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GOVERNMENT OF INDIA
भारत सरकार



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Subject: Seeking comments/ inputs on the draft guidelines with respect to Support Persons under Section 39 of the POCSO Act

The Hon'ble Supreme Court in the case titled "We the Women of India vs. Union of India &Ors. Writ Petition(s) (Civil) No(s) 1156/2021 and in Writ Petition No.427 of 2022 titled Bachpan Bachao Andolan vs. Union of India" has passed an order dated 09.10.2023 wherein the Hon'ble Court has directed the National Commission for Protection of Child Rights to formulate Model Guidelines with respect to Support Persons under Section 39 of the POCSO Act in consultation with the State Governments and Union Territories.

Accordingly a draft of the said Model Guidelines have been prepared. Suggestions are invited by NCPCR from the public on the draft guidelines on or before 30.11.2023 on email id : ms.ncpcr@nic.in .

Regards,

Sd/-
(Rupali Banerjee Singh)

**NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
JANPATH, NEW DELHI**

**DRAFT MODEL GUIDELINES WITH RESPECT TO SUPPORT PERSONS
UNDER SECTION 39 OF POCSO ACT**

2023

Chapter -1 Introduction

1.1 Context:

The Hon'ble Supreme Court in the case titled **“We the Women of India vs. Union of India &Ors. Writ Petition(s) (Civil) No(s) 1156/2021 and in Writ Petition No.427 of 2022 titled Bachpan Bachao Andolan vs. Union of India”** has passed an order dated 09.10.2023 wherein the Hon'ble Court has directed the National Commission for Protection of Child Rights to formulate Model Guidelines with respect to Support Persons under Section 39 of the POCSO Act in consultation with the State Governments and Government of the Union Territories. Further, the Hon'ble Court has also directed vide its order that the State and the Union Territories shall also frame Rules on the basis of the aforesaid model guidelines.

The Hon'ble Supreme Court of India has opinionated that the need for support person should not be left to the discretion of the parents; in all cases, the option of availability of support person and right to claim the assistance of such support person should be made known to the victim's parents. Further, the Hon'ble Supreme Court has also opinionated that the State has an obligation to provide support persons to POCSO victims which cannot be made optional unless there are good reasons recorded by the CWC in its order, the familiarity of support persons is mandatory. Therefore, the guidelines have been cautiously framed as to include the essential components and basic mechanism involved for engaging of a support person as mandated under Section 39 of the POCSO Act, 2012 to address the ambiguity in understanding

of the process and steps to be followed for engaging the same. Further, these guidelines shall also put in place a key framework for a uniform educational standard, duration of engagement of a support person, appropriate remuneration etc.

Chapter - 2

PRINCIPLES UNDER POCSO ACT, 2012

The fundamental guiding principles as laid down in various international instruments and in the Preamble to the POCSO Act, 2012. All the State Governments, the Child Welfare Committee, the Police, the Special Courts, all other Government functionaries as well as Non-Government Organisations, all professionals and experts assisting the child at the trial and pre-trial stages are bound to abide by these principles.

These principles as laid down under the POCSO Act, 2012 are:-

a) Right to life and survival -Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect; and to a chance for harmonious development and a standard of living adequate for physical, mental, spiritual, moral and social growth. In such cases where a child is traumatized and is a victim to an offence, it is necessary that every step should be taken to enable the child to enjoy healthy development.

b) The best interests of the child - Every child has the right to have his/her best interests given primary consideration. This includes the right to

protection and to a chance for harmonious development. Protecting the child's best interests means not only protecting the child from secondary victimisation and hardship while involved in the justice process as victim or witness, but also enhancing the child's capacity to contribute to that process.

c) The right to be treated with dignity and compassion - Child victims should be treated in with utmost care and in a sensitive manner throughout the judicial process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. Interference in the child's private life should be limited to the minimum needed and information shared on a need to know basis. Efforts should also be made to reduce/avoid further hardship to the child throughout by maintaining a child-friendly environment. All interactions should also take place in a language that the child uses and understands. Medical examination should be ordered only where it is necessary for the investigation of the case and is in the best interests of the child and it should be minimally intrusive.

d) The right to be protected from discrimination - The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste and socio-economic condition, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences. Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, according to his/her age and level of maturity.

