

AS INTRODUCED IN THE RAJYA SABHA

Bill No. XIV of 2011

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
BILL, 2011

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AS INTRODUCED IN THE RAJYA SABHA

Bill No. XIV of 2011THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
BILL, 2011

A

BILL

to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

WHEREAS clause (3) of article 15 of the Constitution, *inter alia*, empowers the State to make special provisions for children;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

AND WHEREAS it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

AND WHEREAS it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

AND WHEREAS the State Parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent—

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

AND WHEREAS sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

- 1. (1) This Act may be called the Protection of Children from Sexual Offences Act, 2011.
- (2) It extends to the whole of India, except the State of Jammu and Kashmir. 5
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

- 2. (1) In this Act, unless the context otherwise requires, —
 - (a) "aggravated sexual assault" has the same meaning as assigned to it in section 9;
 - (b) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;
 - (c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;
 - (d) "child" means any person below the age of eighteen years save as provided otherwise; 15
 - (e) "domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005; 43 of 2005.
 - (f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;
 - (g) "sexual assault" has the same meaning as assigned to it in section 7;
 - (h) "sexual harassment" has the same meaning as assigned to it in section 11; 20
 - (i) "shared household" means a household where the person charged with the offence lives in a domestic relationship with the parent of the child and the child;
 - (j) "Special Court" means a court designated as such under section 28;
 - (k) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32;
- (2) The words and expressions used herein and not defined but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meanings respectively assigned to them in the said Codes or the Acts. 25 45 of 1860. 2 of 1974. 56 of 2000. 21 of 2000.

CHAPTER II

SEXUAL OFFENCES AGAINST CHILDREN 30

A.—PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Penetrative sexual assault.

- 3. A person is said to commit "penetrative sexual assault" if—
 - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
 - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
 - (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or 40
 - (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person:

Provided that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such an act has been obtained against the will of the child or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious or where the child does not have the capacity to understand the nature of the act or to resist it.

Explanation I.— For the purposes of this section,—

(a) "consent" means the unequivocal voluntary agreement where the person has by words, gestures, or any form of non-verbal communication, communicated willingness to participate in the act referred to in this section;

(b) "unequivocal voluntary agreement" means willingness given for specific and be limited to the express act consented to under this section.

Explanation II.— A child, who does not offer actual physical resistance to penetrative sexual assault is not by reason only of that fact, to be regarded as consenting to the sexual activity.

4. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for Penetrative sexual assault.

B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

5. (a) Whoever, being a police officer, commits penetrative sexual assault on a child — Aggravated penetrative sexual assault.

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(b) Whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or 5

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or 10

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or 15

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or 20

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or any where else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; 25 or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or 30

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force,

is said to commit aggravated penetrative sexual assault.

Punishment for aggravated penetrative sexual assault.

6. Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine. 35

C.—SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Sexual Assault.

7. Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault: 40

Provided that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such act has been obtained against the will of the child or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious, or where the child does not have the capacity to understand the nature of the act or to resist it. 45

Explanation I.— For the purposes of this section,—

(a) "consent" means the unequivocal voluntary agreement where the person has by words, gestures, or any form of non-verbal communication, communicated willingness to participate in the act referred to in this section;

5 (b) "unequivocal voluntary agreement" means willingness given for specific and be limited to the express act consented to under this section.

Explanation II.— A child who does not offer actual physical resistance to sexual activity is not by reason only of that fact, to be regarded as consenting to the sexual assault.

10 *Explanation III.*— Any question which involves "sexual intent" shall be a question of fact.

8. Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine. Punishment for sexual assault.

D.—AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR

15 **9.** (a) Whoever, being a police officer, commits sexual assault on a child— Aggravated Sexual Assault.

