



Special courts and the POCSO Act, 2012: A study on structural compliance

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Abstract

This study examines the structural compliance of Special Courts established under the Protection of Children from Sexual Offences (POCSO) Act, 2012, with the Act's mandate and broader child protection principles. While the POCSO Act aims to create child-friendly court environments for vulnerable child witnesses, implementation gaps persist. The research analyzes the physical infrastructure, procedural practices, and resource allocation of Special Courts across several states, assessing their adherence to child-friendly standards. Key areas of focus include the availability of separate waiting areas, child-sensitive interview rooms, audio-visual facilities, accessible toilets, and the prevention of pre-trial exposure to the accused. The study investigates the appointment and training of Special Public Prosecutors, the court's handling of child testimony, and the overall atmosphere for child victims. Findings reveal inconsistencies in implementation, with many Special Courts lacking essential structural and procedural accommodations. The study concludes with recommendations for legislative amendments, increased funding, enhanced training for judicial personnel, and stricter monitoring mechanisms to ensure that Special Courts effectively prioritize the best interests of the child and provide a supportive environment for their participation in the justice system.

Keywords: POCSO Act, special courts, child-friendly courts, child sexual abuse, vulnerable witnesses, structural compliance, child protection, judicial process, best interests of the child, child testimony

Introduction

It is almost six years since the law relating to the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was enacted. The enacting of a special law to address the growing concern of civil society in India with regard to the sexual assault on children was welcomed by most people in the country, as till then, we had little or no specific legal provision to prosecute those who committed sexual offences against children. The POCSO Act, 2012 brought visibility to these heinous crimes against children, and made it possible for the victims or their parents or guardians, or indeed, anyone who had knowledge of a sexual offence having been committed against a child, to file complaints against the offenders. Even though the reporting of these crimes might still be far below the actual numbers, the fact is that this law has taken the country by a storm. However, the Act has not served to deter sexual offences against children, as evident from the fact that there has been no reduction in the number of such crimes. This has resulted in some sections of our society asking for the death penalty as punishment for those who commit serious sexual offences against children. Others have been asking the question why this law has failed to check the crimes against children. It was with the objective of trying to understand this that the Centre for Child and the Law (CCL), National Law School of India University, Bangalore undertook a study of the Special Courts under the POCSO Act to be able to understand how they functioned, what were the problems they confronted, etc.

The five states in which the study was carried out are Delhi, Assam, Maharashtra, Karnataka and Andhra Pradesh (in the order in which the studies were conducted). The reports of the same are available on the CCL-NLSIU website, and have been used by judicial academies and other training institutions as resource material to train the functionaries of the child protection system. Though the focus of these reports was only on the Special Courts, the analysis has also covered various other aspects of a POCSO trial, such as the

police, the prosecution, support services, and so on. The objective of this publication, was to provide a larger, more holistic, picture of some of the issues covered by the state studies, taking the studies as a starting point and enhancing their insights through the experiences of practitioners, and the insights gained from other research projects.

Establishment of special courts

To ensure swift trials in cases of child sexual abuse, Section 28(1) of the POCSO Act mandates State Governments, in consultation with the High Court's Chief Justice, to designate a Sessions Court as a Special Court. This aligns with the Standing Committee Report on the POCSO Bill, which advocated for utilizing existing infrastructure established under the Commissions for Protection of Child Rights Act, 2005, rather than creating redundant systems. Consequently, any Sessions Court already designated as a Children's Court, or any other court designated for similar purposes under other laws, is considered a Special Court under the POCSO Act.

This provision acknowledges children's unique vulnerability and the profound, long-lasting psychological impact of sexual offenses. POCSO cases demand specialized handling, including a sensitive approach to the child's testimony and evidence, ensuring their privacy, and providing necessary support. The intent is to have these cases handled in courts specifically designated for such matters, staffed by judges and Special Public Prosecutors (SPPs) trained in dealing with offenses against children, to expedite the trial process.

Despite this, the POCSO Act doesn't explicitly require Special Courts to exclusively handle POCSO cases or offenses against children. This often leads to trial delays, overburdened judges and SPPs, and the potential for further trauma to the child by exposure to other accused individuals, police, and lawyers during waiting periods. Furthermore, maintaining child-friendly courtroom environments, including screens, separate entrances and

waiting rooms, and other necessary accommodations, becomes challenging when the court also handles other types of cases. The constant shift in focus required of judges and SPPs between POCSO cases and other matters can also be detrimental.

Appointment of Special Public Prosecutors (SPP)

Section 32(1) of the POCSO Act mandates the State Government to appoint Special Public Prosecutors (SPPs) "for conducting cases only under the provisions of [POCSO] Act." Eligibility requires a minimum of seven years of legal practice. The wording implies that SPPs should exclusively handle POCSO cases, ensuring they are well-versed in the Act's provisions, specific procedural needs, and contributing to the goals of swift trials and a child-friendly environment. However, heavy workloads often prevent PPs from solely focusing on POCSO matters, leading to potential delays in these cases.

