

EDITORIAL NOTE

JULY
2018
7TH EDITION

FROM THE DESK OF THE CHAIRPERSON OF THE J.J. COMMITTEE

PARIS Declaration 2018

<https://j4c2018.org>

Hi all!

Paris World Congress for Juveniles happened in May 2018. It was for many first of sorts for me. This was the first world conference for juveniles I was to attend - I for the first time would meet people having with the same passion for children from all over the world, I would-travel with my fellow judges from my country, yes I had met some of them and interacted in the Regional Consultations, I met them in the National Consultations too but that was different, we a few of us from Delhi (M. Gupta, J.), Chandigarh (J. Singh, J.), Rajasthan (S. Mehta, J. and M. Bhandari, J.), Tripura (Talapatra, J.), Manipur (Kotishwar, J.), Gujarat (Devani, J.), Jharkhand (Patel, ACJ.), Bihar (A.K. Singh, J.), Madhya Pradesh (Maheshwari, J.), Jammu & Kashmir (Magrey, J.), Orissa (Mishra, J.), Uttar Pradesh (V. Nath, J.) and myself (Patherya, J.) from West Bengal constituted Team India. That was a lovely feeling to represent one's country especially when you are amongst people from other countries and it gives you a kick (pride). Another first time was for us the Chairpersons of the different Juvenile Justice Committees was that Justice Lokur was addressing the Asian Forum and he addressed the plenary session too. For me I was not visiting Paris for the first time and was not interested as a tourist. Paris was heady, yes, but was for a different reason. For the first time I got chatty with Stuti (on the homebound flight), and we could laugh at things, spoke to Vasundhara on return, for whatever reason. When I met

Justice Talapatra of Tripura at the airport lounge in Calcutta, for the first time after Paris, we started chatting as friends not mere acquaintances. I for the first time got to know a friend in Nikhil-sweet guy, and I gelled with him because we had no hang ups. I know by now I have bored you with my "First Time" but what to do I felt like a rustic villager in Paris for the first time. I met so many people for the "first time" for the last time, the ISIS Survivor, Farida, Fatema Zaman, both of whom I will talk about and Justice Iman from Bangladesh.

After having bored you with my "first times" I must confess that I missed Deepak Gupta J. Supreme Court Judge and my fella judges from the South and Sikkim (Meenakshi ACJ now) if they were there India would have been holistically represented.

For me the platform was very interesting, the topics were more interesting, the speakers worldwide covered many issues and I liked the representatives from Latin America, Jordan, Yemen, Austria, Netherlands, and Belgium amongst others. The interaction, literature, material, food for thought et al collected in one's kitty or booty enriched me.

Paris having ended I headed homeward while others moved on too. Yes we did share pictures, some of whom I have posted in the box. I will share with other pictures when we meet at another locale.



For all of us juveniles are important and it is for this reason that art sketched by juveniles was carried by me to the World Congress. I wanted to distribute them as I was sure that it would be appreciated by the western world. I met the representative of one of the partners and I was really happy that the gentleman, I forget his name, not only appreciated the art sketched by the juveniles but agreed to also distribute earrings made by the juveniles.

Child rights in our country are at a nascent stage. They are much ahead of us, more sensitised too. The western world has included in its universities, child rights in its curriculum under the subject Criminal Law. If universities all over India would also include Child Rights in its curriculum, a dream would come true.

On this hope, I sign off,

NADIRA PATHERYA
CHAIRPERSON OF THE
JUVENILE JUSTICE
COMMITTEE.
CALCUTTA HIGH COURT

Role of Support Persons under POCSO Act, 2012

Children in their journey of life they need support at all levels right from their birth, till 18 years. Initially, they are supported by their parents, siblings, peers and elders. The concept of “support person” under the POCSO Act is based on the spirit of providing emotional support and guidance to the child whose basic rights have been violated. This support is absolutely necessary for the child to overcome trauma and gather courage to seek justice. POCSO Act, 2012 is essentially a penal law but the lawmakers have taken every care to ensure that at every stage of delivering justice, a child friendly approach is maintained. Over half a decade has passed since the inception of this Act and it can now be argued safely that positive changes are slowly becoming discernible – though there is a long way to go. In order to ensure that justice is neither delayed nor denied to the traumatized child, the structures created under Juvenile Justice (Care and Protection of Children) Act, 2015 are to be utilized.¹ The two Acts are intertwined.

