

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION****WRIT PETITION (CIVIL) NO. 427 OF 2022****BACHPAN BACHAO ANDOLAN****...APPELLANT(S)****VERSUS****UNION OF INDIA & ORS.****...RESPONDENT(S)****J U D G M E N T****S. RAVINDRA BHAT, J.**

1. The enactment and bringing into force of The Protection of Children from Sexual Offences Act, 2012 (hereafter ‘Act’ or ‘POCSO Act’) was not merely in furtherance of this country’s commitment to international instruments, but its resolve to and attempt at creating a world as secure and as free from fear, for the most innocent and vulnerable section of its citizens, i.e., children and young adults. Behaviour - physical, verbal, and non-verbal, ranging from what discomfits a child to as horrifying as rape and physical sexual abuse have been criminalized. Special mechanisms to provide access to the justice delivery system, and ensure speedy justice, have been devised. Yet, a society’s commitment to such a cause does not cease by mere enactment of any law, but its willingness, and those governing and administering it, to create and ensure *effective overall frameworks* which support and strengthen its institutions.

2. The present writ petition, arose from the strife caused to an individual victim in her painstaking struggle for justice while navigating the police, investigation stage, and court processes, for the prosecution of an offence under the POCSO Act. At numerous stages, she was revictimized, and faced severe hardships; the issues arising from the individual case, have been dealt with by way of continuing mandamus, wherein this court through a series of orders has monitored the aspects requiring special attention. During those proceedings, it was noticed that the role of a ‘support person’ as envisaged<sup>1</sup> in the Protection of Children from Sexual Offences Rules, 2020 (hereafter ‘POCSO Rules, 2020’), despite being a progressive step – remains unfulfilled, or is given effect to, in a partial or *ad-hoc* manner, thus limiting its positive potential in offering support to victims and their families.

3. From the point of registering an FIR/complaint under the POCSO Act, the victim and their family are required to interact with the police machinery, medical officers and hospitals, the Magistrate, Special Court and/or Juvenile Justice Board (hereafter ‘JJB’), the concerned Child Welfare Committee (hereafter ‘CWC’), and other stakeholders – which in itself can be daunting and overwhelming (over and above the already traumatic experience of the crime itself), often dissuading them from pursuing the case altogether. Noticing the need for support at various stages, the role of a ‘support person’ was institutionalised in the POCSO Rules, 2020, to fill this lacuna:

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<sup>1</sup>Introduced first in the Protection of Children from Sexual Offences Rules, 2012 which has since been repealed and substituted by the far more detailed Protection of Children from Sexual Offences Rules, 2020.

**“2. Definitions.—**(1) *In these rules, unless the context otherwise requires,—*

*[...]*

(f) *“support person” means a person assigned by the Child Welfare Committee, in accordance with sub-rule (7) of rule 4, to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act;*

**4. Procedure regarding care and protection of child.—**

*[...]*

(8) *The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and child’s parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, and shall immediately inform the SJPU or Local Police about providing a support person to the child.*

**5. Interpreters, translators, special educators, experts and support persons.—**

*[...]*

(6) *Support person may be a person or organisation working in the field of child rights or child protection, or an official of a children’s home or shelter home having custody of the child, or a person employed by the DCPU:*

*Provided that nothing in these rules shall prevent the child and child’s parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.”*

Clearly delineating the scope of assistance to be rendered by a support person, the Rules also stipulate that if the CWC, in contravention of its duties fails to appoint one, or for whatever reason, the child victim and their family wish to engage someone else, they are free to seek assistance from a qualified support person externally [ref: proviso to Rule 5(6)]. Termination of their services, for whatever reason, is also covered under Rule 4(11).

4. A support person is to provide information, emotional and psychological support, and practical assistance which are often crucial to the recovery of the

child. This can go a long way in helping them cope with the aftermath of the crime and with the strain of any criminal proceedings – in many ways a support person, acts as guardian *ad litem* for the child.<sup>2</sup> The specific roles and responsibilities, that are expected to be fulfilled are as follows:

**4. Procedure regarding care and protection of child.–**

[...]

(9) *The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he or she has access and shall keep the child and child's parent or guardian or other person in whom the child has trust and confidence, informed regarding the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. The Support person shall also inform the child of the role the Support person may play in the judicial process and ensure that any concerns that the child may have, regarding child's safety in relation to the accused and the manner in which the Support person would like to provide child's testimony, are conveyed to the relevant authorities.*

(12) *The CWC shall also seek monthly reports from support person till the completion of trial, with respect to condition and care of child, including the family situation focusing on the physical, emotional and mental wellbeing, and progress towards healing from trauma; engage with medical care facilities, in coordination with the support person, to ensure need-based continued medical support to the child, including psychological care and counseling; and shall ensure resumption of education of the child, or continued education of the child, or shifting of the child to a new school, if required.*

(13) *It shall be the responsibility of the SJPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.*

(14) *SJPU or the local police shall also inform the child and child's parents or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act or any other law for the time being applicable as per Form-A. It shall also complete the Preliminary Assessment Report in Form B within 24 hours of the registration of the First Information Report and submit it to the CWC.*

(15) *The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:-*

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<sup>2</sup>Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012, issued by the Ministry of Women and Child Development, Government of India, p. 50. <<https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>> (last accessed on 15.08.2023).

