STUDY ON THE WORKING OF SPECIAL COURTS UNDER THE POCSO ACT, 2012 IN ANDHRA PRADESH

BY

CENTRE FOR CHILD AND THE LAW,

NATIONAL LAW SCHOOL OF INDIA UNIVERSITY
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Contents

About the Centre for Child and the Law, National Law School of India University (CCL-NLSIU)

The Centre for Child and the Law, of the National Law School of India (CCL-NLSIU) is a specialized research centre working in the area of child rights, since 1996. The main thrust of the work is on Juvenile Justice and Child Protection, Universalisation of Quality Equitable School Education, Child Labour, Protection of Children from Sexual Offences, Justice to Children through Independent Human Rights Institutions, Right to Food, and Child Marriage. The mission of CCL NLSIU is to institutionalize a culture of respect for child rights in India.

The Juvenile Justice Programme at CCL-NLSIU engages in multi-disciplinary direct field action with children and families in the juvenile justice system, as well as multi-disciplinary research, teaching, training, and advocacy in order to positively impact policy, law and professional practice on issues concerning children and their families. The team adopts a human rights and multidisciplinary approach in general and a constructive, yet critical collaborative approach with the state.

CCL-NLSIU has been working on laws relating to child sexual abuse since 2004. One of the legal researchers in the team was a member of the Working Group constituted by the NCPCR to draft the Protection of Children from Sexual Offences Bill, 2010. More recently, a dedicated team of legal researchers have been researching and writing on the Protection of Child from Sexual Offences Act, 2012. The team has authored *Frequently Asked Questions on the Protection of Children from Sexual Offences Act, 2012 and the Criminal Law (Amendment) Act, 2013* (2nd ed, reprint December 2016). The Hindi translation of this publication is now available, and the Kannada translation is underway. The team also authored *Law on Child Sexual Abuse in India – Ready Reckoner for Police, Medical Personnel, Magistrates, Judges and Child Welfare Committees* (November 2015). Members of the team have also conducted capacity building programs on the POCSO Act, 2012 and The Criminal Law (Amendment) Act, 2013, relevant to child sexual abuse, for judges, police, Child Welfare Committees (CWCs) and other stakeholders, and taken lectures at programs organized by NIPCCD, Karnataka State Commission for Protection of Child Rights and other authorities/organizations.

CCL-NSLIU has published reports on the Working of the Special Courts under the POCSO Act, 2012 in four other states, soft copies of which are available. Details of these are:

- **Delhi** (29 January 2016)
  https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOSCOAct2012.pdf
- **Assam** (13 February 2017)
  https://www.nls.ac.in/ccl/jjdocuments/studyspecialcourtassamPOSCOAct2012.pdf
- **Karnataka** (8 August 2017)
  https://www.nls.ac.in/ccl/jjdocuments/summaryreportrecoposcokar2012.pdf
- **Maharashtra** (7 September 2017)
  https://www.nls.ac.in/ccl/jjdocuments/POSCOMaharashtrastudy.pdf

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[1] List of participants include: Prof. Kesava Rao (Vice Chancellor, DSNLU, Vishakapatnam), Smt. G. Mary Bharati (CDPO), Mr Kishore Kumar (Child Line & CWC), Mr. M. Benjamin (CWC), Mr. Francis Thambi (CRAF), Mr Thirupathi Rao (SCPCS), Mr. Ravi Prakash (JWCS), Ms. Jyothi Supriya (DCPO), Mr R. Rama Rao(CWC), Ms. B. Vasanthi (LPO), Ms. Sugnana Rani(SEEDS), Ms. B. Vijayasree (CWC), Ms. V. Mahalakshmi (Chief Probation Supt) & Mr. Naim Basha (CWC).

About the Study

Normative Framework

Under Section 28 of the Protection of Children from Sexual Offences Act, 2012, (POCSO Act), the State Governments should, in consultation with the Chief Justice of the High Court, designate a Sessions Court to be a Special Court to try offences under the POCSO Act. This is with a view to facilitate speedy trial. If a Session's Court has been notified as a Children's Court under the Commissions for Protection of Child Rights Act, 2005, or if any other Special Court has been designated for similar purposes under any other law, it will be regarded as a Special Court under the POCSO Act.

The POCSO Act requires judges, prosecutors, and lawyers to modify their practice and attitudes to ensure that the proceedings are sensitive to the needs and rights of children. Without mandating a change in the structure of the courtroom, it requires that measures be adopted to prevent the child from being exposed to the accused while ensuring that the rights of the accused are not compromised. It requires the Central Government and State Government to take measures to ensure that government servants, police officers and other concerned persons are imparted periodic training on matters related to the implementation of the Act.

The term "child-friendly" has been defined in the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) to mean "any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child".

At the international level, the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes, 2005* encapsulate core good practices that can be adopted by States in accordance with domestic law and judicial procedures to, *inter alia,* "guide professionals….in their day to day practice", and to "assist and support those caring for children in dealing sensitively with child victims and witnesses of crime."[2] The term "professionals" has been defined to include judges, law enforcement officials, prosecutors, defence lawyers, support persons, and others in contact with child victims and witnesses of crime.[3] "Child-sensitive" has been defined to mean "an approach that balances the child's right to protection and that takes into account the child's individual needs and views."[4] In a criminal trial, the views of a child are rarely considered. The limited extent to which the views of a child are relevant is in the context of removal from custody of the family by the CWC and the place where his/her statement is to be recorded. The rights and needs of a child victim, however, should be considered by judges, prosecutors, and others while examining a child in court.

A more elaborate definition of "child-friendly justice" can be found in the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010*[5] that stipulate the

[2] Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Guideline 1, paras 3(c) and 3(d) ECOSOC Resolution 2005/20, *available at* http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf.

[3] *Ibid*, Guideline 9(b).

[4] *Ibid*, Guideline 9(d).

[5] Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies) – edited version 31 May 2011, *available at* http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf.

ingredients of child-friendly justice before, during and after judicial proceedings. It has been defined to mean:

> "…justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level … and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity."

The aspects of "child-friendly justice" that the POCSO Act emphasizes upon are speedy trial as well modified procedures to cater to the special needs of children. It is left to individual judges to ensure that children are dealt with and questioned in an age-appropriate manner and that the atmosphere is child-friendly.

Scope

The Study on Special Courts established under the POCSO Act in Andhra Pradesh was initiated by the Centre for Child and the Law, National Law School of India University, in January 2017 to understand if these Special Courts were facilitating "child-friendly justice" and to identify critical issues of concern related to the implementation and interpretation of this Act. To do this, the structural and procedural compliance with the POCSO Act and Rules was examined and judgements of Special Courts were studied to map the outcomes, interpretations, and emerging trends. Though they were interviewed for the study to understand their experience in the Special Court, the study does not focus on the functioning of the police, doctors, and investigating authorities under the POCSO Act. Though these aspects are equally important, it is beyond the scope of the study.

Objectives

The objectives of the study are to

1. Examine the extent to which Special Courts in Andhra Pradesh are "child-friendly."
2. Examine whether the Special Courts are structurally and procedurally compliant with the POCSO Act and Rules.
3. To understand the interpretation of provisions, application of presumption, appreciation of testimony of the child, disposal rate, conviction rate, factors affecting conviction and acquittal, response to 'romantic relationships', compensation orders, use of medical evidence, and investigation lapses.
4. Identify gaps and challenges in the functioning of the Special Courts.
5. Identify good practices that can be adopted by Special Courts to ensure a child-friendly trial.
6. Articulate recommendations for practice guidelines and system reform based on the above.

For this study, the term "child-friendly" in the context of Special Courts signifies the following:

- *Respect for and protection of rights of children* contained in the Indian Constitution, domestic laws, and the United Nations Convention on the Rights of the Child, 1989 (UNCRC) which was ratified by India in 1990, by all actors in contact with child victims during the trial, in an age and developmentally appropriate manner.

- *Adherence to the legal procedures* stipulated in the POCSO Act and the Criminal Law (Amendment) Act, 2013 during the trial.
- *Structural changes to the courtroom* to make the ambience child-friendly. Although, this is not expressly mandated in the law, the study seeks to document the initiatives, if any, taken by High Courts and State Governments to alter the design and atmosphere of these courtrooms.

Parameters of Analysis

To analyze the child-friendliness of Special Courts, three factors were examined:

A. Assessment of Structural Compliance in two Special Courts

1. Have Special Courts been designated?
2. Have Special Public Prosecutors (SPPs) been appointed? Are these SPPs exclusively dealing with POCSO cases?
3. Have any initiatives been taken to make the design of the courtroom child-friendly?
4. Are tools and facilities available to prevent exposure of the child to the accused?

In addition to the statutory mandate, the following were also examined:

1. Are Special Courts exclusively trying cases under the POCSO Act?
2. Is there a separate entrance for children into the courtroom so that they can avoid the crowds and the exposure to the police and accused persons?
3. Is a waiting room available in all court complexes for children and their families?
4. Are toilets located in the vicinity of the courtroom?
5. Is there a separate room in which the evidence of the child can be recorded?
6. Are the courtrooms accessible to person with disabilities?

B. Assessment of Procedural Compliance

1. Are cases coming to the Special Court directly or are they being committed by the Magistrate?
2. Are all questions to the child routed through the judge of the Special Court?
3. Are frequent breaks usually permitted by Special Courts?
4. What measures have been taken by the Judges to create a child-friendly atmosphere in the court?
5. Are children called repeatedly to court?
6. What is the extent to which aggressive questions are prohibited?
7. What measures are taken to protect the identity of the child?
8. To what extent is compensation ordered by Special Courts? What are the challenges with respect to award of compensation?
9. Is evidence recorded within 30 days? What is the extent to which the trial is completed within 1 year?
10. What measures have been taken to prevent the exposure of the child to the accused?
11. Are trials being held *in camera?*
12. Is the assistance of experts, special educators, interpreters and translators taken?
13. Are private lawyers allowed to participate in the proceedings?
14. Is a Support Person provided to the child?

Additionally, the following was also examined:

1. What is the experience of child victims before a Special Court?
2. Is there any linkage between the Child Welfare Committee (CWC) and the Special Court?
3. Is the exposure to the accused prevented at all times?
4. Is there a support gap?

C. Assessment of Findings, Challenges and Gaps

The judgements were analyzed with a view to gather information on the following:

- Rate of conviction and acquittal and reasons for the same
- Appreciation of testimony of children
- Rate of alleged perpetrators known/unknown to the victim and its relation to the testimony of the child and the outcome
- Rate of cases in which the survivor and the accused were married or in a romantic relationship, testimony in such cases, and the outcome
- Sex profile of victims
- Age profile of the victims/survivors and the nature of their testimony.
- Sex and age profile of the accused
- Percentage of pregnant victims and the nature of their testimony and outcome
- Charges and sentencing pattern
- Disposal rate and the time taken to dispose cases
- Application of presumption
- Interim and final compensation being awarded by Special Courts
- Treatment of 'romantic cases' by Special Courts
- Treatment of hostile witnesses
- Treatment of medical evidence
- Treatment of delay in lodging FIR
- Age-determination
- Lapses in investigation and prosecution highlighted by Special Courts

Research Methodology

The principal methods adopted for the study were:

- Interviews with judges, prosecutors, lawyers, Support Persons, police officers, doctors, NGOs, JJBs, CWCs, Magistrates, children, families, and other experts involved in legal proceedings concerning child victims of sexual abuse.
- Analysis of judgements of the Special Courts to ascertain application of child-friendly procedures in determining competence of child victims, appreciating evidence, ordering compensation, and in arriving at the decision.
- RTI applications to the Hon'ble High Court seeking information about pendency, disposal and compensation.
- Consultation with stakeholders on the provisional findings of the study.

Field interviews were carried out in April 2017 by Priyanka Lal, Shraddha Chaudhary and Monisha Murali in Prakasam; and in June 2017 by Anuroopa Giliyal and Monisha Murali in Guntur. 36 interviews were carried out with a range of stakeholders including:

- Judges of Special Courts
- Public Prosecutors
- Superintendent, District Legal Services Authority
- Representatives of the Department of Child Welfare[6]
- Representatives of the Department of Juvenile Welfare
- Chairperson and members of Child Welfare Committees
- Former Principal Magistrate, Juvenile Justice Board (JJB)
- Magistrate who records Section 164 statement
- Investigating Officers (IO)
- Senior Police Officers
- District Child Protection Officers (DCPO)
- Legal cum Probation Officers (LPO)
- Counselor
- Court staff
- Doctors in government hospitals
- NGOs and Community-based Organisations
- Child victims
- Family of one child victim
- Defence lawyers

While the voices of children who journey through the criminal justice system are vital to a study like this, ethical concerns prevented the researchers from approaching child victims and their families directly. Two child victims under the POCSO Act were interviewed with the assistance of NGOs providing them support. Care was taken to ensure that the child victim was interviewed by a staff of the organisation who supported the child and the questions were asked by her, in the presence of one researcher.

The districts of Guntur and Prakasam were selected based on the district-wise data on judgements passed under the POCSO Act, 2012 till 2015 as per which they recorded the highest and second highest number of cases, respectively.

A census approach was adopted with respect to the analysis of judgements of the Special Courts. The team studied 509 judgements passed by Special Courts in 11 districts, from 1 January 2013 till 30th June 2017. The judgements were downloaded from http://ecourts.gov.in.

District-wise Total Number of Judgements Analysed

S.No.	District	Number of Cases

[6] In Andhra Pradesh, there are three Departments under the Secretariat of Women, Child, Differently Abled and Senior Citizens viz., Department of Women Development & Child Welfare (DWDCW), Department of Juvenile Welfare, Correctional Services and Welfare of Street Children (DJWCS) and Department for Welfare of Differently Abled and Senior Citizens (DWD). POCSO matters are handled by the DWDCW and the CWCs and JJBs come under the DJWCS.

S.No.	District	Number of Cases
1.	Anantapuram	40
2.	East Godavari	27
3.	West Godavari	39
4.	Krishna	40
5.	Prakasam	76
6.	Nellore	14
7.	Guntur	188
8.	Kadapa	6
9.	Vizianagaram	12
10.	Srikakulam	8
11.	Vishakapatnam	59
Total- 509		

Cases of two districts were inaccessible on the e-courts website. These were Kurnool and Chittoor.

A consultation on the provisional findings of the study was held in Vijayawada on November 1, 2017, which was attended by 14 people. The participants represented a range of stakeholders comprising academicians, representatives from Department of Child Welfare and Juvenile Welfare, CWC members NGOs, CHILDLINE representatives and other practitioners. Views, insights and recommendations of the participants have been incorporated into the report.

Limitations

The researchers acknowledge the following limitations of the study:

- The study focuses only on the functioning of Special Courts, which is admittedly only one part of the criminal justice system that child victims will encounter throughout their experience with any case registered under the POCSO Act.
- The study is confined to the working of Special Courts, and examines the manner JJBs deal with cases under the POCSO Act only in a limited way. Further, the team was unable to meet the sitting members of the JJBs despite few attempts.
- The analysis of the proceedings in the case have largely been dependent on the text of the final judgement of the Special Court, as the researchers were unable to witness actual court proceedings which are held *in camera*. The orders of the JJBs were not analysed nor were bail orders passed by the Special Courts.
- Only judgements uploaded on the official website of the District Courts and http://ecourts.gov.in formed part of the analysis. It is indeed possible that more cases were decided during the period under the study. All reasonable efforts have however been made by the researchers to ensure that no judgement in a POCSO case during this period was excluded from the analysis.
- Only judgements of 11 out of 13 districts were available. Some of the judgements that were in Telugu had to be dropped due to paucity of time and budget.
- A large percentage of the cases analysed were from Guntur and Ongole districts respectively, and the sample for judgement analysis was, accordingly, biased.
- Finally, any error or gap in the data collected is inadvertent and unintentional.

CHAPTER I: STRUCTURAL COMPLIANCE

The POCSO Act prescribes limited structural requirements for the Special Courts like designation of Special Courts, appointment of SPPs for conducting cases only under the provisions under the Act, and certain mechanisms to prevent contact between the child victim and the accused at the time of evidence. The sections below capture the extent to which the Special Courts in two districts of Andhra Pradesh complied with the structural necessities as prescribed under the POCSO Act, largely drawn from observations made by the researchers and from interviews with respondents.

1.1 Establishment of Special Courts

According to Section 28(1), POCSO Act, State Governments should, in consultation with the Chief Justice of the High Court, designate a Sessions Court to be a Special Court to try offences under the POCSO Act, to facilitate speedy trial. However, if a Sessions Court has been notified as a Children's Court under the Commissions for Protection of Child Rights Act, 2005, or if any other Special Court has been designated for similar purposes under any other law, it will be regarded as a Special Court under the POCSO Act.[7]

By a notification dated 23.03.2013 (G.O.Rt. No. 630), the Government of Andhra Pradesh has designated the Courts of I Additional District and Sessions Judges in all the Districts and the Courts of I Additional Metropolitan Sessions Judges in Metropolitan Sessions Divisions of Hyderabad, Visakhapatnam and Vijayawada, to try the offences under the POCSO Act, 2012.

The POCSO Act does not mandate an exclusive Special Court to hear cases under the Act. The designated Courts of Andhra Pradesh hear POCSO cases with other civil and criminal cases. The Special Courts are also designated as Special Courts under the Protection of Human Rights Act, 1993 and also hear matters under the Electricity Act, 2003, the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985 and also under the Drugs and Cosmetics Act, 1940. A representative from the police department stated that a separate court for POCSO cases away from the regular court complex should be established. While a prosecutor believes that the POCSO cases should not be mixed with other cases, a DCPO feels that an exclusive court is better for a victim. A representative from Non- Governmental Organisations (NGOs) appreciated the model followed for children in conflict with the law (i.e the JJB, instead of the regular criminal courts) and stated that such an exclusive system is essential in POCSO cases as well. Thus, several respondents including representatives from NGOs, police and prosecutions expressed a need for exclusive Special Courts.

Special Court Judges have in their judgements also shared their inability to meet the timelines under the Act as they are handling cases under different legislations.[8]

[7] Section 28(2), POCSO Act, 2012.
[8] See, *State* v. *Avanigadda Yesu Babu* S.C. No 14/2014, decided on 05.12.2016 (Guntur).

While it was seen that POCSO matters are taken up on priority in the Special Courts, there are no specific days on which they are heard. In one of the Courts, POCSO cases are generally heard in the morning in order to reduce waiting time for children.

1.2 Appointment of Special Public Prosecutors

According to Section 32(1), the State Government should appoint a SPP "for conducting cases *only* under the provisions of [POCSO] Act." Advocates with a minimum of seven years' practice are eligible to be appointed as an SPP. The language of the provision clearly suggests that the SPPs must exclusively handle POCSO cases.

By a notification dated 23.12.2013 (G.O.Rt. No. 2364), the Government of Andhra Pradesh designated the Additional Public Prosecutors of the Courts of I Additional District and Sessions Judges in all the Districts and I Additional Metropolitan Sessions Judges in Metropolitan Sessions Divisions of Hyderabad, Visakhapatnam and Vijayawada, as the Additional Public Prosecutor-cum-Special Public Prosecutor for conducting trial of offences under the POCSO Act.

The Public Prosecutors (PP) of the Special Courts handle all the matters that come to the designated Courts. Researchers also observed a prosecutor being called to stand in for a prosecutor assigned to another court in his absence for bail matters. At this point of time, the prosecutor was in conversation with a distressed woman (possibly a parent) after attending to cases for the morning session in his court. Despite their best efforts, prosecutors do not get enough time to children or families to explain the procedures leisurely. The burden of additional cases also probably affects the temperament of the prosecutor. A NGO and a child respondent expressed that a prosecutor was not handling a child sensitively.

1.3 Design of the Courtroom

According to Section 33(4), POCSO Act, the "child-friendly atmosphere" of the courtroom can be created "by allowing a family member, a guardian, a friend or relative, in whom the child has trust or confidence, to be present in the court." This provision bears no reference to the physical dimension of the courtroom or the behaviour required to ensure that the child's interaction with the criminal justice system is child-friendly.

The Special Courts are similar to other courts in the building. The advantage however is that there are four doors, two on each side of the Courtroom. With minimal intervention children could be prevented from being exposed to the accused. There is no waiting room for child victims and family members in either of the districts. In both the districts, the Special Court Judges have specifically instructed police to bring the child victims to the corridor on one side of the courtroom and the accused to the other side in an attempt to ensure minimal exposure to the accused. In one court the child is on the less crowded side of the corridor and in the second court the child is on the main corridor. However, the child has to pass through several courtrooms to reach the Special Courts exposing her to curious stares of people waiting outside other Courts.

Basic amenities such as a toilet for the use of people accessing the court are not available in both the districts. The toilets are locked and the keys are with the court office staff. Toilets designed for persons with disability were not available in the court complexes.

While the accused and victims are not sharing the same waiting space outside Courts, there is no designated waiting space outside the JJB. The children alleged to be in conflict with law (CICLs) and victims are waiting in the same space which invariably exposes the child to the CICL.

1.4 Tools and facilities to record testimony and prevent exposure

Section 36(1), POCSO Act, requires the Special Court to ensure that the child is not exposed to the accused at the time of recording evidence, and for this purpose it can record the evidence using video conferencing, single visibility mirrors, curtains, or any other device.

Efforts have been made to minimise exposure of the child to the accused inside the courtroom as well. Different methods are adopted in the districts to prevent exposure. While in one district, a screen is kept in front of the accused, in the second district it is kept in front of the witness. In the first district, the screen is a semicircle shape around the chair right next to the door from where the accused enters. The accused is made to come in and sit behind the screen before child is called in. She does not get to see the accused once she enters the room. She is not made to stand in the witness box and is asked to stand closer to the Judge on the raised platform. In the second district, the screen is placed in front of the child in the witness box.

Table No.1.1. Status of Structural Compliance of Special Court under the POCSO Act, 2012 in Prakasam and Guntur

The table below captures the status of structural compliance of Special Courts in the two court complexes i.e., in Prakasam and Guntur, with the POCSO Act. While the points in italics are not statutorily mandated, they were included to highlight aspects of structure that may have a bearing on a child victim's experience in the court.

Parameters of Analysis	Prakasam	Guntur
Designation of Special Courts under POCSO Act	√	√
Special Courts exclusively try offences under the POCSO Act, 2012	X	X
Special Courts are accessible to persons with disabilities	X	√
Special Public Prosecutors appointed	*	*
Special Public Prosecutors exclusively try offences under the POCSO Act, 2012	X	X
Separate entrance for children into the courtroom	√	√
Separate waiting room for children and families	X	X
Separate waiting space for children and families	√	√
Toilet located in the vicinity of the courtroom	X	*
Toilets are accessible to persons with disabilities	X	X

Audio-visual facilities to record evidence of the child available	X	X
Means available to prevent exposure of the child to the accused *in* the courtroom	√	√
Separate room for recording the evidence of child witness	X	X

* Signifies partial compliance. For instance, toilets are available in the court complexes but not open for people to use it. The keys are with court office staff. While a notification has been passed with respect to SPPs, they are not dealing exclusively with POCSO cases.

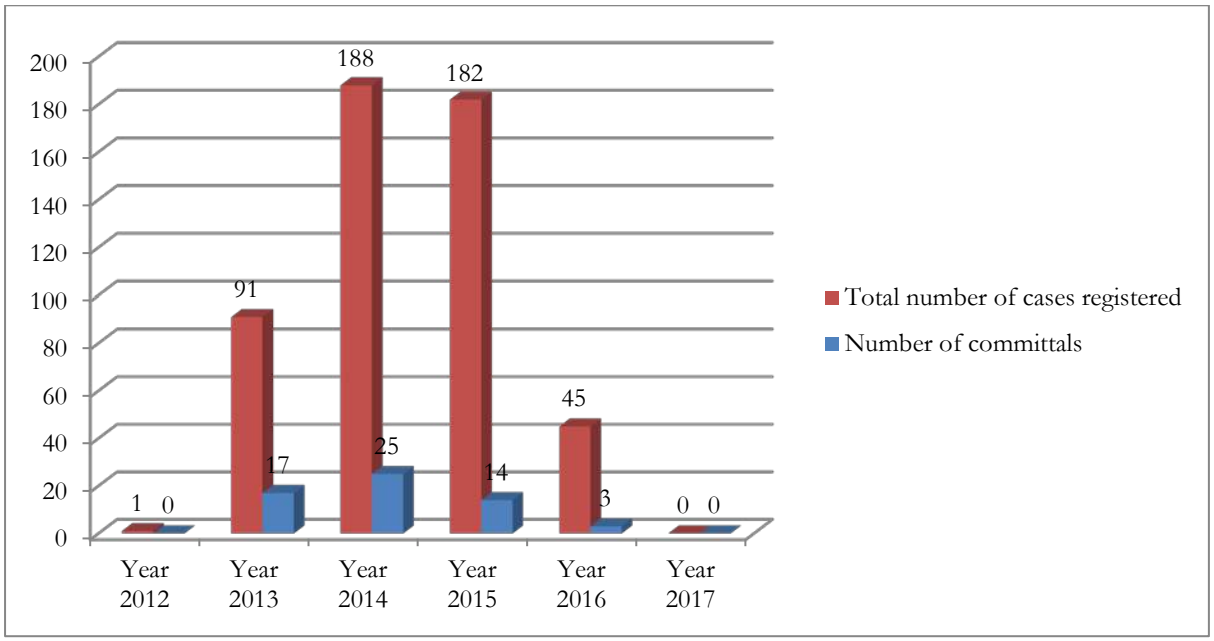
CHAPTER II: PROCEDURAL COMPLIANCE

The POCSO Act lays down the procedures to be followed by Special Courts while trying cases under the Act. The section below captures the extent of compliance to these procedures drawing from interviews, observations, and judgement analysis.

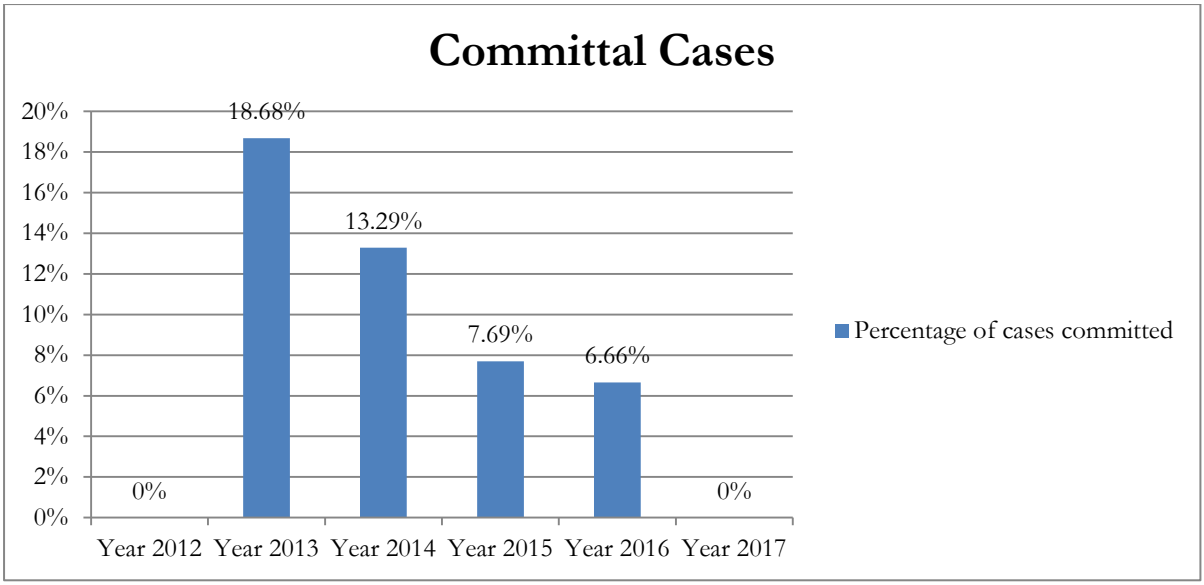
2.1 Direct Cognizance by the Special Court

Section 33(1), POCSO Act, empowers the Special Court to directly take cognizance of an offence based on a complaint or upon a police report, without the accused being committed to it for trial.[9] The police must, therefore, bring the matter directly before the Special Court instead of initiating committal proceedings before a Magistrate. This is to facilitate speedy trial of sexual offences against children.

Judgements of various High Courts have clarified the powers of the Special Courts to take direct cognisance of cases under the POCSO Act. Despite this, accused persons have been produced before the Magistrate's Courts in some districts of Andhra Pradesh. In 60 of 509 cases (11.7%), the cases were committed to the Special Court.



[9] Section 33(1) of POCSO Act, 2012.



As seen in the chart above, there has been a steady decline in the percentage of committals from 2013 (15.3%) to 2016 (6.66%). Six of the eleven districts had cases which were committed to the Special Courts. Higher rates of committal in some districts compared to others may possibly be attributable to a lower level of awareness of the law by the police and magistrates.

Committal proceedings add to the delay at the very first stage of recording the evidence of the child. In *State* v. *Kannuri Sanyasi Rao*,[10] it took over three months for the Special Court to receive the committal orders and the records from the Magistrate's courts. In this case, however, the victim, despite having 75% disability, deposed against the accused and as a result, the accused was convicted. In *State* v. *Muddana Subrahmanyam*,[11] it took one year from the date of filing FIR for the Special Court to take cognisance of the case after committal proceedings were completed by the Magistrate's court, and one more year to finally dispose the case.

According to a prosecutor, there are cases that have been going on for four years. Due to the delay, *"witness will forget, the child will not want to talk about the incident and the family will want to move on etc.*" The delay may also increase the number of victims turning hostile. For instance, in 33 (67.34%) of the 49 committal cases in which victim could testify, the child turned hostile.

In judgements from one district in 34 cases, there was also reference to accused having produced before the Magistrate for judicial custody. It is not clear if the accused was produced for first remand or was committed to the Special Court later.

2.2 Questioning Children

Section 33(2), POCSO Act, prohibits the Special Public Prosecutor and the defence lawyer from putting questions to the child directly. All questions during the examination-in-chief and cross-examination must be routed through the Special Court Judge. Under Section 33(6), POCSO Act, the Special Court should not allow aggressive questioning or character

[10] POCSO S.C NO.111/2015, decided on 22.03.17 (East Godavari).
[11] POCSO S.C NO.118/2015, decided on 04.10.17 (East Godavari).

assassination of the child and should ensure that dignity of the child is maintained during the trial.

The researchers observed that in both Prakasam and Guntur, the prosecutors and defence lawyers are allowed to pose questions to the child victims, but questions are also routed through the Judge in many cases. Judges usually intervene actively when degrading or insensitive questions are posed to the child. It appeared that Judges also prevent the defence from asking insensitive questions, or ensure that they are rephrased before being put to the child. Defence lawyers, in general, seemed to be discontented about questions being routed through Judges.

> "Judges interfere a lot with the questioning process. They often do not let us ask the questions that we need to ask. When I ask certain kinds of questions, which may be personal or worded a little harshly, then the district judge asks instead of me. But these questions need to be asked; otherwise innocent people will get punished. In some cases, they may ask the witness again, in a more sensitive manner, if they feel the question is personal."
>
> -Defence Lawyer

As per Section 142 of the Indian Evidence Act, leading questions (questions which suggest answers) must not be asked during the examination-in-chief if the defence lawyer raises an objection, except with the permission of the Court.[12] A member of the judiciary acknowledged that while leading questions ought not to be allowed in chief examination, he permits them in cases under the POCSO Act, since 'children are innocent'.

The district in which JJB representatives were available for interview confirmed that they allow direct questioning by lawyers.

2.3 Creation of Child Friendly Atmosphere

Section 33(4) POCSO Act, requires the Special Court to create a child-friendly atmosphere by allowing a family member, guardian, friend, or relative, in whom the child has trust or confidence, to be present in the court.

Interviews revealed that Judges interact with the victim generally, and give the child sufficient time to relax. They sometimes also offer water, and enquire if the child has had food prior to recording of evidence. A child respondent shared that the Judge's assurance that it would be helpful if she answered honestly, and his efforts to calm her when she was tense, enabled her to answer the questions. One of the Judges also mentioned that he asks the victim if she is intimidated by anyone present in the courtroom. If the victim responds affirmatively, such person is sent out of the courtroom. Further, if the child wants a member of the family to be present, that person is made to sit next to the child.

Efforts made by the Judge to make the child comfortable have come through in some of the judgements as well. For instance, in *State* v. *Marapatla Sandeep*,[13] the accused had allegedly

[12] Section 141 & 142 of IEA.

[13] Spl S.C No 48/2015, decided on 07.04. 2017 (West Godavari).

committed penetrative sexual assault on a 16-year old girl. Steps taken while recording her statement were stated in the judgement,

> "The Court has created a child-friendly atmosphere as required under Section 33(4) of the Act. When the witness was asked whether she wants any assistance of her parents or any other person in whom she has trust or confidence, she has stated that she can give evidence with the assistance of her mother."

With respect to whether the court is child friendly, respondents had differing opinions. A respondent working with children felt that, "Courts are not child friendly. The atmosphere is hostile. They should be like the JJB, where they sit in a circle and make the child feel comfortable. The guard who screams 'silence' loudly in the court scares the child. The judicial system is not fair. There is no child friendly measures taken by the court other than conducting the proceedings in camera".

A representative from the police department mentioned,

> "The manner in which the (Special Court) handles the case is different- the body language and the manner of communication is more gentle and friendly. All the child-friendly measures mentioned in the Act are being adhered to- designated court, stipulated time period, friendly behaviour."

The child does not get orientation to the court complex or court room by the prosecutor, but wherever a CHILDLINE representative is present, s/he gives the victim a tour of the Court, orients her to the courtroom, and provides her the emotional support she needs.

From interviews and observations made by researchers efforts of the Special Courts to create a child friendly atmosphere in the court room is evident. The victim however may not experience the same outside the court room. In one district, children are brought to the office of the prosecutor on the previous day of the hearing by a CHILDLINE representative, or police constables, to prepare for her examination in chief. This interaction goes on for half an hour to forty five minutes. A prosecutor shared that he asks a female constable or a female family member, when available, to talk to the victim, so as to make her comfortable. However, the researchers also observed a case being discussed in the presence of a male staff and two male constables in uniform who had brought the girl child to the prosecutor's office.

2.4 Minimizing Appearances in Court and Permitting Breaks during the Trial

Special Courts should ensure that children are not called repeatedly to testify in the court under Section 33(5), POCSO Act. As per Section 33(3) POCSO Act, frequent breaks should be allowed to the child during trial, if necessary.

The child's examination is generally completed in one visit. In exceptional cases, the defence lawyer is given another date for cross-examination. The cases are posted on a day-to-day basis in a POCSO case, indicating that the examination of the child is sought to be completed at the earliest. Case notes maintained by the Special Courts visited, showing the dates on which they were posted, corroborated this information. A Special Court Judge stated that the chief and cross examination is completed on the same day, and that the child is not called again,

even when defence lawyers do not agree to it. However, when a request is made for adjournment on behalf of the child, it is granted.