It may be pertinent here to note that POCSO Rules, 2012 states that a support person “means a person assigned by a Child Welfare Committee, in accordance with sub-rule (8) 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.”² A 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.”³

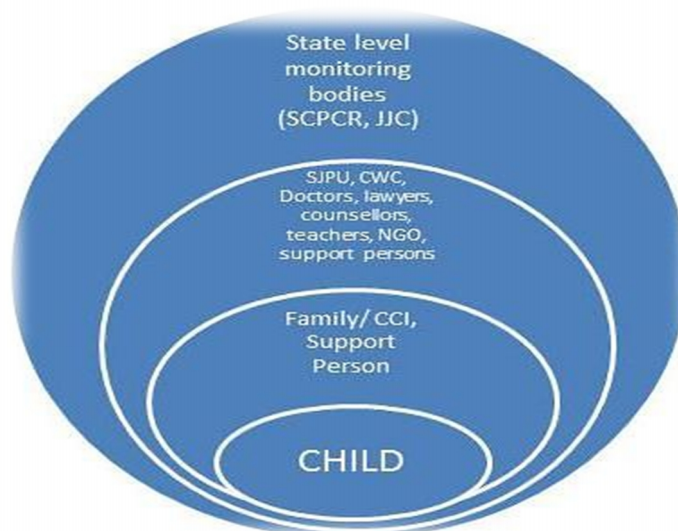
The overall responsibility of the support person is to act as a bridge between the various support/service systems available to the child survivor and make his/her journey through the criminal justice system a smoother one.

The specific roles and responsibilities of a support person are:

- ✓ To keep the child and his parent/guardian or other person in whom the child has trust and confidence, informed about the proceedings of the case, including available assistance, judicial procedures and potential outcomes.
- ✓ To inform the child of the role he may play in the judicial process.
- ✓ To ensure that the concerns of the child regarding his own safety in relation to the accused and the manner in which he would like to provide his testimony are conveyed to the relevant authorities.
- ✓ To keep the child and his family informed about the court dates
- ✓ To facilitate availability of public and private emergency services
- ✓ To facilitate availability of victim compensation scheme
- ✓ To maintain confidentiality of all information pertaining to the child to which he has access.

The National Commission for Protection of Child Rights suggests that the support persons may comprise of people with the following qualifications: (a) persons with para-legal qualifications (b) persons who can offer counselling and emotional support (c) persons who can communicate with the child and family in their mother tongue.”⁴

For a child survivor, it is very important to get “emotional” compensation over and above the financial compensation. The healing process is incomplete if the accused is not punished. A support person can facilitate this healing process by providing the necessary emotional support. The role of different stakeholders *vis-a-vis* the child can be illustrated through the following diagram:



¹The Supreme Court has observed in *Re: Exploitation of Children in Orphanages of Tamil Nadu v. Union of India & Ors* (Judgment dt. 5th May 2017 in WP (Cr.) No. 102/2007) that “a child in need of care and protection must be given a wider meaning and in addition to some children in conflict with law as discussed above, it must also include victims of sexual abuse or sexual assault or sexual harassment under the POCSO Act as also victims of child trafficking. Such children must also be given protection under the provisions of the JJ Act being victims of crime under the POCSO Act and the Immoral Traffic (Prevention) Act, 1956”. The Court further observed that “The definition of the expression “child in need of care and protection” under Section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. The definition is illustrative and the benefits envisaged for children in need of care and protection should be extended to all such children in fact requiring State care and protection”

²Rule 2 (f), POCSO Rules, 2012.

³Rule 4(7), POCSO Rules, 2012

⁴*Monitoring Guidelines for NCPCR/SCPCR for Roles and Functions of Various Stakeholders*, NCPCR, available at: <<http://www.ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=406&lid=843>>

The West Bengal Scenario

In West Bengal, the State Guidelines for implementation of POCSO Act, 2012 is at the final stage of being adopted.⁵ The Model Guidelines will include detailed content on the 'role of support persons'. The DCPUs are adopting and sharing some 'good practices' at the district level and act as support persons for the child survivors and their families. In Uttar Dinajpur, the Government run Home for children with special needs- "Suryadaya Children Home for Deaf and Dumb Boys and Girls"- maintain a list of special educators and the Courts utilize their services when required. In 2017- 18, the services of special educators have been utilized for eight (8) cases out of which one (1) is a case under the POCSO Act, 2012.

In most of the other districts, the convergence platform under JJ Act, 2015 is utilized effectively while dealing with POCSO cases. This holds true for the cases which are brought before the JJB. Howrah is the only district with a full time Principal Magistrate, at present. Under the directions of the Board, separate waiting areas have been made so that the victim is not traumatized or threatened as a witness.

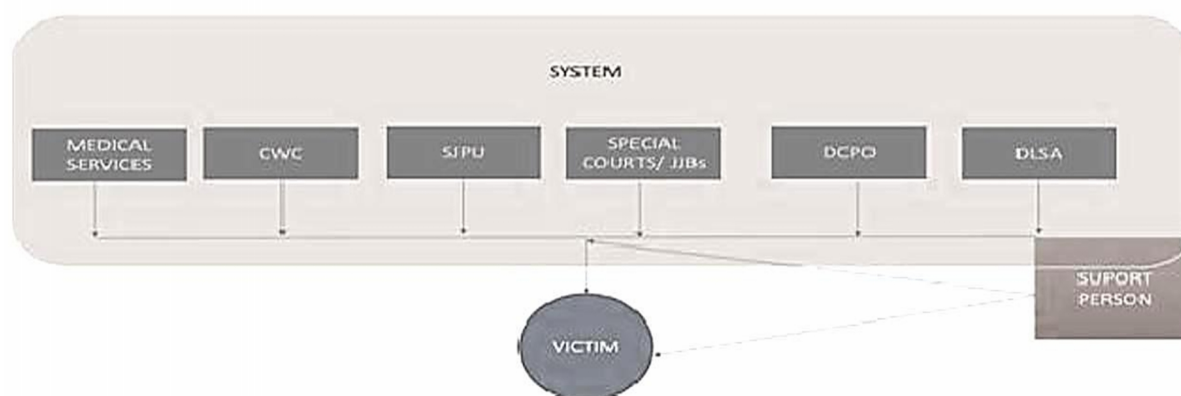
Some of the Notable good practices are:

- Para Legal Volunteers ("PLVs") undertake regular visits to the child care institutions to identify cases where legal aid is necessary and to bring that to the attention of the District Legal Services Authority.
- Legal guidance and counselling is offered by the Legal cum Probation Officer ("LCPO") of DCPU and also DLSA advocates.
- Psychological counselling is done by the Counsellors of DCPU or CCI.
- In the POCSO court of Howrah (2nd ADJ), POCSO cases are tried in camera and no person unrelated to the case is allowed during trial.
- In all JJBs, a child friendly environment is maintained in the JJB and care is taken so that the children, whether CCL or CNC, do not feel threatened.
- In Purba Medinipur JJB, when the victim comes for deposition as a witness, he/she is counselled to overcome fear and to be at ease.
- Drinking water and refreshments are arranged for all the children coming to JJB.
- The LCPO orients the child about JJB proceedings.
- The counsellors provide emotional support through the principles of generalization and reality orientation to help the child realize that in order to get justice, he/she has to overcome fear and co-operate with the system.
- The child and his family are also made aware about the victim compensation scheme and assistance is provided for claiming it

There will always be an element of dilemma in the Juvenile Justice system while trying POCSO cases as, rights of both the CCL and the victim are to be protected. It is indeed heartening to note that the DCPUs are trying to bring the concept of restorative justice while dealing with such cases.

Way forward

The DWCD & SW, Government of West Bengal being the nodal department for implementation of POCSO Act and JJ Act has a key role to play. It has to ensure that all the child protection structures are in place and are functioning properly. It also has a vital role in establishing linkages between the line departments and co-ordinating with the stakeholders.



The capacity building of the support persons is another important task and in order to build a cadre of trained psychological Counsellors, the Department, in collaboration with UNICEF is organizing a phase wise experiential training with the help of Samikshani (an organization that specialises in psychoanalytical studies and mental therapy). The remuneration of the support persons will be made from the Juvenile Justice Fund which will be operational soon. It is stark reality that child sexual abuse is on the rise. Preventive aspects cannot be overlooked but the need of the hour is to help the child survivors get justice, overcome trauma and get back to normal life. A Support person, equipped with proper training, can facilitate the child to cope with the challenges with ease. In this context, it is worthwhile to mention the work of Enfold Trust, Bangalore (an organization which has been providing support to victims of CSA) in training the support persons in Jharkhand and other States so that they can function effectively.

⁵This is mandated by section 39 of the POCSO Act and is based on the Model Guidelines for implementation of POCSO Act, 2013, issued by the MW&CD, Government of India. The model guidelines are available at :<<http://wcd.nic.in/policies/model-guidelines-under-protection-children-sexual-offences-pocso-act2012>>

EVERY CHILD HAS A STORY

SAMIA SLEMAN

Samia Sleman is a young yazidi girl (aged 17 years today)(Juvenile) who was a member of a distinct Middle East minority that has suffered repeated persecutions over centuries, and especially gruesome treatment at the hands of ISIS. Her village was attacked by IS Militants on 3rd August, 2014 and was captured alongwith her entire family and held as hostage. While the men and older women were killed, young girls as young as 6 or 7 years old were kept as sex slaves, the boys were trained or brainwashed. She has a scar on her wrist as she tried to commit suicide but could not even do that in captivity. She was sold and resold and the last fighter who purchased Samia moved her and his family to Mosul. She was constantly abused and repeatedly raped. Mosul was a big city and Samia tried to figure out a way to escape after 6 months of brutality. She succeeded ultimately.



Moral: The story of Samia teaches us never to give up Hope in adversity situation.

RAM (NAME CHANGED)

His life changed overnight. He was a happy so lucky boy and pursued studies. A family feud gave rise to a dispute and Ram was already involved in it and was booked under a heinous offence. The members of the Juvenile Justice Committee had at the regular visit met him. It was Holi and Ram was singing with his music teacher (disciple of Girija Devi) a bandish in raag kafi –

होलो खेले रघुवीरा अवध मे
होलो खेले रघुवीरा अवध मे

He spoke to us and all he wanted was to study. We were also given his sketches which were beautiful and all those were etched by him, when he was in the Home. Those sketches were taken by me to the Paris World Conference. The beauty was that behind each of the sketch a date was put thereon. Each sketch depicted his mood during the time he was at the Home and before he was granted Bail. I'm sure each of his sketch adorns someone's room or table and the person will always remember the juvenile from India who had gifted them unknowingly.



Moral: The story of Ram teaches us that in the worst situation a light will always glow.