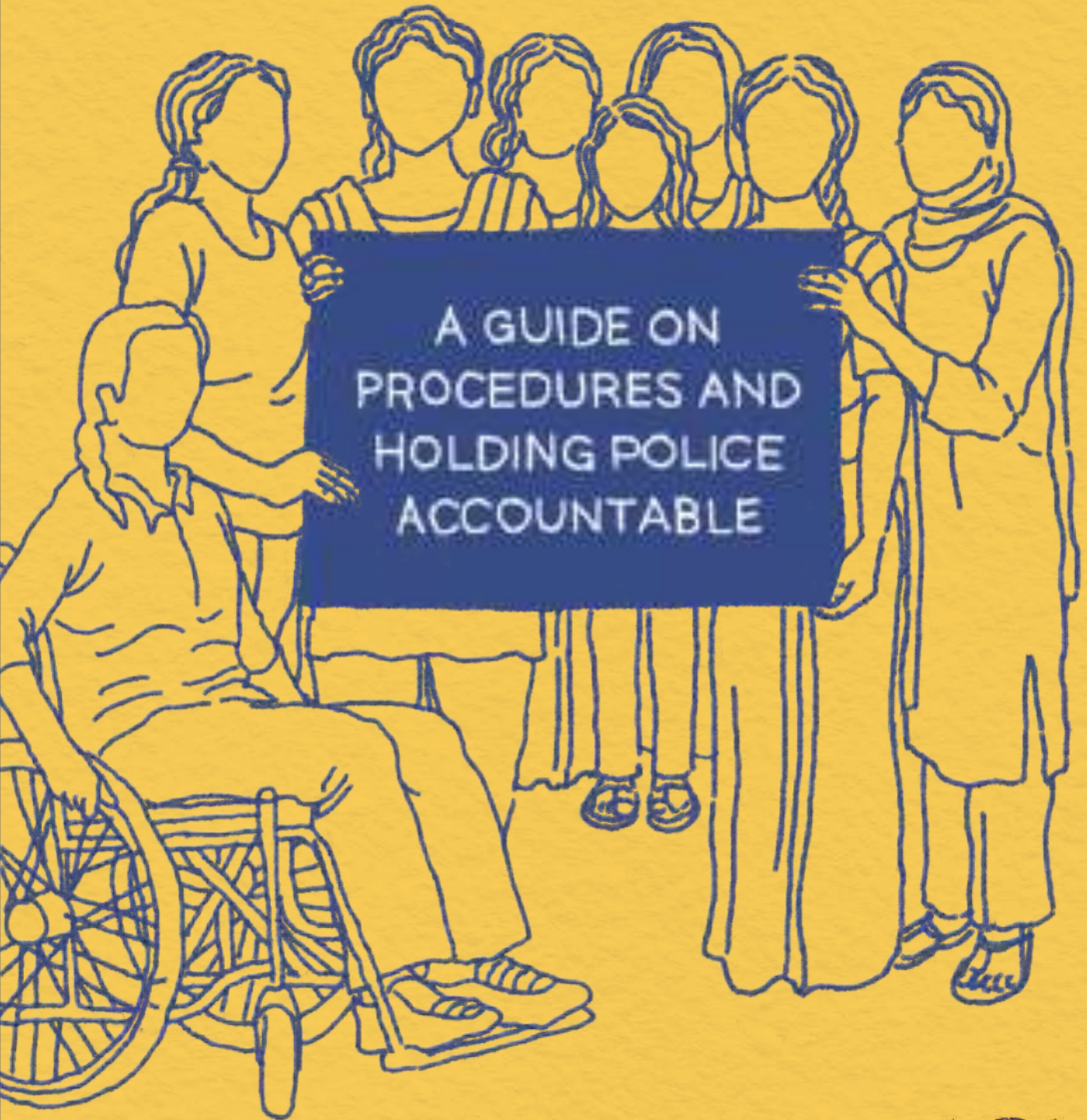


POLICE REGISTRATION OF SEXUAL OFFENCES



COMMONWEALTH HUMAN RIGHTS INITIATIVE

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-governmental, non-profit organisation headquartered in New Delhi, with offices in London, United Kingdom, and Accra, Ghana. Since 1987, it has worked for the practical realization of human rights through strategic advocacy and engagement as well as mobilization around these issues in Commonwealth countries. CHRI's specialisation in the areas of Access to Justice (ATJ) and Access to Information (ATI) are widely known. The ATJ programme has focussed on Police and Prison Reforms, to reduce arbitrariness and ensure transparency while holding duty bearers to account. CHRI looks at policy interventions, including legal remedies, building civil society coalitions and engaging with stakeholders. The ATI looks at Right to Information (RTI) and Freedom of Information laws across geographies, provides specialised advice, sheds light on challenging issues, processes for widespread use of transparency laws and develops capacity. CHRI reviews pressures on freedom of expression and media rights while a focus on Small States seeks to bring civil society voices to bear on the UN Human Rights Council and the Commonwealth Secretariat. A growing area of work is SDG 8.7 where advocacy, research and mobilization is built on tackling Contemporary Forms of Slavery and human trafficking through the Commonwealth 8.7 Network.

CHRI has special consultative status with the UN Economic and Social Council and is accredited to the Commonwealth Secretariat. Recognised for its expertise by governments, oversight bodies and civil society, it is registered as a society in India, a trust in Ghana, and a public charity in the United Kingdom.

Although the Commonwealth, an association of 54 nations, provided member countries the basis of shared common laws, there was little specific focus on human rights issues in member countries. Thus, in 1987, several Commonwealth professional associations founded CHRI.

Through its research, reports, advocacy, engagement, mobilisation and periodic investigations, CHRI draws attention to the progress and setbacks on rights issues. It addresses the Commonwealth Secretariat, the United Nations Human Rights Council members, media and civil society. It works on and collaborates around public education programmes, policy dialogues, comparative research, advocacy and networking on the issues of Access to Information and Access to Justice.

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ASSOCIATION FOR ADVOCACY AND LEGAL INITIATIVES

Association for Advocacy and Legal Initiatives (AALI) is a women-led and women-run human rights organization committed to the protection and advancement of the human rights of women, children and other marginalized communities through direct intervention, capacity building, research and advocacy. With direct field presence in Uttar Pradesh, Jharkhand, and Uttarakhand, AALI has been providing technical support to various human rights organisations and groups across India.

Established in 1998, AALI's ideological framework, rooted in the United Nation's Convention against Elimination of all Forms of Violence against Women (CEDAW), envisions "an egalitarian system which recognizes women as equal human beings and promotes and protects their social, economic, and political rights guaranteed in the Constitution of India and in the international human rights treaties".

Based on feminist perspective and human rights approach, AALI believes the law is both a site for change, and a powerful tool to ensure social justice, hence it works with a multi-pronged strategic framework viz. Advocacy, Access to Justice and Capacity Building.



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POLICE REGISTRATION OF SEXUAL OFFENCES

A GUIDE ON PROCEDURES AND
HOLDING POLICE ACCOUNTABLE

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LIST OF ABBREVIATIONS

IPC	Indian Penal Code
Atrocities Act	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, amended in 2015
POCSO	Protection of Children from Sexual Offences Act, 2012
SJPU	Special Juvenile Police Unit
NGO	Non-Governmental Organisation
FIR	First Information Report
OSC	One-Stop Crisis Centre
UTs	Union Territories
SC/ST	Scheduled Caste or Scheduled Tribe
CrPC	Code of Criminal Procedure
PFO	Police Facilitation Officer
SP	Superintendent of Police
DCP	Deputy Commissioner of Police

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INTRODUCTION

This guide is designed to assist survivors of sexual violence, and anyone helping them, at the first stage of the legal process - in reporting offences and seeking their registration by the police. Studies and real experiences reveal that survivors hesitate to approach the police out of trauma, fear, or being morally judged, made worse by police often either delaying or refusing to register complaints of sexual violence. The law makes it mandatory for the police to register all cases of sexual violence that they receive. When they refuse, they violate the survivors' right to seek justice, the law and their duty. This leads to cases getting compromised, seriously delayed, or even lost at the very start of the legal process.