e) The right to special preventive measures – Children may already face twice as much risk of repeated victimisation as adults because they often are or are perceived by a potential offender as being vulnerable, unsure of how to defend themselves or unable to properly assert themselves and take a strong position against an adult. A preventive measure that could be used to protect children is to demand references and a criminal background assessment before hiring personnel likely to work with children, such as schoolteachers.

f) The right to be informed-There are two aspects of child victims and witnesses right to be informed. The first aspect is the more general one and consists of informing child victims and witnesses about the assistance they are entitled to, the way legal proceedings are organized and the role they can play in those proceedings if they decide to do so. The second aspect is more specific and relates to information on the particular case in which the child is involved: it implies being informed about the progress of the case, about the scheduling of the proceedings, about what is expected of the child, about the decisions rendered, about the status of the offender, and so forth.

g) The right to be heard and to express views and concerns-Every child has the right to be heard in respect of matters affecting him/her. The child has a right to participate at all levels: being informed, expressing an informed view, having that view taken into account, and being the main or joint decision maker. When, for any good reason, the requirements and expectations of the child cannot be met, it needs to be explained to the child, in a child-friendly way, why certain decisions are made, why certain elements or facts are or are not discussed or questioned in Court and why certain views are not taken into

consideration. It is important to show respect for elements that a child finds important in his/her story, but which are not necessarily relevant as evidence.

h) The right to effective assistance–The child must receive the required assistance to address his/her needs and enable him/her to participate effectively at all stages of the justice process. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child’s healing, as well as for justice and reintegration.

i) The right to privacy–The child’s privacy and identity must be protected at all stages of the pre-trial and trial process. The release of information about a child victim or witness, in particular in the media, may endanger the child’s safety, cause the child intense shame and humiliation, discourage him from telling what happened and cause him severe emotional harm. Release of information about a child victim or witness may put a strain on the relationships of the child with family, peers and community, especially in cases of sexual abuse. In some cases it might also lead to stigmatization by the community, thereby aggravating secondary victimization of the child. There are two essential ways of protecting the privacy of child victims and witnesses: firstly, by restricting the disclosure of information on child victims and witnesses and secondly, by restricting the attendance of the general public or non-essential persons in courtrooms.

j) The right to be protected from hardship during the justice process - Throughout the justice process, child victims are exposed to hardship, also referred to as secondary victimization: this can occur while reporting the

crime and recounting what has happened, while awaiting trial and while testifying in court. The judicial process is a very stressful one for the child; as far as possible, any stress the child may have as a result of the process should be minimized.

k)The right to safety-Where the safety of a child victim may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child.

l) The right to compensation- The child victim may be awarded compensation for his/her relief and rehabilitation. This compensation may be awarded at an interim stage, during the pendency of trial, as well as at the conclusion of the trial. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive. Victims may be repaid for material losses and damages incurred, receive medical and/or psychosocial support and obtain reparation for ongoing suffering.

CHAPTER - 3

SUPPORT PERSONS AS UNDER SECTION 39 OF POCSO ACT

3.1 Objective

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is a special law which has been formulated to deal with cases pertaining to child sexual abuse. POCSO Act, 2012 is a comprehensive law and provides for the legal provisions for the protection of children below 18 years of age from sexual abuse, exploitation and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The responsibility of supporting children who have been sexually abused or have been a victim of abuse should be embraced by the whole community. Therefore, the professionals who are working in this field play a key role in enabling the healing process. Section 39 of the said Act, categorically talks about the guidelines for child to take assistance of experts, etc. The same is reproduced below: -

“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 organizations, 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.”

The key objective of Support Persons under the Protection of Children from Sexual Offences (POCSO) Act, 2012 is to provide an emotional and psychological support to child victims during the legal proceedings and further in ensure their well-being and protection.

These individuals play a crucial role in helping children to cope with the legal system and to provide them with the support they need to effectively testify against their offenders.

Further, a support person shall be assigned by a Child Welfare Committee, in accordance with sub-rule (8) of rule 4, in order to render assistance to the child throughout the process of investigation and trial, or any other person who is assisting the child in the pre-trial or trial process in respect of an offence under the Act.