- (i) the availability of public and private emergency and crisis services;
- (ii) the procedural steps involved in a criminal prosecution;
- (iii) the availability of victim's compensation benefits;
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
- (v) the arrest of a suspected offender;
- (vi) the filing of charges against a suspected offender;
- (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;
- (viii) the bail, release or detention status of an offender or suspected offender;
- (ix) the rendering of a verdict after trial; and (x) the sentence imposed on an offender.

**5. Interpreters, translators, special educators, experts and support persons.—**

[...]

(10) The interpreter, translator, special educator, expert, support person or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest and shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973 (2 of 1974).

(11) In proceedings under section 38, the Special Court shall ascertain whether the child speaks the language of the court adequately, and that the engagement of any interpreter, translator, special educator, expert, support person or other person familiar with the manner of communication of the child,

(12) Any interpreter, translator, special educator, expert or support person appointed under the Act shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872 (1 of 1872).

**10. Procedure for imposition of fine and payment thereof.—**

(1) The CWC shall coordinate with the DLSA to ensure that any amount of fine imposed by the Special Court under the Act which is to be paid to the victim, is in fact paid to the child.

(2) The CWC will also facilitate any procedure for opening a bank account, arranging for identity proofs, etc., with the assistance of DCPU and support person.”

5. In addition to maintaining confidentiality of all information, and addressing the concerns of the child and family, the support person is responsible for accompanying the child during recording of statement, medical

examination, depositions<sup>3</sup>, and to assist in all other interactions at the investigation, pre-trial, and trial stage. The support person is to make available public or private emergency and crisis services; ensure availability of free legal aid; provide assistance with navigating the victim compensation scheme; track the status of investigation, arrest, and filing of charges of the accused person; follow the dates of the court proceedings to enable the victim or family to attend as required; and be abreast of any other developments such as grant of bail, detention status, etc. of the accused.

6. A support person – whether involved from the early stages of lodging a report or brought on board shortly thereafter - can play a tremendous role in offering encouragement, reassurance, and guidance, merely from their knowledge of the legalese, armed with a compassionate child-friendly approach. Their potential in providing moral support and guidance, which directly translates to better and more just outcomes both in terms of prosecution, and rehabilitation, cannot be overstated. To fulfil their role as envisaged, their primary focus, must be the child's immediate care and protection, and to play the role of a helpful intermediary between the child, its family/guardian, and the various institutional stakeholders and authorities. In these interactions, the support person, should bear in mind the principles enunciated in Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 while engaging with the child victim, and their families. These include – the principles of

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<sup>3</sup>The importance of a support person accompanying the child victim at the time of recording statement and deposition, has also been recognised in the Witness Protection Scheme, 2018.

dignity and worth, participation, best interest, safety, positive measures, non-stigmatising semantics, non-waiver of rights, equality and non-discrimination, and right to privacy and confidentiality.

7. There are numerous aids prepared, to help in understanding the role of the support person, and how to maximise their impact. The Ministry of Women and Child Development released the *Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012*<sup>4</sup> (hereafter ‘*Model Guidelines*’) which offers detailed guidance for the use of professionals and experts under the POCSO Act (albeit issued in 2013, i.e., prior to the POCSO Rules, 2020). Similarly, another useful resource tailored specifically for the use of support persons, is the ‘Handbook for Support Persons 2021 – Assisting Child Victims of Sexual Violence’<sup>5</sup> which is a handy open access resource, available for download from the internet. These resources, comprehensively elucidate child-friendly best practices, and explain what *not* do, as a support person, in a lucid and accessible manner.

8. It is pertinent to mention that the POCSO Rules, also contain ‘Form-A’ which as per Rule 4(14) is to be handed over to the child victim, parents/guardian, or any other person in whom the child trusts, to inform them of the entitlements the child victim must receive as information and services. This form re-emphasises the importance of a support person in each case, and is

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4<<https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>> (last accessed on 15.08.2023).

