



IMPLEMENTATION OF **POCSO ACT** IN KARNATAKA STATE

CHALLENGES AND FINDINGS



GOVERNMENT OF KARNATAKA
DEPARTMENT OF WOMEN AND
CHILD DEVELOPMENT



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POCSO ACT
IN KARNATAKA STATE

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AUGUST 2017



GOVERNMENT OF KARNATAKA
DEPARTMENT OF WOMEN AND
CHILD DEVELOPMENT





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FOREWORD

It is indeed a privilege to affix this foreword to this report 'Implementation of POCSO Act in Karnataka State - Challenges and Findings', prepared by the Enfold Proactive Health Trust, Bengaluru, as sought by the Department of Women and Child Development, Government of Karnataka. The said research team from Enfold Trust administered the questionnaire and collected factual materials in hundred cases, from ten districts across Karnataka. I record my deep appreciation of the painstaking and successful efforts made by the said research team in furnishing the wealth of information in the form of an easily readable and a convincing text. It is virtually a progress report on the milestones already reached. It is also reflective of the breadth of vision for achieving further progress in the matter of implementing the provisions of the POCSO Act.

There is a rise in the crime chart against children. How long can we allow our children to be sexually abused? The stakeholders cannot afford to remain bystanders. The POCSO Act has to be used as the weapon to fight the battle against the sexual abusers of children. We have to pool in our


collective wisdom and launch collective drive against the crime. While taking our mission forward, all the stakeholders have to act in unison. The basic pre-requirement for all the stakeholders for marching towards the establishment of the society, in which the children would be free from the sexual abuse and violence, is not 'I or you' and certainly not 'I versus you', but it is a 'collective we'.

I vehemently recommend this report to all the stakeholders-Judges of the Special Courts, Magistrates, Special Public Prosecutors, members of C.W.Cs., Police, doctors, social activists, N.G.O.s, etc., to refer to and use this Study, as it would equip them with valuable inputs and insights into child-friendly procedures, besides sensitizing them. The research contributors have revealed the multiple challenges being faced by the stakeholders, more particularly by the concerned child and family, who face re-victimization and secondary trauma.

Ashok B. H.
(ASHOK B. HINCHIGERI)
Chairman
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I congratulate the Department of Women and Child Development, Government of Karnataka and the research team from the Enfold Trust, for undertaking this much-needed study on the Implementation of Protection of Children from Sexual Offences Act (POCSO) in Karnataka.

The POCSO Act was passed in 2012. Five years later, it is important to understand the challenges faced by different stakeholders in the successful implementation of the law in the state of Karnataka.

This study, undertaken in Bengaluru city and the districts of Belagavi, Bidar, Davangere, Hassan, Koppal, Kodagu, Kolar, Udupi and Vijayapura, is an important contribution in this direction. As part of the study, the research team conducted in-depth analysis of cases filed under POCSO Act between January-March 2014, for 10 families in each of the districts. Other stakeholders such as the Police, Medical officers, Special Public Prosecutors, Child Welfare Committees and District Child Protection Units were also interviewed to evaluate the implementation of the Act.

Evidence based findings from this study submitted to the Department of Women and Child Development will be considered for necessary follow-up action and implementation. Awareness and training programs, capacity-building, sensitization of stakeholders will also be taken up. This initiative will help us to make the law more effective while keeping the best interests of the child in mind at all times.

I hope this study will be the precursor to positive changes and hope for the families seeking justice under the POCSO Act.

I once again congratulate the team and their efforts for this successful study.

Uma Mahadevan
(Uma Mahadevan)
Principal Secretary to Govt.

ACKNOWLEDGMENTS

This research study on 'Implementation of POCSO Act in Karnataka - Challenges and Findings' was made possible by the efforts and unstinted support of various Government agencies, organisations and individuals.

SPECIAL THANKS TO THE FOLLOWING

- The **Department of Women and Child Development (DWCD)**, Government of Karnataka for undertaking this Study.
- **Members of the families** who participated in the study, for sharing their experiences.
- The **Karnataka State Police** for their wholehearted cooperation in providing necessary permissions. The team at Gender Sensitisation People Friendly Police Program, have been exceptionally helpful and supportive.
- The **State Crime Records Bureau (SCRB)** for providing necessary data and information on POCSO cases in Karnataka.
- The **Directorate of Public Prosecution**, for necessary information and data.
- **Karnataka State Legal Services Authority (KSLSA)** for information on victim compensation.
- Participating **police officers, medical personnel, Special Public Prosecutors and members of CWCs** in the districts of Bengaluru, Belagavi, Bidar, Davanagere, Hassan, Koppal, Kolar, Kodagu, Udupi and Vijayapura for their cooperation in this Study .
- The **District Child Protection Unit (DCPU)** in the districts of Bidar and Davangere for their assistance with logistics for this Study.
- **District Child Protection Officer**, Bidar and Childline Belagavi for their extensive support.
- **Karnataka State Commission for Protection of Child Rights (KSCPCR)** for their support.
- **UNICEF** for their continued support and encouragement.

We thank the following individuals for their support and expertise during this Study:

- **Hon'ble Justice Mr. Ashok. B. Hinchigeri**, Judge, High Court of Karnataka for his valuable inputs and graciously penning the Foreword for the study.
- **Ms. Uma Mahadevan**, IAS, Principal Secretary to Government, DWCD for graciously contributing the Message for the study.
- **Ms. Uma M. G.**, Member Secretary, Karnataka State Legal Services Authority, for her steadfast support and guidance.
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- **Dr Ashok**, Professor and Head - Department of Psychology, Bengaluru University, for his valuable inputs on the Study tools.
- **Ms. Swagata Raha**, Ms. Anuroopa Giliyal and Ms. Arlene Manoharan from Centre for Child and the Law (CCL), National Law School of India University for their extended support.
- **Dr. Preethi Jacob**, Assistant Professor, Department of Child and Adolescent Psychiatry, National Institute of Mental Health and Neuro Sciences (NIMHANS), Bengaluru
- **Dr. Kavita Jangam**, Assistant Professor, Dept of Psychiatric Social Work, NIMHANS, Bengaluru.
- **Dr. S. T. Ramesh**, DG & IGP (Retd), Karnataka State Police
- **Ms. Nina Nayak**, Former Chairperson KSCPCR, Former Member National Commission for Protection of Child Rights (NCPCR)
- **Dr. Jagadeesh N Reddy**, Professor and HoD, Department of Forensic Medicine and Toxicology, Vydehi Institute of Medical Sciences & Research Centre
- **Ms. Rovina Bastian, Mr. Gururaj K., Mr. Somashekarappa G.S.**- Gender Sensitisation Police Project, Karnataka State Police
- **Mr. Ashok G.V.**, Partner Factum Law Practice
- **Ms. Suchitra Rao**, Independent Consultant, UNICEF
- **Ms. Meena Jain**, Former Chairperson, CWC, Bengaluru Urban
- **Ms. Susheelamma**, (Belagavi District, Spandana) for helping investigators with contact information on families.

We thank the field investigators for diligently gathering the data and the research team from Enfold for their meticulous efforts in completing this Study.



SUMMARY



The Government of India has signed and ratified international conventions. It has enacted comprehensive and extensive laws for the protection of children. The POCSO Act, 2012 specifically addresses sexual abuse against children. It aims to create child-friendly and effective systems for reporting and investigation of the crime, giving specific directions to all stakeholders involved in managing the case of a child who has faced sexual abuse.

Karnataka was one of the first states to implement the POCSO Act on November 14, 2012. The Department of Women and Child Development (DWCD) took the initiative to ascertain the implementation of POCSO Act in Karnataka state through a pilot study and entrusted Enfold Proactive Health Trust with the task.

To assess the implementation on the ground, Enfold Trust selected 100 cases in 10 districts across Karnataka. These were cases that were registered under the POCSO Act from January 2014 onwards, i.e. 13 months after the Act was enacted. Police, doctors, prosecutors, and Child Welfare Committee personnel were interviewed to assess their level of awareness of POCSO guidelines, and to understand the challenges they faced in its implementation. Families of the affected children were interviewed regarding their

experience with the medical and criminal justice system and their views on the outcome of reporting abuse. Qualitative and quantitative data was gathered from the 10 districts of Karnataka State through questionnaires and structured interviews with all stakeholders.

The Research Study revealed multiple challenges faced by all stakeholders. The primary challenge being the re-victimization and secondary trauma of the child and family who faced this in all cases studied. Data revealed that all stakeholders require and requested for in-depth training and sensitisation on child-friendly procedures of POCSO Act. Data also revealed that there is need for additional infrastructure and human resources for better management of cases.

The Department of Women and Child Development could use this evidence based report and the suggested practical plan of action herein, to bridge the gaps in the implementation of the POCSO Act in Karnataka. It could help create and strengthen child sensitive systems and processes, thereby making the child's journey through the medico-legal system smooth, efficient, and effective.

RECOMMENDATIONS AT A GLANCE

FAMILY

A. Community awareness programs to be conducted:

- At educational institutions: for all parents, teaching and non-teaching staff and students
- At anganwadis and day care facilities: for staff and parents
- For elected representatives: for panchayat, gram sabha, and members of the Child Protection Committees
- At workplaces where children are employed

B. Directory to be made available in every district with information on:

- Child protection officers
- CWC (members names/ sitting place/ days of sittings)
- Child marriage protection officer,
- NGOs
- Special educators
- Interpreters
- Mental health professionals

C. Need for support persons

- Immediate assignment of trained support person when a case is reported

Community awareness for Family focus on:

- Perpetrator is usually a known person or family member
- Boys are assaulted
- Abuse of boys need to be reported
- POCSO child friendly procedures
- Dynamics of abuse: grooming, vulnerability of children
- Roles and responsibilities of all stakeholders
- Recognizing signs and symptoms of abuse, reporting abuse
- Reintegration following abuse: normalisation of child's life, non-stigmatisation
- Personal safety education for all ages
- Reproductive rights and responsibilities: For Adolescents

POLICE

- A. Ongoing training programs for all levels of police officers needed
- B. SOPs on POCSO Act for police and manuals to be made available in every Police Station
- C. Need for recruitment of more police officers, particularly women police officers
- D. Need for additional infrastructure in police stations

Training programs for Police on:

- Child related legislations for all levels of police officers
- Forensic interview methodology
- Crime scene investigation
- Dynamics of abuse and vulnerabilities of specific groups of children
- Case laws and case studies

MEDICAL PERSONNEL

- A. Ongoing training programs required
- B. SOPs and manuals to be made available in every Primary Health Care / district hospital
- C. Make available SAFE Kits and DNA Kits at designated district hospitals across the state, for medical examination of sexual violence victims, collection of victim's blood and product of conception
- D. Medical management of sexual violence to be included in MBBS/MD curriculum
- E. Nodal training centres to be established at teaching hospitals in each zone (as demarcated by Police in North, South, East, West and Central zones)
- F. Functional One Stop Centers (OSC) in each district to be set up.

Training program for all streams of Medical Personnel on:

- Dynamics of abuse
- Signs and symptoms of abuse
- Accurate documentation and report writing
- Field visits to CWCs, government children's homes, special courts
- Procedures prescribed under POCSO Act and Guidelines issued by MOHFOW for Medico-legal care of survivors and victims of sexual violence

RECOMMENDATIONS AT A GLANCE

JUDICIARY

Judges, Magistrates recording 164 Statements, Member Secretaries of District Legal Service Authorities and Special Public Prosecutors

- A. Ongoing training to be conducted for current and newly-appointed officers of the court, including Magistrates recording statements under Section 164 CrPC.
- B. No violations of child's rights during trial to be ensured by Special Public Prosecutors and that child-friendly procedures are followed strictly.
- C. SOPs for Judiciary to be drafted and information to be disseminated to all districts.
- D. Increase support staff in courts such as typists and clerks to expedite the documentation process
- E. Designate exclusive courts for trials of POCSO cases in districts where pendency of POCSO cases is over 200.
- F. Provide the necessary infrastructure for efficient functioning of courts, such as office space for SPP with support staff and equipment, and video conferencing facilities in courtroom
- G. Electronic display board in Courtrooms to be fixed outside entrance to identify/ mention the case being heard.
- H. Panel of private and retired lawyers can be set up by State Legal Services Authority at state and district level to support SPPs in drafting petitions, objections, opening and closing arguments.

Training on:

- Case laws, Supreme Court judgments, latest government notifications
- Dynamics of Child Sexual Abuse (CSA), child development
- Child friendly procedures prescribed in POCSO Act, Rules and Guidelines, existing notifications on victim compensation
- Strategies in prosecution
- Convergence with stakeholders
- Proactive approach to prosecution, ensuring that rights of the child are upheld, appreciation of evidence

CHILD WELFARE COMMITTEE (CWC)

- A. Sensitisation and training that is on-going
- B. Improved Infrastructure including waiting area, toilets for children, office equipment and furniture
- C. Customised number of sittings of CWC in a district based on the volume of children in need of care and protection.

Training on:

- Child friendly procedures prescribed in POCSO Act, JJ Act and other child related Acts and guidelines
- Information on existing government notifications on victim compensation
- Dynamics of CSA, child development, signs and symptoms of CSA
- Basic counselling skills
- Accurate case documentation which could support trial
- Testifying in court
- Convergence with stakeholders

INTRODUCTION

The Protection of Children from Sexual Offences (POCSO)⁵ Act 5 was passed by the Government of India on 20th June, 2012 and was notified on 14th November, 2012.



POCSO is a path breaking legislation enforcement, for utmost sensitivity by each one of the stakeholders. Regular training programs by competent domain experts, to all the stakeholders without exception; separately and collectively, without omitting minor stake holders like the Forensic Science Lab personnel etc are the need of the hour.

Dr S T Ramesh

DG & IGP (RETD) KARNATAKA

THIS ACT WAS FORMULATED IN RESPONSE TO

1. The alarming statistics regarding sexual abuse presented in the Study on Child Abuse: India, by the Ministry of Women and Child Development (2007).
2. Sexual offences in the IPC are gender specific. The provisions (with the exception of Section 377) protects only women and girls, leaving boys unprotected.
3. Sections 354, 376 and 377 of the Indian Penal Code, 1860 (IPC) were invoked to cover cases of child sexual abuse. Section 376 of the IPC only covered penetrative peno-vaginal sexual assault. Sections 4 (1), 5 (d), 7 of the Immoral Traffic (Prevention) Act, 1956 (ITPA) applied to children in prostitution. These provisions were insufficient to address the multitude of sexual offences against children.
4. There were no sections to address children being used for pornography, targeted by voyeurs and exhibitionists, verbally harassed using sexually explicit language or being enticed via the internet and other media.
5. The traditional criminal justice system was highly traumatic for any child victim of sexual assault as an accused was considered innocent till proven guilty and the adversarial court procedures usually attacked the complainant in defence of the accused.

KEY PROVISIONS OF THE ACT

The Protection of Children from Sexual Offences (POCSO) Act 2012, addresses crimes of sexual abuse and sexual exploitation of children. The Act prescribes five sexual offences against children - penetrative sexual assault, aggravated penetrative sexual assault, (non-penetrative) sexual assault, (non-penetrative) aggravated sexual assault, sexual harassment, and using a child for pornographic purposes, and prescribes the punishment for these offences. Abetment of or an attempt to commit these offences is also punishable under the Act.

The significant aspects of the law are:

- a. It is mandatory, i.e., it has made NOT reporting sexual offences against children a punishable offence.
- b. It has defined several sexual acts as criminal offences, which were not there in any penal law before.
- c. It is gender-neutral. India now has a law that protects all children of all genders.
- d. It has mandated the creation of child-friendly courts, processes and procedures. An effort has been made to understand and address the vulnerabilities of children.
- e. Each district is required to have a Court of Sessions as a Special Court/Children's Court/Fast-Track Court to try offences under Section 28 of the POCSO Act.

- f. Special Public Prosecutors are to be appointed to assist POCSO cases and they are to be trained and sensitized in handling cases involving children.
- g. Confidentiality is emphasized in order to protect the identity of the child. *In camera* proceedings are mandated during the trial. Media have to follow strict guidelines to ensure that the child cannot be identified from media reports.
- h. Victim compensation is a provision under the POCSO Act, Rule 7, under which the child is compensated for relief and rehabilitation. An interim compensation is available for the family as soon as the FIR is filed while the final compensation is paid after the trial is completed. Child is entitled to compensation even if the accused is found not guilty.

RECENT RESEARCH ON CHILD SEXUAL ABUSE

There have been volumes of research done both in India and abroad, demonstrating the extent of sexual abuse of children across all socioeconomic strata, communities and family ties. These studies have also highlighted the short and long term harm caused due to lack of resolution of the assault - legally, socially and emotionally.

- **Adverse Childhood Experiences (ACE) Study:** The Centre for Disease Control (CDC)- Kaiser Permanente ACE Study is one of the largest investigations into childhood abuse and neglect, and later-life health and well-being. It showed a major correlation between exposure to sexual violence as a child and long term physical and mental health consequences. *(Felitti et al, 1998)*¹
- **Study on Child Abuse:** INDIA 2007 by Ministry of Women and Child Development:
- **The National Study on Child Abuse** found that all forms of child abuse were rampant in India. Over 53% of Indian children faced some form of sexual abuse ranging from sexual harassment to penetrative sexual assault. It found that children were as vulnerable at home as in schools or other public spaces. *(Study on Child Abuse, 2007)*²

- **UN Secretary General's Study on Violence Against Children:** In 2006, the UN Secretary General's Study on Violence Against Children showed the extent of sexual abuse across the world including India. India being a signatory of the Convention of the Rights of the Child (CRC) in 1992 had to create provisions for protection of children as one of the fundamental rights of the child. *(Pinheiro, 2006)*³
- **National Crime Records Bureau (NCRB) and State Crime Records Bureau (SCRB) reports of cases of sexual assault:** The NCRB maintains records of crimes against children in addition to publishing National Crime Statistics. The SCRB data from Karnataka lists offences against children in each year and in particular POCSO cases since 2010. The NCRB data⁴ on sexual violence on children from all over India showed an increase in the number of cases of sexual crime against children being reported.

INTERNATIONAL CONVENTIONS

Declaration of the rights of the child, 1959
Conventions of the rights of the child, 1989(CRC)

NATIONAL LAWS AND POLICIES

The Indian Penal Code (IPC), 1860
The Immoral Trafficking Prevention Act (ITPA), 1956
The Information Technology Act (IT Act), 2000
National Charter for Children, 2004
National Plan of Action for children (NPAC), 2005
The commissions for the Protection of Child Rights Act, 2005
Integrated Child Protection Scheme (ICPS)(2009)
Protection of Children from Sexual Offences (POCSO), 2012
Criminal Law (Amendment) Act (CLAA), 2013
The Juvenile Justice (Care and Protection of Children) Act, 2015

LEGAL ACTION IN SUPPORT OF CHILDREN

The Indian government has demonstrated its commitment to the protection of children, by being a signatory to international conventions as well as enacting legal instruments like the POCSO Act 2012 for the protection of children and through creation of child friendly and effective systems.

In addition there is the **Childline India Foundation**, a non-government organisation (NGO) in India that operates a telephone helpline 1098 called CHILDLINE, for children in distress. It is India's first 24-hour, toll free, phone outreach service for children that operates in 366 cities/districts in 34 States/UTs through its network of over 700 partner organisations across India.

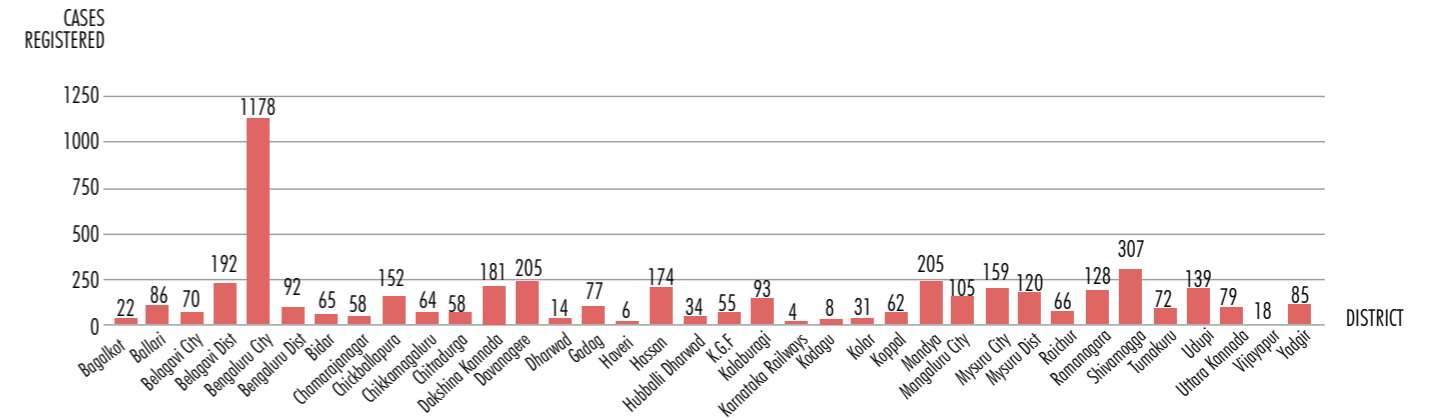
IMPLEMENTATION OF POCSO ACT IN INDIA

It is four years since the POCSO Act has come into effect and it is essential to understand if the Act has indeed lived up to the expectations of the public and if the involved stakeholders have been able to implement the Act in letter and spirit.

POCSO CASES REGISTERED IN KARNATAKA FROM 2013 TO 2017

Karnataka is the state with the fourth highest number of POCSO cases in India, according to the 'Crime in India' report released by the National Crime Records Bureau (NCRB) in August 2016 as shown in Graph 1. According to SCRB data, 4463 POCSO cases were registered from 2013-2017 in Karnataka of which Bengaluru City shows a total of 1178 cases as shown in Graph 2.

Graph 2
SCRB data POSCO from Karnataka 2017



NEED FOR A STUDY ON IMPLEMENTATION OF THE POCSO ACT IN KARNATAKA

The Government of Karnataka adopted the POCSO Act in November 2012. There have been several positive outcomes of the POCSO Act being in force, such as setting up of child-friendly Courts, child-centric processes and procedures, and speedy disposal of cases. There have also been several challenges faced by the various stakeholders in its implementation such as the lack of awareness in the community, inadequate training, lack of convergence and poor support systems.

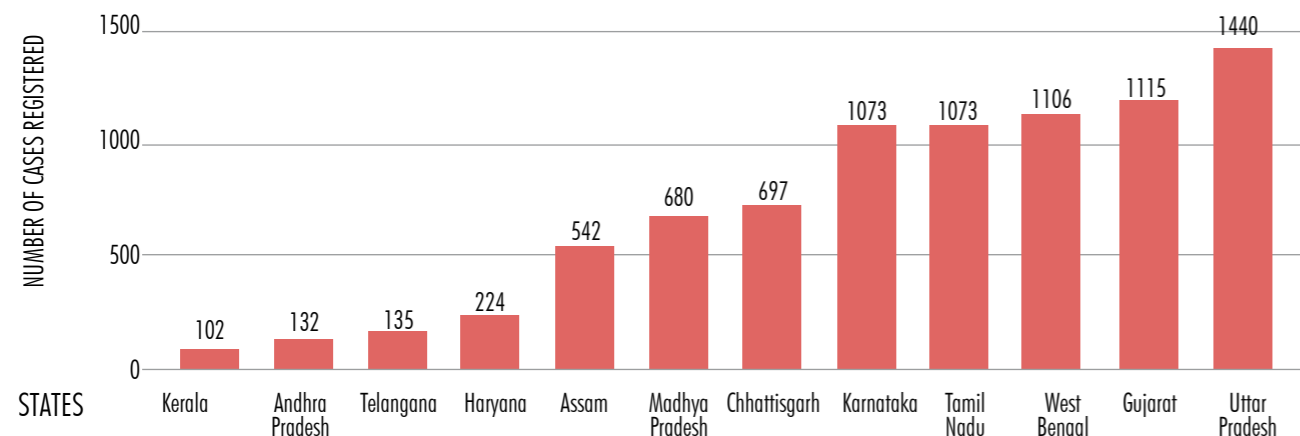
Given the number of POCSO cases registered in the State, the Government of Karnataka felt that a study on POSCO implementation is imperative, to understand the challenges that are faced in the implementation of POCSO in the state and to improve the existing system to make it more child-friendly.

