

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



CENTRE FOR CHILD AND THE LAW
NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, BENGALURU
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Contents

About the Centre for Child and the Law, National Law School of India University (CCL-NLSIU).....	1
Acknowledgments	2
About the Study.....	3
CHAPTER I STRUCTURAL COMPLIANCE BY THE SPECIAL COURTS	14
1.1 Establishment of Special Courts.....	14
1.2 Exclusive Special Public Prosecutors (SPP)	14
1.3 Exposure to the Accused.....	15
1.4 Exclusivity of Special Courts	15
1.5 Location and Design of the Courts	16
1.6 Structure and Ambience.....	16
1.7 Waiting Space for Special Courts.....	17
1.8 Basic Amenities in the Special Court Complexes.....	18
CHAPTER II PROCEDURAL COMPLIANCE BY THE SPECIAL COURTS	21
2.1 Direct Cognizance of Offences	21
2.2 Questions to the Child in Special Courts	21
2.3 Breaks during Trial	22
2.4 Repeated Visits to Court to Testify	22
2.5 Manner of Questioning the Child	22
2.6 Protecting Identity of the Child	23
2.7 Compensation.....	25
2.8 Time Frames for Recording of Evidence and for Disposal of Cases	27
2.9 Trials to be conducted <i>in camera</i>	33
2.10 Presence of a Person during <i>in camera</i> Trials	33
2.11 Assistance from Interpreter and Special Educators	34
2.12 Legal Representation	35
2.13 Support Persons	35
2.14 Orientation to the Court Complex and Processes.....	37
CHAPTER III PROCEDURAL COMPLIANCE BY POLICE, DOCTORS AND MAGISTRATES	38
3.1 Recording of Statement under Section 161 Cr P C.....	38
3.2 Recording of Statement under Section 164 Cr. P. C.....	39
3.3 Engaging Services of Interpreters and Special Educators	43
3.4 Production of Children for Medical Examination	45

3.5	Prevent Contact with the Accused.....	45
3.6	Reporting and Communication	46
3.7	Procedures Relating to Children in Need of Care and Protection	46
3.8	Medical Examination of the Child.....	47
3.9	Mental Health Services.....	47
CHAPTER IV FINDINGS BASED ON JUDGMENT ANALYSIS.....		48
4.1	Sex Profile of the Victims	48
4.2	Age Profile of Victims.....	49
4.3	Conviction Rate.....	50
4.4	Factors that Led to Conviction	52
4.5	Factors that Led to Acquittal.....	53
4.6	Analysis of Charges.....	60
4.7	Sentencing Pattern.....	62
4.8	Profile of the Accused	64
4.9	Testimony of the Child as per the Profile of the Accused.....	65
4.10	Application of Presumption	65
4.11	Outcomes in Romantic Cases.....	66
4.12	Special Court Response to Investigation Lapses.....	67
4.13	Rank of Investigating Officer.....	68
4.14	Prosecution Lapses.....	69
4.15	Non-Registration of Complaint.....	69
4.16	Consideration of Medical Evidence.....	69
4.17	Defence Strategies	70
4.18	Other Observations by the Special Court.....	72
CHAPTER V ISSUES AND CHALLENGES		73
5.1	Support Gap	73
5.2	Compensation and Monetary Reliefs	73
5.3	Procedural Gaps.....	73
5.4	Speedy Disposal of Cases.....	74
5.5	Non Conducive Environment for Child Witness.....	74
5.6	Jurisdiction of Special Courts.....	74
5.7	Engaging Interpreters.....	74
5.8	Visits and Interactions.....	75
5.9	Issues Relating to Police	75
5.10	Issues Relating to Magistrates	76
5.11	Issues Relating to Child Welfare Committees.....	76

5.12	Medical Facilities	77
5.13	Protection of Identity	77
5.14	Capacity Building Programmes.....	77
CHAPTER VI RECOMMENDATIONS.....		78
6.1	Hon'ble High Court of Karnataka	78
6.2	Special Court	80
6.3	Karnataka Judicial Academy	82
6.4	Karnataka State Legal Services Authority	82
6.5	Department of Prosecutions.....	83
6.6	Special Public Prosecutors	83
6.7	Magistrates recording Statements of Child Victim under Section 164 Cr. P. C	83
6.8	Home Department.....	84
6.9	Department of Women and Child Development.....	85
6.10	District Child Protection Unit.....	86
6.11	Child Welfare Committee	87
6.12	Department of Health.....	87
Annexure A.....		88

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 Children 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* (2nded, reprint December 2016). The Hindi translation is published and Kannada translation of this publication 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 and The Criminal Law (Amendment) Act, 2013, relevant to child sexual abuse, for judges, police, Child Welfare Committees and other stakeholders and taken lectures at programs organized by NIPCCD, Karnataka State Commission for Protection of Child Rights and other authorities/organizations.

On 29 January 2016, CCL-NLSIU published a *Report of the Study on the working of Special Courts under the POCSO Act, 2012, in Delhi* which can be accessed at <https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOSCOAct2012.pdf>. The Assam study was published on 13th February 2017 and is accessible at <https://www.nls.ac.in/ccl/jjdocuments/studyspecialcourtaskamPOSCOAct2012.pdf>

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This report is authored by Ms. Anuroopa Giliyal, Legal Research Officer, Ms. Anjali Shivanand, Legal Research Assistant and Ms. Aneesha Johny, Legal Research Assistant with the Juvenile Justice Programme at CCL, NLSIU. Data collection was done by the team with assistance from Adv. Maya C. P, Ms. Shruthi Ramakrishnan, Legal Researcher (consultant) and Mr Sangappa Vaggar, Social Worker in the first phase. In finalisation of the report, the team greatly benefitted from the extensive critical inputs provided by Ms. Swagata Raha Senior Legal Researcher (Consultant) and Ms. Arlene Manoharan, Head of the Juvenile Justice Programme. The executive summary of the report was prepared with assistance from Ms. Shraddha Chaudhary, Legal Researcher.

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About the Study

The Centre for Child and the Law (CCL), National Law School of India University (NLSIU), Bengaluru, initiated preparatory work for a study on the working of Special Courts designated under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) in 2015. Studies in Delhi and Assam have been published.² This report captures the findings and issues that emerged during the field study and analysis of judgments in three districts of Karnataka, along with recommendations.

The Preamble of the POCSO Act clarifies its objective as - protection of children from offences of sexual assault, sexual harassment and pornography and establishment of Special Courts for the trial of such offences. One of the triggers for the enactment was the rising number of sexual offences being reported against children. According to *Crime in India*, offences against children, especially sexual offences were on the rise. A total of 7,112 cases of child rape were reported in the country during the year 2011, as compared to a total of 5,484 cases in 2010 and 5,368 in 2009.³ With an objective to make experience in the criminal justice system smoother and to ensure speedy trial, the Government paid heed to years of deliberations and demands from within the child rights sector and passed the POCSO Act, 2012. The Act is designed to cater to the needs of the child victim and create a child friendly environment throughout the child's journey in the criminal justice system.

A child victim comes in contact with many functionaries and service providers before reaching the stage of evidence in the Court. The child is required to interact with the police for providing information about the offence, statement under Section 161 of Code of Criminal Procedure, 1973 (CrPC), doctors for emergency medical treatment and examination, Magistrate for recording of statement under Section 164, CrPC, and District Legal Services Authority(DLSA) for compensation. A child may be produced before the Child Welfare Committees (CWCs), when found to be in need of care and protection under the POCSO Act. Each of these interactions may impact the child one way or the other. A bad experience with an agency or professional may give an impression that the rest of the journey will be no different. On the contrary, a child-friendly interaction may keep the child hopeful of the system. It is, therefore, important that any functionary that the child encounters while journeying through the system does not subject the child to re-victimisation.

The principal focus of this study on the working of the Special Courts is to examine the extent to which they are child-friendly.

² The Delhi study is accessible at <https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOSCOAct2012.pdf> and the Assam study is accessible

at <https://www.nls.ac.in/ccl/jjdocuments/studyspecialcourtassamPOSCOAct2012.pdf>

³Crime in India – 2016 Statistics, National Crime Records Bureau, Available at <http://ncrb.nic.in/StatPublications/CII/cii2010/cii2010/Chapter%206.pdf>.

Rationale for the Study

The POCSO Act, a law on sexual offences against children, has mandated all questions to the child in Court are to be routed through the Judge. It has introduced presumptions of offence and culpable mental state. Some of these provisions are in sharp contrast with established practices and law. For instance, until the POCSO Act, all witnesses were questioned by the prosecutor and the defence lawyers, with limited intervention from the Judge.

The ground level experience needs to be examined to analyse not only whether these provisions are implemented, but also to study the impact on a case. CCL-NLSIU therefore undertook these empirical studies to identify gaps in implementation, in order to make appropriate recommendations for systemic change and law reform.

Domestic Normative Framework

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 adoption of measures to prevent the child victim from being exposed to the accused while also ensuring that the rights of the accused are not compromised.

Under the POCSO Act, a responsibility is vested with the Special Court to create a child friendly atmosphere, by allowing a family member or a person of the child's choice to be present in the Court. Several other provisions of the Act refer to child friendly procedures, although they are not mentioned explicitly. The aspects of "child-friendly justice" that the POCSO Act emphasizes upon are speedy trial under Section 35 as well as modified procedures to cater to the special needs of children under Sections 26(3), 33(4) and 38 of the Act. It is however, left to individual Judges to ensure that children are dealt with and questioned in an age-appropriate manner

Under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), the term 'Child friendly' has been defined to mean "any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child."⁴ The Juvenile Justice Boards (JJBs) have the responsibility of ensuring that all the procedures are child friendly, that the venue is not intimidating to the child and that it does not resemble regular Courts.⁵ Further, a child friendly atmosphere needs to be created by the JJBs when they are dealing with child victims as well.

⁴Section 2(15) of the JJ Act, 2015

⁵Ibid Section 7(1)

International Framework

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.”⁶ 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.⁷ “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.”⁸ In a criminal trial, the views of a child are rarely considered. The limited extent to which the views of a child are relevant under the POCSO Act is in the context of removal from custody of the family by the CWC and the place where the statement is to be recorded.

A 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*⁹ that stipulate the 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.

Scope of the Study

It is against this background that the “Study on Working of Special Courts established under the POCSO Act in Karnataka” was initiated by CCL NLSIU, in February 2015. The primary objective was to understand if Courts facilitate “child-friendly justice” and to identify critical issues of concern related to the interpretation of this Act. Towards this, the structural and procedural compliance with the POCSO Act and Rules were examined and judgments of three districts of Special Courts were analysed to map the status, issues and emerging trends.

⁶ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Guideline 1, paras 3(c) and 3(d) ECOSOC Resolution 2005/20. <http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>

⁷Ibid Guideline 9(b).

⁸Ibid Guideline 9(d).

⁹ Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies) – edited version 31 May 2011,

http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf

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 (UNCRC) by all actors in contact with victims during the trial in an age and developmentally appropriate manner.
- Adherence to the procedures stipulated in the POCSO Act and the Criminal Law (Amendment) Act, 2013 during the trial.
- Structural changes made to the courtroom in order to make the ambiance child-friendly. Although, this is not expressly mandated in the law, the study sought to document the initiatives, if any, taken by High Courts and State Government to alter the design and atmosphere of these courtrooms.

In this study, the respondent base was broadened due to unavailability of judgments. This presented an opportunity to bring within its scope not only the stake holders who are expected to directly interact with the Special Court, but also others who cater to the needs of child victims outside of the Court system.

The JJBs are also expected to follow these procedures while dealing with child victims of sexual offences allegedly committed by children. When an offence under the POCSO Act is committed by a child, such child shall be dealt under the provisions of the JJ Act.¹⁰ This study therefore also looks at the functioning of the JJBs in three districts in the State.

Selection of Districts

This study was undertaken in three districts in the State viz., Bengaluru Urban, Belagavi and Ramanagara. These districts were selected based on the following criteria-

- The capital district, Bengaluru Urban was selected as it has a higher incidence of sexual offences and it is also where CCL NLSIU is located.
- Belagavi recorded the second highest incidence of reported sexual offences against children.
- The third district Ramanagara was identified to widen the respondent base to compensate for the low number of accessible judgments in Bengaluru Urban and Belagavi. A newly formed and most proximate district to the capital district was selected for this purpose.

The field study was limited to the district headquarters. While researchers acknowledge that taluks would have given a broader perspective of ground realities, due to the paucity of time and human resources, the field work had to be limited.

¹⁰ Section 34(1) of the POCSO Act, 2012

Objectives

The proposed study aims to analyse the need for law and systemic reforms towards ensuring speedy justice and reduction of secondary victimisation to child victims within the existing justice system. To this end, the following objectives were identified for the purpose of the study:

1. Examine the extent to which Special Courts and JJBs in Karnataka are “child-friendly.”
2. Examine whether the Special Courts are structurally and procedurally compliant with the POCSO Act and Rules.
3. 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 adopted by the Special Courts to ensure a child-friendly trial.
6. Develop recommendations for systemic reforms and practice guidelines for Judges, prosecutors, Special Courts and other functionaries in the criminal justice system

Parameters of Analysis

To analyse the child-friendliness of Special Courts the following factors were examined.

A. Assessment of Structural Compliance

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 issues were also examined:

5. Are Special Courts exclusively trying cases under the POCSO Act?
6. Has there been any change in the location and ambience after being designated as Special Courts?
7. Is there a separate entrance for children in the Courtroom, to ensure the child does not encounter the accused or the public?
8. Have any measures been taken to provide space for children and families waiting for the hearing?
9. Are basic amenities such as drinking water, toilets and lifts available in the vicinity of the courtroom?
10. Is there a separate room in which the evidence of the child can be recorded?

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. What is the extent to which aggressive questions are prohibited?
4. Are frequent breaks usually permitted by Special Courts?
5. Are children called repeatedly to court?
6. What measures have been taken to create a child-friendly atmosphere in the court?
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 the award of compensation?
9. Are trials being held *in camera*?
10. Is the assistance of experts, special educators, interpreters and translators taken?
11. Is a Support Person provided to the child?
12. Is evidence recorded within 30 days?
13. What is the extent to which the trial is completed within 1 year?

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

14. What is the experience of the child victims related to procedures before a Special Court?
15. What are the reasons for adjournment of cases?
16. What measures have Courts and JJBs taken to protect victims from threats or intimidation by the accused and children in conflict law?
17. Are private lawyers allowed to participate in the proceedings?
18. Is exposure to the accused prevented at all times?
19. Are the children oriented to the Court complex and processes prior to the Court hearing?
20. Are the support systems in place?

C. Assessment of Findings, Challenges and Gaps

The judgments were analysed with a view to gather information on the following:

- Rate of conviction and acquittal and possible reasons for the same.
- Rate of victims who testified against the accused, and those who turned hostile and how this is related to conviction.
- Rate of accused persons who are known to the victim.
- Correlation between the testimony of the child and the relationship with the accused.
- Age profile of the victims
- Compensation
- Disposal rate
- Application of presumption

- Committal
- Outcome in 'romantic cases'
- Investigation lapses highlighted by the Special Courts
- Time frame for disposition of the case

D. Additional Questions

Assessment of Compliance with Legal Provisions by Magistrates and Police

1. Who records the statements?
2. Are statements of the child recorded at the residence or place of child's choice by the police?
3. Do the police record statements of the child in the presence of a parent or a person in whom child has trust or confidence?
4. Are the child friendly procedures followed while recording statements?
5. Do the police and Magistrates take the assistance of interpreters and/or special educators while recording statements?
6. Are the medical examinations conducted in the presence of a parent or a person in whom child has trust or confidence?
7. Are all children produced before CWC?
8. Do the police report to the CWC within 24 hours?
9. What measures do the police take to ensure that the child does not come in contact with the accused during investigation?
10. Do the police provide necessary information to child victims and their families?
11. Is any audio video equipment used while recording the statement of the child by police?

Additionally, the following issues were also examined:

1. Are statements under S. 164 CrPC recorded by female Magistrates?
2. Where do the Magistrates record the statements?
3. Do the Magistrates record statements of all children?
4. Where are the medical examinations conducted?
5. Who ensures that the medical examinations are done?
6. Are medical facilities available in districts?
7. What is the extent of counselling services available to children in the districts?

Research Methodology

The study was largely qualitative in nature and the focus was on analysing the procedural aspects under the law based on the parameters listed under 'procedural compliance'. Quantitative aspects were examined in the context of judgments while analysing outcomes in the cases and 'structural compliance' to examine if the systems are in place as prescribed under law. The principal methods adopted for the study were

- Semi structured interviews conducted with prosecutors, lawyers, former Judge of a Special Court, Support Persons, police officers, doctors, representatives from

NGOs, OSCCs, interpreters and other experts involved in legal proceedings concerning child victims of sexual abuse.

- Analysis of 110 judgments of the Special Courts in three districts of Karnataka to ascertain application of child-friendly procedures in determining competence of victims, appreciating evidence, ordering compensation, and in arriving at the decision.
- Non- participant observation of spaces that children access during their interaction with the Special Court. This included the Special Court complexes, the Juvenile Justice Board complex, the offices of the DLSA and that of the Public Prosecutors (PPs).

When the study was conceptualised, the team interacted with some respondents such as Investigation Officers (IO), Director of Prosecutions, Former Special Court Judge and Member Secretary of Karnataka Legal Services Authority in 2015 to understand broader issues relating to the departments and to explore the field. Interviews with a majority of the other respondents were undertaken between March and June 2016.

Selection of Sample

Where only one or two representatives were available from respondent groups in the district headquarters, all of them were interviewed. In other respondent groups where more representatives could be interviewed, respondents were selected, depending on the extent of their involvement in POCSO cases. For instance, police stations that had larger number of cases under the Act were visited and officials who recorded statements, escorted children or who were involved in investigation were selected for interviews. While interviewing doctors from district hospitals, researchers had to select representatives who had experience of examining child victims and/or testified before Special Courts and Magistrates who had recorded statements in POCSO cases.

Profile of the Respondents

Respondents from legal fraternity, police, doctors, support services, and Magistrates were interviewed. The following people were interviewed at the State level and in the districts.

STATE LEVEL	
Member Secretary, KSLSA	
Deputy Secretary, KSLSA	
Director of Public Prosecutions	
Member, KSCPCR	
DISTRICT LEVEL	
Stakeholder	Number
Sub- Inspector of Police	4
ASI in Circle Inspector's office	1

Women police constable (WPC) ¹¹	3
Doctor ¹²	3
Magistrate	5
Former Special Court Judge	1
CWC representatives	10
Language Interpreter ¹³	2
Counsellors	2
Support Person	2
Child line representative	2
NGO	2
SPP/ PP	3
DCPO/ Representative from the Office of the DCPO	2
Court Staff ¹⁴	2
JJB representative	4
Legal cum Probation Officer	2
Private Lawyer ¹⁵	3
Legal Aid Lawyer	1
Assistant Public Prosecutor - JJB	1
DLSA Member Secretary	3
SJPU social worker	1
Representative from OSCC	3
Total number of respondents ¹⁶	66

Judgment Analysis

The cases disposed off during the study period were 241 as per the information obtained under the Right to Information Act 2005. However, only select cases disposed were available on <http://ecourts.gov.in/services/>. An organization¹⁷ which had received judgments that are

¹¹ The women police constables interviewed were the ones who escorted children for medical examination, for recording of the Section 164 Cr P C statements and assisted in recording Section 161 Cr P C stations.

¹² Doctors interviewed were from the District hospitals, who had experience examining child sexual abuse cases.

¹³ Interpreters who were interviewed are people who have worked with children and hail from non- law disciplines.

¹⁴ This respondent category consists of staff who are attached to the Special Courts and are aware of the processes followed in these Courts.

¹⁵ Private lawyers who were among the list of respondents have provided legal support to families, organisations and/or assisted the public prosecutors in the Courts.

¹⁶ The respondents were selected on the basis of the roles played by them as listed above. One of the respondents was interviewed in two capacities.

¹⁷ The Centre for Law and Policy Research Bengaluru shared 51 cases of the Special Courts in Bengaluru which they had analysed in their Study of the Special Fast Track Courts for Sexual Assault and Child Sexual Abuses in Karnataka.

not uploaded in the website also shared these documents with the research team. A total of 110 cases were analysed drawn from both the sources, between the period September 2013 to April 2016.

District-wise Distribution of Judgments Analysed

Sl.no	District	No. of judgments
1	Bengaluru Urban	81
2	Ramanagara	20
3	Belagavi	9
Total		110

Non-Participant Observations

Major part of the data for this study was collected through interviews. These interviews helped the researchers to gather information of the factual situation and also to establish whether the law is implemented in the manner mandated. Observations not only substantiate our findings but also helped to gather information not available through interviews.

Limitations

Researchers faced a number of challenges at different stages of the study and these have been grouped under the following sub-headings - pre-field visit, field visit and data analysis stage:

Pre Field Visit

1. A major challenge was denial of permission from the High Court of Karnataka to either access the judgments or to observe the proceedings of the Special Courts and JJBs, on the grounds of violation of confidentiality. Both these research methods were essential to examine the extent of child friendliness in the Courts.

Field Visit

2. While it was easier to meet respondents from the concerned Departments, paucity of time due to tight work schedules of stakeholders limited our interactions with police officers, doctors, Magistrates and Public Prosecutors.
3. It was difficult to identify NGOs working on the issue of child sexual abuse in Belagavi and Ramanagara. Support Persons had not been appointed in Belagavi and Ramanagara during the period of the study and therefore could not be interviewed.
4. The unwillingness of few respondents such as defence lawyers to participate in the study was also a challenge.

Data Analysis

5. One of the main objectives of the study was to analyse all the judgments of Special Courts in the three districts. Researchers had to rely on the limited cases that were available in the public domain i.e., <http://ecourts.gov.in/services/> and judgments shared by a research centre. Moreover, all the judgments were not uploaded on this website.
6. Each district had started uploading cases at different points in time. Judgements were available for Ramanagara from December 2015 to April 2016, in Belagavi from October 2015 to April 2016 and in Bengaluru from September 2013 to April 2016.

While all the cases available were analysed, it was less than half of the total number of cases disposed of.

7. No POCSO case in any of the three Districts before the JJBs had reached the evidence stage, and therefore could not be analysed.
8. Despite best efforts, certain information could not be triangulated and so researchers had to rely on information received from the stakeholders. For instance, information gathered from police officials regarding practices employed in their stations could not be triangulated, as researchers were unable to find a respondent from the non-government sector who worked in the same jurisdiction.

CHAPTER I STRUCTURAL COMPLIANCE BY THE SPECIAL COURTS

This chapter identifies challenges and gaps in the implementation of the POCSO Act based on interviews with stakeholders involved in the criminal justice system and non-participatory observations in the Court premises, JJB complexes, DLSAs and Public Prosecutor's offices. In addition to examining the extent of structural compliance as mandated by the law, this chapter captures additional structural issues that shape a child's experience in the courtroom.

1.1 Establishment of Special Courts

According to the POCSO Act¹⁸, State Governments in consultation with the Chief Justice of High Court are required to designate a Sessions Court as a Special Court in each district to try offences under the Act. The object of this provision is to facilitate speedy trial. Where there is a Sessions Court notified as a Children's Court under the Commission for Protection of Child Rights, 2005(CPCR Act) or a Special Court designated for similar purposes under any other law, such Court is to be regarded as a Special Court under the POCSO Act.¹⁹

A minimum of one Special Court is designated in all the three districts identified for the study. The nature of cases handled by designated Courts varies in the districts. In Bengaluru, in addition to the Children's Courts, two Courts exclusively dealing with cases under Section 376 of Indian Penal Code (IPC) were also designated as Special Courts under the POCSO Act. These two Courts continue to handle rape matters under the IPC along with POCSO matters. In Belagavi and Ramanagara districts, the Special Court under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act) are designated as Special Courts. They also handle matters ranging from criminal revision petition, civil appeals, rape, murder cases and cases under the POA Act

1.2 Exclusive Special Public Prosecutors (SPP)

Any person who has been an advocate for more than seven years is eligible to be appointed as SPP under the Act.²⁰ They should be appointed to conduct cases only under the Act.²¹ In a step towards ensuring exclusivity, retired PPs and advocates were appointed as SPPs in most districts. In Belagavi and Ramanagara, retired PPs were appointed to appear exclusively in POCSO matters. These Special Courts also have a PP attending to other matters. In Bengaluru however, all cases before the Special Court including POCSO cases are handled by the PP attached to the designated Court and are not SPPs.

