

Structural and Procedural Compliance by Special Courts under the POCSO Act

Swagata Raha, Senior Research Associate (Consultant)

Centre for Child and the Law, (CCL)

National Law School of India University (NLSIU)

Bangalore

24 February 2018

Delhi

Basis

5

Delhi
Assam
Karnataka
Maharashtra
Andhra Pradesh

2788 Judgments

Special ~~Sessions~~ Court

~~Special~~ Public Prosecutors



Procedural Challenges

- **Defence lawyers and PPs continue to put questions to the child directly.**
- **Courtroom procedures are rarely explained to the child and the family** by the Special Court or PPs.
- **Identity of the child is poorly protected.** The POCSO courts are known to all. Children are identified in judgments.
- **No list of interpreters, special educators, translators** prepared by DCPU.
- Child victims rarely receive **legal representation** as per Section 40, POCSO Act.
- **Evidence is rarely recorded within 30 days** of taking cognizance.
- **Presumptions** of guilt and culpable mental state are **rarely mentioned or applied** by Special Courts.

Award of Compensation - An Exception

State	Total Cases of compensation ordered by Special Courts	Compensation payable by State Government	Compensation payable by accused
Delhi	36/667 (5.39%)	35/36 (97.22%)	2/36 (5.55%)
Assam	38/172 (22%)	29/38 (76.31%)	9/38 (23.68%)
Karnataka	3/110 (2.72%)	0/3 (0%)	3/3 (100%)
Maharashtra	125/1330 (9.39%)	20/125 (16%)	109/125 (87.2%)
Andhra Pradesh	17/509 (3.35)	3/17 (17.64%)	16/17 (94.11%)

Practice of CWCs in POCSO cases

- **Most CWCs do not have a panel of Support Persons available and do not proactively assign Support Persons in POCSO cases.**

- **Child is separated from the family and kept in the Children's Home till her testimony is recorded by some CWCs.**

Recommendations

- **Structural modifications** in line with RPD Act, 2016 and Supreme Court's recommendation in *Sampurna Behura v. Union of India*, to establish child-friendly courts.
- **Special Courts** should try POCSO cases, sexual offences, and offences against children.
- **SPPs should be appointed and must exclusively try POCSO cases.**
- **To overcome structural limitations, Special Courts may:**
 - Consider examining the child in their chambers or a place other than courtroom if the child is uncomfortable in court.
 - Designate waiting room or space so that exposure of victim to accused and others is avoided.

Recommendations

- Bar Council of India may be approached to draft rules specifically on **conduct of advocates in cases of sexual offences against children.**
- **Identity** of the child, child's parents, and even the accused, if he/she is related to the child should be **suppressed.**
- SPP or Support Person should **assess the communication skills of the child, whether an expert needs to be engaged,** and take steps to ensure such support before the evidence is recorded.
- **Assistance to the prosecution** by LAL or private lawyers must be encouraged.
- States and DCPUs may consider **issuing advertisements** for interpreters, translators, special educators, and Support Persons.