities shall work together and within their own jurisdictions, and with Childline India Foundation, social workers, hospitals, health departments, schools, and other appropriate organizations and NGOs and authorities, to share information, collect statistics, and inform about mandatory and voluntary reporting rules and regulations.

- a. Collected data and statistics shall include and are not limited to:
  - i. Job type and location of reporting parties;
  - ii. Substantiation or nonsubstantiation of reports;
  - iii. Timeline from reporting to investigation and outcome;



(ii) Authorities shall work with NGO's, schools, universities, social services, hospitals, health departments, and other organizations to inform employees of reporting requirements, including:

- a. Recognizing child victims;
- b. What must be reported;
- c. How to report;
- d. Anonymity, immunity, and penalties for failure to report.

(iii) Unless regulations otherwise prescribe, law enforcement shall have forms available at all police stations for reports, and shall provide the informer with a copy of the report. Reports may be filed by phone or in person.

a. A report shall include as much of the following as possible, and may include additional information:

- i. Child victim's full name and nicknames, gender, birthday, languages spoken;
- ii. Child victim's residence, and if difference, address of suspected child sex abuse;
- iii. Child victim's phone number and other contact information;
- iv. Suspected abuser's name, nicknames, gender, birthday, languages spoken, residence, employment, phone number and other contact information;
- v. Time and date of report;
- vi. Name and ID number of law enforcement officer or authority as regulations may prescribe who received the report;
- vii. Suspicions leading to child sex abuse report, such as:
  1. Child victim's physical injuries;
  2. Parent or guardian's drug or alcohol misuse;

3. Past or present problems leading to concerns of child sex abuse;
4. Statements child victim has made to the reporter;
5. Photos, medical reports, and other evidence;
6. Time and date of suspected child sex abuse;
7. A written explanation of reporter's suspicions of child sex abuse.

viii. Confidential information shall include:

1. Reporter's name, residency, business, phone and other contact information;
2. Reporter's relationship to the child victim;
3. If a medical professional:
  - a. Medical diagnosis of the child, medical actions taken and tests performed, if hospitalization required;
4. Signature of reporter.

(iv) Voluntary Reporting

a. Where a person has reasonable grounds to suspect there does exist or has existed or may soon come into existence a situation in violation of this Act, the person may file a child sex abuse report with law enforcement or authority as regulations may prescribe.

i. A person who files a voluntary report may request to remain anonymous.

ii. A person who filed an anonymous report shall not be compelled to participate in any resulting proceedings, or give any evidence on the contents of the report.

(v) Mandatory Reporting

a. If a person encounters a child in a professional capacity and has reasonable suspicion of child sex abuse in violation of this Act:

i. Medical practitioners, including:

1. Licensed dentists;
2. Licensed nurses;
3. Licensed physician assistants;
4. Licensed psychologists;
5. Emergency medical service providers;
6. Licensed doctors;

shall file a report within 24 hours of examination of a child victim patient, which shall include:

- ii. A medical history from the child and the parent or guardian;
- iii. A physical examination;
- iv. Careful records of injuries and child's statements concerning any suspected child sex abuse;
- v. A referral for a psychological profile of the child.

b. Other professionals, including:

1. School principals, teachers, coaches, counselors and other officials;
2. Social workers;
3. Law enforcement officers;
4. Prison personnel;
5. Probation officers;
6. Commercial film and photographic print processors;
7. Clergy;
8. Child advocate and public prosecutorial attorneys;
9. Coroners;
10. Child care providers of group homes or day care facilities;

shall file a report within 48 hours of suspicion of child sex abuse.





c. Any personnel of any tourist resort, house, lodge, hotel, or any other place used to accommodate persons, irrespective of the name used, the duration of stay, or the charges levied, who comes in contact with any person, seeking their services or facilities, who has committed, or is likely to commit any of the offences referred to in this code, shall provide such information in writing within 48 hours to the police and to the Child Welfare Committee.

