

**SUMMARY OF FINDINGS: STUDY ON THE WORKING
OF SPECIAL COURTS
UNDER THE POCSO ACT, 2012
IN ANDHRA PRADESH**

BY



**CENTRE FOR CHILD AND THE LAW,
NATIONAL LAW SCHOOL OF INDIA UNIVERSITY BANGALORE**

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I. Structural Compliance

The table below captures the status of structural compliance of Special Courts in the two court complexes i.e., in Prakasam and Guntur, with the POCSO Act.

Parameters of Analysis	Prakasam	Guntur
Designation of Special Courts under POCSO Act	√	√
<i>Special Courts exclusively try offences under the POCSO Act, 2012</i>	X	X
<i>Special Courts are accessible to persons with disabilities</i>	X	√
Special Public Prosecutors appointed	*	*
Special Public Prosecutors exclusively try offences under the POCSO Act, 2012	X	X
<i>Separate entrance for children into the courtroom</i>	√	√
<i>Separate waiting room for children and families</i>	X	X
<i>Separate waiting space for children and families</i>	√	√
<i>Toilet located in the vicinity of the courtroom</i>	X	*
<i>Toilets are accessible to persons with disabilities</i>	X	X
<i>Audio-visual facilities to record evidence of the child available</i>	X	X
Means available to prevent exposure of the child to the accused <u>in</u> the courtroom	√	√
<i>Separate room for recording the evidence of child witness</i>	X	X

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

II. Procedural Compliance

The compliance of Special Courts with Sections 33, 35, 36 and 37 of the POCSO Act, 2012 (hereinafter, POCSO Act), and the POCSO Rules, 2012 (hereinafter, POCSO Rules). The findings are:

- **Direct Cognizance by the Special Court:** In 60 of 509 cases (11.7%), the cases were committed to the Special Court, indicating that this provision was largely complied with. The percentage of committals steadily declined from 15.3% to 6.66% from 2013 to 2016.
- **Questioning the Child:** It appeared from the interviews in both districts that while questions continue to be put to the child directly by the prosecutors and defence lawyers, Judges usually intervene if degrading questions are attempted to be put to the child. Efforts are also made to prevent defence lawyers from asking insensitive questions, or questions which assassinate the character of the child.
- **Child-friendly Atmosphere:** While there is no mention of Support Persons accompanying a child into the courtroom, parents or other trusted persons were often allowed inside with the child to make her more comfortable. Similarly, Judges make an effort to make the child feel comfortable and relaxed by interacting with them prior to their testimony. At the same time, certain respondents felt that the formalities of a courtroom (a Judge sitting on an elevated platform, the bailiff shouting ‘silence’) tend to intimidate children. Further, the child-friendly atmosphere certainly does not extend beyond the courtroom to other parts of the criminal justice process. For instance, though one of the prosecutors interviewed mentioned that he ensured a lady police officer was present whenever he spoke to a child, the researchers witnessed a child being brought in to the office of the same prosecutor by two male police officers in uniform, and being prepared for her examination-in-chief in the presence of strangers.
- **Minimizing appearances in court and permitting breaks:** The child’s examination is generally completed in one visit. In exceptional cases, the defence lawyer is given another date for cross-examination. The cases are posted on a day-to-day basis in a POCSO case, indicating that the examination of the child is sought to be completed at the earliest. In the JJJB, the child is called for examination on two days, once for chief examination and subsequently for cross- examination.
- **Protection of Identity:** It emerged from judgement analysis that the identity of the victim was compromised in 493 out of 509 cases (96.85%). The name of the child was identified in 103 of the 493 cases (20.8%). In some cases, the names of the child and parents, though not disclosed in the body of the judgement, were listed at the end of the judgement. In some cases, though the name of the victim was protected, other information was released, making it easy to identify her. This included the victim’s address, class/school details, village details, names of parents, grandparents, siblings, any other family members, or informants, with or without reference to their professions. Identity was fully protected in 16 cases (3%).
- **Award of Compensation:** Final compensation was awarded to victims in 17 (3.3%) of the 509 cases, under three different provisions, namely Section 357, Cr.P.C, Section 357-A, Cr.P.C, and Section 33(8), POCSO Act. In 16 of the 17 cases, i.e., 94.11% cases, the accused was made liable to pay a certain amount as compensation. In 12 of the 17 cases (70.58%),

the full amount of the fine imposed on the accused, or some part of it, was directed to be recovered and paid to the child as compensation, under Section 357, Cr.P.C. There was no mention of interim compensation in any of the cases. In three of the total cases in which compensation was awarded, the victim was a child with disability.