Presented as “Frequently Asked Questions”, this guide provides information to help adult and child survivors report complaints and guide them through the process of registration. If their complaints are first refused at the police station, it informs them of remedies to get these registered. It points to steps which can be taken to hold the police accountable for delay or refusal to register in certain cases. It also highlights the offences defined as sexual offences in the relevant laws.

Survivors and support persons must know their rights and the legal process so that no police officer can exercise undue power and get away with it. It is only when we know that we can speak with confidence against wrong and illegal actions. This guide has been produced with the hope that survivors and those working in their support are empowered with knowledge about correct procedures and their own rights and use this to seek both justice and the protection of their rights.



PART A

SEXUAL VIOLENCE
AND SEXUAL
OFFENCES
IN OUR LAWS

1. WHAT IS SEXUAL VIOLENCE¹?

Sexual violence is a serious violation of human rights. While it has many forms, sexual violence means that someone forces, manipulates, or harms someone else into unwanted sexual activity without their willful agreement and informed consent. Sexual violence can affect people of all genders and ages.

The ones who sexually abuse can be friends, family members, romantic partners, work colleagues, other trusted individuals, someone in a position of authority over the victim, or strangers. Abusers can use threats to force a victim to do the sexual activity, such as threatening to hurt the victim, their family, or their reputation, or telling others about it to embarrass the victim, or make it seem the victim will get in trouble. It can be that two or more abusers act together to sexually harm a victim/survivor.

The World Health Organisation defines it as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic a person’s sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, including but not limited to home and work”.²

Sexual violence can happen in any setting. It can happen at home within the family, within a marriage or intimate relationship, within the community someone lives in, at a workplace or school, or in a public street or place. It often also happens during times of war or conflict. Whenever and wherever it happens, it is a violative and painful experience for the victim/survivor, mentally, physically and emotionally.

Sexual violence is never the victim/survivor’s fault

2. WHAT ARE THE DIFFERENT KINDS OF SEXUAL VIOLENCE, IN BROAD TERMS?

Sexual violence can be both penetrative and non-penetrative sexual assault. Penetrative sexual assault will be when an abuser uses force to penetrate, even slightly, a victim’s

vagina or anus, mouth or any part of the victim's body, with any body part, sex organ, or object, against the victim's will.

Rape is often used as the legal term that makes penetrative sexual assault a crime.

Acts of non-penetrative sexual assault can be:

- Unwanted sexual contact or touching
- Showing one's genitals or naked body to others without their agreement
- Masturbating in public
- Forcing someone to take their clothes off
- Monitoring someone's movements or following them around in an attempt to make unwanted and unwelcome contact, either physically or virtually
- Watching or taking photos/videos of someone in a private act without their knowledge or permission
- Asking someone for unwanted sexual favors or making unwanted sexual comments

3. IS SEXUAL VIOLENCE A CRIME?

Yes, several forms of sexual violence are crimes in India. This means that if the perpetrator is found guilty of any of these crimes by a court, they can be punished and sent to jail.

The Indian Penal Code (IPC) defines several acts of sexual violence as crimes, names each crime, describes the acts that make it a crime, and lays down its punishment.

Remember that sexual activity between two willfully consenting adults is never a crime.

Before 2013, the IPC contained only two sexual offences. Section 376 punished a limited definition of rape, and Section 354 punished "outraging the modesty of a woman" which applied only to routine incidents of molestation, which refers to acts of making unwanted sexual contact or advances. Until 2013, many kinds of sexual violence were entirely missing from the law, which meant survivors could not report them to the police.

In 2013, the law was amended to bring in definitions of more sexual offences. The 2013 Amendment Act expanded the definition of rape and brought in other sexual offences including sexual harassment, forced disrobing, voyeurism, and stalking, among other forms of sexual violence.

This table specifies the full range of sexual offences defined and added in the IPC in 2013 and the punishments they carry.

OFFENCES AND THEIR PUNISHMENTS UNDER THE INDIAN PENAL CODE

SECTION (IPC)	OFFENCE	PUNISHMENT	
		Maximum	Minimum
354	Assault or criminal force to woman with intent to outrage her modesty	5 years imprisonment and fine	1 year imprisonment and fine
354A	Sexual harassment in the nature of unwelcome physical contact and advances or a demand for sexual favors, showing pornography	3 years imprisonment or fine or both	
	Sexual harassment in the nature of making sexually coloured remarks	1 year imprisonment or fine or both	
354B	Assault or use of criminal force to woman with intent to disrobe	7 years imprisonment and fine	3 years imprisonment and fine
354C	Voyeurism	3 years imprisonment and fine	1 year imprisonment and fine
	Any man who watches, or captures the image of a woman in private act without her knowing, or disseminates such image	Subsequent Conviction 7 years imprisonment and fine	3 years imprisonment and fine

354D	<p>Stalking</p> <p>Any man who follows or attempts to contact a woman repeatedly after her clear indication of disinterest (the law specifies some exceptions that cannot amount to stalking, after being proved)</p>	<p>3 years imprisonment and fine</p> <p>Subsequent Conviction 5 years imprisonment and fine</p>	
370A	<p>Exploitation of a trafficked child</p> <p>Exploitation of a trafficked person</p>	<p>7 years imprisonment and fine</p> <p>5 years imprisonment and fine</p>	<p>5 years imprisonment and fine</p> <p>3 years imprisonment and fine</p>
375	<p>Rape</p> <p>When a man penetrates his penis, body part or object to any extent in, or applies his mouth to, a woman's vagina, mouth, urethra or anus or makes her do so with any other person; with or without her consent in specific circumstances</p>	<p>Life imprisonment and fine</p>	<p>7 years imprisonment and fine</p>
376	<p>Rape by a police officer; or a public servant; or a member of the armed forces; or a person being on the management or on the staff of jail, remand home or other place of custody or women's or children's institution; or by a person on the management or on the staff of a hospital; or a relative, guardian, teacher or a person in a position of trust or authority towards the woman; or commits rape during communal violence;</p>	<p>Life imprisonment (remainder of that person's natural life)</p>	<p>10 years imprisonment and fine</p>

or knowingly on a pregnant woman; on a woman under 16 years of age; on a woman incapable of giving consent; on a woman suffering from physical or mental disability; causes serious injury, maims or endangers a woman's life while committing rape; or repeatedly rapes the same woman

376A	Rape that inflicts injury which causes death or causes the woman to be in a persistent vegetative state	Life imprisonment (remainder of that person's natural life) or with death	20 years imprisonment
376B	Sexual intercourse by husband upon wife, without her consent, during separation	7 years imprisonment and fine	2 years imprisonment and fine
376C	Sexual intercourse by a person in authority	10 years imprisonment and fine	5 years imprisonment and fine
376D	Gang Rape Rape of a woman by one or more persons acting in a group with common intent	Life imprisonment (remainder of that person's natural life) and fine to be paid to survivor	20 years imprisonment and fine to be paid to survivor
376E	Repeat Offenders (under 376, 376A and 376D)	Life imprisonment (remainder of that person's natural life) or with death	
509	Word, gesture or act intended to insult the modesty of a woman	3 years imprisonment and fine	

Other laws in India also protect victims/survivors and give them remedies when they face sexual violence in different forms; like the Protection of Women from Domestic Violence Act, 2005, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; and schemes like the victim compensation schemes.

Sexual offences also apply as crimes or “atrocities” against women of Scheduled Castes or Scheduled Tribes under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (Atrocities Act).