In the JJB, the child is called for examination on two days, once for chief examination and subsequently for cross- examination.

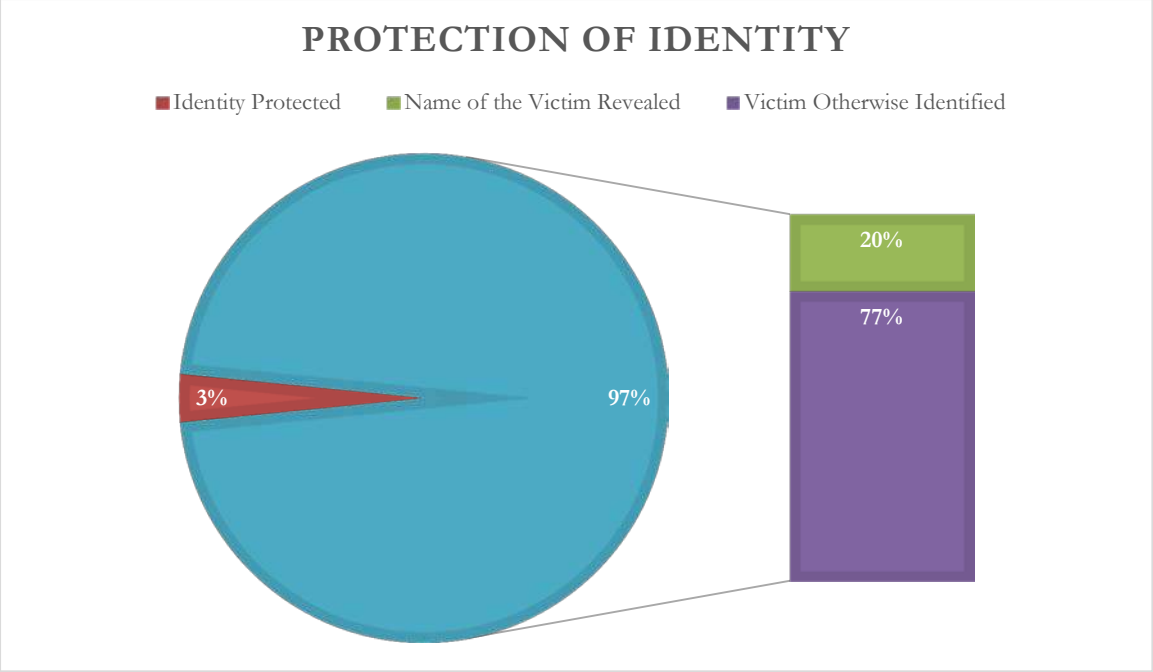
2.5 Protection of Identity

Section 33(7), POCSO Act, requires the Special Court to protect the identity of the child during the investigation and trial. For reasons recorded in writing, the Special Court can permit disclosure, if it is in the interest of the child. The Explanation to Section 33(7) states that identity of the child would 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."

A Special Court Judge shared that he protects the identity of the child by not revealing the child's or the parents' names in the Court. It emerged from judgement analysis that the identity of the victim was compromised in 493 out of 509 cases (96.85%). The name of the child was identified in 103 of the 493 cases (20.8%). In some cases, the names of the child and parents, though not disclosed in the body of the judgement, were listed at the end of the judgement. In some cases, though the name of the victim was protected, other information was released, making it easy to identify her. This included the victim's address, class/school details, village details, names of parents, grandparents, siblings, any other family members, or informants, with or without reference to their professions.

Identity was fully protected in 16 cases (3%). For instance, in *State* v. *Kambhampathi Ramesh*,[14] two female victims who eked out their living by collecting waste papers were subjected to penetrative sexual assault by two strangers, who stopped the auto rickshaw the girls were travelling in. Except for reference to the name of the city to which they belonged, all identifying information was protected in the judgement. The list of the witnesses also referred to them as victims 1 & 2. Similarly, in *State* v. *Mriyala Srinu*,[15] only minimal information such as the scene of crime and occupation of the parents were revealed.

[14] S.C.No. 79/ 2014, decided on 04.01.2016 (Guntur).
[15] Spl. Sessions Case No. 73/ 2015, decided on 13.03.2017 (West Godavari).



It is observed that while efforts are made to protect the name of the child and parents throughout the judgement, certain revealing information is not protected. The concept of protection of identity as laid down under Section 33(7) of the Act which is much broader than directives under the judgements is not fully appreciated or applied. For instance, in *State v. Bathula Venkatesh,*[16] the name of the victim and her parents was protected following the orders of the Supreme Court in *State of Punjab v. Ram Dev Singh.*[17] However, the name of the Head master with the name of the school who was examined to prove the age of the child and the registration number of the child was revealed. This may compromise the protection of identity of the child victim.

2.6 Award of Compensation

Section 33(8), POCSO Act, empowers the Special Court to direct payment of compensation, in addition to punishment, for physical or mental trauma caused to the child or for immediate rehabilitation. Rule 7(1), POCSO Rules, states that interim compensation can be awarded by the Special Court on its own or based on an application by or on behalf of the child, at any time after the FIR has been registered. The purpose of interim compensation is to meet the immediate rehabilitation or relief needs of the child. Compensation, interim and final, can be awarded even if the accused is acquitted, discharged, or untraceable, if according to the Special Court, the child has suffered loss or injury. Rule 7(3), POCSO Rules, specifies 12 factors that the Special Court should consider before it awards compensation. The compensation awarded should be paid from the Victim Compensation Fund or any other government scheme for compensating and rehabilitating victims and must be paid by the State Government within 30 days of the receipt of the order.

[16] Spl. Sessions Case No. 04/2016, decided on 15.06. 2017 (West Godavari).
[17] AIR 2004 SC 1298.

Box No.1 Compensation orders by the Courts					
Payable by the Accused only			**Payable by the State only**	**Payable by the accused and State**	
Fine as compensation	Compensation by the accused	Fine and compensation	Quantum decided by the Court	Compensation from accused and compensation from DSLSA	Fine from accused and DLSA to consider payment of compensation
11	1	2	1	1	1

Judgement analysis shows that Special Courts in four of the 11 districts have passed compensation orders. There is no mention of interim compensation in any of the cases. Final compensation was awarded to victims in 17 (3.3%) of the 509 cases, under three different provisions, namely Section 357, Cr.P.C, Section 357-A, Cr.P.C, and Section 33(8), POCSO Act. In 16 of the 17 cases, i.e., 94.11% cases, the accused was made liable to pay a certain amount as compensation. Either the full or part of the fine imposed on the accused was paid as compensation or accused was ordered to pay an amount to the victim directly. In 12 of the 17 cases (70.58%), the full amount of the fine imposed on the accused, or some part of it, was directed to be recovered and paid to the child as compensation, under Section 357, Cr.P.C. In this category, the amount ranged from Rs. 1,500 to Rs. 30,000. The problem with linking compensation to the fine payable by the accused is that it makes the relief of the victim contingent on payment by the accused. In *State* v. *Mannepalli Venkata Ravi*,[18] the accused was ordered to pay compensation of Rs 1 Lakh to the child, failing which he would have to undergo six months imprisonment. The court also ordered for the fine of Rs. 30,000 imposed on the accused to be paid to the child. In this case, the accused, a resident of the same locality as the girl, used to harass her to marry him. He continued to do so despite her parents' admonition, and one night committed sexual assault on her. In *State v. Patakoti Yallareddy,*[19] the accused was asked to pay a compensation of Rs. 50,000 to the child. In this case the accused, a distant relative had committed sexual assault on a child of eleven years.

Prosecutor's Role

As per Rules 7(1) & (2), POCSO Rules, compensation may be paid by the Court on its own or based on an application made on behalf of the child. Since, in most cases, there is no private legal representation for the child and children are unaware of the provision, it falls upon the Public Prosecutor to make the application. A prosecutor interviewed disagreed with this suggestion and stated that the CWC and the Collector should handle compensation.

Police do not appear to fulfil their responsibility, laid down under Rule 4(12) of the POCSO Rules, to provide information regarding victim compensation schemes. A respondent working with the Special Court stated that due to lack of awareness, victims do not get compensation.

[18] S.C. No 31/2016, decided on 18.08.2016 (Ongole).
[19] S. C. No 52/2016, decided on 04.10.2016 (Ongole).

As most of the families have no information of compensation, the Judge and the staff of the Court provide the information when the victim comes to Court.

Link between Compensation and other Factors

- **Conviction**: The accused was convicted in all the 17 cases in which compensation was awarded for a sexual offence against the victim. Of them, 11 were convicted under both POCSO Act and IPC and five were convicted only under the POCSO Act. Only in one case was the accused convicted solely under the IPC.
- **The offences for which the accused was convicted:** Penetrative sexual assault (two), aggravated penetrative sexual assault (nine), aggravated sexual assault (two), sexual harassment (two). In one case, the accused was convicted for sexual assault and sexual harassment. In another case, the accused was convicted under IPC.
- **Testimony of the child**: In three of these cases**,** the child had not testified**.** Though, in two cases, the child could not testify due to disability. A respondent working in the child protection system stated, "Judges should be awarding compensation under the POCSO Act but they are not interested in paying interim compensation as many children turn hostile."
- **Children with disability**: In three of the total cases in which compensation was awarded, the victim was a child with disability. In *State* v. *Dasari Sreenu*,[20] a 35-year-old accused committed penetrative sexual assault on a 9/10-year-old child with disability. The accused had taken the girl to a nearby field, and committed penetrative sexual assault on her in the middle of the night. The child was brutally assaulted and was admitted to the hospital to undergo medical treatment. Noting the age, disability and the nature of the offence, the Court awarded compensation, exercising discretion under Section 33(8) and Rule 7 of the POCSO Act and Rules. The Special Judge referred to the AP Victim Compensation Scheme to decide the quantum of compensation in this case, and ordered it to be paid within thirty days of receiving the order. The accused was sentenced to imprisonment for the remainder of his natural life.

  In one case, the Special Court also passed compensation orders under two different provisions probably to ensure that the child gets the relief at least under one provision. In *State* v. *Avanigadda Yesu Babu*,[21] the accused had committed penetrative sexual assault on a 17-year-old girl, with intellectual disability. The Court, in exercise of the powers vested under the POCSO Act, directed the State Government to pay the compensation. It also ordered that Rs. 50,000 be paid out of the fine imposed on the accused. The court observed,

  > "As it is the duty of the State to protect the victims, more particularly mentally retarded, deaf and dumb, as the stigma and scar cannot be wiped to the victims during her life time, as solace to the victim as she is mentally retarded and unsound mind, according to powers conferred

[20] S.C. No 66/2014, decided on 13.11.2015 (Guntur).
[21] S.C. No 14/2014, decided on 05.12.2016 (Guntur).

> under …….this court is directing the State Government to pay **Rs.3,00,000/- (Rupees three lakhs only)** compensation to the victim and being the District Collector is head of the District, the office is directed to send the copy of Judgement to District Collector, Guntur and District Collector is hereby directed to pay the compensation **to the victim within one month and send compliance report to this Court**."(emphasis added)

In *State v. Gopavarapu Mohan Rao*[22], the accused was convicted of committing penetrative sexual assault on a 14 year child with speech impairment and intellectual disability. The accused was the paternal uncle of the child 'by courtesy' and was sentenced to rigorous imprisonment for life. The court ordered the accused to pay Rs 3 lakh, failing which he would have to go through simple imprisonment of six months. The court also forwarded the file to the DLSA to fix a quantum of compensation as per the AP Victim Compensation Scheme.

- In three of the 17 cases, the child was pregnant. In all the three cases, the fine imposed on the accused was ordered to be paid as compensation on recovery.

Compensation from other Authorities

The District Legal Services Authority (DSLSA) receives applications from children directly or through a court order. Cases are also referred by the Department of Women Development & Child Welfare (DWDCW) and all the compensation orders are to be approved by the Secretary and Chairperson of the DLSA for payments to be made under the AP Victim Compensation Scheme (APVCS).

As per order G. O. Ms. No. 28 dtd 13.06.2011 issued by the Secretariat[23] for Women, Children, Disabled and Senior Citizens the compensation under the Relief and Rehabilitation Fund is handled by the DWDCW. This fund covers victims of outraging modesty, kidnapping or abducting, dowry death, sexual assault (rape) of a minor below 18 years or gang rape, trafficking, acid attacks, etc. However, this Fund covers only female victims. Application for relief under this scheme is made to the DWDCW forwards the applications to the Collector after initial scrutiny. The amount is then approved and paid by the Collectors office. A DCPO stated that they work with the DWCD and make efforts to ensure payment of compensation immediately in case of girl children. The DCPO also shared that although applications can be made on behalf of any child, no such application has been made so far. However, in serious offences, their office has initiated the process on their own.

Timely Disbursal of Compensation

Many respondents shared that compensation is not disbursed even after the cases are disposed. A representative from the Special Juvenile Police Unit (SJPU) stated,

> "The biggest problem is that the compensation is not paid to the victims in time. In most cases, there is a monetary incentive to turn hostile because the

[22] POCSOA Sessions Case No 101/2015, decided on 20.04.2016 (Guntur).
[23] Mentioned as Department in the Government Order.

> victim and her family are poor. If they were paid compensation quickly, there would be no reason for them to turn hostile'. A prosecutor was of the opinion that 'the compensation should be given before she turns hostile, to prevent her from turning hostile."

2.7 Prompt Recording of Evidence and Disposal of Cases

Evidence should be recorded within 30 days of the Special Court taking cognizance of the offence, as per Section 35(1), POCSO Act. Reasons for the delay should be recorded by the Special Court.

The Special Court Judges interviewed stated that they try to complete the cases within one year and do not give adjournments 'unless the request is from the complainant's side.' A court staff also seconded this view and stated that the victim is called only once for evidence unless the defence lawyer files a petition for recall of witness. In such cases the child may be called twice or thrice.

A prosecutor who was interviewed strongly believes that 'Practically it is not always possible- there are procedural issues. Usually it takes about 2 months to conduct the examination in chief itself.'

Only in a few cases, reasons for delay are mentioned such as the impracticability of completing evidence within 30 days, due to the varied nature and number of cases being dealt by the court, etc.. In *State* v. *Bommidi Dasu*,[24] the Special Court, while expressing inability to complete the evidence of the child within the stipulated deadline, was able to dispose of the case in 11 months of taking cognisance. In *State* v. *Kannuri Sanyasi Rao*,[25] the Special Court Judge specifically mentioned the time lapse between the taking of cognisance and the recording of the evidence of the child. In this case, the case was taken cognisance of by the Magistrate in the first instance, and was committed to the Special Court only after two months. Another month's delay occurred before the court took cognisance of the case due to late submission of records. The court, while giving reasons for the delay observed:

> "Further this is a court which has been entrusted with special jurisdiction under various statutes. This court has been dealing with cases under Protection of Children from Sexual Offences Act, Narcotic Drugs and Psychotropic Substances Act and Electricity Act. Apart from the above this court has been dealing with the cases under Motor Vehicles Act, Civil Appeals, Criminal Appears, all types of civil suits and various categories of cases. Pendency of the cases on the file of this court under special jurisdiction is also very high. It becomes impracticable to post the matter within one month from the date of taking cognizance and to comply of the necessary formalities before fixing the trial schedule. So it has become totally impracticable to record the statement of the victim within one month from the date of taking cognizance."

[24] POCSO S.C No. 152/2015, decided on 26.10.2016 (East Godavari).
[25] POCSO S.C NO.111/2015, decided on 22.03.17(East Godavari).

2.8 Avoiding Exposure to the Accused

Section 36(1), POCSO Act, requires the Special Court to ensure that the child is not exposed to the accused while testifying. For this purpose, curtains, single visibility mirrors, and video-conferencing facilities can be adopted.

Efforts are made to minimise exposure to the accused at different stages of the case. With respect to accused contacting the victim, a Special Court Judge shared that he does not grant bail easily, and when he does, he grants a conditional bail with the specific condition that the accused must not threaten the victim.

A few judgements have mentioned the measures taken to protect the child from exposure to the accused. In *State* v. *Marapatla Sandeep*,[26]

> "Before examining and recording the evidence of the victim child (P.W.1) precautions were taken to ensure that she did not face the accused by using curtains, at the same time ensuring that the accused was able to hear the statement of the victim-child and communicate with his counsel as mandated under Section 36 of the Act."

2.9 In-Camera Trials

Section 37, POCSO Act, requires the Special Court to conduct the trial *in-camera*, and in the presence of the parents of the child, or any other person in whom the child has trust or confidence. The child can also be examined in a place other than the courtroom, if the Special Court deems fit.

Many respondents shared that the child victim's examination was conducted *in-camera*. The Judge, public prosecutor, defence lawyer, court staff, child and a family member are present during the examination. While all cases under POCSO Act are heard *in-camera*, it is unclear whether the examination of other witnesses is also done *in-camera*. A member of the judiciary in one district was of the view that only the child victim's evidence needs to be *in-camera*. In the other district, it appeared that except for official witnesses such as police and doctors, all witnesses are heard *in-camera*. In a serious offence, even doctors may be heard *in-camera*. This was confirmed by one of the doctors interviewed.

In JJBs, POCSO cases are heard *in camera* even if the child victim is not present. A contradictory view was shared by a doctor who had gone as a witness in many cases before the JJB. He stated that his examination was conducted *in-camera* only in one case.

2.10 Assistance of Interpreters, Experts and Special Educators

Under Section 38, POCSO Act, the Special Court may take the assistance of a qualified translator, interpreter, special educator, or a person familiar with the manner of communication of a child. Pursuant to the Criminal Law Amendment Act, 2013, Section 119 of the Indian Evidence Act was amended to provide that a witness who was unable to speak, could give evidence in any other intelligible manner, such as by writing or by signs. Such

[26] Spl S.C No 48/2015, decided on 07.04. 2017 (West Godavari).

writing or signs should be made in open court and would be considered oral evidence. While the Special Court has discretion under the POSCO Act to seek the assistance of an expert, it is mandatory under the proviso to Section 119, Indian Evidence Act, 1872 for the court to take the assistance of an interpreter or special educator when recording the statement of a witness who cannot communicate verbally, and to videograph the statement.

It emerged from the interviews that in most cases, Special Courts engage special educators or translators or any other expert if the child is disabled. Judgement analysis revealed that efforts were made to engage an expert through the police or other channels. The Courts do not maintain a list of experts. They are usually brought by the police, who may have used the same expert during investigation This, however, is also dependent on whether the child has had basic formal education in the sign language or if the child's disability is of a degree that the child can communicate. A Special Court Judge shared that in a case of a child with intellectual disability, the police had arranged for a special interpreter and professional psychologist. In another case before the same court where the child was speech and hearing impaired, assistance from a teacher from a school for the deaf was taken. Another Special Court Judge had not had the occasion to record evidence using an interpreter or an expert. Though a case of a child with 90% disability had come before this court, assistance could not be taken from a special educator, as the child's disability prevented her from communicating effectively.

Judgement analysis showed that the victims in 21 cases were children with disability. Although the degree of disability was not always mentioned, the nature of disability was expressly stated and included both physical and mental disabilities. Majority of the victims were either with intellectual disability (9 cases) or speech and/or hearing impaired (9 cases), or had a combination of both.

While in some cases the child was not produced as a witness, there were also cases in which the child was called but was not able to answer the questions. However, what is established through judgement analysis is that the assistance of the experts or interpreters was not sought in all cases. In *State* v. *Gopavarapu Mohan Rao*,[27] where the child was speech impaired, she has deposed in the form of gestures, both while reporting the incident and in the court. A teacher in a School for the Deaf had assisted the police in recording the statement of the child, and subsequently also assisted the court in examining her. In this case, the accused was convicted for committing penetrative sexual assault on a 14-year-old girl. In *State* v. *Kannuri Sanyasi Rao @ Bujji*,[28] the 16-year-old victim of penetrative sexual assault was speech impaired. She also had impaired mobility in both her right limbs. In this case as well, despite having 75% disability, the child deposed with the assistance of a teacher from a School for the Deaf.

In *State* v. *Avanigadda Yesu Babu*,[29] the Judge asked the father to arrange for an expert to record the evidence of the victim aged 17 years, who had intellectual disability, and speech and hearing impairment. The father, however, clarified that she was never sent to school and

[27] POCSOA Sessions Case No 101/2015, decided on 20.04.2016 (Guntur).
[28] POCSO S.C NO.111/2015, decided on 22.03.17 (East Godavari).
[29] S.C. No 14/2014, decided on 05.12.2016 (Guntur).

cannot be understood by anyone except the family members. Convinced by the same, the court did away with the examination of the girl. The court observed,

> "Therefore, the question of summoning an expert to come to court and to explain the meaning of signals that are making by the victim does not arise. Therefore, this court has not examined the victim. Mere non-citing and examination of victim is not fatal to the case of prosecution as the "Act" is a beneficial legislation for minor children and mentally retarded, unsound, lunatic, idiot etc."

The accused was convicted by the court for life, based on the evidence of other witnesses. The court observed,

> "From the version of prosecution as well as ocular and documentary evidence that the chain of circumstances completed in all respects about the committing of the heinous crime by the accused against victim girl."

The above judgement has taken into consideration the situation of the child and passed a good compensation order. The court however failed to use the language with respect to children with disabilities that is appropriate and in line with the Rights of Persons with Disabilities Act , 2016 (RPD Act). In other spaces, such as the DCPO's office and SJPUs, reliance is placed entirely on internal expertise of people within the agency, or on experts from NGOs, or the School for the Deaf, or on the parents of the child.

2.11 Assistance of Private Legal Practitioners

Section 40, POCSO Act, recognizes the right of the family or guardian of the child to take assistance of a legal counsel of their choice in proceedings under the POCSO Act. The District Legal Services Authority is required to provide them with a lawyer in case they are unable to afford one. However, there is no information regarding a legal aid lawyer or a private lawyer having provided assistance to victims in the two districts. The DLSAs have confirmed that no legal aid lawyer has been appointed to assist the child or the family of the child. While there is reference to a legal aid lawyer being provided to the accused, judgements do not indicate courts having facilitated such services either. Hence, it can be assumed that no additional legal representation was provided for child victims.

2.12 Appointment of Support Persons

As per Rule 4(7), POCSO Rules, CWCs have been entrusted with the responsibility of appointing Support Persons with the consent of the child and the child's parents or the person whom the child trusts.

The CWCs in Andhra Pradesh have not appointed any Support Persons in the two districts where field work was conducted. In one district, social workers who have a Masters in Social Work degree have been orally asked to support victims in all cases. The NGOs interviewed appear to extend support to children in various spaces such as police stations and hospitals, and to also provide important information regarding services. They also interact with the child on a regular basis and keep them informed of the developments in the case. Interviews

revealed that such support is also provided from the DCPU and CHILDLINE. Two children from one district stated that CHILDLINE staff supported them and asked them to speak boldly in the court. However, without the appointment letter from the CWC, they do not have access to *in-camera* proceedings, and are unable to support children during evidence.

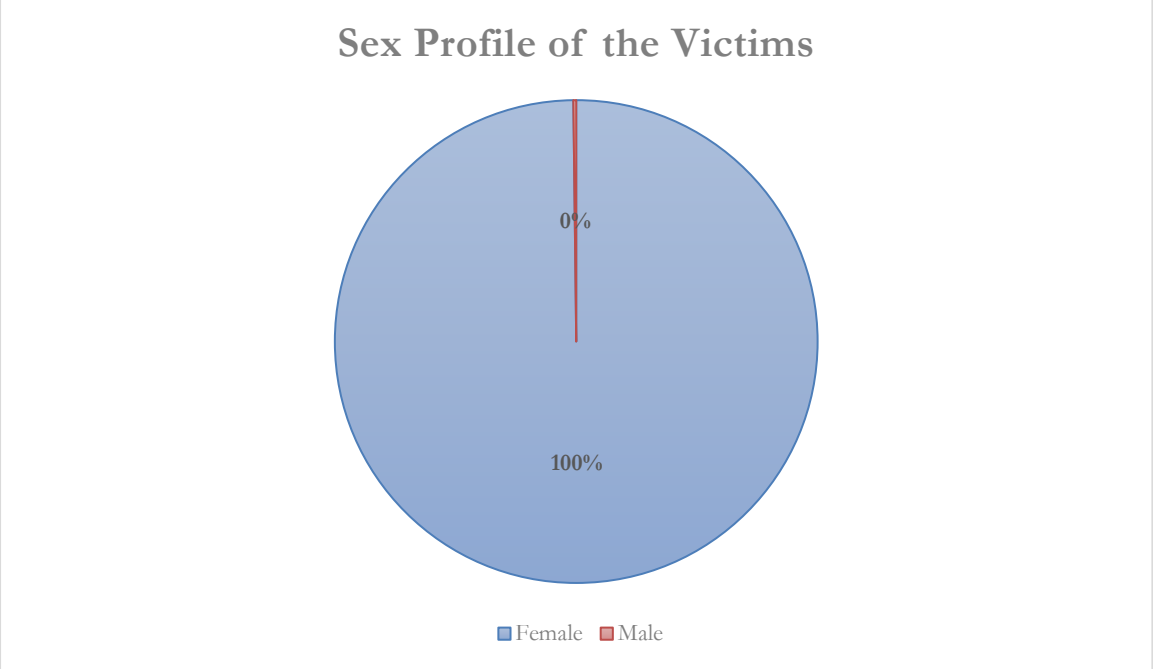
The severe lack of such services was also experienced by children when interacting with prosecutors, as there was nobody to support them when the prosecutor was allegedly rude or when the defence lawyer insisted on a compromise. A representative from an NGO stated, "the prosecutors need to learn skills for interacting with children." Support persons have, so far, been rendering their services voluntarily, without remuneration. The DCPO in one district maintains a register with a list of people volunteering to support children. In the other district, no Support Person has been appointed.

A few judgements make a mention of efforts of the court to create a child friendly atmosphere by asking the child if she wants anybody to be present with her. These judgements only note that the child wanted her mother to be present, and there is no mention of any other person who may be providing support services.

CHAPTER III: FINDINGS BASED ON JUDGEMENT ANALYSIS

3.1 Sex Profile of the Victim

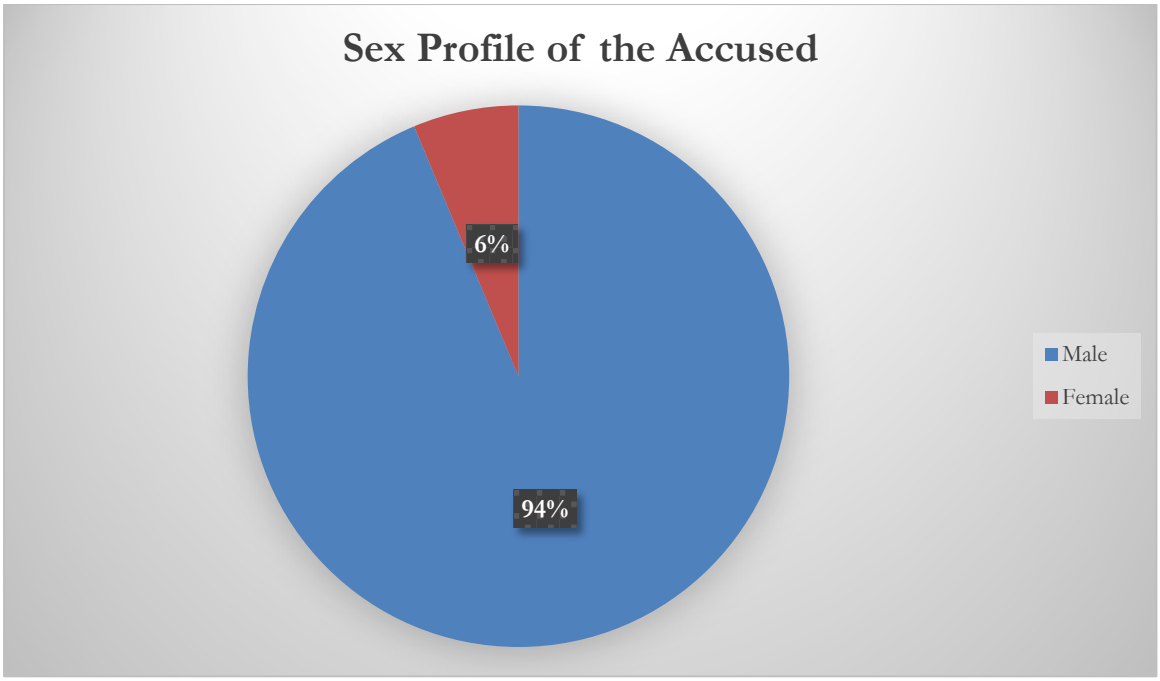
In 508 of 509 cases, there were a total of 523 victims, of which 522 victims (99.80%) were female and only 1 victim (0.20%) was male. In 1 case, the exact number of victims was not specified. These figures do not reflect the pervasiveness of sexual abuse of boys as captured in the MWCD Study on Child Abuse India, 2007, which stated that 52.94% boys and 47.06% girls had reported having faced some form of sexual abuse.[30] As per the study, 77.40% boys and 50.10% girls in Andhra Pradesh reported having faced at least one situation of child sexual abuse. It must be noted, however, that the figures in the MWCD Study were recorded before the division of the state into Andhra Pradesh and Telangana in 2014, whereas this study records figures in divided Andhra Pradesh only. Notwithstanding this, the analysis of judgements, clearly reveals that sexual abuse against boys is heavily underreported.



3.2 Sex Profile of the Accused

In the 509 cases, there were a total of 667 accused persons, of which 625 accused were male (93.70%) and 42 were female (6.29%).

[30] Ministry of Women and Child Development, CHILD ABUSE IN INDIA 75 (2007), *available at* https://www.childlineindia.org.in/pdf/MWCD-Child-Abuse-Report.pdf.

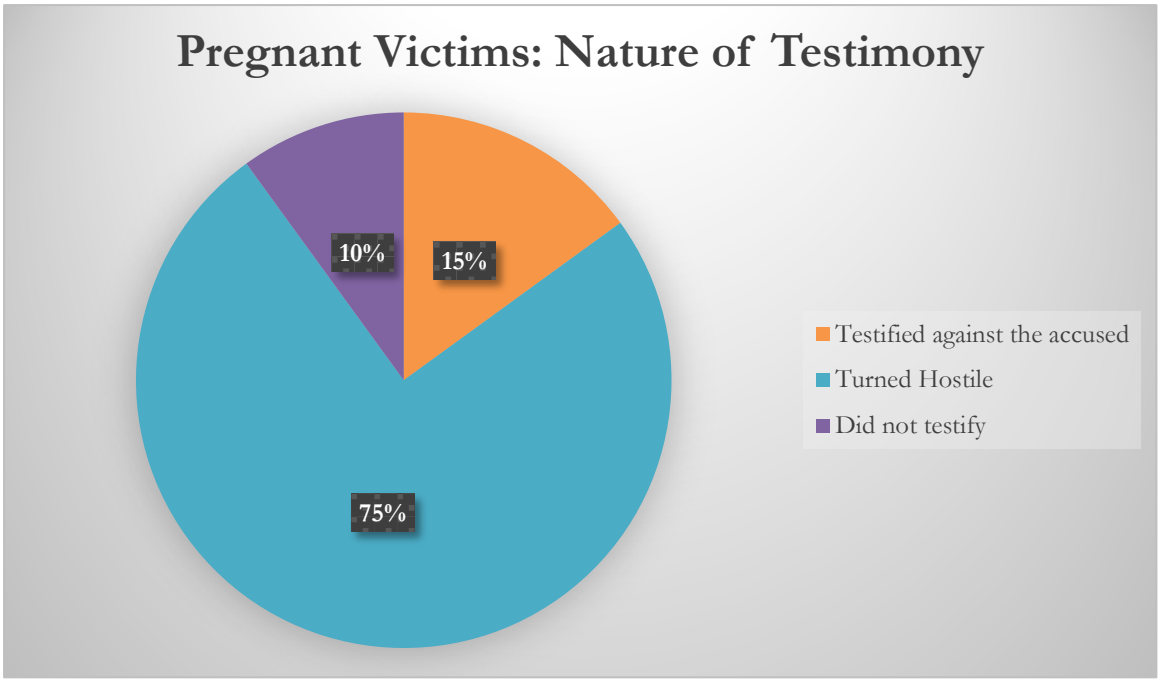


3.3 Pregnant Victims

In 19 cases (3.73%), the victim was either pregnant at the time of lodging the FIR, or had a child subsequently after marriage with the accused, during the pendency of the trial. In most cases, the FIR was lodged only after the pregnancy was discovered. This may be because the victim was too frightened to speak of the incident before she was forced to do so because of the pregnancy, or in some cases, because there was a delay in discovering the pregnancy.

- **Age-profile**: Of the victims who were pregnant, 25% i.e., five, were in the age group of 16 and 18 years, 30%, i.e., six, were between 13 and 15 years. In one case, the victim was less than 13-years old. In four cases (21.05%), the age of the victim was not recorded. In three cases (15.78%), the age of the victim was contested and not proved.
- **Relationship**: The accused was known to the victim in 18 cases i.e., 94.73%. In the remaining case, a stranger forcibly kidnapped and married the victim.
- **Charges**: In eight cases, i.e., 42.10%, the charges framed did not reflect the aggravated nature of the offence and the accused was charged only under Section 4 (penetrative sexual assault), instead of Section 6 (aggravated penetrative sexual assault) of the POCSO Act.
- **Nature of testimony and outcome**: Convictions resulted in the three cases (10.34%) in which the victim testified against the accused. In two cases, the victim could not testify because she had died. Both these cases resulted in acquittal. The victim turned hostile in 15 cases (78/94%). In nine cases (47.36%) the victim admitted to being in a romantic relationship with, or having married, the accused, but denied sexual assault.

In cases like *State* v. *Bandaru Yerraji*,[31] it is unclear why the court did not consider the admission of being "happily married with two children" as proof of the victim being subjected to sexual intercourse. While the minority of the victim in this case had not been conclusively proved by the prosecution, the time frame of the victim's pregnancies conclusively shows evidence of sexual intercourse on a minor. The prosecution alleged that the victim was 17 years old. It was contested that she was 18 years old. Even then, assuming two full term pregnancies with no intervals between each other, shows proof of sexual intercourse when she was a minor.



- **Compensation**: Compensation was awarded or recommended in only three cases in which the victim was pregnant, although the pregnancy was established in all cases. All three cases had ended in convictions. In two of these cases, the accused was directed to pay a fine in addition to the compensation, and in one case part of the fine (Rs.4,000) was to be paid as compensation if recovered.