- **Prompt Recording of Evidence:** The Special Court Judges interviewed stated that they try to complete the cases within one year and do not give adjournments ‘unless the request is from the complainant’s side.’ A court staff also stated that the victim is called only once for evidence unless the defence lawyer files a petition for recall of witness. In such cases the child may be called more than once.
- **Avoiding Exposure to the Child:** Curtains and partitions are used to ensure that the child is not exposed to the accused. Judges also take steps such as calling the victim and the accused one at a time, from separate entrances, to ensure that the child is not exposed to the accused.
- **In-Camera Trials:** While all cases under POCSO Act are heard *in-camera*, it is unclear whether the examination of witnesses other than the child victim is also done *in-camera*. A member of the judiciary in one district was of the view that only the child victim’s evidence needs to be *in-camera*. In the other district, it appeared that except for official witnesses such as police and doctors, all witnesses are heard *in-camera*. In a serious offence, even doctors may be heard *in-camera*. In JJBs, POCSO cases are usually heard *in camera* even if the child victim is not present.
- **Assistance of Interpreters, Experts and Special Educators:** It emerged from the interviews that in most cases, Special Courts engage special educators or translators or any other expert if the child is disabled. Judgement analysis revealed that efforts were made to engage an expert through the police or other channels. The DCPU does not maintain the list as required under the law. Interpreters are usually brought by the police, who may have used the same expert during investigation.
- **Assistance of Private Legal Practitioners:** There is no information regarding a legal aid lawyer or a private lawyer having provided assistance to victims in the two districts where field study was undertaken. The DLSAs confirmed that no legal aid lawyer has been appointed to assist the child or the family of the child. While there is reference to a legal aid lawyer being provided to the accused, judgements do not indicate courts having facilitated such services either.
- **Appointment of Support Persons:** The CWCs in Andhra Pradesh have not appointed any Support Persons in the two districts where field work was conducted. In one district, social workers who have a Masters in Social Work have been orally asked to support victims in all cases. The NGOs interviewed appear to extend support to children in various spaces such as police stations and hospitals, and to also provide important information regarding services. They also interact with the child on a regular basis and keep them informed of the developments in the case. Interviews revealed that such support is also provided from the DCPU and CHILDLINE. The severe lack of such services was also experienced by children when interacting with prosecutors, as there was nobody to support them when the prosecutor was allegedly rude or when the defence lawyer insisted on a compromise.

III. Findings Based on Judgement Analysis

An overview of the key findings that emerged from judgement analysis is as follows:

Sex Profile of the Victim and the Accused

- In 508 of 509 cases, there were a total of 523 victims, of which 522 victims (99.80%) were female and only 1 victim (0.20%) was male. In 1 case, the exact number of victims was not specified. These figures do not reflect the pervasiveness of the sexual abuse faced by male children.
- In the 509 cases, there were a total of 667 accused persons, of which 625 accused were male (93.70%) and 42 were female (6.29%).

Pregnant Victims

- In 19 cases (3.73%), the victim was either pregnant at the time of lodging the FIR, or had a child subsequently after marriage with the accused, during the pendency of the trial.
- The accused was known to the victim in 18 cases i.e., 94.73%. In the remaining case, a stranger forcibly kidnapped and married the victim.
- In eight cases, i.e., 42.10%, the charges framed did not reflect the aggravated nature of the offence and the accused was charged only under Section 4 (penetrative sexual assault), instead of Section 6 (aggravated penetrative sexual assault) of the POCSO Act.
- Convictions resulted in the three cases (10.34%) in which the victim testified against the accused. In two cases, the victim could not testify because she had died. Both these cases resulted in acquittal. The victim turned hostile in 15 cases (78/94%). In nine cases (47.36%) the victim admitted to being in a romantic relationship with, or having married, the accused, but denied sexual assault.
- Compensation was awarded or recommended in only three cases in which the victim was pregnant, although the pregnancy was established in all cases. All three cases had ended in convictions.

