Comparative Analysis of The Operational Guidelines or Rules Under the Sexual Offences Against Children in Malaysia and India

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ABSTRACT

The Malaysian Parliament has passed special legislation, the Sexual Offences Against Children Act 2017 (Act 792). The Guidelines and the Rules of the POCSO Act 2012 provide detailed guidance on the procedure for the necessary protection of the child victim as well as a child witness to the authorities involved. The Guidelines are a very good start and it is recommended to the Legislature conduct further research with respect to the Guidelines and consider it to be promoted into a full-fledged regulation with proposed modifications attached to Act 792 to infuse it with more binding force and pro-active measures rather than reactive.

Contribution/Originality: This study makes a significant contribution to the existing legislation in Malaysia, specifically the Sexual Offences Against Children Act 2017 (Act 792), by conducting a comparative analysis with the legal framework in India which aims to provide valuable insights into the potential areas for improvement of the Malaysian legislation.

1. Introduction

In the Malaysian criminal justice system, it is to be noted that pre-2017, the main penal law that governs vast criminal offences is the Malaysian Penal Code ("the Penal Code"). Nevertheless, the Penal Code is general legislation that does not discriminate between adult victims and child victims. The generic nature of the Penal Code poses some degree of complexity from both procedural and substantive points of view on the reason that given the current circumstances regarding many children have fallen victim to sexual crimes and generally speaking child sexual crimes of many forms, categories, and sub-categories is increasing. It is argued that technological advancement contributes greatly
to its increase. The prevalence of child sex crimes has alerted many authorities and key institutions such as the Malaysian Judiciary as stated by the Chief Justice herself, Tun Tengku Maimun Tuan Mat stating that a total of 1,721 cases had been recorded within the period from January 2022 to June 2022 and statistically speaking, Malaysia has seen an increase of almost 42% between 2020 and 2021 although Malaysian Parliament has passed special legislation, the Sexual Offences Against Children Act 2017 (“Act 792”).

The enactment of Act 792 truly sets apart the treatment and protection of children in various aspects namely procedural and substantive laws exclusively applicable to children. Act 792 comprises twenty-eight provisions categorized into six parts including a schedule. Aside from the provisions for the offences, Act 792 also touches on some aspects of evidentiary rules concerning child witnesses.

In order to grease the operational mechanism of Act 792, the Malaysian Government launched the Sexual Crime Court Against Children on 22 June 2017 to preside over cases involving sexual offences against children and at the same time to ease the burden of the ordinary criminal courts. Also, in ensuring the smooth and streamlined application of Act 792, the Office of the Chief Registrar, The Federal Court of Malaysia (“OCRFM”) had been tasked to develop a Special Guideline for Handling Cases Involving Sexual Offences Against Children (“the Guideline”). The formulation of the Guideline is vital to cast aside unnecessary confusion that can derail the operational objective of Act 792 by appreciating the fact that a wide range of authorities is collectively involved in ensuring that Act 792 is able to fulfil its core intent.

2. Literature Review

This literature extensively covers the existence of operational guidelines or rules under the Sexual Offences Against Children in Malaysia where it concerns the extent of the legal protection to protect children from sexual abuse. According to Cooray, Jamaluddin and Tahir (2020) for the number of reasons, attempts to control pornography and other online content deemed detrimental to children have proven ineffective. The Communications and Multimedia Act of 1998, the Sexual Offences Against Children Act of 2017, and the Penal Code of Malaysia all make it illegal to disseminate such content in Malaysia (Cooray, Jamaluddin & Tahir, 2020). However, due to the non-existent of such guidelines, the efforts to govern such offences seem rigid. This is also due to the restricted nature of legal assistance which is one of the main obstacles to criminal justice. According to research, the legal system does not have a clear procedure to assist vulnerable children that have been abuse (Mazlifah Mansoor et al, 2022).