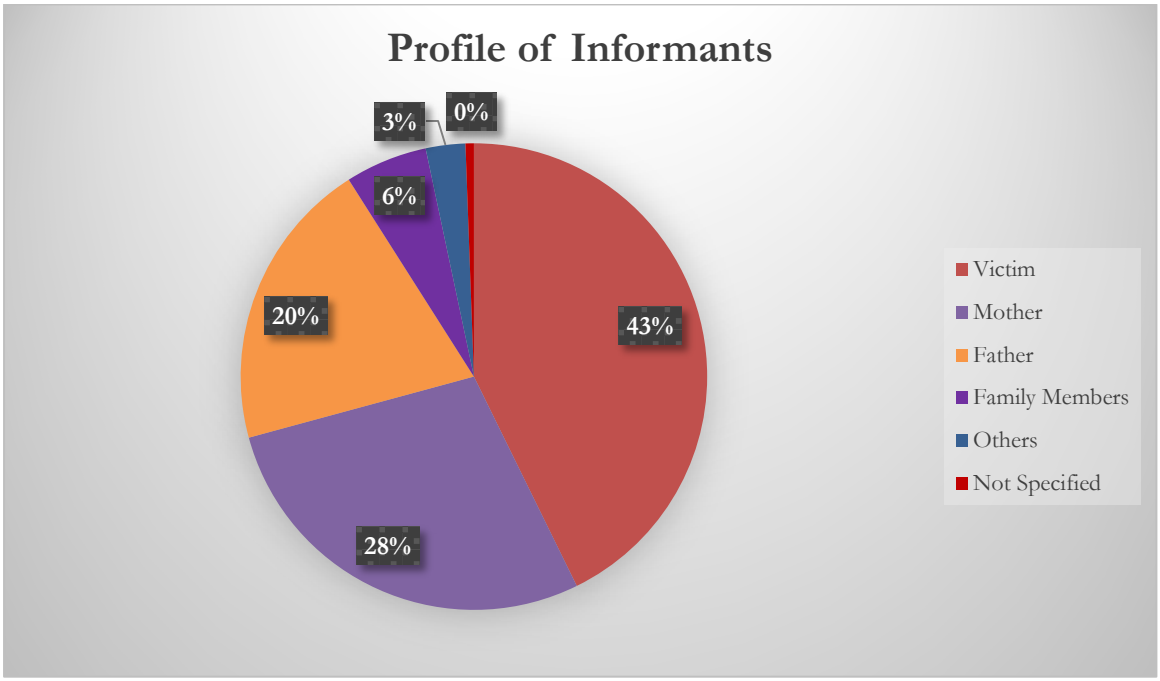
3.4 Profile of Informants

Section 19(1), POCSO Act states that any person having information about the commission of sexual offences or an apprehension that the offence is likely to be committed should report the case to the police/SJPU. Failure to report the commission of an offence by an adult privy to such information is a punishable offence under Section 21 of the POCSO Act, which carries imprisonment upto six months or fine or both.

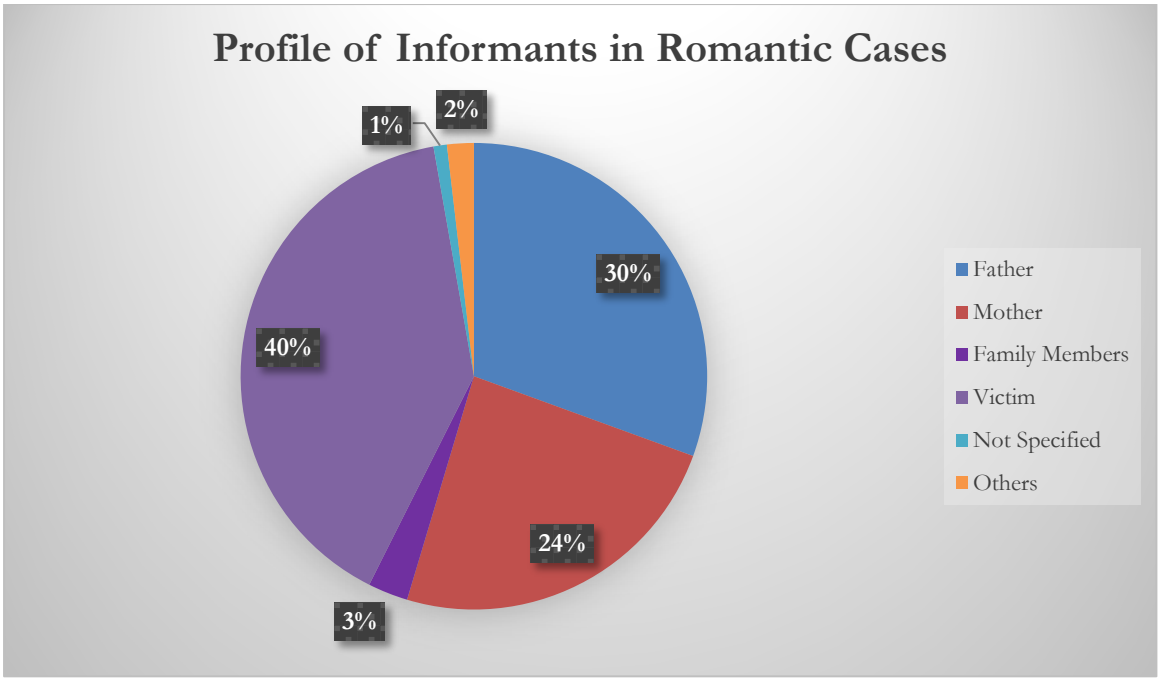
As the graph below indicates, majority of the cases were reported to the police by the victim (218 cases, i.e, 42.82%). The report was given by the victim's mother in 142 cases (27.89%), and the victim's father in 103 cases (20.19%). Other family members such as older siblings, uncle, aunt, grandparents, and cousins were informants in 29 (5.69%) cases. In most cases, the

[31] Sessions Case No. 60 of 2014, decided on 31.03.2017 (Visakhapatnam).

victim was accompanied by a family member to the police station for lodging the FIR. The matter was reported to the police by others in 14 cases (2.75%). These informants included NGOs, social workers, hostel and school staff, district education officer, police, journalists and neighbours. In three cases (0.58%) the informant was not specified.



- **Informants in case of abuse by father/step-father:** Of the 13 cases in which the accused was the victim's father or step-father, the complaint was filed by the victim in three cases (23.07%) and the mother in seven cases (53.84%). In one case where the accused was the father, the complaint was filed by the paternal grandmother. In the other two cases, the aunt of the victim and a neighbour were the informants.
- **Informant in 'romantic cases':** Of the 108 romantic cases, the father filed the complaint in 33 cases (30.9%), the mother in 26 cases (23.63%), the guardian in one case and other relatives in three cases. As is evident in 54.62% of romantic cases, the victim's parent set the criminal justice system into motion. The victim filed the complaint in 43 cases (39.81%). The Station House Officer of the concerned jurisdiction filed one case and the complainant was not specified in one other case.

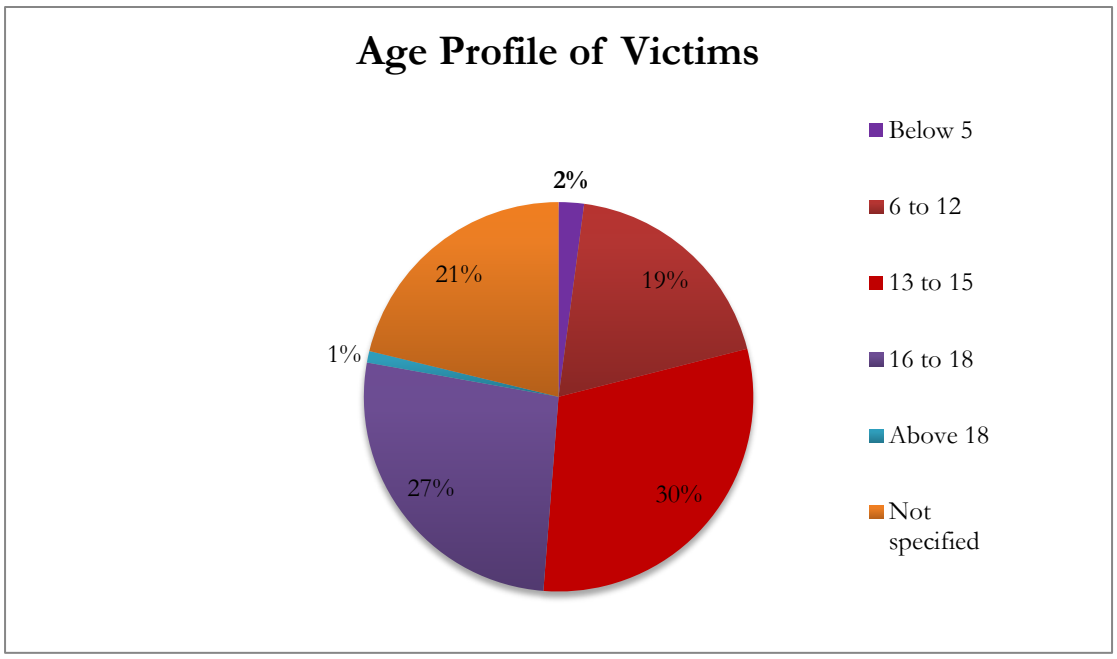


- **Informant in cases where the victim was pregnant:** Of the 19 cases in which the victim had become pregnant as a result of the sexual assault by the accused, the victim was the informant in seven cases (36.84%). The complaint was filed by the mother in five cases (26.31%), and by the father in four cases (21.05%). Of the remaining cases, one was filed by the Station House Officer, and one by the grandfather. The identity of the informant was not specified in one case.
- **Informant in cases of abuse on children with disability:** In 14 of the 21 cases (66.66%) in which the victim suffered from some form of disability, the FIR was lodged by the mother of the victim. The victim herself was the informant in three cases (14.28%) and the complaint was registered by the father in three cases (14.28%). One case was filed by the victim's brother.
- **Informant in cases of abuse by teachers and school staff:** Of the 27 cases in which children were abused by teaching or other school staff (including one school bus driver), the complaint was filed by the parents or relatives of the victim in 15 cases (55.55%), while the victim was the informant in seven cases (25.92%). Other informants included the Principal of the School, the District Education Officer, and the Director of PCAS. In two cases, the CWC/police took cognizance of the case based on newspaper reports.

3.5 Age Profile of Victims

In one of the 509 cases, the number of victims was not specified. In the remaining 508 cases, the number of victims was 523 in total. For analysis, the age of the victim was determined based on the age mentioned in the FIR. The majority of the victims (30.21%, i.e. 158 victims) were aged between 13 and 15, closely followed by the victims aged between 16 and 18 (26.57%, i.e. 139 victims). 18.92% of the total number of victims were aged between 6 and 12 (99 victims), while those aged below 5 constituted 2.10% (11 victims) of the total number of victims. In five cases, the victims were aged above 18, i.e., the victim was not a minor.

Strangely, the age of the victim was not specified with exactitude in 21.22% (i.e. 111) of the cases, but in 94 of such cases (84.68%), the judge was able to conclude that the victim was below the age of 18.



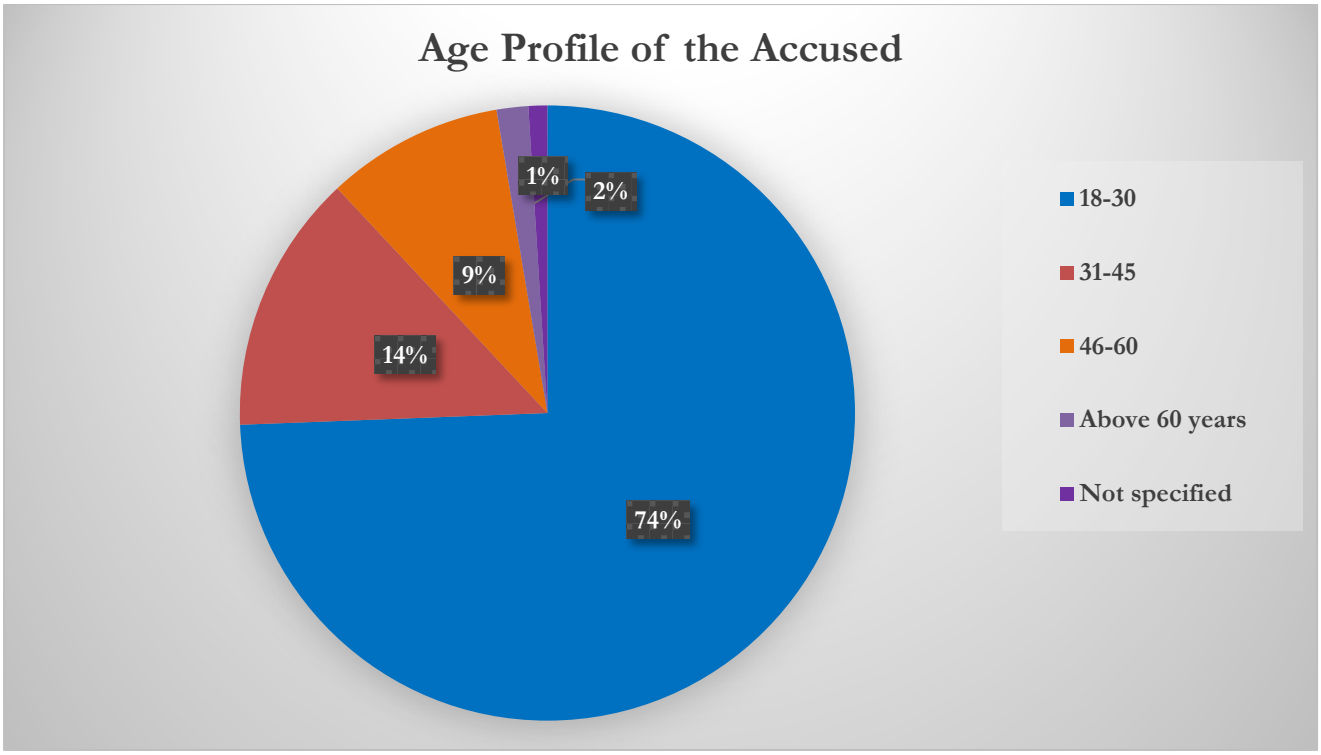
Of the 108 romantic cases, the age of the victim was not specified in nine cases (8.33%), although in four of these cases, the Special Court mentioned that the victim was a minor. In two cases (1.85%), the victim was between the ages of 11 and 12. The age of the victim was between 13 to 15 years in 10 cases (9.25%), between 16 and 18 years in 10 cases (9.25%), and above the age of 18 in three cases (2.77%). In the remaining 74 cases (68.51%), the age of the victim was contested, and no definite finding was given by the Court in this regard. The difficulty in proving the minority of the victim has been observed as a trend in all four of the other states studied by CCL-NLSIU.[32]

Of the 21 cases of children with disability, the victim was in the age group of 6-12 years in six cases, and in the age groups of 13-15 years and age of 15-18 years, in five cases each. The victim was above the age of 18 years in one case, whereas the age of the victim was not specified in four cases.

3.6 Age Profile of the Accused

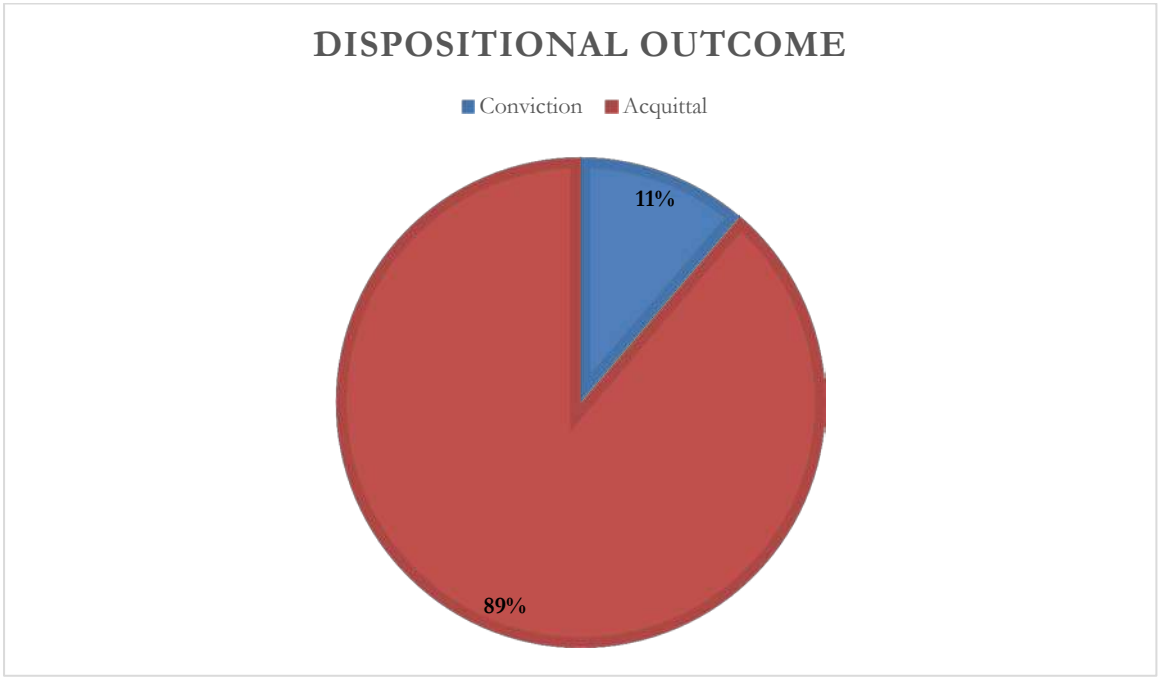
The age profile of the accused has been analysed only for the main accused in every case. The ages of 68 other accused persons (10.19%) have therefore not been considered.. Majority of the main accused persons, 74.45% (446), were between 18 and 30 years of age. Additionally, 13.68% (82) were between 31 and 45 years, 9.18% (55) were between 46 and 60 years, and 1.66% (10) were above 60 years. The age of six accused persons (1.00%) was not specified in the judgement.

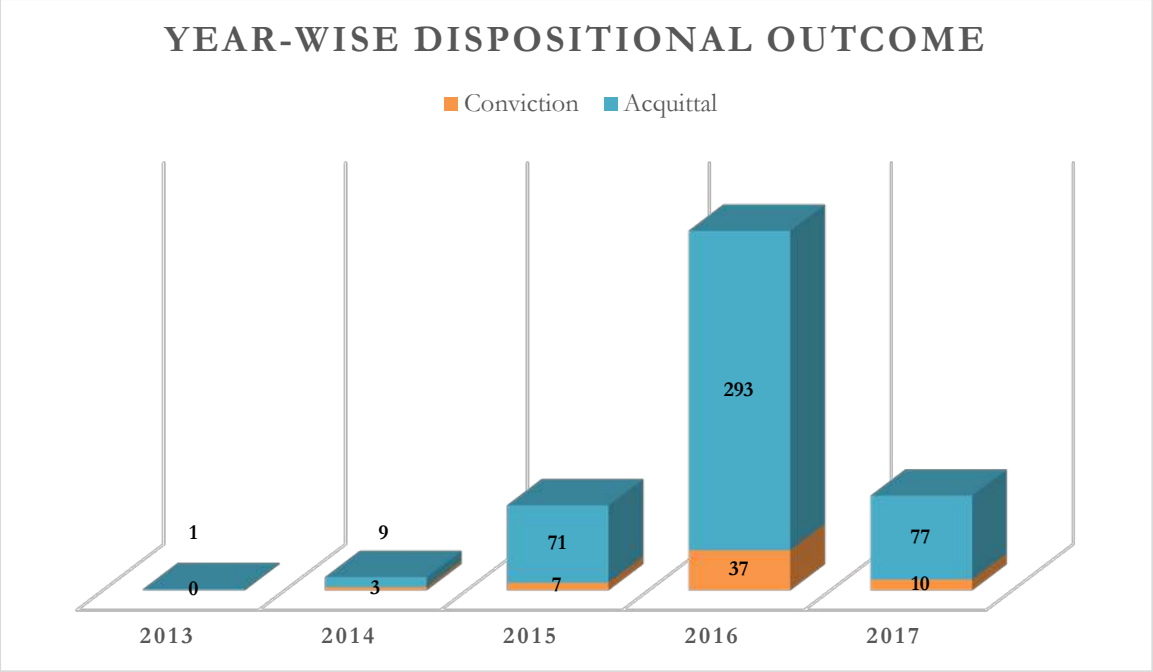
[32] Refer to the CCL-NLSIU Study on the Working of Special Courts under the POCSO Act, 2012 in Maharashtra, *available at* https://www.nls.ac.in/ccl/jjdocuments/POSCOMaharashtrastudy.pdf.



3.7 Conviction Rate and Factors Affecting Conviction

Convictions were recorded in 57 of 509 cases (11.19%), pegging the rate of acquittal at an alarming 88.81%. The rate of conviction was highest in 2014, with 3 out of 12 cases ending in conviction at a rate of 25%. The rate of conviction for 2016 was 11.21%, and for cases upto June 2017 was 12.82%. The rate of conviction was lower than the average rate in 2015, at a mere 9.85%, and the one case available from 2013 did not end in conviction.





3.7.1 Conviction under the POCSO and Other Acts

In several cases (for details, see section 3.8), charges were framed under the POCSO Act, as well as other Acts, most commonly the IPC. Convictions were recorded solely under the POCSO Act in 14 cases (24.56), and solely under the IPC in seven cases (12.28%). In 36 cases (63.15%), convictions were recorded under both the POCSO Act, and the IPC. While charges were framed under the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (PoA Act) in one of the cases which resulted in conviction, a conviction was not recorded under the said Act.

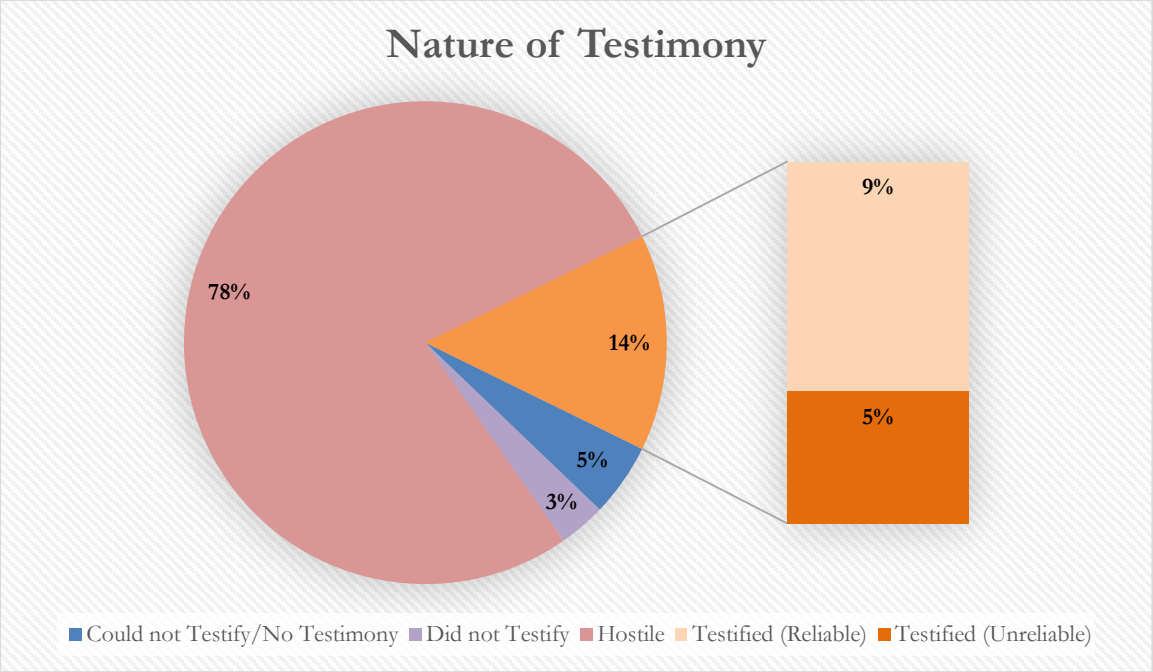
Of the 36 cases in which the accused was convicted under both the POCSO Act and the IPC, a sentence under both Acts was awarded in 20 cases (55.55%), and section 42, POCSO Act was applied in 16 cases (44.44%). Section 42 states that where an act or omission constitutes an offence under the POCSO Act, as well as any other law for the time being in force, the offender found guilty of the offence would be punishable under the law which provides greater punishment for the offence.[33]

Of the seven cases where a conviction was recorded solely under the IPC, the conviction was for a sexual offence (S.354)[34] in only one case, where the accused was acquitted under the POCSO Act because the minority of the victim could not be proved. In the remaining six cases, the conviction was for other offences such as kidnapping (S.363),[35] trespass (S.448),[36] and criminal intimidation (S.506).[37]

[33] S. 42, Protection of Children from Sexual Offences Act, 2012.
[34] S. 354, Indian Penal Code, 1860: Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
[35] S. 363, Indian Penal Code, 1860: Whoever kidnaps any person from [1]India or front lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

3.7.2 Nature of Testimony

- In 73 cases (14.50%), the victim testified against the accused, and in 396 cases (77.45%), the victim turned hostile.
- In one case (0.19%), none of the witnesses were examined because the accused pleaded guilty, and in three cases (0.58%), the victim was not examined, and no reason appeared to be forthcoming for the same.
- In 20 cases (3.92%), the victim could not testify either because she was dead (seven), due to tender years (four), due to disability (eight), or because she was untraceable (one).
- In 16 cases (3.11%), the victim appeared before the court, but did not testify, either because the victim and the accused had compromised outside court or the victim had been married to someone else. In four cases, no reasons were discussed as to why the victim did not testify.



[36] S. 448, Indian Penal Code, 1860: Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or which may extend to one thousand rupees, or with both.

[37] S. 506, Indian Penal Code, 1860: Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;
If threat be to cause death or grievous hurt, etc. and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

3.7.3 Grounds for Conviction

3.7.3.1 Cogent Testimony of the Victim

In *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat*,[38] the Supreme Court of India held:

> "In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society."

In *State of Punjab* v. *Gurmit Singh*,[39] the Supreme Court held:

> "Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice."

Judgement analysis reveals that this mandate has largely been adhered to by Special Courts in Andhra Pradesh. Of the 46 cases in which the testimony of the victim was considered reliable, 44 cases resulted in conviction, at a rate of 95.65%. In *State* v. *Yeddu Manibabu*,[40] the accused was harassing the victim to marry him. One day, he kidnapped her and took her to another town where it was alleged that they engaged in sexual intercourse. After three days, he returned her to her house. She told her parents about the rape he had committed and the complaint was filed. At trial, there was no conclusive medical evidence to point to sexual intercourse. However, the testimony of the victim was categorical. The Special Court noted that beyond minor discrepancies, the testimony could not be shaken in cross-examination. The Special Court also noted that there were no procedural irregularities which were serious enough to vitiate the trial. On these grounds, the accused was convicted.

In *State* v. *Thummu Varahalu*,[41] the accused was the father of the victim. He was a drunkard and used to beat up his children regularly. He would return home drunk and then urinate and defecate on the children's beds. He would also stare at the victim when she was in the bath or in a state of undress. After many years of such harassment the mother of the victim filed the complaint. At trial, the testimony of the victim and her mother differed in parts from their complaint before the police. However, the Special Court held that the entire testimony could not be struck off on this count. Even after discounting the additions, it was clear that the offences of sexual harassment and cruelty were made out in the present case. In this situation, the Special Court convicted the accused.

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[38] 1983 SCR (3) 280.
[39] 1996 SCC (2) 384.
[40] Sessions Case No. 259/2015, decided on 06.01.2017 (Visakhapatnam).
[41] Sessions Case No. 82/2016, decided on 02.11.2016 (Visakhapatnam).

Given the nature of sexual offences, corroboration of the testimony of the victim is often unavailable, and therefore, the statement of the victim is the strongest piece of evidence, which ought to be relied upon by the Court. This view appears to have been endorsed in some cases by the Special Courts as well. For instance, in *State* v. *Namburi Kondala Rao*,[42] the 12-year old victim had been kidnapped by the accused by administering an intoxicating substance to her through a handkerchief placed on her nose and mouth. The accused, having taken her to a secluded location, threatened her with a knife and committed penetrative sexual assault against her twice. The accused was charged under section 363, IPC and section 6 POCSO Act. One of the witnesses had seen the accused administering the intoxicating substance to the victim, and therefore, insofar as this part of her testimony was concerned, there was corroboration by an independent witness. However, insofar as the charge of aggravated penetrative sexual assault was concerned, the defence argued that there was no corroboration, and since the victim was young, her testimony could not be made the sole ground for conviction. This was so, especially since the medical evidence indicated that the hymen of the victim was not torn, even though the final opinion indicated that there had been a recent attempt to commit sexual intercourse. The Special Court held that the offence had taken place in a secluded area, where it would have been impossible to have independent eye-witnesses who could have corroborated the evidence of the victim. It relied on *Ganga Singh* v. *State of Madhya Pradesh*,[43] to hold that the testimony of a victim, if cogent, can be relied upon even if it is uncorroborated. Similarly, it was also held that the doctor's final opinion had stated that there had been an attempt to commit sexual assault, and in her cross-examination, she had conceded that forcible sexual intercourse had been committed. Given this, the Court held that the accused was guilty.

In *State* v. *Vempala Vijay Kumar*,[44] the 12-year-old victim had alleged that the accused had indecently exposed his penis to her repeatedly on four days when she went to collect flowers from his house. When he did it on the fourth occasion, she complained to her mother, who advised her not to go to his house. A few days later, the accused stood in front of the tea stall run by the victim's mother and again exposed his penis to the victim. When her mother confronted the accused, he started threatening her and trying to hit her. The altercation was broken up by bystanders, and on the next day, the victim's mother filed an FIR against the accused. During trial, the victim testified cogently as to the entire sequence of events. The defence tried to argue that there was no corroboration as to the version of the victim, and the prosecution had not produced any independent witnesses for the same. Further, it was argued that the accused had filed a complaint against the IO before the Human Rights Commission, and the FIR had, therefore, been lodged against him out of spite. The Court, however, dismissed both contentions, stating that the testimony of the victim was natural, and inspired confidence. It was observed,

> "The evidence of victim girl (PW.2) appears to be very natural and there is no reason to disbelieve her evidence. Since the said incident took place in the four

[42] POCSOA SESSIONS CASE No.37/2016, decided on 27.06.2016 (Ongole).
[43] 2014 (1) ALD (Crl.) 782 (SC).
[44] S.C. No. 20 of 2015, decided on 08.11.2016 (Srikakulam).

> walls of the house of accused, it is impossible to be seen by any other persons. So, corroboration from any independent witness cannot be expected."

Similarly, as to the contention that the FIR had been lodged to extract revenge against the accused, the Special Court noted,

> "According to the learned defence counsel, this Investigation Officer implicated the accused in this criminal case due to grudge developed against the accused for the reason that the accused gave complaint against this police official to Human Rights Commission when the police official misbehaved with the wife of accused. Except his self-serving statement, nothing is placed before this court to accept the above said condition. Even if it is assumed that there were disputes between the accused and this IO, the same cannot be a ground to disbelieve the evidence of the victim girl for the reason that her evidence is so natural and the contention that this witness is a tutored witness cannot be accepted."

Therefore, the accused was convicted.

3.7.3.2 Testimony of the Victim Corroborated by Testimony of Others

While it is rare, in some cases, independent witnesses are able to corroborate certain parts of the testimony of the victim regarding the sexual offence, thereby lending credence to her story. In *State* v. *Kokilagadda Ramaswami*,[45] it was alleged that the 19-year-old accused had sexually harassed the 13-year-old victim, by calling her incessantly, making lewd comments and obscene gestures at her whenever he found her alone, and stalking her. The victim had approached her parents, who had brought the matter to the notice of one of the teachers of the victim, as well as the village elders. Despite being admonished by the said teacher and a village elder, however, the accused continued to harass the victim. Therefore, the FIR was lodged against him. The victim, her mother, her father, and other independent witnesses testified cogently as to the aforementioned events, and nothing damning could be elicited from them during their cross-examinations. While the defence attempted to argue that a false case had been filed due to some previous dispute between the families of the victim and the accused, the Special Court rightly dismissed the argument, on the ground that it was not backed by any substantive evidence. Therefore, the accused was convicted under section 12, POCSO Act and S. 354-A, IPC.

Similarly, in *State* v. *Thupakula Durgaiah*,[46] the accused was in a relationship with the mother of the victim, though they were not legally married. He had taken the 5-year-old victim into the forest behind the house and sexually assaulted her. Her cries drew the attention of some neighbours who then reported the matter to the police. At the trial, the victim could not give details of the incident very clearly. However, the Special Court noted that young children may suffer from trauma, which would affect their memory, and held her evidence to be reliable. This reasoning was used to explain the minor discrepancies in the testimony of the victim. All

[45] Sessions Case No.39/2016, decided on 08.12.2016 (Guntur).
[46] POCSO Special Case No. 33/2016, decided on 17.11.2016 (Nellore).

the witnesses in the case also supported the prosecution case. The medical evidence available also showed that the victim was assaulted near her private parts. However, no evidence of penetration could be established. Thus, the Special Court held the accused guilty of offences under section 9 and 10 of the POCSO Act as opposed to sections 5 and 6 which were the original charges.

In *State* v. *Gopavarapu Mohan Rao*,[47] the 14-year-old victim, who was "mentally challenged", and "dumb", was kidnapped and raped by her uncle. The accused, on being discovered in a state of nakedness with the victim, by the victim's mother and grandmother, fled the scene. The FIR was lodged by the mother of the victim. In court, the victim identified that accused and stated that he had taken her with him and raped her. This version was corroborated by her mother and grandmother. The defence attempted to argue that the victim was mentally challenged, and therefore not entirely reliable, and the witnesses were all interested parties, belonging to the same family. The Special Court, however, rejected the contention and convicted the accused by relying on *Shyam Babu* v. *State of UP*,[48] wherein the Hon'ble Apex Court held,

> "… the testimony of the witnesses cannot be discarded merely on account of relationship and there is no bar in law of examining family members or any other person as witness and their evidence, if credible, reliable, trustworthy and corroborated by other witnesses, cannot be rejected merely on the ground that they were family members or interested witnesses or persons known to affected party or friends etc."

In *State* v. *Devarampati Singaiah*,[49] the 66-year-old accused had taken the 7-year old victim behind a veterinary hospital and sexually assaulted her by touching her private parts. The victim also stated that he had bitten her private parts. However, the medical evidence did not show any indication of external injuries on her genitals. The defence argued that this was an inconsistency which made the testimony of the victim unreliable, and cast doubt on the case of the prosecution. The Special Court, however, observed that this was not a fatal inconsistency, especially given that the victim, being barely 7 years old, had no reason to make up such falsehoods and risk her reputation and future. Moreover, her testimony had been consistent in every other way, and had been corroborated by two other witnesses who had seen the accused inappropriately touching the victim and stopped him. The accused was therefore convicted.

3.7.3.3 Conviction Based on the Testimony of Other Witnesses

Sometimes, it was observed that the victim was unable or unwilling to testify, or was not examined by the prosecution. While most of these cases resulted in acquittals, in some cases, a conviction was recorded based on the testimony of other witnesses.

