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The Guardian in the Courtroom: A Comprehensive Analysis of Support Person Guidelines under Section 39 of the POCSO Act

AYUSHI SURYAWANSHI

Assistant Professor, Criminology

Abstract

The Protection of Children from Sexual Offences (POCSO) Act, 2012, was a landmark shift in Indian criminal law, moving toward a child-centric restorative justice model. A pivotal yet often underutilized component of this Act is Section 39, which mandates assistance for the child during legal proceedings. This paper evaluates the "Model Guidelines with Respect to Support Persons" issued by the NCPCR. By examining the selection, roles, and judicial interpretations of Support Persons, this research argues that these individuals are essential for mitigating secondary victimization. The study concludes that while the guidelines provide a sophisticated roadmap, structural barriers in funding and professional training must be addressed to ensure every child survivor has an effective "voice" in the halls of justice.

Keywords: POCSO Act, Section 39, Support Person, Child Welfare Committee, Secondary Victimization, Judicial Reform.

1. Introduction

The journey of a child through the Indian criminal justice system is historically paved with intimidation. From the cold atmosphere of a police station to the aggressive cross-examination in a courtroom, the system was designed by adults, for adults. Section 39 of the POCSO Act, 2012, was enacted to break this cycle of trauma. It recognizes that a child survivor is not merely a witness but a vulnerable human being requiring specialized emotional and procedural navigation. The Indian legal system addressed sexual offenses against children through the lens of the Indian Penal Code (IPC), 1860. However, the IPC was fundamentally flawed in its treatment of minors; it lacked a gender-neutral approach, failed to recognize non-penetrative forms of sexual assault as grave offenses, and most critically treated child victims as "miniature adults" in the eyes of the law. The adversarial nature of the IPC required a child to withstand the same rigorous, often hostile, cross-examination as an adult, frequently leading to the collapse of cases and the profound re-traumatization of the victim.

Recognizing these systemic failures and honoring its commitment to the **United Nations Convention on the Rights of the Child (UNCRC)**, India enacted the **Protection of Children from Sexual Offences (POCSO) Act in 2012**. This legislation was not merely a new list of crimes; it was a revolutionary shift toward **Restorative Justice**. It introduced the concept of the "Best Interests of the Child" as the guiding principle for every stakeholder from the first responding police officer to the presiding Special Judge.

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it lacked a gender-neutral approach, failed to recognize non-penetrative forms of sexual assault as grave offenses, and—most critically—treated child victims as "miniature adults" in the eyes of the law. The adversarial nature of the IPC required a child to withstand the same rigorous, often hostile, cross-examination as an adult, frequently leading to the collapse of cases and the profound re-traumatization of the victim. that justice is not derailed by the child's fear, confusion, or inability to articulate trauma in a formal setting At the heart of this restorative framework lies **Section 39 of the POCSO Act**. While other sections define offenses and punishments, Section 39 focuses entirely on the **Support Ecosystem**. It mandates that the State Government shall prepare guidelines for the use of "persons" (experts in psychology, social work, or child welfare) to assist the child at all stages of the judicial process.

The legislative intent behind Section 39 is to ensure that a child is never left alone to navigate the "Labyrinth of Law." It recognizes that a child's testimony is the most potent evidence in a POCSO trial, yet it is also the most fragile. By providing a **Support Person**, the law seeks to stabilize this fragility, ensuring.

Despite the mandate of Section 39, for many years there was a lack of uniformity in how "Support Persons" were selected or what their specific duties entailed. This led to "Support Persons" being treated as mere bystanders. The **National Commission for Protection of Child Rights (NCPCR)** intervened by drafting the **Model Guidelines** provided in the document. These guidelines transform Section 39 from a vague "right to assistance" into a concrete, professionalized, and accountable system. They define who can be a support person, how they should be paid, and exactly how they must conduct themselves to protect the child's dignity without compromising the legal facts of the case.

The National Commission for Protection of Child Rights (NCPCR) introduced the "Model Guidelines" to standardize this support. A Support Person is defined as a professional who bridges the gap between the child's fragile psychological state and the rigid requirements of the law. This paper seeks to analyse these guidelines as a tool for human rights advocacy. The legal journey for a child survivor of sexual abuse is often as traumatic as the offense itself. The adversarial nature of the Indian courtroom, the intimidating presence of police in uniform, and the repetitive narration of trauma can lead to "secondary victimization." Recognizing this, Section 39 of the POCSO Act, 2012, read with Rule 18 of the POCSO Rules, 2020, necessitates the involvement of a 'Support Person.'

The Model Guidelines issued by the National Commission for Protection of Child Rights (NCPCR) serve as a blueprint for institutionalizing this support. A Support Person is not merely an observer; they are a psychological anchor and a procedural guide. This paper evaluates the framework of these guidelines, examining how they aim to humanize a rigid legal system.

