



**MAHARASHTRA STATE  
CONSULTATION TO REVIEW  
THE PROTECTION OF  
CHILDREN FROM SEXUAL  
OFFENCES ACT, 2012**

  
महिला व बाल विकास  
WOMEN & CHILD DEVELOPMENT

  
बाल हक्क संरक्षण आयोग  
महाराष्ट्र राज्य

  
unicef  
unite for children

  
majlis

8th and 9th August, 2014  
Sahyadri State Guest House, Mumbai



**REVIEW OF  
THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT  
(POCSO), 2012  
CONSULTATION BETWEEN STAKEHOLDERS**

We cordially invite you to a two day consultation of stakeholders to discuss best practices and challenges faced while implementing provisions under POCSO Act.

Date: 8th and 9th August, 2014

Venue: Sahyadri State Guest House, Malabar Hill, Mumbai



**MSCPCR**  
Maharashtra State Commission  
for Protection of Child Rights



**Inaugural:**

Key Note Address by Adv Flavia Agnes, Director, Majlis Legal Centre - A Survivor Centric Approach within the Criminal Justice System

Address by Mr. Ujjwal Uke, Principal Secretary, Department Women and Child Development

Address by Hon'ble Justice V M Kanade, Bombay High Court

Inaugural Address by Hon'ble Justice Mohit Shah, Chief Justice, Bombay High Court

**Session I: Challenges before the Investigating Agency**

Contributor: Mr. Harsh Mander, Director of Centre for Equity Studies (Former civil servant and member of NAC)

Presentations by Senior Police Officers from Districts

**Session II: Challenges before the Health Professionals - Medical Examination and Treatment**

Chair: Ms. Sujata Saunik, Principal Secretary, Public Health Department

Contributor: Ms. Enakshi Ganguli, Co Director, HAQ Centre for Child Rights

Initiative by Municipal Corporation Greater Mumbai Hospitals

Presentations by Senior Doctors from District Hospitals

**Session III: Challenges before Child Welfare Committee and Juvenile Justice Board**

Chair: Mr. Rahul More, Deputy Commissioner, WCD

Contributor: Ms. Alpa Vora, Child Protection, UNICEF

Presentations by Chairpersons CWC and Magistrates Juvenile Justice Board from Districts

**Session IV: Understanding the Functioning of Special Courts**

Chair: Dr. Shalini Phansalkar - Joshi, Registrar General, Bombay High Court

Contributor: Ms. Flavia Agnes, Director, Majlis

Presentations by Special Judges from Districts

Presentations by Special Public Prosecutors

Presentations from Districts

**Session V: Role of Civil Society Institutions**

Chair: Mr. A. M. Tripathi, Member Secretary, Maharashtra State Commission for the Protection of Child Rights

Presentations:

Model Shelter Home by Ms Jaya, Superintendent, Asha Sadan

Support needed by Victims by Ms Audrey D'mello, Co-ord, RAHAT (a collaboration between WCD & Majlis)

Problems with Mandatory Reporting by Ms. Anuradha Vidyashankar, Childline and Ms. Rita Paniker, Butterflies

Media Reporting and Accountability by Ms. Pooja Thaparia, Arpan

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**Valedictory**

Mr. Ujjwal Uke, Principal Secretary, Department Women and Child Development

Adv. Flavia Agnes, Director, Majlis

Ms. Alpa Vora, Child Protection, UNICEF

# **Maharashtra State Consultation to Review The Protection of Children From Sexual Offences Act, 2012**

8 and 9 August, 2014. Venue: Sahyadri State Guest House

**“The children are the stakeholders...we are the duty bearers and should do our duty to the best of our ability”**, was the message given by Hon’ble Chief Justice of Bombay High Court, Mr. Mohit Shah, while inaugurating the State Level Consultation to Review the Protection of Children from Sexual Offences (POCSO) Act, 2012.

The consultation was organized by the Department of Women and Child Development (WCD) Government of Maharashtra, Maharashtra State Commission for Protection of Child Rights (MSCPCR), UNICEF (Maharashtra) and MAJLIS Legal Centre. It brought together the Government (WCD, Health and Law and Judiciary departments), Judges from the High Court, Sessions Courts, Public Prosecutors, Advocates, Police, Medical and Forensic professionals, both public and private, members of the Child Welfare Committee and Juvenile Justice Boards from across Maharashtra.

The other dignitaries present at the inaugural were Hon’ble Justice V. M. Kanade, Judge, Bombay High Court, Mr. Ujjwal Uke, Principal Secretary, WCD and Adv. Flavia Agnes, Director, Majlis Legal Centre. Justice Kanade emphasized the need for evolving a well coordinated convergent model among stakeholders so that there is clarity in the roles and responsibilities of each stakeholder and the child victim of sexual violence is duly protected while navigating the criminal justice system.

Mr. Ujjwal Uke took pride in the fact that Maharashtra has taken the lead in organising this innovative meeting where all stakeholders across various districts involved in implementing the Act will deliberate upon the challenges faced. The gaps can be highlighted and an effective victim centric model can be evolved.

Ms. Flavia Agnes, consultant, RAHAT, a collaborative project of the Department of WCD and Majlis Legal Centre which provides support to survivors of sexual violence in Mumbai said, “We need to move away from measuring success by conviction rates and move towards a survivor centric approach while dealing with sexual crimes.” She emphasized the need to evolve a support mechanism under the Department of Women and Child to help the child to negotiate the formidable and daunting criminal legal system.

Ms. Alpa Vora, Child Rights Specialist, highlighted the fact that after the enactment of POCSO, children are placed under a special protective mantle and their abuse and violations have to be treated in a more sensitive manner. The Act defines “sexual offences” in very wide terms and places the burden of proof on the accused. Further, it prescribes special child friendly measures for investigations and trial and provides for safe custody of the child.

The consultation helped each agency to present the challenges they face, and also to understand the challenges confronting other agencies. The discussions based on practical experiences were engaging and criticisms were accepted with grace by each agency, in the right spirit. The most positive aspect was that the answers for resolving the challenges came from the floor itself, with each stake holder constructively contributing to the discussions.

Judge Dr. Shalini Phansalkar Joshi, Registrar General, Bombay High Court, chaired the session on the Functioning of Special Courts. She stated that since courts traditionally are spaces meant for adults, there was a need to reorganise the court spaces so that a child does not feel intimidated and traumatised. This only serves to re-victimise the child. She also felt the need to have special premises for setting up special courts, away from the intimidating atmosphere of a regular sessions court, where all special provisions which children require could be provided. She assured the participants that a circular would be issued to direct women magistrates to record statements of victims under S.164 Cr.PC, in all POCSO cases, across the State, as was already being done in Mumbai.

According to Ms. Sujata Saunik, Principal Secretary, Public Health Services, who chaired the session on health care providers, one of the key take away from the consultation was that henceforth every District Hospital will have a designated Nodal Officer to coordinate with victims and the police.

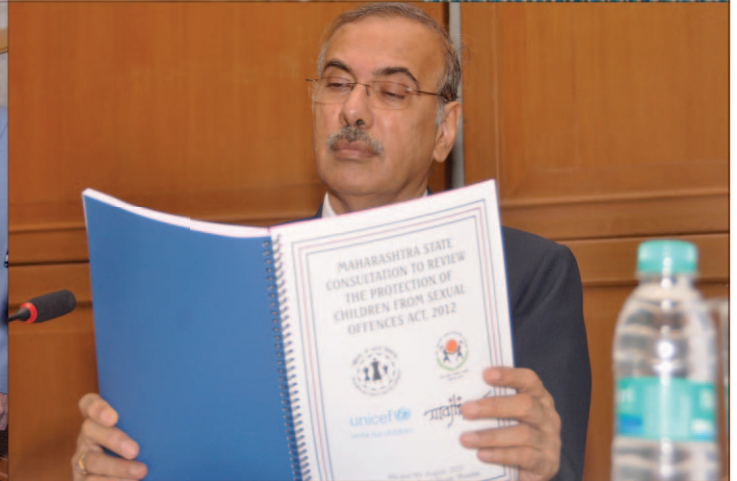
Mr Ujjwal Uke, Principal Secretary, Department of Women and Child Development, (WCD) Government of Maharashtra whose department is directly in charge of Child Welfare Committees and Juvenile Justice Boards, assured the gathering that zone-wise trainings will be conducted to all members regarding their specific role and responsibility under the POCSO Act. He also explained that the Department of WCD is in the process of evolving an MIS (Management of Information System) to monitor all cases of sexual crimes from the stage of the FIR till the stage of the final verdict, which will help both the investigating agency and the judiciary to keep a track on cases, provide accurate statistics and identify the gaps.

Mr. Harsh Mander, Director of Centre for Equity Studies and a former member of the National Advisory Council (NAC) who is an expert on issues of marginalisation and children, was able to effectively steer the panel discussion on the role of the police towards a child centric approach, and made valuable suggestions for making the investigative process smoother for the child.

All stakeholders greatly appreciated the innovative scheme which has been introduced in Maharashtra, the Manodhairya scheme for financial assistance and support services to survivors. WCD officials explained that apart from providing financial support, the aim of the scheme is to provide immediate response to the survivor as well as overall support through a convergent model by setting up a District Trauma Team which will help victims to reintegrate into the system.

In accordance with Section 46 of the POCSO Act, the consultation was organised with the aspiration that at the end of the deliberations, recommendations would be made to Government of India for strengthening the Act.