[47] POCSOA SESSIONS CASE NO. 101 of 2015, decided on 20.04. 2016 (Ongole).
[48] 2013 (1) ALD (Crl.) 23 (SC).
[49] POCSOA SESSIONS CASE No.40/2016, decided on 05.08.2016 (Ongole).

In *State* v. *Dasari Sreenu*,[50] the accused had allegedly kidnapped the 9-year-old victim from her room while she was sleeping (her parents were sleeping outside the house), taken her to a vacant land nearby and raped her. In the process, he also bit her cheeks, breasts, genitalia and other parts of her body. When her parents realised that the victim was not in the house, they woke up their neighbours, and a search was initiated. On hearing the cries of the victim, the search party ran towards the field and upon seeing them approach, the accused fled. He was found later, hiding in the bathroom of one of the witnesses, and was immediately handed over to the police. The victim was speech impaired, and had intellectual disability, as a result of which she was not examined by the police, nor was her testimony recorded by the Special Court. However, her mother had brought her to court, and she had been identified as the victim by the police as well as by the medical examiners. The medical examination of the victim indicated that she had been subjected to aggravated penetrative sexual assault, and the bite marks on her body were confirmed to be human bite marks. The parents of the victim as well as her neighbours who were part of the search party testified to the above sequence of events. A test identification parade was conducted before the magistrate and the accused was identified by the witnesses. Given this evidence, the Court applied the presumption under Section 29, POCSO Act, and found that the accused was guilty under Section 6, POCSO Act, and under Section 376(2), IPC.

3.7.3.4 Testimony of the Child Corroborated by Medical Evidence

In several cases, especially where there are no independent witnesses, or the testimony of the victim is called into question by the defence, medical evidence can strengthen the prosecution's case. For instance, in *State* v. *Alluru Benjamin*,[51] the victim, aged 13, was the daughter of the domestic help in the house of the accused. He had on multiple occasions raped her, and also exposed her to pornographic material. As a result, the victim had become pregnant and delivered a baby. Subsequently a complaint was filed. At the trial, the victim turned hostile and denied the prosecution case in its entirety. She stated that she had no knowledge of what was contained in the complaint. However, the Special Court ignored this testimony, and relied on the statements given by the victim under Section 164, Cr.PC, in support of the prosecution story. Further, the medical evidence indicated that the accused was the biological child of the victim's baby. This led the Court to conclude that the accused was guilty, despite the victim not having supported the prosecution.

In *State* v. *Gochipata Rambabu*,[52] the accused had allegedly kidnapped the 13-year-old victim when she went to attend nature's call, taken her to Vijayawada, made her believe that they were married by performing a marriage in a church, and committed repeated penetrative sexual assault on the victim because of which she became pregnant. The parents, brother, aunt and uncle of the victim testified to the fact that the victim had gone to attend the call of nature, and could not be found thereafter. The victim testified to the fact that she had been kidnapped by the accused, (who, as it turned out later, was already a married man), and subjected to repeated penetrative sexual assault. The report of the medical examiner revealed that the victim had been subjected to sexual intercourse, and was pregnant with a foetus

[50] S.C.No. 66/ 2014, decided on 13.11.2015 (Guntur).
[51] POCSO Special case No. 1/2015, decided on 06.12.2016 (Nellore).
[52] S.C.No.57/ 2015, decided on 4.10.2016 (Guntur).

approximately 9-weeks old. While no DNA examination was done, the Court held that the medical evidence corroborated the testimony of the victim, and held the accused guilty of offences under Section 6, POCSO Act, and Sections 363 and 376(2), IPC.

In *State* v. *Suresetty Narayana*,[53] the 7-year-old victim was sexually abused by the accused, who bit her on the cheek and chest while she was sleeping on a cot in her house at night. When the victim raised an alarm, her parents came running out and saw the accused fleeing. Once the FIR was lodged, the victim was sent for medical examination, and the report of the doctor indicated that there were bite marks on the chest and cheek of the victim, just as she stated in her testimony. Since the victim testified to the incident; her parents testified to hearing the cries of the victim and seeing the accused fleeing from the scene of the incident, and the medical evidence also corroborated their testimonies, the accused was found guilty under both the POCSO Act, and the IPC.

In *State* v. *Bavanam Peri Reddy*,[54] it was alleged that the 11-year-old victim had been repeatedly raped by the accused, her father. She had been residing with her father and grandmother, as her mother resided separately in another village with her sister. When the victim visited her mother, she narrated the incidents of abuse to her, based on which the FIR was filed. In court, the victim narrated the incidents of rape in detail, and her version was supported by the other witnesses for the prosecution. The medical examination showed that the hymen of the victim was torn, and sexual intercourse had occurred. Relying on this, and the testimony of the prosecution witnesses, the Special Court found the accused guilty under Section 6, POCSO.

3.7.3.5 Accused Failed to Discharge the Burden of Proof

As the analysis in section 3.11 shows, the application of the presumption under S. 29, POCSO Act is a rare occurrence. But when it is applied, the burden shifts to the accused to prove that he did not commit the offence alleged. In some cases, failure to discharge this burden resulted in a conviction.

In *State* v. *Gochipata Rambabu*,[55] aside from the testimony of the victim corroborated by medical evidence, the Special Court also referred to the presumption under S. 29, POCSO, holding that since the victim had stated the accused had kidnapped and raped her, the Court was bound to accept that the offence had been committed. The burden was then on the accused to prove that the offence had not taken place. Since no evidence was placed by the accused to show that he had not committed the offence, he would have to be convicted. Similarly, in *State* v. *Vemulla Durga Rao*,[56] the accused was charged under Section 6, of aggravated penetrative sexual assault as defined under Section 5. The Court applied Section 29 of the POCSO Act and stated that when a person is prosecuted for offences under Section 5, the Court presumes the guilt of the accused unless proved otherwise. As the accused was not able to establish his innocence, the Special Court convicted him.

[53] POCSOA SESSIONS CASE No.86 of 2015, decided on 16.11.2015 (Ongole).
[54] POCSOA SESSIONS CASE No.1 of 2016, decided on 18.04.2016 (Ongole).
[55] S.C.No.57/ 2015, decided on 4.10.2016 (Guntur).
[56] Sessions Case No. 55 of 2014, decided on 22.07.2016 (Guntur).

3.7.3.6 Other Factors

There may often be factors other than those discussed above which lead the Court to record a conviction. It was observed that in two cases, the dying declaration of the victim was considered a strong piece of evidence, and was used to convict the accused. Thus, in *State* v. *Pyrdhala Yesubabu*,[57] the 16-year old victim was in a relationship with the accused who had promised to marry her and subjected her to sexual intercourse on a frequent basis. On his request, she left her house to go with him. However, she discovered that he was married to another woman and returned home, where, in the absence of her parents, the accused poured kerosene on her and lit her on fire. She was rushed to the hospital where she gave two dying declarations – the first said it was an accident, while the second alleged that the accused had raped her multiple times under the pretext of marrying her, thereby bringing dishonor to the family name, and then set her on fire. Her vaginal swabs revealed traces of human semen and the medical examination showed evidence of sexual intercourse. Post mortem of the victim and potency test of the accused was also done. The Judge considered the second dying declaration to be a strong piece of evidence corroborated by the medical evidence. Further, he mentioned that under the Act, the culpable mental state of the accused should be presumed. Hence, the accused was convicted.

In certain other cases, the Court convicted the accused by giving a literal interpretation to the POCSO Act. In these judgements, once the minority of the victim was proved, and the occurrence of the sexual act had been shown, the Court disregarded any arguments as to the consent of the victim and convicted the accused. For instance, in *State* v. *Yadala Nagendra Babu*,[58] even though the victim claimed to have given her consent to the sexual act, she was below the age of 16, and therefore, under the stipulated age of consent under both, the IPC and POCSO. Therefore, the definition of 'child' applied to her, and the accused was convicted.

In *State* v. *Teeta Narayanrao*,[59] the accused was convicted on the ground that he pled guilty as charged. It had been alleged, in this case, that the accused had kidnapped and raped the minor victim. The Special Court, after confirming the guilty plea was entered voluntarily, and the accused was aware of the consequences of doing so, convicted and sentenced him under both, the POCSO Act and the IPC.

3.7.4 Reasons for Acquittal

3.7.4.1 Victim turned Hostile

The ground most commonly cited to acquit the accused was that the victim, and other witnesses of the prosecution, turned hostile. Acquittals were recorded in each of the 395 cases in which the victim turned hostile (100%). One of the court staff interviewed informed the researchers,

[57] Sessions Case No. 65 of 2015, decided on 22.11.2016 (Guntur).
[58] Sessions Case No. 2 of 2014, decided on 15.07.2014 (Krishna).
[59] S.C No. 11 of 2014, decided on 22.01.2015 (Srikakulam).

> "In most cases victims usually compromise, because her parents are worried about her future. A number of offences may have been committed, but for so many of them, even the report is not filed in the police station. If the victim is about to become a major, the settlement is in the form of a marriage between the victim and the accused. Otherwise, compensation as money or land may be given. Then they become hostile in court. We get to know all this because we hear them talking."

Similarly, one of the interviewees from the judiciary mentioned, "In most of the cases the victim turns hostile because the parents or the elders of the village force for compromise outside the court."

- The victim turned hostile on the point of age in 18 cases, of which 13 (72.22%) were romantic cases.
- Hostility on the point of the sexual offence was observed in 376 cases, and on the point of the identity of the accused in 114 cases.
- In 28 cases, the victim turned hostile on other grounds, such as the statement under Section 161, or under Section 164, Cr.PC, or, in some cases, even as regards lodging the FIR.
- In three of these cases, the victim testified during examination in chief, but turned hostile in the cross examination. As there is no data on the time taken between the examination-in-chief and cross-examination, it cannot be said whether delay contributed to this or gave the accused an opportunity to brook a compromise through threats or other means.

A stock statement by hostile witnesses was observed in several cases, where they stated that they had never seen the accused, they did not know him/her, and no offence had been committed against them. Additionally, they stated that they did not know who filed the FIR, or what the contents of their statement under Section 164, Cr.PC were, as they had merely signed on a blank sheet of paper on being asked by the police. While most Special Courts did not delve into the reasons why the victim and other witnesses had turned hostile, in some cases, it was mentioned that the victim and the accused had compromised the matter outside Court.[60] In In *State* v. *Bevara Dinesh*,[61] it had been alleged by the 15-year-old victim that the accused had taken nude photographs of her while she was bathing, and had then attempted to blackmail her into "satisfying his lust". When the accused continued to harass the victim multiple times, despite her having refused, she told her mother, and the FIR was lodged. However, when the matter came to trial, the victim and her father turned hostile, stating that they had settled the matter with the accused. The Special Court acquitted the accused, observing,

> "Since the material witnesses turned hostile and since the victim girl herself deposed that as she has compromised with the accused, she did not speak about the offence of taking nude photos of her by the accused with his cell

[60] See, for instance, State v. Mutchu Nagendrababu & Ors. SPL.SESSIONS CASE NO.99 OF 2015, decided on 11.01.2017 (Krishna).
[61] POCSO Sessions Case No. 30 of 2015, decided on 26.02.2015 (Vizianagaram).

> phone or blackmailing her or threatening her to love him and other facts and there is no other evidence except the evidence of investigating officer in the present case to link the accused for the alleged offence."

In *State* v. *Lingala Ramesh*,[62] the main accused was the son of the second accused who was the headmistress of the four victim girls. He used to follow the victim girls and try to harass them sexually, whereas the other three accused used to facilitate him in the same. After a period of few months, the victims filed a report. At trial, all the victims turned hostile. They stated that they had never seen the main accused or any other accused with the exception of the headmistress. Regarding her, they stated that she had never misbehaved with them in any manner. The Special Court felt that the formal testimony of the IO would not be sufficient in convicting the accused. Therefore, the Special Court acquitted the accused of charges under the IPC, POCSO Act and Atrocities Act.

Similarly, in *State* v. *B. Anil Kumar*,[63] the victim turned hostile, and stated that she had never seen either of the accused persons before, and had not been eve-teased by anyone. She also stated that she did not know that contents of the complaint on which her signature had been obtained, and did not remember the date on which she had made the complaint either. The complainant's father, and all the other witnesses also turned hostile and denied the entire incident of alleged sexual harassment. The only witnesses which supported the case of the prosecution were the IO, who gave an account of the investigation conducted by them. Therefore, the Court held that the prosecution had failed to prove the occurrence of the offence beyond reasonable doubt, and both the accused were acquitted.

3.7.4.2 Victim was not examined and Other Witnesses turned Hostile

In *State* v. *Gobburi Koteswara Rao*,[64] the prosecution, for reasons best known to it, did not examine the victim, but only neighbours and other residents of the village who supposedly had knowledge of the incident. At the trial, all these witnesses turned hostile. This, combined with the fact that the age of the victim could not be proved by the prosecution, resulted in the accused getting acquitted.

In seven of the 509 cases, the victim could not be examined as she was dead. In one of these cases, the accused was convicted based on the evidence given by other witnesses. In some cases, the witnesses turned hostile. For instance, in *State* v. *Kamanaboina Srinu & Ors.*,[65] it was alleged that accused no. 1 and 3 had attempted to rape the 16-year-old victim in an agricultural field, at the instigation of accused no. 2, as a result of which the victim consumed insecticide and died. The incident was allegedly witnessed by one of the villagers who was there in the field at the time, who narrated it to the aunt of the victim. However, since both the witness and the aunt were threatened by the accused persons, they did not tell the parents of the victim. Almost a month after the death of the victim, her aunt told her mother about the incident, upon seeing her distraught. Based on this, the FIR was lodged. However, the only witness who had allegedly seen the offence being committed turned hostile, stating that while

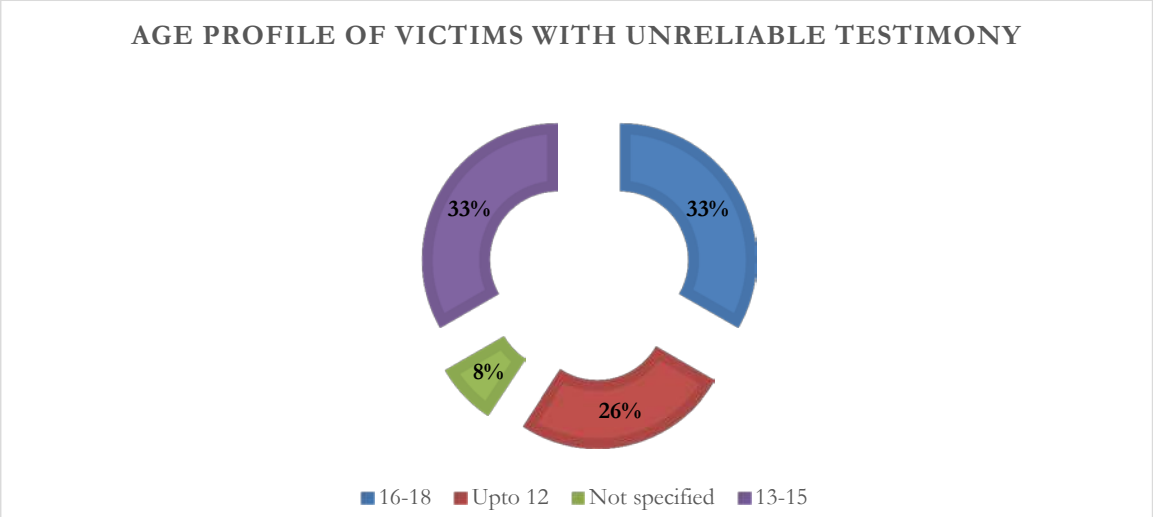
[62] Sessions Case No. 2/2016, decided on 05.07.2016 (Guntur).
[63] Sessions Case No. 325 of 2014, decided on 10.12.2014 (Ananthpuramu).
[64] S.C.No.8/2013, decided on 21.12.2015 (Guntur).
[65] S.C.No.43/2014, decided on 24.02.2016 (Guntur).

she knew all the persons involved, she did not know of any offence having been committed against the victim. The Special Court noted that while the offence had allegedly been committed during the day in an agricultural field, where other villagers ought to have been present, no witnesses were produced by the IO. It was also observed that there were inconsistencies between the testimonies of the witnesses produced by the prosecution. While one of the witnesses stated that the witness to the incident had told the entire family of the victim about it, the others stated that she had only told the mother of the victim. These inconsistencies, in light of the fact that the victim's family, and the accused persons belonged to two rival political factions of the village, were found to be fatal to the case of the prosecution. Therefore, the accused was acquitted.

3.7.4.3 Testimony of the Victim was found Unreliable

Of the 73 cases in which the victim testified against the accused, her testimony was considered reliable in 46 cases (63.01%), and was found to be unreliable in 27 cases (36.98%).

The age profile of the victims whose testimony was considered unreliable is depicted in the graph below:



Of the 27 cases in which the testimony of the victim was found unreliable, the victim was convicted under the POCSO Act in four cases (14.81%), all of which had victims below the age of 12. Of these, medical evidence was available and relied upon in two cases (50%). Further, in two cases (7.47%), the accused was convicted under the IPC only. In both these cases, the court found that the minor inconsistencies in the statement of the victim were not sufficient to disregard every aspect of her testimony.

However, in a number of cases, discrepancies in the statement of the victim were not ignored, nor did the Special Court dwell upon the causes for the same, assuming, instead, that inconsistencies in the testimony of the victim necessarily indicated that the offence had not been committed. For instance, in *State* v. *Talari Manjunatha*,[66] the victim girl was the only eye witness to the alleged incident of sexual harassment. It was alleged by the defence counsel that

[66] Sessions Case No. 524 of 2015, decided on 31.08.2016 (Ananthpuramu).

a false case had been foisted against the accused because the father of the accused had refused to sell his hayrick yard to the father of the victim. While other witnesses testified that the victim had mentioned the occurrence of the incident to them, their testimony was dismissed as hearsay evidence. Given the motive suggested by the defence, and the fact that there were no other independent witnesses to corroborate the alleged incidents of sexual harassment, the Court found that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt.

In some cases, the actions of the victim were deemed to have indicated consent, even though the victim explicitly stated otherwise. In *State* v. *Sayyadh Rehan*,[67] the accused was a 22-year-old male who was charged with kidnapping and molesting the victim girl, aged 16. It was alleged that they had developed romantic feelings for each other, but she did not want to get married to him at that stage. So, he kidnapped her and took her to another city. They were found there and a case was registered. At the trial, the victim deposed in favour of the prosecution. However, the Special Court observed that the victim had got off the bus at an earlier stop than she used to. It was at this spot that the accused found her and allegedly kidnapped her. The Special Court held that if she knew that the accused would meet her at that spot, it was likely she wasn't kidnapped, but, instead had accompanied him willingly. Further, there was no medical evidence or witness statements to suggest that he had molested or raped the victim. Relying on these aspects, the accused was acquitted.

On the other hand, it must be noted that there were some cases in which the testimony of the victim was, indeed, fraught with several inconsistencies, and therefore, the Special Court rightly held it to be unreliable. For instance, in *State* v. *Boya Anjanappa*,[68] there were several contradictions in the testimony of the 13-year-old victim, both before the court, and between her evidence in court and her Section 164, Cr.PC statement. She stated first that she did not recognise the person who was produced before the Court as the accused, and later that the accused had been chasing her on her way to school, and had raped her one day. She also changed her statement as to whether she had conveyed anything to her mother about the alleged incident. And most importantly, while she stated in her Section 164 statement that she had been raped in thorny bushes, she changed that statement before the Special Court and said that the accused had taken her to a bathroom and raped her. Given these contradictions, the Court found the testimony of the victim unreliable, and therefore, refused to convict the accused. Similarly, in *State* v. *Sheik Aqbar*,[69] the accused convinced the 15-year-old victim to board his vehicle when she was returning home from school. He then proceeded to remove her undergarments and commit aggravated penetrative assault. The victim first testified that she did not know the accused, but on cross-examination stated that she had known him for a month before the alleged incident. There was also inconsistency as to the location of the alleged assault. In chief examination, the victim stated that the accused had stopped the van at a lonely place near Samsiragudem, but on cross-examination, stated that it happened at Tadapalligudem gate (which is about one hour away from Samsiragudem). The Judge thus

[67] Sessions Case No. 83/2016, decided on 06.04.2017 (Visakhapatnam).
[68] Sessions Case No. 328 of 2015, decided on 11.07.2014 (Ananthpuramu).
[69] Sessions Case No. 14 of 2015, decided on 30.9.2016 (West Godavari).

concluded that the victim's testimony was unreliable and the accused was acquitted due to lack of evidence.

3.7.4.4 Gaps in Investigation

Several investigation gaps emerged based on judgement analysis and are elaborated in Section 4.2, Chapter IV. However, the following cases serve as useful illustrations of the damage done by gaps in investigation.

In *State* v. *Boya Prahladha*,[70] the Special Court observed that while the victim and her parents stated that they had complained to the police on the day that the alleged offence had occurred, the date on the FIR reflected that it had been made one day later, and no explanation could be offered to explain this discrepancy. Similarly, it was noted that the police had not collected the clothes that the victim was wearing when the incident occurred. The court also found that while the FIR stated that the victim had a towel hanging around her neck which had been used by the accused to pull her down and tie her hands and feet, the description of the clothes worn by the victim in her statement to the police made no mention of the said towel. The Special Court found that these gaps in investigation were sufficient to create doubt in the case of the prosecution, and gave the benefit of this doubt to the accused. The accused was therefore acquitted.

In *State* v. *Chukka Appala Raju*,[71] the victim was a 10-year old girl. It was the case of the prosecution that she had a romantic relationship with the first accused, as a result of which she had become pregnant. After one of their meetings, the accused informed her that he had told his friend, the second accused, of their relationship, and the said friend had come to the spot to meet them. She was upset that he had told someone else, and they fought. On the suggestion of the second accused, the main accused pushed the victim into a well. Her body was later recovered and a complaint was filed. When the main accused was confronted, he confessed to the crime. At trial, the defense contended that there was no evidence beyond the extra-judicial confession of the main accused to suggest that the victim had been murdered. The Special Court concurred, holding that there was no evidence linking the victim to the accused. Though it was alleged that they used to converse over the phone, no phone records were presented. The medical examination of the victim was not carried out to investigate whether sexual intercourse had occurred. Since the body had been cremated, it had also become impossible to establish whether she was, in fact, pregnant. The Special Court also found that the police officer signing on the confession had not been the one to record the confession. There was no confession recorded before a Magistrate. On these grounds, the Special Court acquitted both accused.

3.7.5.5 Prosecution Failed to Establish the Minority of the Victim

In several cases, it was seen that the necessary evidence was not produced by the prosecution to prove the minority of the victim. Refer to the analysis in Section 3.5.1. for more information on the same.

[70] Sessions Case No. 360 of 2015, decided on 31.08.2016 (Ananthpuramu).
[71] Sessions Case No. 29/2014, decided on 04.11.2016 (Visakhapatnam).

3.7.5.6 Ingredients of the Offence not Established

In *State* v. *Indla Venkatesh & Ors.*,[72] the accused no.1 and two of his friends had pulled the victim out of school pretending that her grandfather had died, and allegedly attempted to kidnap her, because the accused no.1 wanted to "satisfy his sexual lust with her". The Special Court held that the offence of sexual harassment had not been proved, stating,

> "…so far as the causing of sexual harassment against the victim girl is concerned, the victim girl has not deposed anything to the effect that the accused caused any sexual harassment against her at any time or on the date of incident. The victim girl simply deposed that Accused No.1 has expressed that he is having lust towards her and so he asked Accused No.2 to kidnap her. The victim girl has not deposed anything to the effect that A.1 and A.3 had any intention to cause sexual harassment against her."

It is unclear what exactly the Special Court required the prosecution to prove in order to make out the offence of sexual harassment, given the express words of the accused.

In *State* v. *Chappidi Phanindra*,[73] the accused asked the victim, a 9-year-old, to lick his testicles and put his penis into her mouth in a room adjunct to a hall where a function was taking place. When she refused to do so, he penetrated his penis into her vagina causing her pain. He threatened to kill her if she told others of the incident. Due to this she didn't tell anyone until later, when she was crying and her father questioned her. Despite mild contradiction in the victim's statement, she was consistent about the sexual assault. Further, the medical record showed that the vulva was congested, red in colour and that the posterior of the hymen was rough, congested and torn, indicating evidence of recent sexual abuse. The potency test of the accused was also conducted. Despite this, the Judge did not consider the elements of Section 6, POCSO Act to be met and instead convicted the accused under Section 10, POCSO Act imposing a lesser punishment of rigorous imprisonment of 6 years and a fine of Rs 5000.

3.7.5.7 Ineffective Use of Medical Evidence

In several cases, acquittals were recorded because medical evidence, despite being present, was not appreciated fully.

In *State* v. *Konda Balakrishna*,[74] the accused was the maternal uncle of the victim, and had allegedly lured the victim into eloping with him and marrying him. The victim had lived with him as his wife for several months, and even given birth to his child. When the parents of the victim lodged an FIR against the accused, and the couple was traced by the police, the victim refused to return to her parents and stayed in a government home. During trial, the victim, her mother, her father, and all other witnesses turned hostile and stated that the accused had not committed any offence against the victim. It was evident that the accused and victim were married and had a child. The Court made a passing reference to the fact that the victim was

[72] S.C.No.57/ 2015, decided on 04.10.2016 (Guntur).
[73] Sessions Case No. 8 of 2014, decided on 23.11.2015 (West Godavari).
[74] S.C.No.1/2015, decided on 01.02.2016 (Guntur).

"around" 18 years of age, thereby avoiding any discussion of the validity of the consent of the victim. Similarly, while a DNA examination of the child could have proved that the accused and the victim were the biological parents of the child, the same was not conducted. The Special Court could have ordered a test at the stage of trial, even if samples had not been collected during investigation. However, this was not done either. Therefore, the accused was acquitted.

In *State* v. *Darla Ratnam*,[75] the medical examiner's report indicated that there was a 9 o' clock position tear on the hymen of the victim, and genital lacerations, indicating that she had suffered sexual assault. In fact, semen was found on her person, samples of which were collected and preserved. All the witnesses of the prosecution, including the victim herself, turned hostile, stating that the accused had never sexually assaulted the victim. The Special Court held that while the Medical Examination Report (MER) showed that the victim had suffered sexual assault, there was nothing to prove that it had been at the hands of the accused, given that all the witnesses of the prosecution had turned hostile and stated that the accused had never assaulted the victim. It is interesting to note that neither the investigation, nor the Special Court, ordered a DNA analysis of the semen, to prove whether it belonged to the accused. Had the analysis been done, there would have been conclusive proof to either implicate or exonerate the accused. Therefore, the accused was acquitted.

3.8 Analysis of Charges Framed

3.8.1. Analysis of charges under the POCSO Act

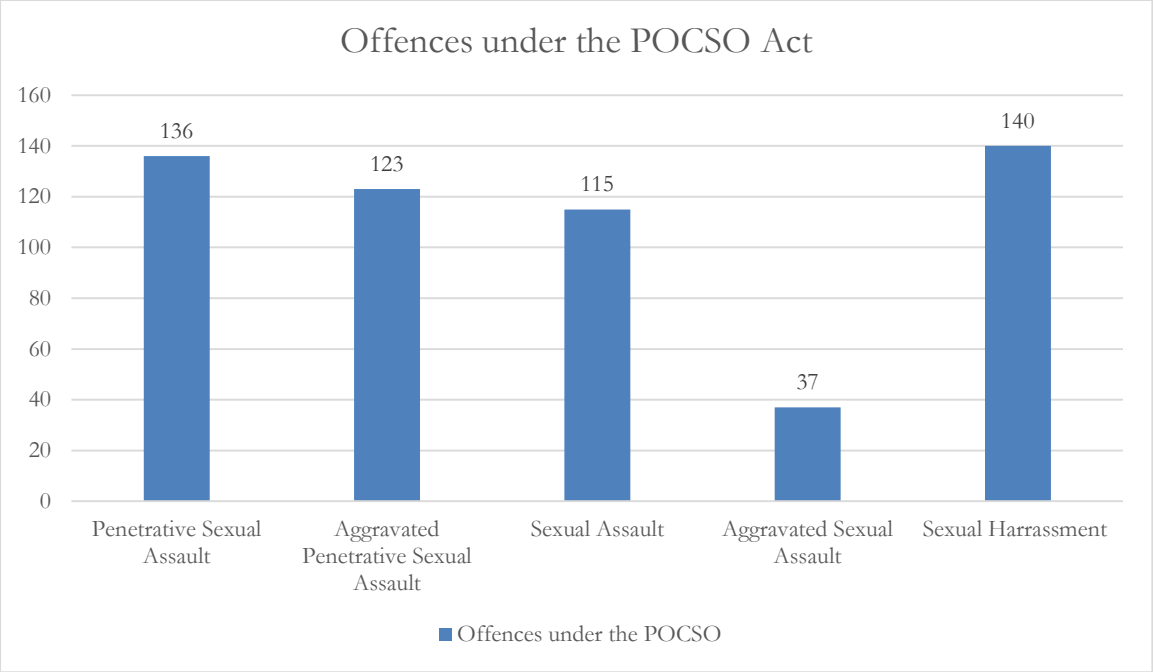
In the 509 cases analysed, there did not seem to be a charge under any particular section that featured prominently. Section 4, 6, 8, 10 and 12 all featured more or less equally. It is important to note that in cases where aggravating factors were present, charges were nevertheless framed under the non-aggravated section in addition to the aggravated section. For example, if the accused was the father of the victim, and had committed penetrative sexual assault, charges were framed under Section 4 as well as Section 6, POCO Act. While the Special Court would have the power to convict for an offence different from the one charged,[76] or add any charge at any stage before the judgement under the Cr.P.C.,[77] as long as

[75] S.C.No.8/2014, decided on 07.11.2015 (Guntur).

[76] S. 221(2), Code of Criminal Procedure, 1973: Where it is doubtful what offence has been committed.—(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. (2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

[77] S. 216, Code of Criminal Procedure, 1973: —(1) Any Court may alter or add to any charge at any time before judgement is pronounced. (2) Every such alteration or addition shall be read and explained to the accused. (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge. (4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary. (5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is

no prejudice is caused to the accused,[78] addition of the non-aggravated section may be a good practice as a matter of abundant caution. A more detailed breakup of the charges can be found in the graph below.



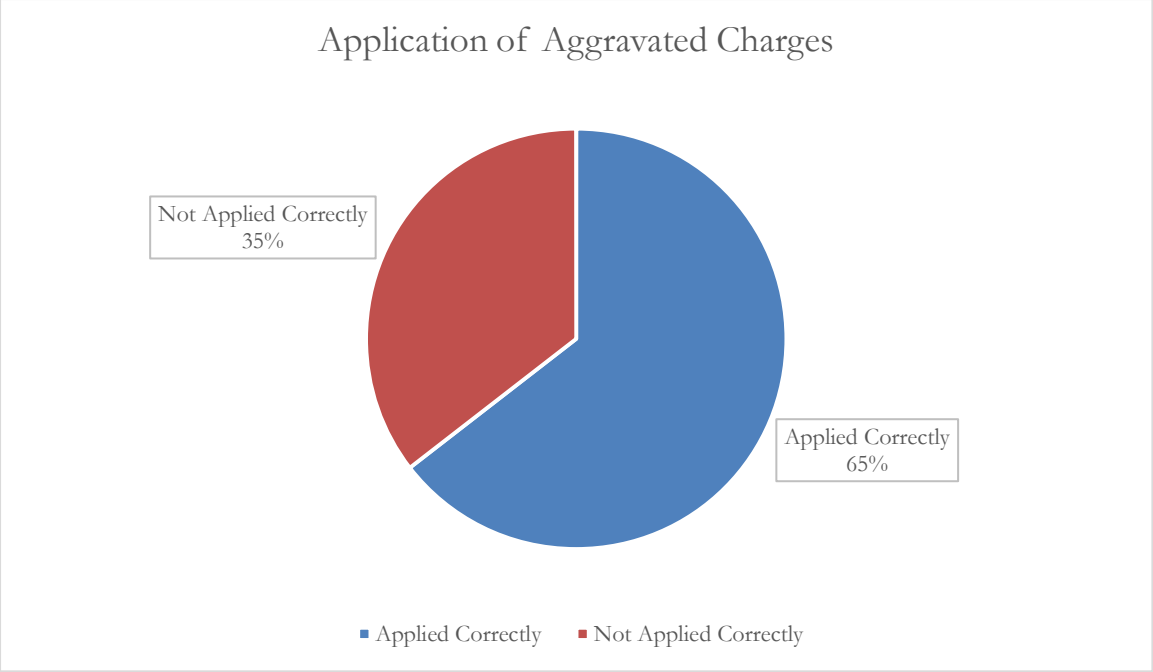
Apart from the offences highlighted above, charges were also framed under Section 14 in three cases. Charges of abetment were framed in a further six cases, and charges for attempt to commit another offence were framed in another seven cases.

3.8.2 Aggravating factors

As seen from the chart above, aggravating factors were present in a number of cases. Appreciably, where aggravating factors exist, the same were reflected in the chargesheet more often than not. The exact breakup of this inclusion can be seen in the chart below:

necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

[78] See Shamnsaheb M.Multtani v. State of Karnataka (2001) 2 SCC 577.



Some common aggravating factors seen in the analysis were:

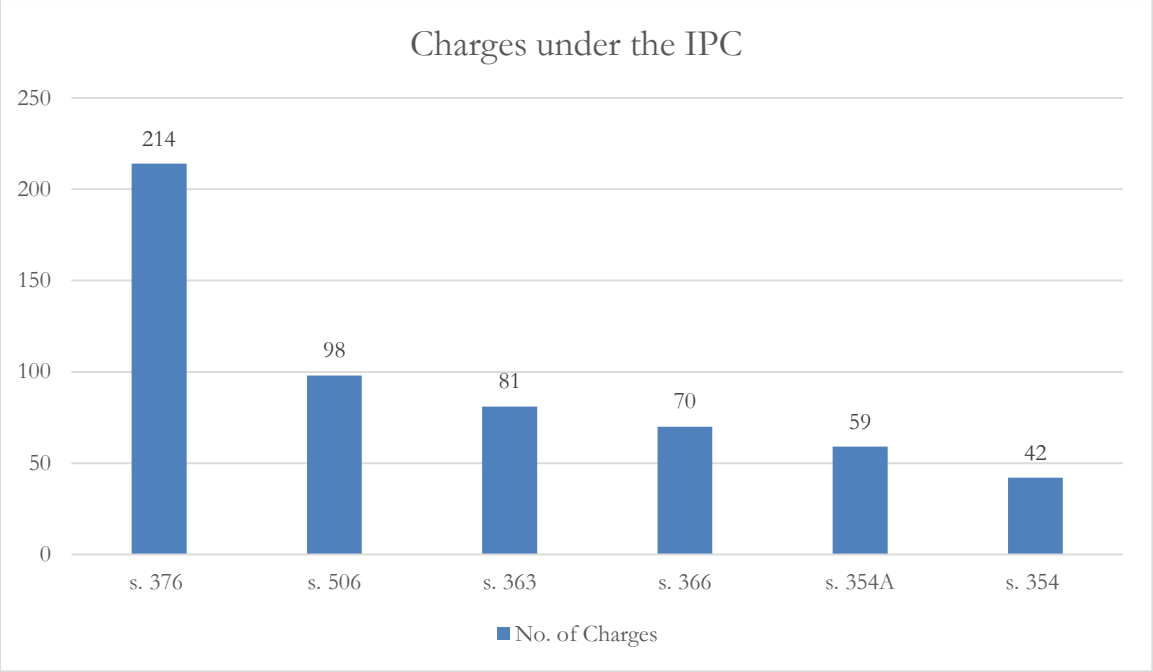
- The offence was committed multiple times.
- The accused was a relative of the victim.
- The victim was less than 12 years-old at the time of the offence.

