

Purpose of Proposed Meeting/ Discussion

To systematize and make more child-friendly all the medico-legal processes involved in CSA enquiry.

1. Rationale

The continual reporting of child sexual abuse (CSA), while it has prompted many discussions and recommendations for prevention, has largely left unaddressed the challenge of how to respond when an incident occurs. A critical aspect of child protection, also a child public health issue, CSA warrants systemic approaches that are uncompromisingly child-centric.

When an event occurs, it is addressed by systems of criminal justice, police, schools, families, and healthcare, which generate a flurry of incoherent activity, albeit in good faith, thereby compromising the child's best interests. The major emphasis of these activities are directed towards the child 'victim' through enquiry, interrogation and intrusive detailing of the event to verify it and then bring the perpetrator to book.

Over the past year, the Dept. of Child & Adolescent Psychiatry at NIMHANS has received several children with CSA issues. When they come for help, they are extremely overwhelmed after visits to the Child Welfare Committee, police station, the hospital; by then, the child has been subjected to questioning on multiple occasions and therefore to re-traumatization. There are many areas which have to be systematically addressed namely, the child's reaction to the abuse, ensuring the child's immediate safety, medical and mental health needs of the child, and the concerns of the family. On the other hand, there is a sense of urgency to in legal procedures. Towards this, there is an understandable emphasis by the police on evidence and enquiry processes and related pressure from media and civil society, raising questions on the timely nature and effectiveness of these processes.

In all this, the balance between the need for justice and empowered recovery of the child becomes precarious. There is thus an urgent need to develop a protocol-based systemic response ensuring that the child's agenda i.e. healing and recovery, is at the core of it. The focus of initiative and consultation is to device processes involving medico-legal systems for the child and the family. (*Note: Protocol for schools will be addressed as a separate/ independent issue*).

2. Objectives

- To streamline, systematize and make more child-friendly all the medico-legal processes involved in CSA enquiry.
- To arrive at a consensus about the sequence of inquiry and related processes that child and family need to engage in.
- To ensure that legal processes, including inquiry and evidence gathering, are strongly embedded in healing processes facilitated by child care services experts.
- To examine the function of SJPU, police investigative mechanisms, ICPS, CWC, and judiciary (in relation to CSA investigations), and to arrive at role clarity and a consensus on sensitization/ training needs of these parties.

3. Proposed Participants for Discussion

- Police Commissioner and designated DCPs/ ACPs
- Director, Women and Child Development (DWCD)

- Chairpersons of Child Welfare Committee (CWC)
- District Child Protection Officer (ICPS)
- Designated members of the State Judiciary

4. Issues for Discussion

a) Reporting

- Where the child/ family require to report incident first and thereafter (sequence of reporting), including seeking medical and psychosocial care
- Assistance and involvement of NGOs such as Makkala Sahayavani/ APSA/BOSCO in relation to institutionalized children (where they are the caregivers) versus other children who have parents (where they become mere information providers).
- Where the abuse has occurred more than a couple of weeks before child presents for assistance, what is the duration within which paediatric/ gynaecological examination is necessary for evidence gathering? (In acute/ immediate presentation, it is automatically done).

b) Child's Involvement in Investigative Processes

As per current practice, there is a police investigative process by IO, a request for corroborative evidence from child care service experts and a requirement under CRPC for (lady) magistrate to conduct an in-chamber enquiry with the child/ parents, to establish direct evidence and thus pass orders. This already entails a child being interviewed 3 or more times (police investigator and child care service experts inquiry often take more than one session) within a short period of time. This is exhausting and traumatic for the child especially for very young children.

- Can inquiry with the child be conducted once instead of multiple times, and only by child care/ protection service experts? Can police investigation of child be conducted only by trained SJPU or if needed assisted by child care service experts?
- What is the role of the SJPU versus the (lady) IO appointed for the specific purpose of investigating CSA case?

c) Magistrate Statement

As per current practice, there seems to be an insistence on the part of the magistrate to 'hear' a disclosure and account of the abuse directly from the child. The magistrate who is usually a lady magistrate, available at the time, does not usually follow the standard procedures of how children are to be interviewed in general or the procedure of how to sensitively and systematically inquire for abuse. Furthermore, even if the magistrate is trained on interviewing children, it is difficult to elicit this information from children who are very young or intellectually disabled or highly traumatized, in a single session¹.

- In case on very young children (ages 0 to 6 years)²/ children with intellectual disability/ severe trauma and associated dysfunctionality, can the magistrate's orders

¹ The urgency of the process and the availability of the magistrate sometimes creates a situation where the child may reach the magistrate's chamber late in the evening, after a long corroborative evidence gathering session with IO or child care service expert. The child, by this time, is tired and irritable, and the magistrate's unskilled approach does not yield the requisite results. Thus, the entire purpose of the exercise under section 164 is defeated.

² In very young children, even under normal circumstances, speech and language development is not of a level that detailed, coherent descriptions about an experience, in whole sentences can be articulated by the child.

be passed under the existing provision to obtain the information from the parent? (There appears to be a provision to this effect but the magistrates do not seem to comply with it—despite the request/ advice of the child care service experts).

- For other children, can the place for providing their statement to the magistrate be shifted from the magistrate's office/ chambers to more child-friendly environments? Recommendation for child-friendly courts and where they should be located and how they should be appointed have already been made under the J.J. Act/ POCSO. In the interim, can the statement be recorded in a CWC space?
- Re-examine 'child-friendly' court idea—coordinating child's statements with existing set-up of audio/ video facility?

Outcomes

- ✓ Protocol for sequence of where child and family need to seek assistance.
- ✓ Protocol for sequence of inquiry, including role clarity on who conducts the inquiry and how/ in what spaces (*vis-à-vis* child's involvement).
- ✓ Child-friendly procedures in magistrate's statement recording processes.