Adv. Flavia Agnes,  
Consultant,  
RAHAT



# CHALLENGES BEFORE THE INVESTIGATING AGENCY

The first sessions dealt with the challenges faced by the investigating agency. The expert contributor for this session was Mr. Harsh Mander, Director of Centre for Equity Studies, a former IAS Officer and a former member of the National Advisory Council (NAC). Investigating Officers from three districts presented the challenges they face while implementing the Act. The situation prevailing in smaller towns and rural districts were the particular focus of this session.

## Presentations by Investigating Officers

1. Though the Act prescribes many child friendly measures, some of these are not accepted by the victim or her family. For instance, due to the stigma attached to sexual violence in our society, parents prefer to record the statement at the police station rather than at their residence. Even if a lady police officer is in civilian clothes, the police van is easily identifiable, even if it is parked at a distance, and this raises the curiosity among the neighbours. Parents like to avoid such situations to protect the confidentiality of the child.
2. Similarly, children are not comfortable when their statements are video recorded. Children become inhibited and tongue-tied when they face the camera and are not able to speak in a natural and free flowing manner. This hinders the process of recording their statement.
3. If the victim is a very young child, the statement is recorded over several days as the investigating officer has to wait till the child feels comfortable to confide and talk freely about the incident. Many times, junior officers are chided by their seniors for taking a long time for recording the statement of a child as they are unable to understand the process involved and want quick results.
4. As the distances in rural areas are huge, it takes an entire day to take the child and the accused for medical examination to the district hospital and bring them back. In some cases, the police have to walk long distances in difficult terrain to reach the victim, which further delays investigations.
5. Police lack the infrastructure required to follow all the provisions stipulated under the Act. They do not have sufficient number of lady officers particularly in rural areas, they do not have sufficient number of vehicles to take the victim and accused separately for the mandatory medical examination.
6. Police do not have the required training or assistance of experts to deal with victims who suffer from disabilities.
7. There is pressure from the media to provide daily information regarding the progress in investigations in some high profile cases, which hinders investigation. Excessive media exposure results in providing vital clues regarding the victim and her family through which the reporters can identify the victim. The victims are in constant fear of this exposure.
9. Pressure exerted by social workers also adversely impacts the investigation.

## Response to the Presentations

### Judicial Officers and Public Prosecutors

1. The police often use general statements such as “ganda kam kiya” without elaborating further on the actual incident of abuse which has taken place. The Police will have to make the effort of building a rapport with the child and then

eliciting accurate information about the offence. It was suggested that body charts can be used for this purpose. This will greatly enhance the quality of evidence produced before the court.

2. Recording of several additional statements of the child must be avoided as the defence lawyers can exploit this situation to their advantage. Instead, a memorandum of the statement can be prepared and after the entire statement is recorded, it should be finalised and then signed.
3. It is not required to record a panchnama of the clothes of the child and send them for forensic examination when the incident has occurred several weeks/months prior to the filing of the FIR as vital evidence would already be lost. Such unnecessary procedures should be avoided as they only serve to delay the investigation and the trial and adds to the workload of the police and the court.
4. The Investigating Officer (IO) must regularly consult the Public Prosecutor (PP) during the investigation, especially prior to filing the charge sheet to ensure that all legal points are well covered. However, this is seldom done and most officers bring the final charge sheet directly to court on the date of filing, without consulting the PP in advance. Hence, the PP is not able to provide valuable legal inputs in order to present a strong case without any loopholes.
5. The officer must confirm with the court staff before bringing the child for her deposition, if the judge will be free to examine the child on the specified date. If there is better coordination between the police, prosecutor and the court staff, it will prevent inconvenience which is caused to the child and her family and save the family of avoidable hardship of bringing the child to court repeatedly.
6. The frequent excuse made by police officers for non-appearance in court or failure to comply with court orders is that they are busy with bandobast. This needs to be rectified immediately and cases of sexual offences must be treated as a priority by the police machinery.

### **Medical Officers**

1. Samples for forensic examination must be sent to the forensic laboratory immediately without delay by the Police. In several cases, forensic samples had become unfit for examination due to a delay by the Police.
2. The chain of custody should be accurately maintained as any lapses will benefit the accused.
3. The protocols evolved by the Public Health Department must be accurately followed regarding the manner in which records of body fluids collected during the medical examination and sent for forensic examination.

### **Child Welfare Committees**

1. The Police are mandated to inform the CWC about every FIR recorded under the Act. This is not being done. Only cases where the child is produced before the CWC are coming to the notice of the CWC. In order to do this routinely, a format needs to be evolved and it must be made mandatory for the police to inform the CWC of every FIR registered under POCSO to the CWC in this format. This will ensure that a proper record of all POCSO cases within their jurisdiction is maintained by the CWC.
2. Documentary evidence relating to age must be produced before the CWC. If there is no documentary evidence, age verification test must be done. The procedure prescribed under the JJ Act for age verification should be followed. Very often the Police produce children before the CWC without age proof and medical examination. While the CWC accepts the child, it also directs the Police to return the following day to complete the requirements. However, the

Police come after several days and the CWC has to repeatedly follow up with them.

### **Civil Society**

1. Though statements are signed by lady officers as per the provisions of the Act, the child is made to narrate the incident several times in the presence of male officers which defeats the very purpose of this provision and causes embarrassment to the child.
2. Very often, after an incident of sexual assault, the family changes their residence and the police do not bother to stay in contact with the child and her family. Hence, they are unable to trace the child at the time of recording her evidence. This delays the matter and sometimes may result in the victim not being traceable.
3. Despite the mandate of the Act that the victim should not be brought in contact with the accused, very often, the police take the accused and victim in the same vehicle for medical examination. They also bring the accused face to face with the victim and permit him to intimidate the child. Such unethical and illegal practices must be stopped immediately.
4. The charge sheet has to be filed within 60 days in cases under the POCSO Act. The Police are not complying with the same and this results in the accused availing the provision of statutory bail. Hence, the Police must file the charge sheet within the stipulated time to avoid this situation.
5. Once bail is granted, the trial is prolonged and the statutory period of one year to complete the trial is not complied with.
6. If the accused is on bail, the Police should proactively work towards making the victim and her family feel secure. An application for cancellation of bail should immediately be made if the accused tries to threaten / intimidate the victim or her family.
7. Though the Police is mandated to record an FIR immediately, it is observed that in cases where the accused belongs to an affluent background and the girl comes from a poor background, the Police try to “settle” the dispute. It has also been brought to the notice of the Hon'ble High Court instances where the police, instead of lodging an FIR, have tried to arrange the marriage between the victim and the accused to save the accused from the ignominy of facing the criminal trial. Such illegal practises should be stopped immediately and the Police should restrain from indulging in such practices.





## **ACTION POINTS**

- There is an urgent need for improving the infrastructure and providing the necessary budgets to comply with all the mandatory requirements as stipulated under the POCSO Act
- The DCPU must prepare a list of translators and special educators and provide the same to all police stations, CWCs and Sessions Courts. The fees for their services, as prescribed under the Act, must also be stipulated and necessary budgetary allocations must be made.
- Under the POCSO Act, the Police must approach the Special Court directly for all purposes including remand and not approach the Magistrate Court.
- In cases of pornography, ensure the seizure of CD player, TV equipment and include the content of the CD, pen-drive, etc in the panchnama.
- Preferably, there should be one comprehensive statement of the child. If the statement is recorded over a period of time, a station diary entry should be made for the statements taken each time. This will ensure that the defence does not take objections to delay.
- Statements must be recorded using phrases and expressions used by the child. Even while explaining in legal language, use parenthesis to explain the vocabulary used by child so that there are no inconsistencies.
- The Maharashtra State Health Protocols regarding collection and maintenance of body fluids and chain of custody must be strictly followed.
- The police should not try to “settle” matters at their level. The common complaint continues to be that the police refuse to file an FIR. Strict action must be taken against such officers as per the provisions of S.166A of the IPC.
- There is an immediate need to provide training to the investigating officers and those recording statements of the child and the impact of such training must be strictly monitored to record the changes in the system.

## **IMPORTANT PROCEDURES TO BE FOLLOWED BY POLICE**

### **Recording of the offence:**

The information of a sexual offence committed or likely to be committed on a child can be given by any person to the Special Juvenile Police Unit (SJPU) or the local police. S.19 (1)

Every information given shall be recorded in writing (FIR) and shall be given an entry number. The same should be read over to the informant S.19 (2). The informant shall be given a copy free of cost. Rule 4 (2) (a)

The police officer shall share his name, designation, address, telephone number as well as the details of his supervising officer with the informant. Rule 4 (1)

If a police officer fails to record an FIR it a cognizable offence under S. 166A CrPc

### **Recording a Child's Statement:**

The police officer shall ensure that:

If the sexual offence is reported by a child, it shall be recorded in simple language. S.19(3)

The child's statement shall be recorded at a place where the child resides or where the child feels comfortable

by a police officer shall not be below the rank of sub inspector and should preferably be a woman officer. S.24 (1)

A person who the child trusts shall be present at the time of recording statement. S.26 (1)

While recording the statement of the child, the police officer shall not be in uniform. S.24 (2)

If the child speaks a different language, an interpreter or translator may be called and shall be paid for the service. S.26 (2)

If the child is temporarily or permanently mentally or physically disabled, a special educator or a person familiar with the manner of communication or an expert may be called and shall be paid for the service. S.26 (3)

If possible, the statement of the child may be recorded using audio-video electronic means. S.26 (4)

The child does not come in contact in any way with the accused. S.24 (3)

The child is not detained in the police station at night. S.24 (4)

The identity of child shall be protected from the media, unless directed by the Special Court. S.24 (5)

If the child's statement is being recorded by the Magistrate u/s. 164 of Cr. PC, then the same shall be recorded as spoken by the child. S.25 (1)

The Magistrate shall provide the child or parents or representative a copy of the police report, FIR, statements of the witnesses, documents containing confessions and statements and other relevant documents. S.25 (2)

#### **Medical Examination and treatment:**

The SJPU or local police shall get the victim examined by a registered medical practitioner within 24 hours of receiving information whether or not the FIR or complaint has been registered.