Profile of Informants

- Majority of the cases were reported to the police by the victim (218 cases, i.e, 42.82%). In several such cases, the victim was accompanied by a family member.
- The report was given by the victim's mother in 142 cases (27.89%), and the victim's father in 103 cases (20.19%). Other family members such as older siblings, uncle, aunt, grandparents, and cousins were informants in 29 (5.69%) cases.
- The matter was reported to the police by others in 14 cases (2.75%). These informants included NGOs, social workers, hostel and school staff, district education officer, police, journalists and neighbours.
- Of the 108 romantic cases, the father filed the complaint in 33 cases (30.9%), the mother in 26 cases (23.63%), the guardian in one case and other relatives in three cases. As is evident in 54.62% of romantic cases, the victim's parent set the criminal justice system into motion. The victim filed the complaint in 43 cases (39.81%).

Age Profile of the Victim

- In one of the 509 cases, the number of victims was not specified. In the remaining 508 cases, the number of victims was 523 in total.
- The majority of the victims (30.21%, i.e. 158 victims) were aged between 13 and 15, closely followed by the victims aged between 16 and 18 (26.57%, i.e. 139 victims).
- 18.92% of the total number of victims were aged between 6 and 12 (99 victims), while those aged below 5 constituted 2.10% (11 victims) of the total number of victims.
- In five cases, the victims were aged above 18, i.e., the victim was not a minor.
- The age of the victim was not specified with exactitude in 21.22% (i.e. 111) of the cases, but in 94 of such cases (84.68%), the judge concluded that the victim was below the age of 18 years.
- In 74 of 108 romantic cases (68.51%), the age of the victim was contested, and no definite finding was given by the Special Court in this regard.

Conviction Rate and Factors Affecting Conviction

- Convictions were recorded in 57 of 509 cases (11.19%), pegging the rate of acquittal at an alarming 88.81%.
- Convictions were recorded solely under the POCSO Act in 14 cases (24.56), and solely under the IPC in seven cases (12.28%). In 36 cases (63.15%), convictions were recorded under both the POCSO Act and the IPC.
- While charges were framed under the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (PoA Act) in one of the cases which resulted in conviction, a conviction was not recorded under the said Act.
- The most common ground for conviction was the cogent testimony of the victim. Of the 46 cases in which the testimony of the victim was considered reliable, 44 cases resulted in conviction, at a rate of 95.65%.

Factors Affecting Acquittal

- The most common ground for acquitting the accused was that the victim (and most often, other witnesses as well) turned hostile. Acquittals were recorded in each of the 395 cases in which the victim turned hostile (100%).
- Of the 27 cases in which the testimony of the victim was found unreliable, the accused was convicted under the POCSO Act in four cases (14.81%), all of which had victims below the age of 12. Of these, medical evidence was available and relied upon in two cases (50%). Further, in two cases (7.47%), the accused was convicted under the IPC only.
- Cases also resulted in acquittals when sufficient evidence was not produced to prove the minority of the victim, or DNA evidence, though available, was not collected or used to prove the guilt or innocence of the accused.

Nature of Testimony

- In 73 cases (14.50%), the victim testified against the accused, and in 396 cases (77.45%), the victim turned hostile.

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

Analysis of Charges Framed

- In the 509 cases analysed, there did not seem to be a charge under any particular section that featured prominently. Section 4, 6, 8, 10 and 12 all featured more or less equally.
- In 65% of the cases, the charges correctly reflected the aggravated nature of the offence, whereas in 35% of the cases, though aggravating factors were present, charges were not framed for an aggravated offence.
- Charges framed under the Indian Penal Code (hereinafter IPC) usually mirrored the charges framed under the POCSO Act.
- Aside from the POCSO Act and the IPC, in 15 cases, charges were framed under other penal legislations. 11 charges were framed under the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1993 (Atrocities Act), and one charge each was framed under the Information Technology Act, 2000, the Immoral Traffic (Prevention) Act, 1956, the Dowry Prohibition Act, 1986 and the Prohibition of Child Marriage Act, 2006.