There is also a need to understand the following.

- Assessment of the degree of awareness of the Act, among stakeholders like the police officials, doctors, judges, lawyers and prosecutors.
- Assess the nature, frequency, duration and reach of training for these stakeholders .
- Assess the degree of implementation in terms of redressal of issues for the beneficiaries, i.e. the children /family and caregivers.
- Assess the challenges the stakeholders face during the implementation of the Act and make recommendations on improving the existing systems.
- Submit an evidence based report to help the Government create a practical plan of action on filling the gaps and create a system that is child-friendly, sensitive and capable of responding to the needs of a child who enters the criminal justice system.

The Department of Women and Child, Government of Karnataka has taken a proactive and bold step to conduct a study on the implementation of the POCSO Act in order to ascertain if the provisions and procedures detailed in the Act are being followed, both from the perspective of the stakeholders and from experiences of children and families who have registered cases under POCSO Act.

Graph 1
NCRB Data of 12 states registering the highest number of cases on PocsO ACT registered in 2015



As per NCRB data⁴ in 2015, the State that registered highest number of POCSO cases (Section 4 & 6 only) was Uttar Pradesh with 1440, followed by Gujarat (1115), West Bengal (1106), Tamil Nadu (1073)⁴ and Karnataka

1. Objective and Outcomes of the Study

2. Designing and Conducting the Research

- Design of Study and External Review
- Preliminary Field Testing of the Tools
- Permissions and Letters of Intent
- Orientation of Principal Investigators and Field Researchers
- Selection of Districts
- Respondents Selected for Study
- Qualitative and Quantitative Data Collection
- Data Collection Process
- Statistical Analysis and Inferences

3. Ethical Consideration and Confidentiality

4. Limitations

The Department of Women and Child Development, Karnataka, took the initiative to organize and conduct this research Study in order to get an in-depth understanding of the state-wide, district level implementation of the POCSO Act. The Study will in turn guide efforts to strengthen existing systems.

1. OBJECTIVES AND OUTCOMES OF THE STUDY

- **OBJECTIVES**
 - » To study the implementation of the POCSO Act on the ground and identify the gaps and challenges.
 - » To understand the level of awareness of the various stakeholders, regarding POCSO Act
 - » To understand effectiveness of current training programs, if any.
- **OUTCOME**
 - » Documentation of challenges faced by stakeholders while managing cases of sexual assault as per the law.
 - » Documentation of experiences of children and families who have reported sexual violence.
 - » Design evidence-based report with suggestions and recommendations for improvements to the existing systems

2. DESIGNING AND CONDUCTING THE RESEARCH

The research Study was divided into 6 phases listed and described below.

2a. Design of Study and external review

- » Design of Survey Instrument, tools of the Study and format of data collection was done by Eudaimonic Center. The Study design and tools* were reviewed by an external expert, Dr. Ashok, Professor and Head, Department of Psychology, Bengaluru University and the feedback was incorporated into this Study.

2b. Preliminary field testing of the tools

This was done in Bengaluru Urban, based on which the data collection tools were revised

2c. Permissions and letters of intent

Given the sensitive and confidential nature of this Study, letters were sent from following departments:

- » Department of Women and Child, to State headquarters of the relevant stakeholders to confirm the authenticity of this Study. They in turn were requested to send a letter allowing their staff to share information with the field researchers.

- » Director of Health and Family Welfare, Govt. of Karnataka, permitting government doctors to share confidential case related medical information.
- » Registrar General, High Court of Karnataka, to Special Courts to share information on procedures in POCSO cases.
- » Additional Director General, Crime and Technical Services, Karnataka Police, to police stations, permitting police personnel to share information regarding specific cases.
- » Director of Public Prosecutions to direct Public Prosecutors of Special Courts to share information such as status of trials of specific cases, statistics of POCSO cases, rate of convictions, etc.
- » DWCD requested DCPU and CWC to assist Enfold Trust with the Study in their districts.

2d. Orientation of principal investigators and field researchers

This included informing them about:

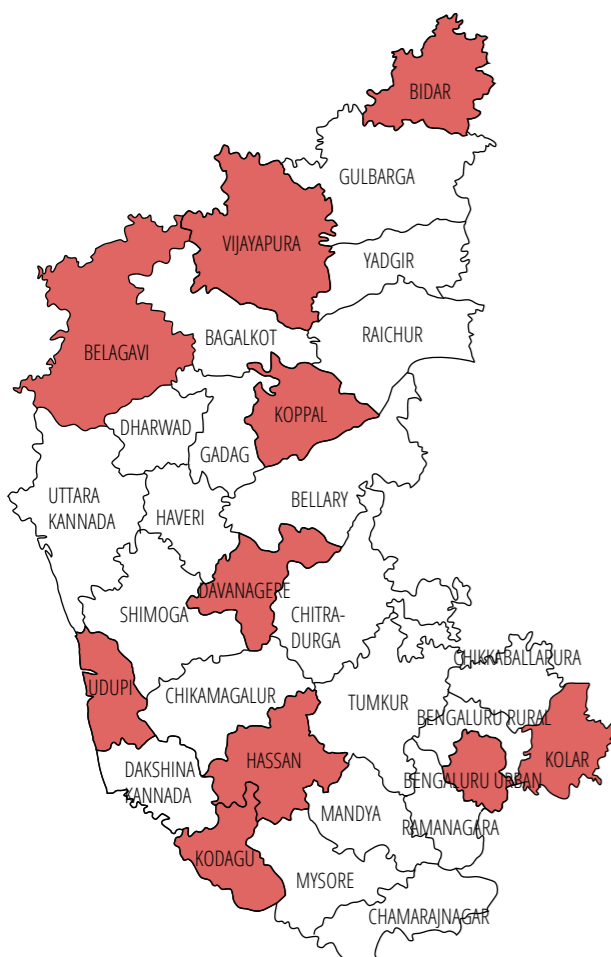
- » The background of this Study
- » Methods of data collection - Use of Research Tools and recording of data. This was conducted by the research partners
- » Process of documenting information gathered

2e. Selection of districts

Karnataka state has 30 districts. The number of cases recorded under POCSO vary from district to district.

To get a comprehensive picture of the statewide distribution of reported POCSO cases, the following sampling approach was applied:

Karnataka State is divided into 6 Police Ranges: North, North East, South, West, East and Central. Representative districts were chosen from each of these ranges. The ten districts chosen for this Study were: Belagavi, Bengaluru Urban, Bidar, Davangere, Hassan, Kodagu, Kolar, Koppal, Udupi, Vijayapura (Bijapur)



2f. Respondents selected for this Study

• FAMILY

Considering the POCSO Act was implemented in November, 2012, it was assumed that by January 2014, some awareness and sensitisation sessions on POCSO Act would have been undertaken for all stakeholders. Hence cases were chosen from 2014 for this Study. 10 cases filed in 2014, in each of the 10 selected districts, were taken for data analysis. Two families could not be traced with the given contact information hence only 98 families were interviewed, instead of 100 families.

The considerations in the case selection process were:

- » First 15 cases booked under POCSO Act in each district from January 2014 were chosen for analysis. 10 families were identified from these 15, based on the availability of respondents in each district.
- » The families were interviewed face-to-face, at a location of their choice.
- » In three districts, (Kolar, Vijayapura, Belagavi) telephone calls were made to eight families, since the distance of commute and inaccessibility prevented face-to-face interviews.

• POLICE

The proposed plan was to interact with the Investigating officers (IOs) of the 10 cases selected in each district. Since it was found that few of the IOs were no longer posted at these police stations, officers currently investigating POCSO cases were interviewed. The target of 100 police officers could not be achieved as field investigators were unable to contact / interview few police officers, despite repeated attempts. Hence only 94 police respondents were interviewed.

• MEDICAL PERSONNEL

Medical personnel at the district and taluka hospitals in the 10 districts, attending to cases of

child abuse, were interviewed. In most districts the investigators met with the attending Registered Medical Practitioners (RMPs). In a few districts, more than one Medical Personnel were interviewed, hence 32 Medical Personnel participated in this Study. In Belagavi District, Investigators were unable to connect with the doctors, despite repeated attempts.

• SPECIAL PUBLIC PROSECUTORS

One Special Public Prosecutor (SPP) per Special Court was interviewed. In Bengaluru, two SPPs responded, since Bengaluru has three courts designated as Special Court for POCSO cases.

• CHILD WELFARE COMMITTEE (CWC)

Child Welfare Committee members were administered only the list of Challenges in each district. Field investigators were unable to follow up with the members for interviews with the Questionnaires, due to paucity of time and inability to visit on days of CWC sittings.

• KARNATAKA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS (KSCPCR), BENGALURU

Given the critical role the KSCPCR plays in monitoring POCSO implementation across the State, a questionnaire was administered to them.

Table.1

Respondents who participated in this Study from each district are shown below.

#	District	Family	Police	Medical Officers	Public Prosecutor	CWC Members
1	Bengaluru Urban	9	10	6	2	1
2	Belagavi	10	11	NO	1	1
3	Bidar	10	11	1	1	1
4	Kolar	10	10	1	1	1
5	Hassan	10	8	4	2	3
6	Koppal	10	6	7	1	2
7	Davanagere	9	10	1	1	1
8	Kodagu	10	8	7	1	2
9	Udupi	10	10	3	1	1
10	Vijayapura	10	10	2	1	1
	Total	98	94	32	12	14

2g. Quantitative and Qualitative methods of data collection

Both quantitative and qualitative methods were used for collecting data

• QUANTITATIVE METHODS

- » Questionnaires were designed for a one-on-one interaction, to obtain data from the stakeholders.
- » Stakeholders were asked about the challenges they faced, in an open ended

format and subsequently a checklist was also given on common challenges faced. In addition, the respondents were also asked to list out the biggest challenge they faced and the smallest challenge that came in their way. Their responses were collated and interpreted.

• QUALITATIVE METHODS

- » Interactions with all stakeholders beyond the questionnaire, were also recorded by field investigators and analysed.

» The checklist of challenges were drawn up based on previous studies, past experience in the field and provisions of the POCSO Act, in the belief that it would be more convenient and easy. Along with the list of predefined challenges, the stakeholders shared their own challenges on the ground, which added value to this Study. Hence the findings have been presented accordingly.

2h. Data collection process: Field investigators followed these steps to collect data:

- Contacted the respective DCPU apprising them of the visit; subsequently visited CWC, Police Stations, Medical Personnel and Prosecutors.
- Questionnaires and challenges sheets were administered to respondents in each district by a single investigator. Six investigators were involved in collecting data from 10 districts
- The answers to questionnaires were recorded by the field investigator or directly entered by the stakeholders.
- Questions were presented in the local language. In Belagavi and Bidar, DCPU staff translated questions to Hindi and Marathi when needed.

2i. Statistical analysis and inferences

- Analysis was done using simple comparative methods. Graphs extrapolated are the product of the same. Inferences were drawn based on the findings. Recommendations were drafted based on these inferences and findings. Report was generated post analysis and inference.

3. Ethical consideration and confidentiality

- Children were not interviewed for ethical reasons and to avoid possible re-traumatization.
- Consent for the interviews were taken from all respondents
- Due to the confidentiality enforced on stakeholders given the nature of the crime, letters from respective departments were obtained, permitting them to share confidential information with the researchers.
- All field Investigators, analysts and researchers signed a confidentiality agreement regarding the information gathered during this Study.

- All data regarding this Study was given a code to ensure none of the respondents could be identified by the people entering the data.
- Codes were assigned to the districts and all stakeholders to avoid traceability and bias in analysis.

4. Limitations and challenges

- This Study has not presented the data district wise as the objective of was to get an overall perspective of implementation across the State.
- Each field investigator translated the questionnaire on the ground depending on the language spoken by respondent. Therefore the final administered questionnaire could not be standardised to the desired extent.
- Stakeholders' reluctance to provide answers to all questions for fear of being identified, targeted or their case compromised was an issue.
- Non-availability of contact details of certain respondents, leading to target numbers not reached.
- In some cases, the distance from district headquarters to the family's residence and police station was as much as 100 Km, resulting in investigators having to travel long distances.
- Interviews of eight families were conducted over telephone calls as they were reluctant or unable to meet field researchers due to distance and/or fear of social stigma.
- Possible withholding of information by some families for fear of repercussions as well as consequences to their legal proceedings.

Research team

Enfold Proactive Health Trust was the implementing partner and Eudaimonic Centre for Positive Change & Well Being, Bangalore was the Research Support Partner.

**Study tools available in annexures*

DETAILED FINDINGS

DETAILED FINDINGS
FAMILY

DETAILED FINDINGS
POLICE

DETAILED FINDINGS
MEDICAL PERSONNEL

DETAILED FINDINGS
SPECIAL PUBLIC PROSECUTORS

FINDINGS
CWC & KSCPCR

DETAILED FINDINGS

FAMILY



Of recent child victims, families and care givers brave odds and come out into the open to register complaint under the Act. Efforts should be made on war footing/emergency basis to systematically reduce the Procedural delays at every step – from filing FIRs, commencing investigation, collecting and persevering evidences, including medical and forensic, taking statements of child, parents/ guardian and witnesses, submission of Charge Sheet with relevant Sections, sensitive trial procedures with children not summoned many times, and closure of case within the stipulated one year time frame.

Suchitra Rao

SR. CONSULTANT CHILD PROTECTION & EDUCATION, UNICEF

1. INTRODUCTION

The POCSO Act was enacted to deliver justice to the child who reports sexual violence. It outlines child-friendly procedures at every stage of the criminal justice process. Keeping this in mind, the parent/guardian of the child was considered a key stakeholder in this Study. The main objective was to gather relevant information about the actual experiences of the families on the ground. This was achieved by interviewing families of children who had reported sexual violence, understanding the various challenges they faced while navigating the system and their experiences during interactions with concerned stakeholders.

2. DEMOGRAPHICS OF CHILD, FAMILY AND ACCUSED IN STUDY

A total number of 98 families were interviewed. 88 respondents were met by the field investigators, the purpose of the study was explained to them and the questionnaire administered. 10 families who were reluctant or unable to meet with the field investigators in person were spoken to over the phone. Some families were reluctant to respond to specific questions (between 1%-5%). In these instances, field investigators were instructed to proceed with the remaining questions. Questions were asked in the vernacular language as and when required.

Age profile of children

Figure 1 shows that 63% of the victims in the cases studied, were in the age group of 16 - 18 years. Field investigations revealed that children in 16-18 age group were also involved in 'consensual' relationships. However further study and analysis is required to understand how many of the children were actually groomed / coerced into the relationship.

FIGURE 1: Family
Age Profile of the Child N=98

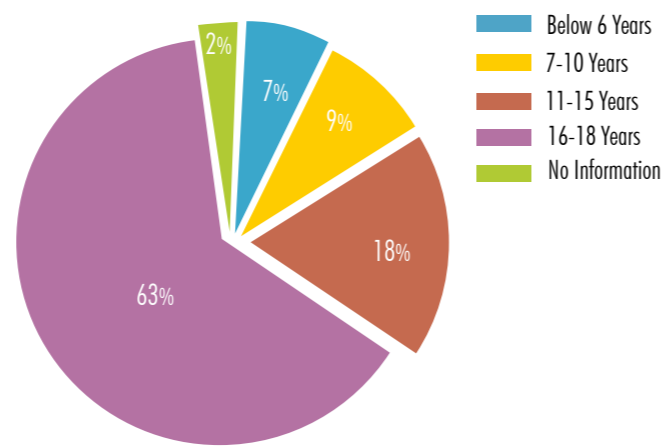
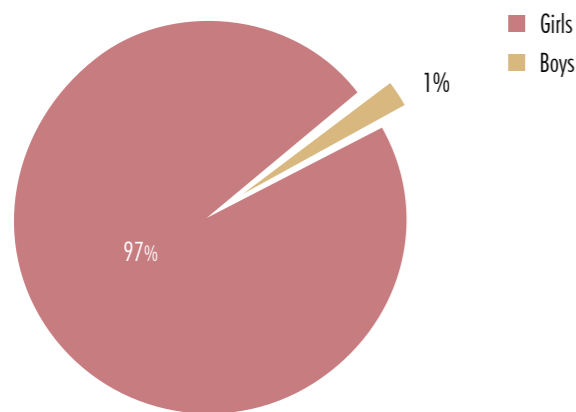


FIGURE 2: Family
Gender of Child N=98



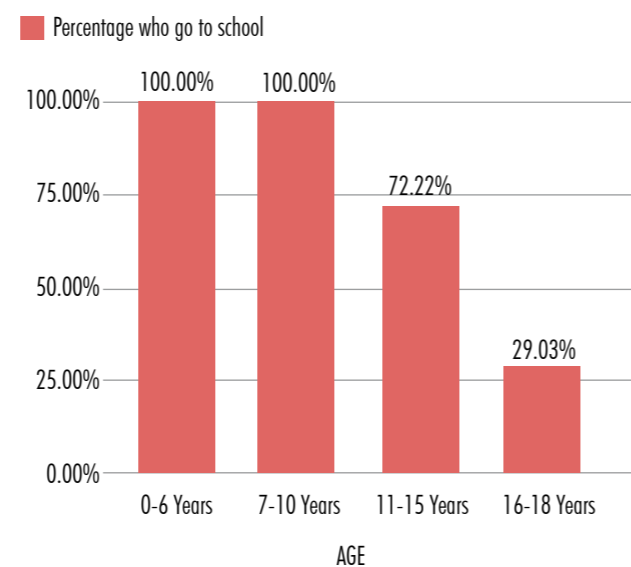
Gender of the children

In the 98 cases studied, 97 were girls and one was a boy as shown in Figure 2. This highlights the fact that even today, despite POCSO Act being a gender neutral act, cases where boys are facing sexual abuse are still not being reported.

Status of schooling of children

A correlation emerged between age groups of children and school attendance, as seen in Graph 3. From the families who participated in this Study, all children between the age groups of 6 years and below and 7 - 10 years were attending school. School dropouts increased as the age increased. The lowest attendance was in the age group of 16 - 18 years. This was the age group from which maximum cases were registered as per this Study.

GRAPH 3: Family
Percentage of children attending school N=98



Socioeconomic background of children

Figure 3 shows the socioeconomic strata of families reporting cases according to the disclosed annual income of the family. Most families show single income with either the mother or the father working. The Government of Karnataka (Food, Civil Supplies & Consumer Affairs Department, 2016)⁶ has defined 'below poverty line' as families whose annual income is less than Rs. 12,000/- in rural areas and Rs. 17,000/- in urban areas. However for this Study, families that earn less than Rs. 50,000/- per annum were considered as low-income families. 55% of the families that participated in this Study fell under this category.

FIGURE 3: Family
Income bracket per annum in INR N=98

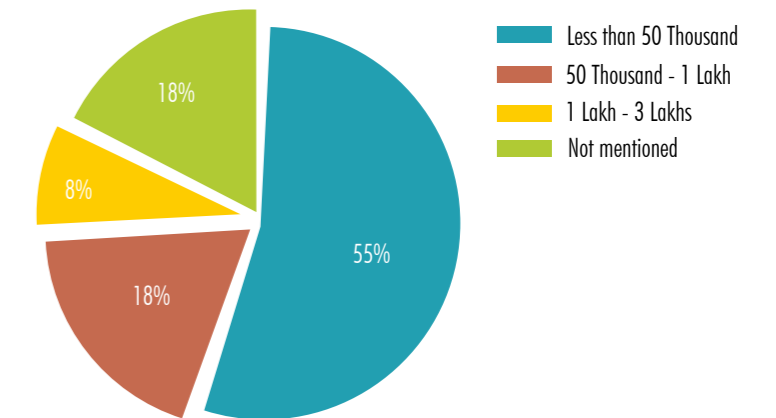
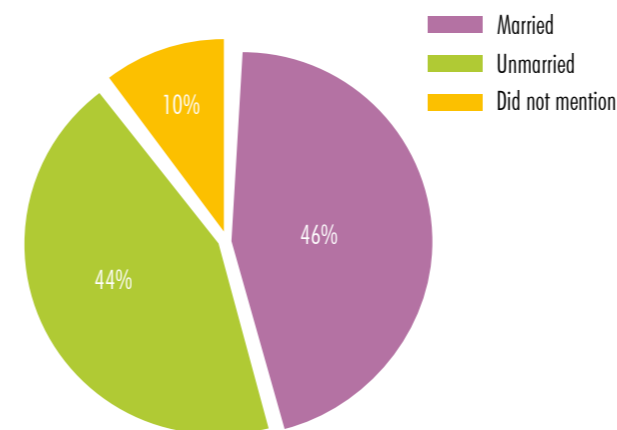


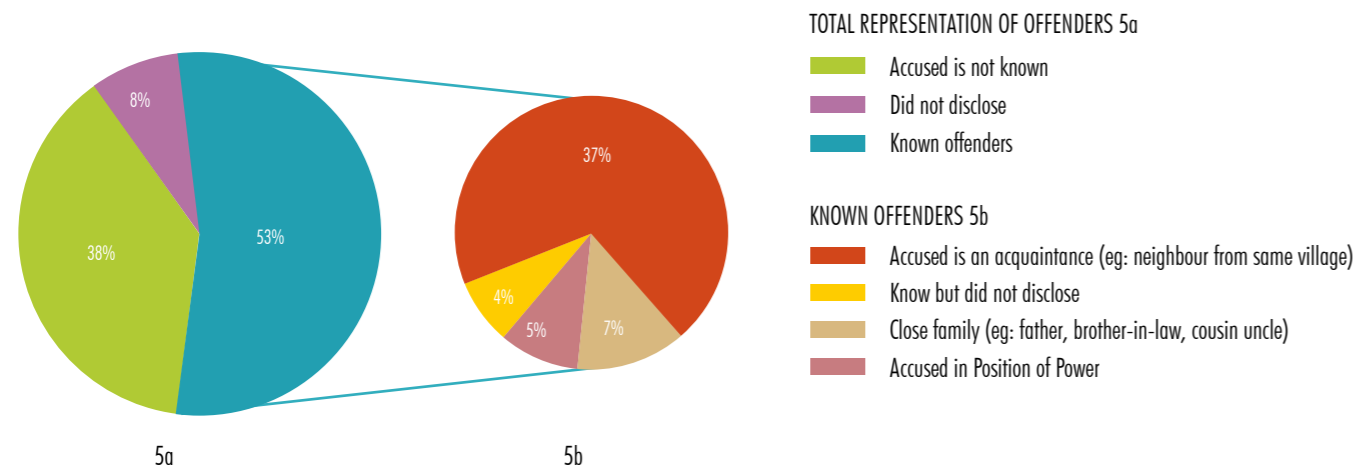
FIGURE 4: Family
Marital status of the accused N=98



Profile of the accused

In the data collected, the gender of accused is predominantly male. This reiterates the importance of POCSO Act being gender neutral, with respect to accused and victim. Data collected in this regard shows that in 46% cases, the accused was married at the time of offence. This breaks the myth that unmarried men are more prone to committing such crimes as shown in Figure 4. However, in some cases the offenders eventually married the victim. This could be either a case of elopement or a result of social pressure.

FIGURE 5: Family
Relationship with the accused N=98



Relationship with the accused

Figure 5a shows if the accused was known to the child and family. 53% of the respondents mentioned that the accused was known. Figure 5b shows the relationship of the known offender with the child. This includes close family members (father, cousin, brother-in-law, uncle: 7%), and persons in position of power (Panchayat president, Panchayat leader, teacher: 5%). During interactions with the field investigators, some families were reluctant to reveal whether the accused was known to them. This is evident where 4% admitted to knowing the accused but did not disclose the relationship/identity.