5Published by Enfold, Prerana and UNICEF, this handbook was launched on 10.03.2022, and is available on open access terms: <[https://enfoldindia.org/wp-content/uploads/2022/03/Handbook-for-Support-Persons-2021-Released-on-10\\_3\\_2022.pdf](https://enfoldindia.org/wp-content/uploads/2022/03/Handbook-for-Support-Persons-2021-Released-on-10_3_2022.pdf)> (last accessed on 15.08.2023).

also indicative of the stages at which such a support person can play a role in:

**FORM-A**

**Entitlement of children who have suffered sexual abuse to receive information and services**

1. To receive a copy of the FIR.
2. To receive adequate security and protection by Police.
3. To receive immediate and free medical examination by civil hospital/PHC etc.
4. To receive Counseling and consultation for mental and psychological well being
5. For Recording of statement of child by woman police officer at child's home or any other place convenient to child
6. To be moved to a Child Care Institution where offence was at home or in a shared household, to the custody of a person whom child reposes faith.
7. For Immediate aid and assistance on the recommendation of CWC.
8. For being kept away from accused at all times, during trial and otherwise.
9. To have an interpreter or translator, where needed.
10. To have special educator for the child or other specialized person where child is disabled.
11. For Free Legal Aid.
12. For Support Person to be appointed by Child Welfare Committee.
13. To continue with education.
14. To privacy and confidentiality.
15. For list of Important Contact No.'s including that of the District Magistrate and the Superintendent of Police.

(emphasis

supplied)

9. The specific Rules discussed hereinabove, read with 'Form – A', confirm that the availability of services of a support person is not merely directory or suggestive – but a legal *entitlement*. While this framework created by the Rules, in furtherance of supporting victims of child abuse under the POCSO Act, is truly laudatory, it also requires proactive action from the State to shore up infrastructure and train human resources, accordingly – to bridge the gap between this entitlement on paper, and on-ground reality. This court in



*Alarming Rise in the Number of Reported Child Rape Incidents, In re*<sup>6</sup>, recorded that as per the Supreme Court Registrar's report prepared in November 2019, a support person had been appointed only in 4% of POCSO cases. Much is yet to be done, therefore, for a declaration by this court of the *mandatory* nature of the appointment of support person (subject only to the consent of the child, guardian, or the person in whom the child trusts, as the case may be), to carry any weight. It is necessary that steps are taken to ensure that the POCSO Act and the mechanisms it creates, are functioning and effective.

10. The existing monitoring framework is spelt out in Rule 12, which is extracted below, for the ease of reference:

***“12. Monitoring of implementation of the Act.—***

*(1) The National Commission for the Protection of Child Rights (hereafter referred to as “NCPCR”) or the State Commission for the Protection of Child Rights (hereafter referred to as “SCPCR”), as the case may be, shall in addition to the functions assigned to them under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), perform the following functions for implementation of the provisions of the Act—*

*(a) monitor the designation of Special Courts by State Governments;*

*(b) monitor the appointment of the Special Public Prosecutors by the State Governments;*

*(c) monitor the formulation of the guidelines described in section 39 of the Act by the State Governments, for the use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child, and to monitor the application of these guidelines;*

*(d) monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Centre and State Governments, for the effective discharge of their functions under the Act;*

*(e) monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular*

*intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act.*

*(f) call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.*

*(g) collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes provided under the Act, including information on the following:-*

*(i) number and details of offences reported under the Act;*

*(ii) whether the procedures prescribed under the Act and rules were followed, including those regarding timeframes;*

*(iii) details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,*

*(iv) details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case;*

*(h) use the information so collected to assess the implementation of the provisions of the Act. The report on monitoring of the Act shall be included in a separate chapter in the annual report of the NCPCR or the SCPCR.*

*(2) The concerned authorities mandated to collect data, under the Act, shall share such data with the Central Government and every State Government, NCPCR and SCPCRs.”*

11. In view of what is required under the POCSO Rules, this court hereby issues the following directions:

In furtherance of the mandate of Section 39 of the POCSO Act<sup>7</sup>, the Principal Secretary to the Department of Women and Child Welfare, in the State of Uttar Pradesh shall convene a meeting within the next six weeks to review the facts, take action, and frame rules/guidelines as necessary, on the following:

- i. Assess capabilities in the state with respect to the support persons ecosystem for the selection, appointment, need for special rules/guidelines/Standard Operating Procedure in regard to their

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<sup>7</sup>“Section 39. Guidelines for child to take assistance of experts, etc.- Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.”