3.2: QUALIFICATION AND APPOINTMENT OF SUPPORT PERSONS:

3.2.1: Qualification for support person:-

Any person with a post graduate degree in Social Work or Sociology or Psychology or Child Development OR a graduate with minimum three years of experience in child education and development or protection issues.

3.2.2: PROCESS FOR EMPANELMENT OF SUPPORT PERSONS:

- i. ADVERTISEMENT:** For the purpose of empanelment or engagement of Support Persons, an advertisement may be published on the official website as well as leading newspaper for purpose of calling applications.

- ii. **SCRUTINY OF APPLICATIONS:** For the purpose of short-listing of the eligible candidates, the DCPO shall scrutinize eligible applications meeting the criteria and further call the eligible candidates for a personal interview.
- iii. **SELECTION COMMITTEE:** For the purpose of conducting personal interviews, a Selection Committee shall be formulated comprising of –
 - i. Ld. Special Judge (POCSO)
 - ii. District Magistrate or his representative not below the rank of Additional District Magistrate.
 - iii. Chairperson, Child Welfare Committee
 - iv. Subject Expert –
 - i. Head of Government District Mental Health Program/HOD of Government College Psychology/Sociology Department.
 - ii. District Education Officer, Principal DIET, CMHO, Renowned Experts in the field of Psychiatry and Psychology.
 - v. DCPO ; as the Convener of the Committee
- iv. **INTERVIEW:** All the short-listed eligible candidates shall be called for a personal interview which shall be conducted by the aforestated Selection Committee. The Selection Committee shall evaluate on the basis of qualification and experience of working with children and personal interaction of the applicant and

recommend a panel of the names for the position of Support Persons.

v. SELECTION/EMPANELMENT: The DCPO shall empanel the selected candidates on the recommendations of the aforesaid Selection Committee.

vi. TERM OF ENGAGEMENT/EMPANELMENT: The selected Support Persons shall be engaged for a period of three years which shall be yearly reviewed by the DCPO and shall be extended on the basis of the review cum recommendation conducted by the DCPO only after approval by the District Magistrate.

vii. REMUNERATION OF SERVICES OF SUPPORT PERSONS: The Support Person shall submit a report at the end of each month to the DCPO for review and remuneration. The Remuneration for the services of a support person whose name is enrolled in the register maintained under rule 5(1) or otherwise, shall be made by the State Government from the Fund maintained under Section 105 of the Juvenile Justice Act, 2015 (2 of 2016), or from other funds placed at the disposal of the DCPU.

Any support person engaged for the purpose of assisting a child under this Act, shall be paid monthly remuneration which shall be prescribed by the State Government, but which, shall not be less than the amount prescribed for a skilled worker under the Minimum Wages Act, 1948 (11 of 1948)

viii. RATIO FOR EMPANELMENT OF SUPPORT PERSONS: The empanelment of Support Persons shall be in the Ratio of 1:5 or as per the number of cases in each district. However the Support Persons shall not be handling more than 5 cases at a time.

3.2.3: DUTIES OF DCPO FOR MAINTAINING DATABASE OF SUPPORT PERSONS:

- i. The District Child Protection Officer shall list the details of all the Support persons engaged/empanelled by the said district on the NCPDR's "**POCSO Tracking Portal**" for maintaining all India database of Support persons. Further, the DCPU shall also be responsible to enlist and delist the details of Support Persons on the Commission's portal who have been freshly engaged or have been terminated from the services.
- ii. The DCPU shall also be responsible to update and maintain the records of support persons along with the assigned cases on the designated portal.

3.2.4: PROCEDURE FOR ASSIGNING OF CASES AS SUPPORT PERSONS BY CWC:

Any person, who has been appointed and engaged as a support person by the DCPU, shall be assigned cases as a support person by the Child Welfare Committee. Such assignment shall be made -

- i. in accordance with sub-rule (7) of rule 4, to render assistance to the child through the process of investigation and trial, or to any

other person assisting the child in the pre-trial or trial process in respect of an offence under the Act;

- ii. 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.