¹⁸ Section 28(1) of the POCSO Act, 2012

¹⁹ Ibid

²⁰ Section 32(2) of the POCSO Act, 2012

²¹ Ibid, Section 32(1)

1.3 Exposure to the Accused

Special Courts are mandated to ‘ensure that the child is not exposed in any way’ to the accused at the time of recording evidence without compromising with the accused’s right to hear the child and communicate with his advocate.²² This child-friendly measure aims to reduce the child’s discomfort and fear during trial. Suggestions for tools to prevent exposure include video conferencing, using single visibility mirrors and curtains or screens.²³ Special Courts in the districts are not designed or their structure has not been altered to cater to victims of sexual offences. One of the Courts did not have screens. According to PPs and court staff, where screens are available, it is placed before the accused when a child enters the witness box. An NGO representative reported that the shield was not used as a norm. It was placed only when the child appeared to be scared in the court. Barring the Special Court in Belagavi, the child invariably sees the accused while entering the Special Court as there are no separate entrances. It was observed that due to confusion, at times a victim comes in along with the accused, or enters and exits the courtroom and thereby comes face to face with the accused in the process.

While it appears that attempts were made in two districts to comply with the above provision, it is construed narrowly and the same protection is not extended when the child is entering the Special Court or until the process for recording evidence begins. Outside the courtroom, the accused and children share the same physical space in all three districts. The accused and his lawyer have easy access to witnesses. Efforts to lure the family to enter into a compromise outside the Special Courts were witnessed by the researchers.

Tool to shield exposure in Juvenile Justice Boards (JJBs)²⁴

Although the design of the JJB rooms can assure protection of victim from exposure to the child in conflict with the law(CICL) with minimal efforts, no device or mechanism was adopted to prevent the victim and CICL from coming face to face. Efforts to make arrangements for curtains were underway in Bengaluru during the field visits. The JJBs in the other two districts also expressed their intention to introduce systems to prevent exposure when cases reach evidence stage. Currently, the child victim is called closer to the table and spoken to when necessary.

1.4 Exclusivity of Special Courts

The POCSO Act mandates the Courts to try all sexual offences against children but does not specify exclusivity. The need for a Special Court that functions differently was felt strongly by several respondents including Support Persons, PPs, and CWC members. According to some, these Courts could handle related cases such as child trafficking, child labour and such other matters or assign exclusive days or half days to deal with POCSO cases to ensure

²² Section 36(1) of the POCSO Act

²³ Section 36(2) of the POCSO Act

²⁴ Researchers were informed during interviews with JJB members, APPs and LPOs that POCSO matters have not reached evidence stage in any of the JJBs studied.

speedy trial. A respondent from the non-governmental sector expressed the need for exclusivity as cases are not being disposed of within a year as recommended in the Act.

In Ramanagara, the Special Court has taken an initiative to hear POCSO matters on three specific days a week.

Speeding up procedures through exclusive Courts will prevent the victim from getting influenced by the accused and his relatives.

-Public Prosecutor

1.5 Location and Design of the Courts

The POCSO Act does not recommend any structural changes to make the Special Court child friendly. In Karnataka, all Special Courts visited were situated in regular court complexes sharing common access paths and corridors with other courts. Researchers observed that barring one Court in Bengaluru, the remaining Special Courts in Bengaluru, Belagavi and Ramanagara districts were located at the end of the corridor where general public access is comparatively less. However, the child has to walk past several courtrooms and withstand stares from people waiting for cases outside other courts or accessing the toilet located next to the Special Courts.

The Delhi High Court has taken the initiative to create child friendly courtrooms. 'The Vulnerable Witness Deposition Courts' established in Kakardooma in 2012, Saket in 2014, Dwarka in 2017 also serve as the Special Court under the POCSO Act. This complex has waiting rooms for children and their families with items to keep young children occupied.²⁵ In South India, the first child friendly Court was established in 2016 in Nampally, Hyderabad which was facilitated by the Justice and Care, a NGO in collaboration with the State Government of Telangana and the Judiciary. In Bengaluru a Child Friendly Special Court was recently inaugurated.

Location of the JJBs

The JJBs were located in different spaces in the three districts. In Bengaluru and Belagavi, JJBs were functioning from within the Observation Home building on the ground floor. In Ramanagara, it is attached to the District Child Protection Unit (DCPU) on the second floor accessible by a lift.

1.6 Structure and Ambience

The Special Courts had similar structures across three districts and the designated POCSO Special Courts appear to be identical to other court room in the complex. The court rooms were large and designed to accommodate litigants and advocates of all cases to be heard on a particular day. It could be a daunting experience for the child to walk to the witness box across the huge room. However, alteration may not be easy considering the nature of other cases heard in these Courts.

²⁵ Refer to Delhi Report <https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOSCOAct2012.pdf>

Structure and Ambience of Juvenile Justice Boards

The JJB meets in regular rooms with minor variations in the arrangements of furniture. The JJBs sit on non-elevated platforms in all three districts. In Bengaluru, several benches were arranged in two sets of rows and the JJB sits facing them. In Ramanagara and Belagavi, the room had a table and few chairs around it and no space for people unrelated to the case to be present. The space in Ramanagara was partitioned by semi- permanent structures and the corridor which was shared with the DCPU was colourfully painted with story themes, flowers and animals. The corridor of Belagavi and the approach to Bengaluru JJBs are regular and no changes have been made.

1.7 Waiting Space for Special Courts

Except for one District Court complex, none of the Courts had waiting rooms for children. Researchers noticed a ‘Mother and Child Care Room’ in the Ramanagara Court premises, which was not being used. The well ventilated room with colour paintings had an electric water purifier, a locked washroom, and a wooden rocking horse. It had empty paint cans and was latched from outside. Women waiting outside with children in the sun did not appear to be aware of this room. In Belagavi and Bengaluru, families wait outside the courtrooms. As a practice, summons does not specify a time for the appearance of a victim/witness and witnesses including children wait outside the courtrooms from morning. Some families were seen carrying infants and few others carried overnight bags. The long wait coupled with standing outside the courtroom prior to commencement of examination is likely to exhaust the child and poses a danger of affecting the case adversely.

The seating arrangements outside the courtrooms were not sufficient in any of the districts. The chairs and benches against the wall could accommodate 35-40 people. In Bengaluru, this was shared by people attending proceedings before two Special Courts. Due to lack of sitting space, people stand or sit on the floor against the wall of the courtrooms. Overcrowding in the corridor outside a Special Court and the common pathway leading to other Courts was also noted. One of the court staff interviewed emphasized the urgent need for a separate waiting room as the space outside the Special Court was inadequate for the victim and family.

The Scene Outside the Courtroom: Observations

A middle class family with two girl children aged around 10 and 4 was waiting outside the Special Court. Parents seemed to make efforts to assure the elder one and keep the younger one occupied with a mobile phone. The entire family was startled and the discomfort was visible when four armed police in uniforms and boots suddenly entered through the side corridor walking close to the family. The older girl was visibly frightened after she looked at the accused. The police were escorting the accused, four of them handcuffed to each other and four in long chains around their wrist and the other end held by the police. The police asked the people sitting on two benches to clear the seats for the accused and police officials.

A PP shared that he allowed very young children to wait and use the washroom in his office. The PP in another district shared his office with two other PP of different Courts and the Courts were on another floor or building in two districts. In the third district, the PPs office did not have space to accommodate children and families. Toilets are not at an accessible distance from their offices. They were located on the other side of the corridor.

Designated Waiting Area for JJBs

There was no separate waiting space for children or families in any of the JJBs. CICL and victims share the same space waiting outside the building in Belagavi and Bengaluru. In Ramanagara, there is a space outside the JJB room which is also common. Seating arrangements are made on the day of JJB sittings in that space.

1.8 Basic Amenities in the Special Court Complexes

The accessibility levels of Court buildings and availability of basic amenities differ in Court complexes across districts.

Box No. 1 Basic Amenities in Special Courts			
Item	Bengaluru Urban	Belagavi	Ramanagara
Regular Toilets in the Court building	✓	*	*
Disabled friendly toilets in the vicinity	X	X	*
Lift	✓	*	X
Drinking water in the courtroom	✓	X	X
Water in the vicinity of the courtroom	X	✓	✓
Waiting room	X	X	✓
<i>Note: This table only indicates the existence of a basic amenity in the Special Courts as indicated in the first column noted during field study. The extent to which they are accessible is detailed below</i>			
<i>*Indicates the presence of the amenity but not easily accessible</i>			

As seen in the above table, only Bengaluru has a lift facility in the Court complex. In Belagavi, the lifts were used only by the Judges and lawyers and not by public. Toilets in Ramanagara and Belagavi were locked and the keys were with the administration staff. In Bengaluru, the toilets are available on the same floor and are accessible to the public. The disabled friendly toilet in Ramanagara was used as a storage space and in Bengaluru and Belagavi, researchers could not locate one in the vicinity of the courtroom. Bengaluru Courts have drinking water in the courtroom. Outside the courtroom, Bengaluru does not have water in the vicinity but the other two districts have it on the floors below.

They [the children and family] have to wait the whole day. They cannot even go to the bathroom because it is so far.

-Respondent working with children

The POCSO Act does make special provisions to ensure participation of children with communication barriers and other disabilities in the police stations, Magistrate's Courts and

Special Courts. The Act encourages authorities to take assistance from special educators or persons familiar with the manner of communication of the child or experts to enable recording of the statement of the child²⁶. Further, offences against disabled children and offences causing disability are considered aggravated forms of offences²⁷. It appears to be a challenge for a child with disability to go to the Court buildings owing to the inaccessibility of basic amenities in all the three districts.

Box No 2 Basic Amenities in Juvenile Justice Boards			
Item	Bengaluru	Belagavi	Ramanagara
Regular Toilets	*	✓	✓
Disabled friendly toilets in the vicinity	X	X	X
Lift	-	-	✓
Drinking water in the JJB room	✓	X	X
Water in the vicinity	X	X	X
Waiting room	X	X	X

As seen in the table above, in Ramanagara, lift facilities are available. In Bengaluru and Belagavi, there is no need for a lift due to its location on the ground floor. Although there were toilets available in the premises of OH in Bengaluru, they were locked and not easily accessible to children and families waiting outside. Disabled friendly toilets did not exist in the vicinity. In Ramanagara and Belagavi, toilets were in use.

Developments since the study

Waiting Room for Special Courts

During the field study, efforts were being made by organisations and individuals working on child rights to set up a waiting room in Bengaluru Urban district. With the support from the Registrar of District Courts, a waiting room for the three Special Courts has been established in May 2016.

Establishment of Child Friendly Special Court

A Child Friendly Special Court to hear POCSO cases has been established in Bengaluru Urban district in 2017. This was an initiative taken by UNICEF India, NGOs and child rights activists with support from the Karnataka High Court Committee on Juvenile Justice, Department of Women and Child Development and the Karnataka State Legal Services Authority.

Waiting Space for JJBs

After the completion of the field study, the space under the trees outside the Observation Home for Boys in Bengaluru where the JJB is located has been converted into a waiting space for families of the CICLs. Seating and drinking water arrangements have been made in that space.

CHAPTER II PROCEDURAL COMPLIANCE BY THE SPECIAL COURTS

Ensuring speedy trial of sexual offences is one of the key objectives of the POCSO Act. Courts need to achieve this without compromising on child friendly measures laid down under the Act. According to Section 33(4) of the 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.”

Drawing from the above references and international standards, this study has identified some of the procedures laid down under the Act as promoting child friendly environment. This chapter captures the extent to which Special Courts and Juvenile Justice Boards in three districts of Karnataka comply with such procedures.

2.1 Direct Cognizance of Offences

As per Section 190 of the CrPC the accused is produced before the Magistrate to take cognizance and later the case is committed (transferred) to the jurisdictional Court. With an objective of avoiding delay, the Special Court under the POCSO Act is vested with the power to take cognizance directly without committal. As is the case in all criminal matters, such cognizance can be taken either based on a complaint made to the Court or through a police report based on a FIR registered with them²⁸.

Judgment analysis revealed that soon after the POCSO Act was notified, there was some confusion regarding the Court for production of accused. However, the accused is now produced directly before the Special Court for remand. Committal proceedings were initiated in 18 cases decided between September 2013 and September 2014. From September 2014 onwards the Special Court started taking direct cognizance.

2.2 Questions to the Child in Special Courts

The POCSO Act explicitly prohibits the PP and defence lawyers from putting questions to the child directly²⁹. Questions have to be routed only through the Special Court. This provision is aimed at protecting the child from harsh and intimidating questions and to facilitate easy communication. In all the Special Courts under the study, direct questioning is a continued practice. Two PPs confirmed that the questions are posed by the prosecutors and the defence lawyer.

As per the Act, only we are supposed to ask the questions and not the lawyers. But, there is no time for this so the lawyers pose question to the child. There should be an exclusive Court for all these procedures to take place.

Respondent from the Judiciary

²⁸ Section 33(1) of the POCSO Act

²⁹ Section 33(2) of the POCSO Act

2.3 Breaks during Trial

The Court should not compromise on the important provision of granting frequent breaks during trial as guaranteed under the Act.³⁰ This will help provision should ensure that the child is sufficiently relaxed, gets food and bathroom breaks when required. As noted in the interviews and observations, it is largely the respondents working with children who encourage children to ask for it and the situation in cases in which the child does not have such support structure is not clear.

2.4 Repeated Visits to Court to Testify

The Act requires the Special Courts to grant breaks as mentioned above and also not call the child to Court repeatedly.³¹ These two provisions have distinct objectives. While both are special measures, the objective of the former is to create an environment best suited for examination; the latter facilitates speedy trial and also ensures that the child is not subjected to the trauma of appearing in court repeatedly.

Although it is desirable to complete the evidence in one hearing, it is a rare occurrence. As reflected in the judgment analysis and stated by some of the respondents, in several cases children were called at least two to three times before the commencement of evidence. Absence of the defence lawyer or cross-examination questions not being ready are commonly cited reasons for adjournments. Difficulty in organising interpreters was also noted as a reason in this context. An additional problem shared by a PP was at times he was compelled to seek adjournments as children are not brought to his office prior to the trial to familiarise the child with essential documents. (*Refer to point no. 2.8 below for details*).

Adjournment of a case may pose problems including great inconvenience, loss and hardships to children and families as observed in a case of mildly intellectually disabled child brought by her mother for cross examination. The accused was in custody and was not presented to the Court as the police were busy with election duty. The case which was posted for cross-examination was therefore adjourned. The mother explained her difficulties of having to find a place to leave her other child in order to bring the victim child to court. Researchers noted that siblings of a few of the child victims waited outside the Court.

2.5 Manner of Questioning the Child

Under the POCSO Act, the Special Court should not allow aggressive questioning or character assassination of the child and should ensure that the dignity of the child is maintained at all times during the trial³². By preventing aggressive and character assassination questions, the Act intends to prevent further trauma to the child.

Interviews with prosecutors revealed that the Judges intervene often to facilitate smooth questioning by repeating or simplifying questions and conversing with the children to calm

³⁰ Section 33(3) of the POCSO Act

³¹ Section 33(5) of the POCSO Act

³² Section 33(6) of the POCSO Act

them down. According to the PPs, the Special Courts object to rude questions posed by defence lawyers and the questions not understood by the child are rephrased and posed to the child again by the Judge. The judgments in *State v Shaik Alimuddin*³³ and *State v Umamathi*³⁴ have clearly mentioned the procedure followed by the Special Court before commencing examination of the child. The Special Court tried to find out whether the child victim was in a position to understand all the questions and was able to answer those questions before recording evidence.

2.6 Protecting Identity of the Child

Protecting the identity of the child during investigation and trial is the responsibility of the Special Court.³⁵ Protection of identity of the child would include protection of name, address, photograph, family details, school, neighbourhood or any other particulars that may lead to disclosure of identity of the child.³⁶ The Special Court can relax this rule only when satisfied that disclosure is in the interest of the child.³⁷

Researchers visited all the Special Courts on more than one occasion and through their observations noted that this provision is not fully complied with. As discussed in Chapter I, Special Courts are not designed to protect the identity of the child. Since there is an assumption that children outside these Courts are victims of sexual offence, it compromises on their right to protection of identity. Further, police and advocates know of the ‘POCSO Courts’ and on inquiry few advocates came forward to direct the researchers and enquired about case numbers assuming that they had come for a case hearing. In the judgments, the identities were not sufficiently suppressed. References to parents or other relatives have been made resulting in partial disclosure of identity of the victim.

Box No. 3: Ingredients of a Child Friendly Special Court

This table captures the responses of respondents on ways in which Special Courts could be child-friendly.

Atmosphere in the Court

- Special Court should create a:
 - Congenial and homely atmosphere essential for providing evidence.
 - Free environment for children in the Courts where a child will be comfortable to testify, open up and give an honest account.
- Special Court should not be:
 - A hostile environment. It should not be a space where the child feels re-victimized or feels that action is being taken against her.
 - Intimidating and traumatizing. It should not be a place where a child is shamed.

³³Spl CC No. 250/2013 decided on 13.03.2014.

³⁴Spl CC No. 170/2013 decided on 17.03.2014.

³⁵ Section 33(7) of the POCSO Act

³⁶ Section 23(2), POCSO Act

³⁷ Section 33(7) Proviso of the POCSO Act

- Child should not be exposed to the accused in the Court. The screen should be put during evidence without fail.

Attitudes and Practice

- Child should be given enough time to relax before giving evidence.
- Judges should deal with children very gently, calmly and affectionately.
- The Judge should help the child to develop the confidence to speak.
- Children and witnesses should be handled with dignity and sensitivity. Children's rights and dignity should be respected.
- Courts need to be familiar with the law.
- The Judge should have a pleasant disposition.
- The Judge should be compassionate and understand that it is difficult for the child and a parent to narrate the incident.

Questioning Methods

- Questions to the child should be framed in a language that is age appropriate.
- General questions should be asked about school and siblings to make them comfortable before the evidence.
- Judges should intervene when the accused is staring at the mother and child.
- Children should not be made to stand on a chair to give evidence.

Attitude of the Prosecutor

- Public Prosecutor should be supportive of the child.

Attitude of the Court Staff

- Court staff needs to be sensitive to the needs and rights of the child victim and families.
- Court staff should call out names slowly so that the children know whose name is being called.
- Court staff should not be inquisitive and unnecessarily curious.

Structural and Procedural Aspects

- The waiting time for the child in the Court should be reduced.
- Support Persons should be available to all children.
- Proceedings should be conducted *in camera*.
- Space should be available for a child to unwind before and after trial
- The child should not have to confront the accused.
- Judges should not sit on raised platforms.
- Lawyers and police of the Special Court should not wear uniforms.
- Cases should be disposed of soon. The child should not have to endure the traumatic process of the Court repeatedly.

2.7 Compensation

Under the POCSO Act, the Special Court may use its discretion to grant compensation to the child in appropriate cases.³⁸ An application can be made on behalf of the child but it is not a prerequisite as the Special Court is empowered to take *suo motu* action.³⁹ Moreover, compensation can be awarded independent of the outcome of the case.

The Special Courts under the POCSO Act can pass orders for interim and final compensation. Interim compensation is to meet the immediate needs of the child. Loss or injury caused to the child should be taken into account while determining compensation. As the POCSO Act is gender neutral, the provision is applicable to male children unlike the compensation schemes that are applicable to offences that are gender-specific.

Data procured from the Karnataka Legal Services Authority (KLSA) and judgment analysis shows that compensation orders have not been passed in Karnataka under the POCSO Act. No interim compensation was awarded to the victims in the 110 cases analysed. Section 33(8) was not invoked in any case. Compensation under Section 357(1) was awarded in four out of the five cases in which accused was convicted. In three of these cases, the Court ordered for the fine to be deposited in the child's name. In one case involving three victims, it was ordered to be paid to the father.

In *State v. Muneendra*,⁴⁰ the Special Court imposed a fine of Rs. 30,000 under Section 9, Rs. 10,000 under Sections 11, 12 & 18 of the POCSO Act, and Rs. 10,000 under Section 506 of IPC. The Special Court ordered that if fine is recovered from the convict, then Rs.30,000 should be given to the victim as compensation. In *State v Musheer*⁴¹ the Court convicted the accused for offences under Section 9(m) r/w. Section 10 and sentenced the accused for simple imprisonment for a term of five years and also imposed fine of Rs.15,000/ and the fine amount was ordered to be paid to the child. In the case of *State v Abdul Samada*⁴², the Judge stated the fine deposited by the accused should be kept in the name of the victim in a fixed deposit. The interest from the deposit should be used for her education. An amount of Rs. 75,000 for an offence under POCSO Act and Rs. 5,000 for an offence under IPC was awarded in this case.

In *State v Deepak Sunder Singh Vantimoori*,⁴³ the accused was sentenced to three years simple imprisonment with Rs. 10,000/- fine under Section 8 of the POCSO Act, one year imprisonment under Section 12 of the POCSO Act with Rs. 10,000/- fine, three years imprisonment under section 452 IPC with Rs 3000/- fine and 6 months simple imprisonment

³⁸ Section 33(8) of the POCSO Act, 2012

³⁹ Rule 7(2) of the POCSO Rules, 2012

⁴⁰ Spl CC No. 576/2014 decided on 27.01.2016; Refer to Victim's testimony against the accused was cogent and reliable under point no 2.4 below for details of the case

⁴¹ Spl CC No.568/2014 decided on 14.03.2016

⁴² Spl SC no. 235/2013 decided on 24.01.2015

⁴³ Spl.SC No. 133/2015 decided on 6.04.2016.

u/s 354 (A) IPC. The Court ordered the recovered fine to be paid to the father of the three victims.

This makes compensation to the child or family contingent on the accused paying fine whereas if compensation is granted under the Act in exercise of discretion of the Court, the money would be available to the child as it is payable by the State Government.

In one case, compensation was recommended even though the victim did not support the prosecution case and the matter ended in acquittal. In *State v Lohith Tipanna & Ors.*⁴⁴, the accused and victim were married subsequent to filing the complaint. The Special Court ordered that an application should be made to DLSA under section 357A of CrPC and after due inquiry, if the family was found eligible, compensation was to be awarded to them.

Role of Prosecutors

Most children do not have private lawyers who can make applications for compensation on behalf of them or their behalf. In such circumstances, prosecutors should initiate the process on behalf of the child. However, this step had not been taken by any of the prosecutors interviewed. A PP while agreeing that Courts should grant compensation under the POCSO Act also shared that an oral submission from their side would suffice for the Court to award compensation but such submissions have not been made yet.

Disbursal of Compensation

The State Government has the responsibility of providing the compensation money. DLSAs are the disbursing agencies. As the Courts are not passing compensation orders, the amount is now determined by the DLSAs as stipulated under the Victim Compensation Scheme 2011.

Karnataka Victim Compensation Scheme⁴⁵

Pursuant to the power vested under Section 357A, CrPC, on 22 February 2012, the State Government of Karnataka framed and notified the Victim Compensation Scheme 2011 for victims or their dependents who have suffered loss or injury as a result of a crime and require rehabilitation.⁴⁶ The upper limit of compensation was revised through a government order dated 19 September 2013. The amount of compensation for rape of a minor was enhanced from Rs.50,000 to Rs 3 lakhs.

⁴⁴ Spl SC no.165/2015 decided on 4.05.2016

⁴⁵ The scheme is available at <http://kslsa.kar.nic.in/docs/Victim%20Compensation%20Scheme.pdf>

⁴⁶ This provision was introduced in the Cr P C through an amendment in December 2009

Box No 4 Details of Disbursal of Compensation by the Karnataka Legal Services Authority⁴⁷			
Scheme	Bengaluru	Belagavi	Ramanagara
Victim Compensation Scheme 2011 (VCS 2011) [Disbursed in the year 2013]	0	0	0
VCS 2011- disbursed in the year 2014	0	0	0
VCS- 2011- disbursed in the year 2015	5 Penetrative Sexual Assault & 8 Sexual Harassment cases; Total Rs. 5,95,000	0	0

Dissemination of Information

It appears that the information regarding the compensation and other monetary reliefs is provided by the SJPU/ police, Support Persons, and at the One Stop Crisis Centre (OSCC). As per the POCSO Rules, the responsibility of providing information regarding compensation and other services is vested with the police.⁴⁸ In all the three districts, legal aid lawyers at OSCC are also vested with the responsibility of providing information relating to law and compensation schemes. Information through this mode however reaches only children who access government hospitals with functional OSCCs.