Other factors included cases where the accused was a teacher of the victim, the victim was suffering from a mental or physical disability or where the victim had become pregnant as a result of the offence. Naturally, the pregnancy factor was seen only in cases of penetrative sexual assault.

One issue that was noticed in the analysis was the application of aggravated charges under the IPC while non-application of aggravated charges under the POCSO Act. Thus, even though the facts may call for aggravated charges under the POCSO Act and the IPC, the aggravated charge under the POCSO Act was sometimes left out. Of the 49 cases where the charge under Section 376(2) was applied, 18 cases did not apply aggravated charges under the POCSO Act. This could be a result of poor awareness, and efforts should be made to ensure that the same does not occur.

3.8.3 Charges under the IPC

Of the charges under the IPC, Section 376 (Rape) was the most commonly applied section, having been applied in 214 cases. Other commonly applied section included Sections 354, 354-A, 363, 366-A, and 506. The detailed breakup of the number of charges under various sections can be seen in the table below.



Apart from the offences reflected in the chart above, charges were also framed under Sections 306, 354-D, 448 and 509, of the IPC.

3.8.4 Charges under other Acts

The case analysis showed that there were very few charges framed under other criminal statutes. While 11 charges were framed under the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1993 (Atrocities Act), one charge each was framed under the Information Technology Act, 2000, the Immoral Traffic (Prevention) Act, 1956, the Dowry Prohibition Act, 1986 and the Prohibition of Child Marriage Act, 2006. Under the Atrocities Act, accused persons were usually charged under Section 3(1) (xi) and (xii) and Section 3 (2) (v), prior to its amendment in 2016.[79]

3.9 Sentencing Pattern

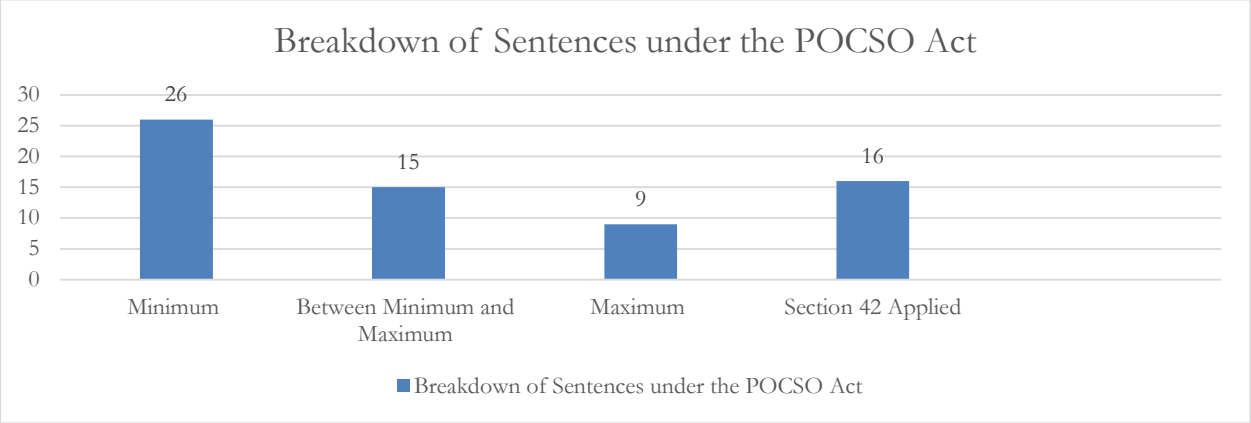
- The number of sentences passed under the POCSO Act and the IPC have been discussed in section 3.7. Of the total number of cases where sentences were passed, Section 42 was applied in 16. A detailed breakdown of sentencing patterns can be found in the graph below. Probation was not granted in any case analysed. This is in tune with the POCSO Act, which bars probation as a sentence, except in offences for which no minimum sentence is prescribed, such as sexual harassment. In other States studied, it was seen that probation was granted by the Special Courts, disregarding the bar under the POCSO Act.[80]

[79] Section 3(1) (xi) pertains to assault on a woman belonging to SC/ST with an intention to outrage her modesty, whereas Section 3(1) (xii) deals with a person using a dominant position to sexually exploit a woman of the SC/ST. Section 3(2)(v) prescribes additional punishment if an offence under the IPC is committed against a person belonging to the SC/ST.

[80] Refer to the Reports on the Studies in other states at:
Delhi: https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOSCOAct2012.pdf.
Assam: https://www.nls.ac.in/ccl/jjdocuments/studyspecialcourtassamPOSCOAct2012.pdf.

- Another positive observation was that in no case was a sentence below the statutory minimum imposed. Again, this was different from the practice in other States studied by CCL-NLSIU, where there were many instances of sentences below the statutory minimum being passed.[81]
- Of all the cases where charges were framed under other legislations, only one resulted in a conviction. This was the case of *State* v. *Vamulla Durga Rao* where charges were framed under s. 3(1)(x) and (xi) of the Atrocities Act.[82] In this case, the accused had raped a minor girl below the age of 12. Though the Special Court had convicted the accused under the IPC and POCSO Act, no conviction was made under the Atrocities Act as the ingredients of the offence could not be made out. Thus, since there were no sentences passed under any other Acts, no analysis of the sentencing patterns can be made out.

A detailed breakdown of the sentencing pattern under the POCSO Act can be seen in the graph below:



3.9.1 Minimum Sentences

Though sentences below the minimum were not awarded in any case, it is clear that Special Courts lean in favour of minimum sentences under the POCSO Act. This could be due to the relatively high minimum mandatory sentences provided under the Act. The duration of the minimum mandatory sentences may be seen by many Special Court Judges as being sufficient punishment for the offence in question. In most cases, the socio-economic background of the accused, his role as the sole-breadwinner of the family and lack of criminal antecedents were some of the reasons that the Special Court relied on to award the minimum sentence to the accused.

Karnataka: https://www.nls.ac.in/ccl/jjdocuments/posco2012karnataka.pdf.

[81] Refer to the Reports on the Studies in other states at:
Delhi: https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOSCOAct2012.pdf.
Assam: https://www.nls.ac.in/ccl/jjdocuments/studyspecialcourtassamPOSCOAct2012.pdf.
Karnataka: https://www.nls.ac.in/ccl/jjdocuments/posco2012karnataka.pdf.

[82] Sessions Case No. 55/2014, decided on 22.07.2016 (Guntur).

3.9.2 Maximum Sentences

Maximum sentences were passed only in nine of the 57 cases in which convictions were recorded (15.78%). In five of these cases (55.55%), the facts of the case disclosed aggravating factors. Thus, it would appear that a maximum sentence is more likely to be imposed in cases where aggravating factors are disclosed by the facts. In passing maximum sentences, Special Courts have also taken note of the severity of the crimes committed (aggravated penetrative sexual assault/aggravated sexual assault) and their impact on social life in general as well as on the life of the victim in particular.

In *State* v. *Bavanam Peri Reddy*[83] and *State* v. *Gopavarpu Mohan Rao*,[84] the Special Court provided the maximum sentence, because rape had been committed on girls of very young ages by persons in positions of trust and confidence. In both cases, the Court held that the heinousness of the offence had increased given the trust that the accused had violated. In further justifying the sentences, the Court referred to the following passage from *Shyam Narain* v. *State of NCT of Delhi*,

> "Almost for the last three decades, Supreme Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight-year-old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and shock suffered by her can be well visualised. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasized on the manner because, in the present case, the victim is an eight-year-old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. Judicial discretion impels to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgement of conviction and the order of sentence passed by the High Court."[85]

In *State* v. *Kokilagadda Ramaswamy*,[86] the accused had incessantly called the victim (aged 13) and made lewd and inappropriate comments against her. He had also been stalking her. The accused had pleaded for a lenient sentence on grounds that he had to support his ageing parents and that he had no criminal antecedents. However, the Court was not swayed by these factors. In sentencing the accused to the maximum punishment under Section 12, POCSO Act, i.e., three years imprisonment, the Special Court made the following observations,

> "Leniency in matters involving heinous offences is not only undesirable but also against public interest. Such types of offences are to be dealt with

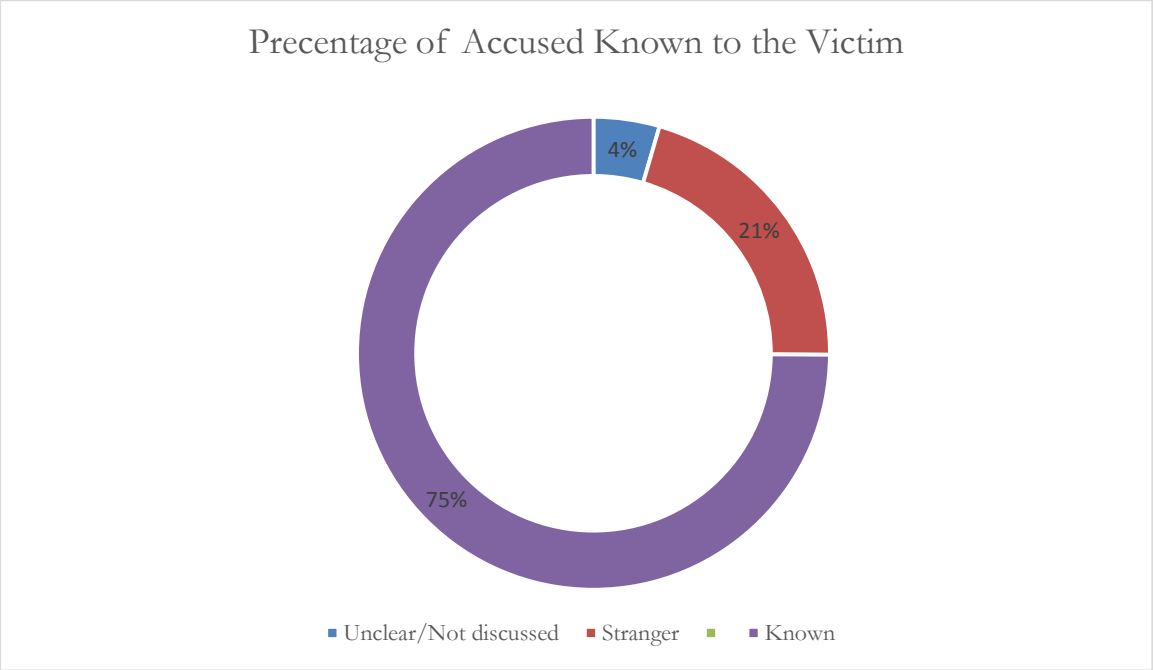
[83] POCSOA SESSIONS CASE No.1/2016, decided on 18.04.2016 (Ongole).
[84] POCSOA SESSIONS CASE NO. 101 of 2015, decided on 20.04. 2016 (Ongole).
[85] 2013(2) ALD (Crl.) 500 (SC).
[86] Sessions Case No.39/2016, decided on 08.12.2016 (Guntur).

> severity and with iron hands. Showing leniency in such matters would be really a case of misplaced sympathy. The acts, which led to the conviction of the accused, are not only shocking but also outrageous in their contours"

It is interesting that the Special Court regarded sexual harassment as a "heinous" offence, although in strictly legal terms it does not qualify for such a categorization.

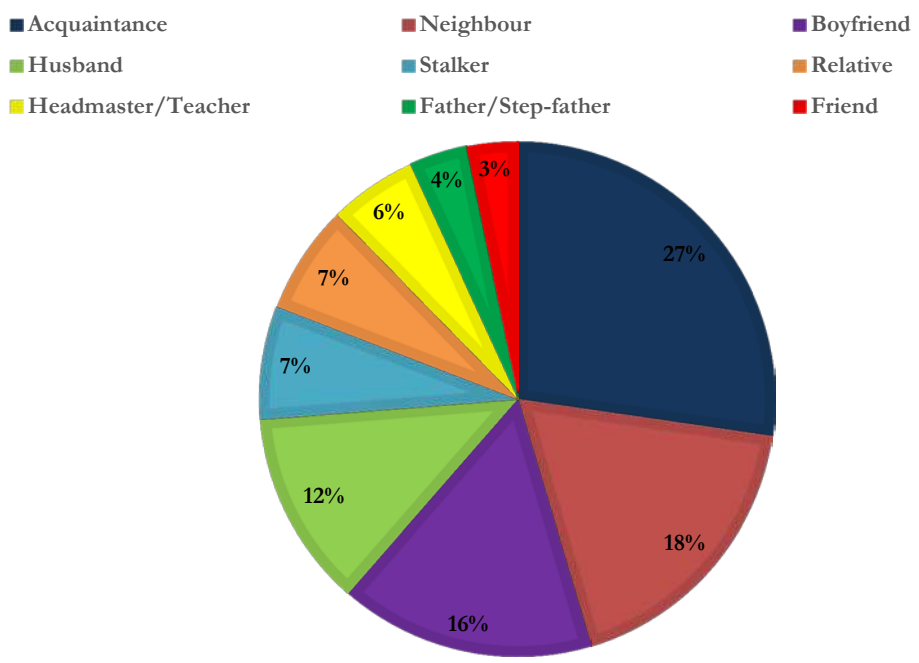
3.10 Profile of the Accused and its Implication on Testimony of the Victim and the Outcome of the Case

The accused was known to the victim in 381 cases (74.85%), was a stranger in 105 cases (20.58%), and the relationship between the victim and the accused was either not discussed or unclear in 23 cases (4.50%).

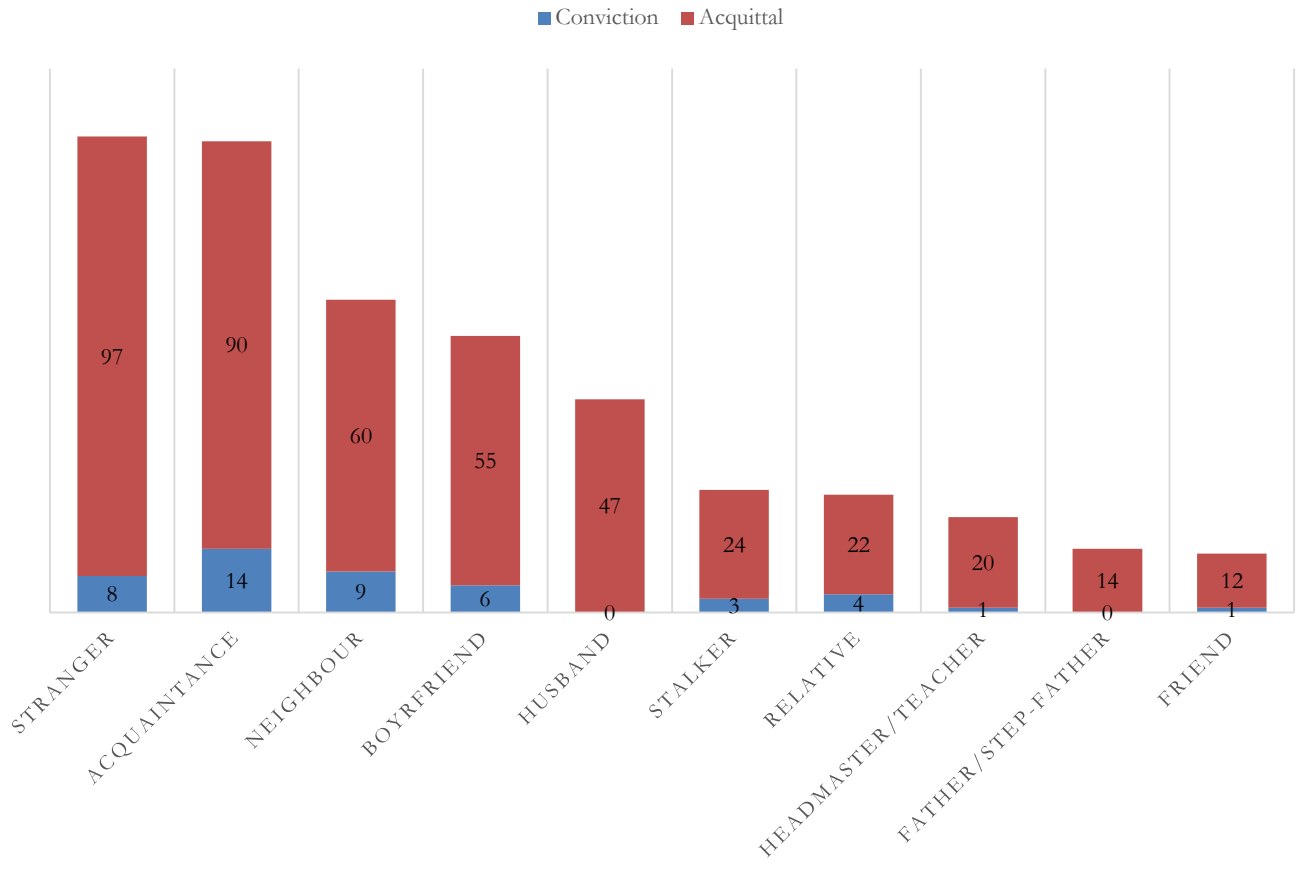


A breakdown of the profile of the accused known to the victim shows that acquaintances formed the largest category (27.29%), followed by neighbours (18.11%). The category of acquaintances included pastors and priests, fruit and vegetable vendors, friends of the family, residents of the same village, and so on. Boyfriends constituted a significant proportion of the accused (16.01%), along with accused persons to whom the victim had got married (12.33%). The accused person was alleged to have been stalking the victim in 7.08% cases, and a relative was the accused in 6.82% cases. The broad category of relatives includes cousins, uncles, and brothers-in-law. The accused was the teacher/professor of the victim, or the headmaster/principal of the school in which the victim was studying in 5.51% cases. This category includes tuition teachers. The father/step-father of the victim was the accused in 3.68% cases, and a friend of the victim had allegedly committed a sexual offence against her in 3.16% cases.

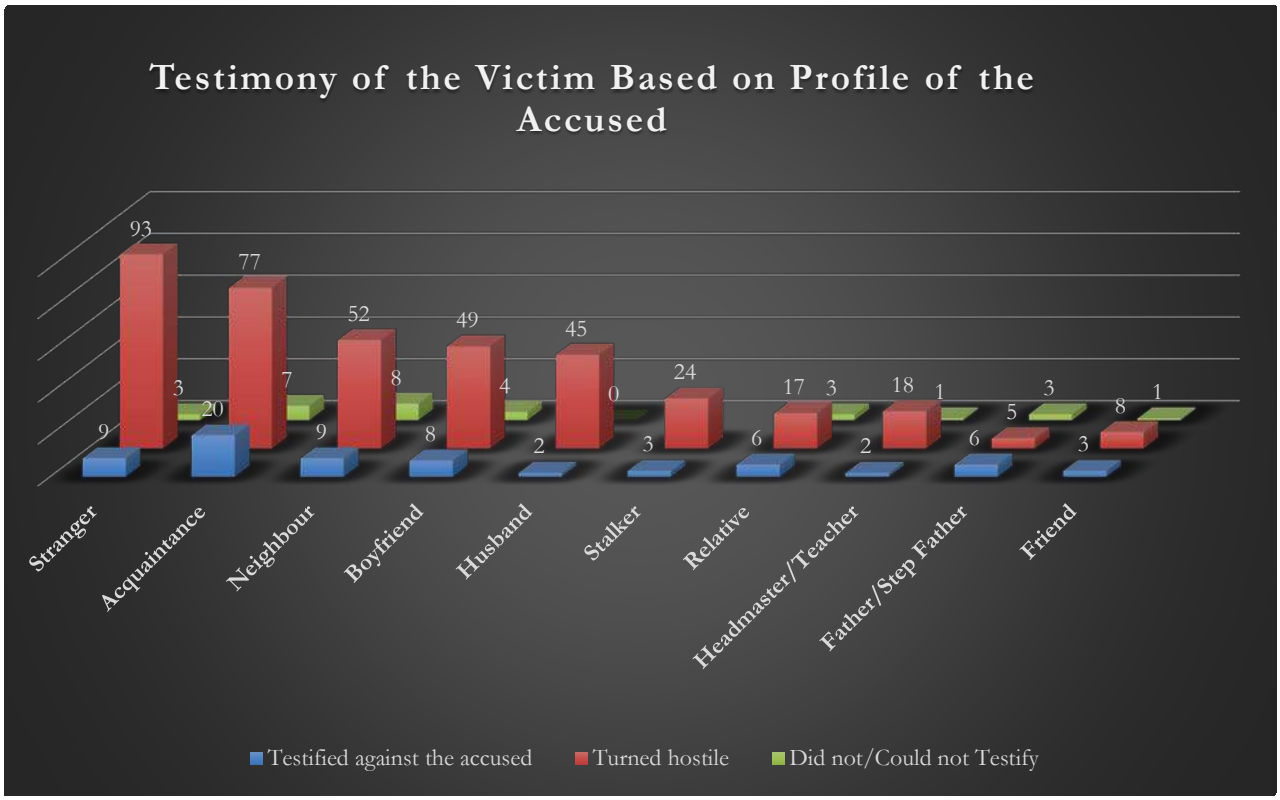
PROFILE OF KNOWN ACCUSED



OUTCOME OF THE CASE BASED ON PROFILE OF THE ACCUSED



The graph above shows that the lowest rates of conviction were seen in cases where the accused was married to the victim (0%), or was her father/step-father (0%). Higher rates of conviction were seen in cases where the accused was the relative (15.38%), acquaintance (13.46%), neighbour (13.04%), or stalker (11.11%) of the victim. Boyfriends and friends of the victim, and strangers were convicted at a relatively lower rate of 9.83%, 8.33% and 7.61% respectively, whereas the rate of conviction for headmasters/teachers was an astoundingly low 4.76%.



- **Conviction and testimony**: The low rate of conviction when the accused was the teacher/headmaster or a stranger is explained by the fact that in most such cases, the victim turned hostile against the accused. However, in cases where the accused was the father/step-father or friend of the accused, no definite link can be drawn between the testimony of the victim and the outcome of the case. This may be because of the smaller sample of these cases, or because the testimony of the victim was considered unreliable.
- **Highest Percentage of Testimony**: The highest percentage of cases in which the victim testified against the accused was when the accused was the father/step father of the victim (42.85%), a friend of the victim's (25%), a relative (23.07%), or an acquaintance (19.23%).
- **Lowest Percentage of Testimony**: The lowest percentage of cases in which the victim testified against the accused was when the accused was the husband (4.25%), a stranger (8.5%), the headmaster/teacher of the victim (9.52%), or her boyfriend (13.11%).

3.11 Application of Presumptions

The presumptions under Sections 29 and 30 of the POCSO Act are strong tools available to the prosecution to secure convictions. A bare reading of the statute would suggest that no preliminary facts are required to be proved before the presumptions can be applied. Nevertheless, as laid down by the Supreme Court, certain foundational facts would have to be proved for any presumption to apply. Although the presumptions under the POCSO Act can be raised by the prosecution, they were mentioned only in 26 of 509 cases (5.10%). This number is abysmally low, indicating that the presumption, intended to make the job of the prosecution simpler, given the sensitive nature of cases under the POCSO Act, is not being utilised satisfactorily. Indeed, there were many districts where the presumption was not mentioned in any case. Further, given that the figures above only capture the number of cases in which the presumptions were mentioned, the number of cases in which the presumption was applied would be even lower. Analysing the trends in the application of the presumptions reveals that they are used more to bolster evidence rather than to shift the burden of proof. This is made clearer by statements such as, "Hence, s. 30 of the POCSO Act is further strengthening the case of the prosecution in my considered view".

This can also be seen from the fact that presumptions are largely applied only in cases which have ended in convictions, with 22 of the 26 cases in which the presumptions were mentioned ending in convictions. It is also seen that Special Courts are more likely to apply the presumption in cases where the victim has testified against the accused. Indeed, Special Courts seem to be reluctant to utilise the presumption where the victims do not testify against the accused. Of all the cases where the presumption was mentioned, the victim girl turned hostile only in three. While one of these led to an acquittal, the other two led to convictions on grounds such as paternity tests or eye-witness testimony. In *State* v. *Alluru Benjamin*,[87] the victim was raped by the accused who was an ex-army man. The victim also became pregnant as a result. The victim turned hostile and refused to testify against the accused. However, the paternity test on the child of the victim showed that the accused was the biological father of the child. Therefore, the Court felt it fit to convict the accused and applied the presumption. In the other cases, there was usually very strong evidence such as paternity tests or testimony of eye-witnesses. Admittedly, given the small sample size of these cases, such conclusions may be premature.

In many cases, the Special Courts indicated that the presumptions would only come into play after the prosecution has established the offence. This is clear from the views of a Public Prosecutor who stated,

> "The presumption is very good- it is very practical. There is no burden, as such, on me. The victim must say the offence has been committed, and give cogent account of the same. The burden then shifts on the accused party to prove that he has not committed the offence."

[87] Sessions Case 1/2015, decided on 06.12.2016 (Nellore).

While the Special Court in *State* v. *Killadi Krishna*,[88] held that no foundational facts are required for the presumption to apply, it was seen that in practice, the Court did not follow the same. The Court did examine the prosecution evidence to determine whether the prosecution had discharged its burden. This would not be required if the presumption had been applied without the need to prove foundational facts. On the other hand, the Special Court in *State* v. *Thupakula Durgaiah*[89] diluted the presumptions and their application. The Court observed, "Section 29 or 30 can be applied only on sufficient proof of the prosecution case beyond reasonable and probable doubt. Then only these presumptions would come into play."

Despite this, there were some cases where the presumption was used effectively. In *State* v. *Dasari Sreenu*,[90] the victim was a 9-year-old girl child with intellectual disability. The accused had committed rape on her as well as bitten her in multiple places. Due to her disability, she was unable to testify in Court. Nevertheless, she was identified as the victim in Court by other witnesses. The witnesses also identified the accused in the case. The Court then used the presumption of guilt along with the other circumstantial evidence to convict the accused. The presumption of mental state was used in *State* v. *Mudanna Subrahmanyam*,[91] as well, where the accused was convicted of harassing the victim by following her and professing his love for her. He also threatened to harm her in if she refused his advances. The Special Court acquitted the accused under the IPC, yet convicted him under the POCSO Act. The reason was that the facts did not disclose an offence under s. 506, IPC. However, the Court used the presumption to hold that the accused had the requisite mental state to commit the offence under s. 12, POCSO Act.

There also appears to be a high correlation between the application of the presumption and the gravity of the offence. In 19 of 25 cases where presumptions were mentioned, the charge was an aggravated offence under s. 6 or s. 10, or the facts disclosed an aggravating circumstance. It would, therefore, seem that Judges are more likely to apply the presumption in cases where the offence was of an aggravated nature. This could be because Judges, who ordinarily perceive the presumption as being too strong, feel that these situations justify its application. The greater moral blameworthiness attached to a relative or teacher committing the offence, would seem to play to a role in the mind of the Judge.

It is also important to note that though Special Courts require the prosecution to prove foundational facts beyond reasonable doubt, the presumption can then be disproved on a preponderance of probabilities. Though the statute states that the presumption can only be disproved by leading evidence beyond reasonable doubt, this requirement was read down in *Noor Aga* v. *State of Punjab*.[92] This requirement was applied in accordance with *Noor Aga* by Courts in cases such as *State* v. *Killadi Krishna*[93] and *State* v. *Thupakula Durgaiah*.[94] In both cases, the Special Court observed that while the burden on the prosecution was one of

[88] Sessions Case No. 229/2015, decided on 06.01.2017 (Visakhapatnam).
[89] POCSO Special Case No. 33/2016, decided on 17.11.2016 (Nellore).
[90] S.C.No. 66/ 2014, decided on 13.11.2015 (Guntur).
[91] Sessions Case No. 118 of 2015, decided on 4.10.2016 (East Godavari).
[92] Noor Aga v. State of Punjab, (2008) 16 SCC 417.
[93] Sessions Case 1/2015, decided on 06.12.2016 (Nellore).
[94] POCSO Special Case No. 33/2016, decided on 17.11.2016 (Nellore).

beyond reasonable doubt, the presumption could be rebutted on a preponderance of probabilities.

Apart from the presumption under the POCSO Act, the presumption under Section 114-A, Indian Evidence Act, 1872 (IEA) was also applied. In *State* v. *Avanigadda Yesu Babu*,[95] for instance, the accused was charged with kidnapping and raping the victim who was aged 17 years. The Court applied the presumption under Section 114-A, IEA to presume an absence of consent once the medical reports had indicated that intercourse had taken place. However, since the victim was proved to be a minor, there was no need to presume absence of consent. Although the minority of the victim was not in question, the Court did not consider applying the presumption under the POCSO Act.

The trepidation with which Special Courts have been approaching these presumptions could be explained by the wide scope of the presumption itself. Unlike other presumptions, such as Section 114A, IEA, the presumption under the POCSO Act does not expressly require any preliminary facts to be proven before it can be invoked. Even the Supreme Court has indicated that a preliminary fact may be necessary to ensure that presumptions in criminal statutes are constitutional. The recent decision in *Shahid Biswas* v. *State of West Bengal*[96] would, however, seem to indicate that all the facts required to be proved for the offence under the POCSO Act would require to be proved as foundational facts. The effect is that the presumptions under the Act do not reduce the burden on the prosecution to establish the case beyond reasonable doubt. One of the respondents from the judiciary did hint at the presumption having limited utility stating, "There is no necessity for that clause as the Supreme Court has already held that the sole testimony of the victim is sufficient to prove the guilt of the accused." This statement indicates that those responsible for applying the presumption believe that it would come into effect only after the testimony of the victim is taken, rendering the presumption irrelevant.

The wide scope of these provisions was questioned in *Yogesh Maral* v. *State of Maharashtra*[97] in which the Bombay High Court observed:

> "The terms of the said section are very wide and a plain reading thereof indicates the said provision to be contrary to the basic and normal principles of criminal jurisprudence. The ambit and scope of the presumption enacted by Section 29 and its true meaning would certainly need a detailed discussion in an appropriate case."

A similar sentiment was echoed by one of the defence lawyers who stated,

> "If such a presumption were to be applied in all cases, there would be automatic conviction, without fail. There would be no burden on the prosecution, and the burden of the defence would be extremely harsh. How can anyone prove a negative fact?"

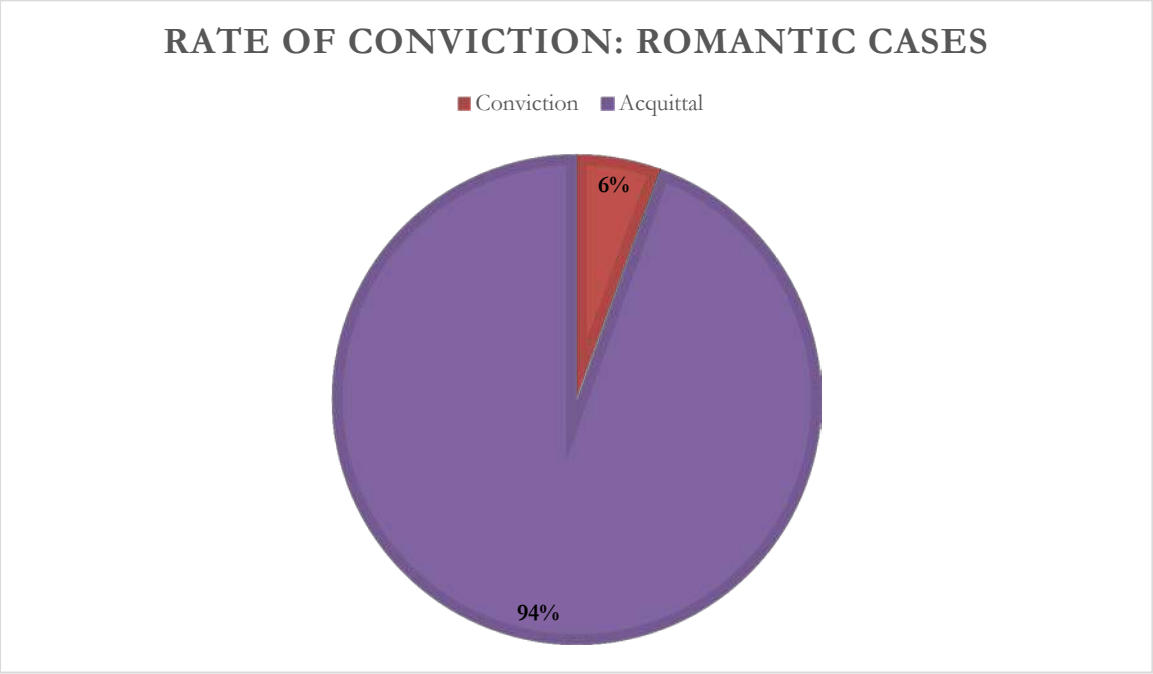
[95] Sessions Case No. 46/2014, decided on 05.12.2016 (Guntur).
[96] C.R.A. No.736 of 2016 (High Court of Calcutta).
[97] 2015(3) B.Cr.C. 687 (High Court of Bombay).

The High Court of Bombay, in *Yogesh Maral*,[98] also stated that given the position of the presumption, it will only be used to add strength to the evidence of the victim. This only adds to the uncertainty surrounding the application of the presumption. Given the prevalent situation, there is an urgent need for legislative or judicial clarity to ensure that the discretion of the Special Courts in applying the presumption is guided.