#### **Forensic:**

The SJPU or local police shall ensure the samples collected from the hospital and in the course of rendering emergency medical care are sent to the forensic laboratory at the earliest. Rule 4 (2) (d) & Rule 5 (5)

Inform Special Court: The SJPU or local police shall inform the Special Court about the assignment of the support person within 24 hours of such assignment. Rule 4 (9)

## **CHALLENGES BEFORE HEALTH CARE PROFESSIONALS**

This important session was chaired by Ms. Sujata Saunik, Principal Secretary, Public Health Department. Ms. Enakshi Ganguli, Co-Director, HAQ Centre for Child Rights, Delhi and Dr. Duru Shah ex-chairperson of FOGSI were the contributors. Presentations were made by senior doctors from District Hospitals. The Initiative by Municipal Corporation of Greater Mumbai (MCGM) was also discussed.

### **Presentations by Doctors in District Hospitals and MCGM**

1. One Stop Help Centres have been established by MCGM in five hospitals in Mumbai which are based on a convergence model between different departments. Standard Operating Procedures have also been evolved for their effective functioning.
2. They will be implemented in three phases. At present the first phase is being implemented where a coordinator has been appointed at each Hospital who is the first point of contact for all cases of sexual violence from the time the victim enters the hospital. Every department has been informed about the designation of this coordinator. It will be her duty to guide the victim through the medical examination and coordinate with all departments to ensure that the victim does not have to go from one department to another and is treated in a timely and effective manner.
3. Doctors from the districts emphasised that even though the law mandates that a lady doctor shall conduct the medical examination, no provision had been made to increase the number of lady doctors in their hospitals. They also lack facilities such as counselling and tests such as colostromy.
4. There was no private and separate space designated for the examination of victims of sexual violence. The child is usually examined in the labour ward, in casualty, or sometimes even in the same room as the accused.
5. The health care system is overburdened and this causes delay in submitting forensic / medical reports, which is a concern for the investigating agency.
6. The Police and the Courts require a “conclusive” report. However, a doctor cannot determine rape or contact abuse. They can only determine sexual intercourse / penetration and even this may not be possible without the Doppler test. Hence other stakeholders must refrain from expecting doctors to draw such conclusions in their medical reports.
7. Standardised Medical Examination Formats: A GR has been issued by the Maharashtra Government titled ‘Forensic Medical Examination of Sexual Assault Cases: An Instruction Manual by Proforma’, dated 10th May 2013. This is the standardised format to be followed by all doctors while conducting examinations in cases of sexual violence. However, each hospital had their own variations of the prescribed format. Care should be taken to ensure that there is no deviation from the format.
8. With regards to the National Guidelines and Protocols, once it is adopted by the State of Maharashtra, the same will be adopted by all district hospitals.
9. Issues relating to lack of basic infrastructure such as dedicated space, adequate furniture and equipment were repeatedly highlighted in all presentations.
10. Doctors were concerned about the contradiction between the provisions of mandatory reporting under POCSO and patient-doctor confidentiality. They believe that mandatory reporting will discourage patients from approaching the health system and availing treatment after sexual violence as they may not wish to approach the Police.

11. The MTP Act provides complete confidentiality to the victim while POCSO stipulates mandatory reporting. Mandatory reporting may result in young girls approaching quacks or resorting to other dangerous methods of abortion rather than approaching the health care system for a safe abortion. This will adversely affect the health of young girls. The government should take note of this and provide a solution.
12. It was suggested that a complaints committee or a similar mechanism could be set up where a victim could complain to the committee instead of the Police. When she is ready to report, then she could approach the Police. This procedure is followed in some countries.
13. Dr. Duru Shah spoke about the duty of private doctors under the amended law. However, she said that private doctors were not equipped with the required legal and procedural knowledge and they require training.
14. She also suggested the concept of task shifting whereby trained female nurses can be given the responsibility of examination of victims, especially since there are not adequate female doctors. The nurses will also require to be trained on how to report.
15. It was suggested that awareness regarding the provisions of this Act is necessary for adolescent children. However, instead of sex education, a better term such as “Reproductive Health Education” may be used.

## **Response to the Presentations**

### **Judicial Officers and Public Prosecutors**

1. Most doctors are not aware of the new definitions of sexual offences under POCSO and continue to use archaic terms in their reports which causes confusion. This must be avoided as it benefits the accused.
2. Doctors must be made aware of the latest law and its requirements and they must also be guided to record medical reports in a manner that is required under the law.
3. Doctors should also note the mental condition of the victim in their medical reports, especially if the victim appears to be stressed, anxious or traumatised. However, care should be taken while recording the same, because the defence should not benefit from loose statements, such as the victim was calm and composed.
4. Very often the doctor who signs the medical examination report does not come to court for the deposition and a doctor who was not involved in the examination is sent to court, which weakens the prosecution case.
5. The chain of custody with regards to medical evidence is not adhered to by the Police and doctors. This results in a sample reaching the forensic laboratory after it has become unfit for testing, resulting in loss of crucial evidence of the prosecution.
6. Judges and Public Prosecutors were concerned that a delay in the submission of the forensic medical report, delays the entire trial. It generally takes around 4 -6 months for the forensic reports to be submitted to court.
7. A major concern for Judges was that victims were not being examined by lady doctors, even though this is mandated by law. This issue needs to be taken up urgently, as it results in re-victimisation for the victim.
8. Most doctors do not come prepared to court for their deposition. They do not even read the medical examination report prior to their deposition, thereby contradicting their own findings. Care should be taken about the same and doctors must always come prepared for their deposition.
9. Archaic books on Medical Jurisprudence by authors such as Modi are still used by defence advocates while cross

examining doctors. Doctors must be careful while answering suggestions put to them at the time of cross examination based on these books, as a wrong answer could adversely affect the case of the prosecution.

### **Police Officers**

1. At the time of conducting the medical examination, police officers are often made to go from one department to another, along with the victim, without any guidance from doctors or hospital authorities. This causes hardships to the victim and delays the medical examination resulting in loss of vital evidence. It also violates the mandate of confidentiality.
2. In most hospitals, the victim and Police are made to wait for a long time, generally 2-3 hours, before the medical examination commences. No special arrangements are made to treat victims of sexual violence on an urgent basis.
3. Doctors are frequently transferred which causes problems at the time of service of summons. It becomes difficult to trace the appropriate doctor and serve the summons.
4. Often doctors who examine the victim do not come to court for their deposition, despite being served the summons several times. This delays the trial.
5. Often, samples of medical evidence, clothes of the victim, etc are not sealed correctly; panchnamas are not drawn up properly, which results in weakening the case of the prosecution.

### **Child Welfare Committee**

1. For facilities such as X-rays, MRIs, etc some payment has to be made to the Hospital. When the child is an orphan, there is no one to make this payment on her behalf. The CWC also is unable to make the payment, as they do not have funds for this. Hence these children are not provided the required medical treatment. It was proposed that hospitals can make exceptions for such children and give treatment free of charge. Moreover, under the amended law, S. 357C CrPC, medical aid and treatment shall be provided free of cost in cases of sexual violence.
2. An emergency fund should be provided by the District WCD for responding to such emergency needs of medical treatment to the child.

### **Civil Society Response**

1. The emphasis of health professionals is “examination” rather than “treatment”. This must change. The victim's health and treatment should be of paramount importance.
2. The history of the victim is not recorded accurately. Doctors do not take the effort of gaining the confidence of the victim so that she is able to narrate the incident without hesitation.
3. Care should be taken to ensure that the history is written in the words of the victim and not in medical terms. If the child is very small and the history is taken from the parent, the same should be mentioned. If the victim is pregnant, the date of the incident and LMP become very crucial at the time of the trial and care should be taken while recording the same.
4. During cross examination, the doctor will have to answer several questions on recording the history and therefore this should be done carefully.
5. In most cases, victims are not called for follow up visits even though they experience continued health problems due to the sexual assault. Though medical reports do mention that counselling is required, no attempt is made to guide the victim to an appropriate counsellor and ensure that she avails of the same.



6. The imperative of having a female doctor undertaking medical examination of the child reiterated by many, in the best interest of the child.

### **ACTION POINTS**

- Ms. Sujata Saunik, Principal Secretary, Public Health Department agreed to designate one Coordinator in all hospitals under the Public Health Department who shall be the point of contact in all cases of sexual violence. This coordinator shall be with the victim as soon as she comes to the hospital, guide her through the medical examination and ensure that all departments respond to her in a timely and effective manner. This will ensure that the victim does not have to wait endlessly when she comes to the hospital and she receives an effective response from doctors.
- Treatment should be provided free of cost to all victims of child sexual abuse in public hospitals in accordance with the amended law. Even tests such as X-ray, MRI etc. should be provided free of cost.

### **IMPORTANT PROCEDURES TO BE FOLLOWED BY MEDICAL**

All medical practitioners (public or private) shall provide medical care and treatment without demanding any legal documentation from the victim. Rule 5 (3)

If the child victim is female then the medical examination shall be conducted by a woman doctor. S.27 (2). If such person is not available then a woman nominated by head of the medical institution shall be present. S.27 (4)

A person who the child trusts shall be present at the time of medical examination S.27 (3).

The consent of the child or person who the child trusts shall be taken by the medical practitioner. The examination shall be conducted without any delay. S.27 (1), S.164A of Cr. P.C.