Threat from the accused

18% of families shared that following the incident, the accused had threatened the family. This has been illustrated in Figure 6.

Some of the threats made to the child and family as mentioned to the field investigators were:-

- If reported, he will destroy her and her family
- Warned her not to complain or report
- That he would kill her if she told anyone
- Refused to marry her
- The child's marriage will get cancelled
- The child will be kidnapped

One family shared that they were offered money to keep the matter from being reported. Although it is not clear whether these threats are being made before or after filing the case, it does highlight the vulnerability of the child.

FIGURE 6: Family
Threats from the accused N=98

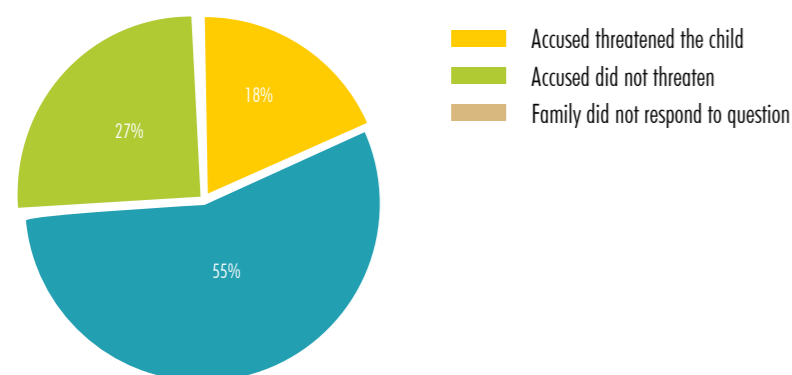
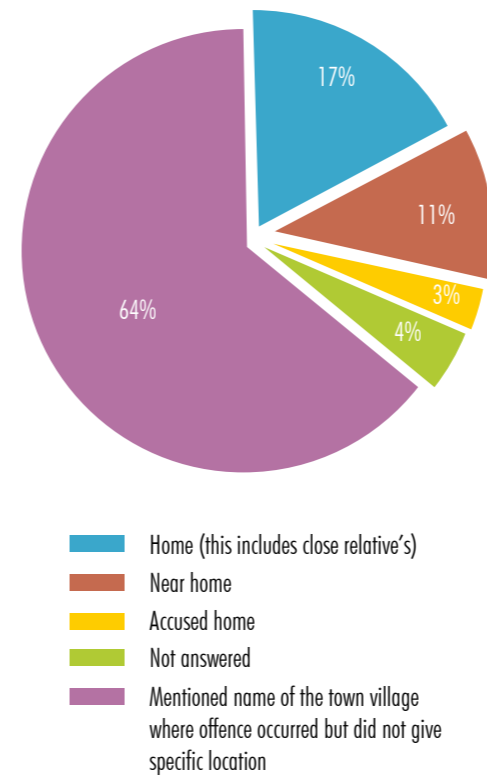


FIGURE 7: Family
Place of crime N=98



PLACE OF OFFENCE

Figure 7 shows that 17% of the crimes were committed within the child's home. 3% shared that the incident occurred in the accused's home and 11% indicated that the incident occurred close to home, highlighting the fact that these offences occurred in places that were familiar and considered safe. 64% of respondents mentioned names of the town or village, but did not give specific location. The questionnaire did not specify locations for respondents to choose from. 13% revealed that the offence occurred more than once.

3. INTERACTIONS WITH VARIOUS STAKEHOLDERS

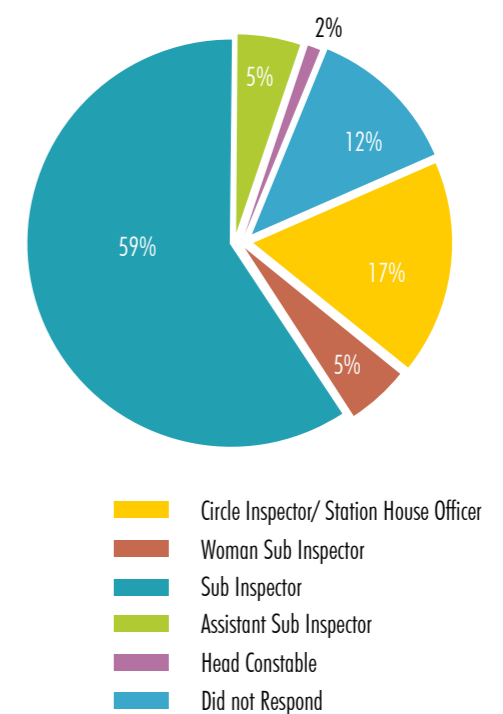
A. INTERACTIONS WITH POLICE

Specific questions were posed to understand the experiences of the family with the police following reporting of CSA. The responses were also used to ascertain if the awareness level among the police correlated with the experiences of the family.

Among the stakeholders, the police were found to have higher awareness and better training on the POCSO Act basing on the responses from families.

The police were the first point of reporting for 92% of the respondents. Some cases were reported directly by a hospital to the police. Figure 8 shows that 85% respondents recollect the designation of the Police officer who received the complaint. However only 19% remembered the name of the officer.

FIGURE 8: Family
Designations of police who interacted with family N=98



Recording of statement by police

POCSO Act, Section 24 (1) states that the child's statement, as far as possible, is to be recorded by a woman police officer not below the rank of Sub-Inspector. 81% of the respondents have shared that the child's statement was recorded by a woman Sub-Inspector, despite Karnataka having only 158 serving woman Sub-Inspectors. Even though the initial conversations were with male police officers, the statement of the child was recorded by a woman police officer.

Section 24 (1), of POCSO Act states that the child's statement can be recorded at the residence of the child or a place of the child's choice. 64% of the respondents indicated that the statements were recorded at the place where child resides. 88% of the respondents indicated that the recording of the statement of the child was done in a comfortable environment.

93% of the respondents said that the statement was recorded in the presence of a parent/guardian. In the few instances where the parent/guardian was absent the reasons weren't recorded. Section 26 (1) states that while recording a statement of the child, the parent or any other person in whom the child has trust or confidence can be present during the process.

Police in uniform

Section 24, (2) mandates that the police shall not be in a uniform during the recording of the statement. 55% indicated that the police were not in their uniform while recording a child's statement, while 44% of the respondents stated that the police were in uniform. On the contrary 94% of police in their interviews had agreed that they cannot be in uniform when they interview a child. This information raises the issue that the police are aware of the protocol but are not able to adhere to it. This may be due to distances in travel, inability to change to civil clothes, particularly for women police officers and other reasons elaborated in detailed findings for police.

TIME FRAME FOR RECORDING CHILD'S STATEMENT

94% of the families said the statement of the child was taken immediately, which indicates good practice by the police in the districts. Remaining did not mention or did not understand the question.

Audio-visual recording

POCSO Act, Section 26 (4) suggests that child's statement is to be recorded through audio-video means. 55% of families said that audio visual means were used for recording of statements.

Information leading to identity of child

In 84% of the cases, police did not collect any photographs of the child. Section 24 (5) of the POCSO Act states that the identity of the child has to be protected from public and media, unless otherwise directed by the court.

Providing support systems to assist the child

52% said that a language interpreter was provided when the language was not understood by the child in the police station. This is in accordance to Section 38 (1,2) of the POCSO Act which mandates the assistance of an interpreter or expert while recording evidence. The more comfortable a child is made to feel while their statements are being recorded, the higher the chances of a more complete and detailed statement. However 25% answered that they were not provided with a speech therapist or special educator/counselor, while 35% did not respond to the question. This could be attributed to the fact that they were not aware of this support option and did not understand the relevance of the same.



Bail orders, if any granted to the accused, must not only prohibit tampering of prosecution witnesses but must also prohibit any kind of contact with the victim whether with or without the order of visitation. Our forensic science laboratories need more infrastructure and people to handle the workload. Lastly, POCSO courts must be ruthless in enforcing the directions of the Supreme Court in State of Gujrat v. Kishanbai and Vinod Kumar v. State of Punjab in order to ensure accountability for investigators and prosecutors and to achieve witness friendly courts.

Ashok G.V.

ADVOCATE
PARTNER, FACTUM LAW

ARREST OF ACCUSED

93% said the accused was arrested after filing the FIR. 73% of the families confirmed that the child was not brought before the accused during investigation. POCSO Act Section 24 (3) mandates that child not come in contact with the accused during investigation.

Bail/detention of accused

61% respondents confirmed they were informed about bail/detention or release of the accused as per POCSO Rule 4 (1 and 12). The rest did not receive this information, making them vulnerable to confronting the accused when least expected. The child and family must be kept aware when the accused secures bail, so they are not caught unawares when they encounter the accused in their day to day lives, especially in cases of incest.

Procedural information to family

85% of the families confirmed that a copy of the FIR was given to them as per CrPC Section 154 (2). 53% said the police did not inform the family when they were required to attend court proceedings.. POCSO Rule 4 (12(vii))places the responsibility of providing information to the family on the police. Besides this, police are required to inform regarding legal proceedings, status of the investigation, arrest, filing of charges, bail/detention of accused, verdict among other matters. Information regarding the status of the case enables the family to continue to have faith in the investigation and judicial process.

Police proactiveness

71% of the families said that the police went ahead with the case even when there were conflicting views within the family about proceeding with it. This is in accordance with the POCSO Act Section 19 (1 and 2).

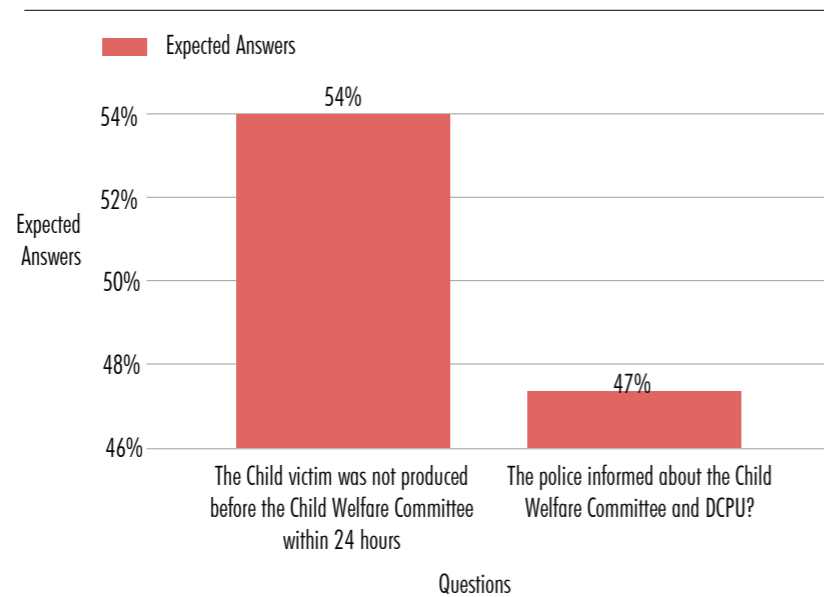
B. INTERACTION WITH CHILD WELFARE COMMITTEE (CWC)

The police are responsible for keeping the CWC informed of all cases under POCSO Act and taking appropriate action when a child is identified as a child who needs care and protection under the JJ Act.

79% of families said that, when necessary, the child was kept in a safer environment within 24 hours of filing a complaint. As per POCSO Act Section 19(5) and Rule 4(2), the police play a crucial role in ensuring safety and care of child during the investigation and trial.

54% families from this Study indicated that the child was not produced before the CWC. POCSO Rules 4 (2(e)) requires police to inform families of the assignment of support services. However, only 47% families indicated that they were informed about the CWC and DCPU as shown in Graph 4.

GRAPH 4: Family Interaction with Police and CWC N=98



C. INTERACTIONS WITH MEDICAL PERSONNEL

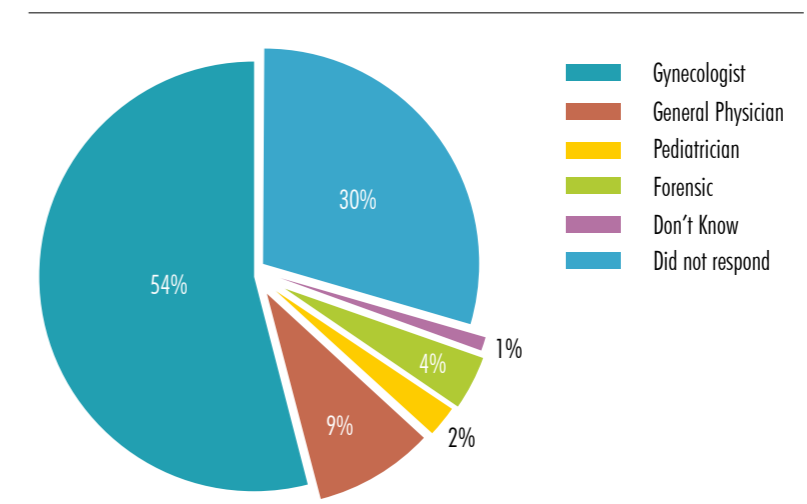
Following the filing of a complaint or registering an FIR at the police station, every child victim is taken for a medical examination. This practice is followed even in cases where there has been a long time-gap between the assault and reporting of the case. Section 27 (1) of the POCSO Act states that medical procedures and examination of child victims of sexual violence should be conducted in accordance with section 164 A of the CrPC. The child should be taken, by the police, to the nearest government or private hospital for emergency medical care and medical examination. Protocols and procedures for doctors examining a victim are detailed in the medico-legal guidelines and protocols issued by the Ministry of Health and Family Welfare (MOHFW Guidelines and Protocols, 2014)⁷.

Procedures during medical examination

71% of the families responded that blood and urine samples were collected and tested for STDs, HIV, alcohol and other drugs. 52% of the family said the doctor prescribed pregnancy prophylaxis in cases where the victim had attained menarche (puberty). This is in compliance with the MOHFW Guidelines⁷ and Protocols: Medico-legal care for survivors/victims of sexual violence.

61% of the families said that the accused and the family were not taken to the same hospital. It is preferred that for medical examination and collection of evidence, the accused and the child are taken to different hospitals to eliminate the possibility of the child being confronted by the accused as mentioned in POCSO Act 24(3) .

FIGURE 9 CHILD AND FAMILY Profile of medical personnel the family interacted with N=98



Examination by gynaecologist

Most of the families interviewed could not recall the name of the doctor, their designation or their speciality. This Study shows that 54% of respondents were examined by a gynecologist, while 4 respondents shared that the forensic expert examined the child as shown in Figure 9.

Woman doctor to examine child

86% said the medical examination of the girl child victim was done by a woman doctor. POCSO Act Section 27 (2) mandates that a girl victim has to be examined by a woman doctor only. Efforts must be made to find a woman doctor to examine a girl but no medical treatment should be denied or delayed in case of non-availability of a woman doctor. In such situations, a male doctor can examine a girl child in the presence of a woman attendant.



The cases must be expedited - the child is not able to move on with life as the case drags on for years and this results in secondary victimisation. Besides, cases taking very long has an impact on the memory and thus children will not be credible witnesses with the passage of time as they may have forgotten many details.

Dr. Preeti Jacob

ASST PROFESSOR
DEPT OF CHILD AND ADOLESCENT
PSYCHIATRY, NIMHANS

Medical care and counselling

85% of the families said that medical care was given to the family. However the families were not asked if the police accompanied them as mentioned in POCSO Rule 5 (1). This procedure provides (a) support to the child in the event of a confrontation with the accused in the hospital, (b) effective handling of media and (c) facilitates convergence between medical personnel and investigating officer which is vital for the effective implementation of the Act.

POCSO Rule 5 (4(v)) says wherever necessary, the examining doctor needs to refer child and family to a mental health professional as they require extended therapy and counselling to cope with the abuse. 55% of the families mentioned that they were referred to a counsellor or therapist.

Taking consent from child and family

42% families said consent had not been taken prior to medical examination. While POCSO Act does not explicitly refer to consent of the victim for medical examination, CrPC Section 164 A (4) states that the written consent of a victim of rape has to be taken prior to undertaking his/her medical examination. This has been further elaborated in the chapter Detailed findings- Medical Personnel.

D. INTERACTION WITH JUDICIARY

Following the initial filing of complaint and the subsequent medical examination, the family is unaware of the proceedings leading to the start of the trial. Interactions with investigators have revealed that the families have not been informed regarding the intervening processes, including framing of final medical opinion, bail for the accused, filing of chargesheet and framing of charges. Information related to judicial proceedings were asked of the families and the findings have been elaborated below.

Cases in same courtroom

64% of the families indicated that trial of their case was conducted in the same courtroom from commencement till completion of trial or until the field investigators met with the families. Addition of two Special Courts in Bengaluru Urban District could be one of the reasons for cases being transferred.



With regard to the evidentiary value of a child witness, Sec.118 of the Indian Evidence Act states that even a child is competent to give evidence and the evidence of a child is admissible. The child of tender age can be allowed to testify, if he or she has psychological capacity to understand questions and give rational answers thereto. Therefore, the evidence of a child witness is not required to be rejected per se.

(See AIR 2008 SC P 1842, Golla Elugu Govindu Vs. State of Andhra Pradesh)

Justice A.V. Chandra Shekar

FORMER JUDGE, HIGH COURT
OF KARNATAKA IN A PAPER ON
SALIENT FEATURES IN INVESTIGATION,
PROSECUTION AND TRIAL OF CASES
UNDER POCSO ACT - 2012

Having one judge throughout trial

In 78% of the cases, the Judge of the Special Court remained the same from when the trial commenced until the field investigators met the families. In 22% of cases the Judge had changed, while 4% of the cases, the family was not aware if Judge had changed. Reasons for change of Judge in 22% of the cases could be because of a) the addition of two Special Courts in Bengaluru Urban district in March 2015, b) Transfer/retirement of Judges in certain districts.

Encountering accused during trial

POCSO Act Section 36 (1) provides for the child to be shielded from the accused while his/her evidence is being recorded. Courts are required to place a screen between the child and the accused. However, only 52% of the families indicated that a screen was placed before the accused. Support persons have mentioned that children have expressed fear and anxiety when the accused was in the vicinity.

The description of the profile of the offender mentioned above, clearly indicates that the abuser is known to the child and or/ family in over 53% of the cases. While courts are sensitized to call child witnesses at the earliest possible, children are often found waiting outside all Special Courts for hours together. While 45% of families said they did not encounter the accused while waiting for the case to be called in by the Court, 47% of the families stated that the accused was in the vicinity of the child and family during the waiting period.

Repeated calls to testify in court

54% of respondents indicated that they were made to visit the court with the child on more than one occasion. Families shared with field investigators that on most occasions child had to visit the court repeatedly for a host of reasons. These included the unpreparedness / absence of defence lawyer, questions not being submitted to the judge in advance, Judge / SPP / accused not present on date of hearing, In such instances, the child and family had to travel great distances, to reach the court, often with the loss of their daily wages, only to realize that the hearing had been adjourned. Video conferences can mitigate the unnecessary travel. POCSO Act Sec 33 (5) states that child is not to be called repeatedly to court to testify.

In camera proceedings

77% respondents indicated that when the child victim was testifying, no other persons apart from family were allowed in the

court. POCSO Act Sec 37 states that trials are to be held *in camera*, which means that the entire trial be conducted in the presence of only the Judge, court clerk, prosecutor, defence lawyer, accused and the witness being examined. In case of a child witness, a parent or guardian and a support person are permitted during the child's deposition.

Procedures in court during trial

POCSO Act Section 33 (6) states that the court shall not permit aggressive questioning or character assassination of the child in order to ensure that the dignity of the child is maintained at all times during the trial. 67% of the family felt that they had not been asked uncomfortable questions, but 23% families felt the child victim was asked uncomfortable questions. Section 33 (2) of the POCSO Act also states that the prosecutor and the counsel for the accused are required to communicate the questions to be put the child, to the Judge, who will in turn put the questions to the child in a child-friendly manner. Families and stakeholders have shared that this is still not being followed.

24% of families felt that they had to wait for long hours at court. Waiting for long hours increases the possibility of the child facing the accused, anxiety level of the child and adds to the time delay of the case.

Verdict of trial

When families were asked if the accused was convicted, 39% responded that the accused was convicted. Few did not know outcome, while the rest had conflicting reports on the verdict. On the other hand, SCRB data available on these 98 cases studied, showed only five convictions, compared to the thirty eight convictions reported by the family. Clearly there is a lack of information dissemination from the police and courts to the families, regarding status of their cases, though mandated in the law. It could also be that the family did not understand the question posed regarding conviction.

4. CHALLENGES FACED BY FAMILY

Families who participated in this Study were given a list of predefined challenges. 24 respondents did not rate the challenges as requested. Therefore the sample size was too small for quantitative analysis hence not included here. Table 2 shows the rating by the families when asked to rank challenges, giving a rank of 1 to the biggest challenge and 10 to the least of the challenges.

- Extremely low public confidence in the government systems.
- Fear to report since the accused is often more powerful.
- Lack of family/community support.
- Lengthy investigation and legal process
- Lack of specialized care, support and facilities to children
- Lack of protecting identity and privacy of the child victim
- Shoddy handling of incest cases that require sensitivity and specialized understanding
- Insufficient information on the status of the case provided to child and family
- Delay in accessing government victim compensation scheme and receiving lower amount than the amounts specified in the Government Notification
- Insensitivity of medical staff during medical examination



I feel emotionally drained and memories of the incident where my daughter was assaulted, has caused me a lot of mental anguish, leading to my own health issues. We also have to bear the life long expenses of medicines for my daughter, who is intellectually challenged and she suffers from seizures. Since the trial started, we have had to additionally bear the cost of travel to court which is over 40kms from our residence. The trial is still not completed and neither have we received any kind of compensation so far.

Mother of 16 - year old girl WHO WAS SEXUALLY ASSAULTED

Table 2

The following are the ratings given by the remaining respondents:

Challenges	No. of families	Rating
Extremely low public confidence in the Govt. systems like police, hospitals, courts etc	16	1
Lack of Family /Community support	12	1
Delay in accessing Govt. schemes	9	1



It is not surprising when scores of victims and their family members retract in court. The need of the hour is a robust support system for victims of sexual offence and a victim protection programme.

Swagata Raha

SENIOR LEGAL RESEARCHER
CENTER FOR CHILD AND THE LAW,
NATIONAL LAW SCHOOL OF INDIA
UNIVERSITY, BANGALORE

Families shared the following **additional challenges** that they experienced with individual stakeholders, during conversations with the field investigators.

- **Police**
 - » Families shared that the procedure of reporting a case under POCSO Act was the key challenge they faced. In districts where the police station was far away, the families found it cumbersome to travel and wait long hours for the case to be registered.
 - » There were few reports that the concerned police officials made the family wait, had multiple individuals question the family and child, trivialised the abuse based on personal biases and treated it as another regular offence. The child friendly procedures as defined in POCSO Act were not followed in some cases.
 - » Some families shared that they did not receive a copy of the FIR.
 - » The family was not updated of the status of the case they filed, the bail of the accused, or the status of the investigation. A few families shared that they were unaware that the trial had concluded.
- **Medical Personnel**
 - » Families shared that they were not informed about the procedures followed, treatment provided and rationale for collecting samples in the name of evidence collection. At times families were admonished for questioning the same.
 - » The families mentioned that they were made to wait for long hours for the doctors to attend to the child. In some cases the doctor was called from another hospital as there was no doctor available to conduct a medico-legal examination.
 - » In one of the hospitals in a district, the child was admitted to the ICU since the doctor was not available to attend to the child. This seemed to be the common practice in this district hospital.
- **Prosecutors**
 - » Families reported, in some instances, that the prosecutors encouraged settlement of their case out of court.
 - » Families also reported to investigators that the prosecutor did not meet with them prior to the commencement of trial, to interact with the child or brief them regarding procedures in court.