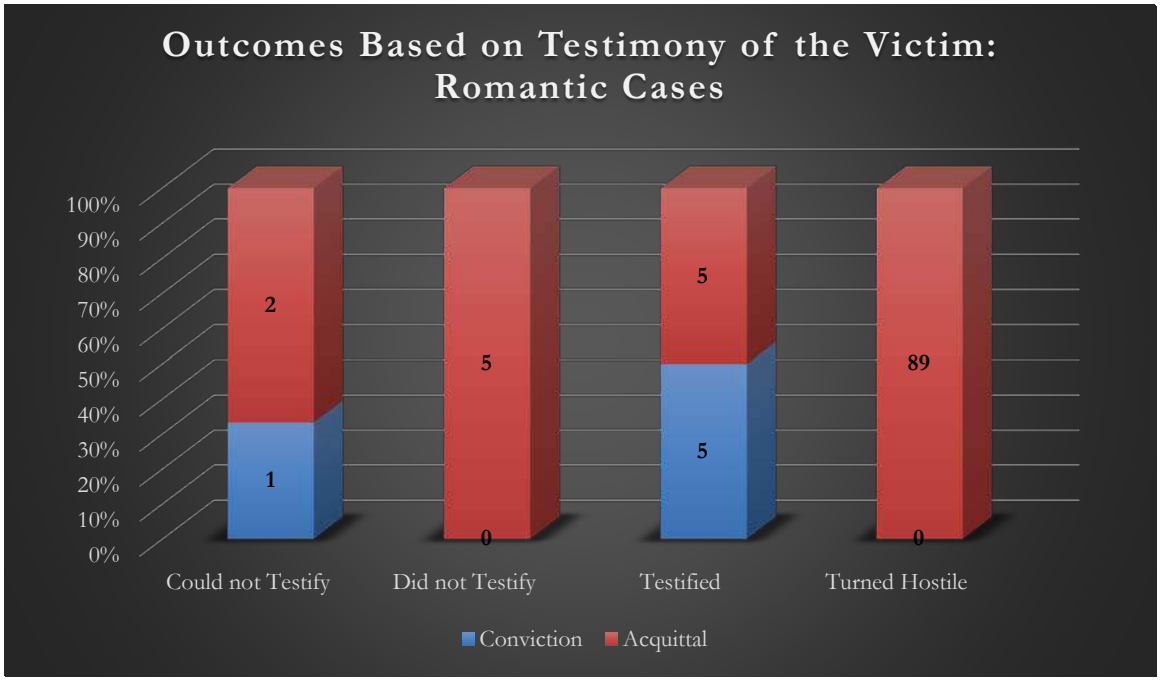
3.12 Outcomes in 'Romantic Cases'

All cases in which the victim claimed to have been in a romantic relationship with the accused at any stage of the investigation or trial, or the prosecution itself claims that the accused and the victim were in such a relationship, or the Judge noted explicitly that a love affair could be inferred from the facts or the statement of the victim, are considered 'romantic' cases. Charges were framed under Sections 4 or 6 of the POCSO Act in a majority of cases, followed by Section 12, and Section 8 and Section 10 respectively. In several cases, charged under the POCSO Act were accompanied by charges under Sections 363, 366-A, and 376, IPC.

- 108 out of the 509 cases analysed, i.e. 21.21% were classified as 'romantic' in nature.
- Convictions were recorded in six cases (5.55%), of which in three cases the accused was convicted under both the POCSO Act and the IPC, and three were convicted under the IPC only. The rate of conviction in romantic cases, therefore, stands nearly 6% lower than the overall rate of conviction by Special Courts.



[98] 2015(3) B.Cr.C. 687 (High Court of Bombay).



- Of the six cases in which the accused was convicted, sentences under both the IPC and the POCSO Act were awarded in one case, the accused was sentenced only under the POCSO Act in two cases, and under the IPC only in three cases. The maximum sentence was awarded only in one case, and minimum sentences were given in three cases.
- Compensation was not awarded in any of the cases which resulted in conviction.
- The victim had become pregnant, allegedly as a result of the penetrative sexual assault by the accused in 15 cases (13.88%), but none of them resulted in conviction. Of these, the victim was dead in two cases, and had refused to testify against the accused in the rest. DNA examination was conducted in only one case (where the victim was dead), which showed that the accused was not the biological father of the foetus.
- Marriage between the victim and the accused had taken place in 47 out of 108 cases (43.51%), either before the report was filed, or subsequently. None of these cases resulted in a conviction, even though, in several cases, the minority of the victim was not in doubt.
- In 62 out of 108 cases (57.40%), the FIR was lodged by the parents or guardians of the victim, and in 43 cases (37.27%) by the victim herself. For the details and break-up of the profile of informants in romantic cases, see section 3.4.

Evidently, in most romantic cases, the criminal justice system is set into motion by the parents or guardians of the victim because she eloped with the accused, or because they did not approve of the relationship. Inevitably, in such cases, the victim refuses to testify against the accused, or turns hostile, stating either that she was above the age of 18, or that she had consensually engaged in sexual relations with the accused. For instance, in *In State* v. *Atchi Abhiram,*[99] the prosecution's case was that the 14-year-old victim and the accused were in a relationship which was objected to by the victim's mother. The accused lured her and took

[99] Sessions Case No. 40 of 2015, decided on 21.1.2016 (Guntur).

her away from the house, they stayed first in a temple and then in the house of the acquaintance of the accused where the accused committed rape on her. The victim's sister discovered her whereabouts and the victim was brought home and a complaint was filed. However, all material witnesses turned hostile and the accused was acquitted. Similarly, in *State* v. *SK Jayalabdeen*,[100] the victim girl aged 17 years, and the accused, the van driver for her school fell in love and eloped for a period of two days. Upon return, the father of the victim girl threatened to file a complaint against the accused and the accused and the victim girl consumed poison, but were saved. Subsequently, the prosecution's case was that the accused kidnapped the victim girl from her house along with some gold jewellery, pledging which the two stayed in different places for a short period. The victim girl upon return reported to the police station. A charge under Section 4 was filed against the accused. However, the victim girl denied the entire incident and the accused was acquitted.

This was the view held also by most stakeholders interviewed. One of the PPs stated, "after registration of case they get married, [and the] victim says now I'm 19 years old, and turns hostile. This is the outcome in more than 20% cases." In several cases, despite the FIR suggesting that the accused had forcibly married the victim, the victim and her family went to the extent of stating that they never even saw the accused, and were, in fact, tricked into filing an FIR against him.[101] This may be because the victim and the accused were already married, and did not wish to proceed with the criminal justice process, having settled the matter outside court.

A large majority of the cases in which the victim herself filed the FIR were those in which the accused had had sexual relations with the victim on the promise of marriage, and subsequently refused to fulfill his promise. In such cases, the most common outcome was that after filing the FIR, the victim and the accused were married, betrothed, or had otherwise compromised the matter outside court, and all the witnesses of the prosecution turned hostile in Court. In *State* v. *Katakam Durga Rao*,[102] for example, the 19-year-old accused had allegedly professed his love to the 16-year-old victim, and the two had had sexual intercourse multiple times, since the victim believed that the accused would marry her. However, the accused subsequently refused to marry the victim, and therefore, an FIR was lodged. By the time the matter was heard, however, the accused and the victim had been married. All the witnesses, including the victim, stated that the accused was the victim's husband, the victim was 19 years old as well, and no offence had ever been committed by the accused. Therefore, the accused was acquitted.

These trends were confirmed by interviews of key stakeholders. A respondent from the judiciary mentioned, "Majority of the cases are romantic relationships. In some cases, there are promises of marriage by the accused. I am harsh in granting bail. The honor of the family of the victim is at stake, so there is a huge scope to compromise these cases. Majority of the cases are compromised." Similarly, one respondent from the JJB opined, "60 out of 100 cases are romantic relationships. They file a complaint only when there is a breach of promise of marriage." One of the PPs interviewed further stated, "[These cases end in] compromise or

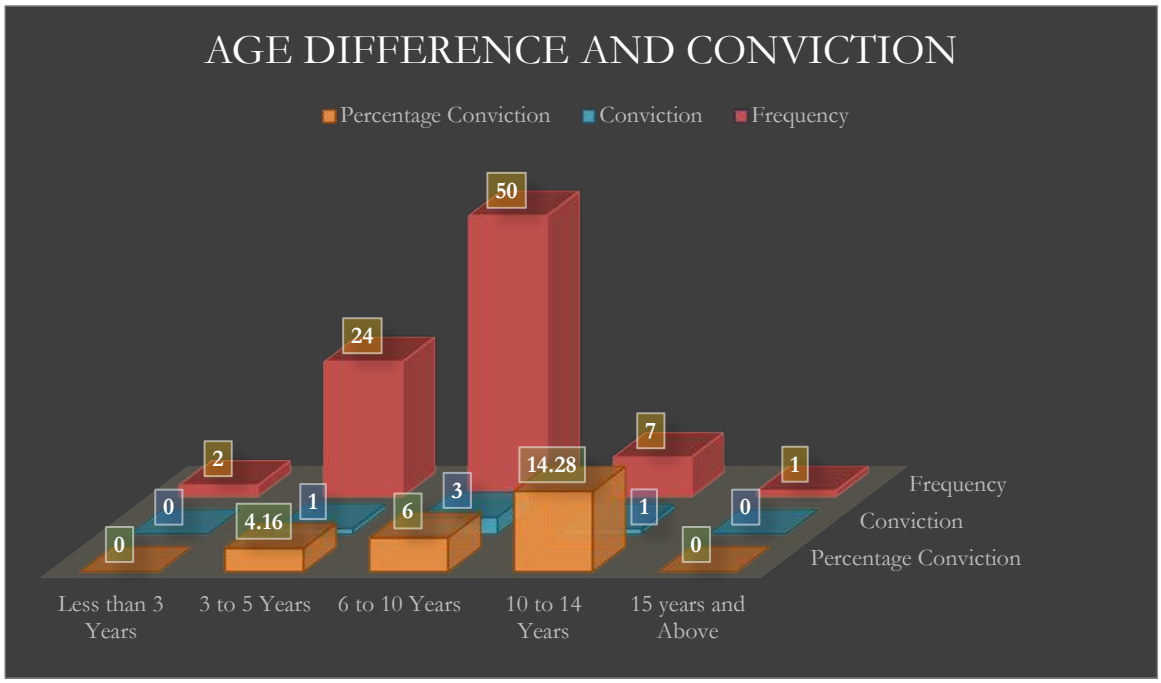
[100] Sessions Case No. 50 of 2016, decided on 02.12.2016 (Guntur).
[101] See, for instance: State v. Gaddam Ramudu S.C.No.47/2015, decided on 03.06.2016 (Guntur).
[102] S.C.No. 92/ 2015, decided on 03.03.2016 (Guntur).

settlement. Usually these cases are filed by parents because they do not agree with the love affair."

3.12.1. Appreciation of Age Difference

One of the main reasons why romantic cases inevitably end in acquittal is that the Special Courts, ignoring the explicit mandate of the POCSO Act, hold that the victim consented to the sexual acts, and therefore, no offence was committed against her. The difference in age between the victim and the accused can be an important indicator of whether the "consent" of the victim was free and informed, or a result of duress or grooming by an older partner. Unfortunately, however, judgement analysis indicated that Special Courts almost never considered these nuances of consent.

The profile of age difference between the victim and the accused in the cases where the ages of both parties have been mentioned (85) is depicted in the graph below. Due to the nature of the cases, the age of the victim was often contested. Where the Court gave a finding as to the age of the victim, or there was documentary evidence in the form of a birth certificate or school/study certificate, the age accepted by the court or mentioned in the document have been used. Where there was no conclusive proof of age, the age mentioned in the FIR was relied upon.



The graph indicates an increase in rates of conviction with the increase in age gap between the victim and the accused. From this correlation, however, no causal link can be drawn between the two events due to several factors such as the contested age of the victim, the tendency amongst victims and their families to turn hostile, and other factors such as compromises, marriages and pregnancies which weigh on the mind of the Special Court. Moreover, age gap was never overtly considered by the Special Court in arriving at a verdict. It is true that several "consenting" adolescents are trapped in the net of the criminal justice system due to a blanket age of consent. At the same time, a large age-gap may be a red-flag for grooming, indicating

that the minor may have been conditioned into accepting sexual abuse from her older partner. This is a factor that the courts must consider when deciding allegedly "romantic" cases.

3.12.2 Conviction

The rate of conviction in cases classified as 'romantic' was an abysmal 5.55%. The victim had testified against the accused in five out of the six cases which resulted in conviction (83.33%), making the testimony of the victim the key factor for conviction. For instance, in *State* v. *Valla Santosh*,[103] the 17-year old victim had been in a romantic relationship with the 27-year-old accused, and the couple had repeatedly had penetrative sexual intercourse at various places, because the accused had promised to marry the victim. However, after a few months, the accused stopped meeting the victim, and refused to answer her phone calls. When he was confronted, he also refused to marry the victim. During trial, the victim, as well as her parents testified cogently against the victim, narrating the entire sequence of events. Their testimony remained unshaken even during cross examination. A school certificate was produced as proof of the minority of the victim, and since the certificate was duly proved by the headmaster of the school, the Special Court relied upon it. It rejected the argument of the defence that the victim had consented to the sexual intercourse. It observed, "since the prosecutrix is aged about 17 years and therefore, even if she gives consent to have sexual intercourse, it is immaterial and thereby the accused committed the offence under section 376, IPC." Further, the Special Court also rejected the argument of the defense that the accused did not intend to commit rape against the victim, by relying on Section 30, POCSO. It held that since the victim had stated that the accused had had sexual intercourse with her without her consent, it was incumbent upon him to prove that he had not done so. And since no such proof had been produced by the defence, no benefit could be given to the accused. Moreover, the Special Court rightly held that in a case of rape, where the minority of the victim makes her consent irrelevant, the question of establishing the *mens rea* of the accused does not arise.

Even where the testimony of the victim was not necessarily considered reliable, in some cases, the Special Court applied the law literally, and recorded a conviction based solely on the ground that the factum of intercourse had been established, and the consent of the minor was irrelevant. In *State* v. *Jalli Ramesh*,[104] for example, the accused was charged with having a romantic relationship with the victim on a false promise of marriage. The Special Court held that there was no false promise. However, since the minority of the victim and the fact of intercourse were proved, the accused was convicted.

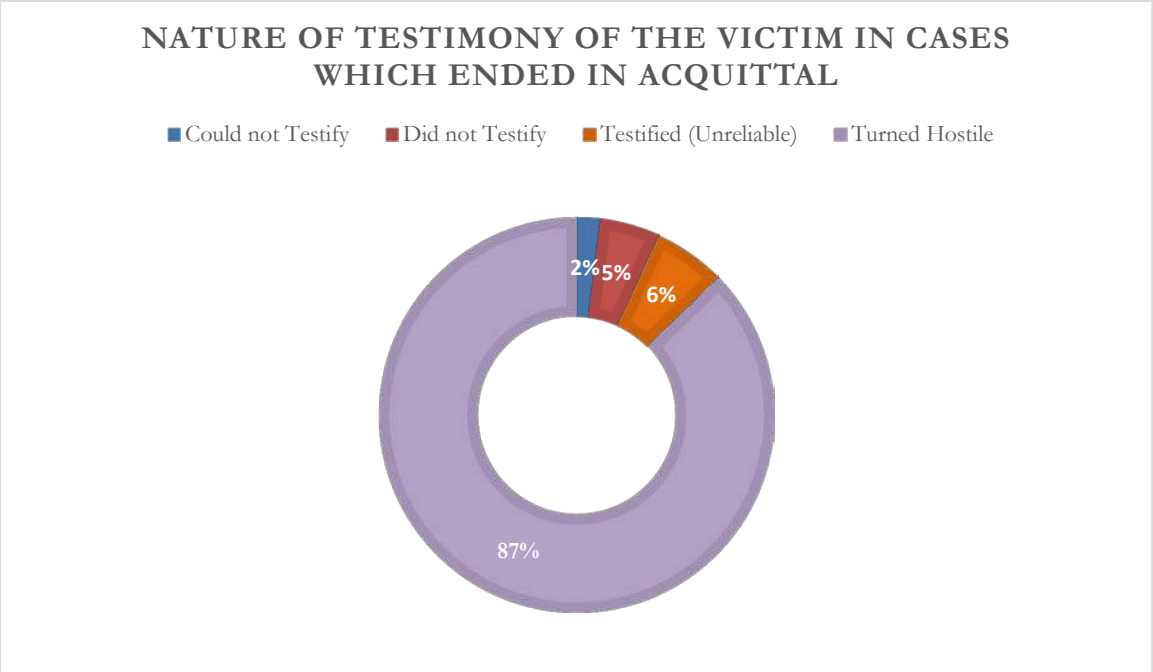
3.12.2 Acquittal

Acquittals were recorded in 94.45% of the cases classified as 'romantic'. The reasons for acquittal are as follows:

3.12.2.1 Acquittal based on the testimony of the victim

[103] POCSO Sessions Case No. 6 of 2015, decided on 29.03.2016 (Vizianagaram).
[104] Sessions Case No. 300/2015, decided on 02.12.2016 (Visakhapatnam).

- Of the 102 romantic cases in which the accused was acquitted, the victim had been unable to testify in two cases (1.96%) because she was dead. In five cases (4.85%), the victim did not testify against the accused because she had been married to someone else, or there had been a compromise outside the Court.
- In 88 cases (86.27%), the victim turned hostile and refused to testify against the accused. In one case, while the victim testified against the accused in her examination-in-chief, she turned hostile during her cross-examination.
- In five cases, while the victim testified against the accused, her testimony was found to be unreliable due to material contradictions.



The trend in majority of cases was that the victim and her family would turn hostile in court and deny that any offence ever took place. As a result, the Special Court would be left with little choice but to acquit the accused. In *State* v. *Kadupuri Suresh*,[105] the minor (age not discussed) victim had allegedly been kidnapped and raped by the accused on the promise of marriage. The FIR had been lodged by the father of the victim, after which the victim and the accused were traced out and brought back by the police. During trial, the victim stated that she was married to the accused, and the latter had never behaved inappropriately with her or committed any sexual offence against her. The father of the victim also stated that he had filed a missing report because he could not find the victim, but a few days later, the victim returned and informed him that she had gone to their relatives' place. Despite being declared hostile and cross examined, the victim and her father maintained that they had never filed an FIR against the accused and the alleged offence had never occurred. Therefore, the accused was acquitted.

Similarly, in *State* v. *Peddaitikala Shyam Kumar & Anr.*,[106] the 17-year-old victim had married the accused (who was already a married man, and had concealed this fact from the victim), in an

[105] S.C. No. 21 of 2015, decided on 19.10.2016 (Srikakulam)
[106] POCSOA SESSIONS CASE No.179/2015, decided on 13.06.2016 (Ongole).

informal ceremony, and had repeated sexual intercourse with him in a house rented by the accused. She had been beguiled by the accused no. 1 and his friend, accused no.2, into believing that accused no.1 was in love with her and would care and provide for her. However, on discovering that the accused no.1 was married, the victim's father lodged an FIR against both the accused persons under S. 363, IPC, and S. 4, POCSO Act. During trial, however, all the material witnesses, including the victim, her father, and her brother turned hostile and stated that the accused had not committed any offence against the victim. The accused was acquitted.

3.12.2.2 Acquittal based on victim's behaviour and a problematic understanding of sexual offences

For a detailed analysis of acquittals based on the victim's behaviour, or a problematic understanding of consent, see section 4.11. (Challenges posed by Romantic Relationships).

3.12.2.3 Acquittals due to compromise/marriage with the accused

Marriage between the victim and the accused had taken place in 47 out of 108 cases (43.51%), either before the report was filed, or subsequently. From these numbers, it would appear that there is a tendency amongst Special Courts to not interfere in cases where the victim and the accused have settled or compromised the matter outside court, particularly where it appears that the two are married to each other. This may become problematic in cases where the marriage of the two was coerced by village panchayat members, or family members. Unfortunately, no evidence of such coerced marriages appears to have been collected by the authorities or is reflected in the judgement. The fact that, in such cases, out-of-court settlements may often be arrived at under fear, or social pressure, and without considering the wishes of the victim, has been acknowledged by the Supreme Court as well. Recently, in *State of M.P.* v. *Madan Lal*,[107] the apex court observing that the single Judge whose decision had been appealed had been influenced by a compromise arrived at between the accused and the parents of the minor victim, reiterated the holding in *Shimbhu & Anr.* v. *State of Haryana*,[108]

> "Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurised by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurise her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between

[107] (2015) 7 SCC 681.
[108] (2014) 13 SCC 318.

> the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) IPC."

The Court then held,

> "Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility."

However, this has almost never been considered by the Special Courts.

In *State* v. *Ravalavalasa Kiran Kumar*,[109] the victim and the accused were in a romantic relationship, and had eloped. The father of the 15-year-old victim had lodged an FIR, stating that the 21-year-old accused had kidnapped her. When the victim and the accused were discovered together, they were handed over to the police. During trial, the victim testified that she was married to the accused, and living happily as his wife. The other prosecution witnesses, such as the father of the victim, also turned hostile. Given that no sexual offence could be made out by the prosecution, the accused was acquitted under the POCSO Act. No charges under the Prohibition of Child Marriage Act, 2006 were considered by the Court. In *State* v. *Gunji Srinivasulu*,[110] it was alleged that the victim (age not discussed) had been enticed by the accused on the promise of marriage to elope with him to Hyderabad. The victim had lied to her parents, saying that she was going to college, and had accompanied the accused to Hyderabad instead. The victim's father then filed an FIR alleging the accused had kidnapped his daughter. During trial, the victim stated that the accused was her husband, and their marriage had been solemnized as per Christian ceremonies in the course of the trial. The victim's parents also testified to the same. All the witnesses mentioned that the accused had not committed any offence against the victim. The Special Court did not go into the age of the victim, and therefore, it cannot be said whether the marriage was a child marriage or not, and therefore, whether any offence under POCSO Act could have been made out. Since all the material witnesses of the prosecution turned hostile, an acquittal was recorded.

Similarly, in several cases, an acquittal was recorded explicitly on the ground that a compromise had been reached outside court between the victim and the accused. In *State* v. *Girish Dharmaiah*,[111] the report by the victim revealed a classic tale of elopement following a romantic relationship. But when the case was heard, the victim refused to even acknowledge the facts and only admitted knowing the identity of the accused. The court reasoned that the

[109] POCSO Sessions Case No. 28 of 2015, decided on 10.02.2016 (Vizianagaram).
[110] POCSOA SESSIONS CASE No.53/2016, decided on 23.04.2016 (Ongole).
[111] SPL.SESSIONS CASE NO.5 OF 2015, decided on 05-05-17 (Krishna).

hostility was born out of the fact that the case had been compromised outside of the court by intervention of the caste elders of the village, and consequently, the mother of the girl had instructed her to testify in contradiction to her original statement. Therefore, the accused was acquitted.

3.12.2.4 Acquittal because victim's age was not established or not considered

In most romantic cases, the observable trend appears to be that when the victim and the accused reach a compromise outside the Court or get married, the investigation, the prosecution, and the Special Court, make no effort to determine the age of the victim. The minority of the victim is often brushed under the carpet because the factum of marriage, and often children born out of the marriage, overshadow everything else. See *State* v. *Ravalavalasa Kiran Kumar*[112] discussed in section 3.12.2.3 above.

In *State* v. *Bantu Ravindra*,[113] the accused was acquitted solely because the victim had turned hostile, and denied that the accused had committed any offence. The Court did not consider the documentary evidence proving that the victim was 17-years-old at the time of the commission of the offence. Further, the Regional Forensic Science Laboratory and wound report showed that she was habituated to sexual intercourse, further proving that she had been subjected to sexual intercourse while she was a minor. However, this was not considered, and therefore, an acquittal was recorded.

In *State* v. *Devarapalli Japaniya & Ors*,[114] it was alleged that the 16-year-old victim and the accused had developed intimacy, and the accused had lured her to his house and raped her. As a result, she became pregnant. When her pregnancy was discovered (in the 7th month), the parents of the victim, after consulting with the village elders, approached the parents of the accused, but they refused to marry the accused to the victim, and in turn, insulted the victim's parents. Therefore, an FIR was lodged. During trial, the victim and her parents turned hostile. The victim stated that she was 22 years old, and had been married to the accused for 3 years. The victim's parents also stated that the accused was her husband, and the two had been living happily for three years. The father of the victim further stated that they had merely gone to the police station to register for an Aadhaar card, and had therefore signed on a blank sheet of paper. They had never intended to file any FIR before the police. The medical evidence in this case showed that the accused and the victim were the biological parents of the victim's child. However, either the prosecution produced no evidence as to the age of the victim, or the same was not discussed in the judgement, because of which the testimony of the victim (that she was actually 22 years old) was accepted by the Court as the only proof as to her age. Therefore, despite DNA evidence, the accused was acquitted.

[112] POCSO Sessions Case No. 28 of 2015, decided on 10.02.2016 (Vizianagaram).
[113] Sessions Case No. 144 of 2015, decided on 27.7.2016 (East Godavari).
[114] S.C.No.49/2015, decided on 04.03.2016 (Guntur).

3.13 Response of Special Courts to Delay in Filing FIRs

The Supreme Court in *State of Andhra Pradesh* v. *M. Madhusudhan Rao*,[115] summarised the established position on delay in filing an FIR,

> "Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety."

However, in sexual offences, particularly against children, immediate filing of an FIR may not be possible for several reasons. *First*, the child victim may not wish to mention the incident out of shock or shame because of the stigma attached to such offences, fear because she may be under threat, or a lack of vocabulary or understanding to explain the abuse. As a result, in some cases, the offence may be discovered only when the victim shows signs of pregnancy. For instance, in *State* v. *Turugopi Venkateswara Rao*,[116] the accused, finding the 11-year-old victim alone in the house, forcibly took her into his house, closed the doors from inside and committed aggravated penetrative sexual assault on her. He threatened to kill her if she revealed the incident to anyone, and therefore, the victim kept it to herself. A week later, she started having severe pains in her stomach and on questioning by parents, revealed what happened and they rushed to file a complaint. The delay in filing FIR was considered understandable under the circumstances.

Similarly, in *State* v. *Kothapalli Veerraju*,[117] the accused was the brother-in-law of the victim, who would visit her house frequently. With the help of his friend, he brought the victim to his home, promised to marry her, and committed rape several times on her. As a result, the victim became pregnant. It was only when her mother noticed that the victim had not had her menstrual cycles and took her to the doctor, that she told her mother what had happened. Allegedly, the accused also confessed, but his parents refused to allow their marriage. Then the complaint was filed leading to the delay. However, in this case, the victim turned hostile and stated that one day when she was returning home from working on the fields, an unknown person raped her, leading to the pregnancy. Later the pregnancy was terminated, but the products of conception were not sent for DNA testing, thereby precluding the possibility of determining the paternity of the child. Given the lack of evidence against the accused, the point of delay in lodging the FIR was not considered by the Court.

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[115] (2008) 15 SCC 582.
[116] Sessions Case No. 37 of 2015, decided on 7.6.2017 (West Godavari).
[117] Sessions Case No. 53 of 2015, decided on 13.6.2016 (West Godavari).

In some cases, a delay may be caused because the victim does not feel comfortable confiding in the male members of her family, or waits to tell a particular family member, typically her mother. For example, in *State* v. *Chinnam @ Avula Chanti*,[118] there was a delay of 18 days in filing the FIR, which was used by the defence to argue that the case had been fabricated. The delay had been caused because the victim resided with her father, and her mother resided separately with her second husband in Hyderabad. When the victim came away from the accused to her aunt's place, she was too afraid to disclose the incident to anyone, and it was only when her mother came to visit her that she was able to disclose what had happened, and subsequently file the FIR. The Special Court relied on the decisions of the Supreme Court in *Kanhaiya Lal and Ors.* v. *State of Rajasthan*,[119] and *Harbans Kaur & Anr.* v. *State of Haryana*,[120] which held that there is no general rule that delay in filing the FIR would be fatal to the case of the prosecution, especially if the victim had no reason to falsely implicate the accused**.** Holding that the explanation for the delay was sufficient, and the victim in this case had no reason to file a false FIR, the Special Court observed,

> "In view of the contents of Ex.P1, I am of the opinion that PW.1 as well as the prosecution has explained the delay in presenting Ex.P1 report to police on 03.02.2015 and when the delay was explained properly, the said delay is not fatal to the case of the prosecution."

The victim might be unable to speak of the incident because the perpetrator is a relative, or in a position of power over her. The Special Court has taken a sensitive approach when considering delay in filing FIRs due to this reason. For instance, in *State* v. *Korada Adinarayana*,[121] there was a 5-day delay in filing the FIR as the mother of the victim had sought the advice of the village elders. She stated that the delay was caused because she was concerned about the fact that the accused was her husband and the complaint would affect her whole family. The Special Court accepted this explanation, stating that such familial considerations were very reasonable. Similarly, in *State* v. *Patakoti Yallareddy*,[122] there was a delay of seven days in lodging the FIR. The explanation given by the father of the victim was that he was concerned about the reputation and well-being of his daughter, and therefore, did not register the FIR immediately. Even though the defence attempted to argue that the delay in FIR was unexplained, the Special Court held that the explanation given by the father of the victim was sufficient. Therefore, it was held that the delay in lodging the FIR would not be detrimental to the case of the prosecution.

Even if the victim discloses the incident, she may be dissuaded by relatives, society, as well as the police, from lodging the FIR. These social realities have also been acknowledged by the Supreme Court in *State of Himachal Pradesh* v. *Prem Singh*,[123] wherein it observed,

> "So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There

[118] POCSOA SESSIONS CASE No.31/2015, decided on 30.05.2016 (Ongole).
[119] 2013(2) ALD (Crl.) 204 (SC).
[120] 2005 (2) ALD (Crl.) 330 (SC).
[121] Sessions Case No. 38/2015 decided on 21.06.2016 (Visakhapatnam).
[122] POCSOA SESSIONS CASE No.52 of 2016, decided on 04.10.2016 (Ongole).
[123] AIR 2009 SC 1010.

> are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR."

In Andhra Pradesh, particularly, one of the trends observed was that incidents of sexual assault were first sought to be resolved with the intervention of village or caste elders, and only when no resolution could be reached was the criminal justice system initiated. However, the Special Court has not responded uniformly to this ground for delay. Thus, in *State* v. *Yadala Nagendra Babu*,[124] FIR was presented with 3 days delay, because the case was first presented in front of caste elders, and despite repeatedly calling them, the accused and his family did not show. The Special Court held the delay to be "properly explained". Similarly, in *State* v. *Vempala Vijay Kumar*,[125] there was a delay of one day in lodging the FIR which, it was contended on behalf of the accused, vitiated the case of the prosecution. The delay had been caused because the bystanders who had intervened when an altercation took place between the mother of the victim and the accused over the fact that the accused had been exposing his penis to the victim, had stated that the elders would confront the accused and settle the matter the next day. However, no action was taken, and the mother of the accused then filed the FIR. The Special Court was satisfied with the explanation given for the delay, even though none of the bystanders who had allegedly offered to mediate the dispute were examined. The court held that it did not materially affect the case of the prosecution.

On the other hand, in *State* v. *Damavarapu Suresh*,[126] the victim alleged that the accused had sexually assaulted her while she was at her paternal uncle's house. While she informed her parents on the same day, the FIR was filed three days later because her parents had placed the dispute before the caste and village elders first. However, none of the caste elders who were consulted were produced before the Special Court, nor had the IO provided any other reason for the delay. Therefore, the Special Court held that the unexplained delay of 3 days was fatal to the prosecution case. Similarly, in *State* v. *Darsanam Daveedu*,[127] there was a delay of 5 days in lodging the FIR. The victim and her parents stated that since the accused was also a resident of their village, they had first informed the village elders about the incident, and only when the elders refused to take any action against the accused, they lodged the FIR. However, the Court did not accept this as a proper explanation for a 5 day delay and the accused was acquitted.

Special Courts have, similarly, taken divergent views on the argument that the delay was caused because the parents were looking for the victim. In *State* v. *S.G. Suresh*,[128] while the victim had been missing since 22.10.2014, the FIR was lodged only on 25.10.2014 when she returned from Bangalore. The Court held that while her father knew that she was missing, and was purportedly searching for her, his conduct of not immediately reporting her absence to the police was not natural. The circumstances were even more suspicious because the father

[124] Sessions Case No. 2 of 2014, decided on 15.07.2014 (Krishna).
[125] S.C. No. 20 of 2015, decided on 08.11.2016 (Srikakulam).
[126] POCSO Special Case No. 12/2014, decided on 09.03.2017 (Nellore).
[127] Sessions Case No. 98 of 2015, decided on 13.04.2016 (Ongole).
[128] Sessions Case No. 417 of 2015, decided on 30.06.2016 (Ananthpuramu).

of the victim could not give a detailed account of where he searched for his daughter, and there was no explanation as to the delay in lodging the FIR. This delay, it was held, cast doubt on the case of the prosecution, and the benefit of this doubt was given to the accused. Similarly, in *State* v. *Donka Sreenu*,[129] there was a 10- day delay in lodging the FIR, and no explanation had been given for the same, aside from the fact that the family of the victim had been trying to locate her. This was held not to be a plausible or satisfactory explanation for delay. The accused was acquitted in this case.

On the other hand, in *State* v. *Chevuri Lokeshwara Rao*,[130] there was a delay of more than 20 days in filing the FIR. The reason given by the parents of the victim was that they had been trying to search for the victim. To that end, a search party had been formed, and a press conference had also been held to get information about her. Only when these efforts failed did they resort to filing an FIR. The Special Court was satisfied with this explanation for delay and held that it did not affect the case of the prosecution. Perhaps the divergence in the views taken by the Special Court from one case to another may be explained by the fact that in the latter case, there was evidence to show that the parents of the victim had, in fact, been making efforts to search for her, whereas the same was not forthcoming in the former cases.

Certain problematic incidents also emerged from judgement analysis regarding delay in filing FIR, and the response of the Special Court to such delay. Two such cases require attention.

In *State* v. *Potnuri Prasad*,[131] there was a few days' delay from the time that the accused refused to marry the victim, but a delay of 3 years from the first instance of intercourse. The Special Court considered the earlier date and stated that the enormous delay would go against the prosecution case. It is true that an offence under the POCSO Act is made out the moment there is sexual intercourse with a minor. However, in several cases, the victim feels aggrieved when the accused refuses to fulfil his promise to marry her because her consent to have sexual intercourse with him was based on the said promise. His refusal, therefore, vitiates the consent. Given the tender age of the victims under the POCSO Act, and the overarching aim of the Act to protect children from sexual abuse, it is untenable for Courts to refuse justice to victims on mere technicalities. In this case, the date of offence ought to have been considered to be the date on which the accused refused to marry the victim, thereby vitiating her consent.

In *State* v. *Pagala Subbarao & Anr.*,[132] there was a delay of nearly one month from the date of the incident of alleged sexual harassment, and the filing of the FIR. The defence attempted to rely on this to suggest that there was unexplained delay which ought to be interpreted in favour of the accused. The explanation given for the delay was that the parents of the victim had first tried to resolve the matter by talking to the parents of the accused persons. When that did not work, they approached the police to file an FIR. However, for nearly a month, the police kept refusing to file the FIR, or postponing the filing on one ground or another. Finally, the victim and her father wrote to the District Collector, who instructed the jurisdictional police station to file and FIR. The Special Court held that this was a reasonable

[129] S.C.No.84/2014, decided on 14.03.2016 (Guntur).
[130] S.C.No. 101/ 2014, decided on 29.03.2016 (Guntur).
[131] Sessions Case No. 145/2015, decided on 08.06.2017 (Visakhapatnam).
[132] POCSOA SESSIONS CASE No.151/2014, decided on 03.06.2016 (Ongole).

explanation of the delay, and therefore, the delay would not be detrimental to the case of the prosecution. While the approach of the Special Court in determining the consequence of the delay was unimpeachable, the explanation given by the prosecution throws light on a highly problematic scenario. The police is duty-bound to register an FIR, and when it was brought to the attention of the Court that they had refused to do so for nearly a month, the Special Court ought to have taken action against the responsible officers, or asked senior police officials in the district to do so.