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

20 (iv) when the person is known or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

25 (iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

30 (d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

35 (f) whoever being on the management or staff of an educational institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child ; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

40 (i) whoever commits sexual assault causing grievous hurt or causing injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or

45 (ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or

- (k) whoever, taking advantage of a child’s mental or physical disability, commits sexual assault on the child; or
 - (l) whoever commits sexual assault on the child more than once or repeatedly; or
 - (m) whoever commits sexual assault on a child below twelve years; or
 - (n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or
 - (o) whoever being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or
 - (p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or
 - (q) whoever commits sexual assault on a child knowing the child is pregnant; or
 - (r) whoever commits sexual assault on a child and attempts to murder the child; or
 - (s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or
 - (t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force,
- is said to commit aggravated sexual assault.

Punishment for aggravated sexual assault.

10. Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

E.—SEXUAL HARASSMENT AND PUNISHMENT THEREFOR

Sexual harassment.

11. A person is said to commit sexual harassment upon a child when such person 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 or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as 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) repeatedly or constantly follows or watches or contacts a child either directly or through any 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.

Explanation.—Any question which involves “sexual intent” shall be a question of fact.

Punishment for sexual harassment.

12. Whoever commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

CHAPTER III

USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

Use of child for pornographic purposes.

13. Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

- (a) representation of the sexual organs of a child;
 - (b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
 - (c) the indecent or obscene representation of a child,
- shall be guilty of the offence of using a child for pornographic purposes.

(2) Every report given under sub-section (1) shall be—

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded. 5

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter shall be provided to the child if he fails to understand the same. 10

(5) 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 required. 15

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

Obligation of media, studio and photographic facilities to report cases.

20. Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be. 20 25

Punishment for failure to report or record a case.

21. (1) Any person, who fails to report 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.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine. 30

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

Punishment for false complaint or false information.

22. (1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed on a child below the age of sixteen years, under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both. 35

(2) Where a false complaint has been made or false information has been provided by a child, being less than sixteen years, no punishment shall be imposed on such child. 40

(3) Where a false complaint has been made or false information has been provided by a child being more than sixteen years, and it is proved that the complaint was made or information was provided with his own informed decision and in such case, the child shall be sent to the Juvenile Justice Board constituted under section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000, for suitable remedial action. 45 56 of 2000.

(4) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimising such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both. 50

23. (1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, and without the consent of the child or his parents or guardian, who may be involved in an offence under this Act either as an accused or as a victim, which may have the effect of lowering his character or infringing upon his privacy.

Procedure for media.

(2) No reports in any media shall disclose, without the consent of the child or his parents or guardian, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than one year but which may extend to two years or with fine or with both.

CHAPTER VI

PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

24. (1) For the purposes of recording the statement of the child, the provisions of section 157 of the Code of Criminal Procedure, 1973 shall apply.

Recording of statement of a child.

(2) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973, the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that the Magistrate may wherever necessary, take the assistance of an interpreter while recording the statement of the child:

Provided further that the Magistrate may, in case of a child having a mental or physical disability, seek the assistance of a special educator or an expert in that field to record the statement of the child.

(3) Notwithstanding anything contained in section 164 of the Code of Criminal Procedure, 1973 where any statement of the child is recorded by audio-video electronic means, it shall be recorded in the presence of the parents of the child or any other person in whom the child has trust or confidence.

(4) The provisions contained in the first proviso to sub-section (1) of section 164 of the Code of Criminal Procedure, 1973 shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(5) The magistrate shall provide to the child or his representative, a copy of the document specified under section 207 of the Code of Criminal Procedure, 1973, upon the final report being filed by the police under section 173 of that Code.

25. Without prejudice to the provisions contained in sub-section (1) of section 24, the police officer while recording the statement of the child shall not be present in his uniform.

Police officer not to be in uniform.

26. The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

Accused not to be in contact.

27. The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973.

Medical examination of a child.

CHAPTER VII

SPECIAL COURTS

28. (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette,

Designation of Special Courts.

designate for each district, a Court of Session to be a Special Court to try the offences under the Act.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. 5 2 of 1974.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online. 21 of 2000.