- appointment/empanelment, training, career advancement and terms and conditions of employment;
- ii. To achieve the purpose in (i) above, require the presence of the Chairperson, of the State Commission for the Protection of Child Rights (SCPCR), Secretary, State Legal Service Authority, senior-most President of a JJB and senior-most Chairperson of a CWC in the state, and a representative from the State Commission for Women;
  - iii. Prior to this meeting, details may be called from each District Child Protection Unit (DCPU), as to the list of support persons maintained by it as per Rule 5(1) – which is to include the names of persons or organisations working in the field of child rights or child protection, officials of children’s homes or shelter homes having custody of children, and other eligible persons employed by the DCPU [as prescribed under Rule 5(6)];
  - iv. After due consultations, frame such rules, or guidelines, as are necessary, relating to the educational qualifications and/or training required of a support person [over and above the stipulation in Rule 5(6)], and parameters to identify the *eligible* institutions or NGOs in the state, which can be accredited to depute qualified support persons, and consequently be added to the District Child Protection Unit (DCPU) directory as contemplated in Rule 5(1);
  - v. Ensure that the DCPU or CWC, as the State authorities may deem fit, is tasked with conducting periodic training for all support persons in the DCPU directory to impart knowledge not only on the Act, Rules, and the legal and court procedures involved in prosecuting a POCSO case, but also more fundamentally on communicating and assisting the children of various ages and backgrounds, with the sensitivity it the role demands;
  - vi. In the guidelines framed, ensure that a reporting mechanism through appropriate formats are prepared, to enable the support persons to send monthly reports as per Rule 4(12) to the concerned CWC, which

- should then be compiled and sent to the SCPCR, and the state government;
- vii. Prepare a framework, in the form of a Standard Operating Procedure (SOP) to ensure proper implementation of Rule 12 of the POCSO Rules, 2020, for reporting by the respective CWCs on the specific heads of information collected by them, on monthly basis. This shall include the number of cases, where support persons have been engaged in trials and inquiries throughout the state. The information should also reflect whether they were from the DCPU directory, or with external help from an NGO. Such list shall be reviewed on monthly basis by the SCPCR;
  - viii. The SOP prepared, and guidelines framed, are to be communicated to all JJBs and CWCs within a week of its preparation;
  - ix. Lastly, it is important to acknowledge that support persons who are independent trained professionals, would need to take up tasks which require intensive interactions in often, hostile environments, and consequently deserve to be paid adequate remuneration. Therefore, though the Rules<sup>8</sup> state that such personnel should be paid equivalent to a skilled worker as per the Minimum Wages Act, 1948, this court is of the opinion that the remuneration paid for the duration of the work, should be commensurate to the qualifications and experience of these independent professionals, having regard to the salaries paid to those with comparable qualifications employed by the government, in PSUs, or other institutions run by the government (e.g. hospitals), and this too may be considered in the meeting to be convened by the Principal Secretary.

The *Model Guidelines* (supra) issued by the Ministry of Women and Child Development, Government of India, albeit prepared prior to the amended

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<sup>8</sup>As per the Rules, the support persons listed in the District Child Protection Unit directory are to be remunerated emoluments equivalent to a skilled worker as per the Minimum Wages Act, 1948 from the funds maintained under Section 105 of the Juvenile Justice (Care and Protection of Children) Act, 2015 or from other funds placed at the disposal of the DCPU [ref: Rule 5(7) and (8) of POCSO Rules, 2020].

POCSO Rules, 2020, may offer some assistance in the framing of guidelines as directed above.

12. In crimes against children, it is not only the initiating horror or trauma that is deeply scarring; that is aggravated by the lack of support and handholding in the days that follow. In such crimes, true justice is achieved not merely by nabbing the culprit and bringing him to justice, or the severity of punishment meted out, but the support, care, and security to the victim (or vulnerable witness), as provided by the state and all its authorities in assuring a painless, as less an ordeal an experience as is possible, during the entire process of investigation, and trial. The support and care provided through state institutions and offices is vital during this period. Furthermore, justice can be said to have been approximated only when the victims are brought back to society, made to feel secure, their worth and dignity, restored. Without this, justice is an empty phrase, an illusion. The POCSO Rules 2020, offer an effective framework in this regard, it is now left to the State as the biggest stakeholder in it – to ensure its strict implementation, in letter and spirit.

13. The State of Uttar Pradesh is hereby directed to file a report of compliance of these directions on or before 04.10.2023. The Ministry of Women and Child Development, Government of India, is requested to bring this judgment to the notice of the NCPCR, which in turn is directed to file – in furtherance of its obligation under Rule 12(1)(c) – a consolidated status report outlining the progress of all States in framing of guidelines as prescribed under

Section 39 of the POCSO Act, by 04.10.2023. The Union of India and the NCPCR shall also file an affidavit in this regard before 4.10.2023. A copy of this order shall be marked directly by the Registry to the Union Secretary, Department of Women and Child Development and Chairperson NCPCR, for necessary action.

14. List the writ petition next on 06.10.2023.

.....J.  
[S. RAVINDRA BHAT]

.....J.  
[ARAVIND KUMAR]

**NEW DELHI,  
AUGUST 18, 2023.**