Research by CCL-NLSIU indicates that existing Public Prosecutors (PPs) or Additional PPs were designated as SPPs in several states, including Andhra Pradesh, Assam, Delhi, and Maharashtra. In some instances, even retired PPs were appointed. Critically, PPs often lack sufficient pre-hearing interaction with the child, frequently meeting them only on the day of the hearing. This prevents the establishment of trust, hinders effective orientation of the child to the courtroom and judicial process, and impedes the PP's understanding of the child's vocabulary, developmental stage, or any disabilities. Furthermore, PPs frequently lack adequate training in communicating and questioning child witnesses effectively.

Design of the courtroom

Section 33(4) of the POCSO Act addresses the creation of a "child-friendly atmosphere" in the courtroom by permitting a trusted family member, guardian, friend, or relative to be present. However, this provision is limited in scope, focusing solely on the presence of a support person without addressing the broader requirements for a truly child-friendly environment. It neglects the physical aspects of the courtroom and the necessary behavioral adjustments required from those within the criminal justice system to ensure positive interactions with the child. Courtrooms, particularly those dealing with criminal matters, are often inherently unsuited for children. Creating a child-friendly atmosphere necessitates both structural modifications to the courtroom itself and significant changes in attitudes and interactions with child victims by all involved.

Tools and facilities to record testimony and prevent exposure

Section 36(1) of the POCSO Act mandates Special Courts to protect child witnesses from exposure to the accused during testimony. Permitted methods include video conferencing, single visibility mirrors, curtains, or other suitable devices. Such exposure can severely undermine the child's confidence, trigger traumatic memories, and potentially provide the accused with opportunities for intimidation. However, the Act's focus is limited to the courtroom during the recording of evidence, neglecting the critical period *before* trial and *outside* the courtroom. CCL-NLSIU research has revealed that most courts lack separate waiting areas and entrances for child victims, often forcing them to share the same space as the accused and their legal counsel. While some Special Courts utilize alternative arrangements,

such as the judge's chambers or the canteen, these are not standard practice. Although various mechanisms like separate halls or partitions are employed in some courts, their implementation is inconsistent, and children are sometimes still exposed to the accused during testimony.

Key findings of the CCL-NLSIU Studies

While the POCSO Act lacks explicit requirements for a "child-friendly atmosphere," several key factors contribute to its creation. These include preventing the child's exposure to the accused outside the courtroom, ensuring accessible toilets and drinking water, providing designated waiting areas, and making the court and its facilities accessible to children with disabilities. Although not mandated by the Act, minimizing pre-courtroom exposure to the accused is crucial. This necessitates separate entrances and waiting rooms for children.

CCL-NLSIU's research across multiple states (Andhra Pradesh, Assam, Delhi, Karnataka, and Maharashtra) reveals that designated POCSO Special Courts do *not* exclusively try POCSO cases, and SPPs do *not* solely handle such cases. This heavy, diverse workload prevents PPs from building rapport and trust with child victims, understanding their vocabulary, and communicating sensitively. With the exception of two Delhi Special Courts studied in 2015, none of the courts surveyed had separate entrances or waiting rooms for children, significantly increasing the likelihood of contact with the accused and their lawyers. Toilet facilities are often inaccessible to children, and almost never accessible to children with disabilities, further hindering their access to justice. While tools to prevent exposure to the accused are generally available, their use is inconsistent, and audio-visual facilities and separate rooms for children are rare.

While some Special Courts demonstrate best practices with specialized infrastructure designed to implement the POCSO Act effectively, these are not the norm. For example, the Karkadooma court complex includes a dedicated child witness courtroom with a separate entrance and lift, a one-way mirror, a lowered dais for the child to sit near the judge, and a play area with a pantry. Goa's Special Children's Court, operational since 2004 and designated as a POCSO Special Court in 2013, handles only child-related cases and offers special seating for children near the judge. It also has a Victim Assistance Unit and a "going to court" program where law students accompany and assist children and their families. This program could be particularly valuable in the absence of other support persons, helping orient families to the judicial process. Hyderabad established a child-friendly court in 2016 with separate waiting rooms and video conferencing, where the judge does not sit on a dais and officials wear plain clothes. Bengaluru opened its first child-friendly court in 2017, featuring two halls separated by a one-way glass, a separate lift, waiting room, and video conferencing. Despite these examples, the majority of Special Courts lack child-friendly and accessible physical infrastructure.