My daughter told the previous judge everything. Now during cross examination, there is a new judge. How will the new judge know anything? She should have seen the tears and anguish in my daughter's eyes when she was relating the incident.

Mother of a 11 year old

FOLLOWING CHILD'S CROSS
EXAMINATION

5. RECOMMENDATIONS FROM FAMILIES FOR IMPROVEMENT

Families suggested the following changes for better implementation under POCSO Act:-

- Have access to their child's medical reports
- Be informed on status of bail for accused.
- Have a support person assigned to the family from the time the case is registered.
- Receive timely information about the status of their case, court hearing dates, conclusion of trial and the final verdict.
- Speedy completion of trials.

DETAILED FINDINGS

POLICE



1. INTRODUCTION

The police are directly in contact with the child and family, from the time an incident of sexual abuse is reported and an FIR is filed, till the closure of the case. As per Section 19 of the POCSO Act, when a Special Juvenile Police Unit (SJPU) or the local police receive information of an incident of sexual abuse of a child from any person including the child, they are required to:

- explain the procedures
- register an FIR
- accompany the child to hospital for emergency care and medical examination
- transfer samples from hospital to State FSL for testing
- arrest the accused
- provide information to the child and family about all the support systems, compensation, court hearing dates

2. DEMOGRAPHIC OF PARTICIPATING POLICE OFFICERS

For the purpose of the Study, 10 police officers from each district, who handle POCSO cases, were selected to participate. A total of 94 police officers participated in the study.

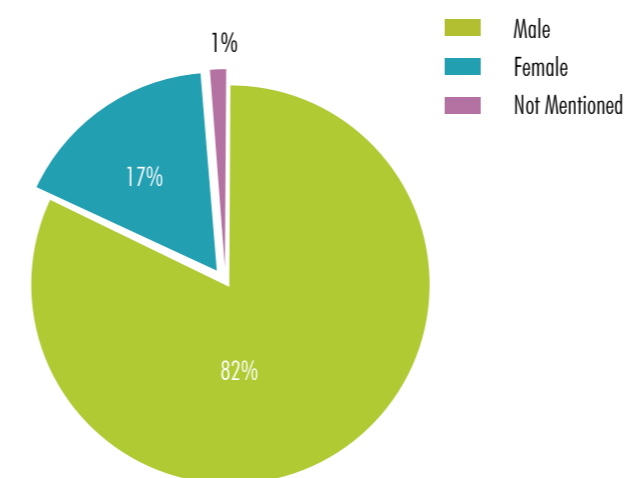
Families who participated in the Study indicated that the police were the first respondents in 92% cases.

Gender of participating police officers

Figure 10 shows distribution by gender of the police officers who participated in the study. 77 were male and 16 female. Karnataka has 158 women Sub- Inspectors while the total number of police stations in the State are over 858.

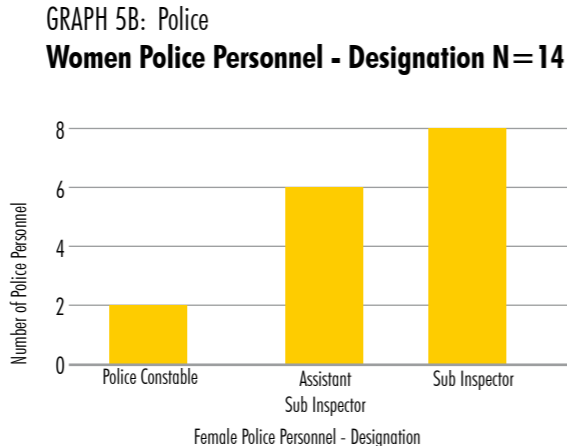
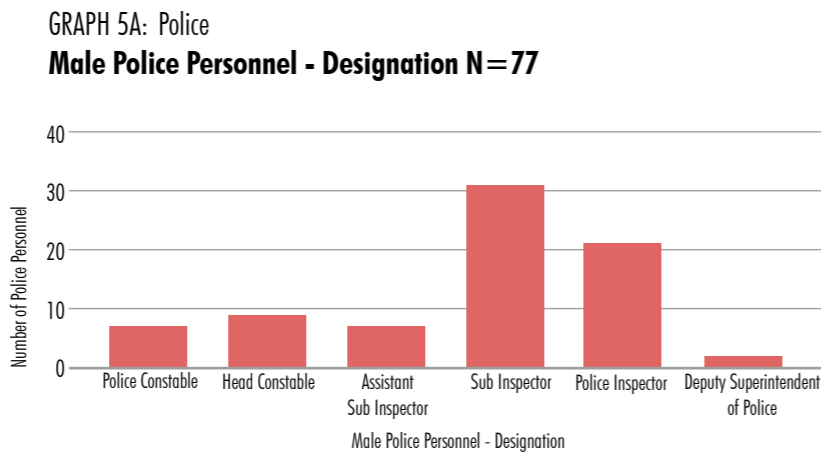
91% of the respondents indicated being aware that as per POCSO Act Section 24 (1), a women not below the rank of a sub-inspector should record the child's statement. 81% of the families who were interviewed said the statement of the child was recorded by a woman Police Inspector.

FIGURE 10: Police
Gender of Participating Police officers N=94



Designation

Graph 5a and 5b shows the designation of police officers who participated in this study. POCSO Act Section 24 (1) specifies that police officer not below the rank of Sub Inspector is required to record the statement of the child and family. It is preferred that this officer is a woman. The Study revealed various ranks of police officers who were interacting with the child and family in a POCSO case.



3. AWARENESS AMONG POLICE PERSONNEL

With new Acts such as POCSO Act and the Criminal Law Amendment (CLA) Act being passed in the past 5 years, the need for regular sensitisation and awareness initiatives on the nuanced procedures and protocols, across all levels of police officers, is a key factor in the effective implementation of the Acts. The following findings indicate the level of awareness and sensitivity among police officers with regard to POCSO Act.



Existence of POCSO Act has paved way for justice for the children. More cases are being reported that need protection and justice. POCSO needs to be understood in completeness, for all those involved in these cases.

Meena Jain

PSYCHOLOGIST,
FORMER CHAIRPERSON CWC
BANGALORE URBAN

Reporting of sexual offences against children

POCSO Act Section 19 requires anybody who has apprehension or knowledge of sexual offences against a child to report the same to SJPU/local police. Section 21 defines punishment as imprisonment for a period of six months to one year for failure to report such an offence. 64% respondents are aware of reporting obligations under this Section.

Presumption of Guilt

91% of the police officers agreed that in CSA cases the accused is considered guilty until proven innocent, unlike most other Indian laws. This Section has been further elaborated in the chapter Detailed Findings - Special Public Prosecutor.

Being present during the commission of a crime is punishable

96% of the police are aware that being present during a crime is punishable under Section 16-17 of POCSO Act, which defines abetment of and attempt to commit a crime. Discussions with field investigators and support persons indicate that though there is high awareness among the police, the civil society remains ignorant of this section. When incidents of sexual assault/abuse have occurred in schools, the management and staff have been booked under these Sections.

Confidentiality regarding identity of child

97% of the respondents understood the need to maintain confidentiality regarding all details of the child, family during all stages of the investigation as per Section 24 (5) of the POCSO Act. Despite this, details of POCSO cases are often reported widely in the media. Further inquiry into the source of this information is necessary. As per Section 23 of the POCSO Act, police are required to initiate action on its own (suo moto) against any person who discloses the identity of the child, including his/her name, address, schools, parents details or any factors that could reveal the identity of the child. This is discussed in a separate chapter 'Media and CSA'.

Statement by the child is taken *prima facie*

Only 43% of the respondents indicated that the statement of the child is to be taken *prima facie* (accepted on the first impression; until proved otherwise). It is for the Judiciary to decide if it is a genuine or false case basing on presented evidence, child and witness testimony. Owing to the nature of the question, the low response could be either due to the lack of awareness of the Act or failure to understand the question.

Recording statement of child

While 97% of respondents were aware that child's statement needs to be recorded in a place where he/she is comfortable, only 64% of the families who participated indicated that the children have been interviewed in their home. The reason for this could be either that the family did not want the police to visit their home/ neighbourhood for fear of social stigma or that the police did not inform the families that child's statement could be recorded at a place where the child is comfortable.

87% of the police responded that **recording the child's statement needs to be completed with minimum number of meetings.**

Although the word 'minimum' is relative, it can be assumed that the police officers understand the need to complete interviewing the child and recording his/her statement without undue delay and repeated questioning. 94% of the families had confirmed that statement of the child was taken immediately which indicates good practice of the police.

86% of the respondents indicated that the **statement of the child can be recorded using audio-video means.** A comparison with the responses gathered from the family indicates that in 55% cases, child's statement was recorded using audio visual means, besides recording statement in writing. According to POCSO Act, Section 26 (4), wherever possible, the statement of the child before the police (Statement under Section 161 CrPC) or the magistrate (Statement under Section 164 CrPC) is to be recorded through audio/visual means.

Presence of parents when recording statement is necessary

as per Section 26 (1) Of POCSO Act: 94% of the Police officers who participated in the Study agreed. This awareness has lead to actual practice and was corroborated by the families. 93% of them confirmed that the statement was recorded in the presence of a parent/guardian. There are instances where children choose to give their statement in the absence of the parent/guardian. This is usually when either the parent/guardian is the accused or in cases where the 'victim' and 'accused' were in a consensual relationship.



The DCP told me 'it's not good to lodge this complaint against your own father. Now your daughter is small but when she grows up, people will start talking about her. Nobody will be ready to get married to her. This is your family thing.'

Mother of a 3 ½ year old girl

WHO WAS SEXUALLY ABUSED BY HER FATHER (CHILD'S MATERNAL GRANDFATHER), WITH THE KNOWLEDGE OF THE GRANDMOTHER

Interacting with child while in uniform

While 94% of police agree that they cannot be in uniform when they interview a child, 44% of families reported that the child was interviewed by the police officers in uniform. The disconnect here between the awareness of the POCSO procedures and the ground reality is the inability of the police to change from their uniform prior to meeting the child (especially for women police officers) due to (i) lack of time to go home, (ii) distance from home, (iii) inability to keep a set of civil clothes handy to change into. POCSO Section 24, (2) mandates that the police shall not be in uniform during the recording of the statement. The presumption is that children will speak freely with an individual who is not in a position of authority. Furthermore families are reluctant to engage with officers in uniform for fear of social stigma.

Child not to be brought before accused

Only 56% of the police who participated agreed that the child should not be brought before the accused at any point during the investigation. Although 73% families indicated that the child victim was not brought before the accused during investigation, the high percentage of police respondents who have not responded accurately to this question is a concern, as this factor affects the psychological state of the child and his/her deposition in Court.

Compromising with family

With POCSO Act Section 21 (1) stating that failure to record a case is punishable with 6 months imprisonment. 88% of participating police officers indicated that it is not ok to compromise a case of sexual abuse of a child, in order to avoid breaking up the family in cases of incest.

Medical reports to be given to family

60% of the police felt that the medical reports should not be given to the family. The response from 23% of families was that they did not receive the copy of the medical report. As per the MOHFW Guidelines⁷, a copy of the medical report is to be handed over to the family of the victim free of cost. The families too have indicated that they would prefer to have the medical reports.

Detaining a child in the police station overnight

78% of the Police indicated that detaining the child overnight is not permitted. This is in accordance with POCSO Section 24 (4) which specifies that no child is to be detained overnight at the police station. If any child is brought to the police station at late hours, the child is to be produced before the CWC and placed in a government child care home. However it is of concern that 23% of them have not answered correctly. As part of Gender Sensitisation Police Program, police officers across the State have been sensitized regarding this child-friendly provision. Further inquiry may be required to clarify if the question was misinterpreted by the participants.

Police are also required to assess if the child needs care and protection, alternate living arrangements and produce the child before the Child Welfare Committee within 24 hours as per POCSO Act Section 19 (5) and POCSO Rule 4 (3). The SJPU/police can also inform a known support person or an NGO to assist the child through the process under POCSO Rule 4 (12) and (2, e) as Care and Protection of the child victim.

Storage of pornography is a crime

97% police were aware that viewing of child pornography is punishable under POCSO Act. Viewing of pornography is not considered a crime, but viewing or storage of child sexual abuse materials (CSAM) or child pornography, as it is commonly referred to, is an offence under POCSO Act Section 15 and is punishable with a jail term that could extend upto three years.

Providing speech therapists, special educator and counselor to the child

97% of the police indicated being aware of Section 19 (4), Rule 3 (1-10) of the Act, which allows for a translator, special educator, sign language interpreter or expert to assist the child during various stages of investigation and trial. When the parents of child victims were asked a similar question, 52% said that a language interpreter was provided when child did not understand the language that he/she was spoken to. Although 25% families answered that they were not provided with a speech therapist or special need educator/counselor, 35% families did not respond to the questions. During interactions, field investigators have shared that there is a dearth of translators and special educators in the districts. Families have shared that when the child's specific needs are catered to, he/she is able to recollect and disclose details in a free and confident manner.



On completion of compilation of charge sheet, it is scrutinised by the Law Officer, Junior. Following this procedure, the chargesheet is sent to the Special Court. This procedure often adds to the delay in commencement of trial.

AS SHARED BY A POLICE PERSONNEL WITH FIELD INVESTIGATOR

Copy of FIR to the family

77% of the police respondents said that a copy of the FIR needs to be handed over to the family. A copy of the FIR needs to be given to the family free of cost as stated in POCSO Rule 4 (2(a)) and as per provisions of Section 154 (2) of CrPC. When a similar question was asked of families of the victims, 85% confirmed that an FIR copy was given to them. The fact that 15% of the respondents indicated that the FIR does not have to be handed over, is a matter of concern and requires further inquiry. This will help understand why a basic record of registering the case, like an FIR, was not handed over to the families.

Duration for chargesheet submission to Special Court

97% of the respondents agreed to the statement that charge-sheet is to be submitted within 90 days. However, CrPC has defined different timeframes for filing of chargesheet based on the punishment prescribed for different offences. In cases where the punishment for the offence is death penalty or imprisonment for over 10 years, chargesheet is to be submitted within 90 days and chargesheets in cases where punishment is imprisonment below 10 years, chargesheet is to be submitted within 60 days. Offences of aggravated penetrative sexual assault (Section 5 & 6) which carry a imprisonment term of over ten years is the only offence under POCSO Act where chargesheet can be submitted within 90 days. For all other offences under POCSO Act, chargesheet has to be submitted within 60 days.

Written consent from family/child for medical examination

95% of the police answered accurately that consent needs to be taken by the medical doctors from the child or from his/her parent/guardian, prior to a medical examination. This is in accordance with CrPC Section 164 A and MOHFW Guidelines⁷. This is further discussed in Detailed Findings - Medical Personnel.

Not all POCSO cases need medical examination

73% of the police officers agreed to the statement that every child who reports sexual abuse, need not be subjected to a medical examination. Furthermore, collecting samples and smears from victims who were assaulted over 96 hours ago, does not serve any purpose. On the contrary, it supports the case of the accused when the reports from the FSL are negative. However police officers routinely send every child victim in a POCSO case for a medical examination, as the lawyers for the accused challenge the reason for lack of medical examination during cross examination of investigating officer.

False CSA cases are punishable

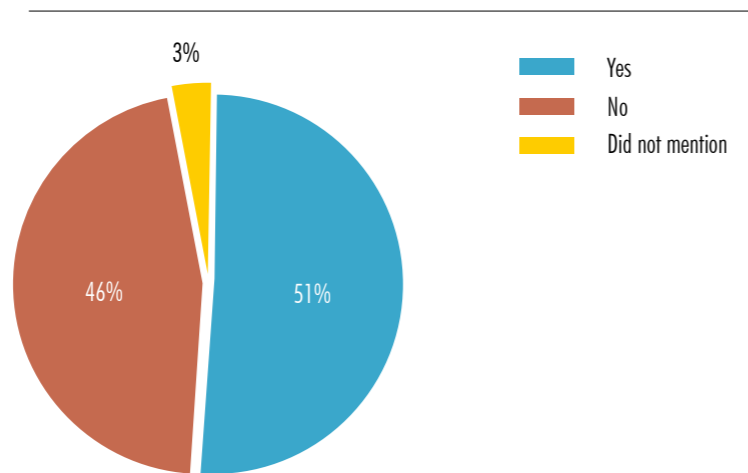
71% of the police respondents indicated that a CSA case, if falsely reported, is punishable. Section 22 (1-3) of POCSO Act stipulates that any person who makes a false complaint or provides false information against any person alleging penetrative sexual assault or sexual assault, will be punished with imprisonment for a period of 6 months. When a child is falsely accused of committing an offence under POCSO Act, the punishment is upto 1 year.

4. ASSESSING IMPACT OF TRAINING RECEIVED ON POCSO ACT

The Karnataka State Police has ongoing training programs for various levels of officers on the different legislations related to the safety of women and children, along with roles and responsibilities of the police. State level, District level and Zone level training programs are conducted on a regular basis. This Study attempted to assess the training imparted to the police as shown in Figure 11.

- a. The police officers who participated in this Study were asked in the questionnaire, if training was undergone on POCSO Act. 51% of police officers indicated that they have received training.
- b. A questionnaire to understand the impact of training as police officers was administered subsequently. 21 officers were contacted and asked to rate the statements on a scale of 1 to 4.

FIGURE 11: Police
Police Officers who attended training N=94

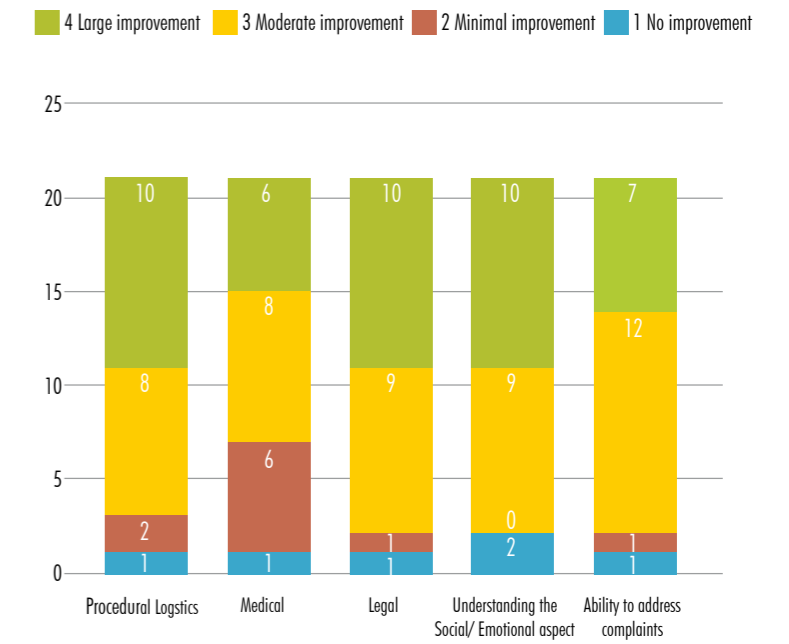


Graph 6 shows the responses received when police officers were asked “To what degree do you feel the training on POCSO Act has improved your knowledge or skills in the following areas?”

- a. Procedural Logistics
- b. Medical
- c. Legal
- d. Understanding socio-emotional aspects
- e. Ability to address complaints

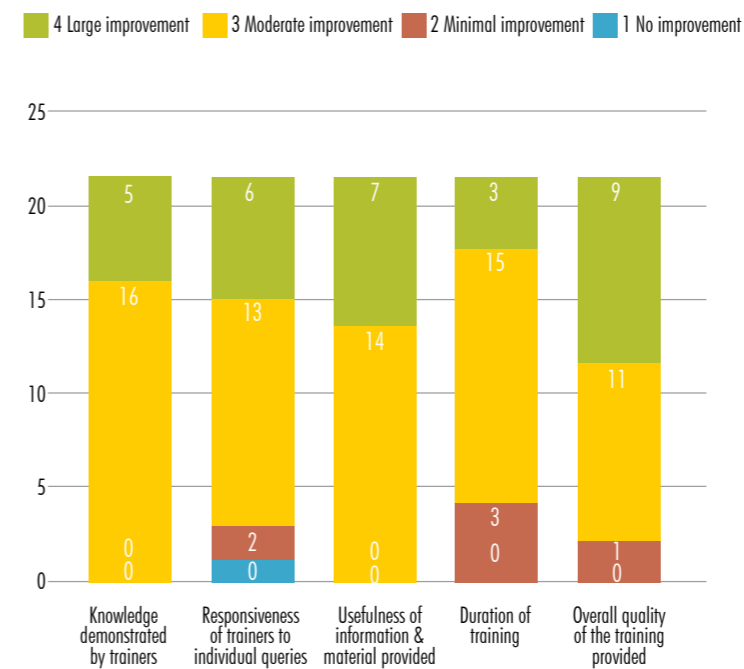
It was observed from responses that the ‘procedural logistics,’ ‘legal’ and ‘understanding socio-emotional aspects’ showed large improvement post-training.

GRAPH 6: Police
Feedback on knowledge improvement post POSCO Training N=21



Skills and Knowledge imparted during training

GRAPH 7: Police
Feedback on training imparted N=21



Questions regarding quality of training

Graph 7 shows the responses received when police officers were asked, “How satisfied are you with the following aspects of the POCSO Act Training?”

- a. Knowledge demonstrated by trainers
- b. Responsiveness of trainers to individual queries
- c. Usefulness of information and material provided
- d. Duration of training
- e. Overall quality of training provided

Responses to these queries indicated that ‘overall quality of training provided’ showed large improvement.

Additional suggestions made by police officers to improve training:

- Good trainers and resource persons from all departments required
- Provide separate trainers for medical, legal and police personnel
- Make attendance compulsory; with pre and post test, conduct quizzes with objective type questions.
- Training should not be conducted for a single day as it is not possible to cover all aspects of the Act; should be conducted for a minimum period of 2-3 days
- Conduct training on Sundays and government holidays
- Workshops to be conducted in vernacular language
- Methodology should include activities and discuss cases to make the sessions more interesting and proactive
- Latest decisions and judgements of Supreme Court, Karnataka High Court and nuances of relevant laws to be discussed during the training
- 100% information should be given and details on all aspects of the law should be imparted
- Practical knowledge on case management should be shared
- Need training material after the sessions.

5. CHALLENGES FACED BY POLICE IN IMPLEMENTING THE POCSO ACT

Police officers who participated in the Study were given the following list of predefined challenges. 42 officers did not rate the challenges, so the sample size available for analysis is reduced to approximately 50 %. Table 3 shows the rating by police when asked to rank challenges, giving a rank of 1 to the biggest challenge and 10 to the least challenge:

- Shortage of women in the police force
- Shortage of trained manpower within the police
- Lack of training in investigating cases of CSA, particularly incest (familial abuse)
- Delay in receiving reports from State Forensic Science Laboratory
- High incidence of elopement cases among girls below 18 years of age who turn hostile during the trial
- Insufficient collaboration among various support systems
- Lack of availability of the Act in local languages for the benefit of all concerned
- Too much time spent in other routine cases/duties leaving less time for POCSO cases
- Lack of sufficient budgetary allocation
- Lack of facilities for management of POCSO cases

TABLE.3

Following are the rating of challenges by police officers who responded

Challenges	No. of Police Officers	Rating of Highest Challenge
Lack of training in investigating cases of child sexual abuse, particularly incest cases	21	1
Shortage of women in the workforce	6	1
The lack of availability of the Act in local languages for the benefit of all concerned	5	1

During conversations with field investigators and support persons, police shared the **following additional challenges that they faced:**

The police in remote places in the districts found it difficult to take the forensic sample to the designated drop off places for testing. Most often they had to use their personal financial resources to ensure all processes were completed as prescribed.

In certain cases, police vehicle was not available to visit the crime scene for spot mazhar, recording of statements, to accompany the child to a safe place, to the hospital, or the court, which made it difficult to stick to the time frames prescribed by POCSO Act.