In 2020, it was observed that the implementation of SOACA 2017 had a substantial impact on police investigations and prosecutions related to offenses against children. Before the enactment of SOACA 2017, police had to rely on provisions in the Penal Code to address cases involving child sexual abuse, such as child pornography, sexual grooming, and other forms of sexual abuse against children. Further, police were also granted with additional investigative powers and authority to effectively handle cases involving child sexual abuse. SOACA 2017 has streamlined the investigation and prosecution processes, making it easier for the police’s investigation and prosecution divisions, as well as the Deputy Public Prosecutors’ divisions, to carry out their duties. The provisions within the SOACA 2017 provided clearer guidelines and marked a significant advancement in addressing the specific challenges posed by offenses against children and providing improved support for victims (Mooi & Awal, 2020).
It is also expressed in the study in 2020 that the implementation of SOACA 2017 has provided the police and the prosecution new tools to combat the cases of child sexual abuse. The investigation procedure is simplified, and courtroom prosecution matters may be resolved more quickly. Inadvertently, the strengthened legal protections and streamlined judicial procedures significantly lessen the suffering and anguish experienced by young witnesses and victims. However, it is asserted that SOACA 2017 might still need some adjustment (Mooi & Awal, 2020).

Having clear guidelines plays a vital role in raising public awareness on the proper procedures to follow in cases of sexual offenses against children. It is crucial that individuals, including society and family members, are well-informed about the law and the judicial system when it comes to Child Sexual Abuse (CSA). Access to justice for CSA victims is available through reporting the crime, but it is equally important for the child's support system to be knowledgeable and supportive throughout the process. Society should be educated from an early stage about the concept of crime victims and the potential for anyone to become a victim. This understanding is essential in creating a supportive environment for victims of CSA (Mazlifah Mansoor et al, 2022).

In contrast, India implemented the Protection of Children from Sexual Offences Act (POCSO) in 2012, which is a comprehensive law aimed at combating sexual abuse against Children. The act expands the definition of sexual crimes, mandates the reporting of abuse, and sets guidelines for assessing victims. POCSO emphasizes a multidisciplinary approach to provide medical care and ensure justice for children who have experienced sexual abuse (Seth & Srivastava, 2017).

A comprehensive medical response to sexual violence includes various elements, as outlined in the Guidelines & Protocols of the Ministry of Health and Family Welfare. These include immediate assistance, obtaining informed consent, gathering a detailed history and conducting examinations to collect forensic evidence. The medical response also involves providing necessary care for sexually transmitted diseases, conducting HIV testing, administering prophylaxis, and offering emergency contraception if required. Additionally, appropriate treatment for injuries is provided, and if necessary, referrals to other specialists are made (Ministry of Health and Family Welfare, Guidelines & Protocols).

POCSO 2012, the Government of India has defined Child Sexual Abuse (CSA), outlined the duties of physicians, and provided management guidelines and legal processes. The existence of such guidelines helps to pave the flow and system better for the respective parties to follow (Finkel, 2009).

To establish comprehensive guidelines for addressing child sexual abuse in Malaysia, in accordance with the SOACA 2017, it is beneficial to consider several relevant soft laws. These include six key documents that were particularly relevant in developing an ethical framework for evaluating the Operational Guidelines or Rules under the Sexual Offences Against Children. These documents comprises the UNICEF assessment regarding ethical principles and potential risks when gathering information on violence against children, the WHO guidelines for conducting research on domestic violence against women, the suggestions by the Sexual Violence Research Initiative for studying the commission of sexual violence, UNICEF’s directives for safeguarding child trafficking victims, the ethical guidelines for biomedical research involving children as outlined by the Indian Council of
Medical Research, and the WHO’s clinical recommendations for addressing cases of sexual abuse experienced by children and adolescents. These resources serve as valuable references to inform the establishment of effective and ethical guidelines in addressing child sexual abuse in Malaysia (Ministry of Health and Family Welfare, Guidelines & Protocols).

Further, recommendations have been made in a newly recent study in 2022 in regard to the “Legal Literacy in Accessing Justice for Child Sexual Abuse” in which this study supports the government's proposal of a specific management guideline for sexual offences against children is relevant in that it offers a solid structure for handling such cases. It is advisable to centralize child protection-focused law enforcement. CSA is now managed by three agencies: the protector, which provides safety and care, the police, which conducts criminal investigations, and the legal companion, which supports legal proceedings. A better workflow for educating society and law enforcement, training law enforcement, and providing protection to CSA victims before and after investigations will result from the combination of these activities with a specialized CSA unit (Mazlifah Mansoor et al, 2022).

It is suggested that to change the rules to make it essential for CSA to get legal aid assistance throughout the pre-investigation stage through the appeal stage. By declaring CSA, a non-bailable offense, the court should refuse bail in CSA instances unless an unusual situation justifies the release. In order to ensure that victims of child abuse have access to justice, measures must be taken to ensure their protection and safety so that they will come forward, file complaints, and take part in the criminal justice system (Mazlifah Mansoor et al, 2022).