3.3: DUTIES OF SUPPORT PERSONS:

The child and family should be protected from external pressure and supported in their journey within the criminal justice system. A trained support person can ease the child and family's journey through the criminal justice and child protection systems. As the support person can provide information and updates the child and his family from time to time, facilitates emotional and psychological support and assists with rehabilitation. Hence, the support person becomes a vital liaison between stakeholders, the child and the family by assisting them through the various stages of the case.

The duties of Support persons are:-

- a. Maintain confidentiality of all information pertaining to the child
- b. Addressing any concerns, the child and the family have.
- c. Accompany the child during statement recording, medical examination and trial.

- d. From the day support person is appointed, it is his duty to provide the child with medical assistance and treatment, counselling to come out of the trauma, and inform the victim about the availability of the legal aid assistance through DLSA or DCW, and the provision of interim compensation for medical and other expenses.
- e. Address safety concerns that the child may have concerning the accused.
- f. For a child without parental/familial support, the support person can play the major role by providing the assistance and access to protection, rehabilitation, reintegration, healing and justice to the child by informing and getting recommendations from CWC and concerned authorities.
- g. Provide information promptly to the child and the family about the procedural steps involved in a criminal prosecution, which includes but is not limited to:
 - (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.
- g. Submit monthly updates to the Child Welfare Committee (CWC) on the child's well-being, including physical, emotional, and mental health, collaborate with medical facilities for necessary care, and facilitate the child's education, potentially relocating them to a new school as needed.
- h. The Support person 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).
- i. The support person shall update, track and monitor each case assigned to him on the **NCPCR's "POCSO Tracking Portal"** so as to facilitate the process of rehabilitation.
- j. The Support Person shall in coordination with the CWC, police and DCPU, take appropriate steps for the child's safety and security.
- k. The support person shall help the child and the family in incest cases and to find alternate residences and connect them with people who can support them to relocate.
- l. The Support Person shall seek immediate assistance of CWC or the police if he believes that the child is under the influence of the

- accused and/or their associates and also intimate the same to the Court .
- m. The Support Person shall assist the child in accessing facilities such as education, health services, and public distribution system.
 - n. That in cases where the child is pregnant, the Support Person shall connect the child with the hospitals to address to the child's healthcare needs. In cases where the child has contacted or is infected by Sexually Transmitted Infections, or has become HIV positive then the support persons can connect the child to services and organizations with necessary expertise.
 - o. Normalization of the child's routine could often mean resuming education. The support person shall ensure that the child resume his or her studies and get the child enrolled for education by ascertaining when the child is ready to resume school and facilitate the same. If the child has dropped out of school, the same must be discussed and resolved, by encouraging the child to resume education. Support Persons can assist the child in accessing the Education Department's sponsorship programs.
 - p. A support person shall also assist the child in obtaining admission in government-run schools or private school as per need and requirement. The Support person shall also educate the family and the child regarding the child's right to receive free and compulsory education till completion of elementary education under the Right to Education Act, 2009.
 - q. In case of financial difficulty, support persons may connect the child and its family with philanthropic organizations or individuals willing

- to sponsor the child or refer to the government scheme in their region to fund their education, etc.
- r. In cases where the child is not keen or is reluctant to resume school, the support person shall connect the child with vocational training/skill development centre that help develop a skill that enables the child's financial independence.
 - s. Support person shall facilitate the family or the minor victim to obtain identity documents like Aadhar, PAN card, ration card, BPL card, and open bank accounts in coordination with and assistance from the CWC/ DCPU/CCI.
 - t. The Support Person shall assist the families in collecting documents related to the case, such as copies of the FIR, medical reports, statements and charge sheet.

3.4. REHABILITATION OF VICTIM OF CHILD SEXUAL ABUSE

To ensure proper rehabilitation of the victims of child sexual abuse the Support person shall keep real time tracking of the victim on the NCPCR POCSO Tracking Portal which shall ensure the overall accountability of each state holder and victims be provided with care and protection as per their individual cases as the process of rehabilitation is a complex process that requires a multidisciplinary approach from the day the incident has taken place or reported since children are more prone to suffer from trauma, anxiety, depression, and other psychological and emotional issues. Hence, making it even more necessary to put in place a suitable Rehabilitation Plan for every child who is a victim under the Act. This plan must be developed keeping in mind the basic details as well as social background of the child.