3.14 Consideration of Medical Evidence

From judgement analysis, it appeared that medical evidence was either unavailable, or not referred to at all by the Special Court, in 311 cases (61.10%). It is difficult to say with any precision whether medical examination was carried out in these cases, but simply not discussed in the judgement, or alternatively, whether no medical examination was carried out at all. In certain cases, the judgement mentions that the victim refused consent to conduct the medical examination, or that the parents of the victim refused to send the victim for medical examination.

3.14.1 Conviction Based on Corroborative Medical Evidence

Medical evidence was available (or referred to in the judgement) in 30 of the 57 cases (52.63%) which resulted in conviction, either under the IPC or the POCSO Act. Of these, the evidence was considered, but not relied upon to reach a decision in four cases, was not considered in one case, and was both considered and relied upon in 25 cases.

In *State* v. *Mannam Prasad*,[133] the accused had allegedly blackmailed the victim into having sex with him. As a result of this instance, she became pregnant. She informed her sister of this and then a report was filed. At the trial, the victim deposed in favour of the prosecution. She stated that she had been blackmailed by the accused into having sex with him. She denied all the suggestions put to her in cross-examination and the Special Court found her testimony to be believable. Further, the medical evidence also suggested that the accused was the father of the child of the victim. However, it is to be noted that this was adduced by the doctor based on the history given by the victim and not through a DNA test. Further, the version of the prosecution was corroborated by other witnesses as well. The Special Court felt that sufficient evidence was adduced to apply the presumption under the POCSO Act. The Special Court also felt that there was no rebuttal to the presumption made by the accused. Under these circumstances, the accused was convicted.

Similarly, in *State* v. *Turugopi Venkateswara Rao*,[134] the accused saw that the 11-year-old victim was all alone in the house and forcibly took her into his house, closed the doors from inside and committed aggravated penetrative sexual assault on her. He threatened to kill her if she revealed this. A week later, she started having severe pain in her stomach and on questioning by parents, revealed what happened. The parents then rushed to file a complaint. Her testimony was very cogent as she said that the accused had 'put his organ inside where she

[133] Sessions Case No. 6/2013, decided on 29.09.2015 (Guntur).
[134] Sessions Case No. 37 of 2015, decided on 7.6.2017 (West Godavari).

passes urine' and didn't change her testimony on cross-examination. This was further corroborated by medical evidence which revealed that the hymen was torn. The Judge relied on this despite there being no congestion, injuries on the thighs, etc., given that considerable time had passed since the incident. Thus, the accused was convicted.

It must be noted that invasive examinations such as the two-finger test, and problematic practices such as relying on the state of the hymen to determine whether a victim was subjected to sexual assault continue to be seen, despite the Supreme Court opining that such practices violate the victim's right to privacy and dignity, and cannot, therefore, give rise to a presumption of consent.[135] It is acknowledged, however, that in several cases, there is no alternative method of determining whether the victim was subjected to penetrative sexual assault, and the medical examination may be the only way for the victim to get justice. At the same time, courts must be mindful of the effect of using medical terminology in their judgements without considering their social impact. A recurring observation, for instance, is that the victim was "habituated to sexual intercourse". While in medical terms this is a statement of fact, and can, in fact, be used as proof of continued victimization, socially, it comes with moral baggage, and tends to cast aspersions on the character of the victim. This, in turn, may have the effect of prejudicing the Judge against her.

3.14.2. Acquittal despite Medical Evidence

From the data above, it appears that medical evidence is rarely considered sufficient proof to enter a verdict of conviction, even though, scientifically, it proves a fact beyond reasonable doubt. Even in cases where medical evidence was available, it was not always relied upon, particularly when the victim and other witnesses of the prosecution turned hostile. This would appear counterintuitive, given that medical evidence can be a crucial tool to arrive at a verdict when eye-witnesses turn hostile, and therefore, ought to be given greater weight. For instance, in *State* v. *Shaik Inthiyaz*, medical examination revealed that the male child delivered by the victim, was the biological child of the victim and the accused. Notwithstanding this, since the victim testified that she had been married to the accused for a long time, and that they were living together happily, the Court did not convict the accused. The victim stated that she had merely complained against the accused because she suspected that he might desert her.

[135] Lillu @ Rajesh & Anr v. State Of Haryana (2013) 14 SCC 643.

Chapter IV: Challenges and Issues

4.1. Gaps in Age Determination

Section 94 of the JJ Act, 2015,[136] provides for a specific procedure for age determination of a child. The Courts did not make any reference to the erstwhile Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (JJ Model Rules, 2007),[137] while deciding the cases. In *Jarnail Singh* v. *State of Haryana*,[138] the Supreme Court held "though Rule 12 [of the Juvenile Justice Model Rules] is strictly applicable only to determine the age of a CICL, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime." No reliance was, however, placed on this provision or on *Jarnail Singh* in any of the judgements analysed in the study. Given that the minority of the victim is essential to the application of the POCSO Act, this omission would be detrimental to the interests of the victim.

In most cases, when the victim and other witnesses of the prosecution turned hostile, the Special Court did not even attempt to go into other aspects of the case, such as medical evidence, or indeed, the minority of the victim. In *State* v. *Done Kumar*,[139] for instance, medical tests revealed the victim girl's age to be 16 or 17 but the accused claimed that she was a major

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[136] 94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.
(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —
(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.
(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

[137] Rule 12(3), JJ Model Rules, 2007:
(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –
(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.
and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

[138] (2013) 7 SCC 263.

[139] SPL. SESSIONS CASE NO. 1 of 2014, decided on 30-07- 14 (Krishna).

of 20 years. It was argued on behalf of the prosecution that as per *State of Maharashtra* v. *Gajanan Hemant Janardhan Wankhede*,[140] age of the victim should be assessed as per the date of birth recorded by the school. The Special Court, however, did not attempt to determine the age of the victim with exactitude, as even if the victim was deemed to be a minor (as per contention made by the prosecution), there was not enough evidence against the accused to convict him. Similarly, in *State* v. *Konda Balakrishna*,[141] the accused was the maternal uncle of the victim, and had allegedly lured the victim into marrying him. The victim had lived with him as his wife for several months, and even given birth to his child. When the parents of the victim lodged an FIR against the accused, and the couple was traced by the police, the victim refused to return to her parents and stayed in a government home. During trial, the victim, her mother, her father, and all the other witnesses turned hostile and stated that the accused had not committed any offence against the victim. It was evident that the accused and victim were married and had a child. The Court made no effort to determine the age of the victim, making only a passing reference to the fact that the victim was "around" 18 years of age, thereby avoiding any discussion on the validity of the consent of the victim. Similarly, while a DNA examination of the child could have proved that the accused and the victim were the biological parents of the child, the same was not conducted. Therefore, the accused was acquitted.

In several cases, it was seen that the necessary evidence was not produced by the prosecution to prove the minority of the victim. For instance, in *State* v. *S.G. Suresh*,[142] the Court noted that while the prosecution had taken the specific plea that the victim was less than 18 years old at the time of the incident, and therefore, an offence under section 12, POCSO Act had been made out, no efforts had been made by the prosecution to prove the said fact. No witnesses were produced, nor were any documents exhibited to establish the minority of the victim. Therefore, it was held that the offence could not be established.

Further, in some cases, it was seen that the age determination tests were performed by professionals not qualified to do so. In *State* v. *Gobburi Koteswara Rao*,[143] it was alleged that the accused, who had been working at the tea shop run by the victim's father, had developed a friendship with the victim, and lured her into eloping with him. However, when they were supposed to elope, the accused did not turn up and the victim realised that she had been cheated. Therefore, she lodged an FIR. The victim was sent for age determination tests, and the report of the dental surgeon concluded that the victim was 17 years of age at the time of the incident. However, during cross-examination, the dental surgeon admitted that he was not competent to determine the age of the victim, and therefore, it could not be said how old she actually was. Further, the prosecution, for reasons best known to it, did not examine the victim or her parents, but only neighbours and other residents of the village who supposedly had knowledge of the incident. At the trial, all these witnesses turned hostile. As a result, the accused was acquitted. In this case, the Special Court could have ordered a fresh age

[140] 2008, Cri LJ 3549 (2).
[141] S.C.No.1/2015, decided on 01.02.2016 (Guntur).
[142] Sessions Case No. 417 of 2015, decided on 30.06.2016 (Ananthpuramu).
[143] S.C.No.8/2013, decided on 21.12.2015 (Guntur).

determination test under section 94(2), JJ Act, 2015, read with the ruling of the Supreme Court of India in *Jarnail Singh*.

In cases where there exists ambiguity with respect to the age of the victim, the benefit of the doubt has generally been given to the accused. This is in line with the criminal jurisprudence, which gives primacy to the rights of the accused. However, it is worth considering whether giving the benefit of the doubt to the accused undermines the legislative intent behind POCSO Act. The tenor of the legislation is ostensibly one derived from a child-rights discourse. The Statement of Objects and Reasons, and the Preamble of the Act explicitly state that the best interest and well-being of the child must be paramount at every stage. The Courts could, therefore, interpret the provisions and decide cases accordingly. In cases where the medical report shows the victim to be either 17 or 18, mechanical acquittal of the accused may be lawful, but is certainly not ideal. In *State* v. *Shaikh Khasim and Ors.*,[144] the victim turned hostile with respect to her age and stated that at the time of the incident she was aged 19 years. The medical examination predicted her age to be either 17 years or 18 years. The Court held that she was 18 years old and the POCSO Act was not applicable to her. The accused was acquitted. In *State* v. *Dukka Suresh & Anr.*,[145] the accused were acquitted of most of the charges because the prosecution failed to prove that the victim was a minor. The Special Court observed,

> "…in the present case, there is no corroboration of the age of victim girl. As observed earlier also that there is discrepancy of evidence in the statements given by the victim girl itself and she stated that she is aged 18 years at one time again she stated that she is aged 12 years . The study certificate issued by the school authorities is not a conclusive proof of date of birth of victim girl. As per the radiologist who is examined as P.W.10, that the victim girl is aged above 16 years and she is in the age group of 16 to 17 years."

The Special Court relied on *Satpal Singh* v. *State of Haryana*,[146] wherein it is held,

> "…very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home etc., the entry in the school register is to be discarded."

The Special Court then observed,

> "It is well settled Law when there is no clear cut age proof and the evidence itself goes to show that she is aged about 18 years, the benefit has to be given to the

[144] Sessions Case No. 97 of 2015, decided on 30.11.2016 (Guntur).
[145] POCSO Sessions Case No. 21 of 2015, decided on 24.03.2016 (Vizianagaram).
[146] 2010 CRI.L.J.4283

defence counsel since there is no cogent proof placed by the prosecution with regard to the age of the victim girl that she is below 18 years to come under the definition of section 2 (d) of the Protection of Children from Sexual offences Act and, therefore, the prosecution has miserably failed to prove that the victim girl is a child within the definition of section 2 (d) of the Protection of Children from Sexual Offences Act."

Therefore, the accused was acquitted.

The Special Courts in Andhra Pradesh have also displayed a marked tendency to take a hands-off, mechanical acquittal approach in matters where the accused and victim have married each other, subsequent to the commission of the offence (for a detailed analysis of this, refer to section 3.12.2). In *State* v. *Jayanti Manikanta*,[147] the accused and the victim had eloped and performed a marriage. The family of the victim alleged that the marriage had been performed and registered based on a fake school leaving certificate obtained by the accused. Therefore, they filed a complaint. At trial, the victim turned hostile and stated that she was a major at the time of the marriage and that she and her husband were living together happily. Her family also turned hostile and stated that they had no complaint against the accused. The principal of the school from which the allegedly fake certificate was obtained denied issuing any certificate as to the age of the victim. Nevertheless, the Special Court held that the prosecution had failed to prove minority and acquitted the accused.

4.2. Investigation Lapses

Several investigation lapses were noticed by the Special Courts, while some were observed by the researchers during judgement analysis. The most common ones were:

4.2.1. Failure to collect documents that establish age or initiate ossification

In *State* v. *S.G. Suresh*,[148] the Court noted that the only proof of age brought forth by the prosecution was oral testimony regarding a Transfer Certificate of the victim, which showed that she had been born in 1998, and therefore, was a minor at the time of the alleged incident. The certificate itself had not been collected by the IO, nor was any information provided as to why it had not been collected. The Special Court noted that since this was not a civil matter, a document could not just be proved by a witness without exhibiting it before a court. In the absence of documentary evidence and given the fact that the victim was considered unreliable due to material contradictions and omissions in her testimony, the prosecution was unable to prove that the victim was below the age of 18 years. Hence, the offence under S. 12, POCSO, could not be established.

In *State* v. *Beera Rajesh*,[149] the IO admitted to the Special Court in his testimony that he did not make any enquiries with the school authorities or attempt to collect any school certificate or birth certificate to obtain proof of the victim's minority. The defense challenged that the true age of the victim was 19 years old and in the absence of documentary evidence, despite the victim's cogent testimony regarding the sexual offence, the Special Court held that the

[147] Sessions Case No. 48/2014 decided on 01.05.2015 (Visakhapatnam).
[148] Sessions Case No. 417 of 2015, decided on 30.06.2016 (Ananthpuramu).
[149] Sessions Case No. 16 of 2015, decided on 26.9.2016 (West Godavari).

offences under Section 7 and 8, POCSO Act could not be established. The accused was instead convicted under Section 452 and 376 r/w 511, IPC.

4.2.2. Failure to seize relevant property or prepare *Panchnama* correctly

In *State* v. *Juthuka Apparao*,[150] the IO did not notice whether the bathroom door had any bolt or not despite doing site mapping of the scene of the offence where the accused had undressed and molested the 5-year-old victim. The Special Court pointed out that this was crucial to the investigation as it was necessary to determine whether the victim could have escaped. There was no mention of the description of the door in the spot *panchnama*. However, this did not affect the result of the case and the accused was convicted due to other factors like the cogent testimony of the victim and other witnesses.

In *State v. Sayyadh Rehan*,[151] the Special Court noted that no spot investigation was carried out by the IO. The Court observed that this, accompanied by other lapses like no medical examination, made the prosecution version very weak and the accused was acquitted.

In *State* v. *Donka Sreenu*,[152] it was alleged that the accused had kidnapped the 17-year-old victim, married her in an informal ceremony in a Church in Nagapatnam (Tamil Nadu), and repeatedly committed penetrative sexual assault on her in a rented flat in Vishakhapatnam. The IO had not procured any photographs of the marriage between the victim and the accused, nor had he proceeded to Vishakhapatnam or Nagapatnam to examine the alleged scenes of the offence, and had also not made any effort to produce any independent witnesses who could corroborate the statement of the witness. Therefore, the accused was acquitted.

In *State* v. *Boya Prahladha*,[153] the Special Court noted that the police had not seized the blouse, petticoat and the towel that the victim was wearing when the attempted rape occurred. This should have been collected and sent to the Forensic Science Laboratory for examination. The results therefrom could have supported the case of the prosecution. While this was not the sole factor, combined with the hostility of the witnesses and discrepancies in records, it led to the acquittal of the accused.

4.2.3. Discrepancies in the records

In *State* v. *Boya Prahladha*,[154] the Special Court observed that while the victim and her parents stated that they had complained to the police on the day that the alleged offence had occurred, the date on the FIR reflected that it had been made one day later, and no explanation could be offered to explain this discrepancy. The Special Court also found that while the FIR stated that the victim had a towel hanging around her neck which had been used by the accused to pull her down and tie her hands and feet, the description of the clothes worn by the victim in her statement to the police made no mention of the said towel.

[150] Sessions Case No. 43 of 2016, decided on 30.3.2017 (East Godavari).
[151] Sessions Case No. 83 of 2016, decided on 06.04.2017 (Visakhapatnam).
[152] S.C.No.84/2014, decided on 14.03.2016 (Guntur).
[153] Sessions Case No. 360 of 2015, decided on 31.08.2016 (Ananthpuramu).
[154] Sessions Case No. 360 of 2015, decided on 31.08.2016 (Ananthpuramu).

The Court found that these and other gaps in investigation were sufficient to create doubt in the case of the prosecution, and gave the benefit of this doubt to the accused.

4.2.4. Failure to record the statement of independent witnesses

In several cases, failure on the part of the police to record the statement of independent witnesses was considered fatal to the case of the prosecution. In *State* v. *Kamanaboina Srinu & Ors.*,[155] the Special Court observed that since the incident had taken place in an agricultural field during the day, it should have been noticed by the villagers working in the field. The Special Court found it highly suspicious that no other person came out to help the victim, nor were any independent witnesses produced to corroborate the testimony of the victim and her aunt. Further, the aunt turned hostile. Since the police failed to find or examine any independent witnesses, doubt was cast on the veracity of the testimony of the prosecution witnesses, leading to acquittal.

Similarly, no independent witnesses were examined in *State* v. *Kagga Rama Krishna.*[156] The Special Court noted that the accused and the victim had resided for prolonged periods in Tirupathi, Vijayawada, and Chinakakani where the alleged offences took place. However, the IO had not made any effort to produce any independent witnesses from these cities, like neighbours, to corroborate the case of the prosecution. This, in addition to the fact that the victim and her parents turned hostile, led to acquittal. A very similar fact scenario played out in *State* v. *Donka Sreenu*,[157] (above) and once again, the prosecution failed to examine independent witnesses leading to acquittal.

Caution must be exercised while considering the lack of independent witnesses as a ground for acquittal. Other inconsistencies must be kept in mind while coming to a conclusion as to whether reasonable doubt had been created in the case. This is because, often, although independent witnesses may be available, they are unwilling to become part of the legal process, due to a general distrust of investigating authorities, a fear of the court system, or, in some cases, apathy towards incidents which do not directly affect them. That said, the IO must expend efforts to produce and examine such witnesses.

4.2.5. Lapses with respect to collection of samples and medical reports

In *State* v. *Chevuri Lokeshwara Rao*,[158] while the victim had become pregnant, allegedly as a result of repeated penetrative sexual assault by the accused, no DNA test was done to ascertain whether the accused was, indeed, the biological father of the victim. Since the case was otherwise built only on the testimony of the victim and other circumstantial evidence, had the IO sent samples for a DNA test, the case of the prosecution would have been stronger. As a result, while the accused was convicted, it was under Section 4, POCSO Act and not Section 6, as ingredients for the same had not been established.

[155] Sessions Case No. 43 of 2014, decided on 24.02.2016 (Guntur).
[156] Sessions Case No. 41 of 2015, decided on 02.02.2016 (Guntur).
[157] Sessions Case No. 84 of 2014, decided on 14.03.2016 (Guntur).
[158] Sessions Case No. 101 of 2014, decided on 29.03.2016 (Guntur).

In *State* v. *Darla Ratnam*,[159] semen was found on the victim's person and samples were collected and preserved. The Special Court opined that while the medical examination showed that the victim had suffered sexual assault, there was not enough proof to link it to the accused. However, the investigation did not order a DNA analysis of the semen to prove whether it belonged to the accused. Had the analysis been done, there would have been conclusive proof to either implicate or exonerate the accused. Therefore, the accused was acquitted. The same was also seen in *State* v. *Boddu Venkateswara Reddy & Anr.*[160]

In *State* v. *Bayyavarapu Nageswara Rao*,[161] the medical examiner's report stated that the victim had old hymenal tears indicating sexual assault, and was also pregnant. However, no efforts were made by the IO to determine the paternity of the victim's child, in order to link the accused conclusively to the alleged offence and he was acquitted. The Special Court too, did not order a paternity test and instead opined that there was no evidence to convict the accused.

4.2.6. Multiple investigation lapses

In *State* v. *Kelavath Dudiya Naik*, [162] the accused allegedly stalked and threatened the victim saying he would kill her if she did not reciprocate his feelings. He was acquitted because of the following lapses:

- No independent witnesses were produced to testify that the accused was produced in front of the *panchayat* and chastised for his past misbehaviours.
- No statement under Section 164, Cr.P.C was recorded in this case.
- No charges under the Information Technology Act were included for clicking nude pictures of the victim.
- No attempt was made to procure evidence of the photographs' existence.

In *State* v. *Chukka Appala Raju*,[163] the victim was a 10-year-old who was alleged to be in a romantic relationship with the main accused, and had become pregnant as a result. After one of their meetings, the main accused told the victim that he had told one of his friends about them, which made her upset. The friend of the accused allegedly suggested that the accused push the victim into a well. The accused took his advice and pushed her, thereby killing her. When confronted with this, the accused confessed. However, during trial, the defence contended that there was no evidence linking the accused to the crime other than the inadmissible extra-judicial confession. The Special Court agreed, and acquitted him. The following investigation lapses were noted by the Special Court and observed during judgement analysis:

- Though it was alleged that they used to converse over the phone, no phone records were presented.

[159] Sessions Case No. 8 of 2014, decided on 07.11.2015 (Guntur).
[160] Sessions Case No. 12 of 2015, decided on 13.01.2016 (Guntur).
[161] Sessions Case No. 72 of 2015, decided on 04.01.2016 (Guntur).
[162] Sessions Case No. 87 of 2015, decided on 28.02.2017 (Guntur).
[163] Sessions Case No. 29/2014, decided on 04.11.2016 (Visakhapatnam).

- The medical examination of the victim was not carried out to investigate a sexual offence. Since the body had since been cremated, it had also become impossible to establish whether she was pregnant.
- The Special Court also found that the police officer signing on the confession of the accused had not recorded the confession.
- There was no confession recorded before a Magistrate.

In *State* v. *Kannuri Sanyasi Rao*,[164] it was alleged that the accused entered the house of the 16-year-old, physically handicapped victim when she was alone, closed her mouth, pushed her onto a cot and raped her. However, the accused was convicted under Section 10 instead of Section 6, which was the charge initially framed. The ingredients of penetrative sexual assault were not held to be met due to the following investigation and prosecution lapses:

- There was no Section 164 statement of the victim and witnesses recorded.
- The accused himself confessed in police custody and was not taken to the Magistrate immediately to get it recorded.
- The potency test of the accused was not conducted.
- The witnesses who saw the accused enter the house (and scene of crime) were not produced by the prosecution leading to fatal error.
- There was no translator present while taking the victim's testimony.
- There was no age determination certificate or other documentary proof of the victim's age.

4.3.7. Breach of prescribed procedures

In *State* v. *Kuparala Shiva*,[165] the evidence of the victim was recorded by a Woman Police Constable whereas under Section 24, POCSO Act, the evidence of the victim must be recorded by a Woman Police Inspector. As a result, the Special Court found the testimony of the victim unreliable. This and lack of medical evidence resulted in the acquittal of the accused.

> "A lot of bribe is demanded by the Police at the level of writer and constable while filing the FIR. Even to inform the higher authorities, the constables does not allow us to meet them. Even while recording of the 164 statement, the videographer too demanded for bribe to hand over the CD of her statement. Till now, I have given an amount of Rs. 10,000/- as bribe."
>
> - Parents of a child victim

4.4. Inconsistent Application of Aggravated Grounds or Special Laws

The analysis brought out in Section 3.8.1 reveals that the aggravated nature of the offense has not been correctly reflected in 35% of the cases where it was warranted. In other words, in 35% of the cases where the offence was of an aggravated nature, charges were not framed under either section 5, or section 9 of the POCSO Act. While the rate of incorrect framing of

[164] Sessions Case No. 111 of 2015, decided on 22.3.2017 (East Godavari).
[165] Sessions Case No. 277 of 2015, decided on 20.06.2016 (Visakhapatnam).

charges in Andhra Pradesh is lower compared to the other States in which this study was conducted, these numbers do still reflect the need for better training of the police and judicial officers.

In *State* v. *Mullaparthi Ranga Rao*,[166] not only was the accused the 'grandfather by courtesy' of the victim, and hence, ostensibly in a position of trust and authority, but also the victim was only four years old. Both these factors warranted the application of charges for aggravated grounds, but were completely overlooked. Such oversights are especially egregious when the accused is, in fact, found guilty as in *State* v. *Suresetty Narayana*,[167] where the sentence for the aggravated offence against a 7-year-old could have been harsher had he been charged accurately.

It must be noted, however, that the failure to frame charges for an aggravated offence can be corrected by the Special Court at a later stage if it feels that a graver offence is made out by the case of the prosecution, provided the accused is given the opportunity to defend himself against the revised charge. While the Cr.P.C. gives Judges the power to do this, the power is rarely exercised. Hearteningly, in Andhra Pradesh, charges for an aggravated offence were framed in at least one case. In *State* v. *Senagal Ayyappa*,[168] charges had initially been framed under Section 8, POCSO Act. However, the Special Court noted that since the victim was "deaf, dumb, and physically challenged", the charge ought to have been framed under Section 10. The accused was convicted under Section 10, and punished to the minimum sentence of five years.

The oversight with reference to special laws is also evident from the analysis brought out in 3.8.4, where it was found that only one charge each was framed under the Information Technology Act, 2000, Immoral Traffic (Prevention) Act, 1956, Dowry Prohibition Act, 1986, and Prohibition of Child Marriage Act, 2006. The facts of several cases would reveal that there were more instances to apply these special legislations. For instance, the Information Technology Act, 2000 contains provisions such as Section 67, especially Section 67B, that penalize the recording of sexual abuse upon children. Nevertheless, no such charges were slapped on the accused in cases such as *State* v. *Kelavath Dudiya Naik*,[169] where the accused had threatened to make public photographs of the victim in the nude, or *State* v. *Munelli Manga Raja*,[170] where the accused had taken photos of the victim while sexually assaulting her.

4.5. Lapses in Prosecution

It appears that there are no PPs dealing exclusively in POCSO cases. Interviews with the assigned prosecutors revealed that they appear for all cases before the designated court, which hears several cases aside from POCSO matters. At times, prosecutors are untrained in dealing with children, and tend to be insensitive. For instance, one of the child victims interviewed stated that she felt scared of the Public Prosecutor, who was rude and aggressive.

[166] SPL.SESSIONS CASE NO.43 OF 2014, decided on 05-05- 17 (Krishna).
[167] POCSOA SESSIONS CASE No.86/2015, decided on 16.11.2015 (Ongole).
[168] Sessions Case No. 24 of 2016, decided on 28.3.2017 (East Godavari).
[169] Sessions Case No. 87 of 2015, decided on 28.02.2017 (Guntur).
[170] Sessions Case No. 29 of 2015, decided on 30.9.2016 (West Godavari).

Private legal practitioners are not forthcoming in helping the prosecution. Interviews suggest that even prosecutors are not always willing to take help from private lawyers. Often, the prosecutors have failed to bring the court's attention to presumptions under the POCSO Act and not adduced evidence regarding age of the victim. Where the victim or her family are unaware of their right to seek compensation, it is the prerogative of the Public Prosecutor to do so on their behalf. However, it would appear that not only are some prosecutors unaware of this, they are also actively unwilling to do it. One of the prosecutors interviewed, stated,

> "It is not our job to plead for compensation. The CWC and the Collector need to handle this. It is ordered by the judge, but no action is taken subsequently. No compensation can be given if she has turned hostile. The compensation should be given before she turns hostile, to prevent her from turning hostile."

Lapses on the part of the prosecution are, thus, frequent and often noted by the court:

In *State* v. *S.G. Suresh*,[171] the Court noted that while the prosecution had taken the specific plea that the victim was less than 18 years at the time of the incident, and therefore, an offence under S. 12, POCSO had been made out, no efforts had been made by the prosecution to prove the said fact. No witnesses were produced, nor were any documents exhibited to establish the minority of the victim. Therefore, it was held that the offence under S. 12, POCSO, could not be established.

In *State* v. *Dasari @ Yarlagadda Govindu*,[172] it was alleged that the 60-year-old accused had inserted his finger into the vagina of the 6-year-old victim while she was at his house to play. The Special Court noted that while the case of the prosecution was that the younger sister of the victim walked in on the accused while he was assaulting the victim, she had not been examined, and no reasons had been given for non-examination. Non-examination of the sole eye-witness aside from the victim was held to be fatal to the case of the prosecution, and created doubt in favour of the accused.

In *State* v. *Gudimetla Nuthan Chakradhara Reddy*,[173] the accused used to visit the house of the victim and pursued her romantically. He asked the victim to come with him to get married under the threat of committing suicide. She succumbed and they stayed in different places under the pretext of being married and he forced himself on her sexually. He dropped her back when he heard that a complaint had been filed. The victim turned hostile. In her testimony, she stated that while the accused came to attend computer class in her house, he never talked to her and never approached her. She also denied recording the 164 statement. The Court noted the following flaws in the prosecution's case: the letter purported to have been left by her for her family was not adduced, the initial complaint did not mention the role of the accused, no witnesses who had seen victim and accused together were produced. Hence, the accused was acquitted.

[171] Sessions Case No. 417 of 2015, decided on 30.06.2016 (Ananthpuramu).
[172] S.C.No.35/ 2015, decided on 03.08.2016 (Guntur).
[173] Sessions Case No. 10 of 2015, decided on 18.9.2015 (West Godavari).

However, there were several lapses that went unnoticed, or, at least, were not commented upon in the judgements. For instance, in *State* v. *Devarapalli Japaniya & Ors*,[174] there was DNA evidence to prove that the accused was the biological father of the victim's child. However, no evidence was led by the prosecution as to the age of the victim. Given this, the testimony of the victim, that she was 22 years of age, and not 16, was accepted by the Court. Therefore, despite DNA evidence, the accused was acquitted. Secondly, the father of the victim in this case stated that they had never given any FIR to the police, and had, in fact, gone to the police station only to register for an Aadhaar card, and his signature was obtained on a blank sheet of paper. The prosecution made no attempt to question him as to how, if no FIR was made, the victim was sent for medical examination, the accused was sent for medical examination, their statements were recorded by the police, and a chargesheet was also filed.

4.6. Gaps in Compensation

From the interviews conducted by the researchers, it appeared that a number of functionaries within the child protection system felt that victims of child sexual abuse turned hostile in Special Court because they were not paid compensation. For instance, one of the respondents from the police stated,

> "I believe that the biggest problem is that compensation is not paid to the victims in time. In most cases, there is a monetary incentive to turn hostile because the victim and her family are poor. If they were paid compensation quickly, there would be no reason for them to turn hostile."

Similarly, one of the prosecutors interviewed mentioned,

> "I feel the root of all problems is that compensation is not given to the victim by the government in a timely manner. Hardly any of the victims get their due compensation right now, and that is the reason that most of them tend to turn hostile. All the government wants is conviction, but is that what the victim wants? They need jobs, land, money- they need something that will let them live a normal life again."

A large part of the compensation orders were under S. 357 Cr.P.C., where fines are given as compensation. The greatest problem with this practice, as elaborated in section 2.6., is that is makes the compensation of the victim dependent on recovery of the fine amount from the accused. If the accused chooses to suffer further imprisonment instead of paying the fine, the victim would be deprived of any compensation. Further, since the conviction and sentence (including fine) are subject to appeal, the victim is unlikely to receive compensation until all such processes are complete.

In certain cases, such as *State* v. *Gopavarapu Mohan Rao*,[175] the Special Court ordered the accused to pay Rs. 3,00,000/- as compensation to the victim. It was directed that in default of

[174] S.C.No.49/2015, decided on 04.03.2016 (Guntur).
[175] POCSOA SESSIONS CASE NO. 101 of 2015, decided on 20.04. 2016 (Ongole).

payment, the accused would have to suffer further simple imprisonment for 6 years in accordance with the judgement in *Suganthi Suresh Kumar* v. *Jagdeeshan*,[176] which held,

> "… section 431 of the Code [Cr.P.C.] has only prescribed that any money (other than fine) payable by virtue of an order made under the Code shall be recoverable 'as if it were a fine'. Two modes of the recovery of the fine have been indicated in Section 431 (1) of the Code. The proviso to the sub-section says that if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant for levy of the amount."

Further, the judgement was also referred to the Principal Judge to determine further compensation under the victim compensation scheme referred to in S. 357A(1), Cr.PC. This is because the Principal Judge of the Sessions Court is the Chairman of the DLSA.

While this is a more direct way of ordering compensation, it still makes the compensation dependent on the capacity and the willingness of the accused to pay. Thus, in *State* v. *Patakoti Yallareddy*,[177] and *State* v. *Mannepalli Venkata Ravi*,[178] the accused was ordered to pay Rs. 50,000/- and Rs. 1,00,000 respectively as compensation, or in default to suffer imprisonment. In both these cases the judgement recorded that the accused persons had not paid the compensation to the victims.

Additionally, some of the problems faced in awarding and disbursal of compensation, as apparent through the interviews and observations were:

First, while all functionaries feel that compensation should be awarded instantaneously, there seemed to be a great degree of confusion as to who should be awarding the compensation, and what procedure is required to be followed for the same. This was compounded by a lack of coordination between the functionaries in the Child Protection System. Given this, it is not difficult to imagine that victims and their families would find it very difficult to obtain compensation even if they were aware of this remedy.

Secondly, even where compensation was awarded, it had not reached the bank account of the victim even after several months, and therefore, had not been available to her in the most crucial period for rehabilitation.

Thirdly, the different functionaries responsible for award and payment of compensation, such as the Special Court, the Police, the Collector, and the Public Prosecutor must communicate with each other and work in coordination. It must be ensured that victims and their families are informed of their right to seek compensation and provided the support and assistance they need to seek it, and subsequently, receive it from the State Government.

[176] 2002 (1) ALD (Crl.) 417 (SC).
[177] POCSOA SESSIONS CASE No.52 of 2016, decided on 04.10.2016 (Ongole).
[178] POCSOA SESSIONS CASE No.31/2016, decided on 18.08.2016 (Ongole).

4.7. Need for better Linkage between the Criminal Justice System and the Child Protection System

Both the JJ Act, 2015 and the POCSO Act require an efficient coordination between the traditional criminal justice system on one hand and the child protection system on the other. Given that children entering one system may require transitioning to the other, it is essential that all stakeholders are aware of the ways in which the two systems can interact.

One of these is the production of children in need of care and protection (CNCP) under the POCSO Act before the CWCs. Interviews revealed that CNCPs are not produced before the CWC unless the police anticipate that there is a threat to the child. The member also discussed how there is a lack of coordination between the police and the CWC typified by cases where children are sent for multiple medical examinations. This indicates that there is an urgent need for clarity in this regard.