Presumption as to certain offences. 29. Where a person is prosecuted for violating any of the provisions under sections 3, 5, 7 and section 9 of this Act, and where the victim is a child below the age of sixteen years, the Special Court shall presume, that such person has committed the offence, unless the contrary is proved. 10

Presumption of culpable mental state. 30. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. 15

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. 20

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court. 31. Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor. 25 2 of 1974.

Special Public Prosecutors. 32. (1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act. 30

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly. 35 2 of 1974.

CHAPTER VIII

PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

Procedure and powers of Special Court. 33. (1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts. 40

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial. 45

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial, except with the consent of the child or his parents or guardian.

Explanation.—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of compensation to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session.

34. (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Procedure in case of commission of offence by child and determination of age by Special Court.

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

35. (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

Period for recording of evidence of child and disposal of case.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

36. (1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

Child not to see accused at the time of testifying.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

37. The Special Court shall try cases *in camera* and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Trials to be conducted *in camera*.

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973.

2 of 1974.

Assistance of an interpreter or expert while recording evidence of child.

38. (1) Wherever necessary, the Court may take the assistance of an interpreter while recording the evidence of the child.

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(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or an expert in that field to record the evidence of the child.

CHAPTER IX

MISCELLANEOUS

Guidelines for child to take assistance of experts, etc.

39. Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

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Right of child to take assistance of legal practitioner.

40. Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

2 of 1974.

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Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

Provisions of sections 3 to 13 not to apply in certain cases.

41. The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

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Alternative punishment.

42. Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.

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Power to make rules.

43. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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Power to remove difficulties.

44. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:

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Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

45

THE SCHEDULE

[See section 2(c)]

ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER

- (a) The Air Force Act, 1950 (45 of 1950);
- 5 (b) The Army Act, 1950 (46 of 1950);
- (c) The Assam Rifles Act, 2006 (47 of 2006);
- (d) The Bombay Home Guard Act, 1947;
- (e) The Border Security Force Act, 1968 (47 of 1968);
- (f) The Central Industrial Security Force Act, 1968 (50 of 1968);
- 10 (g) The Central Reserve Police Force Act, 1949 (66 of 1949);
- (h) The Coast Guard Act, 1978 (30 of 1978);
- (i) The Delhi Special Police Establishment Act, 1946 (25 of 1946);
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992);
- (k) The Navy Act, 1957 (62 of 1957);
- 15 (l) The National Investigation Agency Act, 2008 (34 of 2008);
- (m) The National Security Guard Act, 1986 (47 of 1986);
- (n) The Railway Protection Force Act, 1957 (23 of 1957);
- (o) The Sashastra Seema Bal Act, 2007 (53 of 2007);
- (p) The Special Protection Group Act, 1988 (34 of 1988);
- 20 (q) The Territorial Army Act, 1948 (56 of 1948);
- (r) The State police forces (including armed constabulary) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of section 2 of the Armed Forces (Special Powers) Act, 1958 (28 of 1958).

STATEMENT OF OBJECTS AND REASONS

Article 15 of the Constitution, *inter alia*, confers upon the State powers to make special provision for children. Further, article 39, *inter alia*, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse: India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the extant laws. A large number of such offences are neither specifically provided for nor are they adequately penalised. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self contained comprehensive legislation *inter alia* to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 16th March, 2011.

KRISHNA TIRATH.

Notes on clauses

Clause 2.— This clause provides for definitions. It defines the various expressions used in the proposed legislation which, *inter alia*, include the expressions “aggravated sexual assault”, “aggravated penetrative sexual assault”, “armed forces or security forces”, “child”, “domestic relationship”, “penetrative sexual assault”, “sexual assault”, “sexual harassment”, “shared household”, “Special Court” and “Special Public Prosecutor”.

It further provides that words and expressions used in the proposed legislation and not defined but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meaning respectively assigned to them in the said Codes or the Acts.