SPECIFIC OFFENCES AGAINST WOMEN AND THEIR PUNISHMENTS UNDER THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (ATROCITIES ACT)

SECTION	OFFENCE	PUNISHMENT	
		Maximum	Minimum
3(1)(k)	Performs or promotes devadasi by dedicating a Scheduled Caste or a Scheduled Tribe woman to any religious institution	5 years imprisonment	6 months imprisonment
3(1)(w (ii))	Intentionally touches a Scheduled Caste or Scheduled Tribe woman without her consent	5 years imprisonment	6 months imprisonment
3(1)(w (iii))	Uses words or gestures of a sexual nature towards a Scheduled Caste or Scheduled Tribe woman	5 years imprisonment	6 months imprisonment

Note: The Atrocities Act provides that a person can also be punished under the Indian Penal Code. It enhances the punishment for offences under the IPC that are punishable with ten years or more imprisonment to punishment with imprisonment for life, if committed against a member of a SC or ST. However, the enhancement of punishment does not apply to most sexual offences, as listed in a Schedule to the Atrocities Act.

4. ARE THERE DIFFERENT LAWS FOR THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES?

Yes. Since the needs and situations of children can be different from adult survivors of sexual violence, a separate law called the Protection of Children from Sexual Offences Act, 2012 (POCSO) was enacted on 14 November 2012. It is a special law to protect children below 18 years of age from sexual offences, punish sexual crimes committed against them and provide for procedures that take into account the best interest of the child.

This law also says that the age of consent for sexual activity is 18 years of age. This means that even if a child below 18 years chooses to have sex or any sexual activity, the law will not consider this as consent because of their age.

This table specifies the range of sexual offences against children defined in POCSO and their punishments.

OFFENCES AND THEIR PUNISHMENTS UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

OFFENCE AND DESCRIPTION	PUNISHMENT	
	Maximum	Minimum
<p>Section 3</p> <p>Penetrative Sexual Assault</p> <p>Inserting body part or object in a child, or making a child do this with another; or applying their mouth to the private parts of the child (penis, to any extent, into the vagina, mouth, urethra or anus of a child) or making the child do so with another person.</p>	<p>Section 4 (1)</p> <p>Imprisonment for life and fine</p>	<p>10 years imprisonment and fine</p>
	<p>Section 4 (2)</p> <p>On a child less than 16 years of age</p> <p>Imprisonment for the remainder of natural life and fine</p>	<p>20 years imprisonment and fine</p>
	<p>Section 4 (3)</p> <p>The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet their medical expenses and rehabilitation</p>	

Section 5

Aggravated penetrative sexual assault

Penetrative sexual assault by a police officer, member of the armed forces, public servant, staff of remand home, jail, hospital or school. It includes penetrative sexual assault committed by any other person through gang penetrative assault, penetrative sexual assault using deadly weapons, fire, heated substance or corrosive substance, penetrative sexual assault which physically incapacitates the child or causes the child to become mentally ill, causing grievous hurt or bodily harm and injury to the sexual organs of the child, making a girl child pregnant, inflicting child with HIV or any other life threatening disease, penetrative sexual assault more than once, penetrative sexual assault on a child younger than 12 years, by a relative, owner/ manager or staff of any institution providing services to the child, by a person in a position of trust or authority over the child, committing penetrative sexual assault knowing the child is pregnant, attempts to murder the child, by a person previously convicted for a sexual offence, penetrative sexual assault in the course of communal or sectarian violence, penetrative sexual assault and making the child strip or parade naked in public.

Section 6 (1)

Imprisonment for the remainder of natural life and fine, or death 20 years imprisonment and fine

Section 6 (2)

The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to their medical expenses and rehabilitation.

Section 7

Sexual Assault

With sexual intent touching the private parts of the child (vagina, penis, anus or breast), or makes the child touch the private parts of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration

Section 8

5 years imprisonment and fine 3 years imprisonment and fine

Section 9

Aggravated sexual assault

Sexual assault by a police officer, member of armed forces, public servant, staff of remand home/jail/hospital/school etc; and other acts of sexual assault by any person as mentioned in the second part of Section 5, except making a girl child pregnant.

Section 10

7 years imprisonment and fine

5 years imprisonment and fine

Section 11

Sexual Harassment

With sexual intent:

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture shall be seen by the child; or

(ii) makes a child exhibit their body or any part of it, so it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes

Section 12

3 years imprisonment and fine

OTHER OFFENCES

OFFENCE AND DESCRIPTION	PUNISHMENT	
	Maximum	Minimum
<p style="text-align: center; background-color: #f4a400; color: white; padding: 2px 5px;">Section 13</p> <p>Use of child for pornographic purposes</p> <p>Whoever, uses a child in any form of media (including programme or advertisement irrespective of whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—</p> <p>(i) representation of the sexual organs of a child;</p> <p>(ii) usage of a child engaged in real or simulated sexual acts (with or without penetration);</p> <p>(iii) indecent or obscene representation of a child</p>	<p style="text-align: center; background-color: #f4a400; color: white; padding: 2px 5px;">Section 14 (1)</p> <p>First time conviction 5 years and fine</p> <p>Subsequent conviction 7 years and fine</p> <p>(2) Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic acts, shall be punished for the said offences also under section 4, section 6, section 8 and section 10, respectively, in addition to the punishment provided in sub-section (1).</p>	
<p style="text-align: center; background-color: #f4a400; color: white; padding: 2px 5px;">Section 15</p> <p>Storage of pornographic material involving child</p> <p>(1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography</p> <p>(2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court,</p>	<p style="text-align: center; background-color: #f4a400; color: white; padding: 2px 5px;">Section 15 (1)</p> <p>First time conviction Fine of Rs. 5000</p> <p>Subsequent conviction Fine of Rs. 10,000</p> <p style="text-align: center; background-color: #f4a400; color: white; padding: 2px 5px;">Section 15 (1)</p> <p>3 years imprisonment or fine or both</p>	

(3) Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose

Section 15 (3)

First time conviction

5 years imprisonment or fine or both	3 years imprisonment or fine or both
--------------------------------------	--------------------------------------

Subsequent conviction

7 years imprisonment and fine	5 years imprisonment and fine
-------------------------------	-------------------------------

Note: As per Section 42 of the POCSO Act, for offences which are also punishable under Sections 166A, 354A-D, 370, 370A, 375, 376, 376A, 376C-E, and 509 of the IPC; if found guilty, the offender will be punished under POCSO or the IPC, whichever has the greater punishment.

5. WHO CAN BE A VICTIM AND PERPETRATOR OF THE SEXUAL OFFENCES UNDER THE IPC?

Most of the sexual offences are **gender specific**, so they apply only to women as victims and men as perpetrators. But some are **gender neutral**, for instance the offences of human trafficking and acid attack. When an offence is gender neutral, anyone – a man or a woman - can be a victim or a perpetrator.

6. WHO IS A VICTIM AND PERPETRATOR OF THE SEXUAL OFFENCES UNDER POCSO?

Under POCSO, only a child³ can be a victim and an adult a perpetrator. It is also gender neutral. Both girls and boys can be victims, while both men and women can be perpetrators.

7. CAN THE POLICE TAKE ACTION AS SOON AS THEY HEAR A SEXUAL OFFENCE HAS HAPPENED?

Yes, both under the IPC and POCSO.⁴ Sexual offences are cognizable crimes, this means they are classified as serious crimes which allow immediate action by the police, without first getting the permission from the local judge, also called judicial Magistrate, like the police have to do for minor crimes. The police can register a case, start investigations, and make arrests without a warrant. |



PART B

REPORTING
SEXUAL
OFFENCES

8. WHO CAN REPORT A SEXUAL OFFENCE TO THE POLICE?

Anyone who has information that a sexual offence has been committed can approach the police to report it. This includes the victim of any age, a witness to the crime, or anyone else who has some reliable information that a sexual crime may have happened.

You do not have to have seen it taking place, or be the victim, to report the crime to the police. Whoever reports the crime must give honest information and not make any false claims.

As far as possible, it is recommended that the survivor reports the crime to the police.

9. ARE THERE DIFFERENT PROCEDURES TO REPORT SEXUAL OFFENCES AGAINST CHILDREN?

Yes, there are special procedures towards a child-rights approach under the POCSO Act to make sure that every sexual offence against a child is reported.