Assistance for Medical Expenses

Budget has been allocated to meet immediate medical needs of child victims of sexual offence from the Karnataka Children's Relief Fund through the Karnataka State Integrated Child Protection Society.⁴⁹ As per this order Rs. 10,000 could be issued for emergency medical treatment. Depending on the seriousness of the injuries and on a recommendation from the doctor if medical treatment is continued, an amount upto Rs. 75,000 or against actuals whichever is lower is to be given to the child. For the recovery period, an additional amount of Rs. 15,000 could be given based on doctor's recommendation. From interviews, it appeared that in two districts this amount has been utilized by the DCPO's office. In the third district, there was no information of any amount having been disbursed under this scheme.

2.8 Time Frames for Recording of Evidence and for Disposal of Cases

The Act refers to two sets of timelines for processes in the Special Courts i.e for recording of evidence of the child and for disposal of cases.⁵⁰ While the former is mandatory, the latter is not. It is seen that Special Courts are not able to meet these timelines always. The

⁴⁷ Information received from Karnataka Legal Services Authority in June, 2016

⁴⁸ Rule 4(12)(iii) of the POCSO Rules, 2012

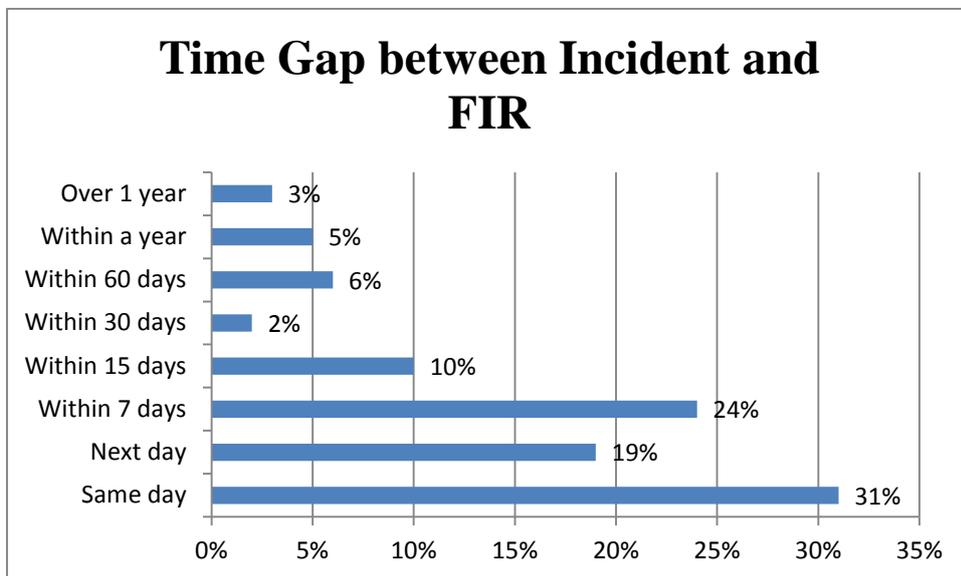
⁴⁹ Order No MAMAE 183 MABHABA 2013 Bengaluru dtd 15.10.2014

⁵⁰ Section 35 of the POCSO Act, 2012

contributing factors may be burden of higher case load for Courts and PPs, adjournments based on requests from defence lawyers or for lack of availability of assistance to cater to specific needs of the child.

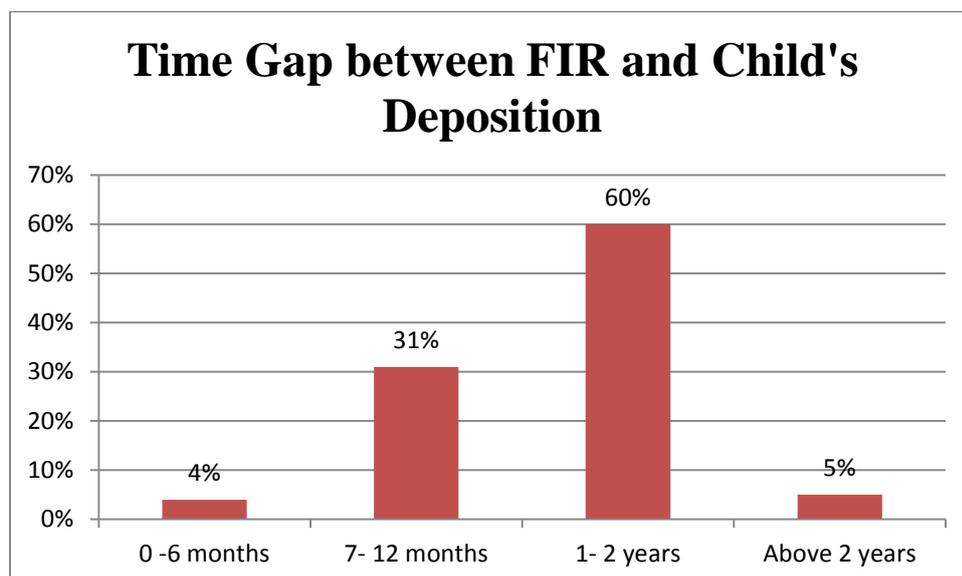
Information such as the time gap between the date of charge sheet and the date on which the Court took cognisance of the case was not available. Hence, the information regarding the compliance to timelines such as completion of evidence of the child within 30 days is not analysed. Where timelines were available, the time gap between the incident and FIR, FIR and child's deposition, FIR to final disposal and child's deposition to final disposal were examined. Such timelines were available in 50 % of the cases and are analysed to understand the stage where delay is higher.

2.8.1 Time Gap between Incident and FIR



In a total of 62 cases, 52 cases were reported within 15 days of the incident (84%) and 46 of these cases were reported within a week.

2.8.2 Time Gap between FIR and Child's Deposition



Except for two (4%) out of 55 cases, the time gap between FIR and date of evidence of child was above six months. In 33 cases (60%), the time gap was between one year and two years and 17(31%) cases within 7- 12 months. In *State v C Krishna*⁵¹, four girls victims years who had alleged sexually harassment by their school teacher in a Government Higher Primary School. All the girls and the informant in the case turned hostile. The deposition of children was recorded just two days short of one year after the case was registered. Except for the IO, all the witnesses turned hostile and the accused was acquitted.

In *State v Thalasi Kumarachar*⁵², the time gap between the complaint and child's deposition was 34 months. In this case, the accused was charged under Section 366 of IPC and Section 18 of the POCSO Act for kidnapping a child aged 14 years and attempt to commit an offence. The child in her evidence stated that she did not know the accused and that she has not given any statement to the police. Her father, the complainant also stated that he did not know the accused. The accused was acquitted on the grounds that material witnesses had turned hostile. In *State v Syed Mujeer*⁵³, a girl aged 14 years, had visited a doctor providing native medicine in a village. He took her to a room, touched her genitals and inserted a pipe through which he administered the medicine knowing fully well that she was a minor. The child's testimony was recorded 22 months after the date of complaint and the prosecutrix and her family members turned hostile based on which the accused was acquitted. In some cases, the victim married the accused during the pendency of the cases. In the three cases, where the victim was married to the accused, the evidence of the victim was recorded more than a year after

⁵¹ SC No.26/2015, decided on 30.01.2016

⁵² SPL.C/96/2014, decided on 26.03.2016.

⁵³ Spl. S.C.No. 92/2015, decided on 29.04.2016

the incident.⁵⁴ It was not possible to derive at any specific conclusion based on the available data as details were not available in all the judgments. The reason for the time gap between FIR and of child's deposition was not clear.

Time Gap between Examination- in- Chief and Cross- Examination

In order to ensure speedy trial, the POCSO Act categorically mentions that the evidence has to be recorded within 30 days of the Special Court taking cognizance of the offence. Reasons for the delay should be recorded in writing. From the available data, it is seen that in some cases the time taken between chief examination and cross examination was more than a month. In *State v. Girish*⁵⁵ the victim testified against the accused in the examination-in-chief, but turned hostile during the cross-examination by the defence counsel. During the cross examination by the prosecutor, she stated that the version of events in the chief examination was not correct while what she deposed during the cross-examination was true. Since the victim, her parents, and other witnesses had turned hostile, the court acquitted the accused. In this case the time gap between the examinations was over three months.

In the case of *State v Somashekara*⁵⁶, the child aged 15 years had filed a complaint that the accused, her cousin, had committed penetrative sexual assault on her. The chief examination of the victim was conducted 16 months after the incident and then deferred twice by the Court - once as the complainant was asked to produce property and second at the request of the defence counsel, both within a gap of 16 days. The cross examination was conducted after a gap of over six months. In this case the victim turned hostile and stated in her evidence that she gave statement to the Judicial Magistrate First Class (JMFC) at the instance of the police. The delay was not acknowledged and the reasons for the same were not provided in the judgments, hence the reason for delay could not be identified.

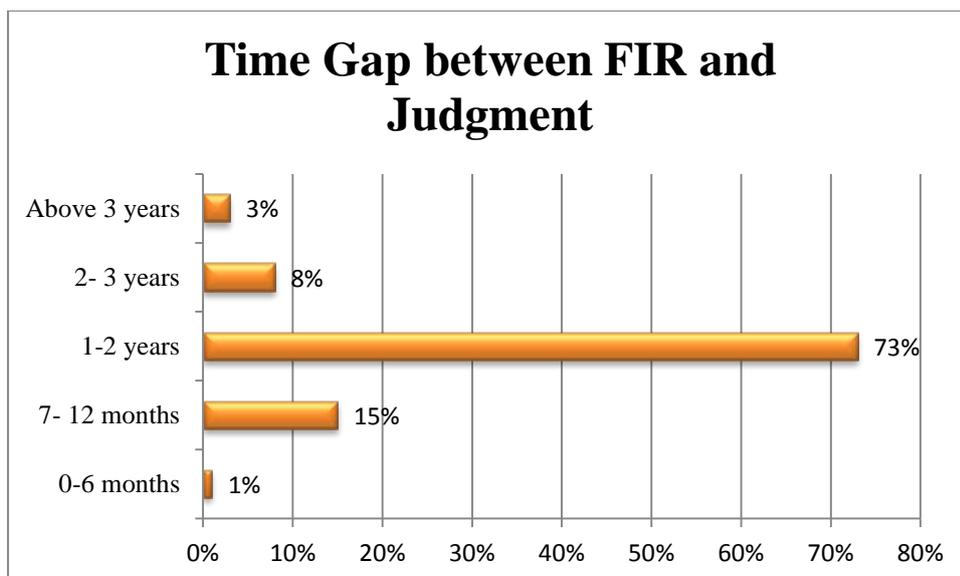
2.8.3 Time Gap between FIR and Judgment

The time gap between FIR and judgment was largely above one year but less than two years.

⁵⁴State v Gopi; State v Lohith Tipanna Baraki &Ors.; State v NiteshGanapatKinekar

⁵⁵ S.C No. 73/2014 decided on 29.03.2016.

⁵⁶ Spl.SC 74/ 2014 decided on 29.04.2016.



As is the case with the time gap between FIR and the deposition of the child, the gap between FIR and judgment is also high in a large number of cases. Only in 10 cases, the judgment was passed within a period of one year from the date of FIR and in none of these cases, victim had testified against the accused. Majority of cases (45 out of 62) were disposed of after completion of one year but within two years. Of the five cases in which accused were convicted, four of them were disposed of within two years of registering the FIR and in one case such details were not available. Seven cases took over two years of which two cases were concluded after three years. In none of these cases, the victim had testified against the accused. Of these seven cases, the victim was married to the accused in one case and in another accused was her boyfriend. In both cases, the age of the girls were not specified. It should be noted that this does not indicate delay in disposal of cases by the Special Courts as the gap between deposition of the child and judgments was less than four months in 80% of the cases as shown below.

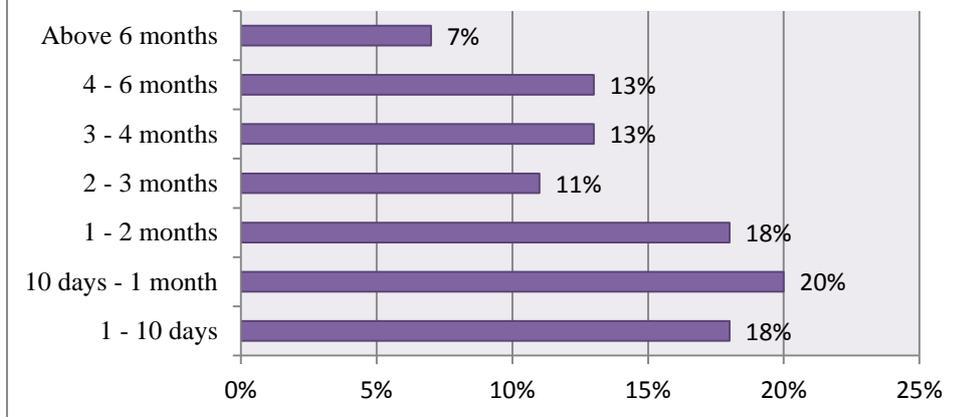
2.8.4 Disposal of Cases

Special Courts are required to complete the trial within one year from the time of taking cognisance, to the extent possible⁵⁷. This provision is not mandatory but conveys that speedy disposal is essential. Of the total 2576 cases pending in Karnataka as on December 2015 at different stages; 628 were pending in Bengaluru Urban district Courts, 109 in Belagavi and 78 in Ramanagara.⁵⁸

⁵⁷Section 35(2) of the POCSO Act, 2012

⁵⁸ Data received from the High Court of Karnataka under the Right to Information Act on 08/07/15

Time between Deposition of the Child and Judgment



The time gap between the child's deposition and the judgment is under six months in a majority of the cases. Only four out of 55 cases were decided after six months of recording child's deposition. Of the four cases, one took more than eight months and others were completed earlier. As seen above, the time final disposal of the is quite long indicating that the delay could also be at the stage of investigation, filing of charge-sheet, FSL reports also contribute to the delay in most cases. Since the information regarding charge sheet date and cognisance date is not available, this could not be analysed further.

Some respondents working with children and families shared that victim forgetting details of the abuse and getting jaded with the justice system are some problems of time lapse between incident and evidence. A police officer said that families want to withdraw the case if it is not concluded soon. A PP was of the belief that that speeding up the process would reduce the numbers of children turning hostile.

In addition to the time loss that occurs prior to the cases reaching trial stage, Special Courts must give enough time for POCSO cases while also ensuring that child friendly measures are implemented. According to Section 309(1) of CrPC, cases must be heard on a day to day basis to achieve the above objective. In the Special Courts, most POCSO cases do not receive any special status and are posted only as frequently as other cases. This could possibly be attributed to their case load and the nature of other cases they handle. According to some respondents, strict compliance to various provisions under the Act is possible only if there are exclusive Special Courts.

2.9 Trials to be conducted *in camera*

According to the POCSO Act, the Special Courts must “try cases *in camera*⁵⁹”. This rule applies to all offences under the Act. The provision does not specify whether entire case/trial or examination of certain witnesses should be heard in this manner.

The Special Court in one district hears the entire case behind closed doors. Researchers also noted this during their visits. Certain staff attached to this Court opined that all witnesses need not be heard *in camera*. Should this logic be applied for POCSO matters is a moot point considering the nature of the offences. In all the districts, examination of the child and mother is conducted *in camera*. Barring this commonality, the practice varies in different Courts studied.

A doctor reported that her deposition was taken in the presence of the typist, prosecutor, accused and the advocate of the accused, suggesting that it was heard *in camera*. In the same Special Court, researchers noted that when a police officer was examined, many people were present. Although the general public is always barred from entering this Court, doors were seen open, all the advocates appeared to have access and some were even present inside when a case was being heard.

This provision also gives discretion to the Court to decide if the child needs to be examined at a place other than the Court through a commission issued by it.⁶⁰ Interviews and cases analysed do not provide any information regarding this provision having been used in the three districts.

***In camera* Proceedings in JJBs**

In one district, all cases are heard in the presence of staff and people concerned with the case. This was a common practice irrespective of the nature of the case or age of the victim. This practice was followed in another district only while hearing sexual offences. All the other witnesses are heard in the open hall. Unless a case was contested by the other party, the case was not heard *in camera* in the third district.

2.10 Presence of a Person during *in camera* Trials

In general, in an *in camera* proceeding only the victim, the accused, advocates of both sides and skeletal court staff are present in the court. Under the Cr.P.C, in rape cases, the court in exercise of its discretion or on an application from either of the parties can allow a person to be in the room or building used by the Court.⁶¹ The POCSO Act mandates the presence of parents or any other person in whom the child has trust or confidence while hearing cases under the POCSO Act *in camera*.⁶² This provision aims at creating a child friendly atmosphere.

⁵⁹ Section 37 of the POCSO Act, 2012

⁶⁰ Proviso to Section 37 of the POCSO Act, 2012

⁶¹ Section 372 (2) of the Criminal Procedure Code, 1973

⁶² Section 33(4) of the POCSO Act, 2012

In addition to having a parent, the law also enables the presence of a person who is not necessarily related to the case or the child. A parent is generally present inside with the child during the evidence. A Support Person authorized by a CWC could be allowed inside during recording of the evidence if the child wishes. Based on the respondent interviews, it emerged that CWCs have not appointed Support Persons in Belagavi and Ramanagara resulting in children not receiving service from Support Persons in these districts. In several cases in Bengaluru, Support Persons were allowed during examination of the child. In each case, their involvement began at different stages of the case. (*Refer to point no 2.12 below*).

Presence of a Person with the Child in the JJB

A parent, generally the mother is present when the child's evidence is recorded before the JJBs in all three districts unless the child requests otherwise. According to a JJB Member, such requests are not uncommon. In one district, respondents informed that the child is asked if the child wants parent/s to be inside. In majority of the cases, a parent is the person of choice and is present. Interviews revealed that the CWC appointed Support Persons were not available for cases before JJBs in any of the three districts.

2.11 Assistance from Interpreter and Special Educators

With a view to enable recording of evidence of the child in his/her preferred language, Special Courts may use discretion to engage translator or an interpreter on case to case basis.⁶³ The DCPU is mandated to maintain a register of interpreters, translators and special educators⁶⁴. The responsibility to share this information with police, Magistrate or Special Court is also with the DCPU. Researchers were informed that the list is being developed by DCPO's office from their contacts and assistance from NGOs in Bengaluru. In Belagavi and Ramanagara, the DCPU had not initiated this process.

Language Interpreters

As far the language interpreters are concerned, the need has not been felt in all districts. Such need appears to be largely dependent on the language spoken by majority population and whether it is a capital city or not. The situation in Bengaluru is different from Belagavi and Ramanagara districts. PPs, advocates and court staff are familiar with these languages and Special Courts manage with available resources in the latter two districts. Therefore, need for language interpreters arise in fewer occasions, for instance, when either or both parties are from outside the State. In Bengaluru on the other hand, perhaps due to migrant population, need for interpretation is greater. A PP of one of the Special Courts in Bengaluru stated that as there is no list available, they mostly rely on advocates around the court to serve as interpreters. However, it must be noted that is not easy to find trial court lawyers familiar with a language from outside the State especially from the Eastern and Western regions of the country.

⁶³ Section 38 of the POCSO Act, 2012

⁶⁴ Rule 3(1) of the POCSO Rules, 2012

Interviews revealed that often interpreters are decided at the time of examination. Interpretation begins without giving time to build a basic level of trust and comfort between child and interpreter which is essential for the child to be able to depose freely. An interpreter having experience in the Special Court, a police station, and a Magistrate's Court stressed on the need for familiarity and prior meetings with the child. This will help to avoid possibility of the child refusing to depose in the presence of a stranger.

Sign Language Interpreters and Special Educators

Respondents shared that no case requiring sign language interpreters or special educators were registered in the three districts. Enquiries showed that such services are not easily available in all districts. While Bengaluru has institutions which have special educators and sign language interpreters in Belagavi there is an Institute for the Deaf which has sign language interpreters in another taluk. Ramanagara has to depend on Bengaluru for experts. Bengaluru appeared to be the only district having access to special educators.

2.12 Legal Representation

As per the Act, the family or guardian of the child is entitled to assistance of a legal counsel of their choice and the Legal Services Authority should provide a lawyer for those who cannot engage private lawyer.⁶⁵

From the interactions with DLSA representatives, it emerged that in none of the three districts legal aid lawyers were provided to child victims in POCSO matters. In Bengaluru, two private lawyers interviewed assist the PPs. Lawyers either work with prosecutors on the request of families or on a request from PPs. A private lawyer with experience prior and post POCSO Act has assisted the PPs in many cases. As the PPs are handling a large number of cases, through this method efforts are made to assure individual attention necessitated in these cases. However, an advocate even with domain knowledge or experience in the area is not allowed to be a SPP in specific cases unless he has seven years of practice experience.

2.13 Support Persons

As per the POCSO Rules, CWC with the consent of the child and his guardian, parent or a person in whom the child has trust and confidence may appoint a Support Person to render assistance to the child through the process of investigation and trial⁶⁶. Support Persons have an important role of liaising with various agencies and update families with information in addition to responsibilities listed under the law. These include providing information relating to available services, compensation, judicial procedures, and potential outcomes and others such as school admissions, help with moving houses which are not strictly their responsibility under the Act.

⁶⁵Proviso to Section 40 of the POCSO Act, 2012

⁶⁶Rule 4 (7) of the POCSO Rules, 2012

From the respondent interviews it emerged that Support Persons are appointed only in Bengaluru. The existing Support Persons in Bengaluru are able to cater to only a fraction of the cases. Perhaps, the lack of clarity on who should identify the Support Persons has added to the problem. There is an immediate need to identify adequate, trained and equipped Support Persons to guide children and family through the system. A Child Line representative opined that a child needs a Support Person to help in the process from the police station and entire duration of court processes.

In Bengaluru and Belagavi Child Line representatives fill the gap that exists due to lack of formally appointed Support Persons. Child Line representatives receive information regarding POCSO cases from various sources including police station, children, public, media, teachers through telephone helpline or letters or via email and also from participants of outreach and awareness programmes conducted. As they are not authorized Support Persons they are not allowed during *in camera* proceedings but assist in registering cases, producing children before CWCs, facilitate medical interventions and identify appropriate shelter when needed.

One Stop Crisis Centres

In Karnataka the OSCCs were set up under the Nirbhaya Fund in many District government hospitals after November 2014.

One Stop Crisis Centres and their presence in Districts under the Study⁶⁷

Objective

The major objectives of OSCC are to provide legal, counselling, medical services and shelter to female victims of violence. This caters to women of all ages and male children below the age of 6 years.

Location

In two districts, the unit is not visible from outside. However, when a patient approaches the front desk, they are guided to the OSCC. In another, the unit is on the side of the road as one enters the Government hospital premises but there is no board facing the road. It is always the police who bring the victims to the hospital and they are aware of where it is located.

Functioning of the OSCC

The OSCC consists of a multi-disciplinary team with counsellors, social workers, legal aid lawyers and police constable. The OSCC was envisaged to be open 24x7 and cater to any emergency situation during the night or day. As shared by the staff at the OSCC all the posts were not filled in any of the three districts. The OSCC is open with one staff being present at all times. This does not necessary mean that the psycho- socio-

⁶⁷ Information regarding the OSCC is drawn from the interviews with respondents related to OSCC and observations of the researchers.

legal services would be available 24x7 as the core staff except in one OSCC are not around during the night.

Nature of Cases

The OSCC attends to cases of physical assault against women, domestic violence and sexual assault against adult women and children. Interviews with representatives of the OSCC in three districts revealed that they receive more domestic violence cases and are predominantly accessed by adult women. With respect to POCSO cases, records show that they have had only cases of penetrative sexual assault. The reason for the same may be that police do not bring child victims to the OSCC in other cases.