Sentencing Pattern

- Of the 36 cases in which the accused was convicted under both the POCSO Act and the IPC, a sentence under both Acts was awarded in 20 cases (55.55%), and section 42, POCSO Act was applied in 16 cases (44.44%).
- Of the seven cases where a conviction was recorded solely under the IPC, the conviction was for a sexual offence (S.354) in only one case, where the accused was acquitted under the POCSO Act because the minority of the victim could not be proved. In the remaining six cases, the conviction was for other offences such as kidnapping (S.363), trespass (S.448), and criminal intimidation (S.506).
- Probation was not granted in any case analysed. This is in tune with the POCSO Act, which bars probation as a sentence, except in offences for which no minimum sentence is prescribed, such as sexual harassment.
- In no case was a sentence below the statutory minimum imposed.

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

- The accused was known to the victim in 381 cases (74.85%), was a stranger in 105 cases (20.58%), and the relationship between the victim and the accused was either not discussed or unclear in 23 cases (4.50%).
- Acquaintances formed the largest category (27.29%), followed by neighbours (18.11%). The category of acquaintances included pastors and priests, fruit and vegetable vendors, friends of the family, residents of the same village, and so on. Boyfriends constituted a significant proportion of the accused (16.01%), along with accused persons to whom the victim had got married (12.33%). The accused person was alleged to have been stalking the victim in 7.08% cases, and a relative was the accused in 6.82% cases. The broad category of relatives includes cousins, uncles, and brothers-in-law. The accused was the teacher/professor of the victim, or the headmaster/principal of the school in which the victim was studying in 5.51% cases. This category includes tuition teachers. The father/step-father of the victim was the accused in 3.68% cases, and a friend of the victim had allegedly committed a sexual offence against her in 3.16% cases.
- The lowest rates of conviction were seen in cases where the accused was married to the victim (0%), or was her father/step-father (0%). Higher rates of conviction were seen in cases where the accused was the relative (15.38%), acquaintance (13.46%), neighbour (13.04%), or stalker (11.11%) of the victim. Boyfriends and friends of the victim, and strangers were convicted at a relatively lower rate of 9.83%, 8.33% and 7.61% respectively, whereas the rate of conviction for headmasters/teachers was an astoundingly low 4.76%.
- The low rate of conviction when the accused was the teacher/headmaster or a stranger is explained by the fact that in most such cases, the victim turned hostile against the accused. However, in cases where the accused was the father/step-father or friend of the accused, no definite link can be drawn between the testimony of the victim and the outcome of the case, since acquittals were recorded despite the victim testifying against the accused.

Presumptions

- The presumptions under the POCSO Act were mentioned only in 26 of 509 cases (5.10%).
- Presumptions are largely applied only in cases which have ended in convictions, with 22 of the 26 cases in which the presumptions were mentioned ending in convictions.
- Presumptions were used more as a tool to strengthen the evidence presented by the prosecution than a tool to record a conviction.
- There also appears to be a high correlation between the application of the presumption and the gravity of the offence. In 19 of 25 cases where presumptions were mentioned, the charge was an aggravated offence under Sections 6 or 10, or the facts disclosed an aggravating circumstance.

Outcomes in Romantic Relationships

For the purposes of this study, cases in which the victim admitted to a romantic relationship with the accused at any stage of the investigation or trial, or such a relationship was inferred by the Judge from the facts of the case, were treated as ‘romantic’ cases.