Under Section 19 of the Act, any person (except a child), who either has information that a sexual offence against a child may take place, or knows that an offence has taken place, must report it the Special Juvenile Police Unit (SJPU) or local police.

Under Section 20, it is binding for any staff of the media or a hotel or lodge or hospital or studio or photographic facilities who come across any material which sexually exploits a child to report it to SJPU or local police.

Under Section 21, any person who fails to report a sexual offence against a child can be imprisoned or fined or both. An employer who does not report a sexual offence against a child (like those in Sections 19 and 20) by anyone working for him/her, can be imprisoned and fined.

10. WHAT IF A SURVIVOR IS NOT ABLE TO REPORT A SEXUAL OFFENCE RIGHT AWAY AFTER THE INCIDENT?

Everyone responds differently to going through the trauma of sexual violence. It is understandable that a survivor may not be able to approach the police immediately after

an incident. It is hoped that every survivor has someone they trust to talk to – a non-governmental organisation (NGO), activist, lawyer, family member, or any confidante – so they do not feel alone and more vulnerable.

As far as possible, it is best to avoid too much delay in reporting. The possibility of recalling details will be sharper with early reporting. Bodily or physical evidence can be collected. Factors like this make the chances of catching and punishing the perpetrator higher. Also, getting necessary medical care early on is important to attend to any injuries or discomfort.

If the survivor takes time to approach the police, the survivor, with the help of a trusted support (NGO, activists, lawyers or any confidante) if needed, should find a way to record a written first version of the offence(s). This should include the date, time, and details as soon as possible after the incident. This should be sent by email or registered post to a trusted relative or friend as hard proof of the date. Any visible injuries should be photographed with some proof of the date.⁵

Ensuring a written version and any needed photographic evidence of injuries, if available, will enable a survivor to approach the legal system when ready, without losing the first recall of facts and details of the offence(s) from the survivor's perspective.

When a survivor reports the offence to the police with time lapsed from its occurrence, the reasons for delay should be given to the police.

11. HOW CAN A SURVIVOR REACH THE POLICE TO REPORT A CRIME?

There are many ways a survivor can report to the police.

Whatever mode of first reporting, the survivor will have to go in person to the police station for the registration of the complaint.

1

In person by going to the police station, or beat chowki

Some states have all-women police stations which are to respond to crimes against women. They are staffed mainly by women police to receive, register, and where possible, investigate. A survivor or their support person can find out if there are all-women police stations in their state, or the local police will tell them.



POLICE CONTROL ROOM (100)

CHILD HELPLINE (1098)

LOCAL POLICE STATION / ALL-WOMEN POLICE STATION



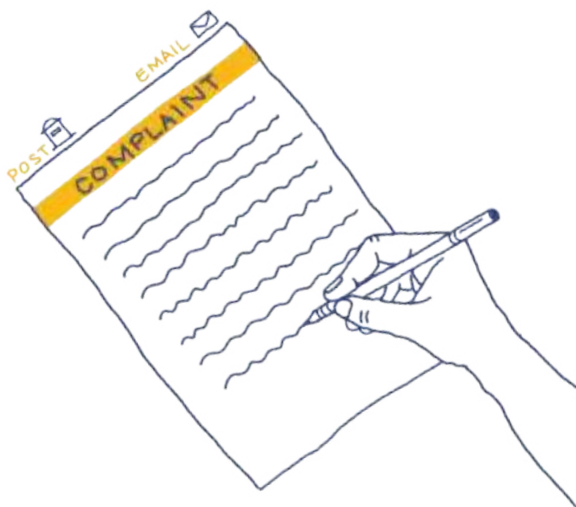
2

By calling the Police Control Room (100), or a special helpline (if available), or a child helpline if applicable (1098)

By calling the local police station (or the all-women police station if applicable)

3

By sending a written complaint by email or post



On calling the Police Control Room or dedicated helpline number, a police team in a van should be quickly dispatched to reach the survivor's exact location, remove and protect the survivor from further harm, and take the survivor for medical help if needed. Staff from the local police station should also reach to assist in registering the case. The police van services are provided in cities and urban areas mainly.

On going to the nearest beat chowki, the chowki in-charge should record the information in their assigned register, and immediately inform, and forward the complaint to the local police station. The chowki in-charge should tell the survivor which police station the complaint has been forwarded to, that staff in the police station will register the complaint, and an Investigating Officer will be assigned to investigate.

If a survivor calls a child helpline to report a sexual offence, the helpline has to immediately report it to the SJPU or local police.⁶

12. CAN A SURVIVOR APPROACH ANY POLICE STATION TO REPORT A SEXUAL OFFENCE?

Ideally it is best to report a crime to the police station under whose jurisdiction the crime occurred, as this will be the police station which will investigate the crime. The survivor would need to know the police station in which the crime fell, and can take advice (e.g. from NGOs or support persons) to verify this.

However, it is important to know that no police station can turn away a person seeking to report a crime.

If a survivor goes to a police station outside the jurisdiction where the crime took place, the police are to register the complaint as what is called a “zero FIR” and ensure it is forwarded to the police station with jurisdiction.⁷

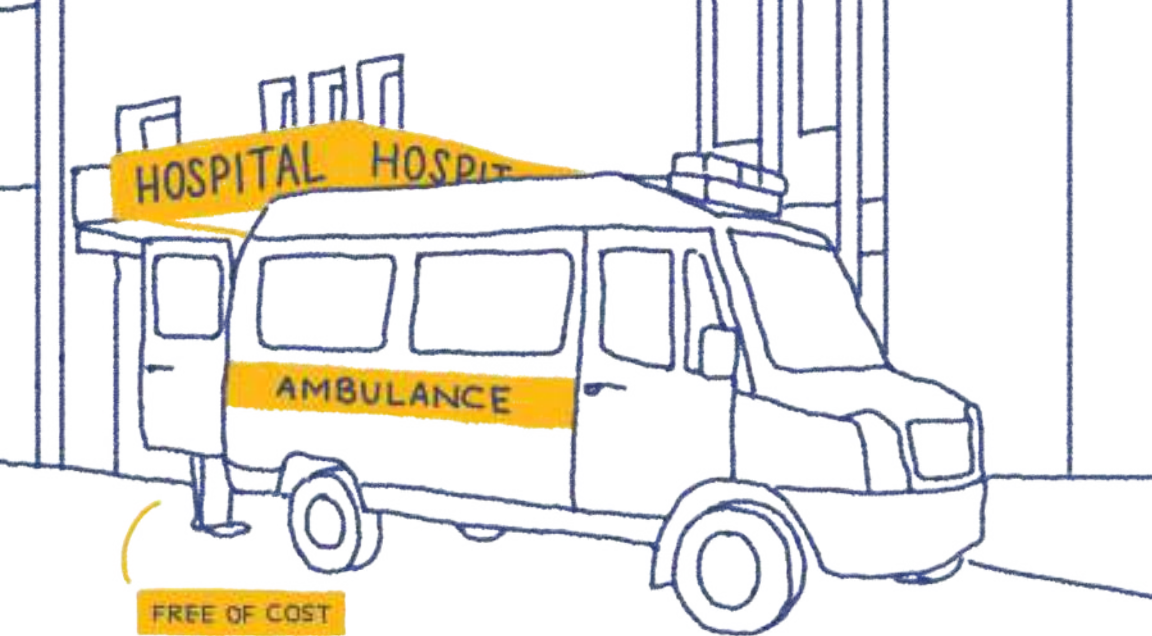
13. DOES THE SURVIVOR HAVE TO CARRY A COMPLAINT IN WRITING WHEN GOING TO THE POLICE STATION TO REPORT?

It is not mandatory for a survivor to have a written complaint in hand when reporting. A survivor can give a complaint orally, by narrating their experience to the police. The police are duty bound to write down the information given by the survivor as part of the process to register the complaint.

However, if the survivor can prepare a written complaint in advance (through whatever trusted support needed to do so), it will ease the registration process for the survivor. It can ensure that a written account of all the first facts in the survivor’s perspective is already in hand.