Access by Public

Due to its location and possibly the lack of publicity, all cases under the POCSO Act are not received by the Centre unless police brings it to their attention. There may be few cases that come through the casualty.

Reporting

The Centres send reports of the cases to the Office of District Child Protection Officer (DCPO).

2.14 Orientation to the Court Complex and Processes

Another essential part in engagement with the system is orientation to the courtroom and the complex. Prior familiarity with the structure and procedure could aid in easing the discomfort of the child. No such system through State agencies is in place and very little support from non-state actors was available. Most people have to not just locate the courtroom, but also understand the functioning of the system on their own.

All the PPs interviewed meet the child on the day of the hearing. In rare circumstances, children and families meet the PPs a day or two before the hearing. A common difficulty shared by two PPs is that the police bring the children late to their office which gives them very little or no time for interaction. Handling a large number of cases may also contribute to the problem. In Bengaluru, Support Persons have introduced children to PPs, explained his role in their case and given a tour of the court. Support Persons orient the child on a day closer to hearing which is beneficial considering the invariably long time gap between the date of incident and evidence. Further, they also tell the child to request for water, for a chair to sit down or for breaks if required in the Court. Through interactions with people from different backgrounds, researchers noticed a large support gap in the other two districts.

CHAPTER III PROCEDURAL COMPLIANCE BY POLICE, DOCTORS AND MAGISTRATES

Special Courts and JJBs being the final stop in the journey of the child in the criminal justice system, child interacts with the police, doctors, Magistrates and/or CWCs prior to going to Court. This Chapter presents a snapshot of roles and responsibilities of these agencies as recognised under the POCSO Act and the extent to which services of stake holders like medical professionals, interpreters, experts are available and accessed with the intervention of police, doctors and Magistrates.

3.1 Recording of Statement under Section 161 Cr P C

As per the provisions of POCSO Act, while recording the statement of the child police officers have to follow certain norms. Many of these provisions are mandatory in nature. The statement should be recorded either at the residence of the child or where the child usually resides or at a place of his choice.⁶⁸ The police officials recording statement should not be in uniform.⁶⁹ The police are required to record the statement as spoken by the child in the presence of a parent or a person in whom child has trust or confidence as mandated under the POCSO Act.⁷⁰

3.1.1 Place of Recording the Statement

The objective of recording the statement in the residence or a place of choice of the child is to facilitate child's involvement in deciding the best suitable place. Police officers in their interviews in all three districts shared the efforts made to record the statement outside the police station. Residence of the child is the first choice in all three districts in most cases. Statements have also been recorded in schools in Bengaluru and Belagavi in cases involving offences in schools. Statements were also recorded in a park outside the station if the child came to the station. Contrary views were expressed by respondents working with children and representatives from within the police department. These interviews revealed that the place for recording statements were largely chosen based on convenience of police and include place like computer room of the station or in some cases in the hospitals, which may not necessarily be a place of child's choice. A Child Line representative stated that statements were recorded in shelter homes as well.

3.1.2 Statement to be recorded by female Sub- Inspector

As per POCSO Act, as far as practicable, the statement should be recorded by a female police officer not below the rank of Sub- Inspector⁷¹. While this is not a mandatory provision under

⁶⁸Section 24(1) of the POCSO Act

⁶⁹ Section 24(2) of the POCSO Act

⁷⁰ Section 26(1) of the POCSO Act

⁷¹Section 24(1) of the POCSO Act

the POCSO Act, it is mandatory under the Criminal Law Amendment Act 2013(CLAA)⁷². As per CLAA, statement of a victim of sexual offences has to be recorded by a female police officer or any woman officer indicating that any offence against a girl child would come within the purview of this provision. In all three districts, statements were recorded by female officers or by male officers in the presence of sub-ordinate female police. Interviews with police officials of different ranks revealed that stations have evolved their own systems such as female Assistant Sub Inspector recording statements under instructions of a senior officer or a male Sub- Inspector records statement in the presence of a female SJPU social worker.

3.1.3 Recording Statement in Uniforms

Interviews with police officials revealed that the police escorting children also wear civil clothes but some officials expressed their difficulty in having to keep spare clothes and change while dealing with a POCSO case.

3.1.4 Recording Statement in the Presence of Parents or any Other Person

This is one of the well-established child friendly measures introduced to enable smooth recording of statement. As a rule, the child's statement is recorded in the presence of a parent in all three districts. A person other than a parent can be permitted to be part of this process consequently; a Support Person has also been present in some cases. There were no instances shared where any other person of child's choice other than the family member was present in Ramanagara and Belagavi during recording of statements by police.

3.1.5 Recording the Statement through Audio Video Means

It is the duty of the police officer to ensure that the statement of the child is recorded through audio- video means.⁷³ Audio-video recording ensures that statement is captured as spoken by the child in compliance with the requirement under the law⁷⁴. All police representatives informed that their stations had audio video equipment. The equipment was operated by a female constable of the concerned police station while a nodal female sub-inspector was facilitating recording of statement in Bengaluru. The usage of equipment appears to be at the discretion of individual police officers. A Sub- Inspector believed that recording statement compromises with confidentiality. A majority of the officials interviewed considered recording the statement of a very small child to be a challenge owing to the communication difficulties and use of signs and words that are not commonly understood.

3.2 Recording of Statement under Section 164 Cr. P. C

The POCSO Act lays down procedures to be followed during recording of the statement of a child by the Magistrate. The CLAA provides for recording the statement of victims of certain sexual offences as soon as the commission of the offence is brought to the notice of the

⁷² Section 161(3) of the Code of Criminal Procedure

⁷³ Section 26(4) of the POCSO Act

⁷⁴ Section 26(9) of the POCSO Act

police.⁷⁵ A statement made by a temporarily or permanently disabled person should be videographed and may be used as examination in chief and the victim can be cross-examined based on it.⁷⁶

The system for recording of statements under Section 164, CrPC is well established. Child victims were produced before the Magistrate for recording the statement after the medical examination. For this purpose, the IO makes a requisition to the Magistrate seeking time for production of the child. The child's statement is recorded after Court hours or during lunch hours a day after the requisition is made. The child is escorted by a female police constable for this purpose. As a measure to safeguard the information shared by the child, Magistrates take an undertaking in writing to maintain confidentiality from people present.

3.2.1 Presence of a Person during Recording of Statement

To ensure that the child is comfortable to give statement, a Magistrate should record statement in the presence of parents of the child or any other person in whom the child has trust or confidence as required under the law.⁷⁷ In *Court on Its Own Motion vs. State of N.C.T. Of Delhi*,⁷⁸ the Delhi High Court had held the child victim should not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of "Ascertaining voluntary nature of statement" unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice.

Most common choice of person to be present with the child is the mother. The Magistrates exercise their discretion and allow the mother is used if it is beneficial to the child. The mother is invariably present with children under five years. One of these Magistrates who had recorded about 10 statements expressed that age is a factor that determines whether the child wants a parent inside. With a child under 12 years, mother's presence makes no difference to the child but a child above 12 years may insist that she will state facts in the absence of the parent. Two Magistrates allow the mothers to be present only if the girl desires it. As opposed to this, three other Magistrates ask the mothers to be present in all cases and her presence is dispensed with only when the child is uncomfortable deposing in her presence.

Based on interviews, it emerged that children are accompanied by parents and no other person during the statement under Section 164, CrPC in Belagavi and Ramanagara. In Bengaluru, a NGO representative who worked with the child was allowed to be present while recording the statement. According to a Support Person, they are allowed inside based on family's request. The child may not however know of a choice of having a person other than family unless such information is given.

⁷⁵Section 164(5-A) (a) Code of Criminal Procedure

⁷⁶ Sections 164 (5-A) (a) &(b) of the Code of Criminal Procedure

⁷⁷ Section 26(1) of the POCSO Act, 2012

⁷⁸ WP(C) 8889/2011, decided on 11.05.2012

3.2.2 Dispensing with recording of the Statement

The Section 164 statement should be recorded as spoken by the child.⁷⁹ Magistrates made efforts to follow this but also opined that it is not possible to record statements of all children. One Magistrate dispenses with recording of statement when child is unable to speak or does not open up due to young age. The Magistrate shared a case of a two year child and the challenge faced. The option is also to take assistance from experts who can facilitate communication with young children as was done in one case in a district. When the child is very small, statement of the mother is recorded by some Magistrates. When child refuses or is unable to give statement, Magistrate's mentions that in writing.

3.2.3 Time Frame for recording Statement

There is no time frame prescribed under the POCSO Act or CLAA to record the statement. In *State of Karnataka v. Shivanna*⁸⁰ the Supreme Court laid down that the victim of rape has to be taken to Magistrate as soon as police receive information. If the IO fails to produce the child before a Magistrate within twenty four hours, reasons for the same should be recorded in the case diary and a copy should be handed over to the Magistrate. The Supreme Court held

Upon receipt of information relating to the commission of offence of rape, the Investigating Officer should make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement Under Section 164 Code of Criminal Procedure.....If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

Interviews indicated that police are unable to produce children before the Magistrate within 24 hours. The delay may be attributed to the duration taken for medical examination and human resource and transport constraints. The duration for medical examination takes few hours to days in districts. Medical examination is given priority and request to the Magistrate is made only when a constable is free to present the child for recording of statement. Depending on the availability and distance to the hospital, police vehicles are used to escort children. For children hailing from taluks other than the district headquarters, government bus is the common mode of transport. Since this is the practice in cases of medical examination also, escorting can be time intensive and the recording of 164 statements could be delayed.

⁷⁹Section 25(1) of the POCSO Act, 2012

⁸⁰ (2014)8SCC913

3.2.4 Recording the 164 Statement by Audio Video Means

The POCSO Act requires the Magistrate to ensure that the statement of the child is also recorded by audio-video means wherever possible.⁸¹ Audio video equipment is not available in any of the Magistrate courts in the three districts. In Ramanagara and Belagavi, statement of children is reduced into writing by the typist. In Bengaluru, all the statements are video recorded only because the equipment is provided by the police. During the State consultation on this study, participants clarified that Magistrates in Bengaluru rely on the IOs to provide the equipment for recording.

A female police constable had shared that some Magistrates seek their help to operate the video camera. This was established through interviews with a Magistrate. All statements are recorded *in camera* and the videographer is present along with the child, typist and the Magistrate. A parent is also allowed if the child desires. One Magistrate (recorded three cases of POCSO) shared problems that arose due to the presence of a videographer. The child was conscious of his presence and spoke so softly that her voice was barely audible in the DVD.

3.2.5 Venue for recording Statement

The POCSO Act does not specify any place for recording the statement of the child. Magistrates exercise their discretion and record it either in the court hall or in their chambers. Of the five Magistrates interviewed, two Magistrates stated that they record statements in the court room, two Magistrates have recorded some cases in the chambers when the child is very young and one has recorded all cases in the chambers. In one of the Courts, the child is made to stand next to the Magistrate. Precautions to protect from exposure are taken by closing doors and windows when statements are recorded in courtrooms.

3.2.6 Attire while recording Statement

Unlike the police, there is no provision prescribing civil clothes for Magistrates during recording of the statement. The Magistrate can use his discretion in this regard. Magistrates in most cases prefer to record statements in the courtroom and are seated on raised platforms. Whenever they have recorded statements in the chambers, the physical distance between child and Magistrate is reduced, the environment is less formal and they do not wear court clothes.

3.2.7 Recording Statement by a Lady Magistrate

In *State of Karnataka vs. Shivanna*⁸², the Supreme Court recommended that as far as possible in rape cases the victim should be produced before a lady Judicial Magistrate. The POCSO Act does not have such requirement. Hence, unless a charge of rape has been filed under the

⁸¹ Section 26(4) of the POCSO Act, 2012

⁸²(2014)8SCC913

IPC, there is no obligation on the IO to produce the child before a lady Magistrate. In the three districts, the lady Magistrate is recording the statements in taluks where they are available. In Bengaluru, statements of victims are recorded by female Magistrates. In Belagavi, researchers were able to interview one female Magistrate who recorded statements but in Ramangara district as the taluk did not have female Magistrates, a male Magistrate records the statement. Magistrates find recording the statement of a child under three years to be most difficult and is described by a Magistrate as a traumatic experience.

3.2.8 Relevance of the Statement

In *State v. Karibasavaiah*⁸³ when the victim turned hostile, the CD recording of her Section 164 statement was played to her, but even then she denied the occurrence of the event and said she had no knowledge of the same. In *State v. Thippesha*⁸⁴ when the victim girl denied that she had given 164 statement, the recording of the same was shown to her. Then the victim admitted the fact that her 164 statement was taken but denied everything else. In both cases, the prosecution failed to prove the case as the victim turned hostile and it resulted in acquittal. In some of the cases analysed the statement under Section 164 CrPC was used to challenge the victim when she turned hostile. However, it has been established that if the victim does not support the case despite showing the video, it cannot be considered.

The Court discussed the value of the statement under Sec 164, CrPC, in *State v Somashekhar*⁸⁵. The defence counsel in his submission stated that 164(5), CrPC statement was not done properly. At the first instance when victim comes, the influence of police has to be removed. In this case the procedure was completed within 10 minutes which clearly showed that police influence was not removed whereas the victim stated that she had given statement before JMFC at the instance of police when she was taken there. In *State v Shahid*⁸⁶ the Special Court narrated in detail the points raised by PP who had relied on *Murugesan v State*⁸⁷ wherein the Madras High Court had held regarding the evidentiary value of the 164 statement when witness denies or disowns the statement. The Special Court also stated the version of PP that the 164 statement is of relevance in evidence hearing and that it can be used as corroborative evidence. The Court noted these arguments and acquitted the accused on the grounds that the victim turned hostile and there were investigation lapses.

3.3 Engaging Services of Interpreters and Special Educators

With a view to enable recording the statement in the child's preferred language, the Magistrate and police may engage translator or an interpreter while recording the statement.⁸⁸ Engaging a translator for any child whose mother tongue is different from the official

⁸³Spl CC No.490/2014 decided on 07.11.2015.

⁸⁴Spl CC No.495/2014 decided on 02.01.2016.

⁸⁵Spl SC no.89/2015 decided on 24.02.2016

⁸⁶ SC No. 04/2015 decided on 26.02.2016.

⁸⁷2014(2) Crimes 26

⁸⁸Section 26(2) of the POCSO Act

language would help reduce communication difficulties that children often encounter under pressure.

3.3.1 Engaging Translator or an Interpreter by Magistrate

One Magistrate shared that in their district, the most common language other than Kannada is Urdu. Since the Magistrate is not familiar with the language when any case requires interpretation, assistance is sought from Urdu speaking advocates. From interviews, it is learnt that in Bengaluru, interpreters have been used both in the police stations and by Magistrates drawing from contacts as list is not available with them. (**Also refer to point no. 2.7 above**)

In one case, the statement was recorded in the chambers of a lady Magistrate who took the statement and took a lot of time, care and was extremely sensitive and patient while recording the statement. She took almost an hour to complete the whole process.

Interpreter in a POCSO case

3.3.2 Engaging Translator or an Interpreter by Police

When the information recorded by the police is in a language not understood by the child or whenever it is necessary, a translator or an interpreter may be provided to the child⁸⁹. Further they can also engage interpreters while recording Section 161 statement of the child⁹⁰. The objective of this provision is to ensure that police are able to get the best information both from a child providing information regarding an offence and in the statement of the victim.

Police officials shared that they have to engage an interpreter when they receive a case of a child speaking languages from Eastern, North Eastern or Western regions of the country. An interpreter had assisted in recording of S 161 statement in a station in Bengaluru. She was contacted based on reference from a Support Person who had assisted in another case in the same police station. None of the stations that the researchers visited had used interpreters. In police stations visited in Bengaluru, they had managed internally with their knowledge of English, Hindi and regional languages.

3.3.3 Remuneration for Interpretation

POCSO Act clearly mentions about payment of fees for specialised services⁹¹. Payment needs to be made by the State Government. One of the Magistrates mentioned that they engage advocates and Court staff for interpretation and pay them a token amount. Interpretation is perceived as a voluntary service and even the incidental expenses such as travel costs are borne by the interpreters. Interviews with interpreters other than advocates in

⁸⁹ Section 19(4) of the POCSO Act

⁹⁰ Section 26(2) of the POCSO Act

⁹¹ Section 19(4), 26(3) and 38(1) of the POCSO Act

Bengaluru revealed that they had not received any fees. They have assisted in interpretation while recording Section 161 and 164 statements or evidence in Special Courts.

(Also refer to the section on language interpreters in 2.13 under Chapter II)

3.4 Production of Children for Medical Examination

Medical examination of every victim of an offence under the POCSO Act has to be conducted by a registered medical practitioner.⁹² Children are routinely produced for medical examination by the police within 24 hours of receiving information about a case. Police constables accompany children irrespective of whether a parent or an NGO representative is present. Across all three districts, preference is given to Government District Hospitals when cases are registered in stations at the district headquarters where services are free.⁹³

Interviews with police officials and doctors revealed that government hospitals in taluks were not equipped to deal with such cases and hence were taken to private hospitals or government hospitals in district headquarters. The experience of children presented before government and private hospitals is likely to be different due to the staff capacity in each of these hospitals. Medical examination at private hospitals is completed in much shorter time as compared to government hospitals as emerged in the interviews.

Revisits to the hospital for tests and on occasions admissions for upto three days is also done in government hospitals. WPCs face the brunt of the situation as they wait with the child till the examination is completed. This delay is possibly for the reason that the cases are not taken on priority basis and the examination takes longer time to complete. One of the constables shared that doctors fail to acknowledge that they have been waiting for hours after travelling in public transport.

We have to stay in the hospital for three days. For constables coming from distant taluks, it is extremely difficult as they get the child in the bus and they are made to wait in the hospital with the child. They have to leave their family. In few stations, there is only one lady constable. All POCSO cases in the entire district is referred to the District Hospital in the city, as the taluk hospitals do not have the required infrastructure. The hospital has received an order that medical examinations have to be concluded in one day, hopefully they will implement.

-Representative from the Police Department

3.5 Prevent Contact with the Accused

During investigation, it is mandatory for the IO to ensure that the child does not come in contact with the accused.⁹⁴ According to police officials, exposure did not happen as the

⁹² Section 27(1) of the POCSO Act

⁹³ Section 164-A (1) of the Code of Criminal Procedure, 1973

⁹⁴ Section 24(3) of the POCSO Act

accused and the child were dealt by different police officials at different points of time. Further, children are not called to the station for recording of the statement, according to them. Other respondent interviews, however, presented a different picture. An interpreter was called to the police station to translate the statement of the child which not only shows the requirement under law to recording statement outside violated but also presents a possibility of an encounter with the accused if he is in police custody.

3.6 Reporting and Communication

Police have the responsibility of providing information to different bodies and also to children and families.

Reporting to Child Welfare Committees

Responsibility to report to the CWC and the Special Courts within 24 hours of receiving the information lies with the police.⁹⁵ Interactions with CWCs suggested that information on all cases did not reach them in a timely manner and that the information shared was also limited. Their repeated requests for details have not been received positively. Currently, they procure details of cases they may require from the police. CWCs strongly believe that details are essential for them to decide on care and protection measures.

3.7 Procedures Relating to Children in Need of Care and Protection

As per the Act, police are required to make arrangements for medical care and shelter⁹⁶. Further, they are also required to produce the child before CWC if the child appears to be in need of care and protection.

Production of Children before the Child Welfare Committee

The POCSO Rules clarifies that all victims of sexual offences are not required to appear before the CWC.⁹⁷ After considering the factors laid down under the Rules, discretion to decide production before the CWC is with the police.

Post the POCSO Act, a small number of children are produced before the CWCs which also include children requiring shelter. One CWC member felt that it would amount to harassment if the child is produced before the CWC when there is family support. A majority of CWC members however, felt that all children should be produced before them primarily because they are better equipped to interact and gauge their needs. They reported that they believe that all cases of children in need of care and protection are not produced before them. They cited a case of a child who had voluntarily gone away with her boyfriend and brought to the police station. The mother was upset when she heard that her 16 year old daughter was married and refused to take her back. So the police sent the children to the boy's house with an advice not to have conjugal relationship till the girl turned 18. CWC members felt that this case could have been dealt very differently by counselling the children and the mother to take her

⁹⁵ Section 19(6) of the POCSO Act

⁹⁶ Section 19(5) of the POCSO Act, 2012 and Rule 4(3) of the POCSO Rules, 2012

⁹⁷ Rule 4(3) of the POCSO Rules

daughter back and keep her safe till she is 18. Police on the other hand, are clear that they need not produce all children before CWC except for those required under the law.

3.8 Medical Examination of the Child

Medical examination of the child should be conducted as per Section 164A of Cr. P. C which lays down procedure for medical examination of a rape victim. As per POCSO Act, the same will apply to child victims of sexual offences.⁹⁸ The provision is clear that it is not dependent on registration of FIR. Interviews revealed that most medical examinations are facilitated through police and they would invariably register FIR prior to taking them to doctors.

One of the key features of this provision is that the consent of the victim or any person on her behalf has to be obtained prior to conducting the examination. A female child's examination has to be mandatorily conducted by a female doctor⁹⁹. The examination of a child has to be conducted in the presence of a parent of the child or any person in whom the child has trust or confidence.¹⁰⁰ In one district, a female Child Line representative is present during medical examination in all cases that have come through them.

One of the doctors interviewed stated that emergency medical care requests rarely come to their hospital and she was unable to recall any such case that she had personally attended .She is of the opinion that children may be accessing private medical facilities for emergencies.

3.9 Mental Health Services

Barring Bengaluru, other districts have little or no access to service of this nature. In one district, there was only one counsellor attached to the DCPU who did counselling in the community and in the institutions. Another counsellor was at the OSCC at the District Hospital who was appointed only a few days prior to the field study. Her counselling services were available for child and adult victims of violence, domestic violence and sexual assault who have accessed the OSCC. However, OSCCs are not widely publicized and are accessed predominantly by victims of domestic violence who receive medical intervention from the District Hospitals.

As per the POCSO Rules, police have the responsibility of informing the child and his parent, guardian or any other person in whom the child has trust and confidence of the availability of services including counselling and assist them in contacting the persons who are responsible for providing these services¹⁰¹. However, such services should exist and the police need to have the knowledge of the same in order to provide information to children and family.