Police shared that large number of cases of elopement is a drain on their energy, manpower and resources, especially when witnesses turned hostile and refuse to cooperate.

The non-availability of resource persons for training, support persons, special educators, interpreters, counsellors, etc in the rural districts.

Recruitment of women police officers continues to be low, despite the laws related to safety of women and children (Criminal Law Amendment Act, POCSO Act, Protection of Women from Domestic Violence) requiring women police officers to investigate the cases, record statements of victims and accompany the child for medical examination and statement

6. RECOMMENDATIONS FOR POLICE

To improve implementation of POCSO Act, the following are recommendations based on interactions with families and the lacunae in current functioning of police:

- **Standard operating procedures** for management of cases of sexual crimes and convergence with other stakeholders to be created and notified across the State, at the earliest.
- **Training content to be standardised which can include**
 - » Linkages between POCSO Act, Criminal Law Amendment Act, JJ Act, CrPC, IPC
 - » Detailed crime scene investigation procedures
 - » Basic understanding of the FSL and medical reports to help interpret the same appropriately in order to strengthen the charge-sheet
 - » Procedure for chain of custody of samples
 - » Appropriate protocol to deal with vulnerable witnesses
 - » Profile of sexual offenders, dynamics of incest and sexual crimes, how to empower the child and the family, and other relevant topics.
 - » Supreme Court and High Court orders with special reference of the Supreme Court order dated Jan 7th, 2014 in State of Gujarat vs. Kishanbhai
 - » Parameters used to assess victims of CSA for care and protection, medical and emotional needs

- **Training techniques and approach can include**
 - » Trainers who have field experience
 - » Audio-visual training aids
 - » Details on various procedures using case studies and judgments
 - » Reading material in English and Kannada for further reference.
- **On-going training and consultations to be organised:**
 - » Zone/district level to understand and learn from best practices in the implementation of the Act in different states.
- **Translation of POCSO Act** in Kannada to be made available online.
- **Transfers**
 - » Officers who are trained in POCSO Act, JJ Act, Immoral Traffic Prevention Act (ITPA), CLA Act and other laws pertaining to children, when transferred, may be posted in similar roles to ensure sensitivity in handling cases under POCSO.
- **Recruitment of women police officers**
 - » Recruitment process of police officers should take into account a minimum of 2-3 women officers of different ranks at each police station to handle cases related to women and children.
- **Encourage personnel to adhere to timeframes** specified within POCSO Act, through a recognition/ acknowledgement based reward process .

- **Delays from other stakeholders:**
 - » Draft escalation procedures to tackle delays in receiving information / reports from different stakeholders like hospitals, FSL, CWC
- **Suggestions for State Forensic Science Laboratory (FSL):**
 - » Increase capacity of trained personnel at all State FSLs
 - » Draft protocols and procedures for packing, storage, transportation of different evidence, samples and materials for various tests, considering most of these items are highly perishable and degenerate quickly, resulting in inaccurate test results.
 - » Draft achievable timelines to furnish reports.
- **Incorporate investigation allowance in the annual budget for the police personnel which can include**
 - » Expenses incurred by officers during investigation (like accompanying child to the hospital, CWC, Magistrate Court) to be reimbursed promptly from investigation fund

- **Incorporate Infrastructure enhancement in the budget to include:**
 - » Safe storage facility for evidence and collected samples
 - » Vehicle /station to be available to transport child and family to hospital, magistrate court, CWC
 - » Private space within the police station where child can be interviewed, out of sight of the accused and or / his family and associates
- **Draft procedures to define penalty for police officers** who reveal information related to POCSO cases, to the media and other persons not designated to receive such information.

DETAILED FINDINGS

MEDICAL PERSONNEL



Many provisions of POCSO and also larger issue of CSA have to be understood by all stakeholders including doctors. For this we should increase our priorities in advocacy and training of doctors further. Efforts undertaken till date are grossly insufficient to address this mammoth issue. Liaising of doctor with the other stakeholders like Police, Forensic Science laboratories, CWC, Support persons, NGOs, Public Prosecutors, Special Courts have to be strengthened and streamlined through regular interactions and integrated efforts.

Dr. Jagadeesh N Reddy

PROFESSOR AND HOD,
DEPARTMENT OF FORENSIC MEDICINE

1. INTRODUCTION

Medical examination plays a vital role in investigation and evidence collection. It is conducted to corroborate the physical injuries suffered by the child, with the statement/complaint received by the police and to support the prosecution during trial. It also ensures that the child receives necessary physical and psychological treatment and that a plan for follow-up, for recovery and reintegration of the child and family is created. MOHFW Guidelines⁷ have detailed how medical examination needs to be conducted in a sensitive manner, while being legally compliant. Considering the POCSO Act is meant to specifically address sexual crimes against children, it's imperative that the MOHFW Guidelines⁷ are adhered to while attending to the child and collecting evidence.

2. DEMOGRAPHIC OF PARTICIPATING MEDICAL PERSONNEL

For this study, 32 medical personnel were interviewed in 10 districts. Figure 12 shows the place of work of the participating respondents.

Respondents District-wise

In Belgavi district, interviews of medical personnel could not be conducted due to time constraints of doctors. Few districts had more number of respondents, since medical personnel from taluka hospitals were also interviewed. Districts having more than one district hospital had larger number of respondents. Table 4 shows the break up of Medical personnel who participated in this study.

FIGURE 12: Medical Personnel
Place of Work N=32

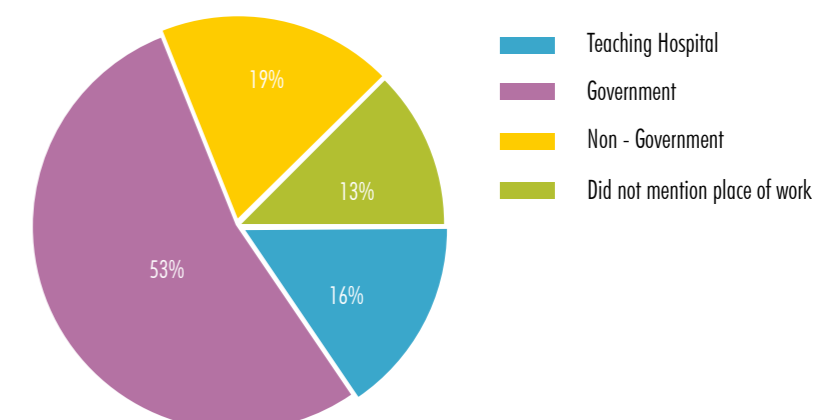


TABLE. 4
Participating Medical Personnel

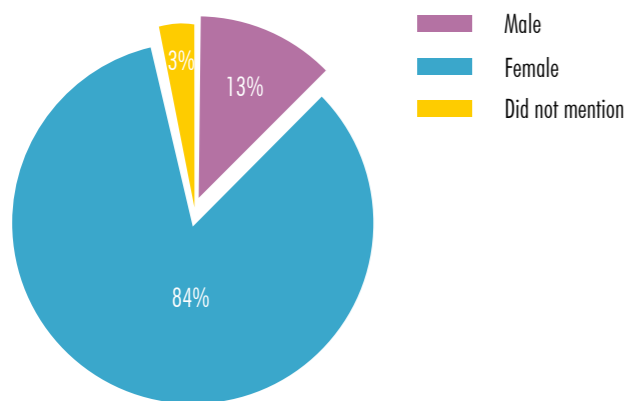
Bidar - 1	Hassan - 4
Kolar - 1	Bengaluru - 6
Davangere - 1	Kodagu - 7
Vijayapura - 2	Koppal - 7
Udupi - 3	Belagavi - 0

Gender of participating Medical Personnel

The gender breakup of participating medical personnel is as below: Female Doctors - 27, Male Doctors - 4 as shown in Figure 13.

It is encouraging to see that 86% of families have mentioned that their child was examined by woman doctor. The POCSO Act Section 27 (2) requires that in case the victim is a girl child, the medical examination is to be conducted by a woman doctor. MOHFW Guidelines⁷, Page 20, states that in cases where a female doctor is unavailable, a male doctor can examine a child in the presence of a female assistant.

FIGURE 13: Medical Personnel
Gender N=32



3. AWARENESS OF POCSO ACT

For the effective implementation of the POCSO Act, it is vital that medical personnel have a good understanding and knowledge of the procedures for examination and care of sexual assault victims. The following is the analysis of questions that explore the same:

Maintaining confidentiality

100% medical personnel agreed that it is important to maintain confidentiality regarding the identity of the child at all times. POCSO Rule 5 (2) mandates that the child's identity is protected during all stages of the case, to avoid stigmatization and re-traumatization of the child.

Initial interaction with child and family and rapport building

97% of respondents confirmed that the medical personnel should introduce her/himself to the child and make the child comfortable before the medical examination. While the response to this question is extremely favourable, the practice on the ground is very different. Families who participated in the study had little knowledge of the identity of the doctor and were rarely informed of the procedures that were undertaken, despite the CrPC and MOHFW Guidelines⁷ specifying the same in detail.

Presence of parent/guardian during medical examination

84% confirmed that the medical examination of the child needs to be conducted in the presence of the parent or guardian. POCSO Act Section 27 (3), POCSO Rule 5 (2) and MOHFW Guidelines⁷, Page 20 state that the victim should be examined in the presence of a parent/guardian or someone who he/she trusts. Page 18 of MOHFW Guidelines⁷ also elaborates on how the hospital staff need to be mindful and take appropriate action in cases where the children may be accompanied by the abuser. In such a situation, a woman staff member appointed by the hospital/institution can be called in to be present during the examination. Support persons have shared that a similar approach has been adopted in 'elopement' cases where the 'victim' and 'accused' are in a consensual relationship.

Consent required prior to medical examination

91% of the doctors believe that if the child is over 12 years of age, his/her consent is required for medical examination. 91% respondents indicated that if the child does not consent to the examination, samples cannot be collected forcibly.

CrPC Section 164 A (4) states that the consent of the person being examined has to be recorded. Also, MOHFW Guidelines⁷, repeatedly refers (Pages 4, 6, 9, 16, 18, 24, 25, 60) to the need for consent of the victim. If the child and family do not want a medical examination despite being informed about reasons for conducting the same, then the doctor is required to document the refusal as 'informed refusal' in the medical report and defer or abandon the procedure till the child gives consent.

Government and private hospital required to provide treatment

68% of the doctors believed that medical examination of the child could be conducted in private hospitals, not just government hospitals. Section 357C Cr.PC says that both private and public health professionals are obligated to provide immediate treatment to victims of sexual offences. Criminal Law Amendment Act, 2013 has amended Section 357C of CrPC and Section 166B of IPC to provide free first aid and medical treatment for all victims of sexual offences.



Sexual abuse per se is a significant risk factor for occurrence of mental health problems in childhood, adolescence or adulthood. The secretive nature of abuse and the fact that at most times, the abuser is a known and trusted member of the child's inner circle is what makes it even more devastating. Given this, a number of negative consequences can occur to the child victim post the abuse.

Dr. Preeti Jacob

ASST PROFESSOR,
DEPT OF CHILD AND
ADOLESCENT PSYCHIATRY,
NIMHANS

Whether medical examination can be conducted only by a gynaecologist

59% medical personnel believed that the medico-legal examination of a girl-child victim can only be conducted by a gynaecologist. POCSO Act Section 27 (2) states that the medical examination of a girl child has to be conducted by a woman doctor. It does not specify the specialisation of the doctor. According to MOHFW Guidelines⁷, Page 8, examination of a case of sexual assault is to be conducted by a registered medical practitioner (RMP) employed in a hospital run by the government or a local authority and in the absence of such a practitioner, by any other RMP.

FIR required to initiate medical examination

22% of medical personnel were not aware that medical treatment can be initiated without an FIR. This is one of the reasons why some doctors refuse to examine a child victim of sexual violence, if unaccompanied by the police. POCSO Act Section 27 (1) and Rule 5 (3) state that medical care can be initiated without an FIR, legal, magisterial or other documentation. This has also been elaborated under Section 164A of the CrPC. According to the MOHFW Guidelines⁷, admission, evidence collection or filing a police complaint is not mandatory for providing treatment.

Not all POCSO cases need medical examination

75% of medical personnel indicated that all cases booked under POCSO Act require medical examinations, which sometimes is an unnecessary intervention for the child and family. For example, children who have faced sexual harassment (Section 11) or shown pornography (Section 13), do not require to be medically examined.

Two-Finger Test not to be conducted

85% of the medical personnel are aware that the two-finger test is not to be conducted anymore. The MOHFW Guidelines⁷, Pages 28 & 60, categorically states that per-vaginum examination, commonly known as the two-finger test, cannot be conducted to establish if sexual assault has occurred, as it is seen as a violation of the rights of the victim to privacy and dignity. Further, the Supreme Court has upheld on April 9th, 2013 that the two-finger test on a rape victim should be discontinued due to these demeaning reasons. (Rai, 2010)⁸.

Whether sedation of young child victim is recommended for sample collection

63% respondents recommended sedation if required. Sedation may not be required if the child is informed of the procedures by the doctor and with the support of the parents. The child can be made comfortable and requirements explained prior to the procedure. A sedation is recommended only if the child refuses the examination and requires immediate medical procedures as a result of the assault. POCSO Central Model Guidelines has elucidated the same in guideline 3.5. Speculum exam on a pre-pubertal child can be done under anesthesia after informing the child or caregiver. (Manoharan, 2015, Page 105)⁹.

Doctors cannot record statement

82% of interviewed medical personnel mentioned that a child's statement can be recorded by a doctor, which is procedurally incorrect. The reasons for the high percentage of incorrect responses by families could be because the question was not understood by the respondents and / or they believed the doctors can record the statement.

As per the CrPC Sections 161 and 164, a statement can be recorded only by the police and magistrate. The examining doctor is required to record the complete history of the incident, in the survivor's own words, as it has evidentiary value during trial.

Medical termination of pregnancy (MTP)

- Only 29% of respondents were aware that **MTP can be conducted on a pregnant girl even if FIR is not filed.** This could be due to lack of awareness regarding procedures related to MTP as elaborated in MTP Act and the MOHFW Guidelines⁷.
- 68% responded that **permission of the police or judiciary is not required for MTP.** However consent of the parent or caregiver is required when the person is below 18 years of age, as specified in Section 3(4)(a) of the MTP Act.
- 76% of respondents confirmed that the product of conception is to be preserved for testing following the MTP to ensure that the DNA can be matched with the perpetrator. This is elaborated in MOHFW Guidelines⁷ Page 34.



Challenges in ensuring parents/ caregivers continuing therapy/ counselling for their child. Many of the parents do not wish to continue therapy or follow up with mental health professionals thinking that talking about sexual abuse experience would be more traumatic for child. Some of the parents, hesitate to provide contact details to the treating team as they do not want treating team to contact them to continue follow up with child. Sexual abuse as it is traumatic for child, it is also traumatic memory for the parents. Both parent and children try to avoid any conversation that brings back the traumatic memories of abuse. Therefore, after initial contacts and assessments, many families drop out of follow up therapies.”

Dr. Kavita Jangam

ASSISTANT PROFESSOR,
DEPT OF PSYCHIATRIC SOCIAL
WORK, NIMHANS

Sexual Assault Forensic Evidence (SAFE) Kit

94% of respondents have said hospitals should have a SAFE kit. MOHFW Guidelines ⁷ has detailed information on page 21 regarding the SAFE kit. Materials required for a SAFE Kit are standard requirements at any medical facility, however, basic necessities for a kit are missing in few district hospitals.

Preservation of samples

91% respondents agreed that appropriate preservation of samples and smears and establishing chain of custody, is important for accuracy in test reports and admissibility during trial. This clearly shows that the awareness is high in this regard. Delays in collecting samples, improper preservation of samples and inability to establish chain of custody of collected samples, weakens the validity of the samples and the test report.

Testing of samples and evidence at FSL labs

82% of the respondents were aware that samples collected from the child can be tested only at the Forensic Science Laboratory (FSL) identified by the State, as specified in MOHFW Guidelines⁷, Page 22.

Medical report / medical opinion cannot be given before FSL report

66% of doctors were unaware that a provisional medical opinion can be given before receiving reports from FSL. The proforma for provisional and final medical opinion have been provided in the MOHFW Guidelines⁷, Pages 62 - 74. These Guidelines state that the examining doctor has to issue a written medical provisional opinion without any delay, upon completion of medical examination. The final medical opinion is to be issued after receiving reports from FSL to expedite the process of filing of chargesheet.

Medical reports to be given to family

As per the MOHFW Guidelines ⁷, Page 22, a copy of the medical report is to be handed over to the family of the victim, free of cost. While medical personnel were not asked this questions, 23% of the family stated that they had received a copy of the medical report, indicating that this protocol is not being followed by all medical personnel. 40% of the police, when asked the same question, responded that medical reports should be given to the family. Medical personnel to be sensitized to hand over copies of medical reports to families, for families to continue medical care at another hospital, if required.

Therapy and counselling

As per responses from families, only 55% of children were referred for psychological assistance in the districts after a POCSO case was reported. As per POCSO Rule 5 (4 (v)), referral to a psychologist or counsellor for the child and family must be made by the medical personnel for recovery and rehabilitation.

Medical personnel have shared there is a shortage of mental health professionals who are trained in handling CSA cases, especially in the districts.

4. TRAINING

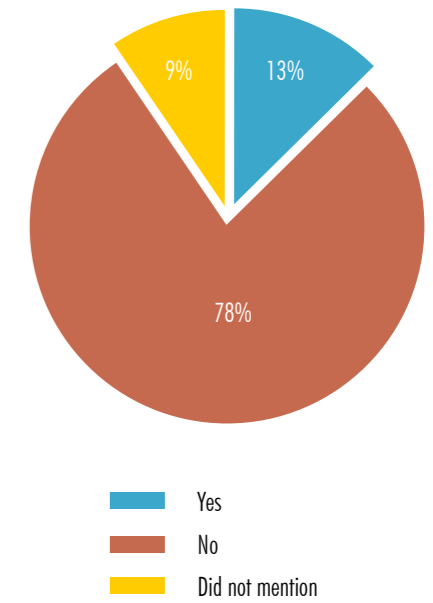
POCSO Act Section 43 (b) states that all stakeholders are to be periodically trained on the provisions of the Act. Figure 14 shows 13% medical personnel who participated had undergone training in medical management of cases of sexual violence, while 78% had received no training. 9% of the respondents did not answer this question.

5. CHALLENGES FACED BY MEDICAL PERSONNEL IN IMPLEMENTING POCSO ACT

Out of the 32 medical personnel who participated in the study, only nine ranked the list of predefined challenges. They were required to rank the challenges on a scale of 1 to 10, with rank 1 being the biggest challenge and 10 being the smallest challenge. Considering that the sample size is very small, the findings cannot be analysed and hence have been discarded. However, medical personnel have **shared their challenges** with fields investigators verbally and the same are listed below:

- The caseload at all government hospitals is very high, which led to the doctors not being able to prioritise the examination of a child sexual assault case, and not allocating the necessary amount of time required for such an examination.
- Lack of dedicated, trained and sensitized medical staff to address POCSO cases - to conduct forensic examination, adhere to interview methodology, and collect evidence in a prescribed manner and maintain chain of custody.

FIGURE 14 MEDICAL PERSONNEL Trained on POSCO Act 2012 N=32



- Non-availability of a Standard Operating Procedure (SOP), Sexual Assault Forensic Evidence (SAFE) Kit
- Formats for accurate medical reports or other materials needed.
- Delay in reporting of cases, because of which key forensic evidence is lost.
- Lack of trained counsellors or therapists available locally
- Delay in collecting samples from the hospital by the police which could lead to disintegration of the same.
- The entire process of termination and storage of evidence has been elaborated in detail in page 34 of the MOHFW Guidelines⁷. However storage facilities and transportation is a challenge from the police standpoint in the districts.
- In Karnataka, DNA testing is conducted only at the State FSL in Bengaluru. It is not possible for police to transport the samples from other parts of the state without samples getting degraded, given the distances and time taken to travel.

6. RECOMMENDATIONS FOR MEDICAL PERSONNEL UNDER POCSO ACT

The following are recommendations to improve medico-legal care to a child when a case is filed under the POCSO Act:

- **Standardised functioning of One Stop Centres** across the State based on 'Implementation Guidelines for the state governments/ UT administrations' issued by the Ministry of Women and Child Development, GOI
- **Standardised name for One Stop Centres** so that recall and recognition is easy. These centers are currently being referred to as Mahila Chikitsa Ghataka, Women's Special Ward, Nirbhaya Center or OSC

- **Standard Operating Procedures for management** of cases of sexual violence can be drafted in accordance with MOHFW Guidelines⁷ and the same notified across the State. This will include:

- » Proformas for history taking, examination and documentation of findings
- » Procedures for medical examination, treatment and collection of samples
- » Proformas for documentation and storage of samples collected
- » Police at district head quarters to ensure stock of DNA kits.
- » Procedures and protocols for MTP

- **Training modules for medical personnel to include:**

- » Dynamics of child sexual abuse
- » Relevant aspects of Child Development and Psychology
- » Forensic interview methodology
- » History taking, documentation, drafting provisional and final medical opinion
- » Collection and preservation of samples, including 'product of conception', chain of custody, packaging and sealing of samples

- **Mental health professionals trained to manage child sexual abuse:** Cadre of psychologists and psychiatrists trained in dealing with child victims of sexual abuse to be created across the State by drawing from 50 medical universities across Karnataka State. Directory to be available (online) to police, CWCs, DCPU and general public.

- **The Karnataka State Commission for the Protection of Child Rights** to appeal to Medical Council of India and Indian Medical Association that all medical interventions including medical examination, emergency and extended medical care for all cases of sexual violence against children to be provided free of charge by all RMPs, hospitals and medical facilities. Currently only government hospitals provide free medical care.
- **Amendment to the MBBS and nursing curricula** to be made by the Ministry of Health and Family Welfare, to include medical management of sexual crimes.

DETAILED FINDINGS

SPECIAL PUBLIC PROSECUTORS



Child friendly atmosphere, according to me is only about having the child friendly mindset for the stakeholders while dealing with the children and not about the systemic infrastructural facilities. Child friendly procedures may mean that each and every stakeholder handle the matter with human touch. Grounds are to be made out for grant of Interim and final compensation. Court cannot grant compensation mechanically, unless there is a reason to grant the same. The same principle applies for grant of such compensation by DLSAs. Unless there is convergence between the stakeholders, the trial will result in the acquittal of the accused and at times it may be an unjust acquittal. But the stakeholders will remain blaming each other for the lapses, which is not good for the criminal justice system in the country.

Ms. Uma M G

MEMBER SECRETARY,
KARNATAKA LEGAL SERVICES AUTHORITY

1. INTRODUCTION

The Special Public Prosecutor (SPP) is appointed under Section 32 of the POCSO Act to represent the State, on behalf of the child victim in a POCSO case. The SPP plays a major role in assisting the child and family navigate through the pre-trial and the trial procedures, in a fair and child-friendly manner. The SPP is appointed to the Special POCSO Court through a government notification.

A Special Court is designated for the purpose of trying offences under the POCSO Act and in each district, the sessions court is designated as the Special Court. The Special Court is required to follow child-friendly procedures as prescribed under Section 28(1) of POCSO Act to avoid re-victimization of the child. In few POCSO cases where the child victim is entitled to services provided for scheduled castes and scheduled tribes, the SPPs are the Public Prosecutors who handle cases under The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989.

2. DEMOGRAPHIC OF PARTICIPATING SPPs

In each district, the SPP appointed for POCSO cases were interviewed. 12 SPPs participated in the interview. As the sample size was only 12, the findings have been projected using values and not percentages. All 12 SPPs who participated in the study were male.