Compatibility of POCSO Act with International Human Rights Law (IHRL) Standards relevant to Courtroom Structure

The UN Convention on the Rights of the Child (UNCRC) emphasizes children's need for special safeguards and care, including appropriate legal protection, due to their physical and mental immaturity. The POCSO Act reflects India's

commitment to the UNCRC, recognizing children's heightened vulnerability and developmental needs to ensure their best interests are protected.

Article 3 of the UNCRC establishes that the best interests of the child shall be the primary consideration in all actions concerning children, particularly in courts of law. This includes providing necessary care and protection for their well-being, and ensuring that all institutions, services, and facilities responsible for children's care and protection adhere to established safety, health, staffing, and supervision standards. The Committee on the Rights of the Child (CRC) has clarified that Article 3 requires proactive measures by governments, parliaments, and judiciaries to consider how decisions, both directly and indirectly, will impact children's rights.

Article 19(1) of the UNCRC mandates states to protect children from all forms of violence, including sexual abuse. In General Comment No. 13, the CRC recommends "specialized courts and criminal procedures" for child victims of violence, where appropriate, and emphasizes "accommodations in the judicial process to ensure equal and fair participation of children with disabilities." It also stresses the importance of treating child victims in a child-friendly, sensitive manner that respects their integrity, needs, and individual circumstances. Article 34 obligates states to protect children from all forms of sexual exploitation and abuse, including the inducement and coercion of children into unlawful sexual activity, and the exploitative use of children in prostitution, unlawful sexual activities, and pornography. Finally, Article 36 prohibits all forms of exploitation that are detrimental to any aspect of a child's welfare.

The POCSO Act's preamble demonstrates a commitment to fulfilling UNCRC obligations to prevent child sexual abuse and exploitation, acknowledging these as heinous crimes requiring effective countermeasures. However, while the Act mandates Special Courts, their specialization is often diluted as they handle various cases beyond POCSO, undermining their intended focus. Although the POCSO Act itself is silent on physical accessibility for children with disabilities, this right is affirmed in Section 12(1) of the Rights of Persons with Disabilities Act, 2016, which guarantees access to all courts. The POCSO Act reinforces the "best interests of the child" principle in its preamble and prioritizes child welfare, including provisions for support persons, legal aid, and the assistance of interpreters, special educators, and other experts.

The 2005 Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, adopted by the Economic and Social Council, recognize children's right to sensitive and caring treatment. They advocate for child-sensitive interviews, measures to minimize contact between the child and the alleged perpetrator, and the use of aids like interpreters and specialized assistance to facilitate the child's testimony and prevent intimidation. The Guidelines suggest child-sensitive procedures such as dedicated interview rooms, closed sessions, measures to protect the child's appearance and identity (including pseudonyms), scheduled recesses, and hearings at age-appropriate times. The POCSO Act similarly provides for preventing exposure to the accused through tools like screens and partitions, and for directing questions through the judge to ensure age-appropriateness, comprehensibility, and avoidance of

hostility or embarrassment. However, unlike the Guidelines, the POCSO Act does *not* mandate separate interview rooms. The 2005 Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime emphasize the need for structural modifications to create child-friendly courts. These include separate entrances and waiting rooms to prevent pre-trial exposure to the accused, extending beyond the courtroom itself. The Guidelines also advocate for audio-visual facilities to further minimize contact between the accused and the child during proceedings. Additionally, they highlight the importance of accessible toilets for the child's comfort, along with elevated seating, and stress that these facilities should be disability-friendly to ensure inclusivity. While the POCSO Act calls for a child-friendly atmosphere and provides for audio-visual tools to prevent exposure to the accused, it lacks specific details regarding these essential structural requirements. The POCSO Act should be amended to explicitly incorporate the structural necessities outlined in the Guidelines. In the interim, Special Court judges should proactively implement these measures to create more child-friendly courtrooms.

Conclusion

Special Courts require substantial structural improvements to become truly child-friendly. Amending the POCSO Act to mandate that these courts exclusively handle POCSO cases and offenses against children, after assessing the potential impact on case disposal, should be considered. State Governments must also fully implement Section 32(1) of the POCSO Act to ensure SPPs exclusively handle POCSO cases.

Recognizing the trauma experienced by child victims and children in conflict with the law, the Supreme Court, in *Sampurna Behura v. Union of India*, urged High Court Chief Justices to consider establishing child-friendly and vulnerable witness courts in every district. A long-term solution for State Governments and High Courts could be locating Special Courts away from criminal court complexes and designing them with separate entrances, waiting rooms, and provisions to prevent the child's exposure to the accused, police, lawyers, and the public, even while waiting to testify. Accessible toilets, drinking water, and other comfort facilities, with clear signage, should be provided, adhering to the Rights of Persons with Disabilities Act, 2016. CCL-NLSIU's recommendation to utilize funds from the National Mission for Justice Delivery and Legal Reforms to create child-friendly court environments warrants serious consideration.