Care shall be rendered in a manner that the privacy of the child is protected. A person who the child trusts shall be present at the time of medical examination. Rule 5 (2)

The medical practitioner shall treat the child for cuts, bruises, bodily and genital injuries, exposure to STDs & HIV. S/he shall discuss possible pregnancy and emergency contraceptives with the child or the person who the child trusts. Rule 5 (4)

The child may be referred for mental, psychological or other counseling. Rule 5 (4) (v)

Non treatment of a victim by a Hospital is an offence punishable with imprisonment for a term which may extend to one year or fine or both under S. 166B Cr. P. C.



# **CHILD WELFARE COMMITTEE AND JUVENILE JUSTICE BOARD**

Two important state institutions were the focus of the discussion of this session which was chaired by Mr. Rahul More, Deputy Commissioner, Department of Women and Child Development. The expert contributor was Ms. Alpa Vora, Child Protection specialist from UNICEF (Maharashtra). Presentations regarding challenges faced by them were made by members of CWC Magistrates of JJB from Districts.

## **Presentations by Chairpersons of CWC and Magistrates of JJB**

1. The JJ Act provides that the CWC is recognised as a Magistrate of first class as a bench. However, other stakeholders do not award them this statute which serves to reduce their authority.
2. The CWCs highlighted the challenge of addressing sexual offences that take place in the private spheres (homes and in families) and public spheres (schools, residential care institutions).
3. The JJB has to deal with the child who may be an offender and the victim of sexual offence committed by a child under 18. There is need for a convergence of stakeholders in order to offer more holistic assistance to children, which would include health care, legal aid and comprehensive rehabilitation and reintegration services.
4. The need to monitor Adoption Agencies was also raised to prevent vested interests from taking advantage of the loopholes.
5. Though the Act provides for five CWC members on the Bench, in most districts the numbers of members vary. The mandated number of members has not yet been appointed to the Committees. This hampers their work.
6. The sittings of the CWC were also not sufficient in some districts. This needs to be looked into.
7. There is a complete lack of basic infrastructure, insufficient number of Probation Officers and care givers.
8. Training must be provided to all CWC members before they are assigned their tasks. It is imperative that they are made aware of the Act as they have a crucial role in the implementation of the Act.
9. The CWC was also concerned that the Police were not informing them after an FIR under POCSO is registered. A suitable reporting mechanism should be evolved.
10. In cases where the accused is a family member, the safety of the child becomes critical and the Police must produce the child before CWC. The Rules of the POCSO Act clearly provide the three circumstances under which the Police shall produce the child before the CWC. However, this was not being followed.

## **Response to the Presentations**

### **Police Officers**

1. Documentation of the CWC is not maintained properly. This causes problems when the Court orders for the records of the CWC.
2. The child and the police officer are made to wait for a long time before the CWC attends to them. This delays the process and causes the child further anxiety and trauma.

### **Civil Society Response**

1. The CWC does not maintain its records in a standardised format. As a result, a proper analysis of the work of the CWC becomes difficult. Case summary, facts and other case records need to be maintained in an organised manner.

2. In cases where the accused is a member of the family, especially father or brother, the CWC should take sufficient care to ensure that child is in protective care during the pendency of the trial, so that she and her mother are not subjected to intimidation or threats from relatives and neighbours.
3. Even after a child is released from protective care, the CWC should ensure that the progress of the child is reviewed periodically so that they are able to assess if the child is safe and comfortable.
4. CWC members require training on certain legal aspects and laws relating to children, especially since they interact frequently with the Police.
5. CWC members should periodically visit institutions where children in need of care and protection are sent and submit reports of their visits to the State government, as mandated under the JJ Act. This will help in ensuring better standards of care for children in these homes.

### **ACTION POINTS**

- The WCD shall conduct training for all CWC members on a regular basis, keeping in mind their requirements.
- WCD also agreed to review the vacancies in CWC at the earliest.
- CWC will maintain a resource directory of all Police Stations, NGOs, counselling centres, Special Educators, within its jurisdiction.
- WCD has permitted every CWC to appoint one data operator. This will assist the CWC in information collection, data collection of maintaining records. The WCD shall provide the remuneration for the data operator.

### **IMPORTANT PROCEDURES TO BE FOLLOWED BY CHILD WELFARE COMMITTEE**

The SJPU or the local police shall report all cases of child sexual offences to the Child Welfare Committee and Special Court within 24 hours of receiving the report. S. 19(6)

Produce the child before the Child Welfare Committee (CWC) if the offence is committed, attempted or likely to be committed by a person living in the same household or where the child is living in a child care institute without parental support or is a homeless child without any parental support. Such child shall be produced with reasons in writing along with a request for detail assessment by the CWC. Rule 4(3)

Within three days of receiving the report, the CWC on its own or with the assistance of a social worker, shall determine whether the child needs to be taken out of the custody of the family or shared household and placed in a shelter/ children's home. Rule 4(4)

#### **Determination of care and protection by CWC**

**Inquiry:** Any inquiry shall ensure that it does not expose the child to injury or inconvenience. Rule 4(5)

**Child's Interest:** It shall take into account the preference and opinion of the child along with the child's best interest. Other factors such as age, gender, social background, level of maturity, disability, chronic illness of the child, capacity of the parent to provide immediate care and protection, need of the child to remain in care of the family and history of violence in the family shall also be considered. Rule 4(5)

**Informing person's affected:** It shall inform the child or the person in whom the child has trust about the determination being considered. Rule 4(6)

**Support Person:** The CWC shall, with the consent of the child or the person who the child trusts, provide a support person who will assist the child through the investigation and trial process. The support person may be a person from a child rights organization, official of a children's home or shelter home having custody of the child or a person employed by DCPU. Other than the person so appointed, the child or person who the child trusts may seek assistance of any other person or organization. Rule 4(7).



## FUNCTIONING OF SPECIAL COURTS

This most important session was chaired by Dr. Shalini Phansalkar Joshi, Registrar General, Bombay High Court. The expert contributor for this session was Adv. Flavia Agnes, Director, MAJLIS Legal Centre and consultant to RAHAT. The presentations were made by judicial officers designated as Special Judges under POCSO and designated Special Public Prosecutors.

### Presentations by Judges and Prosecutors

1. Though the Act provides for setting up of child friendly court rooms, the courts lack the adequate infrastructure to meet these requirements. Due to this, many Judges have improvised by using cupboards, curtains, etc to prevent the victim from seeing the accused. They also make the victim enter from the Judges' entrance and make her sit in the Judge's chamber or the steno's room. Some Judges record the statement of the victim in the Judges' chamber.
2. It takes time to build rapport with a young child who comes before the court to depose. Building rapport and gaining confidence requires time. However, this poses an obstacle to the mandate of speedy disposal. Moreover, delay in receiving the forensic report delays the entire trial.
3. The Police must confirm with the court staff before bringing the victim for her deposition.
4. The rights of the victim must be seen in relation to the rights of the accused. For instance, the accused must hear the deposition of the victim, through the partition, curtain, etc. If he does not hear, he can deny it in his statement in S. 313 (Cr.PC), which has detrimental consequences.
5. A female doctor must examine the child to avoid causing further trauma to the child.
6. Sensitivity of the defence advocate is important while cross examining the child.
7. The statement of the child must be recorded in her language or else the defence can take advantage of this.
8. Certain inconsistencies in the Act were pointed out as follows: S.18 of the Act. Quantum of punishment one half of the imprisonment for life. (This provision requires clarification.)
9. Moreover, it was suggested that only women JMFC / MM must record the 164 statement of the victim. In Mumbai, a list of women MM who shall record the 164 statement of the victim has been provided to each Police Station. Police Stations have been divided according to jurisdiction for this purpose. This should be extended to the entire state of Maharashtra.
10. The Public Prosecutors raised the issue that the Police do not provide them with a complete set of the papers.
11. Several issues relating to the manner in which the statement of the victim is recorded were raised. In cases of sexual violence this is the most crucial piece of evidence. Chronology must be maintained, unnecessary information should not be included, the incident of sexual violence must be stated in detail and it must be recorded in the language of the child. Any lubricant, condoms used should be mentioned, threats given to the child must be stated, and any accomplice should be mentioned.
12. The spot panchanama must be conducted even in cases of non penetrative sexual violence. It is an important piece of evidence.

13. It was suggested that any statement of the child recorded before the CWC may also be made part of the charge sheet.
14. There should be only one defence lawyer and she should preferably be a lady. The defence advocate should not be allowed to bring juniors at the time of recording the evidence of the child.
15. Some defence lawyers adopt the strategy of continuously questioning the child to cause further trauma to the child. The Judges should take care and such cross examination must not be allowed as it is the duty of the Judge to maintain the dignity of the victim.