3. AWARENESS ON POCSO ACT

Presumption of Guilt

11 of the SPPs were aware that as per Section 29, a person accused of committing or abetting or attempting to commit offences of Penetrative Sexual Assault and or/ Sexual Assault is presumed to have committed the offence, unless the contrary is proved. One of the differences between POCSO Act and other Acts is the fact that the accused is considered guilty until proven innocent. This section has been explained in detail in 'Laws on Child Sexual Abuse in India' by Center for Child and the Law, National Law School of India University Page 186 - (Manoharan, 2016)⁹. Given the private nature and secrecy around child sexual abuse, the high incidence in India, the lack of corroborating medical evidence and given that the victim is a child, the burden of proof should continue to lie on the accused in POCSO cases. (Manoharan, 2016)⁹



The presumption under the POCSO Act is similar to the one under the Narcotics Drugs and Psychotropic Substances Act. Based on our studies, I can say that the presumption is rarely invoked by Special Courts. The burden is very much on the prosecution to establish beyond reasonable doubt the accused person's guilt.

Swagata Raha

SENIOR RESEARCH CONSULTANT,
CENTER FOR CHILD AND THE
LAW, NATIONAL LAW SCHOOL OF
INDIA UNIVERSITY

164 Statement

Only 6 SPPs were aware that statement of the child recorded by a magistrate under Section 164 of the CrPC can be admitted in court as per Section 25-26 of POCSO Act.

Pre-trial rapport building

10 SPPs acknowledged that it is necessary to meet the child before the child's testimony in court. This is a key procedural issue in which the prosecutor can meet the family and child before the court hearing, to share updates and court statements for the day and apprise them of what to expect during the trial for the day. This will facilitate the child and family to prepare themselves to depose confidently in court.

Witnessing trial proceedings

10 of the SPPs were aware that public is not allowed during the trial of POCSO cases. All the SPPs were aware that the trial of POCSO cases is to be conducted in the presence of the child's parents or any other person in whom the child has trust or confidence as per Section 33 (4) of the Act. 77% of the families indicated no one else was permitted inside the courtroom during child's testimony. Persons permitted to be present during *in camera* trials include support person, social workers or special educators and interpreters. In some of the cases families have indicated that trials were conducted in open court. 'A literal interpretation of Section 37 of the POCSO Act suggests that it is not confined to the evidence stage but extends to the entire proceedings. Hence, the trial cannot cease to be held *in camera* after the child has tendered evidence. The Special Court has not been vested with any discretion in this regard and will have to conduct the entire trial *in camera*.'- (Manoharan, 2016)⁹

Procedures for examination in court

10 SPPs agreed that questions demeaning the character of the child should not to be asked. This is in accordance with Section 33 (6) which says the Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial. However, responses from families indicated that in 23% cases, the children were asked uncomfortable questions.



The issue of jurisdiction of police stations and their concerned courts, particularly in Bengaluru urban and rural areas is still an unsolved myth! The evolution of children's court is still taking a lot of time - we are mute spectators to the violation of law; accused and the victim still waiting in the same corridor; accused being present in the court hall; sometimes the advocate of the accused accosting the victim and their families in the court premises itself; children made to come to the proceedings repeatedly...

Vasudeva Sharma N. V.

EXECUTIVE DIRECTOR,
CHILD RIGHTS TRUST

4. COMMUNICATION WITH CHILD DURING TRIAL

Questioning of Child

11 SPPs were aware that the child cannot be questioned directly. According to POCSO Act Section 33 (2), SPPs and lawyer for the accused are to submit the list of questions intended to be asked of the child to the Special Court. The Special Court, in turn, is required to pose these questions in a manner which is uncomplicated, not demeaning, clearly understood and developmentally appropriate to the child. The investigators were told that despite this, prosecutors and lawyers for the accused continue to pose questions directly to the child. Families shared with field investigators that children were asked questions related to clothes worn by them and detailed information of the accused. They were also asked about the time, date, day of week and duration of the offence, sequence of events that occurred several months or even years ago.

Place of Examination

Only 4 SPPs were aware that the child can be examined in a place other than the Special Court. While POCSO Act Section 37 states that the child can be examined at a place other than the court, this is applicable only if the Special Court feels the need for the same.

Facing the Accused in Court

11 SPPs agreed that the accused should not be brought before the child while the child's statement is being recorded. Section 36 (1) states the Special Court should ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child. POCSO Act Section 36 (2) also specifies that child's testimony to be recorded through video conferencing or by utilizing one-way visibility mirrors or curtains. However, 38% families stated that a screen had not been placed in front of the accused during trial. 47% of the families shared that the accused was present in the vicinity of the child while waiting for the hearing.

Interpreters and Translators

11 of the SPPs were aware that in accordance with POCSO Act Sections 38 and Section 282 of the CrPC, services of an interpreter, translator, special educator are to be provided when the child does not understand the language or requires a special educator. The qualifications and experiences of the interpreters and others engaged for the purpose of assisting a child and family while reporting a case and while recording statements of the child are defined in POCSO Rule 3. Stakeholders shared with field investigators that information regarding these experts is not available, when required, especially in remote districts. Access to such specialists is higher in urban cities like Bengaluru than in the rural areas.

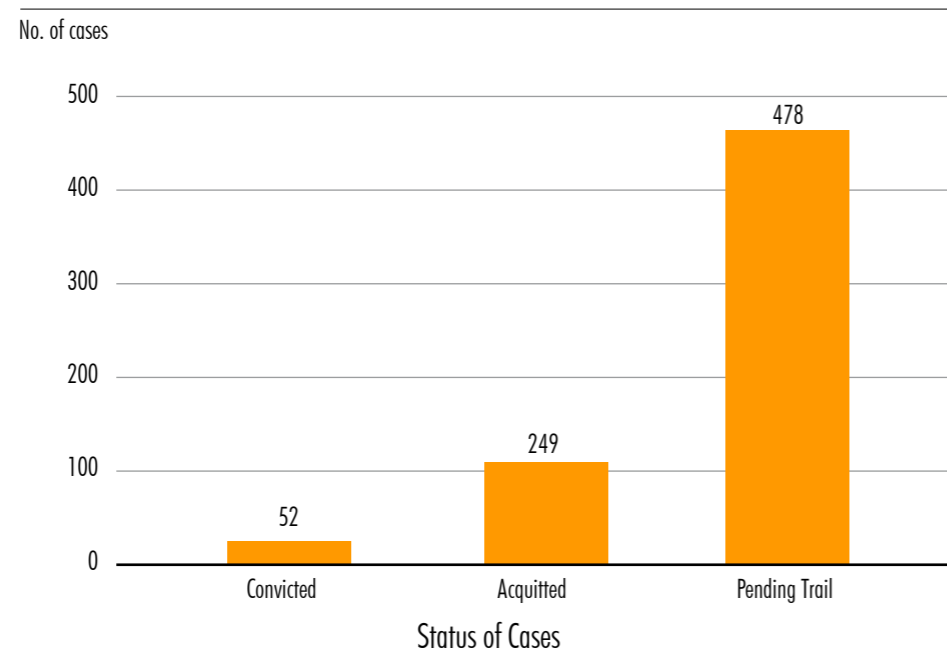
Legal Representatives for the Victim

8 of the SPPs were aware of the provision that a child is entitled to legal assistance, apart from the one provided by the State. However families shared with field investigators that this information was not shared with them. The POCSO Act Section 40 explains the right to engage legal counsel of family's choice or to request for free legal aid through District Legal Services Authority.

Juvenile as Accused

11 SPPs confirmed that when the accused is below 18 years, the case will be tried by the Juvenile Justice Board (JJB) and provisions prescribed under the Juvenile Justice (JJ) Act are to be followed. Section 34 (1-3) of POCSO Act describes the procedure when the accused is below 18 years and age determination of the child victim.

GRAPH 8: Public Prosecutor
Status of cases Information shared by 10 out of from 12 SPPs



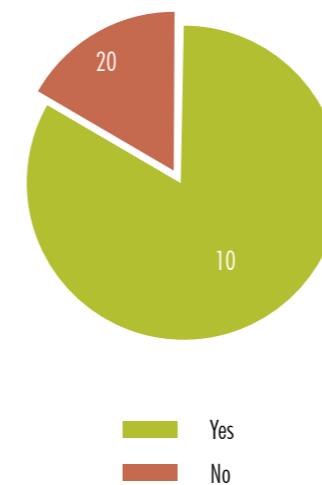
DISPOSAL OF CASES

When asked regarding timeframe for disposal of cases, 10 of the 12 participating SPPs **indicated awareness** that once the Special Court takes up the matter, the trial should be completed within one year as stated in POCSO Act Section 35 (2).

Graph 8 illustrates status of cases until 2016 shared by ten SPPs. The graph shows a high number of cases that are still pending trial and higher rates of acquittals compared to convictions.

POCSO Act Section 35 (1) states that the **evidence of the child** is to be recorded within a period of thirty days of the Special Court taking cognizance of the offence (in this case, taking cognizance indicates that Special Court has received the charge sheet and a special calendar case number has been assigned). Reasons for delay, if any, are to be recorded by the Special Court.

FIGURE 15: Public Prosecutor
Training received on POCSO N=12



5. TRAINING RECEIVED

Figure 15 shows that 10 of the SPPs indicated they received training while 2 SPPs indicated that they had not undergone any training in handling cases under POCSO. Despite 10 SPPs maintaining that they have undergone training, procedures followed during the trial is not in accordance with the POCSO Act and Rules. This has been substantiated earlier, through testimonies of families and responses from the SPPs in:

- Communicating with child
- Place of examination
- Facing the accused in court

6. CHALLENGES FACED BY SPECIAL PUBLIC PROSECUTORS IN IMPLEMENTING THE POCSO ACT

The Public Prosecutors are crucial stakeholders as a link between the judiciary, the police and the family. Out of the 12 SPPs who participated in the study, 8 responded to the questionnaire related to challenges. They were given the following list of predefined challenges and asked to rank them, giving a rank of 1 to the biggest challenge and 6 to the least challenge:

1. Delay in legal process of POCSO cases due to Special Courts dealing with many other types of cases
2. Lack of specialized training in handling CSA cases

3. Case becoming weak due to inadequate investigation
4. Inability to engage with most families prior to commencement of trial.
5. Insufficient collaboration among various support systems like hospitals, courts, CWC, police etc.
6. High incidence of elopement cases among girls below 18 years of age, who turn hostile during the trial.

6 SPPs have rated **point six as the most challenging** and this was consistent with observations on the field and responses from other stakeholders in the study.

The SPPs shared the following additional challenges that they faced:

- The sessions courts assigned as 'Special Courts' are not exclusively for cases of CSA so the caseload is very high.
 - The accused often hire excellent legal counsel to defend their case and the family seldom have committed private lawyers to assist the SPP or take up pro bono cases which would ease the burden on them.
 - Infrastructure issues where an SPP did not have an office to work from and was provided only a makeshift workspace. Another SPP said that he does not have basic equipment like tables, storage cupboards or stationary for day to day work. They are in need of clerks and typists who can assist them with statements, clauses or case updates.
 - Due to heavy pendency of cases in the courts, the trial is delayed due to which children forget several details of the incident and depose unconvincingly.
- One SPP shared that the basic need for screens in courts is not provided and suggested that waiting rooms could be made mandatory to help the family and child.
 - Since the guidelines for interim compensation were not clear, they are unable to help families in need.
 - List of support persons, interpreters and special educators are not provided by the DCPUs, making it hard for the prosecutors to provide an expert when the need arises.
 - Delays due to (a) late filing of chargesheet, as FSL reports are awaited (6-9 months), (b) scrutiny of charge-sheet by Assistant Public Prosecutor (upto three months) and late (c) completion of investigation. This has created a sense of disillusionment among the families, leading to children often stating that they do not want to participate in the hearings. This has also been cited as one of the reasons for children turning hostile as he/she is forcibly required to remember all details of the abuse to depose correctly in Court.

7. RECOMMENDATIONS TO ENHANCE APPROACH OF PROSECUTORS UNDER POCSO ACT TRIAL

The following are recommendations to improve legal support to a child when a case is filed under the POCSO Act:

- **SPP can request for the following to support** a child-friendly environment when the child is questioned in court:
 - » Time to build rapport with the child, as it is vital to the child's mental framework
 - » Screen to be placed between the accused and the child .
 - » Frequent breaks to be allowed for the child to gain composure as per the Act.
 - » Video conferencing In cases where the child is extremely traumatised, children with special needs, very young children or those living far from the Special Court
 - » Latest list with details of interpreters, translators, special educators and support persons from the DCPU (as per POCSO Rule 3).

- **State Legal Services Authority to set up a panel** of private and retired lawyers at state and district level to support SPPs in drafting petitions, objections, opening and closing arguments.

- **Training Modules for SPPs can include:**
 - » Dynamics of CSA, in particular incest
 - » Relevant aspects of Child Development and Psychology with special emphasis on communicating with children of different ages, experiences, and backgrounds
 - » Forensic interview methodology
 - » Strategies in prosecution
 - » Case laws, Supreme Court judgments, latest government notifications
 - » Child friendly procedures prescribed in POCSO Act, Rules and Guidelines
 - » Convergence with stakeholders
 - » Proactive approach to prosecution, ensuring that rights of the child are upheld, appreciation of evidence

FINDINGS

CHILD WELFARE COMMITTEE



CWC is in charge of care and protection, being the primary players in rehabilitation of survivors. Their role needs to be enhanced since currently there is a vacuum in taking care of the child post trauma. The commission can facilitate this since it is already mandated by the POCSO Law. CWC infrastructure can also be improved to help them serve better. CWC is currently overburdened. They can use a team of support persons to help them.

Nina Nayak

FORMER CHAIRPERSON,
KSCPCR AND FORMER MEMBER
NCPCR, FORMER CHAIRPERSON
CWC, BANGALORE

INTRODUCTION

Juvenile Justice (JJ) Act places the responsibility of the care and protection of a child on the Child Welfare Committee (CWC). The CWC bench has the powers of a first class magistrate as per Section 27 (9) of the JJ Act, 2015. Section 30(xiii) further defines the role of CWC with regard to a child who has faced sexual abuse and is in need of care and protection.

According to POCSO Rule 4(3), the SJPU/police need to produce any child victim, who is in need of care and protection, before CWC within 24 hours. Particularly if the offender is sharing the same household as the child or living in the same house, or child is living in an institution or is an orphan without support. The CWC can then decide if the produced child requires care and protection. (Manoharan, 2015)9 .

CWC members in the 10 districts were asked to rate a list of six challenges that they faced while handling POCSO cases. The members rated "Do not have the manpower to follow up on cases and ensure normalization of child routine," as the biggest challenge.

In addition, the following challenges faced by CWC members were shared with field investigators:

- Police not handing over the FIR copies to CWC, due to which the Committee was sometimes unaware of the cases.
- No clear-cut guidelines regarding their roles and responsibilities in POCSO cases.
- Not able to / do not have the authority to take cognizance of lapses on the part of investigating agencies like the police or prosecutors
- Delay in disbursement of funds from the government to the DCPUs for sponsorship programs, leading to delay in children being awarded the same.

RECOMMENDATIONS

1. Given the volume and diversity of cases handled by the CWC, additional trained staff is required for administration, preparing Social Investigation Reports, creating Individual Care Plans and for counselling and therapy for the children in their care.
2. SOP's need to be formulated and distributed across the states
3. Appointments of exclusive District Child Protection Officers to be expedited. Currently only three districts in Karnataka have DCPU. The rest are additional charge.

FINDINGS

KARNATAKA STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS



POCSO has been a milestone as far as sexual crimes on children are concerned. The problems in the State is more regarding the implementation of the Act. There seems to be a lack of coordination between the different departments. The need of the hour is to have all the stakeholders work in convergence, to make the Act more viable, keeping the best interest of the child in mind at all times.

Dr. Kripa Amar Alva
CHAIRPERSON, KSCPCR, BANGALORE

INTRODUCTION

According to POCSO Act Section 44, the Karnataka State Commission for the Protection of Child Rights is required to monitor the implementation of the provisions of the POCSO Act. The roles are further elaborated in POCSO Rule 6 (13); the Commission is authorised to call for reports from specific cases falling within the jurisdiction of a CWC, empowered to collect information and data from relevant stakeholders regarding reported cases of sexual abuse and their disposal, ensuring that prescribed timeframes and procedures are followed. POCSO Rule 6 (4) suggests that this data may then be used to assess the implementation of the provisions of the act.

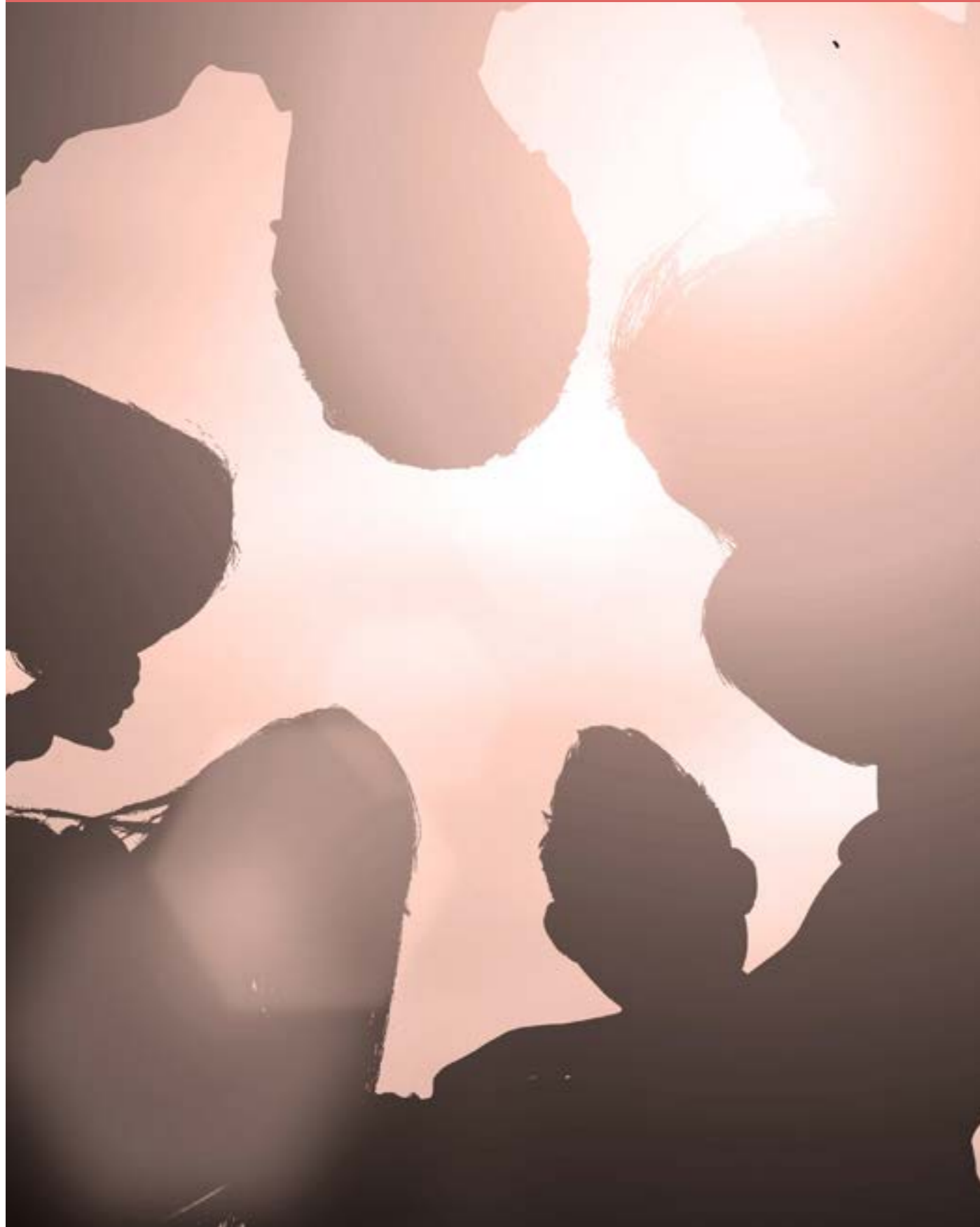
In order to understand the role of the KSCPCR in the implementation of POCSO Act, a questionnaire was administered to the Commission. Their responses have been mentioned in Table 5.

TABLE.5 The responses to the questionnaire for KSCPCR

	Question	Response
1	Does the Commission have a record of cases booked under POCSO Act in Karnataka since 2012?	Yes
2	Does Commission receive district-wise records on POCSO cases registered in Karnataka State?	Yes
3	If yes, source of information? DCPU/CWC/SJPU/SCRB/Special Courts	SJPU
4	Is there a prescribed format for receiving information?	YES
5	Is there any follow up on all cases or specific cases done by Commission?	Yes, on specific cases
6	Has the Commission been involved in providing training on POCSO Act to all stakeholders?	Yes
7	How often does the Commission conduct public awareness campaigns related to implementation of POCSO Act?	Not yet
8	Has Commission initiated media campaigns regarding POCSO Act, procedures and provisions?	Not yet
9	Does the Annual Report of the Commission contain information on: a. Number and details of POCSO cases in Karnataka State b. Compliance status of timeframes of cases	Yes No
10	Has the Commission faced any challenges while monitoring the implementation of POCSO Act?	No

Monitoring Guidelines¹⁵ for NCPCR / SCPCR in the National Commission for Protection of Child Rights, 2013, elaborates Roles and Functions of Various Stakeholders under POCSO. These Guidelines also require NCPCR or SCPCR to systemize the process of data collection by compiling information from the implementing agencies functioning under the Act.

DISCUSSION



Family members of the respondents and or people known to them clearly form the majority of abusers. Male cousins, uncles, neighbors, male family friends and servants were very frequently perpetrators. It is significant that fathers and brothers, though fewer in numbers, are also perpetrators.

Voices from the Silent Zone

WOMEN'S EXPERIENCES OF INCEST AND CHILDHOOD SEXUAL ABUSE CONDUCTED BY RAHI, NEW DELHI

The Study on the Implementation of POCSO Act in Karnataka State has brought forward many aspects regarding the ground realities and challenges. The majority of the challenges faced was found to be primarily due to limited awareness and understanding of the Act, limited accountability of stakeholders and deep seated cultural and social constructs that come in the way of effective implementation. Some important inferences that emerged from this Study have been discussed and elaborated here.

1. BEST INTERESTS OF THE CHILD

Although this Study focused on the implementation of the POCSO Act, the deeper objective was to understand whether child friendly procedures were being followed at every level. The significant findings regarding the best interests of the child have been discussed below.

a. Sensitive interactions with children

Families have shared with field investigators that stakeholders have been insensitive at times. This includes inappropriate handling of incest cases, long wait at police stations, multiple individuals questioning the family and child, trivialising the abuse based on personal biases and treating it as another regular offence.

Field investigators noted that in a few districts cases were handled in accordance with child friendly procedures prescribed under POCSO Act. These districts have been able to implement the procedures sensitively due to the presence of proactive officials.

It is vital that all stakeholders be sensitised on various aspects of child development, dynamics of child abuse particularly incest, sexuality and gender sensitivity. This will support police, doctors, CWCs, DCPUs, prosecution and judiciary to understand the correlation of the same to the effective implementation of the Act.

The change in mindset and attitude can:

- Prevent the child and family from turning hostile while pursuing justice
- Avoid revictimization of the child and family
- Ensure speedy rehabilitation

b. Medical management of cases have been insensitive according to few families on some occasions

- Waiting for long hours for the doctors to attend to the child
- Doctor to conduct a medico legal examination was unavailable,
- Not informed or explained about the procedures followed i.e. informed consent was not taken
- Treatment provided and rationale for collecting samples as part of evidence not explained.
- Families were admonished if they questioned the same.

In one district there is a practice of admitting a child in the ICU when a doctor is not available to attend. . The intention of keeping the child in a safe place away from the public eye and from possible attack by the abuser, as well as preventing loss of evidence, while good intentioned, caused hardship and confusion for both the child and family.