Steps to be initiated for rehabilitation:

- i. When an incident of sexual abuse comes to the knowledge of the school/counselor/hospital or is reported to the police or SJPU, the same must be informed/reported to the concerned CWC within 24 hours.
- ii. To cater to the well-being of a child victim of sexual abuse and to reduce the stress of the child which he/she has to undergo the CWC shall appoint a Support Person to assist the child and family in navigating not only in the criminal justice process, but also in the rehabilitation of the child.
- iii. Once the support person is informed about a case, he shall ensure that the child's care, protection, and other needs, if any, are brought to the attention of the CWC and other relevant authorities.
- iv. As per the Act and Rules, upon the registration of FIR/complaint with the police the statement of the child under section 164 CrPC shall be recorded and be provided with immediate medical assistance, if at all needed and should be medically examined and treated. The victim should be produced before the concerned CWC within 24 hours and the CWC should appoint the support person for the child to provide all the assistance.

3.4.1: NCPDR'S POCSO TRACKING PORTAL: The Commission in pursuance of its role of monitoring the implementation of the Act as laid down under Section 44 of POCSO Act 2012 and Rule 12 (1)(c),(f) and (g) of

POCSO Rules, 2020 and understanding the need of having a dedicated system to monitor in real time monitoring of facilitation of services to the victims, the requirement of a dedicated portal for such purpose was realized. It was envisioned that there is a need for real time tracking of cases of victims of child sexual abuse and which facilitates them with services such as victim compensation and rehabilitation for their care and protection.

The said portal has five steps. These five steps have been developed in a manner to ensure that the overall accountability of each stakeholder be tracked and victims be provided care and protection as per their individual cases. The five steps include:

- i. Step 1: This includes the details of the child.
- ii. Step 2: This includes the details of the child which includes a Social Investigation Report of the Child. It is pertinent to mention that this step involves the Stakeholder to provide details regarding requirement of child with respect to support persons, translators, interpreter etc.
- iii. Step 3: This step caters to individual needs of the child victim.
- iv. Step 4: This step deals with the rehabilitation plan wherein a child is linked with schemes and compensation.
- v. Step 5: This step sends the application of the child victim to DALSA for further process.

To ensure proper rehabilitation of the child sexual abuse victim the

support person shall keep real-time tracking of the victim on the aforestated portal which will ensure the overall accountability of each stakeholder and provide care and protection of the victim and also track and monitor cases assigned to them from the pre-trial stage till completion of trial and awarding of compensation.

3.5. REVIEW OF SERVICES OF SUPPORT PERSONS:

- i. The DCPO shall conduct a yearly review of the support person which includes review with respect to handling and management of the cases assigned, successful rehabilitation of the victim minor etc. The DCPU shall thereafter submit its report to the concerned District Magistrate, who shall be the final reviewing authority. The contract of the Support person shall be renewed only after successful review of the support person.
- ii. That in case of any complaint by the victim or by the victim's family or by any other person against the Support Person or in cases where the witness has turned hostile, an inquiry shall be initiated against the support person by the DCPO and the DCPO after giving an opportunity to both the parties to be heard in the matter equally, the DCPO shall submit its report of the inquiry initiated to the District Magistrate. The said inquiry shall be completed and disposed off within 15 days of receiving such complaint and the Support Person during the course of inquiry shall remain suspended from the engagement.

3.6. TERMINATION OF ENGAGEMENT OF SUPPORT PERSONS

- i. The empanelment of the support person may be terminated by the DCPO upon completion of its inquiry and submission of its inquiry report to the District Magistrate. The District Magistrate shall be the final approving authority against termination.
- ii. The empanelment of the support persons may be terminated in cases where the services provided by the support persons is found unsatisfactory in the yearly Review report submitted by the DCPO to the District Magistrate;

3.7: GRIEVANCE REDRESSAL MECHANISM

- i. **Grievance Redressal Authority:** The District Magistrate shall be the Grievance Redressal Authority. All complaints against the Support persons shall be made to the District Magistrate and the District Magistrate shall dispose of the said complaint within a period of one month from the date of receipt of such complaint.
- ii. **Appeal:** All appeals against the resolution of complaint passed by the District Magistrate shall lie with the State Commission for Protection of Child Rights.