## **Response to the Presentations**

### **Civil Society Response**

1. To maintain confidentiality trials are conducted behind closed doors (in-camera). In such a situation, it is impossible to monitor whether the prescribed rules and procedures are being followed while conducting the trial. At times, gross violations of the prescribed procedures have been noticed. Hence there is a need to monitor the Special Courts to assess if they are functioning as per the prescribed rules. There must be mechanisms of redressal in the event it is found that there are lapses in the manner in which trials are conducted.
2. Since a female child of sexual abuse may be more comfortable while deposing before a lady judge, only lady judges are assigned to these courts. However, this does not mean that all lady judges are more sensitive to victims of sexual abuse than male judges. It is not biology that determines sensitivity. Judges assigned to the Special Courts must be provided with training not just on the Act and its provisions but also on case law and the requirements of being sensitive to a child of sexual abuse. Such training has not been provided so far while appointing Judges to the special courts.
3. When reputed criminal lawyers appear before the special courts, judges presiding over these courts get intimidated by their presence and are not able to strictly control the aggressive behaviour of these lawyers towards the victim. All Judges must take due care that they do not get intimidated by such tactics of defence lawyers.
4. The Sakshi Guidelines have stipulated that all questions of cross examination must be given in writing to the presiding judge by the defence and the judge must only ask relevant questions to the child. However, it has been noticed that this procedure is not followed. Guidelines must be issued by Registrar General, High Court to all Special Courts to strictly follow the Sakshi Guidelines regarding cross examination of a child victim of sexual violence.
5. The layout of a special court must be different from a regular sessions court. The layout of a family court is a good example. The judge should not be seated on a high podium. Judges and lawyers should not be in black coats. The child should not be put in a witness box while deposing, but made to sit. Frequent breaks for drinking water, toilet etc. must be given as mandated by the Act.
6. Judges must take care that the child is not intimidated by the accused, his family members or the defence lawyers when she comes to court to depose.
7. Maintaining Confidentiality of the Child – In some courts the mandate is followed only as a ritual without taking due care. The judge must take care to first vacate the court and then bring the victim inside. If this is not followed, the provision of maintaining confidentiality and conducting in-camera trial becomes meaningless.

## **ACTION POINTS**

- Dr. Shalini Phansalkar Joshi agreed to ensure that a list of women JMFC / MM who would record the statement of the child under S. 164 CrPC would be issued for each district in Maharashtra, based on the circular that has been issued in Mumbai.
- Until adequate infrastructural provisions are made in the Court for recording the evidence of the child, Judges should improvise by using the existing infrastructure, such as a cupboard, curtain, etc. Judges may also record the evidence of the child in their chamber. This will ensure that the provisions of the Act are followed and the child is not traumatised.
- All questions during the cross examination must be given to the Judge in writing by the defence, and the Judge will then administer the relevant questions to the child, in accordance with Sakshi Guidelines.
- The child should not be called repeatedly to Court. Her examination in chief and cross examination should preferably be completed on the same day.

## **IMPORTANT PROCEDURES TO BE FOLLOWED BY SPECIAL COURTS**

Cases of offences committed under this Act shall be tried in a Special Court which shall have all the powers of a Court of Sessions. S.28 (1) S. 33 (9)

While trying such cases, the Special Court shall also try offences under CrPc and/or Information Technology Act, 2000 if clubbed together. S.28 (2) & (3)

Every Special Court shall have a Special Public Prosecutor with a minimum experience of 7 years as an advocate. S.32 (1) & (2)

The Special Court may directly take cognizance of an offence or on receiving information by police. S.33 (1)

### **Examination of the Victim in Special Court:**

**Questions by the Judge:** questions to the child shall be asked only by the Special Judge. S.33 (2)

**Aggressive Questioning:** The Special Court shall ensure that the dignity of the child is maintained at all times. No aggressive questioning or character assassination shall be permitted. S.33 (6)

**Assistance of Translator or Interpreter:** If the child does not speak the language of the court, the Special Court may take the assistance of an interpreter or translator who shall be paid for the service S.38 (1). The Special Court shall verify that the interpreter or translator has no conflict of interest with the case. Rule 3 (9)

**Special Children:** If the child is mentally or physically (temporary or permanent) disabled a special educator or a person familiar with the manner of communication or an expert may be called and shall be paid for the service S. 38 (2). The Special Court shall verify that the special educator or expert has no conflict of interest in the case Rule 3 (9).

**No exposure to the Accused:** The child should not be able to see the accused while testifying. The statement may be recorded through video conferencing or by using single visibility mirrors, curtains or any other device to shield the child victim from the direct gaze of the accused. S. 36 (1) & (2)

**Frequent Breaks:** The court may permit frequent breaks for the child during examination if necessary. S.33 (3)



***Trial In Camera:*** The entire trial shall be conducted in camera i.e. behind closed doors in the presence of a person in whom the child has trust S.37. No member of the public or an advocate who is not connected with the case shall be present in court.

***Presence of Persons who the child trusts:*** In order to make the child comfortable, the child shall be examined in the presence of a person who s/he trusts. S.33 (4)

***Child Victim should not be called repeatedly:*** The child shall not be called repeatedly to the court to give evidence. S.33 (5)

***Confidentiality:*** Identity of the child shall not be revealed. Identity of the child includes the family's identity, school, relatives, neighbourhood and other information. S.33 (7)

***Examination at another location:*** The Special Court may order that the examination of the child may be conducted at an alternate location. S.37

***Onus of Proof is on the Accused:*** S.29 states that the Special Court shall presume that the accused has committed / abetted / attempted the offence, unless s/he proves otherwise.

The Special Court shall presume that the accused had a culpable mental state at the time of committing the offence, unless s/he proves otherwise. The defence will have to prove that the accused had no culpable mental state beyond reasonable doubt S.30 (1) & (2)

***Compensation to be awarded by the Special Court:*** In addition to punishment, the court may prescribe payment of interim or final compensation to the child for causing physical or mental trauma or for immediate rehabilitation of the child. S.33

***Interim Compensation:*** May be awarded by the court on its own or by an application filed by or on behalf of the child to meet immediate needs of relief and rehabilitation. The amount paid shall be adjusted against final compensation, if any. Rule 7 (1)

***Final Compensation:*** May be awarded by the court where it is of the opinion that the child has suffered loss or injury as a result of the offence. It may be paid even if the case ends in acquittal, discharge or if the accused cannot be found or identified. Rule 7 (2)

***Consideration:*** The following considerations shall be taken into account before awarding compensation - Type, gravity of abuse and severity of mental or physical harm/injury; expenditure incurred or likely to be incurred on medical treatment; loss of educational opportunity including absence from school; loss of employment including absence from place of employment; relationship of the child to the offender; whether the abuse was a single isolated incidence or whether it took place over a period of time; child pregnancy; contraction of STD or HIV; any disability suffered; financial condition and any other factor. Rule 7 (3)

The child or person who the child trusts may also submit an application for seeking relief under any rules or schemes of the Central or State Government. Rule 7 (6)

***Rights of an Accused Child:*** A child under 7 years cannot be tried for an offence. S.82 of IPC

A child under 12 years who has not attained sufficient maturity cannot be tried for an offence. S.83 of IPC

A child who has committed a sexual offence shall be tried as per provisions of the Juvenile Justice (Care and protection of Children) Act, 2000. S.34 (1) & (2)

If the age of the child is in doubt then the same shall be determined by the Special court and the reasons must be recorded. The judgement of the court cannot be invalidated, if at a later stage, it is found that the age of the child as determined by the court was not correct. S.34 (3)



## **ROLE OF CIVIL SOCIETY INSTITUTIONS**

The session was chaired by Mr. A.M. Tripathi, Member Secretary, Maharashtra State Commission for the Protection of Child Rights who explained the role of the Commission and the various tasks which the Commission has undertaken during the last two years. The MSCPCR has the mandate to monitor the effective implementation of the Act in the State of Maharashtra. Mr. Tripathi explained that the Commission has framed the necessary guidelines as mandated by the Act and these have been sent to all concerned stakeholders in the state. He stressed that the guidelines should not be seen in isolation as they form part of the composite scheme laid out by the Act, and Rules framed under it. He also stated that it is a matter of concern for the Commission as to how to tackle cases where the girl is between the age of 16 to 18 years and falls in love and engages in sexual activity.

The panel comprised of five organizations which provide support to survivors of child sexual abuse adopting different models which have been evolved by them and which address different components of support.

**Asha Sadan (House of Hope)** is a home for abandoned and orphaned girl children which was started by the Maharashtra State Women's Conference around 90 years ago and provides both long term and short term shelter to victims of sexual abuse, more specifically pregnant adolescent girls. This Home is often mentioned in court judgements and many times when the judges notice that there is pressure on the child to turn hostile, particularly in cases of incest (rape by fathers), they pass orders that the child should be placed in Asha Sadan to be away from the adverse influences which will exert undue pressure on the child so that the child is able to depose without fear and will be able to speak the truth.

Ms Jayalakshmi, Superintendent of the Home stated that a care plan is chalked out for every girl. The aim is to provide a secure atmosphere and great emphasis is laid on formal education. All health aspects looked into by specialists who regularly visit the Home. Special care is provided to pregnant adolescent girls and after the delivery the infants are given in adoption in a manner which would cause minimum trauma to the victim. The social workers accompany the child when she appears in court for the deposition. Social workers and lawyers from RAHAT are invited to interact with the child prior to the deposition and to explain the court procedure to the child. Once the child completes basic education, she is shifted into a sister institution for further studies. If the child is over 18, attempts are made to find gainful employment even while the child continues to live within the protected environment of the Home. Asha Sadan has demonstrated that it is possible to run a shelter home which can provide a safe and caring environment conducive for the child's reintegration into society.

**Chidline Foundation** has instituted a toll free Help line for children in emergency and distress: 1098 (ten nine eight – a number which was chosen by street children themselves and which is easy to remember). It is a first response to crisis intervention and the main function is to provide a trained person to rescue the child from danger, produce the child before CWC and place the child in a safe Home. It operates in 291 cities / districts in 30 states and union territories through a network of 540 partners. Established in 1996, till March, 2013, the organization has responded to 27 million calls from children facing crisis. An initiative which started as a project of a social work college in Mumbai, has grown and has been converted into a state supported programme of the Ministry of Women and Child Development, Government of India.

While cases of abandoned children, physical abuse and torture, drug addiction etc. are routine, of late there has been an increase in the number of cases of sexual assault.