3. Methods

This research employs both doctrinal legal analysis and a qualitative study methodology using content analysis. The primary data for this article are predominantly derived from a comparative examination of the legal provisions in Act 792’s Guideline and the Rules outlined in the Indian Protection of Children Against Sexual Offences Act 2012 (“the POCSO Rules”) in terms of coverage, scope, parties involved, and legal framework. This comparison is pertinent based on the reason that the POCSO Act has been passed as a law on 19 June 2012 and later enforced on 14 November of the same year which is five years before Act 792 was enacted (India Code, Digital Repository of All Central and State Acts).

4. Result

When evaluating the effectiveness of a rule or guideline, it’s crucial to emphasize that the POCSO Act explicitly outlines that the State Government possesses the legal jurisdiction and capability to formally establish directives for the engagement of external organizations, professionals, and specialists with expertise in disciplines including psychology, social work, physical and mental health, and child development. These guidelines are intended to assist the child during the pre-trial and trial stages (Indian Protection of Children Against Sexual Offences Act 2012) By incorporating the rules directly into the act itself, the POCSO Act holds a stronger binding force, leaving limited room for deviation among the parties responsible for its implementation. In contrast, Act 792 lacks accompanying rules or regulations that provide detailed guidance on its operation and implementation. This absence stems from the lack of a specific provision
empowering the Minister or any authorized delegate to create necessary regulations for Act 792, especially in situations where the need arises.

It is to be appreciated as well the fact that the POCSO had gone through an amendment process in 2019 in order to further impose more harsh punishment by the inclusion of the death penalty for convicted offenders. Not only the POCSO Act as the main legislation, due to its insufficiency concerning some matters for instance the mechanism of the assessment of payment compensation due to the previous version of the POCSO Rules did not contain details on that matter which causes some dilemmas for the court to order compensation (Mohanty et al., 2021). Prior to the inclusion of the clear rules pertaining to compensation under the POCSO Rules, the court in India when dealing with the issue of compensation had drawn reference from a compensation scheme developed by the National Legal Services Authority ("NALSA") (Ali, 2019). Therefore, the writer opines that it is evident that since the POCSO Act together with the Rules thereunder had undergone legislative revision, both the Acts and the Rule can be considered mature compared to Act 792 though some shortcomings in terms of its implementation may be faced by the POCSO Act even after its amendment.

Generally, it can be argued that the Guideline even though had been put together by various agencies and authorities still insufficient to affirm that if in the circumstance whereby one party involved in the Guideline failed to do a duty that had been stipulated in the Guideline, therefore commits a breach of law. This argument is in line with the decision of the Court of Appeal in Majlis Perubatan Malaysia & Anor v Asia Pacific Higher Learning Sdn Bhd (registered owner and licence holder of the private institute of higher learning under the name of Lincoln University College). The Court of Appeal, in this case in deciding whether or not a guideline known as the Guidelines of the Accreditation of Malaysian Undergraduate Medical Educational Programmes ("Accreditation Guideline") has a legally binding force, held that inter alia that:

The Accreditation Guidelines had no force of law and there was no provision in Act 679 that made reference to the Accreditation Guidelines or to provide that any non-compliance with any guidelines that may be formulated thereunder, would constitute a breach under the Act. However, the Accreditation Guidelines were intended to be binding on both the first defendant and the plaintiff. The first defendant had issued and eventually adopted the Accreditation Guidelines for accreditation and the procedures to be followed in an application for accreditation but they were saying that they could choose to depart from it. The Accreditation Guidelines did not permit such an arbitrary exercise on the part of the first defendant when the provider of the medical programme was required to adhere strictly to the Accreditation Guidelines. The first defendant could not disown its Accreditation Guidelines as non-binding. The guidelines were binding on the defendants as much as they bound the provider of medical programmes. Thus, the first defendant had a duty to comply with the Accreditation Guidelines for the purpose of the First and Second Survey Panel Visits (see paras 22–23, 28–29 & 34).

In discussing the above case, one should be mindful that the nature of the Accreditation Guideline in that particular case is different from the Guideline issued by the OCRFCM as the Accreditation Guideline is decided to be binding on the party that intends to provide medical programs. However, in the context of the Guideline by the OCRFCM, the
procedures and workflows stated therein can be argued that they are mere recommendations or best practices to be referred to by the authorities involved, and thus noncompliance does not constitute a breach. It is recommended for the Legislature to formulate new regulations or to modify and/or upgrade the Guideline to be a Regulation under Act 792 to increase the binding force of the operating mechanisms and consequently ensure strict adherence and may prevent any unnecessary departure from the stipulated regulations by all the relevant authorities.