⁹⁸Section 27(1) of the POCSO Act,

⁹⁹ Section 27(2) of the POCSO Act

¹⁰⁰ Ibid Section 27(3)

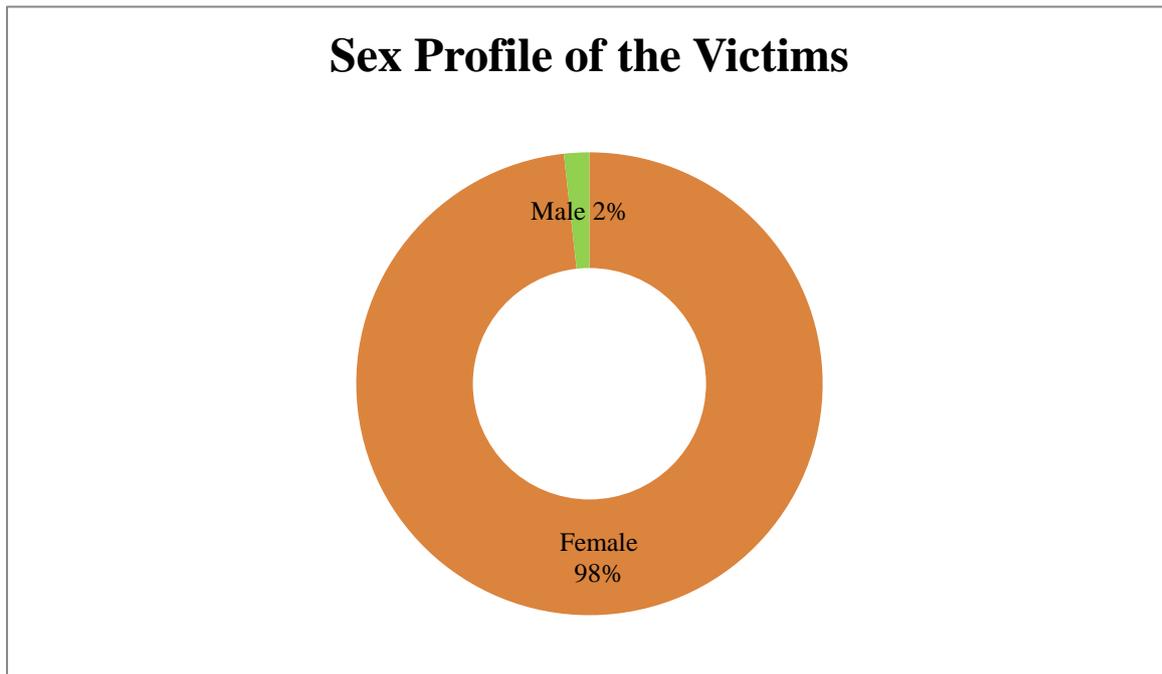
¹⁰¹Ibid Rule 4 (2)(e)

CHAPTER IV FINDINGS BASED ON JUDGMENT ANALYSIS

This chapter specifically focuses on findings that emerged through judgment analysis and is substantiated with findings from interviews with respondents. A total of 110 cases were analysed which consisted of 81 cases from Bengaluru Urban, nine from Belagavi and 20 from Ramanagara Special Courts.¹⁰²

4.1 Sex Profile of the Victims

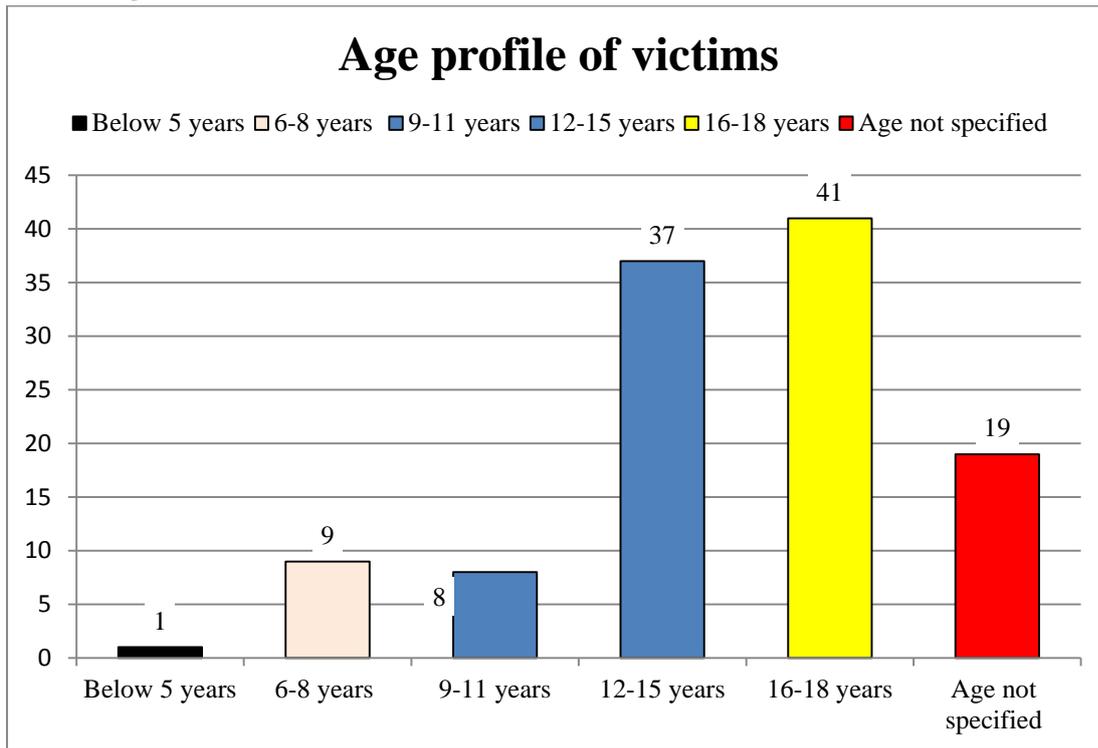
There were 115 victims in total of which two were male victims.



Interviews with individuals working with children, respondents from police department, counsellors, CWCs and PPs also confirmed that they deal with fewer numbers of cases involving male children.

¹⁰² The cases analysed were accessed from e court website <http://ecourts.gov.in/services/>

4.2 Age Profile of Victims



Out of the 115 children, age of 19 children was not specified. Of the 96 children whose age was specified, 20 children (20.83%) were below 12 years and the remaining 76 (79.16%) were between 13 to 18 years. Within the age group of 13-18 years, 41 victims (54%) fell in the age group of 16 to 18 years. According to the Magistrates, police officials, CWCs, NGOs and PPs the number of children they deal with are of children above 12 years are higher as compared to younger children.

The age of 11% victims (6) was contested in the age group of 15 to 18 years. Either the defence counsel challenged the age or the prosecution witnesses turned hostile stating she was above 18 years at the time of incident. Six victims turned hostile on the point of age and sexual offence and in three cases the victim was married to the accused. Since, the material witness turned hostile the accused was acquitted in all these cases. In *State v Faizal Khan*¹⁰³ as per the victim's father, her age was 17 years at the time of the incident but the victim in her examination-in-chief stated that she was a major. The Court also noted that the IO had not obtained any authenticated document to prove the age. The medical report stated the age of the victim to be between 17 and 18 years. The Court considered the defence counsel's submission that according to the Supreme Court judgment in *Jaya Mala v. Home Secretary, Govt. of Jammu and Kashmir*¹⁰⁴ - "when the age is determined based on the radiological and orthopaedic test, the Court can take judicial notice that margin of error in age that is

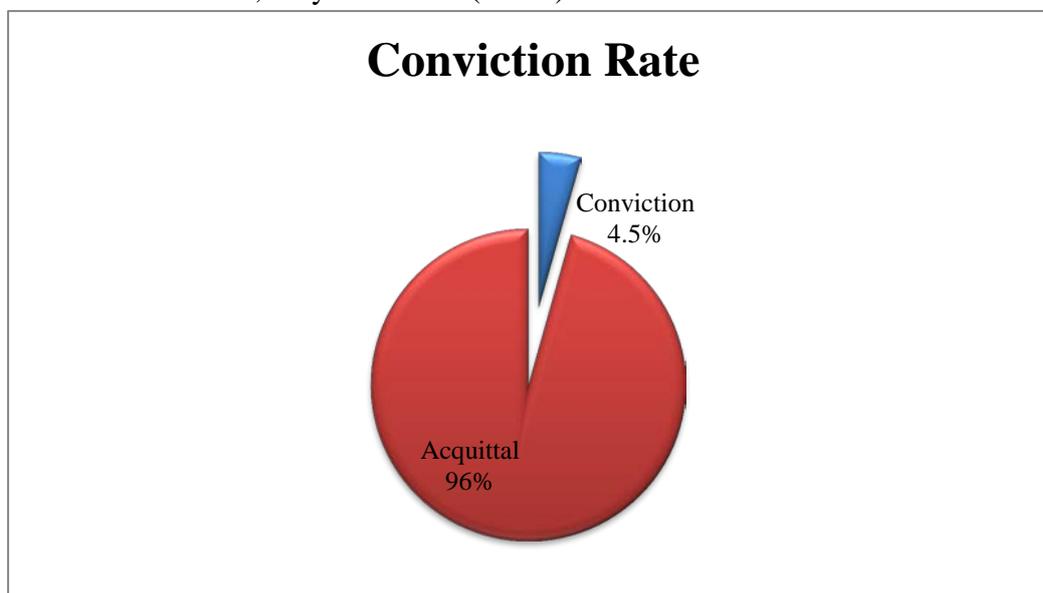
¹⁰³ Special C.C.No 140/2013 decided on 17.02.2014

¹⁰⁴ 1982 SCC (Cri) 502

ascertained by such examination will be two years on either side.” The Special Court held that prosecution failed to prove the victim to be below 18 years and acquitted the accused.

4.3 Conviction Rate

Out of the 110 cases, only five cases (4.5 %) resulted in conviction.



Of these five cases, in four cases the accused was convicted both under the POCSO Act and IPC whereas in one case the conviction was only under the POCSO Act. Other than these five cases where the offender was convicted, in one case the prosecution could not prove the offence under POCSO Act, but the accused was convicted under the IPC because he admitted his guilt for the offence of kidnapping the child.

Box 5: Details of the Cases in which Accused were Convicted

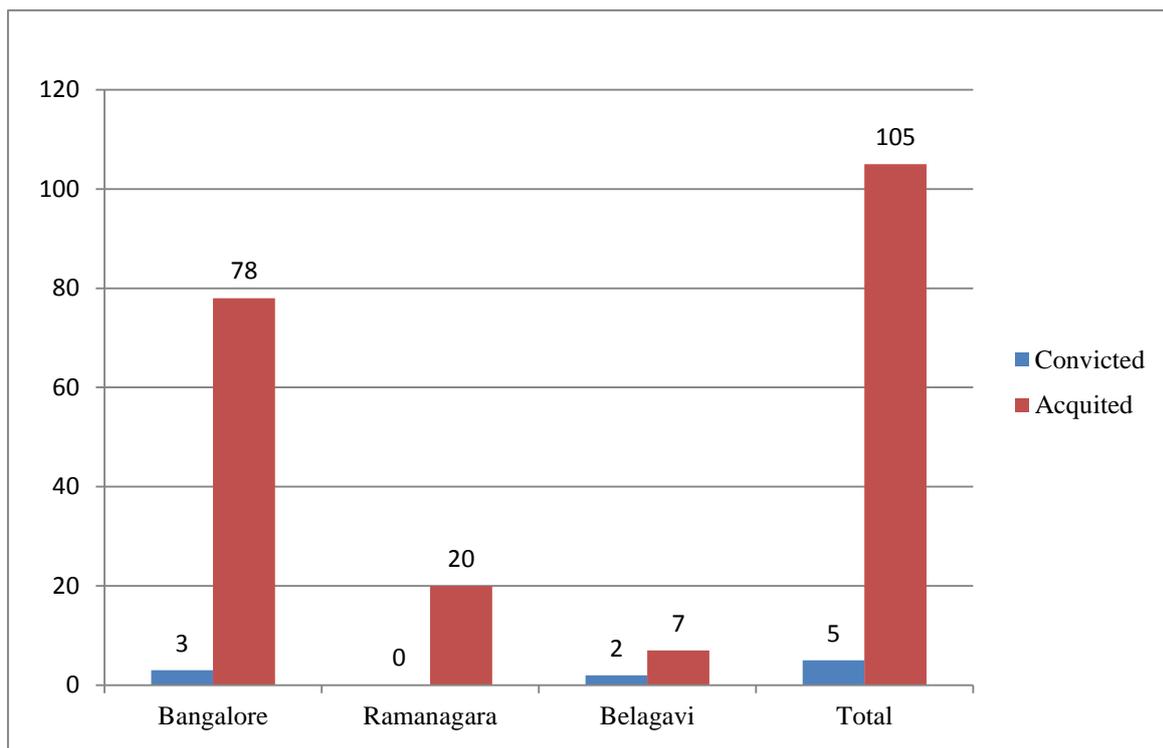
Case Title	Charges and sentence under POCSO	Charges and sentence under IPC
<i>State v Deepak Sunder Singh Vantimoori</i> , ¹⁰⁵	Three years simple imprisonment and Rs. 10,000/- fine for offence under Section 8 of the POCSO Act; One year imprisonment for offence under Sections 12 of the POCSO Act and Rs. 10,000/- fine.	Three years imprisonment under section 452 IPC and Rs 3000/- fine; Six months simple imprisonment under Sections 354 (A) IPC
<i>State v Muneendra</i> ¹⁰⁶	Five years rigorous imprisonment and fine of Rs.30,000/- for the offence under Section 9(m) r/w Section 10 of POCSO Act One and half years rigorous imprisonment and fine of Rs.10,000/- for the offence	One year rigorous imprisonment and fine of Rs.10,000/- for the offence punishable under Section 506 of IPC

¹⁰⁵ Spl.SC No. 133/2015 decided on 6.04.2016.

¹⁰⁶Spl CC No. 576/2014 decided on 27.01.2016.

	under Section 11 r/w Section 12 and 18 of POCSO Act	
<i>State v Vijay</i> ¹⁰⁷	Three years simple imprisonment for three years and Rs. 2,000 as fine for offences under section 354 r/w section 7 r/w section 8 of the POCSO Act	Sec. 354
<i>State v. Abdul Samada</i> ¹⁰⁸	Ten years rigorous imprisonment under Sec. 4,6,8 and fine of Rs. 75,000	One year imprisonment under Section 506 and Rs. 5,000 fine
<i>State v Musheer</i> ¹⁰⁹	Five years simple imprisonment for a term of five years and shall also be liable to fine of Rs.15,000/ for offences under sections 9(m) r/w. section 10

The district-wise conviction rate is depicted in the graph below. The Special Court in Belagavi recorded two convictions out of a total of nine cases (22%) disposed of.¹¹⁰ Bengaluru Urban recorded three convictions in the 81 cases (3.7%) disposed of.¹¹¹ There were zero convictions in Ramanagara.¹¹²



¹⁰⁷Spl CC No. 86/2013 decided on 12.09.2014.

¹⁰⁸Spl SC no. 235/2013 decided on 24.01.2015.

¹⁰⁹Spl CC No.568/2014 decided on 14.03.2016.

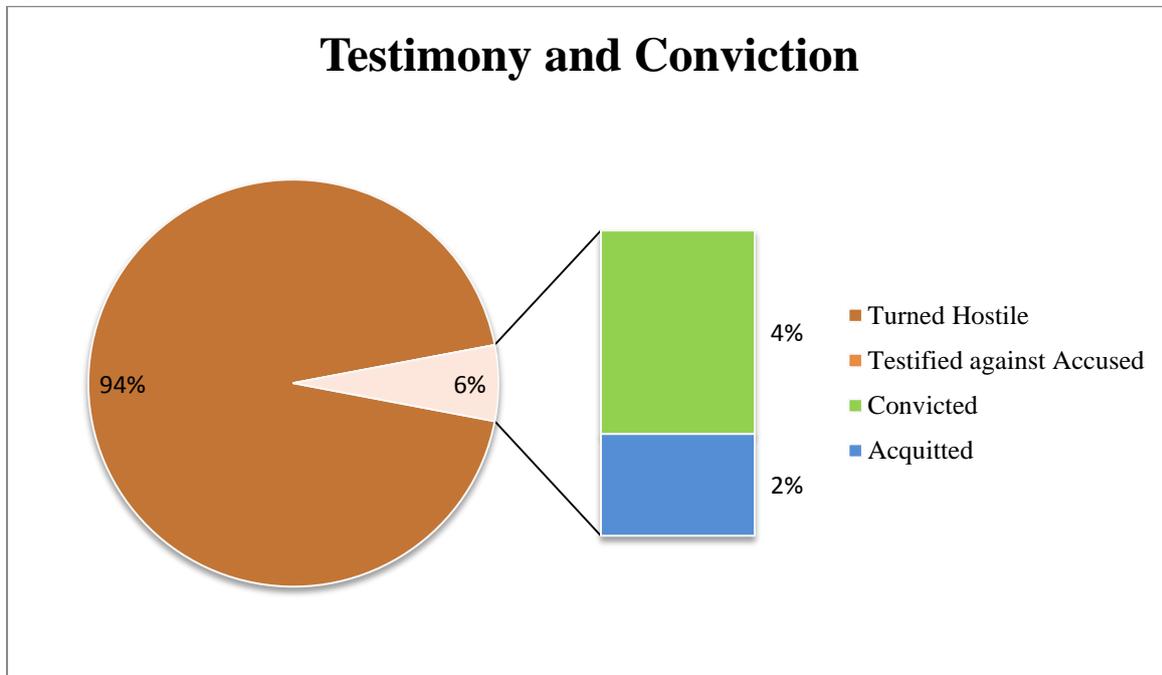
¹¹⁰Cases analysed in Belagavi was for a period from October 2015 to April 2016

¹¹¹ Cases analysed in Bengaluru was for a period from September 2013 to April 2016

¹¹² Cases analysed in Ramanagara was for a period from December 2015 to April 2016.

4.4 Factors that Led to Conviction

The victim testified against the accused in seven cases, of which, five resulted in conviction under POCSO Act, one under IPC and one in acquittal. In the remaining 103 cases, the victim turned hostile, either with respect to the offence, identity of the accused, or on the point of age, or a combination of these factors.



Victim's Testimony against the Accused was Cogent and Reliable

The Courts convicted the accused based on the testimonies of the victim and other witnesses and noted that minor discrepancies in facts and exaggerations did not affect the outcome of the case.

In *State v. Vijay*,¹¹³ the Special Court convicted the accused on the basis of the testimony of the child. The accused in this case was a gym instructor who had sexually assaulted the 17-year-old victim, while he was instructing her. The defence counsel pointed to contradictions in the child's testimony stating that there was slight variation in the time mentioned in the examination-in-chief. She had identified the accused and stated that as the regular trainer was absent it was the co-trainer – the accused – who was present during that time. The Special Court noted that there was nothing to show that she made unnecessary allegations against him as he was not related to her, except that he was the trainer-in-charge and she was a trainee. With respect to house keeper of the gym turning hostile, the Special Court stated, "it is quite natural that she who is employed in that gym, would not support, and this no way casts doubt on the version of prosecutrix". The Special Court convicted the accused under Sections 7 and 8 based on the clear statement of the victim that the accused placed his hands and touched her private parts on the pretext of training.

¹¹³Spl CC No. 86/2013 decided on 12.09.2014.

In *State v. Musheer*¹¹⁴, the Special Court convicted the accused, for sexually assaulting a eight-year-old girl relying mainly on the testimonies of the victim and her mother as they were reliable and sufficient to hold the accused guilty. The Special Court observed while considering the victim's testimony that:

She has exaggerated to the extent that accused stripped her and both of them were lying under bed sheet. But the other part of her evidence that he had touched her back corroborates the case of the prosecution. As per allegations he had touched her parts of the body. Merely because the part of the body i.e., the word 'back' is not specifically stated before Investigating Officer, her evidence to the effect that accused came to fall upon her and touched her back part cannot be disbelieved. Though she has not used the similar words as given before the learned Magistrate or before her mother, doesn't defeat the prosecution case. Sum and substance of her statement before the Court should be taken. What she intends to express in her own words, should be gathered.

The Special Court accepted the victim's testimony and also pointed out that the defence failed to rebut the presumption under Section 29 of the POCSO Act. The Court also noticed that there was delay in filing of the complaint, but held it was not fatal to the prosecution case.

In *State v. Muneendra*¹¹⁵, the victim was an eight-year-old girl who was sexually assaulted and harassed by her tuition teacher's brother at the teacher's residence. The identification of the accused by the victim, the testimony of the victim, supported by her parents statements to whom she disclosed the incident first, and the fact that her statement was in line with the Section 164 statement when the incident was afresh, led to conviction. The Special Court held that the prosecution had proved the case beyond reasonable doubt and the accused had not rebutted the presumption under Section 29, POCSO Act.

Corroboration of Testimony with Medical Evidence

In *State v. Abdul Samada*,¹¹⁶ the Special Court convicted the accused under Sections 4, 6, and 8 for committing penetrative sexual assault on the victim aged seven years, despite the fact that there was no proof of penetration. Medical evidence of bite marks on breasts and the testimony of the victim were the basis of conviction.

4.5 Factors that Led to Acquittal

The child victim turning hostile became the ground for acquittal in 105 cases. Grounds on which victims turned hostile included on the point of age, identity and of sexual offence.

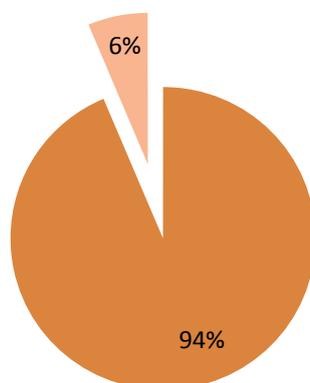
¹¹⁴Spl CC No.568/2014 decided on 14.03.2016.

¹¹⁵Spl CC No. 576/2014 decided on 27.01.2016.

¹¹⁶Spl SC no. 235/2013 decided on 24.01.2015.

Testimony of the Victim

■ Turned Hostile ■ Testified against Accused



Victim Turning Hostile

In 94 % of the cases (103 cases) the victim turned hostile, after which the Special Court acquitted the accused, as the prosecution failed to prove its case. This is the principal reason for the less number of convictions. The victim turned hostile on factors such as identity of the accused, age - claiming that she was above 18 years, at the time of incident, and denying the occurrence of the offence. Where the victim turned hostile, the Special Court did not rely on other evidence in order to determine the guilt of the defendant.

In *State v. Biju*,¹¹⁷ the Special Court acquitted the accused as the victim girl aged 11 years, her parents and other witnesses turned hostile. Though the prosecution case was supported by the SJPU social worker, who deposed in Court what the victim narrated to her immediately after the complaint, the Special Court was of the opinion that it is not possible to rely on it and acquitted the accused as there is no corroborative evidence and the statement of the social worker is not a cogent and convincing evidence. In *State v Shiva Kumar*¹¹⁸ the 15-year-old victim, complainant and the prosecution witness disowned the prosecution case under Sections 4 and 5 of the POCSO Act. The Special Court in the case observed that:

So, absolutely there is no evidence against the accused to connect crime with accused. When there is no evidence against the accused to connect him with the alleged crime, this court left with no other option except to acquit the accused by giving benefit of doubt. It is therefore, we hold that the prosecution miserably failed to prove the guilt of the accused beyond all reasonable doubt.

¹¹⁷Spl CC No.569/2014 decided on 15.12.2015.

¹¹⁸Spl CC No. 441/2015 decided on 16.03.2016.

Victim Testified against the Accused in Examination-in-Chief and turned hostile during Cross Examination

In three cases, the victim testified against the accused during the chief- examination and turned hostile during the cross-examination.

In *State v. Girish*¹¹⁹, the victim testified against the accused in examination-in-chief, but did not support the case during cross examination. In this case, accused was charged of kidnapping and sexually assaulting the victim who was 17-years-old. The Special Court, while acquitting the accused, categorically stated that no further discussion would improve the current situation as the victim, parents and other witnesses have turned hostile and the victim firmly stated that she was telling the truth in her cross examination. Lack of supporting evidence from the prosecution side resulted in the acquittal. It would also be pertinent to consider the time gap between date of incident and the child's deposition, which was 19 months 8 days and the gap between chief and cross examination which was over three and a half months.

In the case of *State v Somashekar*¹²⁰, the child aged 15 years had filed a complaint that the accused who stayed in the opposite house had committed penetrative sexual assault on her. The chief examination of the victim was deferred by the Special Court, directing the complainant police to produce property. Later the cross-examination was deferred at the request of the defence counsel. Thus, cross-examination was conducted after a gap of over six months. During the cross examination, the victim turned hostile, stating that her statement to the JMFC was given at the instance of the police.

Hostile on Sexual Offence

In 86 cases, the victim turned hostile on the point of occurrence of the sexual offence. In these cases the victim has denied the incident of sexual assault in any of the three stages i.e., during 164 statement or chief examination or cross examination. The case fails when the victim turns hostile as the prosecution case generally relies on the testimony of the victim.

In *State v. Prashanth*¹²¹ where the accused was charged for sexually assaulting a victim aged 15 years, the victim turned hostile on her age, identity of the accused and the occurrence of the incident. During her examination she stated she did not know the accused and that he had not kidnapped or sexually assaulted her. The mother of the child victim, the complainant also did not support the prosecution case. She denied the contents of the complaint and retracted by stating her daughter had gone to her sister's village. The Special Court acquitted the accused on the ground that victim had not supported the prosecution case and the prosecution failed to prove its case.

In *State v. Ravindra Ravi*,¹²² the complainant mother and victim did not support the case of the prosecution and turned hostile. In this case, the accused was the victim's maternal uncle,

¹¹⁹Spl S.C No. 73/2014 decided on 29.03.2016.