Ms. Anuradha Vidyasagar, the Coordinator, in Chennai in her presentation expressed the anxiety which the social workers face after the POCSO Act has come into effect with its provision of mandatory reporting. The vulnerable children, while seeking a safe shelter, often confide about their sexual abuse, but they are extremely reluctant to report it to the police as they are afraid of the system. They confide in the social worker with trust and the provision of mandatory reporting amounts to betraying this trust, which is against the ethics of the organization. The child has a right to seek support and a safe environment and also has the right to privacy. The child wants to forget about the abuse and move on in life and not get caught into the legal rigmarole of the criminal justice system. However, the new Act does not allow the children to move on. It also creates problems for the social worker and the organization. The child, the individual social worker and the organization, are burdened by this provision of mandatory reporting as the law also prescribes punishment for non-reporting. She urged the government to examine this aspect and bring in necessary changes so that their work of providing crisis intervention support does not suffer.

Ms Audrey D'mello, Programme Director, **RAHAT and Manodhariya**, explained the context in which Majlis started the survivor support programme in 2011 and the process through which it was transformed into a collaborative project with the state. The question that the project tried to address was that even though there are schemes and support services available, how does a child victim of sexual abuse avail of them? Young children are thrown within the sinister web of the criminal justice system for no fault of theirs and then have to negotiate this daunting system on their own without any help, which is very scary. The project was started to provide the necessary handholding for the victim and her family while they negotiate the system. Examining the system from the victims perspective is important. Only then we will be able to bring necessary changes within it to make it responsive to the needs of children.

“While walking the difficult journey with the child victim, our aim is to identify the gaps and bring it to the notice of the key stake holders who are in a position to bring in the required changes. Our legal process serves to re-victimise a child from the vulnerable section of society. The victim cannot stay in the same place due to the stigma caused by the incident of abuse, she has to move, her entire family has to move and settle in a new place. The source of livelihood is lost for the entire family. The child drops out of school. Abuse related health problems crop up, the pregnancy and delivery add to this, the trauma of giving evidence in court, and facing cross examination from a hostile lawyer, in the presence of the accused, cause severe depression. All these cumulatively serve to render the child even more vulnerable. We need to create a system which can help to lessen this trauma even while following up the criminal case. RAHAT started as a pilot project in Mumbai. But the aim is to create a model that is workable, and which can be integrated within the Department of Women and Child so that care and rehabilitation become important components of the support programme”. There were some of the reflection of Majlis work presented by Audrey D'mello.

Ms. Rita Paniker, is the founder of **Butterflies**, an organization which started in 1989 to secure the rights of street children, and provides knowledge and skill to children so that they can exit out of the cycle of illiteracy and poverty. It has reached out to 3000 children through various interventions and has influenced the lives of over 44,000 children. The organization has actively participated through national and international networks for advocating and promoting policies, programmes



and activities to protect the rights of children. It adopts a non institutional, rights based and participatory approach and works through focused interventions.

Ms. Panicker was critical of the POCSO Act, and felt that the legislation was drafted in a haphazard manner. There are some provisions which are confusing and non implementable. How can FIRs be filed on a suspicion that something may happen in future, was her query. What is needed is care and protection and quality standards in protection and support services which will help the child much more than a law with its primary focus on punishment, she stated. She was also critical of television and film studios where large number of children come to participate in programmes. None of these have any child protection policy. Many times we view on television children being touched inappropriately but no one seems to mind this. We need to be far more alert about such tendencies and ensure that each place which employs children has a child protection policy in place.

**Arpan** is a programme based in Mumbai which works on prevention of child sexual abuse by creating awareness in schools and within communities. Started in 2006, So far it has reached out to around 66,000 children and over two lakhs of adults in Mumbai and Thane. It has evolved a child centric model and while the focus is on children, it also reaches out to adult survivors to prevent further re-victimisation, as well as to help them to heal. The programme empowers children, teachers, parents, NGO professionals and other care givers with knowledge, skill and attitude to prevent CSA and provides adequate support through trained therapists to children and adult survivors and their families.

Ms. Pooja Taparia, who is the founder, made a presentation on the study of media project of child sexual abuse based on 2000 reports published in the media from 2007 to 2011. She stated that the focus is primarily on contact abuse, while only very few cases of non-contact abuse are reported, though these far outnumber contact abuse cases. There is always an element of sensationalisation while reporting cases of sexual abuse of children. They also lack consistency and most often, they do not provide accurate information or data about the prevailing situation. Many times, the engagement with issue is of a fleeting nature. She felt that the media must have a longer engagement with cases which they report and follow them up till the final outcome to provide an accurate picture. There is also a need for greater coverage of cases in non-metro cities. The reports also need to maintain confidentiality and maintain the right balance between unambiguous reporting and over exposure.

**District Child Protection Unit:**

- DCPU shall maintain a register of names, addresses and contact details of all interpreters, translators and special educators of the District and share the same with the local police, SJPU, magistrate and special court. Rule 3(1)
- DCPU shall pay fees to the persons appointed to provide assistance/support to the child from the fund maintained under Juvenile Justice Act, 2000 or other funds as per the amount prescribed by State Government. Rule 3(6)



## **ACTION POINTS BY STAKEHOLDERS**

### **INVESTIGATION AGENCY**

- There is an urgent need for improving the infrastructure and providing the necessary budgets to comply with all the mandatory requirements as stipulated under the POCSO Act
- The DCPU must prepare a list of translators and special educators and provide the same to all police stations, CWCs and Sessions Courts. The fees for their services, as prescribed under the Act must also be stipulated and necessary budgetary allocations must be made.
- Under the POCSO Act, the Police must approach the Special Court directly for all purposes including remand and not go to the Magistrate Court.
- In cases of pornography, ensure the seizure of CD player, TV equipment and include the content of the CD, pen-drive, etc in the panchnama.
- Preferably, there should be one comprehensive statement of the child. If the statement is recorded over a period of time, a station diary entry should be made for the statements taken each time. This will ensure that the defence does not take objections to delay.
- Statements must be recorded using phrases and expressions used by the child. Even while explaining in legal language, use parenthesis to explain the vocabulary used by child so that there are no inconsistencies.
- The Maharashtra State Health Protocols regarding collection and maintenance of body fluids and chain of custody must be strictly followed.
- The police should not try to “settle” matters at their level. The common complaint continues to be that the police refuse to file an FIR. Strict action must be taken against such officers as per the provisions of S.166A of the IPC.
- There is an immediate need to provide training to the investigating officers and those recording statements of the child and the impact of such training must be strictly monitored to record the changes in the system.

### **HEALTHCARE PROFESSIONALS**

- Ms. Sujata Saunik, Principal Secretary, Public Health Department agreed to designate one Coordinator in all hospitals under the Public Health Department who shall be the point of contact in all cases of sexual violence. This coordinator shall be with the victim as soon as she comes to the hospital, guide her through the medical examination and ensure that all departments respond to her in a timely and effective manner. This will ensure that the victim does not have to wait endlessly when she comes to the hospital and she receives an effective response from doctors.
- Treatment should be provided free of cost to all victims of child sexual abuse in public hospitals in accordance with the amended law. Even tests such as X-ray, MRI etc. should be provided free of cost.

## **CHILD WELFARE COMMITTEE AND JUVENILE JUSTICE BOARD**

- The WCD shall conduct training for all CWC members on a regular basis, keeping in mind their requirements.
- WCD also agreed to review the vacancies in CWC at the earliest.
- CWC will maintain a resource directory of all Police Stations, NGOs, counselling centres, Special Educators, within its jurisdiction.
- WCD has permitted every CWC to appoint one data operator. This will assist the CWC in information collection, data collection of maintaining records. The WCD shall provide the remuneration for the data operator.

## **SPECIAL COURTS**

- Dr. Shalini Phansalkar Joshi agreed to ensure that a list of women JMFC / MM who would record the statement of the child under S. 164 CrPC would be issued for each district in Maharashtra, based on the circular that has been issued in Mumbai.
- Until adequate infrastructural provisions are made in the Court for recording the evidence of the child, Judges should improvise by using the existing infrastructure, such as a cupboard, curtain, etc. Judges may also record the evidence of the child in their chamber. This will ensure that the provisions of the Act are followed and the child is not traumatised.
- All questions during the cross examination must be given to the Judge in writing by the defence, and the Judge will then administer the relevant questions to the child, in accordance with Sakshi Guidelines.
- The child should not be called repeatedly to Court. Her examination in chief and cross examination should preferably be completed on the same day.

## VALEDICTORY

Ms. Alpa Vora, child protection specialist of UNICEF, while summing up deliberations of the two days highlighted that the POCSO Act has made a very clear distinction between legislation for children and adults. The core issue as the child friendly procedures stipulated in the Act are not a reality on the ground. Most victims already belong to disadvantaged sections and hence vulnerable. The abuse only serves to reinforce their vulnerability in several ways. The Mandodhairya scheme is an important measure introduced by the government to help the children overcome the vulnerability caused by the abuse. This is an important measure.

Several stakeholders have pointed to issues of lack of infrastructure and skills. These must be priority concerns for all Departments. A concerned convergent model needs to be in place, keeping the child victim at the centre of the justice process. Provisions in the Act which serve to re-victimise the child must be deleted so that the holistic nature of the support which is provided is not compromised. Interdependency and convergence are important. It is important to develop training modules and share the same with all stakeholders which will help to strengthen the protective environment.

Adv. Flavia Agnes, Consultant RAHAT, highlighted the usefulness of these deliberations which have helped to iron out many challenging aspects of evolving a convergent model. Every time, the Department of WCD is notified as a nodal agency for a new Act, it is important to call for meetings of this nature so that all stake holders can interact with each other and understand the roles, responsibilities and challenges facing each agency. While placing the child at the centre of our entire support system, it is also important to provide similar support mechanisms also to women victims of sexual violence as they too form the section of vulnerable victims. This is all the more necessary when we deal with victims with disabilities. She stated that the Manodhairya scheme has adopted the right approach and integrated the needs of women and child victims. We need to strengthen such initiatives.