4.1 Analysis of the scope of the POCSO Rules and the Guideline

4.1.1 Definitions

In addition to the existing definitions mentioned under the POCSO Act, the POCSO Rules stipulate a total of six definitions, five of these definitions are for the words used under the POCSO Act but they are not further defined namely:

i. Expert
   An expert proficient in mental health, medical practice, child development, or a pertinent field, who might be essential for enabling communication with a child whose ability to express themselves has been impacted by trauma, disabilities, or other vulnerabilities.

ii. Special educator
   An individual with specific expertise in adeptly engaging with children having disabilities, while considering the child's distinct capabilities and particular requirements. These disabilities encompass difficulties associated with learning and communication, emotional and behavioral challenges, physical impairments, and developmental concerns. As outlined in clause (s) of section 2 of the Rights of Persons with Disabilities Act, 2016, the term "disabilities" holds an equivalent implication within the context of this provision.

iii. Person familiar with the manner of communication of the child
   A caregiver who can be a parent, family member, or a member of the child’s shared household, or any person trusted and relied upon by the child. This individual should be familiar with the child’s specific way of communicating and their presence can aid in facilitating more effective communication with the child.

iv. Support person
   An individual designated by the Child Welfare Committee, as per the provisions of sub-rule (7) in rule 4, to provide support to the child throughout the duration of the investigation and legal proceedings. This could also involve any other person assisting the child during the initial or trial phases for an offense covered by the Act.

In addition to the aforementioned terms, there is a specific terminology which is the "District Child Protection Unit (DCPU)" which is not explicitly mentioned in the POCSO Act itself but is defined in the POCSO Rules. The term "DCPU" denotes the unit created by the State Government according to section 106 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) (as defined in Rule No. 2 (b) of the POCSO Rules 2020).
In contrast, unlike Act 792 which does not provide any definition section, the OCRFCM (Page 11 of Special Guideline for the Handling of Sexual Offences Against Children Cases in Malaysia) provides a total of four definitions as follows:

i. Child/ Kanak-kanak
   As per Act 792, it incorporates “child” as outlined in Section 2 of the Child Act 2001 (Act 611), which defines a child as a person who is under the age of eighteen.

ii. Sexual abuse against a child/ Penderaan seksual terhadap kanak-kanak
   According to Section 17(2)(c) of Act 611, sexual abuse against a child occurs when an individual participates or observes any sexual activity with the intention of creating pornographic, obscene, or indecent material, including photographs, recordings, films, videotapes, or performances. It also includes instances of sexual exploitation by any person for their own sexual satisfaction or the satisfaction of another person.

iii. Protection/ Perlindungan
   A child that needs protection under Act 792, the Penal Code (Act 574) and Domestic Violence Act 1994 (Act 521).

iv. Support/ Sokongan
   A process through which individuals provide emotional or instrumental resources to help others cope with stress or adversity (Stroebe & Hewstone, 2003).

However, it is pertinent to note here that Act 676 (Evidence of Child Witness Act 2007) is undergoing a very recent development of the law with respect to amendments to some of the provisions thereunder. There is a bill to amend the current Act 676 by amending the definition of a child thereunder from a person under sixteen years old to under eighteen years old and should this bill be passed and comes into force, the definition of child under Act 676 shall be aligned with Act 611 (Child Act 2001) and Act 792.

4.1.2. The function of the Rules/ Guidelines in Promoting Public Awareness of the Act

What distinguishes the POCSO Rules from typical legislation is that, beyond the legal requirements it establishes, section 43 is expounded upon, offering directives to the Central Government of India and respective State Governments on the systematic dissemination of mandatory public awareness to the public. The POCSO Rules even extend their scope by mandating that any establishment that caters to or frequently interacts with children, including schools and similar child-centric facilities, must regularly conduct background checks of their staff. Such institutions also must organize periodic training to equip ample knowledge on child protection under the POCSO Act. In contrast, the Guideline does not provide detailed procedures or measures to be taken by the relevant authorities with regard to the effort in making the laws under Act 792 known to the general public.