If they have a written complaint, it will help if the survivor can carry two copies of it. As part of registering the complaint, the police officer concerned should ideally attach a copy of the complaint to what is called the First Information Report (FIR), which is the legal document representing the registration of a crime complaint (explained in detail below).

If the police do not register the FIR immediately and ask the survivor to come back another day, the survivor should also ask for one copy of the complaint to be stamped and dated as received by the police station on that particular date, and given back to the survivor. The police are not duty bound to do so, but it is good for the survivor to ask for it. Having proof of the submission of a written complaint to the police station will be very useful for the survivor in pursuing further legal steps if needed.



14. CAN A SURVIVOR VISIT A HOSPITAL BEFORE REPORTING TO THE POLICE?

Yes. Sexual violence can have several short or long term impacts on the health of survivors. No survivor should be denied due medical care and attention just because they are not ready to approach the police right away. In fact, the law requires all hospitals to provide first aid or medical treatment free of cost to survivors of acid attack and rape. Hospitals also have a legal duty to inform the police.⁸

For a child survivor, the SJPU has to take the child, if they are in need of care and protection, to a nearest hospital within 24 hours of the reporting of the commission of an offence.⁹

15. WHAT ARE ONE STOP CRISIS CENTRES (OSCs) AND HOW CAN THEY HELP SURVIVORS?

OSCs are designed to support women, and girls below 18 years of age, affected by any form of violence. They provide coordinated services to survivors with medical, legal, psychological, and counseling support, and shelter facilities, all under one roof.¹⁰

There are about 556 Centres in 28 states and 5 UTs.¹¹ As they are not working in every district or every state as yet, access to an OSC will depend on where the survivor is. OSCs can help a survivor to approach the police to report their complaint and seek the

registration of a First Information Report.¹² Each OSC will have an Administrator who will be the first contact point for a survivor.

16. WHAT SHOULD SURVIVORS FROM SCHEDULED CASTES OR SCHEDULED TRIBES (SC/ST) COMMUNITIES KEEP IN MIND WHILE REPORTING?

For a survivor from the SC/ST community who has been subjected to a sexual offence in the form of an identity-based atrocity by someone who is not from their caste/tribal identity, it is important to give the caste/tribe to which they belong. They can further ensure that this detail is recorded by the police when they register the complaint. They can also specify the caste/tribe of the alleged perpetrator(s), if known. Depending on the facts at hand and the communities that the survivors and perpetrators belong to, the police may have to register the complaint under the Atrocities Act.

17. DO THE POLICE HAVE TO TAKE SPECIAL STEPS TO ASSIST SURVIVORS WHO ARE MENTALLY OR PHYSICALLY DISABLED (TEMPORARILY OR PERMANENT) WHO SEEK TO REPORT A SEXUAL OFFENCE?

Yes, the law requires special steps to be taken in sexual offence cases for women survivors of certain crimes.¹³ Once the police are informed that a disabled survivor seeks to complain, the police are to record the complaint at her residence or location of her choice in the presence of an interpreter/special educator. This must be videographed.



The police are also required to get her statement recorded by a Judicial Magistrate as soon as possible.¹⁴



PART C

REGISTRATION
OF COMPLAINTS
AS FIRST
INFORMATION
REPORTS

18. WHAT IS A FIRST INFORMATION REPORT?

As soon as the police receive a complaint of a crime from a victim/survivor/complainant, they have to register the complaint as what is called a First Information Report (FIR). This is their legal duty.

A FIR is a written document prepared by the police. It is the report of the information that *first* reaches the police about the occurrence of a crime or crimes, and is filed after a person reports a crime to them. It is only after the FIR is registered at the police station that the police can start their investigation. The registration of a FIR by the police is the first step for setting the legal process in motion.

19. CAN THE POLICE CHOOSE NOT TO REGISTER A FIR AFTER RECEIVING A CRIME COMPLAINT?

No. If the complaint alleges that a cognizable offence has taken place, they must register an FIR right away. All crimes are classified as serious (cognizable) or less serious (non-cognizable) in the law. All sexual offences are cognizable crimes.

The Code of Criminal Procedure (CrPC) is an important law that sets out procedures that the police and courts have to follow in proceedings of a criminal case. When it comes to registration and investigation of criminal cases by the police, the CrPC makes it binding on the police to register an FIR when they receive information that shows a cognizable offence has taken place.¹⁵ The Supreme Court has said the police cannot even question whether the information is genuine if it describes a cognizable offence. The police have to write down what the person giving the information is telling them and register an FIR based on it.¹⁶

All the above applies to sexual offences against a child too. Also, Section 19 of the POCSO Act states that once the police receive a complaint, or information about a sexual offence, they have to record it in writing. Rule 4(3) to the Act makes it mandatory for the SJPU or local police, who received the complaint or information, to “proceed to record and register a First Information Report as per the provisions of the Section 154 of the Code of Criminal Procedure, 1973”.¹⁷

20. CAN THE POLICE HOLD A PRELIMINARY INQUIRY BEFORE THEY REGISTER AN FIR FOR SEXUAL OFFENCES?

Since all the sexual offences in the IPC and POCSO are cognizable offences, the police cannot say that they have to conduct a preliminary inquiry to verify the first information before registering the FIR.

The Supreme Court has said that a preliminary inquiry before registering a FIR is allowed only for a limited category of cases (including matrimonial disputes, commercial offences, medical negligence cases, corruption cases, or cases where there seems to be too much delay). Even in these cases, the preliminary inquiry can only look into whether it is a cognizable offence, *not* verify the information received.¹⁸ In all other cases, the police is barred from holding a preliminary inquiry.

If the police tell a survivor they have to do a preliminary inquiry before they can register a case of a sexual offence, they can respond by telling the police that this is illegal under the Supreme Court's judgement in *Lalita Kumari v. Government of Uttar Pradesh*.

21. WHAT SHOULD AN FIR CONTAIN?

The FIR should include the facts and information as you know them, or they have been told to you. The police cannot change any of the information which you report to them.

There is some information which you need to tell the police so it gets into the FIR. This includes:

- **The date, time, and location** where the sexual offence took place
- **Your name, full address, and phone number**, as the complainant
- **The true facts of the incident** as they occurred, to the



best of your recollection; including details of the manner of the commission of the crime [for instance, bodily injuries suffered or weapons used]

- **Names, contact details, and descriptions of the persons involved** in the incident; if you do not know the name(s) of the accused, give any details you can to help identify them, like gender, approximate age, body build and height, or any identifying features or marks on their bodies or in their speech
- **The survivor's relation with the accused**, if any
- **Number of incidents of sexual assault**, if repeated
- **Reasons for delayed reporting**, from the date of the offence (if applicable)

Depending on the case and what happened, you can also give the following kinds of information to the police for recording in the FIR, if relevant. Giving the fullest detail can help.

For example:

- if any **attempt was made to undress** or touch using force
- if **sexual comments**, and/or **sexual demands were made**
- if the accused **followed your movements**
- If **any video or other content of a sexual nature was shown** or sent by the accused
- If **threats were made** with a gun or any kind of weapon
- If **drugs or any other inducement were given** forcibly
- If the accused **video-graphed the assault**
- If the accused **threatened to spread the video** in case the assault was reported

22. WHAT ARE THE PROCEDURES THE POLICE HAVE TO FOLLOW TO REGISTER AN FIR?

Section 154 of the CrPC lists the procedures the police have to follow to register an FIR. These are:

1

If a woman survivor herself goes to the police station for registration of her complaint, a woman police officer must record the information and register the complaint.



2

If you give the information orally, the police officer must ask you to narrate the information so she can write it in plain and simple language as close as possible to your own words.

**3**

It is your right as a person giving information or making a complaint to demand that the information recorded by the police is read over to you.