d. Any personnel of any airport, railway, harbour, port, bus service, vehicle service, irrespective of the name used, whether movable or immovable, who comes in contact with any person seeking their services or facilities, who has committed, or is likely to commit any of the offences referred to in this code shall provide such information in writing within 48 hours to the police and the Child Welfare Committee.

e. Any airport and/or airline functionary shall inform the police, at the earliest opportunity, in case of reasonable ground to believe that a child, especially of a different nationality than the accompanying adult, is being taken for child sex tourism related purposes.

f. The timings in this section are extended to five days if the abuse occurred in the past to a person who is no longer a child such that the threat of further child sex abuse in violation of this Act is not imminent.

g. Any person liable to inform the police under Section (-) and fails to report such information shall be liable on the first conviction for imprisonment that can extend to two years and fine. For every subsequent conviction, the punishment shall be twice that mentioned above.



h. Provided that, in any case, if the Child is not available, the fine amount will be credited to the Fund to be constituted under Section ..... of this code. All such amount shall be used by the State towards giving full effect to the provisions contained under this code..

i. Failure to Make Mandatory Child Sex Abuse Report

i. A person commits this offence if, without reasonable excuse, the person does not file a report as required under this Act.

ii. A person guilty of this offence is liable, on conviction, to a fine, to imprisonment for a term of up to 6 months, or both.

j. No civil or criminal liability shall result from a person reporting to law enforcement or authority in good faith as regulations may prescribe with reasonable suspicion of violation of this Act.

i. Reporting shall not be taken as a breach of confidence or violation of professional rules of ethics.

ii. Reporting forms shall not be admissible as evidence in any court.

iii. Mandatory reporters shall comply with authority and law enforcement and shall not be compelled to testify during court proceedings or reveal confidential information defined in this Chapter to anyone except:

1. Law enforcement and other authorities;
2. Prosecutorial attorneys;
3. By court order;
4. If the mandated reporter waives confidentiality;
5. Or as regulations may prescribe;



iv. Mandatory reporters are not required to inform family members or guardians of the child victim before filing reports.

(6) Failure to Follow Confidentiality Rules

- a. A person commits this offence if the person reveals confidential information about a reporter in violation of this Act.
- b. A person guilty of this offence is liable, on conviction, to a fine, to imprisonment for a term of up to 6 months, or both.

(7) False Reporting

- a. A person commits this offence if a person knowingly makes a false report.
- b. A person guilty of this offence is liable, on conviction, to a fine, to imprisonment for a term of up to 6 months, or both.

(8) Immediate Safety Concerns

- a. If a reporter has immediate safety concerns for a child victim, a reporter shall so inform law enforcement or authority as regulations may prescribe and a reporter, law enforcement officer, attorney, child's advocate or other authority shall apply for a child sexual abuse prevention order or remove the child to a place of safety as regulations may prescribe.

(9) Child Victim Reporting and Questioning

- a. Police stations and other child sex abuse reporting offices shall maintain lists of lawyers and victim's advocates willing to work with child victims.
- b. All child victims, guardians and parents shall be informed of the child's right to have an attorney of choice present during questioning.



c. The following protocol shall be followed as closely as possible, or as regulations may prescribe:

i. Questioning shall be conducted by a professional such as a social worker trained in child development or child interviewing techniques, and shall be of same gender as the child victim. States shall maintain and update lists of registered social workers and related NGO's and distribute the lists to police stations, schools, and private citizens;

ii. If a trained professional is not available and a law enforcement officer or other authority conducts the interview, the questioner shall be of the same gender as the child victim and shall not be in uniform;

iii. A child shall be able to request the presence of a family member, child advocate, or other trusted person before and after questioning. A questioner may ask a family member, guardian or other person to leave in order to question a child victim in private if an attorney, victim's advocate, social worker or other professional as regulations may prescribe is present before questioning.

iv. Basic questioning techniques:

1. Questioning shall be done as soon as possible after the incident or disclosure so that it is fresh in the child victim's mind;

2. Questioner's tone shall be supportive and kind;

3. Questioning shall be conducted in private between the trained questioner and the child victim;

4. Questioning shall not take place in view or earshot of the alleged child sex abuser;

5. Questioning shall take place in the child victim's residence, a room with child-friendly toys and



atmosphere, or other location to make the child victim feel comfortable and containing few distractions;

6. Questioner shall first introduce and describe questioner's role and the purpose of the interview to the child, sit at the child's physical level, and ask if child has any questions before beginning;

7. Questioner shall explain that child is not in trouble, and must tell the truth to explain to questioner what happened since questioner was not present for the incident;

8. Questions shall use open-ended and not leading questions and using age-appropriate language to gather complete information about any incidents of child sex abuse;

9. Questioner shall pause and wait and re-phrase rather than repeat questions as needed to clarify for the child;

10. Questioner shall thank child at conclusion of the interview;

11. A child shall not be detained or brought into any lock-up or other criminal facility or holding pen;

12. Law enforcement or other authority as regulations may prescribe shall document any waiver of the right to speak with an attorney before interview in the report.

v. Child testimony and questioning shall be recorded where possible as soon as possible after the incident.

vi. If medical tests need to be performed, law enforcement and other authorities shall work with social workers,

hospitals, health departments, other appropriate organizations, NGOs child advocates, family members, guardians and attorneys to ensure the child receives necessary medical care, with the child's comfort and safety of prime concern.

vii. A psychological assessment shall be ordered for all child victims.

viii. The States shall work with NGO's, the Indian Medical Association, and other organizations to establish guidelines for the medical examination of child victims, and shall include and not be limited to the following:

1. Medical examinations of children shall be conducted in the presence of a parent, guardian, social worker, victim's advocate or other adult where possible;
2. Medical re-examination shall be limited and avoided where possible.

#### **4. Record Keeping**

(1) Report records shall be kept for a minimum of 10 years for substantiated reports and 5 years for unsubstantiated reports, or longer as regulations may prescribe.

#### **5. Child Sex Abuse Investigation**

(1) Once a child sex abuse report is filed, law enforcement shall label the report as Urgent if there is danger for continued or future child sex abuse.

(2) If a report is labeled as Urgent, an investigation to determine substantiation shall commence as soon as possible, or at least within 24 hours of filing the report. If a report is not labeled as Urgent, investigation shall commence as soon as possible or at least within 48 hours of filing the report.

a. Factors to consider when labeling a report Urgent:



- i. Child victim's proximity to the suspected child sex abuser;
- ii. Child victim's and family member's and guardian's statements;
- iii. Other children in proximity to the suspected child sex abuser;
- iv. Previous reports and criminal record of the suspected child sex abuser;
- v. Child victim's injuries;
- vi. Child victim's safety;
- vii. Other factors as regulations may prescribe.

## **6. Media Reporting**

(1) A child victim's gender, age, and state of residency shall be the only non-confidential information reported to the media. A child victim's guardians and family members' information shall also remain confidential.

(2) Reporter's information shall also remain confidential unless the reporter voluntarily waives confidentiality.

## **CHAPTER 12**

### **OTHER PREVENTIVE MECHANISMS**

#### **1. School Child Sexual Abuse Prevention Programs**

##### **(1) Student Awareness**

a. Every public or private school shall display at least one poster in a conspicuous part of the school premises, which will explain age-appropriate definitions of what child sexual abuse is and how to report incidents;

- i. Every school shall have a drop box at its head office to be utilized by students to anonymously report any incidents or answer any queries concerning child sex abuse that they might have;



- a. Queries shall be answered within 1 week by local social workers, NGO's, Childline India Foundation, or as regulations may prescribe;
  - ii. Incident reports shall be forwarded to the local law enforcement and reporting and investigation protocol shall commence as per Chapter 8 of this Act or as regulations may prescribe.
- ii. Age-appropriate Child Sex Abuse Education
1. Within one year of the passage of this Act and with annual updating:
    - a. State and local authorities shall make provision for publishing and distributing age appropriate educational materials for children, ie comic books, videos, etc., defining various forms of child sex abuse criminalized under this Act and with information for reporting and victim services.
    - b. State and local authorities shall additionally make provisions for seminars for students and teachers to improve classroom teaching and facilitate interactional and discussion-based education on recognizing, preventing, reporting and services for victims of child sex abuse.