Clause 3.—This clause defines the offence of penetrative sexual assault. It provides that if a person penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of child or makes the child to do so with him or any other person; or manipulates any part of the body of the child so as to cause penetration into the vagina, urethra or anus or any part of the body of the child or makes the child to do so with him or any other person; or applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so with him or any other person, he is said to commit the offence of penetrative sexual assault.

It further provides that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such act has been obtained against the will of the child, or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious or where the child does not have the capacity to understand the nature of the act or to resist it.

It also provides explanation that for the purposes of this clause, the expression “consent” means the unequivocal voluntary agreement where the person has by words, gestures, or any form of non-verbal communication, communicated willingness to participate in the act referred to in the clause; and “unequivocal voluntary agreement” means willingness given for specific and be limited to the express act consented to under this clause. It also clarifies that a child, who does not offer actual physical resistance to penetrative sexual assault is not by reason only of that fact, to be regarded as consenting to the sexual activity.

Clause 4.—This clause provides for punishment for penetrative sexual assault. It provides that whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

Clause 5.—This clause defines the offence of aggravated penetrative sexual assault. It provides that a person is said to commit aggravated penetrative sexual assault, if he—

(a) being a police officer, commits penetrative sexual assault on a child (i) within the limits of the police station or premises at which he is appointed; or (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or (iii) in the course of his duties or otherwise; or

(b) being a member of the armed forces or security forces commits penetrative sexual assault on a child (i) within the limits of the area to which the person is deployed; or (ii) in any areas under the command of the forces or armed forces; or (iii) in the course of his duties or otherwise; or (iv) where the said person is known or identified as a member of the security or armed forces; or

(c) being a public servant commits penetrative sexual assault on a child; or

(d) being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) being on the management or staff of an educational institution, commits penetrative sexual assault on a child in that institution; or

(g) commits gang penetrative sexual assault; or

(h) commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) commits penetrative sexual assault causing grievous hurt or causing injury to the sexual organs of the child; or

(j) commits penetrative sexual assault upon a child which (i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault; (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or

(k) commits penetrative sexual assault on a child taking advantage of his mental or physical disability; or

(l) commits penetrative sexual assault on the child more than once or repeatedly; or

(m) commits penetrative sexual assault on a child below twelve years; or

(n) being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having a domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) commits penetrative sexual assault on a child and attempts to murder the child; or

(s) commits penetrative sexual assault on a child in the course of communal or sectarian violence; or

(t) commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force.

Clause 6.—This clause provides for punishment for aggravated penetrative sexual assault. It provides that whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten year but which may extend to imprisonment for life, and shall also be liable to fine.

Clause 7.— This clause defines the offence of sexual assault. It provides that a person is said to commit sexual assault if he with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration.

It further provides that where such sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such act has been obtained against his will, or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue influence, threats, when the child is sleeping or unconscious, or where the child does not have the capacity to understand the nature of the act or to resist it.

It also clarifies that the expression “consent” means the unequivocal voluntary agreement where the person has by words, gestures, or any form of non-verbal communication, communicated willingness to participate in the act referred to in this clause, and the expression “unequivocal voluntary agreement” means willingness given for specific and be limited to the express act consented to under this clause and that a person who does not offer actual physical resistance to sexual activity is not by reason only of that fact, to be regarded as consenting to the sexual assault and that any question which involves “sexual intent” shall be a question of fact.

Clause 8.—This clause provides punishment for sexual assault. It provides that whoever commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but may extend to five years and shall also be liable to fine.