4.1.3. The function of the Rules/ Guidelines pertaining to Reporting and investigation
Since Act 792 can be considered as new compared to the Penal Code, and recognizing that to efficiently operate the laws contained thereunder requires the harmonization of many agencies and departments, the Guideline brilliantly set clear and detailed procedures and information on how a report of an offence under Act 792 is to be received and handled from the very beginning all the way to submitting the investigation findings to the prosecution for further deliberation.

The Guideline covers the following aspects:

**The lodgment of the police report and investigations aspect**
- The methodology of the police report;
- The interview of the person who lodges the report;
- The classification of offence;
- The recording of the complainant/ victim/ witness via the Child Interview Centre;
- The appointment of a Legal Companion for the child victim (if necessary).

**The medical examination aspect**
- Medical screening at the Hospital Emergency Department;
- The preparation of the medical report.
- The medical personnel that handles the case under Act 792 must undergo the necessary training in order to do so.

**The investigation aspect**
- Evidence gathering;
- Evidence analysis;
- The arrest of the suspected persons;
- The recording of the statement from the suspected persons;
- Remand application process;
- Identification parade (if necessary).

**The aspect relating to the evaluation of the evidence gathered and reference to the Deputy Public Prosecutor for further assessment of the evidence**
- Incomplete evidence calls for re-investigation;
- Should the investigation gas ample evidence then proceed to charge.

In this context, the POCSO Rules, specifically under Rule No. 4, outline the procedure pertaining to the care and protection of a child. These rules are part of the Protection of Children from Sexual Offences Rules, 2020 (G.S.R. 165(E)), established by the Central Government of India. Published in the Gazette of India, No. 162, New Delhi, on March 19, 2020 (PHALGUNA 29, 1941), these rules provide comprehensive guidance similar to the Guidelines and specify how to receive reports, conduct investigations, and offer detailed regulations for providing medical assistance and care, as covered in Rule No. 6, pertaining to medical aid and care.

4.1.4. **The function of the Rules/ Guidelines in breaking down procedures relating to the Protection of the child victim/ witness**

Both the Guidelines and the POCOS Rules provide detailed guidance on the procedure for the necessary protection of the child victim as well as a child witness to the authorities involved. Under the POCSO Rules, the parties responsible for the investigation as well as affording protection are the local police or the Special Juvenile Police Unit and the Child
Welfare Committee ("CWC") (Indian Juvenile Justice (Care and Protection of Children) Act 2015). CWW operates as an entity entrusted with the duty of ensuring the welfare of a child, rendering judgments in accordance with predetermined criteria delineated in the POCSO Rules. In situations where an offense has been perpetrated, attempted, or is foreseeable by an individual residing within the child’s household, or when the child is devoid of parental backing while residing in a child care institution, or when the child is discovered without a home and parental support, the CWC designates a Support Person to aid the child. The CWC also possesses the authority to remove the child from the care of their family or shared residence and relocate them to a children’s home or shelter home. The appointment, as well as the termination of the Support Person, need to be informed to the Special Court. The support available to the child is not limited to physical well-being only, it is rather extended to medical including psychological care and counselling. Whereas, the Guidelines state that the parties involved in giving necessary care protection to the child are the Department of Social Welfare ("JKM"), the Ministry of Health ("KKM"), the Royal Malaysian Police ("PDRM"), and the Legal Aid Department ("JBG").

Each respective party has its own assigned role and function in accordance with its nature and specialty. The JKM, with respect to the protection of the child, will also gather all the necessary information regarding the offence. If the situation necessitates, the JKM also has the power to assign a Protection Officer to protect the child victim and also to provide necessary assistance for instance visiting the location of the crime. The Protection Officer is also authorized to bring the child victim to undergo the required medical examination at the hospital and should the crime not be reported yet, the Protection Officer has the power to lodge the police report. Furthermore, the JKM may under relevant circumstances take a child victim out of the existing custody and place the child in a safer and more secure environment. Other support services that are provided by the JKM are Witness Support under Act 676, Rehabilitative Intervention (coping skills), Development Support (educational and financial support, Integration into society, and Community Programs.