Delivering the Valedictory Address, Mr. Ujjwal Uke, Principal Secretary, Department of Women and Child Development acknowledged that the buck stops with him and he cannot pass on the responsibility to anyone else. As the Principal Secretary, WCD, Government of Maharashtra, Acting Chairperson of the Maharashtra Child Rights Commission and also the Chairperson of the Integrated Child Protection Scheme, he assured the participants that he will do the best to actualize the suggestions which have come up during the deliberations.

The available financial resources will be put to optimum use to yield maximum benefits. He emphasized the need to move away from a conviction driven model and stated that it is not the quantum of punishment but certainty of punishment that will bring down crime rates. We need to work towards this end. A strong message must go out to society of zero tolerance to violence. Every protective measure to secure and safeguard the child will be adopted by the Government.





## LIST OF PARTICIPANTS

Shri. Mohit Shah Hon'ble Chief Justice, Bombay High Court

Shri. Justice V M Kanade Hon'ble Judge, Bombay High Court

Smt Shalini Phansalkar Joshi Registrar General, Bombay High Court

Smt. Ganediwala Jt Director, Judicial Academy

M. H. R. Patel HC Bombay

G. K. Rathod Registrar

Smt. C.A.Nathani Special Court Judge

Smt.S.K.S.Razavi Special Court Judge

Smt. V.V.Virkar Special Court Judge Thane

Shri. A.Z.Khwaja Special Court Judge Ahmednagar

Shri. S.L.Anekar Special Court Judge Amravati

Shri. P.Y.Kale Special Court Judge Sangli

Smt.Prachi P.Kulkarni Special Court Judge Pune

Shri. U.S.Pathan Special Court Judge Aurangabad

Smt.U.S.Phalke Special Court Judge Nashik

Shri. A.C.Chaphale Special Court Judge Yavatmal

Smt.J.G. Punawala JJB Judge Nashik

Shri. A.M. Samant JJB Judge Raigad

Shri. K.G.Chaudhari JJB Judge Pune

Smt. Gauri B. Jadhav JJB Judge Mumbai

Shri. S.S.Ghuge JJB Judge Thane

Ms. Roopsi Kanaujiya Special Court PP Mumbai

Smt. Gore Special Court PP Nashik

Smt. Ujjwala Pawar Special Court PP Pune

Shri. Vinod Kotecha Special Court PP Aurangabad

Shri. Sanjay Lone Special Court PP Amravati

Smt. S.P.Kobragade Special Court PP Nagpur

Shri. Pratap Jadhav Special Court PP Pune

Smt. Varsha Aaglave Special Court PP Nagpur

Shri. Satish S Patil Dy SP, PAW Pune

Ms. Shilpa Patil WPI Investigating Officer Dhule

Ms. V.V.Patil Investigating Officer Satara

Ms. Jagtap API Kolhapur Rural

Mr. Kasture PI Investigating Officer Beed

Shri. Ujjwal Uke, IAS Principal Secretary, WCD

Smt Sujata Saunik, IAS Principal Secretary, Public Health Department

Shri. A. N. Triparti Member Secretary MSCPCR

Smt Shoumita Biswas Member Secretary Maharashtra State Commission for Women

Shri. Rahul More, Deputy Commissioner, WCD

Ms. Kamlakar WAPI Nashik Rural

Mr. J.B.Palve API Investigating Officer Nandurur

Mr. U. B. Golde PI Investigating Officer Pune Rural

Mr. R. B. Shirsat API Amravati City

Mr. Hiredekar PI Amravati Rural

Mr. B. N. Bowar PI Investigating Officer Nagpur

Mr. Darade API Investigating Officer Sangli

Mr. Bhahmane API Investigating Officer Buldana

Mr. More PI Investigating Officer Gadchiroli

Mr. Kashid WAPI Investigating Officer Nashik City

Mr. S.S.Rasal PI Investigating Officer Hingoli

Mr. Yogesh Gavande Investigating Officer Jalna

Mr. Vivek Sonawane Investigating Officer Chandrapur

Ms. Namrata S Jagtap Investigating Officer

Mr. Rama Sadashu Investigating Officer Latur

Ms. Tegaswini Girsavale API Yavatmal

P V Bakshi Investigating Officer Ahmednagar

S B Shirsath Investigating Officer Omanabad

R V Wadyalkar Investigating Officer

K S Shaikh Investigating Officer Thane

M V Rathod Investigating Officer Aurangabad

R B Shnsal Investigating Officer Amravati

P D Itnare Investigating Officer

Ms. Aradhana Y Patil Investigating Officer Thane Rural

Actarsing Investigating Officer Jalgaon

Mr. Chandrakant Kakadae IO Solapur City

Mrs. Prabha Raut PI Investigating Officer Mumbai

Mr. AN Alawale API Investigating Officer

Ms. Mrudala Dighe Investigation Officer Mumbai

Mr. Sharad Gharade Investigation Officer

Ms. Archana Patil Investigating Officer Pune

Dr. T.H. Mane District Hospital Mumbai  
Dr. Ulhas Marulkar District Hospital Mumbai  
Dr. Pankaj Gajare District Hospital Nashik  
Dr. S.S. Latane District Hospital Pune City  
Dr. Santosh Nalwade District Hospital Pune  
Dr. M.S.Bari District Hospital Jalgaon  
Dr. J Deshmukh District Hospital Ahmednagar  
Dr. B R Pande MCGM KEM Hospital Mumbai  
Dr. Kamakshi Bhate MCGM KEM Hospital  
Dr. Pawan Sabale MCGM Nair Hospital  
Shri. Mahendra Hajari Deputy Secretary, WCD  
Shri. Sanjay Bagul WCD  
Shri. Deelip Hivarale WCD  
Shri. Gokul Deore D. WCD  
Shri. B T Pokharkar Dir. Dy. Comm. WCD  
Shri. Anand Khandagale CDPO, WCD  
Dr. Rajendra Pawar CWC Ahmednagar  
Ms. Aparna Rane CWC Ratnagiri  
Mr. Sanjay Sengar CWC Akola  
Adv. Sangita Bhakre CWC Akola  
Dr. Bedavkar Pritamkumar CWC Ahmednagar  
Mr. Kiran D More CWC Thane  
Ms. Sharda Talreja CWC Mumbai  
Ms. Saraswati Bagul Child Protection Society  
Ms. Aruna Kakade DCPU Mumbai  
Ms. Jyoti Sajay DCPU Pune  
Mr. Sitaram Kamble DCPU Parbhani  
Mr. Hemant Bhoyar DCPO Aurangabad  
Ms. Anuja Patre DCPO Amravati  
Mr. Bombelkar DCPO Yavatmul  
Ms. V Anuradhan Childline Chennai  
Ms. Chitra Acharya, Childline  
Ms. Shweta, Childline  
Mr. Sachin Bhagat Childline  
Mr. Harsh Mander Delhi  
Ms. Uma Subramanian Aarambh  
Ms. Karishma Gupta Action Aid  
Dr. Shah, Akshara  
Ms. Pooja Taparia, Arpan  
Ms. Sonali Parab, Arpan

Mr. Santosh Shinde Bal Prafulta  
Ms. Rita Panicker Butterflies Delhi  
Mr. R. S. Pavaskar CJSD Ahmednagar  
Ms. Roshini Nuggehali YUVA Exec Director  
Ms. Rakshanda Inam FACSE  
Ms. Vidya Apte FACSE  
Ms. Sangeeta Punekar FACSE  
Dr. Duru Shah Gynaecworld  
Ms. Enakshi Ganguli HAQ Delhi  
Mr. Sanjay Macwar IJM  
Ms. Cassandra Fernandes IJM  
Ms. Michelle Mendonca IJM  
Ms. Shalini Newbiggins IJM  
Mr. Aamir Khan, Indian Express  
Adv. Adrian Philips Justice and Care  
Ms. Nipa Bhaasah Leher  
Mr. Tanveer Nizam Perfect Relation  
Ms. Sanjeevani Kulkarni Prayas Pune  
Ms. Smita Singalkar, Sahyog Trust Nagpur  
Ms. Sanghmita Bhosale Special Cell  
Ms. Sneha Khandekar Gender Resource Centre  
Ms. Gayatri Datar Student Sion  
Mr. Ansari Shaheb Asian Age  
Ms. Divya Kanekar TISS  
Ms. Kamini Kapadia UNICEF  
Ms. Madhuri Kamat UNICEF  
Ms. Leela Patade Urja  
Mr. Vijay Kharat YUVA  
Ms. Anuradha Dhongre LPN Pune  
Mr. Manoj Patankar Kharsanta  
Ms. Saumya Uma, Law Researcher

## THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

### BRIEF HIGHLIGHTS OF THE ACT

The objective of the Act is to ensure a child's right to safety, security and protection from sexual abuse. It aims to protect children from inducement or coercion to engage in sexual activity and the exploitative use of children in prostitution and pornographic material. This comprehensive legislation will safeguard the interest of a child at every stage - from reporting, recording of evidence, investigation and trial of offences. The provision for establishment of Special Courts will ensure sensitive and speedy trial.

**Victim:** A child on whom a sexual offence has been committed or is likely to be committed is a victim. S.2 (d) defines a 'child' as any person (both male and female) below the age of 18 years.