**4**

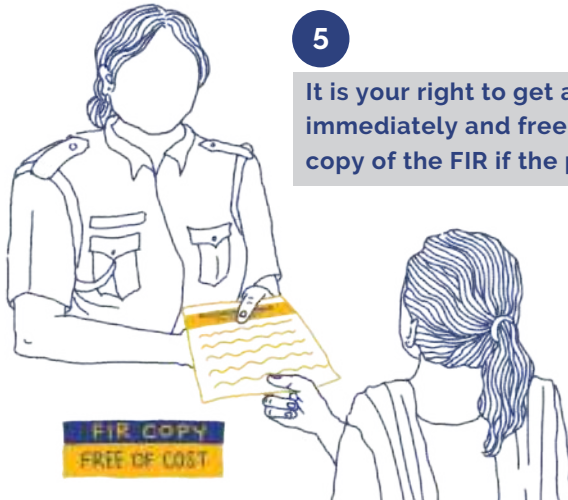
Once the FIR is ready, it must be signed by the person giving the information. You should sign it only after you are sure that the information recorded by the police matches the details you gave. Remember the FIR must reflect what you know.



People who cannot read or write must put their left thumb impression on the FIR after being satisfied that it is a correct record.

5

It is your right to get a copy of the FIR immediately and free of cost. Always ask for a copy of the FIR if the police do not give it to you.



6

The police must record the date and contents of the FIR in the police station diary.



23. ARE THERE ADDITIONAL PROCEDURES TO BE FOLLOWED FOR THE REGISTRATION OF AN FIR UNDER THE POCSO ACT AND RULES?

Yes. While all the procedures in Section 154 CrPC have to be followed when registering an FIR for a sexual offence against a child a survivor, the POCSO Act and Rules add some more to help child survivors.

As per Section 19 of the Act, as soon as the SJPU or local police receive a complaint or information of a sexual offence, they have to:

- Assign it an entry number and put it in writing
- Read it over to you
- Record it in a register or book kept by the SJPU or in the police station diary

When a child survivor is reporting, the police have to write the FIR in simple language to make sure the child can understand the contents.

The police have to provide a language translator or interpreter if the child does not understand the language the FIR is being written in.

The police officer registering the FIR have to share the following with you¹⁹:

- Her/his name and designation
- Her/his address and phone number
- The name, designation and contact details of his/her supervising officer

Within 24 hours of registering the FIR, the local police or SJPU have to fill a preliminary assessment report (see Annexure 1) and send it to a special body that looks after children who need care and protection called the Child Welfare Committee.²⁰

24. DO SURVIVORS HAVE A RIGHT TO TAKE THE ASSISTANCE OF SUPPORT PERSONS AT THE TIME OF REGISTRATION?

The POCSO Act gives child survivors the right to take the assistance of support persons.²¹ They can be from NGOs, or professionals or experts in psychology, social work, or child development. Every state government has to make guidelines to help child survivors access support persons.

At the time of registration, the police have to inform the child or their guardian of the availability of support services, like counselling, and take steps to assist them in contacting the support services they need.²²

Adult survivors can take the help and assistance of whomever they need, but they have to seek them out on their own. In some places, like Delhi²³ for instance, counselling services are to be provided to rape survivors at the time of registration.

POLICE FACILITATION OFFICERS AT OSCs

Every OSC is to have a Police Facilitation Officer (PFO) who is to act as a support for survivors to deal with the police specifically. If a survivor is unable to go to the police station to lodge her complaint, the PFO can help ensure that this happens from her home/OSC/hospital after explaining to her and getting her consent.²⁴

25. DO SURVIVORS HAVE A RIGHT TO A LAWYER AT THE TIME OF REGISTRATION?

Yes.

In a judgment from 1994, *Delhi Domestic Working Women's v Union of India and Others*²⁵, the Supreme Court directed that survivors of sexual assault (referring to rape survivors specifically) must be able to meet a lawyer at the police station at the time of registration, before any questions are asked of her and while she is being questioned. The police is duty-bound to inform a survivor of this right and put it in writing that the survivor was informed. Every police station should have a list of lawyers available for survivors who do not have a lawyer they can contact.

If possible, a survivor can approach a legal NGO and ask them for a private lawyer, or be referred to a lawyer whose fees are affordable.²⁶

Women and child survivors, and members of a Scheduled Caste or Tribe, have a right to free legal aid services, if they cannot afford a lawyer.²⁷

Under Section 40 of the POCSO Act, a child survivor or their family or guardian are entitled to engage a lawyer of their choice. If they cannot afford a lawyer, they can approach a legal services authority to assign them a lawyer free of cost. The police have to inform the child and/or their parent or guardian of the child's right to be represented by a lawyer and to legal counsel.²⁸

26. CAN THE POLICE REJECT YOUR COMPLAINT AS A FALSE COMPLAINT?

No, the police cannot call a sexual offence complaint false

They cannot even question the credibility or reliability of the information/complaint, if it indicates that a sexual offence has taken place. The police have to register the complaint into a FIR. If the officers at the police station call it a false complaint, the survivor should complain to the police chief of the district.

27. CAN THE POLICE ASK A SURVIVOR TO WITHDRAW A COMPLAINT?

No, the police cannot interfere or “mediate” in any way, or ask the survivor to compromise. If they do, they are violating their legal duty. If this happens, the survivor should complain to the police chief of the district.

28. CAN THE POLICE MAKE A SURVIVOR CHANGE ANY FACTS OF THEIR COMPLAINT?

No, the police have to record the information as it is given to them, whether orally or in writing. They cannot change or water down any of the information.

29. CAN THE POLICE MAKE YOU WAIT AT THE POLICE STATION?

They can only make you wait if it is for a legitimate reason and for a reasonable time, like if a woman police officer is on her way to the police station to help the survivor through the process of registration, or if a lawyer, or translator is to arrive. The police have a duty to ensure that the FIR is registered while the information is clear and fresh in your mind and can be accurately recorded. They should not make anyone wait for hours on end, or with no proper explanation or reason.



30. SHOULD YOU EVER SIGN ON A BLANK SHEET OF PAPER WHEN ASKED BY THE POLICE TO DO SO?

Never. It is against the law for the police to ask anyone to sign on blank paper, especially if they threaten or force you. Remember that you should sign the final FIR only when you are satisfied that it accurately represents the information and facts as you told the police. If the police ask you to sign on a blank paper, you must refuse and complain to the district head.



PART D

REMEDIES
FOR NON-
REGISTRATION

31. WHAT CAN YOU DO IF THE POLICE DO NOT REGISTER THE FIR AT THE POLICE STATION?

It is illegal for the police to fail to register an FIR into a sexual offence.

This applies to all cases of sexual offences. If this happens, there are remedies available at two levels to enable survivors to get their FIRs registered. These are available under the CrPC.



1

Send a written complaint to the district Superintendent of Police (the police chief of the district). The SP can order the Officer-in-Charge of the police station to register an FIR.²⁹ If you are in an urban area, you can send your complaint to the Deputy Commissioner of Police (DCP), who is the head of police districts in urban areas.

2

File an application in the court of the area Judicial Magistrate under Section 156(3), CrPC³⁰ to ask the court to order the police to register the complaint and start the investigation.



Taking the advice, or assistance of a lawyer or NGO support person can make it easier for survivors, especially to draft the complaint to the SP/DCP. A lawyer will be required to approach the magistrate's court.

32. CAN YOU COMPLAIN TO ANY OTHER AUTHORITIES?

Yes, you can also send a written complaint to the National/State Human Rights Commission or National/State Commission for Women.

You can also approach a One Stop Crisis Centre if there is one near you. The PFO can help you to complain and follow up with the district police chief.

33. WHAT IS USEFUL TO INCLUDE IN COMPLAINTS TO THE DISTRICT SP AND MAGISTRATE?

It would help to have the following information:

- **Brief details of complainant and original complaint** (attach a copy of the original written complaint if possible; and/or any receipt from the police station)
- **State date(s) on which survivor/complainant went to report to the police;** if multiple, state each
- **Indicate the time** that has transpired since first attempt to register
 - Indicate if the complainant/survivor was told that a **preliminary inquiry had to be done first**, and cite that this violates the Lalita Kumari judgment³¹
 - Indicate if the **survivor has been subject to threats or repeated attacks** since the first attempt to register
- **Details of police officer(s)** spoken to/who refused, if known – name, designation, police station, district
- **Brief description of circumstances/reasons** given
- **Any derogatory/offensive comments** made by police

In the application to the judicial Magistrate, enclose a copy of the complaint to the SP/DCP, indicate the response given, the number of visits made, and state if the SP/DCP gave an order for inquiry, instead of registration of FIR.