Clause 9.— This clause defines the offence of aggravated sexual assault. It provides that a person is said to commit aggravated sexual assault, if he—

(a) being a police officer, commits sexual assault on a child (i) within the limits of the police station or premises where he is appointed; or (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or (iii) in the course of his duties or otherwise; or (iv) when the person is known or identified as a police officer; or

(b) being a member of the armed forces or security forces, commits sexual assault on a child (i) within the limits of the area to which the person is deployed; or (ii) in any areas under the command of the security or armed forces; or (iii) in the course of his duties or otherwise; or (iv) where he is known or identified as a member of the security or armed forces; or

(c) being a public servant, commits sexual assault on a child; or

(d) being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) being on the management or staff of a hospital, whether government or private, commits sexual assault on a child in that hospital; or

(f) being on the management or staff of an educational institution, commits sexual assault on a child in that institution; or

(g) commits gang sexual assault on a child ; or

(h) commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) commits sexual assault causing grievous hurt or causing injury to the sexual organs of the child; or

(j) commits sexual assault upon a child which (i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or (ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or

(k) commits sexual assault on a child taking advantage of his mental or physical disability; or

(l) commits sexual assault on the same child more than once or repeatedly; or

(m) commits sexual assault on a child below twelve years; or

(n) being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) commits sexual assault on a child knowing the child is pregnant; or

(r) commits sexual assault on a child and attempts to murder the child; or

(s) commits sexual assault on a child in the course of communal or sectarian violence; or

(t) commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force.

Clause 10.—This clause provides for punishment for aggravated sexual assault. It provides that whoever commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine.

Clause 11.—This clause defines the offence of sexual harassment. It provides that a person is said to commit sexual harassment upon a child when such person 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 or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as 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) repeatedly or constantly follows or watches or contacts a child either directly or through any 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. It further clarifies that any question which involves “sexual intent” shall be a question of fact.

Clause 12.—This clause provides for punishment for sexual harassment. It provides that whoever commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Clause 13.— This clause defines the offence of use of child for pornographic purposes. It provides that whoever uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use

or for distribution), for the purposes of sexual gratification, which includes (a) representation of the sexual organs of a child; (b) usage of a child engaged in real or simulated sexual acts (with or without penetration); or (c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

It further clarifies that for the purposes of this clause, the expression “use a child” shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

Clause 14.—This clause provides for punishment for using a child for pornographic purposes. It provides that whoever uses a child or children for pornographic purposes shall be liable for rigorous imprisonment which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine.

It further provides that if the person using the child for pornographic purposes, commits any offence referred to in clause 3, or clause 5, or clause 7, or clause 9, by directly participating in pornographic acts, then he shall be punishable for life imprisonment and shall also be liable to fine.

Clause 15.—This clause provides for punishment for storage of pornographic material involving child. It provides that any person who stores, for commercial purposes, any pornographic material in any form involving a child shall be punished with imprisonment of either description that may extend up to three years or with fine or with both.

Clause 16.—This clause provides the definition for abetment of an offence. It provides that a person abets an offence if he instigates any person to do that offence; or engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or intentionally aids, by any act or illegal omission, the doing of that offence.

It further clarifies that a person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

It also clarifies that whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Clause 17.— This clause provides for punishment for abetment. It provides that whoever abets any offence under the proposed legislation and if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for the offence.

It further clarifies that an act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

Clause 18.—This clause provides for punishment for attempt to commit an offence. It provides that whoever attempts to commit any offence punishable under the proposed legislation or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of either description which may extend to one year or with fine or with both.

Clause 19.—This clause makes provision for reporting of offences. It provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person (including the child), who apprehends that an offence under the proposed legislation is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to the Special Juvenile Police Unit; or the local police.

It further provides that every report given aforesaid shall be ascribed an entry number and recorded in writing and be read over to the informant and shall be entered in a book to be kept by the Police Unit. Where such report is given by a child, the same shall be recorded in a simple language so that the child understands contents being recorded and in case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter shall be provided to the child if he fails to understand the same.

It also provides that where the Special Juvenile Police Unit or local police is of the opinion 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.

It is provided that the Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

Clause 20.—This clause provides for obligation of media, studio and photographic facilities to report cases. It provides that if any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, comes across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, then he shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

Clause 21.—This clause provides for punishment for failure to report or record a case. It provides that any person, who fails to report an offence under sub-clause (1) of clause 19 or clause 20; or who fails to record such offence under sub-clause (2) of clause 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

It further provides that any person, being in-charge of any company or an institution (by whatever name called), who fails to report the commission of an offence under sub-clause (1) of clause 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

It also provides that the provisions of punishment for failure to report under sub-clause (1) of this clause shall not apply to a child under the proposed legislation.