2. Review of Literature and Judicial Foundations

child-centric law in India begins with the **United Nations Convention on the Rights of the Child (UNCRC), 1989**, to which India is a signatory. Article 3 of the UNCRC introduces the "Best Interests of the Child" as a primary consideration in all legal actions. Article 12 (the child's right to be heard) and Article 19 (protection from all forms of violence) create a mandatory requirement

for a "Support Person." Literature on international child rights (*Fortin, 2003*) suggests that for a child's voice to be truly "heard" in a legal sense, the state must provide a psychological scaffolding. Without this, the child's participation is merely symbolic, not substantive.

literature in criminology and victimology (*Doak, 2008*) focuses on **Secondary Victimization**—the trauma caused not by the criminal act, but by the response of institutions and individuals to the victim.

In the Indian context, research by organizations like **Arpan** and **Enfold India** has highlighted that the repetitive questioning by police, the clinical nature of medical exams, and the intimidating presence of the accused in courtrooms lead to "legal trauma." The literature suggests that Section 39 was specifically designed as a structural intervention to interrupt this cycle. The Support Person serves as the "buffer" that absorbs the systemic shock, allowing the child to remain a witness without being destroyed by the process.

literature in child psychology (e.g., *Herman, 1992*) emphasizes that trauma causes "fragmented memory." When a child is under stress, their ability to recall chronological events diminishes. Psychological studies integrated into legal reviews suggest that the presence of a "known" or "supportive" figure during testimony lowers cortisol levels, thereby improving the accuracy of the testimony. This debunks the old legal myth that support persons "tutor" children; rather, they provide the emotional safety necessary for the brain to access traumatic memories accurately.

Indian courts viewed child witnesses with skepticism, often labeling them "pliable" or "easy to tutor." However, judicial literature has shifted toward a more empathetic understanding:

- **The Shift in *State of Maharashtra v. Bandu (2017)*:** The Supreme Court recognized the need for "Special Courts" and "Vulnerable Witness Deposition Complexes." The court noted that the environment must be conducive to the child's comfort. This judgment is often cited as the catalyst for professionalizing the role of the Support Person.
- ***Sampurna Behura v. Union of India (2018)*:** The Supreme Court noted that Child Welfare Committees (CWCs) often lack the resources to implement support systems. The Court mandated that the state must provide a support structure to prevent the child from feeling abandoned by the law.
- ***RG v. State (Delhi High Court, 2019)*:** The court ruled that the presence of a Support Person is a statutory right. If a trial proceeds without providing the child with a support person, it risks the integrity of the testimony, as a frightened child is an unreliable witness.

This is perhaps the most descriptive judgment regarding Section 39. The court clarified that the Support Person is not an "optional aide" but a "statutory right." The court criticized the lack of standardized guidelines, directly leading to the NCPCR's formulation of the document you provided.

- **The "Intermediary" Doctrine:** In *Sakshi v. Union of India (2004)*, even before the POCSO Act, the Supreme Court suggested using a screen or a person to help the child

communicate. The current literature views the Support Person as the modern evolution of this "Intermediary".

3. Research Methodology

The study adopts a qualitative design to interpret the statutory provisions of Section 39 of the POCSO Act, 2012. The objective is to evaluate the transition of legal theory into administrative practice. This involves:

- **Primary Source Analysis: A rigorous examination of the NCPCR Model Guidelines (2023), the POCSO Act (2012), and the POCSO Rules (2020).**
- **Secondary Source Review: Analysis of High Court and Supreme Court judgments that identified the "procedural vacuum" prior to the issuance of these guidelines.**

This research utilizes a **doctrinal and qualitative approach**. The primary data source is the **NCPCR Model Guidelines (Section 39)**. Secondary data includes the POCSO Rules 2020 and various High Court rulings. The analysis focuses on the "human element" of legal implementation—asking how these rules translate into comfort for a child survivor.

The scope of this research is limited to the Indian jurisdictional framework, specifically focusing on the role of the Support Person as a non-legal assistant to the child. The study excludes the role of the Special Public Prosecutor (SPP) or Legal Aid Counsel, focusing instead on the **psycho-social support** mandated by Section 39.

The data was collected through a systematic review of the 20-page guideline document.

Analysis of the Model Guidelines

This section provides a deep-dive analysis into the specific clauses of the NCPCR guidelines, evaluating their potential impact on the child-justice ecosystem. The guidelines mandate that the **Child Welfare Committee (CWC)** must maintain a panel of Support Persons. This ensures that when a trauma occurs, the family doesn't have to "hire" someone. The state provides a vetted professional. While the guidelines suggest a background in psychology or social work, the reality in rural India often sees these roles filled by general NGOs who may lack trauma-informed training.

The Shift from Ad-Hocism to Institutionalization

Before these guidelines, the appointment of a Support Person was often an afterthought, occurring only when a judge noticed a child was too terrified to speak. The guidelines mandate that the District Child Protection Unit (DCPU) must pre-verify a panel of professionals. This ensures "immediacy." In child trauma cases, the first 24 hours (the "Golden Hour") are critical. By having a pre-vetted list, the Child Welfare Committee (CWC) can assign a Support Person the moment an FIR is registered, ensuring the child has a "friendly face" during the very first police interaction.

The "Intermediary" Function:

The guidelines describe the Support Person as a bridge for communication.

- In many POCSO cases, children use "coded language" or anatomical nicknames to describe abuse. A Support Person, trained in child psychology, can explain these nuances to the court without leading the witness.