## (2) Public Awareness

- a. Within one year of the passage of this Act, state and local authorities shall broadcast public service announcements or another educational broadcasting method to educate citizens on how to recognize, prevent and report child sexual abuse.



## **2. Police Clearance Certificate Requirement**

(1) In order to work in a public or private school, children's home, or any other institution that works with children or has child patients, the applicant or current employee must present the institution with a police clearance certificate.

(2) State and local authorities shall work with schools, hospitals and other institutions to check such certificates are on file through mandatory visits at intervals for a period not exceeding every three years.

## **3. Child Privacy and Safety**

(1) Protocol for privacy issues in schools

a. Schools, hospitals, children's homes, and other institutions shall ensure that a child is not left alone with just one official, teacher, or employee unless absolutely necessary on school, hospital or other institution premises outside school or business hours.

b. Under no circumstances shall a child change clothing in front of a member of the opposite gender or in a room with windows that does not afford a child privacy.

i. Schools and other institutions shall make provisions for separate changing facilities for male and female children.

(2) Visitors in Schools and other Institutions

a. Visitors must sign in at the school head office or other institutional office stating the following:

i. Name;

ii. Time of arrival;

iii. Purpose of visit;

iv. Other information as regulations may prescribe.

## CHAPTER 13

### INTERPRETATION

1. For the purposes of this Act, conduct that would otherwise be an offence under this Act is not an offence if a person is legally married to a child above the age of 15 at the time of the commission of the alleged offence. The person shall provide proof of the legality of the marriage, whereupon charges shall be dismissed.

2. For the purposes of this Act it shall never be reasonable for a person to believe a child is not a child, nor for a child to consent to commit an act in violation of this Act, when at the time of the commission of the alleged offence the child victim was a young child.

3. Any act an Indian citizen or national does in a country or territory outside India which would constitute an offence under this Act, or is an offence under the law in force in that country or territory shall constitute an child sexual offence under this Act.

4. Where an investigation has been initiated concerning child sexual abuse and during the course of such inquiry the child ceases to be a child as defined by this Act, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry shall be continued and orders shall be made in respect of such person as if such person had continued to be a child.

5. There shall be no statute of limitations concerning child sexual abuse.

6. Of relevance in determining age of the child victim is the age of the child victim upon commission of the alleged offence in this Act. In the case of multiple incidences of the same offence, the earliest offence in time will determine the age of the child victim for the application of this Act.



7. Reference to a person being found to be suffering from insanity or another disability includes a person who is:

- (1) Found unfit to be tried for an offence;
- (2) Found insane so trial could not proceed;
- (3) Unfit to be tried and to have done acts charged against the person.

8. If any part of this Act is found to be unconstitutional, that part shall be severed and the remainder of the Act shall remain in force.

9. Any power to make orders or regulations conferred by this Act is exercisable by statutory instrument

10. Another Act shall not be construed as amending this Act without direct reference to this Act.

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#### **Acknowledgements:**

The draft bill is the result of the efforts of several persons and institutions:

**CHILDLINE India Foundation (CIF)** is India's premier Child Protection institution. CIF developed and runs the CHILDLINE 1098 service across India. 1098 is a 24 hr, toll-free, emergency tele- outreach service that links children in need of help and protection to organizations run by government departments as well as those run by civil society agencies. Children or concerned adults dial the number 1098 and are connected to the CHILDLINE service in their city. As of Dec 2009 CHILDLINE has serviced over 17

CHILDLINE India Foundation.  
2<sup>nd</sup> floor, Nana chowk Municipal School, Frere Bridge, Low level, Nana chowk, Near Grant Road Stn, Mumbai-  
400007.