While the structural modifications in some capital cities or select districts are commendable, most Special Courts struggle with limitations. However, the POCSO Act allows for testimonies to be taken "at a place other than the court" if the Special Court deems the courtroom unsuitable. This could include the judge's chambers or any other comfortable space within or outside the court. Special Courts should also designate waiting areas for children and families to prevent exposure to the accused, police, lawyers, and others. Replicable best practices include seating the child next to the judge, not in the witness box, recording testimony in chambers, and allowing the child to wait in the judge's chambers before testifying. Crucially, the lack of suitable infrastructure and funding should not prevent Special Courts from implementing these measures to minimize trauma for child witnesses. Doing so will reinforce children's trust in

the state and demonstrate the criminal justice system's commitment to their best interests and protection.

References

1. Department-Related Parliamentary Standing Committee on Human Resource Development. Two Hundred Fortieth Report on The Protection of Children from Sexual Offences Bill, 2011, (Standing Committee Report on POCSO Bill) para 5.10.
2. POCSO Act, Section 28(1) proviso.
3. Standing Committee Report on POCSO Bill, para 1.14.
4. CCL-NLSIU. Study on the Working of Special Courts under the POCSO Act, 2012 in Maharashtra, 2017, 15.
5. CCL-NLSIU. Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi, 2016, 34.
6. CCL-NLSIU. Study on the Working of Special Courts under the POCSO Act, 2012 in Assam, 2017, 25.
7. CCL-NLSIU. Study on the Working of Special Courts under the POCSO Act, 2012 in Karnataka, 2017, 16.
8. CCL-NLSIU. Study on the Working of Special Courts under the POCSO Act, 2012 in Andhra Pradesh, 2017, 12.
9. POCSO Act, Section 36(2).
10. POCSO Act, Section 33(4).
11. Delhi Report, p.116; Maharashtra Report, 14.
12. Maharashtra Report, p.15; Delhi Report, p.34; Assam Report, p.25; Karnataka Report, p.16; Andhra Pradesh Report, 13.
13. Andhra Pradesh Report, p.13; Assam Report, p.24; Delhi Report, p.30; Maharashtra Report, 15.
14. Karnataka Report, 14.
15. POCSO Act, Section 33(4).
16. Nelson L. Testifying in Court Can Amplify Trauma For Victims of Childhood Sexual Abuse, 18th Annual Convention of the Association for Psychological Science. August 1, 2006.
17. Delhi Report, 44.
18. Maharashtra Report, p.16; Delhi Report, p.33; Assam Report, p.25; Karnataka Report, p.15; Andhra Pradesh Report, 14.
19. Perapaddan B. Shajan. First child-friendly courtroom ready. The Hindu, 2012.
20. Sriram J. The teddy bear courts: Goa's pioneering children's courtroom. The Hindu, 2017. Available from: www.thehindu.com/society/the-teddy-bear-courts/article19377222.ece
21. Anon. City gets child-friendly court. The Hindu, 2016. Available from: <http://www.thehindu.com/news/cities/Hyderabad/City-gets-child-friendly-court/article14588742.ece>
22. Anon. Karnataka gets its first child-friendly court. Times of India, 2017. Available from: <https://timesofindia.indiatimes.com/city/bengaluru/karnataka-gets-its-first-child-friendly-court/articleshow/59936904.cms>
23. Preamble of the POCSO Act.
24. Committee on the Rights of the Child. General Comment 5 on General Measures of implementation of the Convention on the Rights of the Child, 2003, para 12. Available from: <http://www.refworld.org/docid/4538834f11.html>
25. Committee on the Rights of the Child. General Comment 13 The right of the child to freedom from all forms of violence, 2011, CRC/C/GC/13, para 56. Available from: http://www2.ohchr.org/english/bodies/crc/docs/CRC.C_GC.13_en.pdf
26. Id, para 54(b).
27. POCSO Rules, Rule 4 (7).
28. POCSO Act, Section 40.
29. POCSO Act, Section 38.
30. Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20. Available from: <http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>
31. Article 13, 2005 Guidelines.
32. Article 34(a), 2005 Guidelines.
33. Article 31(c), 2005 Guidelines.
34. Article 30(d), 2005 Guidelines.
35. Section 36, POCSO Act.
36. Section 33 (2), POCSO Act.
37. Article 31(b), 2005 Guidelines.
38. Article 31(a), 2005 Guidelines.
39. UNODC. Justice in matters involving child victim and witnesses of Crime, Model Law and Commentary, 2009, Article 24.
40. Id, Article 26.
41. POCSO Act, Sections 33(4) and 36(1).
42. Writ Petition (Civil) No. 473 of 2005 decided by the Supreme Court on 09.02.18.
43. POCSO Act, Section 37 proviso.