Clause 22.—This clause provides for punishment for false complaint or false information. It provides that any person, who makes false complaint or provides false information against any person, in respect of an offence committed on a child below the age of sixteen years, under clauses 3, 5, 7 and 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term that may extend to six months or with fine or with both.

It further provides that if a child, being less than sixteen years, makes a false complaint or provides false information then no punishment shall be imposed on such child.

It also provides that where a false complaint has been made or false information has been provided by any child being more than sixteen years, and it is proved that the complaint was made or information was provided with his own informed decision, in such case, the child shall be sent to the Juvenile Justice Board constituted under section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000, for suitable remedial action.

It also provides that whoever, not being a child, makes a false complaint or provides any false information against a child, knowing it to be false, thereby victimising such child in any of the offences under the proposed legislation, shall be punished with imprisonment which may extend to one year or with fine or with both.

Clause 23.—This clause provides for procedure for media. It provides that no person from any form of media or studio or photographic facilities shall, without having complete and authentic information, make any report or present comments on any child who may be involved in an offence under the proposed legislation either as an accused or as a victim, which may have the effect of lowering his character or infringing upon his privacy, without the consent of the child or his parents or guardian.

It further provides that no reports in any media shall disclose the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child without the consent of the child or his parents or guardian.

It also provides that the publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the act and omission of his employee.

It also provides that any person who contravenes the provisions of sub-clause (I) of this clause shall be liable to be punished with imprisonment of either description for a period which shall not be less than one year and may extend to two years or with fine or with both.

Clause 24.—This clause provides for recording the statement of a child. It provides that for the purposes of recording the statement of the child, the provisions of section 157 of the Code of Criminal Procedure, 1973 shall apply.

It further provides that if the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973, the Magistrate recording such statement shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence and wherever necessary, the Magistrate may take the assistance of an interpreter while recording the statement of the child and in case of a child having a mental or physical disability, seek the assistance of special educator or an expert in that field to record the statement of the child.

It also provides that notwithstanding anything contained in section 164 of the Code of Criminal Procedure, 1973 where any statement of the child is recorded by audio-video electronic means, it shall be recorded in the presence of the parents of the child or any other person in whom the child has trust or confidence.

It also provides that the provisions contained in first proviso to sub-section (1) of section 164 of the Code of Criminal Procedure, 1973 shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

It also provides that the magistrate shall provide to the child or his representative, a copy of the document specified under section 207 of the Code of Criminal Procedure, 1973, upon the final report being filed by the police under section 173 of that Code.

Clause 25.—This clause provides for police officer not to be in uniform. It provides without prejudice to the provisions contained in sub-clause (I) of clause 24, that the police officer while recording the statement of the child shall not be present in his uniform.

Clause 26.—This clause provides for the accused not to be in contact with the child. It provides that the police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

Clause 27.—This clause provides for medical examination of a child. It provides that the medical examination of a child in respect of whom any offence has been committed under the proposed legislation shall be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973 whether or not the First Information Report or complaint has been registered for the offence.

Clause 28.—This clause makes provision for Special Courts. It provides that for the purpose of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court and by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the proposed legislation.

It further provides that while trying an offence under the proposed legislation, a Special Court shall also try an offence with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

It also provides that the Special Court constituted under the proposed legislation shall have jurisdiction to try offence under section 67B of the Information Technology Act, 2000 in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

Clause 29.—This clause provides for presumption as to certain offences. It provides that where a person is prosecuted for violating any of the provisions under clauses 3, 5, 7 and 9 of the proposed legislation, and where the victim is a child below the age of sixteen years, the Special Court shall presume that such person has committed the offence, unless the contrary is proved.