- The "Plain Clothes" Mandate: The guidelines strictly forbid Support Persons from wearing uniforms or formal black coats. This subtle psychological tool de-escalates the child's "fight-or-flight" response, moving the setting from a "trial" to a "conversation."
- The Support Person is required to be present during medical examinations. Under the guidelines, they act as an "informant" for the child, explaining why a doctor needs to touch them or take samples. This is vital in preventing the medical exam from feeling like a second assault.

Navigating the "Hostile" Defense

One of the most innovative aspects of the analysis is how the guidelines empower the Support Person during cross-examination.

- **Strategic Breaks:** The guidelines allow the Support Person to request the judge for a "break" if the child shows signs of dissociation or extreme distress.
- This challenges the traditional adversarial "flow" of a trial, where the defence lawyer usually has the right to grill a witness without interruption. Section 39, through these guidelines, effectively places a "human shield" around the child's mental health.

Financial Ethics and Remuneration

A common critique in legal literature is the "volunteerism trap," where child-rights work is unpaid and therefore inconsistent.

- **Economic Analysis:** By setting a fixed honorarium (e.g., per appearance/visit), the guidelines professionalize the role. This ensures that the Support Person is not just a "kind stranger" but a "service provider" accountable to the CWC. However, the analysis also notes that in many states, these funds remain blocked in bureaucratic "red tape," which remains a significant implementation hurdle.

Critical Synthesis: The "Three Pillars" of Support

To understand the final impact of these guidelines, we must view them as supporting three pillars:

1. **Dignity:** Ensuring the child is not treated as "Exhibit A" but as a person.
2. **Accuracy:** Reducing stress so the child can provide a clearer, more reliable testimony.
3. **Finality:** Preventing "Hostile Witness" scenarios that lead to the acquittal of actual offenders.

Challenges

1. **Financial Bottlenecks:** The honorarium for Support Persons is often delayed, leading to high turnover rates.
2. **Role Confusion:** Police officers often view Support Persons as "interfering" with the investigation.
3. **Language Barriers:** In many districts, there is a lack of Support Persons who speak tribal or local dialects, rendering the guidelines ineffective for the most marginalized children.
4. Without the Support Person's intervention to ask for a screen and provide emotional grounding, the case would have likely ended in an acquittal due to "lack of evidence."

Conclusion and Recommendations

The enactment of the POCSO Act in 2012 was a promise made by the Indian State to its most vulnerable citizens. However, a law is only as strong as the support it provides to those who must testify under it. Section 39, and the subsequent Model Guidelines, represent the transition of the Indian courtroom from a place of "Trial by Fire" to a place of "Restorative Healing."

Through this research, it is evident that the Support Person is not a mere "assistant" but a procedural necessity. By managing the child's trauma, explaining the legal labyrinth, and standing as a buffer against aggressive defence tactics, the Support Person ensures that the truth is not lost to fear. The analysis shows that when a Support Person is involved, the quality of evidence improves, the likelihood of the child turning "hostile" decreases, and the "Best Interests of the Child" principle is finally realized.

However, the guidelines are not a magic wand. Their success depends on the political will of State Governments to fund them and the sensitivity of the Judiciary to respect the Support Person's role. If implemented with the spirit intended by the NCPCR, these guidelines will ensure that the pursuit of justice does not come at the cost of a child's childhood.

In the final analysis, the Support Person is the human face of the law—proving that while the scales of justice are blind, they need not be cold.

The Model Guidelines under Section 39 are a masterpiece of social legislation. However, for them to be truly "human," the following must occur:

- **Standardized National Accreditation:** the "Support Person" panels are managed at the district level with varying degrees of rigor. There should be a National Certification Program for Support Persons. Similar to how mediators or arbitrators are certified, a Support Person should undergo mandatory 40-hour training in trauma-informed care, child psychology, and the specific rules of evidence under the Indian Evidence Act. This would eliminate "ad-hocism" and ensure a child in a rural district receives the same quality of support as a child in a metropolitan city.
- **Technological Integration (The "Support-Connect" App):** A dedicated digital platform or mobile application should be developed. When an FIR is registered under POCSO, an automated alert should be sent to the CWC and the nearest available Support Person on the panel. Real-time tracking of the case progress through this app would ensure that the Support Person is present for every medical exam and statement recording without manual follow-ups.
- **Public Awareness and "Legal Literacy" for Parents:** The police and CWC must be mandated to provide a "Rights Brochure" to the family at the time of FIR. This brochure should clearly explain that the Support Person is a **bound-by-confidentiality professional** whose only job is to protect the child, not to investigate the family.
- **Financial Autonomy and Prompt Payment:** The funds for Section 39 assistance should be moved from a "reimbursement model" to a "direct benefit

model." Payments should be linked to the "Integrated Child Protection Scheme" (ICPS) and processed within 30 days of a court appearance to ensure that skilled professionals remain committed to the system.

The Support Person is the "silent guardian" of the child's dignity. By following these guidelines, the Indian judiciary can ensure that justice is not just done, but seen to be done through the eyes of the child.

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