¹²⁰ Spl.SC 74/ 2014 decided on 29.04.2016.

¹²¹Spl CC No.418/2014 decided on 22.01.2016

¹²²Spl CC No.431/2014 decided on 10.03.2016.

and the victim was aged 14 years. The accused was charged of kidnapping and raping the victim. During the medical examination, she was found to be four months pregnant. The Special Court considered both the witnesses as unreliable as they did not support their statement under Section 164. The prosecution tried convincing the Court to discard the oral evidence and consider the 164 and 161 statements. The Special Court acquitted the accused and held that neither the oral or medical evidence was enough to tag the alleged crime on the accused.

Hostile on the Point of Identity of the Accused

There were 30 cases in which the victim turned hostile on the point of identity. In some of these cases, as seen above, they denied the offence also. In *State v. Sunil*,¹²³ the victim a 10 year old girl was harassed on the stairs on her way back to her apartment after school. The accused was identified based on the red cover held by him. In the chief-examination she stated about the sexual assault committed by the accused. In the cross-examination, she stated that the accused was not the person who followed her, kissed her and assaulted her. The Special Court said that it is very crucial in the case, as the accused was identified on the basis of the red cover he was holding during the occurrence of the incident and when he was caught by the public. The accused was acquitted on the ground that there was no satisfactory evidence to prove the identity of the accused.

In the case of *State v Suresh Babu*¹²⁴, the victim aged 11 years, was sexually harassed by an auto driver when she was travelling in his auto. Though prosecution case was supported by the victim and her mother during chief examination, they turned hostile on the occurrence of the incident. The Court then tried to corroborate the evidence with eye witness and PSI who enquired the case at the spot. This also failed as the eye witness turned hostile on the occurrence of the incident and the PSI turned hostile on the identity of the accused. In the Court, there was confusion as to the identity of the accused, as to whether the auto-rickshaw driver was the accused in the case, because the victim, her mother and eye witnesses turned hostile and there was no other evidence to support the case. The owner of the auto-rickshaw was not questioned at any point of time and there was nothing to show as to who was driving the auto at that point of time.

Hostile on the Point of Age

To avail the provisions of POCSO Act, it is pertinent that the Court determines the age of the victim before proceeding with other issues. Age is a crucial factor in POCSO cases as it applies to children below the age of 18 years. The victim turning hostile on the point of age is another reason for the prosecution case to fail. There were 10 cases in which the victim turned hostile on the point of age. In *State v Prashanth*¹²⁵, the accused was charged for committing penetrative sexual assault on a victim aged 15 years. However the victim testified

¹²³Spl CC No.451/2014 decided on 30.01.2016.

¹²⁴Spl CC No 264/2013 decided on 31.07.2014

¹²⁵ Spl CC No.418/2014 decided on 22.01.2016; Also refer to hostile on the point of offence under point no. 4.3 above

she was above 18 years at the time of incident, there was no mention of documentary proof and the accused was acquitted. Similarly in *State v Gopi*¹²⁶, the accused was charged of committing penetrative sexual assault on a victim aged 16 years. In court, however, she stated that she was above 18 years at the time of incident and the case resulted in acquittal based on her testimony.

When the victim turned hostile on the point of age, other primary witnesses such as the mother also retracted from the original statement registered for kidnapping under IPC. In these cases, parents appear to be fully aware that their daughter has willingly gone with the accused. The correlation between the outcome of the incident and the retraction of statements is very clear.

Compromise

Compromise between the accused and victim's family is one other reason for the victim to turn hostile and the subsequent acquittal of the accused. Although compromise or compounding of an offence is not permitted in offences of this nature under the law, witnesses openly stated about the settlement that the parties have arrived at. In *State v. Karibasavaiah*,¹²⁷ while acquitting the accused in the case of sexually assaulting a victim aged 12 years, the Special Court observed that, "*It is a fact that in the cross-examination of victim-girl and her father, they admit that there is a compromise between themselves and accused. But, this admission is not sufficient to say that the offences alleged against the accused are proved beyond reasonable doubt.*" In *Shimbu and Anr. v State of Haryana*¹²⁸, a petition before the Supreme Court was filed for reduction of sentence in a rape case for the period already undergone by the accused on the basis that the parties had reached a compromise. It was held that

offences of rape are non-compoundable offences 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 pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise.

In another case the Supreme Court, *State of M.P v Madanlal* while dealing with a rape case against a minor held that under no circumstances a rape case can be compromised.¹²⁹ It held that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. Dignity of a woman is a part of her non-

¹²⁶ Spl CC No 297/2013 decided on 30.04.2014

¹²⁷ Spl CC No.490/2014 decided on 07.11.2015.

¹²⁸ 2013 (4) BomCR(Cri)356

¹²⁹; Criminal Appeal No. 231 of 2015; MANU/SC/0689/2015

perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct.

In a large number of cases, the Special Court thus acquitted the accused relying on the fact that the victim turned hostile and the prosecution is unable to prove its case. In an offence under section 376 of IPC or related to sexual assault, the evidence of the prosecution plays a vital role. The evidence of the victim girl can be accepted without there being corroboration. In *State of Punjab v Gurmit Singh & Ors.*¹³⁰, the Supreme Court held corroborative evidence is not a requirement in each case to prove its credibility-

Corroborative evidence is not an imperative component of judicial credence in every case of rape. 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 over-looked 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 accomplice¹³¹.

However, if there are any major inconsistencies or discrepancies in the evidence of the prosecution witnesses, the Court has to seek for evidence to corroborate the statement of the victim girl. In majority of the cases analysed the Court has observed that the prosecution has failed to prove the case beyond reasonable doubt when the victim has turned hostile.

Victim's Testimony found Unreliable

In *State v. Shahid*¹³², the accused was acquitted as the testimony of the victim was found unreliable due to discrepancy in the testimony of the victim and her father and language difference as a barrier for the accused to have committed the crime. According to the prosecution case, the accused had approached the victim and told her that he would drop her to school. When she refused, he dragged her away from the road and committed penetrative sexual assault on her. The Court referred to various discrepancies in the testimonies of the child and other witnesses and expressed serious doubt whether the accused with language barrier could have committed the offence. Based on this, the Court opined that the prosecution failed to establish the guilt of the accused. It was also observed:

....the serious doubt in the mind of the court is accused belonging to different community knowing only Hindi, how can he commit the said offences of holding the victim and that too by stating that he will take her to school.

¹³⁰ 1996 SCC (2) 384

¹³¹ Ibid para 9

¹³² SC No. 04/2015 decided on 26.02.2016.

Misinterpretation of Law

Difference in interpretation of law has also been one of the reasons for acquittal. The Special Courts, while interpreting have either deviated from the actual law expressly and clearly given in the Act or have differently interpreted it, which in combination with other factors has resulted in acquittals. The Court has in two cases relied on the exception clause under the Indian Penal Code despite there being an overriding clause under POCSO Act. (*For details refer to Application of presumption under Section 4. 10*)

In *State v Nagaraj*,¹³³ the accused was charged for committing penetrative sexual assault on the victim aged 15 years, who used to work for him as a domestic help. The accused, under the guise of marrying the victim induced her to have sexual intercourse with him. However, when he became aware that the victim had become pregnant, he along with his two sisters (who were charged for abetment) insisted on termination of the pregnancy. It was only then that the criminal case was filed. However, neither the victim nor the prosecution witnesses supported the case. The victim stated in the Court that she was married to the accused and subsequently they had developed physical relationship. The Special Court held that there was no evidence to connect the accused to crime or that the accused had forcible sexual intercourse with the victim on the pretext of marriage. On the issue whether the accused could be held guilty of having sexual intercourse if the victim is above 15 years of age, the Special Court observed that:

It is evident from the testimony of the witnesses that victim is above the age of 15 years and her marriage took place prior to sexual activity. Ongoing through the provisions of POCSO Act I do not find anywhere in this Act an exception to Sec.375 IPC, if a man had sexual intercourse with his own wife not being under 15 years constitutes rape or not. In the absence of specific provision on this aspect the Court shall fall back upon IPC that is Ss. 375 and 376.

Similarly in *State v Faizal Khan*,¹³⁴ the Court applied the exception under the IPC to acquit the accused charged with kidnapping and rape. The 19-year-old accused had allegedly married the victim aged 17 years and had sexual intercourse with her. The judgment categorically stated that the prosecution failed to prove the case beyond reasonable doubt and quoted Sec 375 IPC, '*having sexual intercourse by husband on his wife above 15 years is of no offence*' and the case resulted in acquittal of the accused. (*Also refer to 4.11 Outcome in romantic cases below*)

In both the cases, the Special Court acquitted the accused without considering the CLAA amendment through which Section 42A of the POCSO Act was included. This provision clarifies that in case of inconsistency between the POCSO Act and other laws, the provisions of the former will override. Besides, penetrative sexual assault by a person related to the child

¹³³Spl CC No. 221/2-13 decided on 22.07.2014

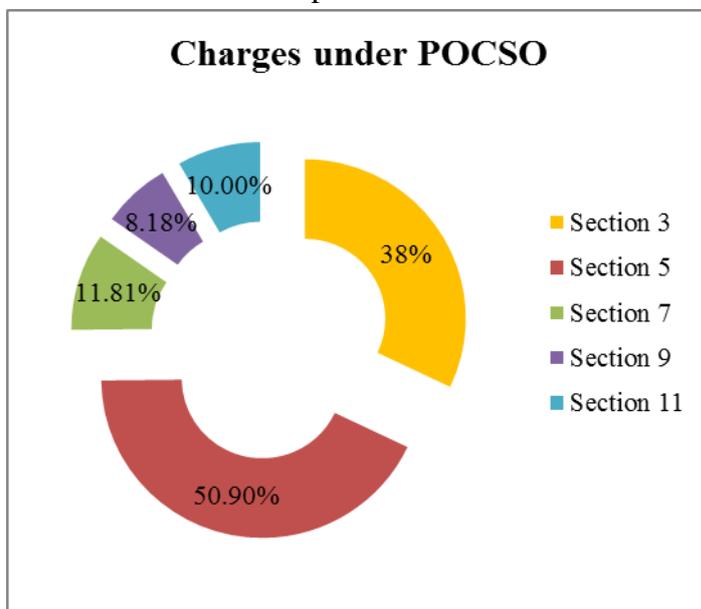
¹³⁴Spl CC No. 140/2013 decided on 17.02.2014.

through marriage constitutes aggravated penetrative sexual assault under Section 5(n), POCSO Act. The judgement stated that ‘prosecutrix was nine months pregnant as on the date of recording her evidence but did not consider Section 5(j)(ii) which makes a sexual assault resulting in pregnancy to be aggravated penetrative sexual assault.

4.6 Analysis of Charges

Charges under the POCSO Act, 2012

In 25 cases, multiple charges under POCSO Act have been filed. The charges filed under all the sections have been analysed. Several offences would have occurred in the course of “one act” and charges have been framed under IPC and POCSO Act for the most serious offences. For instance, in *State v Karthik @ Nagendra*¹³⁵, the accused was charged under section 366-A IPC and Section 5 of POCSO Act for kidnapping a minor girl and having sexual intercourse with her multiple times.



Charges under the POCSO Act and Age of Victims

As mentioned in the earlier sections, victims in a majority of cases belonged to the age group of 13- 18 years. In 50.9% of cases (56 cases), charges were mainly framed under aggravated penetrative sexual assault of which in 71.42% cases (40) children belonged to the age category of 12-18 years. The accused having sexual intercourse more than once or repeatedly is the aggravating factor in these cases. In 40 cases, charges were framed under penetrative sexual assault; in 12 cases charges were framed for sexual assault; in 10 cases for aggravated sexual assault and in 11 cases for sexual harassment. In the analysed cases, there were no offences relating to pornography. In all cases except five, charges were framed under the POCSO Act and the IPC. In five cases charges were framed only under POCSO Act. The charges under the IPC were as follows:

- Rape under Section 376 IPC in 70 cases (63%);
- Procurement of minor girl under section 366A IPC;

¹³⁵ Spl.S.C No.77/2014 decided on 05.04. 2016

- Inducing or compelling the woman for marriage under Section 366 IPC in 65 cases (58.55%);
- Sexual harassment under section 354 IPC in 19 cases (17.11%);
- Kidnapping from the lawful guardianship under Section 361 IPC in 36 cases (32.43%).

Charged not Framed Comprehensively

In the case of *State v Somashekar*¹³⁶, the accused had sexually assaulted the victim aged 15 years. The facts of the case are such that, the accused trespassed into the house of the victim, advanced towards her, closed her mouth and tore the back side of her garment. From the plain reading of the facts as mentioned in the judgment, is a case of sexual assault under Sections 7 and 8 of the POCSO Act. One of the ingredients of this offence is doing 'any other act with sexual intent which involves physical contact' and the physical contact need not necessary be of a sexual organ. Going by the definition, this case has this element of the offence since the accused had closed her mouth and tore the garment covering a private part of the body, the backside indicating sexual intent which is the essential ingredient of this offence. However, the accused was charged only under Section 18 of the Act and no other offences under POCSO Act, it is unclear the offence he attempted to commit under POCSO Act, and Section 448 for trespassing the house, Section 366-A for procuring a minor girl and Section 354 for outraging modesty of a woman in the chargesheet and this was not enhanced by the Court.

In the case of *State v Yellappa & Anr.*¹³⁷, the accused and his friend took the 17-year-old victim to another city with the intention of marrying her. The mother of the victim lodged the complaint. On tracing the accused and the victim, charges were framed under Section 366 IPC against accused No.1. Since there was no evidence of sexual contact or assault, accused was not charged with POCSO offence. His friend was charged under section 114 of IPC who was an abettor present during the commission of the offence r/w section 16 of POCSO for abetting an offence under the POCSO Act. The above case does not fall under any of the provisions of the POCSO Act, as there had been no sexual contact with the victim. The question of abetment of an offence under POCSO Act does not arise unless there is an offence charged against the first accused. Instead, the second accused could have been charged for abetting an offence under the IPC.

In the case of *State v C.Krishna*¹³⁸, the accused was a government teacher, who was charged for sexually assaulting his student, but charges were filed under Section 7 of the POCSO Act instead of Section 9 (f), as this constitutes an aggravated offence based on the status of the offender as staff of an educational institution. In *State v. Deepak Sunder Singh Vantimoori*,¹³⁹ three victims aged 11, 8 and 5 years, respectively were sexually assaulted by their neighbour who had touched their private parts. In this case the age of all the children

¹³⁶ Spl.SC 74/ 2014 decided on 29.04.2016.

¹³⁷ Spl CC No. 192/2014 decided on 26.09.2014

¹³⁸ Spl.C No: 26/2015 decided on 30.01.2016

¹³⁹ Spl.SC No. 133/2015 decided on 6.04.2016.

were under twelve years at the time of the offence, and as per section 9 (m) it would constitute an aggravated offence and was charged under Section 8 of the Act.

4.7 Sentencing Pattern

Sentencing orders had been attached to all the five judgments of conviction. In one case the judgment and sentencing order was passed on the same day. On this point, the Supreme Court in the case of *Allauddin Milan vs State of Bihar*¹⁴⁰, held that:

...all trial courts, after pronouncing an accused guilty, must adjourn the hearing on quantum of sentence to another day to enable both the convict and the prosecution to present material in support of the quantum of sentence

In the rest of the cases the hearing for sentencing was posted on a different date.

Quantum of Sentence

The punishments under the POCSO Act are a mix of both minimum and maximum sentences. While all offences indicate maximum years of punishment that can be ordered, few offences indicate a mandatory minimum sentence also which means that the Judge has to order the minimum stipulated sentence while convicting the accused. When there is no minimum punishment stipulated discretion can be exercised by the Judge to grant any number of years within the range. Hence, while exercising such discretion, the Special Courts have to consider several mitigating and aggravating factors. In *State v. Musheer*¹⁴¹ an eight year old girl playing near her house was dragged into the accused person's house and sexually assaulted. The Special Court convicted the accused under Section 9 of the POCSO Act and sentenced him to undergo the minimum punishment prescribed under the statute i.e five years simple imprisonment and to pay a fine of Rs. 15,000. While deciding the sentence, the Court looked into the nature, gravity and other material factors including the age of the girl and noted that she was an innocent girl below 10 years of age, the family was without a male support, the offence was inhuman, and the accused was an elderly person. The Court observed,

in recent years the crimes against innocent girls under 12 years are on hike, imposition of grossly inadequate sentence and particularly against the mandate of legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general encourage a criminal. The Courts have obligation while awarding punishments to impose appropriate punishment so as to respond to the society's demand for justice against such criminal.

In this case, the Special Court felt that in cases of offences under POCSO Act, the statutory minimum has to be imposed and leniency cannot be shown to the accused considering the aspects of deterrence and just punishment.

¹⁴⁰ 1989 SCC (3) 5

¹⁴¹ Spl CC No.568/2014 decided on 14.03.2016.

Application of Alternate Punishment

Section 42 of the POCSO Act provides that when an offence is punishable under both the POCSO Act and the IPC, the offender will be liable for punishment which is greater in degree. The Special Court had referred to section 42 in the case of *State v. Musheer*.¹⁴² The Special Court ordered for greater punishment provided under Section 10 of POCSO Act i.e. a minimum term of five years imprisonment and fine as compared to Section 354 IPC i.e. minimum imprisonment of two years and/or fine. Similarly, in *State v. Muneendra*¹⁴³, the accused was the victim's tuition teacher's brother. The accused was convicted under Sections 11, 12 and 18 of the POCSO Act and under Section 354 of the IPC and was sentenced for punishment under the POCSO Act.

Rejection of Probation

The plea for probation was raised in two cases. In *State v. Vijay*,¹⁴⁴ the Special Court rejected the option of sending the accused for probation, who was accused of sexually assaulting a 17 year old minor girl. He was instead sentenced to simple imprisonment for three years and imposed Rs. 2,000 as fine and the Special Court observed that:

The crime against women more particularly child below the age of 18 years has been on rise now a days. To show mercy in the cases of sexual offences would be travesty of justice and plea for extension of PO Act or leniency in imposition of sentence would be wholly misplaced. These crimes are affronted to human dignity of the society. Courts are having obligation while awarding punishment to impose proper punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the Courts verdict in the measurement of the punishment. Courts must not only keep in view the rights of the criminals but also the rights of the victim of the crime and society at large while considering the imposition of appropriate punishment particularly in cases wherein moral turpitude is involved. Imposition of inadequate sentence or extension of S.4 PO Act would do more harm to justice system to undermine the public confidence in efficacy of law.... the very purpose of coming into force of the act should not be forgotten.

In *State v. Musheer*¹⁴⁵ Court while rejecting the option of probation and awarding minimum sentence to the accused held that:

The Courts must not only keep in view the rights of the criminal but also the rights of the victim of the crime and society at large, while considering imposition of the appropriate sentence. This is not a fit case to extend the benefit of either section 3 or 4 of P.O. Act to the accused.

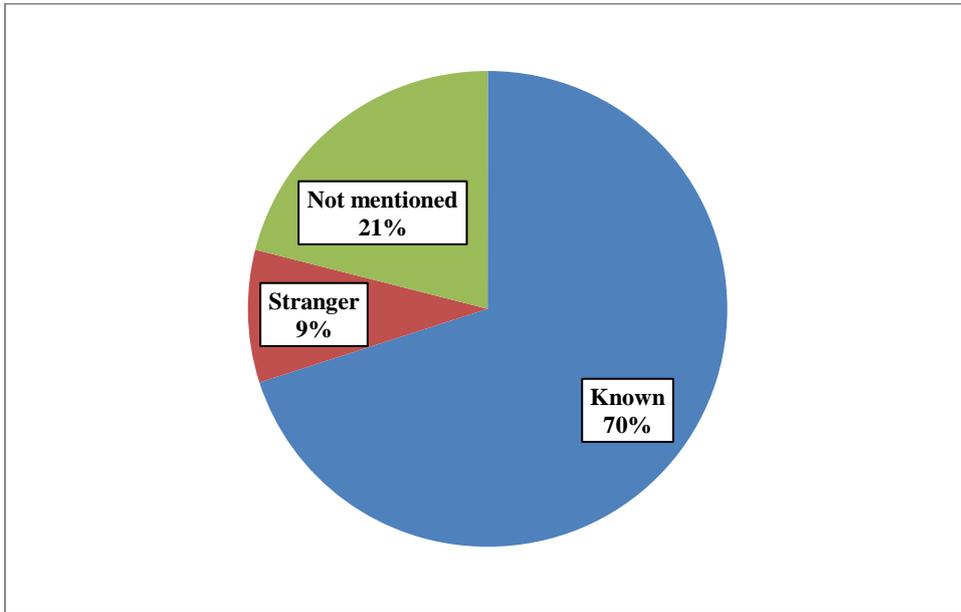
¹⁴²Spl CC No.568/2014 decided on 14.03.2016.

¹⁴³Spl CC No. 576/2014 decided on 27.01.2016.

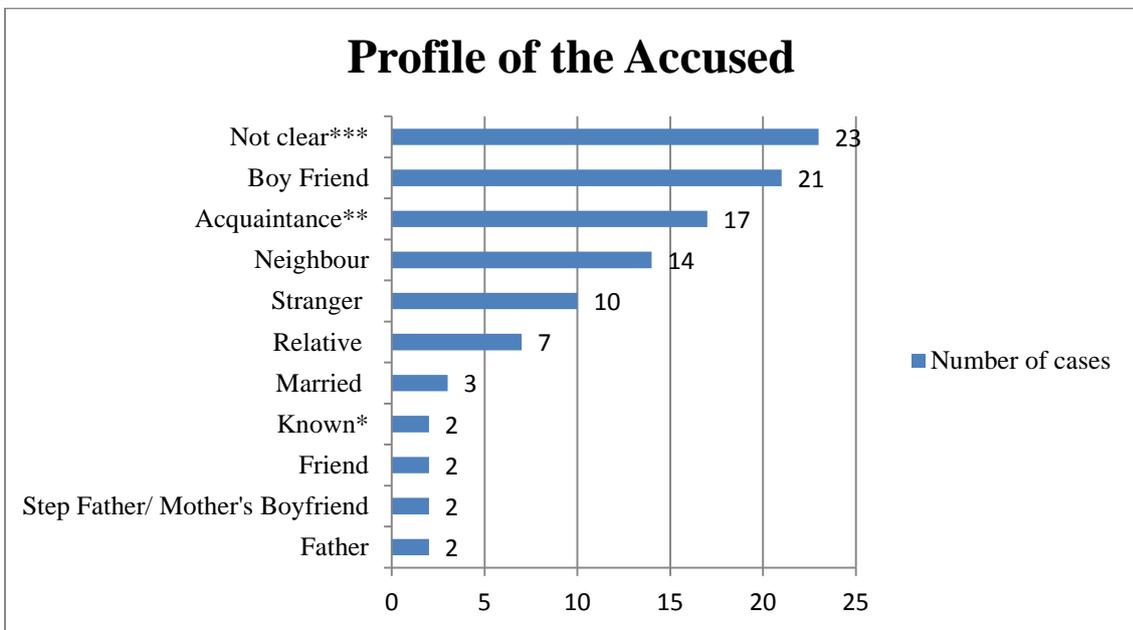
¹⁴⁴Spl CC No. 86/2013 decided on 12.09.2014. Refer to Victim's testimony against the accused was cogent and reliable under point no 2.4 above for facts of the case.

¹⁴⁵Spl CC No.568/2014 decided on 14.03.2016.

4.8 Profile of the Accused



In 70% of the cases, the accused was known to the victim. In 9% of the cases the accused was identified as a stranger and in 21% of the cases the relationship of the accused with the victim was not mentioned. In a breakdown of the profile of accused persons known to the victim, boyfriends constitute the largest category, followed by acquaintance and neighbour.