Clause 30.—This clause provides for presumption of culpable mental state. It provides that in any prosecution for any offence under the proposed legislation which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

It further provides that for the purposes of this clause, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

It also explains that “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Clause 31.—This clause provides for application of Code of Criminal Procedure, 1973 to proceedings before a Special Court. It provides that the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and the Special Court shall be deemed to be a Court of Sessions for the purposes of the said provisions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

Clause 32.—This clause makes provision for Special Public Prosecutors. It provides that the State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases under the provisions of the proposed legislation.

It further provides that a person shall be eligible to be appointed as a Special Public Prosecutor only if he had been in practice for not less than seven years as an advocate and every person appointed as a Special Public Prosecutor under this clause shall be deemed to be a Public Prosecutor under the Code of Criminal Procedure, 1973 and provision of the Code shall have effect accordingly.

Clause 33.—This clause provides for procedure and powers of Special Courts. It provides that a Special Court may take cognizance of any offence upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts, without the accused being committed to it for trial.

It further provides that the Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court, and the Special Court may, if it considers necessary, permit frequent breaks for the child during the trial. It also lays down that the Special Court shall create a child-friendly atmosphere by allowing a family member, or a guardian, or a friend or a relative, in whom the child reposes confidence, to be present in the court and the Special Court shall ensure that the child is not called repeatedly to testify in the court.

It also provides that the Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times and the Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial, except with the consent of the child or his parents or guardian. It also explains that the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

It also provides that in appropriate cases, the Special Court may, in addition to the punishment, direct payment of compensation to a child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

It also provides that the Special Court shall, for the purpose of the trial of any offence under the proposed legislation, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session.

Clause 34.—This clause provides for procedure in case of commission of offence by child and determination of age by the Special Court. It provides that where any offence under the proposed legislation is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

It further provides that if any question arises in any proceeding before the Special Court whether a person is child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination and no order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by the Special Court was not the correct age of that person.

Clause 35.—This clause provides for period for recording of evidence of the child and disposal of case. It provides that the evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and the Special Court shall complete the trial, as far as possible within a period of one year from the date of taking cognizance of the offence.

Clause 36.—This clause makes provision for the child not to see the accused at the time of testifying. It casts upon the Special Court a duty to ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and to communicate with his advocate. It empowers the Special Court to record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other such device.

Clause 37.—This clause provides for trials to be conducted in camera. It provides that the Special court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence and where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973.

Clause 38.—This clause makes provision for assistance of an interpreter or expert while recording the evidence of the child. It provides that wherever necessary, the Court may take the assistance of an interpreter while recording the evidence of the child and if a child has mental or physical disability, the Special Court may take the assistance of a special educator or an expert in that field to record the evidence of the child.

Clause 39.—This clause provides for guidelines for child to take assistance of expert, etc. It provides that subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

Clause 40.—This clause provides for right of child to take assistance of legal practitioner. It provides that subject to the proviso to section 301 of the Code of Criminal Procedure, 1973, the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under the proposed legislation and if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

Clause 41.—This clause provides that the provisions of clauses 3 to 13 shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

Clause 42.—This clause provides that where an act or omission constitute an offence punishable under the proposed legislation and also under any other law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or the proposed legislation as provides for punishment which is greater in degree.

Clause 43.— This clause empowers the Central Government to make rules. It provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the proposed legislation.

It also provides that every rule made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 44.—This clause provides for power to remove difficulties. It provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of the proposed legislation as may appear to it to be necessary or expedient for removal of the difficulty.

It further provides that no order shall be made under this clause after the expiry of two years from the commencement of the proposed legislation.

It also provides that every Order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 43 of the Bill provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the proposed legislation.

2. Sub-clause (2) of clause 43 provides that every rule made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

3. The matters in respect which the Central Government may make rules are matter of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of Legislation power is, therefore, of a normal character.

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to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

*(Shrimati Krishna Tirath, Minister of State (Independent Charge) in the
Ministry of Women and Child Development.)*

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