Another area in which these two systems overlap is when CNCPs have to give evidence at trial. The preparation of a girl, approximately 11-years-old, for trial revealed that number of the safeguards laid down in the POCSO Act are not adhered to. The girl was brought to the office of the Public Prosecutor by police officers in uniform, and while she was being prepared, there were four men in the room, two of whom were in uniform. There were no female police officers or support persons in the room.

Given the tender age of the child as well as the high rate of hostile witnesses in POCSO cases, it is important that children be given all the support they need to testify. Indeed, the effect of support on child victims was borne out in the interview conducted with two victims. They stated that their confidence to testify was increased manifold when they were explained the process of the trial and accompanied to Court by a support person. The creation of a child-friendly atmosphere, presence of support persons, and minimizing court visits could go a long way in ensuring better testimony from child victims.

Another area where the linkage between the two systems could improve is in the application of the Protection of Women from Domestic Violence Act, 2005 when the accused is in a shared household with the victim. This would be particularly useful since the PWDVA allows for number of interim reliefs that the child victims could benefit from. Indeed, one CWC member opined that in cases where the accused was in the same household, the child should be kept in an institution till testimony. This is likely to create a further mental stress on the child. For instance, a restraining order against the accused under the PWDVA could be used to enable the child to live in an environment familiar to her. In the 40 cases where the victim was the daughter or wife of the accused, the PWDVA was not used in any. The possibility of utilizing provisions of the PWDVA in POCSO Cases to advantage the child should be explored.

The final aspect in which linkages could be better managed is the presence of support providers such as counsellors and translators. In cases of children with disability, the responsibility to arrange for a translator or special educator is placed upon the police in practice, who may have availed the services of such persons during their investigation. The

Special Court and the District Child Protection Officer (DCPO) do not maintain a list of these service providers. As concerns support persons, it appeared from the interviews and observations in the field that there is a degree of animosity between NGOs and the stakeholders and functionaries within the government. Active efforts are never made by government functionaries to seek the services of non-governmental Support Persons. And in some cases, 'interference' by such persons is resented. It is important to have a centralized register to ensure a quality pool of resource and support persons available to all institutions. Further, the functionaries and stakeholders within the government must work in coordination with those in NGOs for the larger goal of child protection.

4.8. Need to Address Support Gap

The rate of hostility, as observed from judgement analysis was a shocking 77.5% in Andhra Pradesh, one of the highest rates observed amongst all the states where this study has been conducted.[179] In fact, hostility of the victim was one of the main causes for the high rate of acquittal in cases under the POCSO Act, and most respondent expressed their frustration about the same. This is attributable to a severe lack of support during the investigation and trial process. Several respondents also stated that they have never had support persons appointed for child victims.

Support Persons are usually appointed by the CWC, if the CWC feels that there is a need for the same. This apprehension to appoint Support Persons is troubling, as it may deprive children of much needed care and protection. This is also clear from the statement of two child victims, who stated that they felt more comfortable and confident when they were assisted by a Support Person.

Unless a robust support system is institutionalized, children will continue to feel re-victimized by the criminal justice process. Complexities such as grooming, external pressure to compromise, and the inability to bear the financial, social and emotional burden of a criminal trial can only be addressed with the necessary support of qualified, experienced professionals. Until such support is provided, child victims will continue to turn hostile.

4.11. Challenges Posed by Romantic Relationships

At the time when the POCSO Act was being debated, the National Commission for Protection of Child Rights (NCPCR) had suggested that the age of consent in the IPC (16 years) prior to the Criminal Law (Amendment) Act, 2013, be retained, so that teenage relationships and consensual sexual activity are not criminalised. It had also recommended "close in age" exemptions, which would protect consensual non-penetrative sexual acts between children above 12 years of age who are either of the same age or within two years of each other, and consensual penetrative sexual acts between children above 14 years who are either of the same age or within three years of each other.[180] The NCPCR Bill also proposed criminalization of non-consensual sexual acts with children between 16 and 18 years under

[179] Refer to the Reports on the Studies in other states at:
Delhi: https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOSCOAct2012.pdf.
Assam: https://www.nls.ac.in/ccl/jjdocuments/studyspecialcourtassamPOSCOAct2012.pdf.
Karnataka: https://www.nls.ac.in/ccl/jjdocuments/posco2012karnataka.pdf.
Maharashtra: https://www.nls.ac.in/ccl/jjdocuments/POSCOMaharashtrastudy.pdf.

[180] NCPCR, Protection of Children from Sexual Offences Bill, 2010, exceptions to Clause 3.

specific circumstances. Such clauses also exist in other jurisdictions, notably Canada, where the age of consent is 16 years, but a 14 or 15-year-old can consent to sexual activity as long as the partner is not more than five years older, and there is no relationship of trust, authority or dependence between them.[181] Several states in the United States of America also have these exemptions, called "age-span" provisions or Romeo and Juliet Laws.[182]

However, the determination of age gap is no less arbitrary and problematic than the determination of an age of consent itself. There are vast differences in this regard across the world, owing to differences in culture, and varying levels of sexual awareness and exposure. Not only is there no scientific or social rationale for distinguishing between 16-year- olds and 18-year-olds, or between 18-year- olds and 19-year- olds, it is even more absurd that all 16-year- olds are clubbed together without considering their individual circumstances and capacity to consent. While this is intended to protect children from sexual abuse, it may have the opposite effect. Noted legal scholar Catherine Mackinnon has observed,

> "The age line under which girls are presumed disabled from consenting to sex, whatever they say, rationalizes a condition of sexual coercion which women never outgrow. One day they cannot say yes, and the next day they cannot say no. The law takes the most aggravated case for female powerlessness based on gender and age combined and, by formally prohibiting all sex as rape, makes consent irrelevant on the basis of an assumption of powerlessness. This defines those above the age line as powerful, whether they actually have power to consent or not… dividing and protecting the most vulnerable becomes a device for not protecting everyone who needs it, and also may function to target those singled out for special protection for special abuse. Such protection has not prevented high rates of sexual abuse of children and may contribute to eroticizing young girls as forbidden."[183]

The POCSO Act also rigidly pegs the age of consent at 18 years and does not recognize adolescent sexual expressions or autonomy. As a result, romantic cases present unique challenges before the police, prosecution, and Special Courts. In Andhra Pradesh, the acquittal rate in romantic cases is approximately 5% higher than in other cases under the POCSO Act. At the same time, some respondents expressed support for the brightline approach taken by the POCSO Act, and advocated, instead, better awareness of the law,

> "Once the [romantic] case comes up to our notice, we proceed like a POSCO case. I do feel bad that they enter into legal system… We should observe POSCO day to educate children related to sexual crime, in the same manner as we celebrate civil rights day. There should be a mandatory rule for the government officials, especially women officers, to conduct awareness programmes for such children."

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[181] Janine Benedet, The Age of Innocence: A Cautious Defence of Raising the Age of Consent in Canadian Sexual Assault Law, 13(4) THE NEW CRIMINAL LAW REVIEW: AN INTERNATIONAL AND INTERDISCIPLINARY JOURNAL 665, 666 (2010).

[182] Joseph J. Fischel, Per Se or Power? Age and Sexual Consent, 22(2) YALE JOURNAL OF LAW AND FEMINISM 279, 293 (2010).

[183] Catherine Mackinnon, TOWARDS A FEMINIST THEORY OF STATE 175-176 (1989).

Some of the challenges most commonly faced in such cases are:

First, the veracity of romantic cases is frequently called into question because it is projected that the case may have been registered by parents who disapproved of the match for various reasons, such as caste or religion, and the victim may have been pressured into testifying against her boyfriend. Victims and their families invariably turn hostile in such cases because of marriage or compromise between the victim and the accused and leave the Special Courts with no option but to record an acquittal. They also refuse to cooperate with the investigation. For instance, in *State* v. *Atchi Abhiram*,[184] the prosecution's case was that the 14-year-old victim and the accused were in a relationship, which was objected to by the victim's mother. The accused lured her and took her away from the house, they stayed first in a temple and then in the house of the acquaintance of the accused where the accused raped her. The victim's sister discovered her whereabouts and the victim was brought home. A complaint was subsequently filed. However, all material witnesses turned hostile and the accused was acquitted.

Secondly, evidence of marriage or pregnancy, instead of being detrimental, can work to the advantage of the accused and result in an acquittal. Special Courts take a lenient view if the victim (and her child) is dependent on the accused, or if the victim has been living with the accused as his wife. In such cases, a strict application of the law would defeat the ends of justice. It is not surprising, therefore, that none of the cases in which the victim and the accused were married resulted in convictions. In most cases, in fact, by the time the matter came to trial, the victim stated that she was happily married to the accused, and denied that any offence had been committed against her. For instance, in *State* v. *Katakam Durga Rao*,[185] the 19-year-old accused had allegedly professed his love to the 16-year-old victim, and the two had had sexual intercourse multiple times, since the victim believed that the accused would marry her. However, the accused refused to marry the victim, and therefore, an FIR was lodged. By the time the matter was heard, however, the accused and the victim had been married. All the witnesses, including the victim, stated that the accused was the victim's husband, the victim was 19 years old as well, and no offence had ever been committed by the accused. Therefore, the accused was acquitted. The same was the case in *State* v. *Konda Balakrishna*,[186] discussed in section 4.1 above.

Thirdly, in some cases, the Special Court concluded that the victim consented to the sexual act, even though she stated explicitly that she did not. This was often based on a problematic understanding of the offence itself. For instance, in *State* v. *Indla Venkatesh & Ors.*,[187] the accused no.1 and two of his friends had pulled the 16-year-old victim out of school pretending that her grandfather had died, and allegedly attempted to kidnap her, because the accused no.1 wanted to satisfy his sexual lust with her. In the Special Court, however, the defence argued that the victim had been in love with the accused, and had asked him to take her with him in several letters written to him. While the victim denied having had a love affair with the accused, the Special Court inferred the same from the letters exhibited by the accused, and concluded that the victim had accompanied him willingly, even though two

[184] Sessions Case No. 40 of 2015, decided on 21.1.2016 (Guntur).
[185] S.C.No. 92/ 2015, decided on 03.03.2016 (Guntur).
[186] S.C.No.1/2015, decided on 01.02.2016 (Guntur).
[187] S.C.No.57/ 2015, decided on 04.10.2016 (Guntur).

independent witnesses testified that they had heard the cries of the victim, and accosted the accused, and upon their arrival, the accused had fled the scene, leaving the victim behind. There does not appear to be any reason why the Special Court concluded that the victim had accompanied the accused willingly, merely because she had written a few letters to him previously, without considering whether her feelings had changed in the interim, or whether she could have refused consent to accompany him, even if she had feelings for him.

The legislative intent of the Criminal Law (Amendment) Act, 2013 was to lay down a progressive and nuanced understanding of consent, whereby the Court would be required to ascertain that the victim had consented to every sexual act, instead of presuming that a prior relationship, or consent to one particular act, translated into a carte blanche for all sexual acts. However, the analysis of romantic cases indicates that this intent has not been internalized. It appears that in most cases it is assumed that if the victim had ever expressed any interest in the accused, she loses her right to refuse consent for any sexual act thereafter even though consent of the victim is irrelevant in cases under the POCSO Act.

In other cases, an acquittal was recorded when the victim was not found to have adhered to the script of the ideal victim. For instance, in *State* v. *Yadala Nagendra Babu*,[188] it was alleged that the accused forcibly took the 13-year-old victim on his motorcycle to a place and spent some time with her there, professing his love to her and offering to buy her jewellery. In the evening, he dropped her back home, and an FIR was filed by the mother of the victim. While the victim testified to this sequence of events, the Special Court held that her testimony was unreliable because if she had actually been kidnapped by the accused from her school, she would have raised a hue and cry and attracted the attention of others in the area. The fact that she did not do this led the Special Court to conclude that the victim had willingly accompanied the accused. It was not considered whether the victim had consented to go all the way with the accused, or whether the victim remained silent because she felt threatened and shocked, or concerned about her reputation.

4.12. Structural Gaps and Challenges Posed by Jurisdiction of the Special Court

The Special Courts established under the POCSO Act in Andhra Pradesh handle cases under other legislations along with POCSO cases. Their heavy case load affects the speedy disposal of cases, and there is usually not enough time to create the child friendly atmosphere mandated by the POCSO Act. Several respondents also expressed that there should be an exclusive court to hear POCSO cases. The additional Public Prosecutors of the designated Special courts are appointed to handle POCSO cases. This has increased their caseload, causing problems such as lack of time to spend with child or on the case that is required in a POCSO case.

The court room structure needs to be altered to ensure that child friendly measures laid down under the POCSO Act are followed. The current structure can barely accommodate children with disabilities. There are no basic amenities such as waiting rooms, drinking water, lifts and regular toilets and toilets for persons with disabilities available in the court complex.

[188] SESSIONS CASE NO. 2 of 2014, decided on 15.07.2014 (Krishna).

4.13. Procedural Gaps

The mandatory procedures under the POCSO Act are not followed uniformly. All questions are still not routed through the Judge. Questions are allowed to be asked by the prosecutors and defence lawyers during examination- in- chief and in cross examination.

The protection of identity clause is not appreciated or understood. In very few cases, all information that is likely to reveal the identity of the child is protected. In some cases, the provisions under POCSO Act on protection of identity which is much broader is not applied and only names of child and parents are protected following a Supreme Court ruling in *State of Punjab v. Ram Dev Singh.*[189].

The POCSO Act has introduced the presumption of culpable mental state and of certain sexual offences against children. However, presumption was applied only in few cases. To speed up the trial, Special Courts could direct cognizance and avoid committal proceedings before the Magistrate's Courts as it is the practice in most other criminal cases. Special courts are open to taking cognizance but police do not produce the accused before them. A minimum of 3 months is always lost in cases of committal cases.

4.14. Procedural and Structural Gaps within the JJB

In JJBs, a child-friendly space is created for CICLs, and special measures prescribed under the POCSO Act may not always be followed while examining the child victim. This could add to the distress and confusion of the child further. A former Magistrate of a JJB stated 'As per the Act there should be a curtain. The same is not followed before JJB as the presumption is that both are children and the CICL is presumed innocent' The Magistrate also stated that about 15- 20 % of JJB cases are POCSO cases. Despite this, the JJBs do not have separate waiting space for child victims and children in conflict with law. They share a small place outside the JJB hall on JJB sitting days. No tools for prevention of exposure to the CICL are used during examination of the child.

Questions are not routed through the Board and the defence lawyer and PP are allowed to ask questions to the child during examination.

[189] AIR 2004 SC 1298

Chapter V Recommendations

The previous chapters identified the gaps and challenges in the functioning of the Special Courts drawn from the interviews with various stakeholders and judgement analysis. Recommendations to implement provisions of the Act and to create a child friendly atmosphere in the Courts are listed below.

5.1 Recommendations to the Hon'ble High Court of Andhra Pradesh

1. Establishment of **at least one child friendly Special Court** in each district to **exclusively** hear POCSO cases. It should also be ensured that the Courts and the basic amenities mentioned below are accessible to persons with disabilities in accordance with the Rights of Persons with Disabilities Act, 2016.
2. Construction and location **of waiting rooms for children and families** close to the court to prevent exposure to the accused. Drinking water, lifts and toilets should be available in the Special Courts. Funds made available under the National Mission for Justice Delivery and Legal Reforms for improvement of courtroom infrastructure could be utilised to ensure that the ambience of the court complex is child-friendly.
3. Direction to the Magistrates not to take cognisance of cases under the POCSO Act, in order to reduce the time taken in disposal of cases. Magistrates should instruct the police to produce the accused before the Special Court as per the POCSO Act if the accused is produced before them.
4. Directions to the **Special Courts to:**
    a. **strictly apply the safeguard under Section 33(2) and prevent** prosecutors and defence lawyers from directly questioning child victims. All questions should be routed only through the Judge.
    b. strictly adhere to Section 33(7) and ensure that the names of child victim, parents/ guardians or any information regarding the child or witnesses that may reveal the identity of the child is not mentioned in the judgement. The names of the child and witnesses should be avoided in the list of witnesses annexed after the judgement. The identity of the accused should also be suppressed in cases in which the accused is the child's father, brother, grandfather, or close relative.
5. Directions to the **JJBs** to adhere to the following child friendly measures in the spirit of the POCSO Act.
    a. R**oute the questions** to the child through the Board. PPs and defence lawyers should not be permitted to ask questions directly to the child.
    b. Exposure to the child alleged to be in conflict with the law should be avoided.
    c. Aim to complete examination of the child victim in one sitting to avoid calling the child repeatedly to testify.
6. Introduce **mechanisms to receive suggestions regularly** from the Special Courts and JJBs to ensure that the child friendly measures could be implemented.

5.2 Recommendations to the State Government

1. Construction **of waiting rooms** for child victims and their families, to prevent exposure to the CICL in JJB buildings. **Waiting rooms for children and families** should be located close to the JJBs to prevent exposure to the child alleged to be in conflict with the law while going from the waiting room to the JJB. Drinking water, lifts, toilets should be available, and should be accessible to children with disabilities in accordance with the Rights of Persons with the Disabilities Act, 2016.
2. Direct the DCPUs to identify **qualified people and maintain a register** of special educators, interpreters and other experts who could assist in recording the statement/ testimony of the child. This list should be shared with the police, Magistrates, JJBs and Special Courts.
3. Establish **One Stop Crisis Centres** to enable children to access all services under one Unit.
4. Create **a platform through which the State Government receives suggestions regularly** from the JJBs to ensure that the child friendly measures are implemented.
5. Share **information regarding compensation schemes** applicable to all children, the specific scheme available for specific groups, medical relief or any other scheme that are available to a child victim of sexual assault, with the police department. Police being the first point of contact in most cases can assist the children to apply for compensation with loss of time.
6. Issue **a public call inviting volunteers** and representatives of NGOs to volunteer as Support Persons, while including the necessary qualifications/experience required.
7. Issue **guidelines and eligibility criteria** for appointment of Support Persons by the CWCs to ensure the quality of services and minimum standards.
8. Organise **capacity building programmes** including sessions on interviewing children for Support Persons.
9. Allocate **budget for payment of services** rendered by the Support Persons and fix fees for their services. *Nirbhaya* Fund or Children's Relief Fund, if available, could be used for this purpose.
10. Conduct **awareness programmes** in communities on POCSO Act, the implications of compromising a case outside of the courts and related aspects to reduce the numbers of witnesses turning hostile.

5.3 Recommendations to the Special Courts

1. Proactive steps should be taken to **pass orders of compensation** along with sentencing orders in appropriate cases.
2. **Compliance report** should be sought from the DLSA in all compensation orders.
3. **Interpreters, special educators and other experts** should be engaged from the list that is to be maintained by the DCPU. These interpreters should have received appropriate training in interpretation for children to facilitate effective communication.
4. Instruct court staff **to avoid naming the child** and the other witnesses in the list towards the end of the judgement. The names and any details relating to the child should not be disclosed in any part of the judgement.

5. The standards prescribed for **protection of identity under section 33(7)** of the POCSO Act should be followed. The identity of the accused should also be suppressed in cases in which the accused is the child's father, brother, grandfather, or close relative.
6. Recognise that owing to the taboo associated with sexual offences and the lack of an effective support and protection system, victims and their families may not fully support the prosecution. It is therefore important to appreciate other forms of evidence available to arrive at a decision and to also bear in mind that such cases are non-compoundable.
7. The Special Courts should add appropriate charges under the aggravated offences if they are not added in the chargesheet.
8. When it is brought to the notice of the Court that there was delay in filing of FIR due to non-registration of the same by police officials, the Court must take action against the police as per provisions under the POCSO Act and the IPC.

5.4 Recommendations to the Directorate of Prosecutions

1. Appoint **exclusive SPPs** to handle only POCSO matters as prescribed under Section 32 of the Act in order to reduce the case load and also to dedicate time with each child and on the case that is required in a sexual offence against a child.
2. Organise **training programmes** on the relevant legislations such as the POCSO Act, the JJ Act 2015, Immoral Traffic Prevention Act, 1986 before they assume office as a Special Public Prosecutor. Training programmes should also include aspects relating to child development and skills in interviewing children.
3. Direct the **prosecutors to apply for compensation** under the POCSO Act where Judge does not take initiative or when children do not have a private lawyer to represent them.

5.5 Recommendations to State Legal Services Authority

1. Conduct **awareness programmes** in the community and schools with special focus on rural areas to make the wider public aware of the compensation scheme.
2. **Disburse the compensation amount** and file compliance report within 30 days of an order of compensation passed by the Special Court.
3. **Identify legal aid lawyers** to represent child victims in POCSO cases and train them in relevant legislations as well as the skills necessary for effective legal representation and interaction with children

5.6 Recommendations to the Child Welfare Committees

1. Identify **individuals with necessary qualifications** to be **Support Persons** and appoint them in all appropriate cases.
2. Maintain a **database of Support Persons** who could be appointed at any stage of a case if the child desires or needs assistance.
3. Issue **authorization letters to all Support Persons** providing services in POCSO cases in a prescribed format.

4. Ensure that a **Child Protection Plan** is prepared for children who are provided services by the Support Person, in accordance with the Model Guidelines under Section 39, POCSO Act, published by the MWCD, Government of India.

5.7 Recommendations to the Department of Home Affairs

1. Issue circular to all police stations to
    - **Report all cases of sexual offences** against children **within 24 hours** to the CWCs, in compliance with provisions of the POCSO Act. Only CNCP as per Section 19(6) of the POCSO Act and Rule 4(3), POCSO Rules should be produced before the CWC.
    - **Provide information** regarding Support Persons, counselling services and other essential services to the child and family in the first instance.
    - **Produce accused persons before the Special Courts directly,** to avoid committal proceedings at the Magistrate's Courts and the ensuing delay.
    - Include relevant provisions under the POCSO Act and the Indian Penal Code in the FIR and chargesheet. Effort should also be made to ensure appropriate provisions are included if it is an aggravated offence.
2. **Prepare pamphlets in local language** on compensation and other monetary relief relevant to victims of sexual offences and disseminate them to all police stations. These pamphlets should customized for children, families and guardians of victims of child sexual abuse.

5.8 Recommendations to the Department of Family Welfare

Organise **training programmes on laws relating to child sexual abuse** from legal experts in the field. A Ready Reckoner for doctors could be made available that will that will give them an overview of the applicable laws.

Annexure A

Extracted from: Centre for Child and the Law, NLSIU, Law on Child Sexual Abuse in India (2015), pp. 196-216

Questioning a Child in Court – Suggested Do's and Don'ts for a Special Court Judge

Author: Dr. Preeti Jacob, M.D. (Psychiatry), Post-Doctoral Fellowship (PDF) and D.M. (Child and Adolescent Psychiatry) and Assistant Professor, Department of Child and Adolescent Psychiatry, NIMHANS

The questioning of children for forensic purposes needs to follow a format so that the children can give accurate information to the best of their ability. Given below are some do's and don'ts for the interview procedure as well as questions that can be posed to child victims or witnesses. These have been adapted from a number of interview protocols including The Cornerhouse Forensic Interview Protocol (Anderson et al, 2010), Forensic Interviewing Protocol (Governor's Task Force on Children's Justice and Department of Human Services, State of Michigan, 2003), National Institute of Child Health and Human Development Investigative Interview Protocol (Lamb et al, 2007) and the Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act (POCSO) 2012, Ministry of Women and Child Development, Government of India, 2013.

These would apply to interviews by the police in the course of investigation as well as examination and cross-examination during trial.

Dos and Don'ts

Atmosphere

- The atmosphere must be child friendly and relaxed. This can be done by having a specific room specially designed to interview children. The room should be away from traffic, noise and other potential distractions like phones, fax machines, computers, typewriters, etc. The room should be bright and well lit. It should have a toilet facility. It should have tables and chairs and a cupboard to keep materials out of view. The cupboard can have a few toys and drawing material (such as papers, crayons, colour pencils,) which can be used, if necessary. It should preferably have a one-way mirror and a video recording facility so that the interview can be recorded. The environment should be relaxed but not too distracting.
- Avoid having police personnel in uniform, the accused or any other person in the room when the interview is being conducted

Scheduling Interviews

- Interviews must be scheduled after the child has used the toilet and has had something to eat. It should not be scheduled during the child's nap time. It should be scheduled preferably in the morning. If the child is on medication, (for example, anti-seizure

medication which can cause drowsiness), the interview should be scheduled for a time when the child is most alert.

Interview Guidelines

- The judge/police personnel conducting the interview must introduce themselves. Their tone must be relaxed and easy-going. Sometimes children think that they have done something wrong and are in trouble and therefore are being interviewed by the judge/police personnel. It is important to allay their fears. The following is a brief example of how one can introduce one's self at the beginning of the interview. "Namaste, my name is Srinivas. I am a judge in this court. Part of my work here is to talk to children about events that have happened to them." Or, "Hello, my name is Raju and I am a police officer here. I talk to a lot of children in Hoskote (example of name of place where police station is located) about things that have happened to them. We will talk for a while and then I will take you back to the other room where your mother is waiting for you. Okay?"
- If the interview is video-recorded, verbal consent of the child must be taken prior to the interview. A statement such as the following can be made. "I have a video recorder in this room. It will record what we say. It is there so that I can listen to you without having to write everything down. Is that okay?"
- The child's personal space must be respected. By this it is meant that there must be adequate space between the interviewer and the child. More often than not, these children are talking about difficult issues which they may or may not have confided in others, events that are painful, shameful, embarrassing and guilt inducing and thus it can be quite disconcerting to have someone, especially a person in authority staring/looking at them directly at all times. Sitting at an angle of 45 degrees is helpful, as the child can look in front and talk if they don't wish to look at the interviewer, but the interviewer can see the child at all times.
- As these children have been abused in some form or the other (physical, sexual) they often misinterpret touch. It is important therefore not to touch the child. Even if it is a small child, it is important not to tousle their hair, pinch their cheeks or demonstrate affection using touch.
- If the interviewer is unable to hear the child, he/she should not guess what the child might have said. This is important, because if the interviewer has misunderstood the child, in most cases the child is unlikely to correct the interviewer. It is therefore always better to ask the child again as to what he/she had said. For example, "Could you repeat what you just said?" or "I did not hear what you just said, so could you repeat it again please"
- If the child is talking very softly and the interviewer is unable to hear the child clearly, this should be communicated to the child. The interviewer could give the child an explanation such as: "I am unable to hear you, so it would help me if you can look at me and talk a little louder. Thanks" or, "I have some difficulty hearing, so could you look at me and talk a little louder. Thank you"
- Do not volunteer information that the child has not yet revealed in the interview. For example, if the child has not told you that the father lay down on top of the child it is

important not to introduce this information before the child has revealed it himself/herself. For example, "Did he have his pants off or on when he laid down on top of you?" If leading questions have to be asked then it is suggested that the following style be adopted: "Did he have his pants on or off?". Based on the child's answer, the follow up question can be: "Tell me what happened after he took off his pants?," or "Tell me what happened then?"

Language and Communication

- It is important to talk to the child in a language well understood by the child. If the interviewer does not speak the child's preferred language or dialect a translator must be present.
- Do not use baby or childish language while talking to children. Use a normal adult tone and pronunciation. The words that the child uses to describe certain body parts or names of alleged perpetrators or others need to be used when referring to these body parts or persons.
- Actively listen to the child using minimal encouragers, such as "Go on, I am listening," or "Hmmm," or "Then what happened?," or "Tell me more about what happened."
- If the child uses a kinship term like "uncle" or "Grandpa" it is useful to clarify their name. For example, "Can you tell me this uncle's name?" Or, the interviewer can ask: "Do you have one grandpa or more than one grandpa? Which grandpa was this?" Thereafter during the interview the alleged perpetrator's name must be used. For example, if the child says "Rakesh Mama" or "Dada" then subsequent questions must contain his/her name.
- It is also important not to use the pronouns 'he' or 'she' as they can be quite ambiguous. For example, "What were you doing when he came home?" Instead the question can be framed as "What were you doing when Rakesh Mama came home?"
- Do not propose feelings by saying things such as: "I know that you probably hate your father". Feelings that children have for the perpetrators can be rather ambivalent. Sometimes it can be quite confusing for the child. The perpetrator may otherwise be pretty affectionate and caring and the child may have difficulty reconciling the different experiences shared with the perpetrator, both positive and negative experiences including the sexual abuse itself. The above statement regarding whether the child hates her/his father need not be made at all, as it is irrelevant legally to whether sexual abuse has indeed occurred or not.
- Do not make promises such as: "I will lock him up in prison and you will never have to see him again". This is not ethical, as one cannot predict what is likely to occur during the trial. Making false promises can therefore even result in secondary victimisation.
- Do not ask questions which convey judgements such as: "Why didn't you tell your mother about it that very night?" It is essential to be non-judgemental, as in all probability, the child is feeling guilty about the same fact and this can make the child more guarded which may impede further evidence gathering by the interviewer.

- Do not use the words such as "abuse", "rape" or "bad" etc., when asking about the experiences as these are adult interpretations.
- Do not display affection and bonhomie such as "I am like your father, you can tell me anything," or "We are friends, aren't we?". This might be quite confusing for the child whose trust in adults and perhaps in close friends/relatives has been destroyed – which may therefore make him/her more wary and guarded.
- If the interviewer does not understand a particular word or phrase, she/he can ask the child to elaborate by showing it on ananatomical drawing and explaining the same. For example, if the child says "pee pee" for the male/female genitalia, then the interviewer must ask: "Can you tell me what a pee pee is?" or "On this diagram can you show me where the pee peeis? As explained earlier, it is also important that the child's words be used subsequently in the interview, when referring to the genitalia
- If there is inconsistency, then the interviewer must ask the child for clarifications in a non-confrontational and non-accusatory manner. At no point should the questioning style suggest disbelief in the story of the child. For example conversations questions with statements such as the following should be avoided, "You said that your father kissed you on your mouth yesterday and then you said that you had stayed at your uncle's place yesterday. I am confused. Can you tell me again what happened".

Questioning Children

- Children are quite concrete in their thinking, and thus open ended questions must be asked. Questions such as "Did he touch you?" are not very good questions as they are unclear and misleading. Some children may answer negatively as in their experience, they were kissed not touched. Children are often literal beings and may be extra careful while answering in an interview of such nature and thus may not equate touch and kiss.
- Questions which are ambiguous must not be asked, such as -"How were your clothes?" Instead, concrete questions such as- "What were you wearing when this happened?" must be asked.
- In the hierarchy of questions that can be asked during an interview of a child victim, open ended questions and prompts are most often preferred. Specific but non-leading questions can be asked for soliciting further details. Closed questions are used to confirm specific details through the use of a multiple choice question or a yes/no question. Leading questions can be asked after certain facts have already been established/revealed by the child.
- Examples for the above mentioned question types are given below:
    - Open-ended questions are as follows. "Tell me everything you can about it," or "Tell me what you know about what happened". Open-ended prompts are used in the following manner: If the child stated that the uncle hit her, an open-ended prompt would be: "You said your uncle hit you. Tell me what happened," or "You said your uncle hit you. Tell me everything about that".
    - Specific, non-leading questions are as follows. It focuses on details the child has already mentioned. Questions of this kind are as follows: "You said you

were at home alone. Tell me what happened then?" or "You called this person Bittu. Who is Bittu?" or "You said you were sleeping. Then what happened?"

  - An example of a closed question would be as follows "Where did this happen? In your room, the bathroom or another place?," or, "Were you wearing your pajamas, or wearing something else?"

- Leading questions must not be asked or, if at all, should be used sparingly, as they assume facts or suggest an answer, which the child has not yet given. Questions such as: "He touched you, didn't he?" should not be asked. If a leading question is required to be asked, the question should be framed as follows, "Did Uncle Ravi touch you?," then follow it up with an open-ended prompt such as: "Tell me everything about that."
- Do not ask the child to "pretend or imagine". For example, "Imagine what happened and tell me". This is not a good practice, as it removes the child from the direct experience and can lead to incorrect or/and inaccurate answers.
- Most children do not understand the concept of time until they are 8-10 years of age. Even if they do understand the concept of reading time, they may or may not be able to relate it to events that have occurred. Children less than 4 years have difficulty with times of the day. Children less than 7 years also do not understand prepositions such as "before" and "after" clearly. It is essential to keep these facts about the developmental stages of children in mind while questioning children. Words such as 'yesterday', 'day after tomorrow,' etc., should also not be used. Clock times should not be included in questions. Instead, events should to be tied to meal times and other activities in the child's day, (for example, to the time that he/she goes to school or comes back from school, attends singing class, etc.,) which can be used as reference points. For example, "You came back from school and then what happened?" or "You said you ate lunch. Then what happened?"
- Young children also often have difficulty with numbers. Children should not be asked "Tell me how many times it happened?" Instead the question should be framed as "Did it happen once or more than once?" followed by questions such as "Can you tell me about the first/last time that this happened?"
- Multiple questions should not be asked at the same time. For example, "Where were you and what were you doing?" Instead, if the child stated previously that the event occurred after the uncle came home, then the questions must be framed as follows: "Where were you when Rakesh Mama came home?" After the child has answered the first question, the next question can be: "What were you doing when Rakesh Mama came home?" If for instance, the child said he/she was doing his/her homework, then the follow up question thereafter can be: "Tell me what happened after Rakesh Mama came home and found you doing your homework?"

Making the Child Comfortable

- Do not correct the child's behaviour. For example, if the child rocks in his/her seat, or shakes his/her legs, as long as the interviewer can hear the child and it is not interfering with the interview procedure, it should be allowed, as these are often nervous or soothing behaviours. The child should, in no circumstance, be told to stop

acting in these ways or any other such manner, as the range of such self =soothing behaviours may not always be all known. For example, some children may tap on the desk, hum, make noises with their mouth; rub their hands, sing, etc. An effort should be made to understand such behaviours, (however disturbing they may be to the interviewer), as possibly self-soothing behaviours, which in itself may actually contribute to a conducive and enabling environment for the child in making a clear testimony.

- It is also important to convey a non-judgemental attitude. Do not display shock, disbelief or disgust when the child says something. If a translator is present, try and confine your communication with the translator to understanding the child. Do not engage in conversation beyond this as it could distract and prevent the free flow of thought and recall of painful memories.
- Do not promise rewards or gifts by making statements such as: "I will give you a chocolate, if you tell me what happened?"
- Do not withhold basic needs as a form of reinforcement, by making statements such as: "I will allow you to go the bathroom/drink water if you tell me what happened?" Children are then not only compelled to concentrate more on holding in their bowel/bladder, rather than answering the interviewer's questions, which is counterproductive, but also feel disrespected and unimportant.
- Uses of reinforcements as stated in the above two examples are viewed as improper interview techniques, as they tend to coerce and compel the child into stating events and making disclosures in an incorrect manner. This will undermine the quality of the interview and the accuracy of the facts collected which can have negative consequences for the case in court.
- Acknowledge the child's feelings. For example, if the child is demonstrating a feeling of being upset, sad, embarrassed or scared, acknowledge these feelings. For example, "I talk to many children about these kinds of things, it's okay to feel that way, don't worry. Now, would you like to tell me what happened?"