Even in cases where the FIR has mentioned sexual assault which was non penetrative or when the assault had occurred beyond the stipulated period of time of sample collection, medical records have shown that doctors routinely collected samples and smears from genitals for testing. This increases the workload of the State FSL, re-traumatisation of the victim and delays filing of charge-sheet. Considering the finding will not have any proof of assault, it ends up strengthening the case for the defence as it completely diverts the attention of the court from the actual assault. It is therefore imperative that the MOHFW Guidelines 7, which have elaborated the child sensitive procedures, are a part of the training and sensitisation of medical personnel.

c. Medical Termination of Pregnancy (MTP): It was found during this Study that medical personnel were unsure of the exact protocols and procedures to be considered for a MTP, especially in POCSO cases.

- Several respondents were of the opinion that a court order was required to initiate a MTP, even when the pregnancy was below the timeframe stipulated by MTP Act and other directives issued by the Supreme Court.
- In addition, most medical personnel who participated in this Study believed that a FIR needs to be registered first in order to initiate a MTP.

The findings of this Study regarding MTP in POCSO cases indicates that SOPs or FAQs have to be prepared for medical personnel, CWC members, Police and FSL, based on existing Laws and Guidelines, so that delays in conducting MTPs are avoided. The best interests of the child with regard to emotional, physical well being and long term financial needs are to be considered. Furthermore, in-depth training is required for the medical staff regarding the legal implications of MTP.

Most medical personnel who participated in this Study were aware that Product of Conception (PoC) needs to be preserved and sent to the FSL (DNA Center), in order to match the DNA of the accused. As per the MOHFW Guidelines⁷, the PoC is to be preserved and transported at 4 degree Celsius to avoid degradation of the sample. Compliance with this requirement was seen to be a challenge, as distances and time taken to travel from the districts to the DNA Center located in Bengaluru made it impractical.

This necessitates the addition of more DNA Centers in Karnataka, to meet the high volume of samples that are generated in sexual crimes. With all these samples from across the State being sent to FSL Center in Bengaluru for DNA testing,

MTP Act-1971

3. When Pregnancies may be terminated by registered medical practitioners.-

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,- (a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are. Of opinion, formed in good faith, that,- (i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Explanation 1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4) (b) Save as otherwise provided in C1.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.

5. Sections 3 and 4 when not to apply.- (1) The provisions of Sec.4 and so much of the provisions of sub-section (2) of Sec. 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.



The analysis of 667 cases of the Special Court in the state of Delhi reveals that amongst the 558 cases where the age claimed was specified, about 69% of the cases involved children between the age group of 12 to 18 (383 cases). Amongst the total group of victims, the 12 to 15 age group formed the largest group consisting of 30% of the cases (197 cases), while the 16 to 18 age group formed the second largest group consisting of 28% of the cases (186 cases). Children below 5 years constituted only 7% of the total victims.

REPORT OF STUDY ON WORKING OF SPECIAL COURTS UNDER POCSO ACT IN DELHI, BY CENTER FOR CHILD AND THE LAW (REFERENCE 32)

d. Relationship with accused

An accurate estimate of the number of cases in which the victim knew the accused could not be assessed due to the hesitancy of family in revealing this information. The National Study on Child Abuse 20072 (page 102) also revealed similar findings.

One of the primary fears and concerns that a child and family expressed following reporting a POCSO case was coming face to face with the accused at various stages of investigation and during the trial. This fear is heightened when the accused is a close family member, or is known to the child and family or is in a position of power. Furthermore, seeing the accused being brought by the police in handcuffs or other restraints causes the child to experience confusion, shame, guilt and fear, prior to his/her deposition. 7% of the cases in this Study were incest. It is possible that this percentage may be higher.

In order to increase reporting of incest cases, the stakeholders need to accept the case prima facie, not encourage compromise, and keep an unbiased view while investigating and prosecuting these cases.

2. AGE AND GENDER OF THE CHILDREN

The Study gathered key information regarding the profile of the child survivors, to understand better their experiences with the criminal justice system. Few of these important findings have been reviewed below:

a. Age group of children

Families shared with field investigations that some girls in the age group of 16 - 18 years were in consensual relationships with the alleged accused. Feedback to field investigators from stakeholders showed that parents and caregivers initially approach the police when a girl goes missing. The following happens thereafter :-

- Police file a missing person's complaint under kidnapping and procurement (Section 363 and 366 of the IPC).
- When the child is traced and found to be with his/her partner or friend, sections of POCSO Act are included in the FIR.
- If the partner/friend is below the age of 18 years and is a male, he is considered a child in conflict with the law under the Juvenile Justice Act 2015 and is placed in the Government Observation Home.

In a few cases the victim and accused are married either with or without consent, due to social pressures.

Interestingly, this Study found that in 62% of the cases victims were in the age group of 16-18 years, contrary to the findings in CCL's Study of Delhi Courts 32 which found that in 28% cases, the victims are in the same age group.

According to a survey conducted by India Today and published in the 19th January 2015 edition 33

- 3 out of 10 students of Class 10 surveyed are sexually active.
- Age of first sexual encounter is 15-16 (as compared to 18-26 in 2004)
- 22% of teens surveyed have had sexual encounters with relatives
- 25% knew a teen that got pregnant, goes up to 47% in the metros. 41% do not want to use any contraception
- 2% say they know about sex from parents. 63% get to know about sex from their friends
- 26% are into sexting, 46% into porn, 6% into sex with social network friends
- 89% thinks it is important to look sexy

Although this establishes that children are indulging in consensual sex, we cannot ignore the fact that this age group is also vulnerable to grooming. This coerces the child victim to consent to sexual relationship with the perpetrator. This Study did not explore the nature of the relationship of the child and the perpetrator as children were not interviewed. This needs further detailed study and detailed study and understanding.

b. Gender of children reporting CSA

What was noteworthy in this Study was that out of 98 cases studied, only one was a case where the victim was a boy. As per SCRB data, the total number of POCSO cases registered in Karnataka, as on May 2017 is 4463. Of these cases, the percentage of cases where the victim was a boy is only 4% compared to 96% girls, corroborating the findings of this Study.

These findings are completely contrary to the findings of the National Study on Child Abuse, 20072, where the percentage of boys being sexually abused was 53% versus 47% girls. Despite POCSO being a gender-neutral act, the reporting of cases of sexual abuse of boys still remains abysmally low. The possible reasons for this have been mentioned below.

- Patriarchal approach in Indian culture where boys are not encouraged to express their feelings and emotions. The few boys who come forward are considered 'weak or effeminate and or / labelled 'homosexual' if they do.

- Most cases of sexual offences against boys are either anal or oral and often goes undetected.
- Since sexual abuse of boys does not lead to pregnancy, it is ignored, as it does not affect 'family honour'.
- It is often labelled as 'sexual experimentation' by the boys without looking into the coercion or position of power used by the perpetrator

c. Mandatory reporting

This Study assessed the awareness of police regarding mandatory reporting of cases of sexual offences against children. 36% of police were unaware of the obligation to report under Section 19 of POCSO Act. However this Study did not assess the awareness levels of stakeholders such as families, medical personnel and PPs with regard to mandatory reporting and was a limitation

- From interactions with families, when the abuser was a close member of the family, mandatory reporting was not easy, given the social construct, financial dependence and the stigmatization that the child and family went through.
- In addition, the findings from this Study revealed that mandatory reporting posed a challenge, specifically for the age group of 16-18 years, as most of them are in consensual relationships.
- Besides mental health professionals have shared that mandatory reporting has been detrimental to the ethics of confidentiality and in the healing of the child.

Since its enactment, the merits and demerits of Section 19 of POCSO Act has been discussed extensively. Having an efficient child protection system in place, where re-victimization is minimised, will support reporting cases of child sexual abuse.

3. CHILD SENSITIVE JUDICIAL SYSTEMS

This Study did not interact with the judges, however, the experiences of families during trial were documented through the questionnaires and through interactions with prosecutors. The key findings are discussed below:

a. Low confidence in the existing systems including the legal system was quoted by 16 families as the primary challenges faced. Information gathered by the field investigators revealed that families found the stakeholders were rarely child friendly or empathetic. Cases were often handled as any other criminal case, notwithstanding POCSO Act defining specific procedures, regarding cases involving children who have faced sexual violence. In few districts, name of the child is called out by the court officials revealing the child's identity, delays in putting the screen separating the accused and the child, long waiting periods for the family with no facilities of waiting rooms or toilets nearby are other issues.

b. Adjournments, delays and repeated visits to court

While this Study has not attempted to ascertain reasons for extended trials in POCSO cases, based on the feedback from families, prosecutors, and support persons, some of the reasons for delays and adjournments are :

- Defence lawyer / Prosecutor not present on a particular day or repeatedly requesting extension.
- Lawyer for the accused not submitted the list of questions intended for the child victim to the judge
- Child not prepared for the court experience and has a breakdown once he/she enters the court complex or courtroom
- Material evidence not available in court for child to identify
- Following compromise, victims turn hostile or do not cooperate in the case, more so in elopement cases.
- Only when child enters the courtroom on the day of his/her deposition, do the officials in the court realise that he/she requires the assistance of a special educator, sign language expert, mental health professional or interpreter. So the case is again postponed till a court-accepted expert is identified and summoned.
- Families reported that in some instances, the prosecutors encouraged out-of-court settlements/compromises of their cases.



Considering the uniform age of consent under the POCSO Act, adolescents involved in romantic relationship are seen as devoid of desire and autonomy. The law operates in a gendered way by treating the boys as alleged perpetrators and the girls as victims. By requiring JJBs to conduct preliminary assessment, in heinous offences such as rape and penetrative sexual assault, the boy now runs the risk of being transferred to the Children's Court for trial as an adult.

Swagata Raha

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UNIVERSITY

4. LACK OF CONVERGENCE AMONG STAKEHOLDERS

Interactions of field investigators with families, the police, medical personnel and members of the legal system have shown that there is clearly a lack of convergence among stakeholders. Coordination between all functionaries such as the medical, police, prosecutors, CWC, DCPU, support persons, FSL, SPPs, JJBs, SCPCR and NGOs working with children is essential for effective implementation of the POCSO act. In addition the families who are going through the criminal justice system needs information given to them, on all the stages in the investigation and the trial, to feel more engaged and optimistic without turning hostile.

In a recent PIL before Delhi High Court 17, families have submitted that they are not informed regarding the developments of their case, primarily bail for the accused, despite families having received death threats and the police being informed. The petitioners of the PIL have also urged the High Court to direct the trial court to ensure effective participation of the child and family through their legal representative through all stages of the judicial process.

5. PENDING TRIALS AND CONVICTION RATES

The POCSO Act, despite having over-riding powers over other Acts and having specific provisions and timeframes to ensure the well-being of a child through the criminal justice system, has very high pendency and dismal conviction rates across India. NCRB data from several states across the nation have confirmed the same. The possible reasons for low convictions and high pendency could also be attributed to insubstantial investigations, inefficacious prosecution, the need for dedicated children's courts, hostile witnesses and out of court compromise of cases.

The findings of this Study revealed that 39% families responded that the accused was convicted. This was not an accurate representation of the actual conviction rate according to the SCR. Hence further research and analysis was done to gather information on the actual status of cases in Karnataka.

TABLE. 6
SCR Data on Status of POCSO cases in Karnataka from 2013-2017

Classification	Number of Cases	%	Description
Before Completion of Trial			
Under investigation	1206	27.02	Investigation Underway
Pending trial	2632	58.96	Trial Underway
After Completion of Trial			
Conviction	77	12.32	Where accused is convicted
Dismissed/Acquittal	449	71.84	Where accused is acquitted
False case	63	1.41	Case is considered false.
Undetected	15	0.34	Accused undetected for 6 months.
Abated	8	0.18	Where accused dies during investigation or trial
Compounded	4	0.09	Where the families compromise
Traced	3	0.07	Where victim or accused was missing and then traced
Other disposal	6	0.13	Case closed by quashing at start of trial or during investigation
Total number of cases	4463		

The SCR data illustrated in *Table 6 - SCR Data on Status of POCSO cases* in Karnataka from 2013-2017, shows a total number of 4,463 POCSO cases registered in Karnataka State between January 2013 - June 2017.

- **Under investigation:** 27.2% of the total cases, were shown to be still under investigation (UI) 11 cases from 2013, 32 cases from 2014, 73 cases from 2015 and 485 from 2016 continue to be UI, the reasons for which calls for an in depth, independent inquiry and analysis by the relevant departments.
- **Pending trial:** 58.97% of the POCSO cases across Karnataka are 'Pending Trial' (trial has started and underway). 258 cases from 2013, 684 cases from 2014, 680 cases from 2015 and 939 in 2016. A total number of 3832 cases are yet to reach the final verdict stage, which may take several years from now.
- **Convictions:** The conviction rate stood at 12.32% in Karnataka, calculated by taking into account the completed trials* from 2013-2017.
- **Acquittals:** 71.79% were shown to have ended in acquittals, calculated from the total cases where trials were completed* between 2013-2017.

**Cases considered as 'Completed Trials' also include 'False cases', 'Undetected', 'Compounded', 'Abated',*

Centralised and standardised data collection tools and systems, using updated technology will go a long way in generating accurate data, creating awareness, ensuring review of the existing systems. It could also contribute to advocacy and policy level changes. Higher conviction rates, coupled with a sensitive and efficient criminal-justice system will increase the confidence of the public, thereby encouraging more people to report cases of CSA and ensuring that offenders are punished.

CONCLUSION

In conclusion, the following outcomes of the study can be considered for holistic implementation of POCSO Act:

- Challenges brought forth by all the stakeholders in this Study need to be addressed and systems to mitigate them, identified.
- Monitoring and review mechanisms can be adopted, to increase accountability and ensure better delivery of justice to the family.
- Designate a panel of senior State functionaries, whom the family can approach in case of dereliction by any stakeholder.
- A comprehensive and in-depth plan of action needs to be created, involving all the relevant stakeholders.

Furthermore, there is a need for stakeholders to approach their work without imposing their personal prejudices and biases, in order to positively impact the implementation of POCSO Act.

While efforts are being made to improve the gaps in the system, awareness among the public regarding personal safety, adolescent sexuality and reproductive health are extremely low. This has to be addressed simultaneously on a larger scale, in order to have an informed society, which in turn would lead to better implementation of the various legislations related to child protection.

BEYOND STUDY

RELEVANT TOPICS IN POCSO

Role of support person in POCSO procedures

Compensation for victims under POCSO Act

Role of media in reporting sexual crimes

Progressive practices in India and abroad

BEYOND STUDY

ROLE OF SUPPORT PERSON IN POCSO PROCEDURES



“

This is not something that one can fight on our own, especially when one is a parent of an abused child, who is also emotionally and financially drained. We are very thankful to the support person who are a lot more knowledgeable and experienced. Without them, we would have been at the mercy of a system that is not very child friendly. I was grilled for over five and a half hours in the most crude and unprofessional manner. Ever since the support person came on the scene, we now see some light at the end of a tunnel that purports to be the judicial process.

Mother of a child

WHO WAS ABUSED IN SCHOOL

The incidence of CSA is traumatic in itself, to the child and family. For them to navigate the criminal justice system in their quest for justice is a daunting task. It is therefore vital to have a support person who is familiar with the system to guide the child and family through the various stages of the case. This helps in minimizing re-victimization. POCSO Rule 4 (7-10) and POCSO Model Guidelines 10 allows for a support person to be appointed to assist the child victim and his/her family during the investigation and trial of a sexual offence.

FINDINGS

Field investigators interacted with support persons in Bengaluru Urban District and documented their experiences, though they were not part of the research study as respondents. Some of the findings from these interactions are listed below:

- Limited awareness among stakeholders regarding provisions for support persons under POCSO Act.
- The child and family are usually not informed about the availability of support persons by SJPU/police, CWC or Court.
- CWC does not receive information regarding all cases and are therefore struggling to appoint support persons in all cases.
- The SPPs/Judges are often unaware that the support person can be permitted inside the courtroom during a child's testimony.
- There is a dire need to create a pool of trained support persons to assist more families.

RECOMMENDATIONS

- Awareness programs by the State and District Legal Services Authority to encourage interested people, with the right aptitude, to enlist as support persons
- Training programs for support persons to be organised by DCPU and DLSA
- Support persons to be remunerated as per Model Guidelines, Section 39¹⁸
- Maintaining a list of support persons by the DCPU and sharing it with the CWC, Special Court, SPP's and the Police.

In urban areas such as Bengaluru the families are informed about the support person provisions through known channels. However, in most other districts, families and other stakeholders have limited awareness of the availability of support systems under POCSO Act, Rules and Guidelines.



We continue to wonder, in what way we can support the victim to stand by their original statements. The concept of support persons, translators and interpreters needs to be strengthened. We hope the Government pays more attention towards these necessities.

Vasudeva Sharma N. V.

EXECUTIVE DIRECTOR,
CHILD RIGHTS TRUST

ELIGIBILITY, APPOINTMENT, ROLES AND RESPONSIBILITIES OF SUPPORT PERSONS

The following information has been collated from POCSO Rules and Model Guidelines under Section 3918 of POCSO Act and from NCPCR Guidelines (2013)20.

Eligibility

A support person should preferably have a minimum of four years work experience on issues related to violence against children and women and with any of the following criteria:

- Persons with legal or para-legal qualifications
- Persons who can offer counselling and emotional support
- Persons conversant in the mother tongue of the child and the family to help them fully participate
- Persons employed by the DCPU, including
- Legal-cum-Probation Officer
- Social worker
- Outreach worker
- Counsellor

Appointment

Once the CWC receives a report under Section 19 (6) POCSO Act or on the basis of its assessment under POCSO Rule 4 (5) and with the consent of the child and family, the Committee can provide a Support Person to assist child and family during the investigation and trial as explained in POCSO Rule 4 (7). A child and family can also directly seek the assistance of a Support Person or an NGO in whom they have trust and confidence, to assist with the case. The same to be informed to the CWC to complete appointment process.

The CWC is required to confirm the appointment of the support person through a letter to the SJPU/local police. Format for letter from CWC to SJPU/local police provided in 'Law on Child Sexual Abuse in India' a Ready Reckoner by Center for Child and the Law, Page 150 (Manoharan, 2015)¹⁵

On receipt of this information, the SJPU/local police are required to inform the Special Court, regarding such appointment, within 24 hours, as per Rule 4(9) of POCSO Act.

Cooperation from stakeholders:

The SJPU/local police is required to share, with the support person, information regarding the developments in the case, including the arrest of the accused, applications filed and dates for Court hearings which is to be communicated to the family under POCSO Rule 4 (11).

SPPs to share case related information.

Medical personnel to keep support persons briefed and updated regarding the care of the child

CWCs to inform support persons when they receive information related to a case.

Roles and Responsibilities

Support person is required to:

- Keep the child, parents/ guardians/ person whom the child trusts, informed about the proceedings of the case including available assistance (psycho-social-legal and medical), the stages of the case, arrest /bail status of perpetrator and the outcome of the trial
- Maintain confidentiality of all information pertaining to the child victim and the case.
- Address any additional concerns that the child and family may have
- Information related to the safety of the child, in relation to the accused like threats and coercion
- Follow up on child's physical and emotional health. Schedule follow-up medical examinations and counselling / therapy sessions for child and family.
- Help family and child in relocating and settling down in the new environment.
- Liaise with State Commission for Protection of Child Rights as and when required
- Share case related communication with school, if required
- Facilitate interactions between the SPP and the child and his/her family
- Inform concerned authorities, such as the SPP, regarding the manner in which the child would like to depose before the Court.
- File an application for interim and final compensation with the Special Court as well as the District Legal Services Authority, on behalf of the child and family.

Create a Child Protection Plan, in consultation with the child and family and submit the same to the respective CWC when required.

Termination of services of support person: As per POCSO Rule 4 (10), services of the support person may be terminated by the CWC upon request by the child

BEYOND STUDY

COMPENSATION FOR VICTIMS UNDER POCSO ACT



Our daughter who has an intellectual disability, was assaulted by a known person from our village in May 2013. We faced a lot of financial difficulties following this incident. Around September 2013, we applied for compensation through the Karnataka State Commission for Protection of Child Rights. However till date, we have not received any information, despite submitting all the necessary documents to the District Legal Services Authority and to the Special court.

Parent
OF A VICTIM OF SEXUAL ASSAULT

This study has shown that over 73% of the family respondents, who reported cases under POCSO Act earned below Rs. 1 lakh per annum - that is less than Rs 9,000 per month. The parents/ caregivers of these children are usually daily wage workers, migrant construction workers, domestic help, drivers, other unskilled workers and families whose income falls in the below poverty line category (as prescribed by the Government).

The child victim is entitled to compensation for relief and rehabilitation under **POCSO Rule 7 (1-6)**. It can be awarded at different stages of the case:

- i. as soon as the court takes cognizance of the case,
- ii. at an interim stage,
- iii. during the pendency of the trial and
- iv. upon conclusion of the trial.

In addition, the child victim is eligible to education and medical relief from DCPU, applications for which are processed by the DCPU office.

FINDINGS

As per **POCSO Rule 4 (2 (e))**, police are required to inform families regarding compensation and other government schemes. However, 24% of the families said that they were not informed about compensation or any other government schemes by the police.

Need for providing compensation: Parents and caregivers have shared that reporting a case has had severe negative impact on them, both socially and economically. Elaborating this, they have shared that:

NEED FOR PROVIDING COMPENSATION

Parents and caregivers have shared that reporting a case has had severe negative impact on them, both socially and economically. Elaborating this, they have shared that:

- They have to take leave regularly to visit the police station on more than one occasion to: i) provide statements, ii) identify the accused, iii) crime scene investigation, iv) provide information and documentation to support the investigation v) record statement before the magistrate.
- They are forced to stay away from work to support the child through medical examination and treatment, counselling, and long term medical and psychological care.
- Incidental expenses like medicines, food and transport when the child is admitted in hospital



I have decided to setup a victim compensation fund to provide financial help to children in such situations.

Maneka Gandhi

MINISTER OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA

PRESS TRUST, TOI, FEB 22, 2017 REFERENCE 12

- Families have had to relocate to another locality or city/town/village, change jobs and on occasion, change careers.
- Children have had to change schools due to identification and social ostracism. There have been occasions where children have not been allowed to continue in the current school. Many schools are reluctant to admit students in the middle of the academic year.

Unless these families are supported financially, social and economic reintegration remains a challenge.

VICTIM COMPENSATION SCHEMES IN KARNATAKA

- The Integrated Child Protection Scheme (ICPS) is the main scheme which provides the financial resources for implementing various child protection laws, including the law on Juvenile Justice in Karnataka. As of now Rs. 5,000 is paid as immediate relief to the victims of sexual abuse as soon as an FIR is filed and an application submitted to the DCPU in the district. Additional relief of upto Rs. 1,00,000/- per case are available under this scheme for medical expenses incurred by child and family.
- Special Court is required to order interim compensation as per Government of Karnataka Notification, HD 1 PCB 2011, dated 22/02/2012¹³ and as per New Schedule notification dt 19/09/2013¹⁴

CHALLENGES FACED BY FAMILY IN OBTAINING COMPENSATION

As per the POCSO Act, the police are required to provide a copy of the format to the complainant/dependents to avail the benefit and help them fill the form. Thereafter the filled-up form should be forwarded to the concerned DLSA within the stipulated period. *

Special Courts have passed very few orders for interim compensations in the districts due to limited awareness of the same, leading to delay in processing of the claims.