Apart from general welfare support afforded by JKM, KKM plays a major role in giving medical care and support to the child via the Suspected Child Abuse and Neglect Team ("SCAN Team"). Since KKM is also part of the SCAN Team, it has medical personnel that is able to examine whether the condition suffered by the child that has been referred to them is due to sexual abuse and to plan the treatment for the child. The support and care for the child victim are also assisted by the PDRM. Furthermore, the Guideline also laid downs the duties of the Legal Aid Department ("JBG") to provide legal assistance including legal advice. The JBG also, upon the application made, may assign a Legal Companion (Pendamping Guaman) that participates in all court proceeding in protecting the interest of the child. Similarly, under the POCSO Rules, legal aid and assistance are to be provided by the District Legal Services Authority ("DLSA") (The Indian Legal Services Authorities Act 1987).

4.1.5. The function of the Rules/ Guidelines in breaking down the procedures concerning to Trial of sexual offences against a child

Since Act 792 deals specifically with children, it is important for the authorities to make the atmosphere of the court proceeding involving a child to be as accommodating as possible. Hence, the Guidelines include a detailed procedure on how the trial of child sexual offences should be. The Guideline set down a total of five aspects of a trial that it covers namely the case mention stage, the case management stage, the procedure of the
criminal court for a sexual offence against children, the sentencing stage and the post-trial aspect. The case mention stage involves the standard procedure for instance the reading of the charge and bail.

Further, during the case management stage, the court upon application will decide the need for the assignment of a Legal Companion, the Witness Service Worker (*Pekerja Khidmat Saksi*). To ensure a less daunting and more accessible court proceeding for a child, the court is responsible for adhering to the guidelines set out in Act 676. This might involve facilitating the involvement of an intermediary to aid the court in effectively communicating with the child. The Guidelines further elaborate that the procedure for the trial namely the examination-in-chief, cross-examination and re-examination of a child sexual offence case *inter alia* limitation as to media coverage and reporting, no competency evaluation for child witness except by the order of the court, the child to give evidence in a designated space isolated from the accused, the evidence of a child to be given via video link and many more.

At the sentencing stage, the Guideline provides explanation as regards to the victim impact statement, and the Legal Companion is stated to be allowed to assist the preparation of the statement. Interestingly, the Guideline also comprehensively set the procedure in respect of the child after the conclusion of a case that includes for the court to consider the report made by the officer from the JKM in determining the suitable placement of the child, the disposal or safekeeping of the evidence by the prosecution. Generally, the Guidelines provide a general idea and proper insight as to how the trial for offences under Act 792 should be handled. On the other hand, though the POCSO Rules do mention some general rules regarding the trial, however, it only provides general guidance for instance the duties of a support person (similar to Legal Companion under the Guidelines), testimony of a child through the support person and the duty of a support person to submit a monthly report to the CWC with regards to a trial.

### 4.1.6. The function of the Rules/ Guidelines in clarifying the Handling of the child victim/ child witness

Furthermore, the Guidelines also provide additional discussion on how a child victim/ child witness is to be handled throughout the judicial process. It can be submitted that this guideline on the handling of the child victim/ child witness is supplemental to the aforementioned discussed procedures, nevertheless, this part highlights further on the responsibility of the Deputy Public Prosecutor (“DPP”), the Defense Counsel (“DC”), the Session Court Judge (“SCJ”), the JKM, the Investigating Officer/ Assistant Investigating Officer (“IO/ AIO”) and also the Legal Companion. In summary, this part laid downs the duties of the DPP to build a good rapport with the child through meeting and briefing sessions, to keep the child or the family informed on the laws and the legal process, to attend to special assistance required by the child (eg. Child with disabilities), to prohibit by the court’s order to the details that may identify the child involved in a case by virtue of section 14 of Act 676. Meanwhile, the role of the SCJ is to take into account the age and comfort of the child victim/witness in determining the time for the child victim/witness to give testimony. The DC also shall ensure that the questions to be posed to the child witness need to be non-aggressive and straightforward. Overall, this particular part strongly proposes that all the parties mentioned uphold the interest of the child during the judicial process. There are rules of similar nature stipulated under Rule No.4 of the POCSO Rules.
4.1.7. Special relief under the POCSO Rules and the Guideline

According to the POCSO Rules, the Child Welfare Committee (CWC) has the authority to suggest the provision of special relief payments to either the District Legal Services Authority (DLSA) or the District Child Protection Unit (DCPU). These payments are sourced from funds established by the relevant State or from funds maintained under section 105 of the Juvenile Justice (Care and Protection of Children) Act 2015 (2 of 2016). Special relief encompasses essential provisions like food, clothing, transportation, and other necessary needs. In contrast, the Guidelines generally mention that financial assistance is typically provided by the Department of Social Welfare (JKM).