Tel:022-23881098/23841098, Fax: 23811098.

Email : dial1098@childlineindia.org.in



million calls. The CHILDLINE service has now been recognized as part of the XIth Plan , and is supported under the Integrated Child Protection Scheme (ICPS) program of the Ministry of Women and Child Development, for expansion to all districts of India over the next few years. The CHILDLINE service in India is cited by the Government of India as part of its obligations under the UNCRC.

CIF receives a regular stream of child sexual abuse cases and has taken cases to court in order to secure victim's rights and ensure offenders are punished. The Anchorage shelter case became a landmark case as the offenders were punished by a Sessions Court in Mumbai. The Mumbai High Court, however, reversed the order upon appeal by the offenders. The case is now pending in the Supreme Court.

This led to intensive research and review of Child Sexual Abuse (CSA) related laws in India and laws around the world. CIF met with the Dy Chief Minister of Maharashtra State Government and obtained a commitment to adopt a comprehensive new law to fight CSA. Consequently CIF organized a NGO consultation in Mumbai on the subject of a new law on CSA. CIF partnered with International Justice Mission (IJM), Mumbai, who deputed Michelle Mendonca , their principle lawyer to study and present the gap analysis on CSA laws in India and what is needed.

CIF then engaged services of an American Lawyer, Valerie Gaimon, as a volunteer to research further and develop a draft law on CSA covering both substantive aspects as well as procedural aspects. Michelle Mendonca and IJM were the guides on the draft bill. CIF provided inputs on standards necessary in various aspects of CSA cases.

**International Justice Mission (IJM)** is a human rights agency that secures justice for victims of slavery, sexual exploitation and other forms of violent oppression. IJM lawyers, investigators and aftercare professionals work with local officials to ensure victim rescue and aftercare, to prosecute perpetrators and to strengthen the community and civic factors that promote functioning public justice systems. IJM's office in Mumbai focuses specifically on rescuing victims of sex trafficking and forced prostitution. IJM works with local authorities to hold sex traffickers accountable for their crimes, to provide healing and care for sex trafficking survivors, and to support and strengthen India's public justice system. Since 2007, IJM Mumbai has assisted in the convictions of 19 sex traffickers.

**Michelle Mendonca** joined International Justice Mission in December 2005. She leads a team of advocates who represent International Justice Mission's cases in court and advocate for victim rights. She advises and represents International Justice Mission (IJM) in all sex trafficking cases and has intricate knowledge of child protection and sex trafficking law. She has intricate knowledge of the Juvenile Justice Act, Immoral Traffic (Prevention) Act, and the Indian Penal Code. Also, she has strong exposure to the Criminal Procedure Code and Evidence Act, as it relates to sex trafficking cases. . She has extensive experience applying her legal knowledge through practice in court- Ms. Mendonca either advises on or handles all IJM-Mumbai sex trafficking cases. IJM's primary goal for its legal work is to gain convictions of perpetrators of commercial sexual exploitation of children. Because she practice in courts, Ms. Mendonca knows the loopholes in the law defence attorneys exploit so judges acquit their clients. She analyzes



defence attorneys' arguments and forms strategies for Public Prosecutors to combat these arguments. Through her work, IJM has obtained 12 convictions in its cases in the last year and a half.

**Valerie Gaimon** is the American lawyer who wrote the essential draft of the bill . She was until recently volunteering with CIF. Valerie has a *Juris Doctor degree, Juvenile and Family Law Certificate and Public Service Certification* from the University of Colorado Law School, Boulder, Colorado. She has experience with Children's Law Center of Los Angeles, Los Angeles, California and the National Center for Missing & Exploited Children, International Division, Washington, D.C.