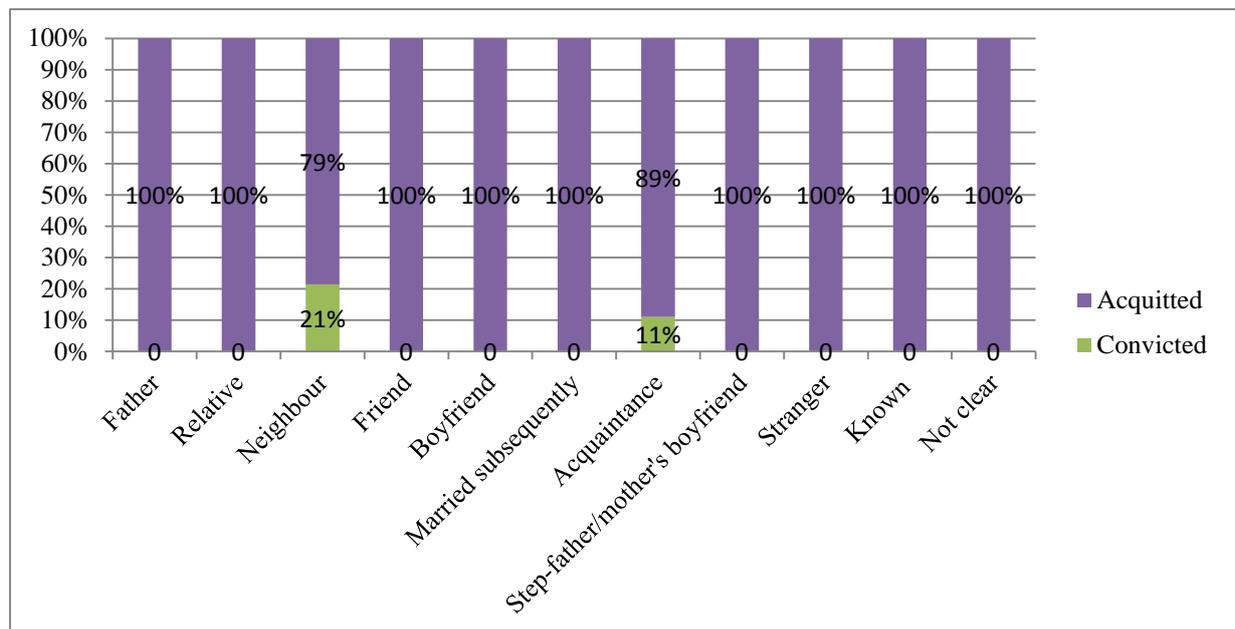


*The relationship of the accused has not been specified, but mentioned as “the accused is known to the victim”.

**Neighbour’s nephew, brother’s friend, employer, landlord’s son-in-law, step-father, shop keeper, co-employee, father’s friend’s son, gym trainer, cylinder delivery boy, father’s friend, native doctor¹⁴⁶, tuition teacher, tuition teacher’s relative.

***Includes cases where the victim has turned hostile on the point of identity of the accused or sexual offence or both during examination-in-chief, but stated to have known the accused in the Sec 164 and Sec 161 statements referred to during the deposition

4.9 Testimony of the Child as per the Profile of the Accused



Out of the seven cases in which the victim testified against the accused, conviction was awarded in five cases under POCSO where the accused was the neighbour or acquaintance. In three cases each the accused was the neighbour and acquaintance. In one case where the victim testified, the accused was a stranger but the case resulted in acquittal. The victim turned hostile in all cases in which the accused was a father, relative, friend, boyfriend, husband, step-father or mother’s boyfriend, stranger, or otherwise known to the child.

4.10 Application of Presumption

The provision of presumption was applied in the judgments from one district in 16 cases. In what appears to be an erroneous application of the presumption based on a commentary in one of the bare acts, in *State v Sendhil Kumar*,¹⁴⁷ the Special Court held that

Section 29 provides for presumption as to certain offences where the victim is a child below 16 years. Therefore the Court shall have to look into whether the

¹⁴⁶Native doctor is a doctor who generally is a traditional or spiritual or indigenous community healer.

¹⁴⁷Spl CC No. 150/2013 decided on 29.01.2014

child is below 16 years or above 16 years in order to ascertain whether presumption of Sec.29 of the Act is available to the prosecution or not.

Since the child in the case was 17 years, the presumption was not invoked. Applying this logic in *State v M. Shekar*¹⁴⁸, the same Special Court invoked the presumption because the child was below 16 years. This interpretation of the presumption creates a distinction between children below and above 16 years of age that is unsupported by statute and untenable under the Constitution. However, after July 2014, the Special Court correctly applied presumption, on the basis that the age of the victim was below 18 years. For instance in the case of *State v Ravindra*¹⁴⁹, the Special Court pointed that presumption was available as the victim was below 18 years. The accused has to rebut presumption in such cases. But it was not applied to the case as the victim turned hostile and the case resulted in acquittal.

4.11 Outcomes in Romantic Cases

For the purpose of the study, cases where the victim admitted having a relationship with the accused in the statement recorded by the police and Magistrate has been termed as romantic cases. Based on the testimony of the victim, the cases have resulted in acquittal. In six cases, the victim has admitted her relationship with the accused and out of these in three cases the victim and the accused married subsequent to filing the complaint.

In *State v Faizal Khan*,¹⁵⁰ there were two cases registered against the 19-year-old accused by the victim's father within a gap of three and half months. First case was registered under Sec. 366 of IPC and the current case was registered under Section.363 IPC and Sections 3, 4, 7 & 8 of the POCSO Act. The case would be analysed focussing on the current case where charge is framed under the POCSO Act. However, both the cases resulted in acquittal, as the victim turned hostile on the point of age and offence. As per the prosecution case, a 17 year old girl was kidnapped and sexually assaulted by the accused. But the victim categorically stated in her testimony that she was 19 years old, that the accused had not taken her away, he did not have sexual intercourse with her, but she had left her home with the accused as her parents were looking for another groom. The victim was sent to Children's Home as she had refused to go with her parents. Another point that was noted by the Court is that the current case was filed the complaint almost 6 weeks after she went missing. The victim stated in her testimony that she was at her friend's during that time. The prosecution also failed to prove the age of the victim. The other witnesses in the case either turned hostile or were not examined in the Court. Thus, the case resulted in acquittal of the accused.

In *State v Girish*,¹⁵¹ the accused is alleged to have committed penetrative sexual assault on a 17-year-old minor girl, but was finally acquitted as the victim, the victim's parents and the independent witnesses all turned hostile. In the case, the victim supported the case in

¹⁴⁸Spl C.C No.57/2014 decided on 05.04.2014

¹⁴⁹Spl.C.C No.269/2013 decided on 10.03.2016

¹⁵⁰Spl CC No. 140/2013, decided on 17.02.2014.

¹⁵¹Spl S.C No. 73/2014 decided on 29.03.2016.

examination- in- chief, but turned hostile in the cross examination, denying the acquaintance with accused, the occurrence of kidnapping, marriage and sexual assault. In her testimony, the victim deposed before the Court that she knew the accused one year prior to the incident. He was a JCB driver by profession working in the village. She said that the accused was residing in the neighboring house and someone introduced him to her and gradually they were attracted to each other. She submitted that the accused had promised to marry her and she left the house under the guise of going to the beauty parlour. The accused took the victim to a temple and tied thali and then took her to his sister's house and had sexual contact with her for the next 6 days. The victim and accused were apprehended from the bus stand. However, in the cross examination, she turned hostile on the point of sexual offence and stated that she had given the statement against the accused at the instance of the police officials.

In *State v Lohith Tipanna Baraki*,¹⁵² the victim whose age was not specified denied her statements made under Section 161 and 164 Cr.P.C and stated that she was married to the accused and was residing with him. The Court recorded her statement as not supporting the prosecution case and acquitted the accused

A former Special Court Judge, the PPs expressed that majority of such cases are filed by families. Children are not willing to cooperate as they leave home voluntarily and they share this with Child Line representatives, Support Persons, CWCs, NGOs. They also expressly tell the Special Court that they do not want the parents to be present during their examination as they feel shy talking in their presence.

4.12 Special Court Response to Investigation Lapses

The Special Courts have taken note of the investigation lapses in the system. Serious investigation lapses like not seizing crucial evidence perhaps is one of the reasons for acquittal in few cases.

Non-Seizure of Relevant Evidence

The Special Courts have criticised the IOs for not collecting relevant evidence, which could have led to conviction of the accused. Special Courts acquitted the accused in such cases as the case was not proved by the prosecution and there were serious lacunae in connecting the crime to the accused. In *State v. Saval Ram Patel*¹⁵³, the Special Court could not connect crime to the accused as the victim turned hostile and the IO had not seized relevant evidence. The accused who was the father of the victim had been charged for committing penetrative sexual assault on his 7-year-old daughter. In certain situations when the victim, her parents and other crucial witnesses turn hostile, it is very important to have all the circumstantial and medical evidence before the Court. The Court pointed out that the IO had failed to seize the mobile phone which the accused had used to show obscene videos to the victim girl. The prosecution also failed to examine the Childline attender, who dealt with the case. Interviews

¹⁵² S.C. Case no.72/2014 decided on 10.03.2016

¹⁵³ Spl CC No.60/2015 decided on 25.11.2015.

revealed that while Childline representatives have been called to Court as witnesses in some cases, in few others Special Courts have told them that their evidence is not required.

In *State v Shahid*,¹⁵⁴ the accused tried to commit sexual assault on a 14-year-old victim who was going to school, by dragging her to a forest area. The Special Court pointed out that the IO had failed to note the fact that accused was a cloth vendor and to collect and seize the piece of cloth used to close the mouth of the victim or the book carried by the victim to school, all of which would have helped in connecting the accused to the crime. The Court also pointed out that IO did not have a satisfactory explanation for not seizing the evidence. The investigation lapses adversely affected the prosecution who had failed to prove the case, due to which the Court finally acquitted the accused.

In the case of *State v Appasaab Baalappa*¹⁵⁵, the age of the victim being uncertain, a dental and an X-ray test was conducted to determine the age. The accused was the father of the victim. The Court acquitted the accused as the victim turned hostile. In this case, there were blood stains on the skirt of the child and also on the clothes of the accused. However, the police officer did not collect the sample and send it to the FSL for examination. According to the Special Court, this showed serious lapse in the investigation and also a substantial loss in corroborative evidence. DNA sampling was also not done and hence it was not possible to establish whose blood it was. Further, there is no evidence of penetrative sexual assault and it was recognised in the evidence that blood stains can be from any other reason. The court opined that the prosecution had failed to use evidence which could have been strongly supported the case.

4.13 Rank of Investigating Officer

The POCSO Act does not specify the rank of the IO and hence state police manual or circulars will have to be considered. For instance, the Karnataka government issued an order in 1961 as per which rank of police officers has been prescribed. As per the order, a police official above the rank of Head Constable can conduct the investigation. The Manual also stipulates that heinous offences should be investigated by Circle Inspector. Rape has been designated as heinous offence as per Karnataka Police Manual.¹⁵⁶ Thus, as per law the investigation has to be carried out by a Police Inspector. The Special Court has rightly pointed this out in the judgment when the PSI did the investigation.

Interactions with police during field study revealed that the Circle Inspector or Assistant Commissioner of Police or any subordinate officer under their directions conduct investigation in cases of penetrative and aggravated penetrative sexual assault. All other offences are investigated by any official above the rank of Sub- Inspector of Police.

¹⁵⁴Spl CC No.4/15 decided on 26.02.2016.

¹⁵⁵Spl SC no. 256/2014 decided on 21.10.2015.

¹⁵⁶ Law on Child Sexual Abuse in India, Centre for Child and the Law, NLSIU Bengaluru, November 2015. (p.62-63)

In the case of *State v. Palaksha*¹⁵⁷, the investigation was conducted by a Police Sub Inspector (PSI) and it was brought to light by the defence lawyer during the cross-examination, that for offences under sections 4 and 6 of the POCSO Act, the investigation should be carried out by a police officer not less than the rank of a Police Inspector (PI). It was further defended by the PI that the investigation was carried out by the PSI only for the offence under section 366 IPC. In the course of the evidence, the Judge came to the conclusion that it was the PSI who did the investigation and hence the procedure prescribed was not followed. The case however resulted in acquittal as the victim turned hostile.

4.14 Prosecution Lapses

In majority of the cases that resulted in acquittal, the prosecution failed to prove the case and the IO was not examined. In *State v Palanayaka*,¹⁵⁸ the accused was a Social Science teacher in the institution where victim studied, and was charged for sexual harassment of the victim and other girls as well. The prosecution failed to prove the case and the accused was acquitted, as the victim and parents had turned hostile. The Special Court pointed out that the prosecution did not examine other girls who studied in the institution, their parents and the IO, whose statements were crucial in this case. In *State v Prasanth*¹⁵⁹, the Court specifically pointed out about the non-examination of IO when the IO did not appear before the Court as witness.

4.15 Non-Registration of Complaint

Non-registration of a report by the police station is prohibited and penalised under the POCSO Act.¹⁶⁰ In *State v. Hemanth*¹⁶¹, the police refused to register a complaint. The victim's mother registered the complaint through the assistance of the Superintendent of Police. In such cases, the police had to be charged for failure on their part to record the offence but no action was initiated against them. However, later in the course of the proceedings, the victim's mother and the victim both turned hostile and the accused was acquitted.

4.16 Consideration of Medical Evidence

In cases where the victim turned hostile, the Special Courts in three districts have not relied on medical evidence as the Court found it inappropriate to pass an order based on it. In *State v Sarvothamma*,¹⁶² it emerged that the victim had eloped with the accused and was carrying Rs. 75,000 and a gold necklace. The Special Court considered the victim's medical report which indicated that she was pregnant and rejected the bail application of the accused. But the court acquitted the accused as the victim turned hostile.

¹⁵⁷ SC no. 51/15 decided on 28.01.2016.

¹⁵⁸ Spl SC No 457/2014 decided on 09.11.2015.

¹⁵⁹ Spl cc No. 418/2015 decided on 22.01.2016

¹⁶⁰ Sec 21 (1) of the POCSO Act, 2012

¹⁶¹ Spl.SC No. 34/2014 decided on 16.04.2016.

¹⁶² SC No. 70/14 decided on 07.04.2016

In *State v. Babu R*,¹⁶³ the medical examination as part of the POCSO procedure conducted revealed that on gynaecological examination, she found the external genitalia was normal, hymen was ruptured due to sexual intercourse. Before this medical examination, her mother and grandmother had taken her to hospital, the doctor had said there were no external injuries on her body, there was no bleeding, but there was an old sign of rupture of hymen. Though these two reports were placed before the Special Court, the court acquitted the accused because the victim, her mother and grandmother all turned hostile. The reasoning given was:

Mere evidence of doctor about the rupture of hymen of the victim girl and potency of the accused to have sexual intercourse is not sufficient to prove the guilt of the accused beyond all reasonable doubt. Therefore in the absence of cogent and convincing evidence, I am of the opinion that the prosecution has utterly failed to prove the guilt of the accused beyond all reasonable doubt that the accused has committed rape on the minor victim girl.

The Special Courts have considered the details of the medical evidence to base the conviction in a small number of cases. In the case of *State v Abdul Samada*¹⁶⁴, the Special Court relied on medical report and convicted based on the evidence of other injuries on the body of the victim like the bite marks. It observed that: “Mere absence of spermatozoa cannot cast a doubt on the correctness of the prosecution case.” Further, the Court relied on *Ramachandrappa v State of Karnataka*¹⁶⁵:

Slightest penetration is sufficient for committing the offence of rape. Mere fact that hymen was intact would not by itself negative the commission of rape by the accused as tearing of hymen would depend upon the extent of penetration and force used while committing sexual assault. Slightest penetration is sufficient for commission of offence of rape and proof of rupture of hymen is unnecessary.

4.17 Defence Strategies

In majority of the cases the defence counsel used strategies such as prior enmity between the family of the accused and the victim and financial liability towards the accused from the victim’s family.

Allegation of False Case

Allegation of false case is the strategy by the defence lawyers in criminal cases particularly in sexual assault cases. The Court often gives due consideration to this plea, as our criminal justice system is based on the fundamental principle of presumption of innocence despite the presumption clause under the POCSO Act. In *State v. Durgappa*¹⁶⁶ the defence stated that the accused is absolutely innocent and the case has been falsely registered against him on account of the dispute between him and his wife, as their daughter died due to the negligence of his wife. The complainant was the elder sister of the victim and she died in the course of the trial. The Court acquitted the accused as the victim aged 14 years at the time of the incident, turned

¹⁶³Spl CC No.34/2015 decided on 12.04.2016.

¹⁶⁴Spl SC no. 235/2013 decided on 24.01.2015.

¹⁶⁵ 2007 Cr LJ 3504

¹⁶⁶Spl CC No.451/2014 decided on 28.09.2016.

hostile in the Court. The evidence of victim was recorded after one year and two months after the case was reported. The case is an example where delay in recording the statement and marital discord between parents was used as a defence strategy.

Prior enmity, failure to pay debts are grounds on which defence generally take the plea that the case is falsely filed. In *State v. Karibasavaiah*¹⁶⁷ defence raised prior enmity between accused and complainant as ground to file false complaint. The accused in the case had married the 12 year old girl and was living with her. This was also raised as a ground for bail. But the Court denied bail, considering the fact that the victim was below 14 years old and she did not know what she was consenting to, even if it is a consensual act.

Identity of the Accused

Lack of proper identification of the accused has been an ideal defence strategy. This was raised in many cases. For instance, in *State v Vijay*¹⁶⁸ the case was sexual assault of the victim by the gym instructor, wherein the accused raised plea of false case lodged to defame the name of the gym, on the instigation of persons inimical towards him. The main contention of the defence was that the name and person of accused is different, as there are two people with the name working in the gym. But in the instant case, none of these helped the accused as the defence could not prove any of these issues raised.

Attack on Dignity of Woman

The Supreme Court in *Sakshi v Union of India*¹⁶⁹ had prohibited the defence from using adverse questioning techniques and character assassination of the child during the evidence. Similarly, the Special Court under the POCSO Act also do not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during trial¹⁷⁰ and despite the amendment to Section 146(3) of the Indian Evidence Act 1871 (IEA), where the defence is prohibited from questioning the sexual history of the rape victim; and the repealing of Section 155 (4) of the IEA which permitted the defence to argue that the victim was of “immoral character” in the course of the trial, these practices continue. In *State v Somashekhara*,¹⁷¹ the defence counsel raised questions on the virginity of the child and attacking her dignity in the Court of law. The Court reproduced in the judgment the arguments raised by defence counsel:

The counsel seriously argued that when a virgin is raped bleeding will be there and in this case nothing is there. Body of the victim is normal. Hence FSL report coupled with the medical reports of victim and accused clearly shows that allegations made under Sections 4 and 6 of POCSO Act are not established.

¹⁶⁷Spl CC No.490/2014 decided on 07.11.2015.

¹⁶⁸Spl CC No. 86/2013 decided on 12.09.2014.

¹⁶⁹AIR 2004 SC 3566

¹⁷⁰Section 33(6), of the POCSO Act, 2012

¹⁷¹Spl SC no.89/2015 decided on 24.02.2016.

Other Strategies

Consent is a common defence strategy used when the victim is an adult. But it cannot be so in the case of the child as the law does not recognise consensual sexual intercourse between children below 18 years or between a child and an adult. None of the sexual offences under the Act require that the absence of consent, force, or coercion be established by the prosecution.¹⁷² In other words, any sexual act with a person under the age of 18 years is an offence and the consent becomes immaterial. The IPC also makes it clear that sexual intercourse with or without the consent of a woman below the age of 18 years will amount to statutory rape. In *State v Nagaraj*¹⁷³ there was substantial argument in the Court and discussion in the judgment on the issue of consent as there was doubt on the point whether victim consented to the relationship and is above 15 years of age. The counsel for the accused argued that the relationship between the victim and the accused is a consensual act and hence it does not attract the ingredients of either Sec 376 IPC or Sec 5(1) r/w/Sec. 6 of the POCSO Act. The accused was acquitted as the victim turned hostile.

4.18 Other Observations by the Special Court

In cases where the testimony of victim has led to conviction, the Special Courts appreciated the victim and family for not remaining silent and for testifying against the accused. In *State v. Abdul Samada*,¹⁷⁴ the Special Court while convicting the accused who was the neighbour of the seven year old victim, made a sympathetic remark in the judgment considering the plight of the victim's family. Following this, the Judge referred to *Dildar Singh v State of Punjab*¹⁷⁵ and justified the conviction:

In normal course of human conduct an un-married girl who is a victim of sexual offence would not like to due publicity to the traumatic experience she had undergone would feel terribly embarrassed in relation to the incident to narrate such incident. Natural indication would be to avoid talking to any one, lest the family name and honour is brought into controversy.

The Special Court while responding to the grounds of defence raised to disprove the case considered the Indian context and supported the victim. In *State v. Musheer*¹⁷⁶ the Court relied on the testimony of eight year old victim and mother to convict the accused and observed that a lady very particularly who has no male support had not gone to the extent of making allegation of sexual assault against the accused at the cost of character of her daughter.

¹⁷²*Frequently Asked Questions on the POCSO Act, 2012 and Criminal Amendment Act, 2013*, Centre for Child and the Law, NLSIU.

¹⁷³Spl CC No. 221/2013 decided on 22.07.2014

¹⁷⁴Spl SC no. 235/2013 decided on 24.01.2015.

¹⁷⁵AIR 2006 SC 3084

¹⁷⁶Spl CC No.568/2014 decided on 14.03.2016; Refer to Victim's testimony against the accused was cogent and reliable under point 2.4 above for facts of the case.

CHAPTER V ISSUES AND CHALLENGES

5.1 Support Gap

Support gap was strongly felt in the interviews and observations made in the three districts of Karnataka. Need for support services was shared by many respondents especially with respect to initial handholding, providing emotional support through this journey, providing essential information to children and families and in liasoning with agencies to avail benefits under different schemes. Bengaluru Urban is the only district which has Support Persons appointed by CWCs. The numbers are few and are able to extend their services only to a fraction of cases in the district.

Lack of adequate support increases the child's and family's vulnerability towards pressures from extended families to withdraw cases and accused for compromises. There is no mechanism to share important information such as POCSO offences are non- compoundable, compromise does not guarantee an end to the abuse and also that the case will have to continue till the Court passes the final judgment.

There is lack of clarity as to who should maintain the database of Support Persons under the POCSO Act and also about the payments for their services. Although it is understood that the authority appointing the Support Persons should maintain the list, this ambiguity is contributing to lower number of Support Persons on record. The Act does not explicitly mention about payments for Support Persons unlike the services of translators and special educators. Support Persons are not paid and all expenses are borne by them or their organisations.

5.2 Compensation and Monetary Reliefs

Interim compensation has not been granted by the Special Courts in any case analysed in three districts of Karnataka. The Special Courts did not compute compensation in any case. Compensations are largely being disbursed under the Victim Compensation Scheme. The Court's discretion under the Section 33(8) POCSO Act has not been adequately understood or explored. While POCSO Act is applicable to all children, sexual offences identified for compensation under the Victim Compensation Scheme is gender specific. Compensation for male children is currently possible only if Court exercises its discretion under the Act and awards compensation.

All DCPUs have not taken measures to disburse budget allocated for medical expenses effectively resulting in victims in one district not receiving any money under the scheme.

5.3 Procedural Gaps

The identity of the child is poorly protected in the court complex. Waiting space outside the courts draws attention to the child and it is a natural assumption that children outside the

Special Courts are either victims or related to the victim of a POCSO offence. The Special Court staff continues to call out names of witnesses and accused which compromises with the identity of the child victim. In many judgments information leading to identity is not protected fully. Certain Special Courts do not use tools to prevent exposure to the accused. The mandatory provision is not adhered to sufficiently.

5.4 Speedy Disposal of Cases

Several respondents cited lack of exclusive Special Courts as a major reason for difficulty in having a child friendly environment and delay in disposal of cases. POCSO cases are an additional burden to the Special Courts as they were already handling other cases. No measures were taken to reduce the case load on the Sessions Courts when they were designated as Special Courts. The pressure to complete a large number of cases reduces the scope for adopting child friendly measures adequately. In Bengaluru Urban district, Public Prosecutors of the Special Courts handling rape cases were given additional responsibility in violation of Section 32 of the POCSO Act. This may reduce their opportunities to interact and familiarise the children with court processes.