4.1.8. Rules for Compensation and Payment Directly to the Child

The POCSO Rules also provide further elaboration on the operation of the compensation mechanism that has been stipulated under Section 33(8) of the POCSO Act. Rule No. 9, in general, provides two types of compensation namely interim compensation order and award of compensation upon conviction of the accused. The interim compensation may aid the child victim in need of rehabilitation or for any other necessary purpose. On the other hand, the court will grant the final compensation award if it is convinced that the child victim experienced harm or injury due to the occurrence of the offense.

Rule No.9 lays down the considerations to be taken into account by the court in ordering compensation *inter alia* type of abuse and severity of the injury and also the manner and source of the compensation to be paid from. The POCSO Rule also mandates the CWC and the DLSA to make sure that the compensation amount is paid to the child and shall assist the child in any manner whatsoever to achieve that objective. In contrast, the Guideline as a reflection of Act 792 does not stipulate anything on compensation for the child victim except the Guidelines only states that in the event that the accused pleads guilty, the court may order compensation to be awarded to the child and this power surely is not under Act 792 but it is argued to be under Section 426 of the Penal Code called the crime compensation order.

4.1.9. The Reporting of Pornographic Material and Implementation of the POCSO Act

Unlike other offences under the POCSO Act, the offence concerning pornographic materials under the POCSO Rules is being further elaborated in terms of its reporting procedure. In contrast, no further elaboration is provided on this matter under the Guideline.

Regarding the oversight of law enforcement, the POCSO Act distinctly delineates the duties of the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights as detailed in section 44. In tandem with the responsibilities stipulated in the Commissions for Protection of Child Rights Act, 2005, the POCSO Rules allocate further obligations to these entities. These include overseeing the designation of Special Courts by State Governments, monitoring the development and implementation of training modules for relevant authorities, and collecting information and data on reported cases of sexual abuse. Whereas, the Guideline does not address the monitoring of Act 792 as there is no provision within the act that mandates specific authorities for such responsibilities.

5. Conclusion
Though one may view that the Guidelines are not attached to Act 792 as the main law, the contents of the Guidelines are very well explained and elaborated. As it is not a proper regulation for Act 792, all the information with respect to the procedure and process is structured in a very comprehensible manner even for a layman who intends to utilize it as a reference. Furthermore, the Guidelines are beautifully illustrated via a digestible flow chart that is very easy for the reader to comprehend the steps to be taken to assist the reader in understanding the Guidelines in a more guided way. Additionally to that, the Guidelines also equipped with a section on frequently asked questions (“FAQs”) at the end of each part which the researcher found helpful to its readers. Nevertheless, it can be argued that the Guidelines lack pre-emptive measures as opposed to the POCSO Rules. For instance, the POCSO Rules under Rule No. 3(4) state that:

*Any institution housing children or coming in regular contact with children including schools, creches, sports academies or any other facility for children must ensure a police verification and background check on periodic basis, of every staff, teaching or non-teaching, regular or contractual, or any other person being an employee of such Institution coming in contact with the child. Such Institution shall also ensure that periodic training is organized for sensitizing them on child safety and protection.*

The above rule operates as a preventive measure by obligating the concerned institutions to ensure that their employees are clean with regard to crime records. The rule also makes it mandatory for institutions to equip their employees with sufficient knowledge of child safety and protection.

Overall, the Guideline is a very good start and it is recommended to the Legislature to conduct further research with respect to the Guidelines and consider it to be promoted into a full-fledged regulation with proposed modifications attached to Act 792 to infuse it with more binding force and pro-active measures rather than reactive. Also, consideration needs to be given to the inclusion of a specific provision power to make rules or regulations under Act 792 to streamline the legislative effort on the part of the Ministry and allow some flexibility to the Minister-in-charge to make rules in catching up with the dynamic nature of the crime.

**Acknowledgement**

Part of this article was extracted from a doctoral thesis submitted at the International Islamic University Malaysia, located in Wilayah Persekutuan Kuala Lumpur.

**Funding**

No financial assistance was extended for this research.

**Conflict of Interest**

The authors declared no conflict of interests concerning this study and assert that there are no possible conflicts of interest concerning the research, authorship, or publication of this paper.
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Protection of Children from Sexual Offences Rules, 2020


The Indian Legal Services Authorities Act 1987 (39 of 1987)