To both the SP and Magistrate, seek an order from them to the officer-in-charge of the police station for immediate registration of FIR.

34. CAN THE SP/DCP ORDER AN INQUIRY INSTEAD OF REGISTRATION OF FIR?

If the complaint given to the SP/DCP discloses that a sexual offence has happened, the SP is bound to order the officer-in-charge of the police station to ensure the FIR is registered. It is best if the SP provides a written order or direction.

35. HOW DO YOU SEND A COMPLAINT TO THE SP/DCP?

The complaint needs to be in writing. You may send it by registered post (with acknowledgment of delivery, AD) to the office of the SP/DCP. If it is possible to take it personally to the SP/DCP, that may expedite it. As the head of the police district, the SP/DCP is busy and often not readily available in their office. To avoid waiting, it is better to visit the SP/DCP during their visiting hours, or after calling to find out their availability.

36. HOW DO YOU APPROACH THE AREA MAGISTRATE?

You will have to engage a lawyer to draft an application under Section 156(3), CrPC and file this in the local Magistrate's court, with all supporting documents. You can avail a lawyer through the District Legal Services Authority or a private lawyer, through the help of a NGO if you need. The court will hold hearings and your lawyer should be there to represent you. The court can order the police to register the FIR and start investigation.

37. WHAT CAN THE MAGISTRATE DO IF THE POLICE DO NOT ACT ON HIS/HER ORDER?

If police do not act on the orders of the Judicial Magistrate, your lawyer can ask the court to call for a status report, and an action taken report from the police, which can push them to comply. |



PART E

HOLDING
THE POLICE
ACCOUNTABLE
FOR NON-
REGISTRATION

38. CAN YOU TAKE ACTION AGAINST THE POLICE FOR FAILING TO REGISTER YOUR COMPLAINT AS A FIR?

It is mandatory for the police to register FIRs in sexual offences. It is illegal for them to fail to do so, under the IPC, POCSO, and Atrocities Act. In fact, it is a crime.

This means, if you choose to, you can file a criminal complaint against a police officer or officers for failure to register an FIR:

- **Under the IPC, for failure to register sexual offences**, you can file a complaint under Section 166A(c) of the IPC
- **Under the POCSO Act, for failure to register sexual offences against a child**, you can file a complaint under Section 21(1)
- **Under the Atrocities Act, if you come from a Scheduled Caste or Tribe and the police officer you want to complain against is not SC or ST**, you can file a complaint under Section 4

39. WHAT DOES SECTION 166A(C) IPC SAY?

The Section states that a public servant can be punished with imprisonment up to 2 years and fine for failure to register complaints of specific offences, provided below. Do note that Section 166A(c) does not cover all the sexual offences under the IPC. This box states the exact offences it covers.

166 A: PUBLIC SERVANT DISOBEYING DIRECTION UNDER LAW – WHOEVER, BEING A PUBLIC SERVANT,-

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under sections:

- 326A** Voluntary causing grievous hurt by use of acid.
- 326B** Voluntary throwing or attempting to throw acid
- 354** Assault or criminal force with intent to outrage her modesty

354B Assault or use of criminal force to woman with intent to disrobe

370 Trafficking of person

370A Exploitation of a trafficked person

376 Rape

376A Causing death or resulting in persistent vegetative state

376B Sexual intercourse by a husband upon his wife during separation

376C Sexual intercourse by a person in authority

376D Gang rape

376E Repeat offenders (under S. 376, 376 A, 376D)

509 Word, gesture, act to insult modesty of woman

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

40. WHAT DOES SECTION 21(1) OF THE POCSO ACT SAY?

It refers to the police's duty under Section 19(2) that makes it binding on the SJPU or local police to register an FIR as soon as they receive a complaint or information that a sexual offence has been committed against a child. It says anyone who fails to record an offence as under Section 19(2), can be punished with imprisonment up to six months, or fined, or both.

21. Punishment for failure to report or record a case – (1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

41. WHAT DOES SECTION 4 OF THE ATROCITIES ACT SAY?

Section 4 lists specific duties that public servants (includes police officers) have to follow under this law. These duties include some specific ones which are part of the procedure police have to follow to register an FIR:

- If you give the information orally, the **police have to write it and read it out to you**, before taking your signature
- To register an FIR and **ensure all the right sections of the Atrocities Act are included**
- **To give you a copy of the FIR** as soon as it is registered

It goes on to say that if it is found after an inquiry that a public servant (who is not from a Scheduled Caste or Scheduled Tribe) did not carry out these duties, s/he can be punished with a jail term from six months up to 1 year.

42. WHAT STEPS CAN YOU TAKE TO FILE A CRIMINAL COMPLAINT AGAINST A POLICE OFFICER?

If a survivor chooses to take this step, it will mean filing an FIR against the police officers concerned. It will be best to do this with the support of a lawyer, and an NGO too. It will help the case if you know the names and ranks of the police officer or officers who were assigned to register your FIR and failed to do so. A copy of your original complaint and any receipts from the police will also strengthen your paperwork. If you complained to the SP/DCP, and s/he did not intervene or failed to ensure the FIR was registered, you can name him/her too in your complaint.



The PFO from a One Stop Crisis Centre can also assist in filing a case against a police officer for women survivors under Section 166A(c), IPC.³²

43. ARE THERE RISKS IN FILING A CRIMINAL COMPLAINT AGAINST POLICE OFFICERS?

It is important to know that there could be risks if you choose to take this step. Police officers may use their position and powers to intimidate and scare you. They may try to convince you to withdraw your complaint against them by going slack on investigating the sexual offence case. Remember that any kind of force, threat or coercion to keep you from seeking legal remedy is illegal.

Ideally, the police department should make sure this does not happen, and also that the investigation into the sexual offence case is not affected by the complaint against the police. But officers involved may want to protect each other especially if they are from the same police station.

It would be important for a survivor to take the advice of a lawyer and/or support person they trust.

One good strategy would be to bring to the notice of the Magistrate's court in the application under Section 156(3) CrPC that the police must be prosecuted for the delay/refusal on lodging FIR. This could persuade the court to order the filing of complaint on its own initiative and inherent powers. Thus, the survivor would remain at a safe distance from taking the lead. Though, the survivor may still be treated a witness and asked to take part in the investigation. |

ENDNOTES

1. Some of the phrasing here is based on the following factsheet by the US-based National Sexual Violence Resource Centre: https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Factsheet_What-is-sexual-violence_1.pdf
2. World Health Organisation(2002), “*World report on violence and health*”, edited by Etienne G. Krug, Linda L. Dahlberg, James A. Mercy, Anthony B. Zwi and Rafael Lozano, page 149, https://www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf as accessed on 27 November, 2020.
3. Defined as any person below the age of eighteen years, Section 2(1)(d), POCSO Act
4. As per Part II of the First Schedule to the Code of Criminal Procedure, 1973; see also the Delhi High Court’s interpretation of the nature of offences in POCSO in *Santosh Kumar Mandal v. State, Bail Appln No. 1763/2016, Delhi High Court (28 September 2016) (2016) SCC Online Del 5378* where the Court stated: “Thus offences punishable under POCSO Act including Section 12 are cognizable and non-bailable offences”.
5. All of this advice taken from: Lawyer’s Collective Women Rights Initiative (2014), Engaging with the criminal justice system: *A guide for survivors of sexual violence*, Page 9-10, <http://www.lawyerscollective.org/wp-content/uploads/2014/04/Dos-and-Donts.pdf>
6. Rule 4(2), The Protection of Children from Sexual Offences Rules, 2020
7. Ministry of Home Affairs, Government of India, Advisory (2013), *Registration of FIR irrespective of territorial jurisdiction and Zero FIR*, 10 May: <https://www.mha.gov.in/sites/default/files/AdvisoryFIR-290513.pdf> as accessed on 7 August, 2020.
8. Section 357C, CrPC- “Treatment of victim: All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.”
9. Section 19(5), POCSO Act- “Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.”
10. Ministry of Women and Child Development, “*One Stop Crisis Scheme: Implementation Guidelines for State Governments/UT Administrators*”, December, 2017, page 1-2; https://wcd.nic.in/sites/default/files/OSC_G.pdf as accessed 21 August, 2020.
11. One Stop Crisis Centre directory by Ministry of Women and Child Development; 19 March 2020; https://wcd.nic.in/sites/default/files/683OSCDirectory-19.03.2020_0.pdf as accessed 24 August, 2020.
12. Ministry of Women and Child Development, “*One Stop Crisis Scheme: Implementation Guidelines for State Governments/UT Administrators*”, December, 2017, page 4; https://wcd.nic.in/sites/default/files/OSC_G.pdf as accessed 21 August, 2020.