The time gap between various stages of the case creates a problem for victims and witnesses as they are unable to remember the facts of the complaint. As shared by a Child Line representative, due to a large number of cases they deal with it is difficult for them to remember facts accurately after a long gap.

5.5 Non Conducive Environment for Child Witness

While waiting outside the courtroom, a child is exposed to an environment that is not conducive for a child in general and specifically for children waiting to give evidence. The child also witnesses armed police bringing accused from judicial custody in hand cuffs and chains.

5.6 Jurisdiction of Special Courts

There is lack of clarity on the procedure of assigning cases to Courts in two districts in Bengaluru. Child Line representatives shared that they are summoned to Rural Courts for cases that they handled from the Bengaluru Urban district.

5.7 Engaging Interpreters

Police, Magistrates and Special Courts can take the assistance of interpreters, special educators and other experts while recording statements or evidence of the child. Representatives from all related sectors shared that the details of such experts is not available to them. This does pose a problem in districts where the need to use services of interpreters is high due to the rise in the influx of people from outside the State.

Special Courts have adjourned cases due to non- availability of authorization letters for interpreters on the date of hearing. Due to unavailability of the list, Courts had to on several occasions engage interpreters on an *ad hoc* manner of advocates and other people who were

present in the court complex on the day of recording the evidence of the child. This may be detrimental to the case as there is no mechanism to gauge the quality of interpretation.

Further, oath is not administered and no undertaking to maintain confidentiality of information received during interpretation is given by the interpreter. Additional problems are that child's own ability to communicate and her comfort level with the interpreter are not tested prior to interpretation. Interpreters do not get any time to spend with the children if the interpreters are engaged in this mode.

Connected to the above issue, there are no guidelines for the interpreters to conduct themselves, manner of communication with the child or to the extent of interpretation. The only responsibility on the interpreter is to sign a paper containing translation of child's deposition to say that s/he has interpreted it. However, the material interpreted is not read out to the interpreter in all cases before signing it.

5.8 Visits and Interactions

Despite the POCSO Act and its attempt to introduce child friendly measures, children have to interact with a number of people and visit places before the case is concluded in the Court. In most cases, a child makes two to three visits to courts for examination, few visits for compensation and a visit to doctors. Although these visits are made for the benefit of the child, frequent visits pose additional problems of bearing financial and loss of attendance in school and at work for parents.

Lack of sufficient staff to scrutinize applications, budget allocation from the State and mechanism to guide the beneficiaries regarding formalities also appears to be contributing to the delay.

5.9 Issues Relating to Police

Police do not report cases to CWCs within twenty four hours as mandated under Section 19(6). CWCs feel that when the information reaches them it may be late for any meaningful intervention.

A challenge that police officers often face is the difficulty in recording statements of small children whose communication skills are still developing. All police stations have equipments to record statements but some stations still rely on writing the statement or typing it in the computer. Reducing it to writing may lose the original content in case of children under the age three years.

The female constables escort children to the hospitals for emergency medical care and examination, recording of S. 164 statement, production before the CWC and for shelter. There has been inadequate number of WPC in each station, due to which burden of escorting the child falls on few WPCs. This makes it impossible for recording of S. 164 statement within twenty four hours as medical examination is done on priority and if there are more than one case at the same time, new case will take precedence and lack of sufficient WPCs cause delay.

Numbers of female officers who are permitted under law to record statement of the child in districts are extremely low. In the opinion of male officers, girls open up better with female police officers. Sometimes the numbers are as low as three for 18 stations in one zone of a district or just one Female PSI in a police station and she records all the statements in the district.

There is a stark contrast between other districts and capital city with respect to availability of transport facility for officials to travel to record statements or escort children.

Flaws in investigation and non-compliance with procedures appear to be another reason contributing to the acquittal. When the IO does not collect crucial evidence, it is pointed as lack of supporting evidence to prove the victim's case. *State v. Shahid*¹⁷⁷, is a glaring example of the same, where the investigation process failed the victim, despite the fact that she had testified against the accused.

Delay on part of the police to bring victims to PP's office and the large number of cases handled by them gives very little time to spend with the child or to orient the child to the Court complex and processes. Further, it is difficult to gauge specific needs of the child for an interpreter, special educator or any other expert within the short time available. This has resulted in adjournment of the case causing inconvenience to the child.

5.10 Issues Relating to Magistrates

A challenge that was shared by Magistrates was the balancing of time between their regular work and recording the statement without making the child victim wait.

As gathered from the interviews, Magistrates dispense with the recording of statements of small children who cannot communicate clearly. In such cases, neither audio video option nor recording of mother/parent's statement is explored. Magistrates do not have access to audio video equipment and have to depend on police for the same.

Majority of the Magistrates wear robes and formal clothes and administer oaths to children of all ages except when the child is very young.

Statement of the child before the Magistrate is to be recorded *in camera*. Despite this, a person to record the video is allowed inside and in several cases, the escorting WPC is the person who assists in this process. It has emerged through interviews that children are reluctant to open up in the presence of an outsider.

5.11 Issues Relating to Child Welfare Committees

Role of CWCs is not clear to doctors, PPs, police and Special courts. As a result their interventions are not recognized and considered by any of these authorities. In case of children in need of care and protection under the POCSO Act, CWC are the authorities to

¹⁷⁷ SC No. 04/2015 decided on 26.02.2016.

pass orders concerned for rehabilitation. Respondents stated that Special Courts do not recognise the role of CWCs and their orders while passing final orders.

The CWCs pass an order for medical examination on request from other agencies. This takes away the right of the guardians/ parents/ child to give consent for medical examination which is a mandatory provision under the law.

5.12 Medical Facilities

In some hospitals no separate room is available to conduct medical examination. In one district, emergency care is provided in casualty and examination is conducted in the doctor's room.

Examinations are also being conducted by male doctors on female victims despite the mandate in law. Non- availability of female doctors appears to be the reason for the same. In the case of *State v Ningappa*¹⁷⁸, the doctor stated before the Special Court that due to non-availability of the lady medical officer, he was forced to conduct an examination of the girl.

5.13 Protection of Identity

The duty to protect the identity of the victim is not recognised by other agencies/ offices child accesses. The researchers noted the staff of a DLSA discussing the details of a case in the presence of public and were pointing out to a woman during discussions compromising on the identity of the family.

5.14 Capacity Building Programmes

Many key stakeholders have not gone through any training in child psychology or child development essential for handling children in a sensitive manner. Only a small number of stakeholders have been trained on POCSO Act. For instance, all Magistrates recording Section 164 statement under the POCSO Act have not received training in POCSO Act and on interviewing children. Similarly, WPCs who spend considerable amount of time with children escorting them to various places have not received training. They function largely on the directions of their superiors. Other key stakeholders such as doctors, interpreters, Support Persons have not received training on laws relating to children and the POCSO Act

¹⁷⁸ SC No. 99/2014 decided on 22.12.2015.

CHAPTER VI RECOMMENDATIONS

This chapter provides for recommendations to address the issues and challenges that have emerged through interviews and interactions with stakeholders and also during the state consultation when findings of the study were discussed. The issues are grouped for each Department that has a primary duty to achieve these objectives through effective coordination with other Departments. Following recommendations are proposed with an objective of making Courts child friendly and to reduce re-victimization of the child in spaces that a child needs to access or comes in contact with.

6.1 Hon'ble High Court of Karnataka

Exposure of Child to Accused

- Allocate sufficient budget to provide Special courts with child-friendly infrastructure. Funds under the National Mission for Justice Delivery and Legal Reforms may be utilised for this purpose.
- Introduce one way mirrors in all Special Courts of Karnataka for trial and identification purposes.
- Establish or designate waiting rooms/ space exclusively for victims and their family members in all Court complexes having Special Courts.
- Take measures to prevent the accused or his representative from approaching the victim or the victim's family to lure them into making a compromise while waiting outside the court halls.
- Issue directions to Special Courts and JJBs to use tools such as curtains or screens to prevent exposure of the child victim to the accused till one way mirrors are introduced in their courts.
- Issue directions to the Court administration to arrange for victims, parents and the Support Persons accompanying the child to enter the Special Court/court complex through a separate entrance. Entrance through the Judge's chamber may be permitted till such time.

Conducive Environment for Child Witness

- Issue directions to the Special Courts to
 - Prepare the child for evidence through general interactions.
 - Replace robes and formal clothes with non-formal attire for the Presiding Officers, PPs and the lawyers while hearing POCSO matters to create an informal environment.
 - Reduce waiting time for children outside the court. Children's examinations should be scheduled for a specific time, either in the forenoon or afternoon session.
- Invest in an electronic intimation mechanism that will alert victims and their families at least 24 hours in advance, if the hearing is being rescheduled.

- Issue directions to the Magistrates to adopt a child friendly approach by wearing non-formal attire during recording of S. 164 statement and to record the statements in their chambers.
- Direct the District Courts administration to
 - Encourage children and families to start using the ‘Mother and Child Care Room’ wherever available as waiting rooms for children in POCSO cases.
 - Make alternative arrangements for recording of evidence of children instead of making them come to the court complexes. Arrangements should also be made for recording evidence of children through video conferencing from a child friendly and neutral place in the taluks or a space in the district headquarters.
- Arrangements to move the Special Courts from their regular court complex need to be considered to address the challenges faced in making the space child friendly in the current location. They could be located closer to the Child Care Institutions set up under the JJ Act.
- Support a “Going to Court” programme based on the Goa model, to orient child victims to the courtroom and court procedures.
- Enable the creation of an accessible and child-friendly court-complex and pictorial brochures explaining the courtroom structure, people present in the courtroom, sequence of events and the procedures that will be followed during deposition;

Infrastructure and Basic Amenities

- Issue directions to the District Court administration to
 - Take steps to make basic amenities such as water, toilets, lifts etc available near the Special Courts.
 - Make sufficient seating arrangements for people waiting outside court rooms or in the designated waiting area.
- Take steps to move the Special Courts not accessible through ramps and lifts to ground level to accommodate children with disabilities.
- Take measures to enable children with disabilities access disabled friendly toilets by keeping them open and clearing the materials currently stored in them.

Speedy Trial and Reduction of Pendency

- In consultation with the State Government, consider establishment of exclusive Special Courts to ensure the trial is speedy and child- friendly.
- Designate additional Courts as Special Courts wherever pendency is high to deal with cases till exclusive Special Courts are established.
- Issue directions to the District Court administration to take steps to distribute cases evenly amongst the Special Courts in Bengaluru Urban district to facilitate in decreasing pendency.
- Issue directions to designated courts to list a manageable number of cases so as to ensure that sufficient time is available to follow child friendly measures in their Courts

Compensation

- Issue directions to the Special Courts to exercise their discretion under the POCSO Act to award interim and final compensation in appropriate cases.

Implementation of Mandatory Clauses

- Issue directions to the Special Courts to follow mandatory provisions under the law such as routing questions during examination of child through the Judge and applying the presumption clause.

Protection of Privacy and Identity of the Child

- Issue guidelines to Special Courts specifying information that should not be disclosed in the judgments such as the names of child victim, parents/ guardians or any information regarding the child or witnesses that may reveal the identity of the child. 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.
- Issue directions to staff of Special Courts to handle children sensitively and to protect their identity. This could include training to avoid calling out their names in the open court rooms or in the corridors. Staff should be encouraged to familiarise themselves with the children who appear as victims/ witnesses prior to the court hearings and to approach the child discreetly and take her/him inside the Court when her/his case is being heard.

Travel Expenses

- Make provisions to cover travel and other basic expenses of children and families for visits made as part of judicial, legal or related processes. The Juvenile Justice Fund (JJ Fund) or the Nirbhaya Fund could be used for the purpose.

Engaging Interpreters

- Issue guidelines for engaging interpreters to administer oath as per the Indian Oaths Act 1969, take an undertaking of confidentiality and proficiency in language to ensure that quality of services is not compromised with.

6.2 Special Court

Exposure to the Accused

- Use tools such as screens/ curtains to protect the child from exposure to the accused.
- Wherever such tools are available, the Special Court should ensure that it is placed in front of the accused before the child enters the court room.
- The objective of Section 36(1) should not be construed narrowly. The curtain should be placed before the accused when he enters the court to avoid all forms of exposure to the child victim irrespective of whether the or not evidence is recorded on that day.

Conducive Environment for Child Witness

- Child should be made to sit next to the Judge with a non-offending parent or Support Person during examination as part of child friendly procedures. In appropriate cases the child's evidence should be taken in the chamber of the Judge.
- System of routing all questions through the Judge during examination should be introduced.

- Legal assistance from a private or a legal aid lawyer should be facilitated in appropriate cases for the child victim, in addition to the service provided by the PP.
- Options to appoint a commission for recording the statement of the child in a place other than the court as provided under S.37 should be explored.
- The waiting time for the child should be reduced by posting only a manageable number of POCSO cases for evidence. Special Court should instruct the staff to inform them when a child victim arrives.

Protection of Privacy and Identity of the Child

- Conduct the entire case *in camera* so as to ensure higher levels of privacy and confidentiality. The *in camera* proceedings should be conducted behind closed doors for the child to be assured that the general public does not have access to information shared during the proceedings.
- Suppress information relating to the identity of the child, child's parents, relatives, school, neighbourhood, address, etc., in the judgments. 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.
- Instructions should be issued to staff of Special Courts to handle children sensitively and to protect their identity. Staff should be encouraged to familiarise with the children who appear as victims/ witnesses prior to the court hearings and approach the child discreetly and take them inside the Court when the case is being heard.

Speedy Trial

- Measures should be taken to avoid situations that require adjournments due to non-availability of an interpreter or expert. The police should be able to communicate information regarding the needs of the child to the Court.
- Courts should use their discretion and impose costs computed based on inconvenience caused to the child due to adjournment request by defence lawyers. Costs charged should be borne by the accused and given to the families to compensate the loss incurred through multiple visits to courts.

Visits

- Introduce systems such as sending a text message via mobile phone to reduce visits to the Court by ensuring information about any adjournments that may arise as a result of Presiding Officer not sitting or interpreter/ expert not organized or any other reason that the Court has prior knowledge of, is communicated to the child and his/her family in advance. PPs and Court police constables may assist the Court in this so that the child's school and regular routine does not get disturbed unnecessarily.

Compensation

- Steps should be taken to identify and pass orders of interim compensation in appropriate cases.
- Proactive steps should be taken to pass orders of compensation along with sentencing orders in appropriate cases.
- Compliance report should be sought from the DLSA.

Orders relating to Child Welfare Committees

- If necessary, a child victim should be referred to the CWC or DCPU for institutional or non-institutional care and protection.
- Due consideration should be given to the rehabilitation orders passed by the CWC, which is the authority to pass such orders in cases of child victims who are also found to be children in need of care and protection under the JJ Act 2015.

Interpreters

- Interpreters, special educators or any other expert 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.
- An oath should be administered to interpreters to comply with requirements under the Section 4(b) of the Indian Oaths Act.
- An undertaking/affidavit on proficiency of language should be taken when interpreters are engaged from sources other than the list provided by the DCPU.
- An undertaking should also be taken to maintain confidentiality of all information received during interpretation or related processes.
- Sufficient notice should be given to the interpreters to facilitate prior interaction with children to enable assessment of the child's capabilities and language skills.
- Sufficient time must be given to the interpreters to read and understand the information that has to be translated. If the matter is typed in a language that an interpreter cannot read or fully understand, the content should be read out or translated before the interpreter signs the document to avoid any error that may affect the case.

6.3 Karnataka Judicial Academy

- Conduct capacity building programmes regularly for Special Court Judges considering their periodical transfers. Capacity building programmes should have subjects such as child development, child psychology, interviewing children, the POCSO Act and laws relevant to child rights such as the JJ Act and applicable Rules. These programmes should be conducted prior to the Judge assuming the position of Special Court Judge.
- Conduct similar programmes should be conducted for other judicial officers such as Magistrates who record statement in POCSO cases in the above subjects.
- Conduct training for the staff present during the recording of the Section 164 statement in operating video cameras to discourage any stranger/ videographer or police from being present during the recording.

6.4 Karnataka State Legal Services Authority

Compensation

- Issue directions/ guidelines to DLSAs to
 - Provide support and guidance to beneficiaries to reduce number of visits to their office arising out of procedural gaps or inability to understand the formalities.

- Provide assistance to children’s families to fill in the forms for compensation in order to help them to give full information and documents without delay.
- Conduct awareness programmes in the community and schools with special focus on rural areas to make the wider public aware of the compensation scheme.
- Disburse the compensation amount and file compliance report within 30 days of an order of compensation passed by the Special Court.

Legal Representation

- 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

Protection of Privacy and Identity of the Child

- Issue directions to DLSA staff to ensure that the identity of children is protected in their conversations in the presence of the general public.

6.5 Department of Prosecutions

Conducive Environment for Child Witness

- Relax the appointment rules relating to minimum years of experience for SPP to facilitate a larger number of advocates’ involvement in POCSO cases. Any lawyer could be encouraged to play this role considering the said lawyer’s expertise in the field and choice of the child and family to engage him/her.

Implementation of Mandatory Clauses under Law

- Appoint PPs to exclusively handle cases under the POCSO Act in compliance with the requirement under Section 32(1), POCSO Act.

Sensitization & Capacity Building Programmes

- Ensure that all PPs handling POCSO cases receive training on interviewing children, the POCSO Act and other relevant legislations necessary for conducting cases.

6.6 Special Public Prosecutors

Exposure to the Accused

- Assist the Court in ensuring that measures to protect child from exposure to the accused is followed during the trial.

Conducive Environment for Child Witness

- PPs should facilitate a court tour at an appropriate time with assistance from Support Persons for the benefit of the child and family. Orientation relating to court process and developments in the cases is to be mandatorily followed.
- Share information regarding Support Persons, counselling services and other essential services with the child and family.

Compensation

- Make applications to the Special Courts for compensation on behalf of the child.

6.7 Magistrates recording Statements of Child Victim under Section 164 Cr. P. C

Section 164 Statement

- Statements should not be recorded in presence of any police person.

- Record the statement *in camera* and no stranger should be allowed inside. Wherever assistance is essential, the Woman Police Constable or the court clerk can help in starting the process.
- Record the statement of a parent or eye witness, when the child is below three years or if the child is not able to communicate properly.
- The Magistrate should record statements in an informal and child friendly environment and by avoiding the judicial attire.
- An oath should not be administered to any child below 12 years while recording statement as stated in the Indian Oaths Act 1969.
- Do not make the child stand in the witness box to give her statement. A more friendly approach such as making the child sit next to the Magistrate should be adopted.
- Take positive measures to reduce intimidation to the child while giving statement by recording the statement in the chambers and avoid a formal court setting. In view of easing the child's fear and discomfort, it would be appropriate for the Magistrates to be sitting at the same level as the child.

6.8 Home Department

Implementation of Mandatory Clauses under Law

- Issue a 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 children in need of care and protection as per Section 19(6) of the POCSO Act 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.

Compensation and other Monetary Relief

- 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 be given to children, families and guardians of victims of child sexual abuse.

Recording of S. 161 Statement

- Issue directions to all stations to
 - Use audio video means to capture the statement of the child in compliance with the mandate under the law. The POCSO Act requires the statement to be recorded as spoken by the child.
 - Ensure that statement of the child is recorded outside and away from the vicinity of the police station in a neutral place to avoid discomfort to the child.
 - Ensure that the child's choice of place for recording of statement should be respected especially in cases of children in institutions and hospitals.

Systemic Gaps Affecting Prosecutor

- Directions should be issued to ensure that the police constable brings children to the PP's office in consultation with the PP to enable interaction with the child, refresh the memory of the child and to avoid adjournments from PP's side.

- Designate constables to act as Court Police Constables based on requirement in each district to exclusively deal with POCSO cases to enable children to be present on time at the PP's office and coordinate with children and family appropriately.

Uniform

- Issue directions to police who escort the child or the accused from judicial custody to be in civil dress in the court premises.

Sensitization & Capacity Building Programmes

- Organise training to police of all ranks especially the female constables who are likely to deal with children. The trainings should be on the POCSO Act, JJ Act, on interviewing children, recording of the S. 161 statement, child development, child psychology and the manner POCSO cases have to be conducted.

Infrastructure

- One sided mirrors should be installed in at least few police stations in each zone. Test identification parade should be done through one sided mirrors.
- Adequate transport facility should be provided for escorting the child. Contingency amount in each police station should be kept for this purpose.

Personnel and Recruitment

- Adequate number of female Sub Inspectors and police constables should be recruited. Adequate number of WPCs should be appointed in each station based on the demography and area of the district.

6.9 Department of Women and Child Development

Support Gap

- 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.
- Issue a public call inviting volunteers and representatives of NGOs to volunteer as Support Persons, while including the necessary qualifications/experience required.
- Issue guidelines and eligibility criteria for appointment of Support Persons to ensure the quality of services by setting minimum standards.
- Organise capacity building programmes including sessions on interviewing children for Support Persons.
- Allocate budget for payment of services rendered by the Support Persons and fix fees for their services. Nirbhaya Fund or Karnataka Children's Relief Fund could be used for this purpose.
- Take appropriate measures to ensure that police and Courts recognise the role, powers and functions of the CWC's vis a vis child victims in need of State care and protection.

Sensitization and Capacity Building Programmes

- Organise training for
 - Support Persons with respect to procedures to be followed with regard to dealing with police, hospitals, courts and compensation.
 - Stakeholder groups such as ICPS staff periodically bearing in mind the likelihood of transfer and attrition rates. The training programmes should be

scheduled in such a manner that every stakeholder working with children should be appropriately trained as soon as they take up the position. Training should be provided on a quarterly basis to make them aware of the new developments, by a multi-disciplinary team of lawyers, counsellors and psychiatrists on the provisions of the POCSO Act, interviewing a child, including do's and don'ts while interviewing a child.

- Multi stakeholder groups working in the same forum or whose roles overlap so as to give a holistic understanding of situations and problems. This will enable better co-ordination and convergence among the stakeholders and agencies. Within the stakeholder groups, stakeholders working directly with children should be provided training on priority.
- JJB members on the POCSO Act for a nuanced understanding of the Act.
- Interpreters, translators, special educators and other experts who are on the list maintained by DCPU on sensitive interaction with children, POCSO Act, JJ Act and other relevant legislations such as disability laws.

Travel Expenses

- Take measures to ensure that child victims who are produced before CWC or have to appear before the JJB are provided travel allowance and other basic expenses from the JJ Fund that is earmarked for this purpose.

Interpreters

- Issue guidelines by the Department as to the criteria for interpreters on the list maintained by the DCPU.
- Allocate budget for appropriate remuneration for the services rendered by the interpreters from the JJ Fund as recommended under Rule 3(6) of the POCSO Rules.

6.10 District Child Protection Unit

Facilitate Monetary Relief

- Take proactive steps to identify and disburse the amount to child victims in all districts.
- Take measures to publicise the scheme among the community, police, LSAs, Child Line, CWCs, and other stakeholders with whom the child may come in contact with.

Database of Interpreters

- Send out a call and encourage people with interest and essential skills to be interpreters, translators and other experts to register in the panel. Based on the guidelines and eligibility criteria to be issued by the DWCD, identify qualified interpreters and special educators.
- All the interpreters, translators and special educators should be trained as per guidelines to be framed by the State Government
- Finalise and share the list of interpreters and experts with police, Magistrates and Special Courts without loss of time.
- Facilitate meetings between the interpreter and children prior to the interpretation to ensure that they can assess their capabilities and needs.

6.11 Child Welfare Committee

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

6.12 Department of Health

Medical Examination

- Issue a circular to all Government Hospitals that are equipped to conduct medical examination in child sexual abuse cases to-
 - Reduce waiting time for victims of sexual offences in the hospitals. Steps should be taken to attend to POCSO cases on priority.
 - Designate a special examination room in the hospital.

Personnel and Capacity Building

- Address shortage of staff in district hospitals to take up cases of sexual abuse on a priority basis.
- Conduct training on laws relating to child sexual abuse to be provided by legal experts in the field. A Ready Reckoner for doctors could be made available that will give them an overview of the applicable laws.

Annexure A

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

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

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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 Corner house 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.

Do's 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 tousele 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-judgmental, 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 an anatomical 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 pee is? 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 dis-belief 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-judgmental 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?”