- 108 out of the 509 cases analysed, i.e. 21.21% were classified as ‘romantic’ in nature.
- Convictions were recorded in six cases (5.55%), of which in three cases the accused was convicted under both the POCSO Act and the IPC, and three were convicted under the IPC only. The rate of conviction in romantic cases, therefore, stands nearly 6% lower than the overall rate of conviction by Special Courts.
- Compensation was not awarded in any of the cases which resulted in conviction.
- The victim had become pregnant, allegedly as a result of the penetrative sexual assault by the accused in 15 cases (13.88%), but none of them resulted in conviction.
- Marriage between the victim and the accused had taken place in 47 out of 108 cases (43.51%), either before the report was filed, or subsequently. None of these cases resulted in a conviction, even though, in several cases, the minority of the victim was not in doubt.
- The failure of the prosecution to establish the age of the victim, and in some cases, the failure of the Special Court to even consider the question of the age of the victim was seen most evidently in ‘romantic cases’, especially in cases where the victim was married to the accused or they appeared to have a child.

Response to Delay in Filing FIR

- One of the trends observed was that incidents of sexual assault were first sought to be resolved with the intervention of village or caste elders, and only when no resolution could be reached was a FIR lodged.
- The Special Court did not respond uniformly to this ground for delay. While in some cases it was held that the delay was sufficiently explained, in others, this was not held to be reason enough for the delay, even though the extent of delay was the same.

Consideration of Medical Evidence

- Medical evidence was either unavailable, or not referred to at all by the Special Court, in 311 cases (61.10%). It is difficult to say with any precision whether medical examination was carried out in these cases, but simply not discussed in the judgement, or alternatively, whether no medical examination was carried out at all.
- Medical evidence was available (or referred to in the judgement) in 30 of the 57 cases (52.63%) which resulted in conviction, either under the IPC or the POCSO Act. Of these, the evidence was considered, but not relied upon to reach a decision in four cases, was not considered in one case, and was both considered and relied upon in 25 cases.
- Medical evidence was rarely considered sufficient proof to enter a verdict of conviction, even though, scientifically, it proves a fact beyond reasonable doubt. Even in cases where medical evidence was available, it was not always relied upon, particularly when the victim and other witnesses of the prosecution turned hostile. This would appear counterintuitive, given that

medical evidence can be a crucial tool to arrive at a verdict when eye-witnesses turn hostile, and therefore, ought to be given weightage.

IV. Challenges and Issues

The main challenges that emerged through the study are:

Gaps in Age-Determination

- Section 94 of the Juvenile Justice (Care and Protection Act), 2015 (hereinafter JJ Act), and the erstwhile JJ Rules were not referred to in any judgment.
- In most cases, when the victim and other witnesses of the prosecution turned hostile, the Special Court did not even attempt to go into the minority of the victim.
- In several cases, it was seen that the necessary evidence was not produced by the prosecution to prove the minority of the victim.

Investigation Lapses

- The most common investigation lapses were failure to collect documents to prove the minority of the victim, and DNA evidence to prove the guilt or innocence of the accused.
- Other lapses included failure to draw *panchnama* correctly, or record the statements of independent witnesses even where available.

Gaps in Compensation

- A large part of the compensation orders were under S. 357 Cr. P. C, where fines are given as compensation. This makes the compensation of the victim dependent on recovery of the fine amount from the accused.
- Delay in disbursal of compensation, lack of clarity and coordination amongst the functionaries of the child protection system, and the conspicuous absence of reference to interim compensation were some of the other issues highlighted.

Support Gap

- The rate of hostility, as observed from judgement analysis was a shocking 77.5% in Andhra Pradesh, one of the highest rates observed amongst the five states where this study has been conducted.
- This is attributable to a severe lack of support during the investigation and trial process.
- In cases of children with disability, the responsibility to arrange for a translator or special educator is placed upon the police in practice, who may have availed the services of such persons during their investigation. The Special Court and the District Child Protection Officer (DCPO) do not maintain a list of these service providers.

Challenges Posed by Romantic Relationships

- The rate of conviction in romantic cases is significantly lower than in other cases under the POCSO Act.
- In such cases, there was usually a tendency to assume that if there was a love affair between the victim and the accused, and more particularly, if the victim agreed to accompany the accused, she would also have agreed to sexual intercourse with him.