**Accused:** An 'accused' can be a male and female, adult or child.

#### **Definitions of 'sexual offence' under the Act:**

**Penetrative Sexual Assault:** S.3 includes insertion, penetration, manipulation with the penis, or any other body part, or any object into the vagina, mouth, urethra or anus of a child. The depth of the insertion is not a criteria. (Oral sex i.e. applying one's mouth to the penis, vagina, anus and urethra also amounts to penetrative sexual assault.) Any person who does the above to the child or makes the child do the above to them self or any other person is liable to be punished under this Act.

**Aggravated Penetrative Sexual Assault:** S.5 states that if a 'person in authority' commits penetrative sexual assault s/he shall be punished under this section. It also states that if additional harm and injury is committed on a child during / after 'penetrative sexual assault' s/he shall be punished.

#### **Persons in Authority are:**

Police Officers  
Armed / Security Forces  
Public Servants  
Management / staff providing custody or care and protection (jail, remand home, observation home, protection home)  
Management / staff of hospitals  
Management or staff of educational or religious institutions  
Management or staff of institution providing services to the child  
Relative by blood, adoption, marriage, guardianship, domestic relationship or person living in same or shared household with the child  
Person in position of trust or authority in an institution or home of the child

#### **Additional Harm and Injury caused during / after the act**

Sexual offence committed on a child below 12 years of age  
Grievous hurt, bodily harm and injury or injury to sexual organs of the child  
Physically incapacitating the child or causing the child to become mentally ill or causing any permanent impairment  
Making the child pregnant  
Inflicting the child with HIV, any disease or infection  
Taking advantage of a child's mental or physical disability  
Act of committing sexual abuse over a prolonged period, repeatedly  
Harm or injury caused by the use of deadly weapons, fire, heated substance or corrosive substance  
Attempt to murder the child after the act  
Sexual offence committed during communal or sectarian violence  
Committed by a repeated offender  
Gang - two or more persons  
Parading the child naked after the act  
Sexual offence com

**Sexual Assault:** S.7 defines sexual assault as any physical contact. The act of touching a child with sexual intent which is non penetrative. Touching the vagina, penis, anus, breast of a child with sexual intent. Any person who does the above to the child or makes the child do the above to them self or any other person is liable to be punished under this Act.

**Aggravated Sexual Assault:** S.9 states that if a 'person in authority' commits sexual assault s/he shall be punished. It also states that if additional harm and injury is done to the child during / after 'sexual assault' s/he shall be punished. Refer above.

**Sexual Harassment:** S.11 Uttering any word, sound, gesture, exhibiting any body part, showing pornography with sexual intent, to attract the attention of the child, amounts to sexual harassment. Making a child exhibit any body part, stalking the child, threatening the use of pornographic media which involves the child or enticing a child for pornographic purposes shall be punished.

**Pornography:** S.13 prohibits the use of a child for pornographic purposes. Using a child on internet, electronic or printed media depicting sexual organs, showing sexual act or any kind of indecent or obscene representation of a child for personal or public distribution is punished.

S.15 states that storing pornographic media involving a child for commercial purpose is punished.

**Abetment:** S.16 defines abetment as instigating a person to commit an offence, getting involved in a conspiracy or aiding the commission of an offence. Abetting the above sexual offences is punishable.

**Attempt:** S.18 states that an attempt to commit any of the above mentioned offences is punishable.

**Mandatory Reporting:** S.19 (1) mandates any person who has knowledge of sexual offence committed or likely to be committed on a child, to report such offence to the Special Juvenile Police Unit (SJPU) or the local Police.

S.20 obligates management and staff of media, hotels, lodges, hospitals, clubs, studios and photographic facilities to report to the SJPU or the local police about any information or material on child sexual offences.

**Failure to record or report an offence:** Failure to report or record such offences is punishable under S.21. However, a child who fails to report the offence shall not be punished S.21 (3).

**Making a false complaint or giving false information:** Any person who makes a false complaint or gives false information relating to sexual offence committed or likely to be committed on a child to humiliate, extort, threaten, defame or victimize the child shall be punished under S.22 (1) & (3).

However a child who makes a false complaint or gives false information shall not be punished. S.22 (2)

Any person giving information in good faith shall not suffer any civil or criminal liability S. 19 (7)

**Confidentiality to be maintained by Media:** No person shall make any report or comment on any child victim without having authentic information, as this may lower the child's reputation and infringe her/his privacy S.23 (1).

Publishers, media, studio or photographic facility owners shall ensure that the identity of the child victim is not disclosed.

Identity of the child includes the family's identity, school, relatives, neighbourhood and other information. Information may be disclosed only with permission from the Special Court S.23 (2).

**Punishment under the Act:** All offences under POCSO Act, 2012 are triable by a Court of Sessions and are cognizable and non bailable. S.42 states that if an offence under this Act is clubbed with any other act or law, the punishment which is greater in degree will apply

### **Time Period to be observed by various agencies:**

- First Information Report: The police shall record an FIR immediately on receiving information about the commission of an offence, without waiting for the aggrieved person.
- Medical Examination: The police shall send the victim for medical examination within 24 hours of recording the FIR.
- Investigation: The police shall complete the investigation within 60 days from the date of recording the information. S. 173 (1-A) of CrPc
- Evidence of the child: The Special Court shall record the evidence of the child within 30 days of the court taking cognizance of the offence. Delay if any shall be recorded with reasons. S.35 (1)
- Trial: The Special Court shall conclude the trial within a period of one year of the court taking cognizance of the offence, as far as practicable. S.35 (2)
- Compensation: The State Government shall pay any compensation awarded by the Special Court within 30 days from the receipt of the order. Rule 7 (4)



Government of Maharashtra

# RAHAT

Socio-legal Support for Victims-Survivors of Sexual Violence  
Collaboration between Department of Women and Child  
Development and Majlis Legal Centre.



Legal Centre for Women

## 5 POINT SUPPORT MODEL\*

### 1 IMMEDIATE RESPONSE

- Meet the victim-survivor.
- Inform the survivor about the availability of services and schemes (public & private) which include counselling, shelter, education, vocational training, medical, legal aid, Manodharyia etc.

### 2 HELP

- Help the survivor access services and schemes she needs as mentioned above

### 3 ENSURE PROTOCOLS AND SAFETY

- Ensure that protocols and guidelines are followed by the Police, Hospitals, Public Prosecutor, Judge, Child Welfare Committee etc.
- In the event, that these protocols and guidelines are not adhered to by the stakeholders, highlight these lapses to the appropriate senior officers.
- Convey to the concerned Police and Doctors any fears, apprehensions or safety concerns that the survivor may have.

### 4 EXPLAIN & INFORM

- Explain to the survivor and her family further procedures and how the case will unfold.
- Read and explain all documents to the survivor and her family.
- Inform the survivor about the status of the case as it progresses including arrest, bail, filing of charge sheet, financial assistance approved, outcome of the case, Judgment and sentence awarded

### 5 COURT

- Conduct a court orientation visit for the survivor to familiarise her with the court and the flow of events during the deposition.
- Meet the survivor prior to the recording of her evidence, to read over all documents to her.
- Be present in court with the survivor during the recording of her evidence.

\* All intervention and support offered by RAHAT is based on the consent of the survivor.

## INITIATIVES BY DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT GOVERNMENT OF MAHARASHTRA

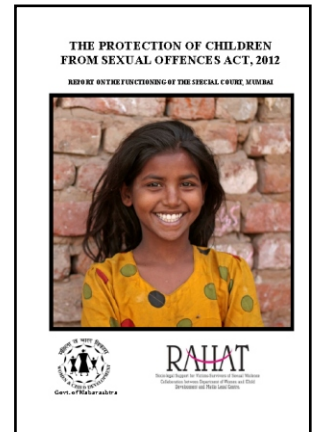
**MANODHARIYA** A scheme to restore the dignity and self confidence of victims of Rape, Child Sexual Assault and Acid Attack. To provide support to these women and children to help them to overcome the mental and physical trauma caused by the incident and to provide immediate financial support, as well as counseling, shelter, medical and legal assistance in order to rehabilitate them.

# RAHIAT

Socio-legal Support for Victims-Survivors of Sexual Violence  
Collaboration between Department of Women and Child  
Development and Majlis Legal Centre.

**RAHAT** A pilot in Mumbai initiated in March 2013 to provide social and legal support to women and children survivors To ensure convergence among state stakeholders – Police, Medical, Forensic, Prosecution, Judiciary and WCD To ensure state accountability with regard to Dignity of victims To evolve protocols, guidelines, best practices and ensure its implementation

**STUDY OF THE FUNCTIONING OF THE SPECIAL COURT (POCSO COURT) IN MUMBAI** On completion of one year of the Protection of Children from Sexual Offences (POCSO) Act, 2012, RAHAT conducted a study on behalf of the Maharashtra Commission for Protection of Child Rights (MCPCR) titled, “Study of the Functioning of Special Courts in Mumbai”. The report highlighted the lacuna in implementation of the Act and difficulties faced by victims in spite of the new legislation. The Report was submitted by the Principal Secretary, WCD and Acting Chairperson, MCPCR as a confidential document to the Chief Justice of the Bombay High Court in order to ensure that the Chief Justice initiates corrective measures in this regard. As a follow up to this report we have we submitted ‘**Guidelines for the Functioning of Special Courts for Women and Children in cases of sexual violence in Maharashtra**’.



**TRAINING FOR MUMBAI POLICE** RAHAT conducted workshops for Police Officers who are assigned the task of recording the statement of the victim. The purpose of this day long workshop was to provide the officers knowledge of the provisions of the new Act. More importantly, it is aimed at creating a victim friendly environment at the Police Station and ensuring that the dignity of the victim is maintained at all times. Under this programme we interacted with over 700 Police Officers.