ENDNOTES

13. These are Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E, and 509 of the Indian Penal Code.
14. Section 154(1)(c), CrPC: "the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause(a) of sub-section (5A) of section 164 as soon as possible".
15. Section 154, CrPC
16. Lalita Kumari v. Government of Uttar Pradesh & Ors AIR 2014 SC 187
17. Rule 4(3), Protection of Children from Sexual Offences Rules, 2020
18. Lalita Kumari v. Government of Uttar Pradesh & Ors AIR 2014 SC 187
19. Rule 4(1), Protection of Children from Sexual Offences Rules, 2020
20. Rule 4(13), Protection of Children from Sexual Offences Rules, 2020
21. Section 39, POCSO Act
22. Rule 4(3)(e), Protection of Children from Sexual Offences Rules, 2020
23. See the following judgment by the High Court of Delhi: *Delhi Commission For Women v. Delhi Police 2009 SCC Online Del 1057*
24. Ministry of Women and Child Development, "One Stop Crisis Scheme: Implementation Guidelines for State Governments/UT Administrators", December, 2017; Page7-8 https://wcd.nic.in/sites/default/files/OSC_G.pdf accessed on 21 August, 2020.
25. 1995 SCC (1) 14
26. Engaging with the Criminal Justice System: A Guide for Survivors of Sexual Violence by Lawyers Collective, Page 20.
27. Section 12 (a) and (c), The Legal Services Authorities Act, 1987
28. Rule 4(3)(f), Protection of Children from Sexual Offences Rules, 2020
29. Section 154(3) of the CrPC states: "Any person, aggrieved by a refusal on the part of the an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such investigation discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence".
30. Section 156(3) states: "Any Magistrate empowered under section 190 may order such an investigation as abovementioned".
31. Lalita Kumari v Government of Uttar Pradesh & Ors AIR 2014 SC 187
32. Ministry of Women and Child Development, "One Stop Crisis Scheme: Implementation Guidelines for State Governments/UT Administrators", December, 2017; Page7 https://wcd.nic.in/sites/default/files/OSC_G.pdf accessed on 14 September, 2020

ANNEXURE 1

PRELIMINARY ASSESSMENT REPORT¹

PARAMETERS	COMMENT
1 Age of the Victim	
2 Relationship of child with the offender	
3 Type of abuse and gravity of the offence	
4 Available details and severity of mental and physical harm/injury suffered by the child	
5 Whether the child is disabled (physical, mental, intellectual)	
6 Details regarding economic status of victim's parents, total number of child's family members, occupation of child's parents and monthly family income	
7 Whether the victim has undergone or undergoing medical treatment due to incident of the present case or needs medical attention on account of offence	
8 Whether there has been any loss of educational opportunity as a consequence of this offence including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial or other reason?	
9 Whether the abuse was single isolated incident or whether the abuse took place over a period of time?	
10 Whether the parents of the victim are undergoing any treatment or have any health issues?	
11 Aadhar No. of child if available?	

Date:

STATION HOUSE OFFICER

¹ Protection of Children from Sexual Offences Rules, 2020, Ministry of Women and Child Development. <https://wcd.nic.in/sites/default/files/POCSO%20Rules%20merged.pdf> Accessed 10 November, 2020

CHRI PROGRAMMES

CHRI seeks to hold the Commonwealth and its member countries to the high standards of human rights, transparent democracies and Sustainable Development Goals (SDGs). CHRI specifically works on strategic initiatives and advocacy on human rights, Access to Justice and Access to Information. Its research, publications, workshops, analysis, mobilisation, dissemination and advocacy, informs the following principal programmes:

ACCESS TO JUSTICE (ATJ)*

* **Police Reforms:** In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as enforcers of a regime. CHRI's programme in India and South Asia aims at mobilising public support for police reforms and works to strengthen civil society engagement on the issues. In Tanzania and Ghana, CHRI examines police accountability and its connect to citizenry.

* **Prison Reforms:** CHRI's work in prisons looks at increasing transparency of a traditionally closed system and exposing malpractices. Apart from highlighting systematic failures that result in overcrowding and unacceptably long pre-trial detention and prison overstay, it engages in interventions and advocacy for legal aid. Changes in these areas can spark improvements in the administration of prisons and conditions of justice.

ACCESS TO INFORMATION

* **Right to Information:** CHRI's expertise on the promotion of Access to Information is widely acknowledged. It encourages countries to pass and implement effective Right to Information (RTI) laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh, Ghana and Kenya. In Ghana, CHRI as the Secretariat for the RTI civil society coalition, mobilised the efforts to pass the law; success came in 2019 after a long struggle. CHRI regularly critiques new legislation and intervenes to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. It has experience of working in hostile environments as well as culturally varied jurisdictions, enabling CHRI bring valuable insights into countries seeking to evolve new RTI laws.

*** Freedom of Expression and Opinion -- South Asia Media Defenders Network (SAMDEN):** CHRI has developed a regional network of media professionals to address the issue of increasing attacks on media workers and pressure on freedom of speech and expression in South Asia. This network, the South Asia Media Defenders Network (SAMDEN) recognises that such freedoms are indivisible and know no political boundaries. Anchored by a core group of media professionals who have experienced discrimination and intimidation, SAMDEN has developed approaches to highlight pressures on media, issues of shrinking media space and press freedom. It is also working to mobilise media so that strength grows through collaboration and numbers. A key area of synergy lies in linking SAMDEN with RTI movements and activists.

INTERNATIONAL ADVOCACY AND PROGRAMMING

Through its flagship Report, *Easier Said Than Done*, CHRI monitors the compliance of Commonwealth member states with human rights obligations. It advocates around human rights challenges and strategically engages with regional and international bodies including the UNHRC, Commonwealth Secretariat, Commonwealth Ministerial Action Group and the African Commission for Human and People's Rights. Ongoing strategic initiatives include advocating for SDG 16 goals, SDG 8.7 (see below), monitoring and holding the Commonwealth members to account and the Universal Periodic Review. We advocate and mobilise for the protection of human rights defenders and civil society spaces.

SDG 8.7: CONTEMPORARY FORMS OF SLAVERY

Since 2016, CHRI has pressed the Commonwealth to commit itself towards achieving the United Nations Sustainable Development Goal (SDG) Target 8.7, to 'take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.' In July 2019 CHRI launched the Commonwealth 8.7 Network, which facilitates partnerships between grassroots NGOs that share a common vision to eradicate contemporary forms of slavery in Commonwealth countries. With a membership of approximately 60 NGOs from all five regions, the network serves as a knowledge-sharing platform for country-specific and thematic issues and good practice, and to strengthen collective advocacy.

This guide provides information to assist adult and child survivors of sexual violence report complaints, and help them through the process of registration. If their complaints are first refused at the police station, it informs them of remedies to get these registered. It points to steps which can be taken to hold the police accountable for delay or refusal to register in certain cases.



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