Stakeholders such as police, CWC and SPPs rarely inform families regarding these financial support systems that are available through the government. Since the judge of the Special Court is the final deciding authority, both for interim and final compensation, the decision to award or reject an application is his/her responsibility. Therefore, all information related to compensation has to be shared with all families by all stakeholders. Detailed guidelines, to clarify the processes / documentation requirement prior to awarding compensation, should be formulated with the support of the State Legal Services Authority

RECOMMENDATIONS TO IMPROVE DISBURSAL

The following are the actionable recommendations to enable families to avail compensation in a speedy manner:-

- A standardised process can be drafted which includes:
 - » Assessing the severity of the case and financial condition of the family
 - » List of supporting documents to verify the claim
 - » Quantum of interim and final compensation
 - » Time frames for awarding interim and final compensation
- District and State Legal Services Authority to create awareness among public and other stakeholders regarding compensation schemes
- Amend the state scheme to include all forms of offences under the POCSO Act for compensation, using the Central Victim Compensation Fund (CVFS) circular¹¹.

TABLE.7

Schedule of compensations: The latest schedule of compensations as per Government of India, Ministry of Home Affairs have been listed below¹¹

No.	Description of offence	Compensation
1	Penetrative Sexual Assault where victim is below 14 years	Rs. 4.5 Lakhs
2	Penetrative Sexual Assault where victim is between 14-18 years	Rs. 3.0 Lakhs
3	Sexual Assault where victim is below 14 years	Rs. 1.0 Lakhs
4	Sexual Assault where victim is between 14-18 years	Rs. 50,000
5	Sexual Harassment	Rs. 25,000
6	Use of a child in Pornography	Rs. 1.0 Lakhs

BEYOND STUDY ROLE OF MEDIA IN REPORTING SEXUAL CRIMES



The media, particularly the electronic media, plays an important role in shaping society's views and influencing the way people think and behave. The media raises awareness, influences behaviour and generates public opinion. It also provides credible information, alerts stakeholders and creates a demand for special support services. The media creates pressure groups for early implementation of laws and works as a watchdog of society. By increasing awareness, it plays a critical role in determining responses at all levels to sexual violence against children.

THE GUIDEBOOK FOR MEDIA
ON SEXUAL VIOLENCE AGAINST
CHILDREN BY NATIONAL HUMAN
RIGHTS COMMISSION

Media (print, electronic, social) have a responsibility of addressing child sexual abuse on two fronts. On the one hand, media can play an important role in the reportage of cases and on the other hand, create awareness on the issue of child sexual abuse .

POCSO Act **Section 23(1-3)** describes protocols for reporting of an incident of sexual violence. Media cannot disclose the identity of the child, which includes name, address, family details, photographs, school, neighbourhood or any other particulars which may lead to disclosure of the identity of the child. Section 23 (4) describes the punishment for disclosing the identity of the child, which is imprisonment for a period of six months - one year for disclosure of a child's identity or any other identifying factors.

Section 74 (1, 3) of the Juvenile Justice Act (Care and Protection of Children, 2015), prohibits media from publishing and disclosing the identity of any child. Punishment is imprisonment for a period of six months and a fine.

The following suggestions can be kept in mind by the media:

- Focus not just on the reporting of a crime, but also on the systemic lapses and failures and convictions.
- Discuss the facts of the incidents, rather than the affected people.
- Mention the steps taken by the concerned stakeholders in supporting child and family
- Information and Contact numbers of emergency services can be publicized, such as 100 (Police) and 1098 (Childline)
- Publish statistics from National and State Crime Records Bureau on sexual crimes against children.
- Provide information about organisations/people working in the area of child rights and child protection
- Create awareness on POCSO Act provisions with regard to mandatory reporting, process of reporting, including steps, procedures and timeframes of cases in the criminal justice system and punishments for offences.
- Engage with experts and stakeholders to discuss issues of CSA, grooming, incest, effects of abuse, counselling and rehabilitation.
- Encourage active involvement of relevant Government departments to organize programs to empower adults and children in personal safety, gender inclusivity, life skills and reproductive health.

Additional Information can be obtained from **Guidebook For Media On Sexual Violence Against Children** issued by the National Human Rights Commission.

BEYOND STUDY

PROGRESSIVE PRACTICES IN INDIA AND ABROAD



A few good practices in other parts of India and abroad, dealing with cases of sexual crimes against children, have been identified and presented here. Some of which can be incorporated and adapted to improve the current systems to make them more effective.

IN INDIA

TELENGANA

Bharosa Centre, (OSC model)¹⁸ This support center for Women and Children is intended to support women affected by violence, in private and public spaces, within the family, community and at the workplace. Integrated assistance is provided at the Bharosa Center, from the time of taking the complaint, along with counselling, legal assistance, support with relief and rehabilitation. The Center also has video conferencing facilities for a child to record statements (under Sections 161 and 164 CrPC)

Child friendly Special Court: Telangana is the third state in the country which has a child-friendly Special Court with features like separate waiting room, video conferencing facility for the child, as mandated under the POCSO Act-2012.

GOA

Goa Children's Court: Goa government has formed a Goa Children's Court, a Special Court under the Goa Children's Act 200319. The court functions as an exclusive children's court that handles all cases related to children including sexual abuse, trafficking and labour. The Children's Court is not housed in the regular court complex, but in a government building. The court functions five days of the week with a permanent judge and two dedicated Public Prosecutors. The Special Court is closed for half a day on Wednesdays for Public Prosecutors to interact with children and witnesses. The Court attempts to reduce retraumatization through child friendly infrastructure and procedures. The Courts also handle cases of child trafficking.

Victim Assistance Unit (VAU): VAU has been functioning as a multi-disciplinary unit in Goa since February 2014. The Unit has been notified by the Goa Government and therefore receives the support of all stakeholders which enables convergence. The unit has a core team of two lawyers, two counselors and one social worker who provide assistance in POCSO cases. Police inform the VAU regarding a case, following which the team helps with registration of the complaint, recording the statement of the victim, psycho-social-legal counselling and medical examination. In cases of penetrative sexual assault the victim is brought to the unit for medical examination, while in other POCSO cases, the child is taken to the Primary Health Care Unit. (Shetye, M. 2017, TOI)²⁰

DELHI

Delhi High Court has set up a Vulnerable Witness Deposition Complex (VWDC) in 2012 at the Karkardooma Court Complex. The VWDC was intended to create a safe and comfortable environment for child victims of various offences. Subsequently, VWDCs have been set up at Saket, Dwaraka and Tis Hazari Court complexes. VWDC are being set up in Patiala House and Rohini Court complexes. The VWDC has a separate entrance, waiting area for the victims/witnesses, pantry, play area and toilets. Video conferencing facility has been set up for the child to be able to depose in a free and comfortable manner. (Kashyap, 2017, Livelaw)²¹

MAHARASHTRA

The Manodhairya Yojna was launched in Maharashtra, implemented by the Women and Child Development, Government of Maharashtra. Apart from monetary benefits, the government is also providing assistance for rehabilitation with counselling, vocational and educational training to the victims wherever required. Under this scheme financial assistance of Rs. 2 lakhs and in special cases, Rs. 3 lakhs is provided as relief for the victims. This scheme is running successfully in a few places although in some districts there are roadblocks on its effective implementation.

IN OTHER COUNTRIES

UNITED KINGDOM

*The Survivors Trust (TST)*²²: It is a network of 135 member organisations across the United Kingdom and Ireland. The member organisations provide specialist support for men, women and children who have survived all forms of sexual violence.

Independent Sexual Violence Advisors (ISVA): Many specialist agencies offer support services through their ISVAs to the survivors. The ISVA inform about the criminal justice process and the importance of forensic DNA retrieval, equipping the survivor to take an informed decision with regard to reporting the crime and the further course of action.

National Helplines: A list of National Helplines and websites is provided for survivors of sexual violence.

The Sexual Assault Reference Center (SARCS): SARCS is a center that provides private spaces for interviews, examinations and counselling for survivors of sexual violence in a comfortable setting.

NEW ZEALAND

New Zealand has many organisations working to provide after trauma/assault support to the victims, organisations like *Women's Refuge, Rape Crisis, Shine* etc. are some of them. These provide resources, advocacy, practical assistance and counselling to rape/sexual assault victims. One of them is the *KidsLine*²⁷ which is a 24-hour helpline for children and teens (5-18 years)

UNITED STATES OF AMERICA(USA)

*Court Appointed Special Advocates (CASA) Support System*²³: is a National program that supports and promotes court appointed volunteer advocacy. CASA volunteers are appointed by Judges to ensure that children who enter the criminal justice system are represented, while taking into account the best interest of the child. The government recruits and trains interested persons to work as CASA volunteers. CASA program is primarily funded by the Federal Government and supported by private donors. A CASA volunteer assists with a child from the beginning of the case and beyond.

*Rape, Abuse and Incest National Network (RAINN)*²⁴ is a support entity which can be reached on a hotline, in partnership with 1000 local sexual assault service providers across the country and operates the safe helpline for the Department of Defence. All calls are kept confidential and no personal information is required from the victim. They connect the victim to the nearest RAINN counselling centre, where all the necessary support is provided to the victim.

*Childhelp National Child Abuse Hotline*²⁵: Is dedicated to the prevention of child abuse in the USA with 24/7 crisis counsellors and interpreters in 170 languages. The hotline offers crisis intervention, information, literature, and referrals to thousands of emergency, social service, and support resources. All calls are confidential.

*Multidisciplinary Case Conferences (MDCC)*²⁶: The MDCC in the USA, provides a forum for professionals to share their professional knowledge, information and concern, and most importantly, to formulate a welfare plan for the child suspected to have been abused and his/her family. The focus of the MDCC is on protection and welfare of the child and not prosecution of the abuser. It is done with the Chairperson/co-ordinator from a government agency playing a role in organizing it as per the norms, in consultation with all stakeholders and with the consent of the child and family.

SOUTH AFRICA

Women against Rape (WAR) is an organisation which helps children and women victims of rape to get in touch with a counsellor and get necessary support. WAR is one of the few programs that provides ‘perpetrator rehabilitation and counselling’. In addition there are several organizations engaged in advocacy and rehabilitation of child abuse victims.

PHILIPPINES

*Child Protection Unit-NET (CPU)*²⁹: A nationwide regional system of 39 CPUs have been established by the Department of Health. Centers for medico-legal evaluation have been opened by the National Bureau of Investigation, jointly with the Philippines National Police. Child protection practitioners and the CPUs developed a system of high clinical standards to be followed, for the care of abused children, in order to close the gaps between medical, psycho-social, investigative and legal services. The idea is to have a knowledgeable pool of expertise to ensure interdisciplinary information exchange with both medical and non-medical child protection professionals along with routing peer review and evaluation.

RESTORATIVE JUSTICE

With a high number of POCSO cases in India (this Study has shown 63% cases) reported from the age group of 16-18 years, most of which are consensual relationships and elopement cases, Restorative Justice seems to a concept that can be adopted in resolving these conflicts, going forward. Two countries who have successfully applied Restorative Justice with youth are South Africa³⁰ and New Zealand³¹.

ABBREVIATIONS

ACE – Adverse Childhood Experiences	IO - Investigating Officer	PP – Public Prosecutor
CASA- Court Appointed Special Advocates	IPC – Indian Penal Code	PT – Pending Trials
CCL – Centre for Child and the Law	ISVA- Independent Sexual Violence Advisors	RAINN – Rape, Abuse & Incest National Network
CDC – Centre for Disease Control	IT Act – Information Technology Act	RMP – Registered Medical Practitioner
CLA – Criminal Law (Amendment) Act	ITPA – Immoral Traffic Prevention Act	SAFE Kit - Sexual Assault Forensic Evidence kit
CPU- Child Protection Unit- NET	JJ Act- Juvenile Justice Act	SARCS- Sexual Assault Reference Center
CRC – Conventions of the Rights of a Child	JJB- Juvenile Justice Board	SASS- Sexual Assault Support Service
CrPC - Code of Criminal Procedure	KSCPCR – Karnataka State Commission for Protection of Child Rights	SCPCR- State Commission for Protection of Child Rights
CSA – Child Sexual Abuse	MDCC- Multidisciplinary Case Conferences	SCRB – State Crime Records Bureau
CSAM-Child Sexual Abuse Materials	MOHFW – Ministry of Health and Family Welfare	SJPU - Special Juvenile Police Unit
CVFS- Central Victim Compensation Fund	MTP - Medical Termination of Pregnancy	SLSA - State Legal Services Authority
CWC – Child Welfare Committee	MTP Act - Medical Termination of Pregnancy Act	SOP - Standard Operating Procedure
DCP - Deputy Commissioner of Police	NCPDR- National Commission for Protection of Child Rights	SPP- Special Public Prosecutor
DCPO - District Child Protection Officer	NCRB – National Crime Records Bureau	STD – Sexually Transmitted Disease
DCPU - District Child Protection Unit	NGO – Non-Governmental Organisation	TST- The Survivors Trust
DG – Director General	NIMHANS – National Institute of Mental Health and Neurosciences	UI – Under Investigation
DLSA - District Legal Services Authority	NIPCCD – National Institute of Public Cooperation and Child Development	UN – United Nations
DNA - Deoxyribonucleic Acid	NISD – National Institute of Social Defence	UNICEF - United Nations Children’s Fund
DWCD - Department of Women and Child Development	NPAC – National Plan of Action for Children	UPT - Urine Pregnancy Test
FAQ – Frequently Asked Question	OSC - One-Stop Centre	UT- Union Territories
FIR – First Information Report	OPD - Outpatient Department	VAU- Victim Assistance Unit
FSL – Forensic Science Laboratory	POCSO – Protection of Children from Sexual Offences	VCF- Victim Compensation Fund
GOI - Government of India	PIL- Public Interest Litigation	VCFS- Victim Compensation Fund Scheme
HIV – Human Immunodeficiency Virus		WVDC- Vulnerable Victim Deposition Complex
HOD - Head of Department		WAR- Women Against Rape
ICPS – Integrated Child Protection Scheme		WCD- Women and Child Development
ICU – Intensive Care Unit		
IGP – Inspector General of Police		

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STUDY ON IMPLEMENTATION OF POCSO ACT IN KARNATAKA STATE CHALLENGES FACED BY DIFFERENT STAKEHOLDERS

The following is a Checklist of the possible Challenges one faces in dealing with POCSO cases. Kindly rank them, giving a rank of 1 to the biggest challenge & the last rank to the least of the challenges.

Police

- Shortage of women in the police force
- Shortage of trained manpower within the Police
- Lack of training in investigating cases of child sexual abuse, particularly incestual / familial abuse.
- Delay in receiving reports from State Forensic Science Laboratory
- High incidence of elopement cases among girls below 18 years of age, turning hostile during the trial.
- Insufficient collaboration among various support systems like hospitals, courts, CWC, prosecution etc.
- The lack of availability of the Act in local languages for the benefit of all concerned.
- Too much time spent in other routine cases/duties leaving less time for POCSO cases
- Lack of sufficient budgetary allocation
- Lack of facilities for management of POCSO cases
- Any other unique challenges you may have faced that is not mentioned here-

Medical staff

- Shortage of medical staff in government hospitals
- Lack of trained medical and para-medical staff in medical and forensic examination of sexual crimes.
- Lack of dedicated facility or space for medical examination of the victim of CSA (Child sexual abuse)
- Insufficient supply of Sexual Assault Forensic Evidence (SAFE) Kits or necessary materials to conduct a forensic examination of the child.
- Lack of training in accurate documentation and providing medical opinion
- Delay in children/families reporting the cases leading to loss of crucial medical evidence.

- Limited access to mental health professionals like, therapists and counselors.
- Limited access to persons trained in Forensic Interview Methodology
- Insufficient collaboration among various support systems like hospitals, courts, CWC, prosecution etc.
- Lack of secured storage facilities for forensic samples
- Any other unique challenges you may have faced that is not mentioned here

Public Prosecutor

- Delay in legal process of POCSO cases due to Special Courts dealing with many other types of cases
- Lack of specialized training in handling CSA cases
- Case becoming weak due to inadequate investigation
- Inability to engage with most families prior to commencement of trial existent.
- Insufficient collaboration among various support systems like hospitals, courts, CWC, police etc.
- High incidence of elopement cases among girls below 18 years of age, turning hostile during the trial.
- Any other unique challenges you may have faced that is not mentioned here-

Child Welfare Committees

- Lack of clear cut guidelines regarding the roles and responsibilities of CWC in CSA cases
- Do not have the manpower to follow up on cases and ensure normalization of child's routine.
- Lack of timely police action and reporting.
- Insufficient authority to take cognizance of lapses on the part of investigating agencies like the police.
- Delay in disbursement of funds to children due to delay in receiving the same
- Lack of dedicated residential facility for victims of CSA requiring safe custody .
- Any other unique challenges you may have faced that is not mentioned here-

STUDY ON IMPLEMENTATION OF POCSO ACT IN KARNATAKA STATE
QUESTIONNAIRE FOR FAMILY

Any information shared as part of the study will be kept confidential. Furthermore, keeping in mind the sensitivity of the information that is shared, no details will be made public under any circumstances.

Personal Information:

1. Name of the child
2. Age
3. Gender
4. Is the child currently going to school?
5. What kind of school (Govt./pvt./open/home school)
6. Language spoken
7. Religion
8. Caste
9. Disability in any
10. Time and place of offence
11. Father:
 - a. Name
 - b. Age
 - c. Occupation
 - d. Income bracket
12. Mother:
 - a. Name
 - b. Age
 - c. Occupation
 - d. Income bracket
13. Number of Siblings
14. Other members residing
15. Extended family members living with the child's family

About the accused

1. Name
2. Age
3. Gender
4. Religion
5. Caste
6. Occupation
7. Family background of the accused:
 - b. Marital status - Married/Unmarried/Widowed/Legally separated
 - c. Does the offender have offsprings?

1. Is the accused known?
2. If known, what is the relationship with the child?

6. Is the accused in position of power? (teacher/staff of school/employer/public servant/official/police/any other
7. Any previous similar offences committed by the accused
7. Did accused threatened the child after the incident?
8. If yes, what was the threat?

About the case

1. When and what time did offence occur?
2. When was the incident reported?
3. In case of delay in reporting, give reasons
4. The incident first reported to (Police/doctor)
5. Place of the offence
6. How did you find out about the incident?
7. Was it a one time incident or a repeated assault?
8. Were any weapons used against the child during the incident?
9. Was/were the incidents recorded using mobile phone or camera

About police

1. Name and designation of police to whom reported
2. Name of police station
3. Date of FIR

About medical examination:

1. Name of Doctor
2. Specialisation of doctor- pediatrician/general physician/gynaecologist/any other
3. Name of hospital
4. Place of medical examination -emergency / ped / labour ward / anywhere else?
5. Date of medical examination

Trial / court room:

1. Name of court
2. Date of commencing trial
3. Date of first hearing

STATEMENTS

About Police action

1. Photograph of the child victim was taken by police and other person in connection with the incident
2. A copy of FIR was given to the family by the police
3. Did the police immediately record the statement of child victim?
4. Was the statement recorded in the place where the child victim resides?
5. Was the Statement of the child victim recorded through audio-visual means?
6. While recording the statement of the child victim was the police officer in uniform?
7. The statements of the child victim were recorded by a woman Sub Inspector?
8. Recording of the statement of child victim was completed within minimum number of meetings in a comfortable environment
9. The statements of the child victim were recorded in presence of the parents/ guardians
10. The police ensured that the child victim is kept in a safer environment within 24 hours of the report
12. The accused was arrested after the FIR was filed
13. During the investigation the child victim was never brought before the accused
14. The police did not inform about the schedule of court proceedings the child victim is required to or entitled to attend
15. The police informed child/parent/guardian about bail/detention/release of the offender
16. For a child with special needs, the police station provided a speech therapists, special medical counselors etc
17. Since the child does not understand the language, an interpreter was provided
18. The police went ahead with the case even when there was conflicting views within the family regarding continuation of the case
19. The child victim was not produced before the Child Welfare Committee within 24 hours
20. The police informed about the Child Welfare Committee and DCPU?
21. The police did not inform about compensation & other government schemes

About medical staff

22. Before conducting the medical examination of the child victim a written consent was not taken from the child and his/her parent/guardian
23. Medical examination of the girl child victim was done by a woman doctor
24. Necessary medical care was given to the child victim
25. Blood & urine samples were collected and tested for STDs, HIV, alcohol & other drugs
26. The doctor prescribed medicine for prevention of pregnancy for a matured child victim in case of penetrative assault
27. The family did not receive a copy of medical report
28. The accused and child were taken to the same hospital p
29. Was child victim referred to psychologist / counsellor / therapist?
About trial court
30. The case was not transferred from one court to another
31. The same magistrate remained since trial commenced
32. The accused was present when the child victim and family were waiting
33. A screen put up in the court when the accused was there
34. The child victim was brought to the court more than once
35. when the child victim was testifying no other persons apart from family were allowed in the court
36. The child victim and family did not have to wait at court each time for long hours
37. The lawyer asked uncomfortable questions to the child victim
38. The accused was convicted

**STUDY ON IMPLEMENTATION OF POCSO ACT IN KARNATAKA STATE
QUESTIONNAIRE FOR MEDICAL PERSONNEL**

We request you to kindly read the following statements carefully and submit your responses. This is for the purpose of research and your responses will be kept strictly confidential.

1. Name
2. Age
3. Gender
4. Designation
5. Place of work
6. No. of years of experience
7. No. of Child Sexual Assault (CSA) cases handled so far
8. Training undergone in handling CSA cases and POCSO Act
9. If yes duration (number of hours) of training
10. Training conducted by whom (organisation, personnel)

Here are a few questions regarding the POCSO (Prevention of Child Sexual Offence) Act. Kindly indicate whether they are True or False

STATEMENTS

1. All hospitals are required to have SAFE (Sexual Assault Forensic Evidence) Kit
2. Medical examination of a child victim should be conducted in the presence of the child's parent/guardian
3. The identity of the child should always be kept confidential
4. The medical practitioner should introduce himself/herself making the child comfortable and relaxed before proceeding with medical examination
5. Medico-legal examination of a girl child victim has to be conducted only by a gynecologist
6. If a child does not consent to a medical examination, samples have to be forcibly collected from her since the police require it
7. Samples & smears collected from child victims are tested only at the State Forensic Science Laboratory (FSL)
8. Medico-legal examination of a child victim can be conducted only at government

hospitals

9. While collecting genital samples of a very young child, sedation of the child is recommended
10. If the child is over 12 years of age, his / her consent is not required for medical examination.
11. MTP cannot be conducted on a pregnant girl above 18 yrs if an FIR has not been registered
12. Permission of the police or judiciary is not required for an MTP
13. Doctors cannot take a statement of a child victim
14. Bio-product of conception has to be preserved for testing by State FSL
15. Medical opinion cannot be given until reports from FSL are received
16. All cases under POCSO Act do not require a medical examination
17. In CSA cases medical treatment can be started without an FIR
18. To establish the occurrence of sexual assault 2 finger test is to be conducted
19. Appropriate preservations of samples and smears is very important for accuracy in test reports
20. Every sample is labeled, sealed and handed over with signature and time to the next person through a process of Chain of Custody

STUDY ON IMPLEMENTATION OF POCSO ACT IN KARNATAKA STATE
QUESTIONNAIRE FOR PUBLIC PROSECUTOR

Kindly read the following statements carefully and fill in the information This is for the purpose of research and your responses will be kept strictly confidential.

1. Name
2. Age
3. Gender
4. Years of experience as a Public Prosecutor
5. No. of years served as a POCSO PP
6. Training if any in POCSO act
7. If yes, duration
8. Number of cases of POCSO dealt for children between the ages of
9. 0-8 years
10. 8-16 years
11. 16-18 years
12. Total number of trials dealt
 - a. Ongoing
 - b. Acquittal
 - c. Convictions

Here are a few questions regarding the provisions in the POCSO Act. Kindly indicate whether they are True or False

1. It is not necessary to meet the child before the child is examined in a trial
2. In case of child sexual abuse (CSA) the accused is considered guilty until proven innocent unlike general IPC
3. Parent/guardians are not allowed inside the court for the fear of influencing the child
4. Support persons like NGO, social workers are allowed inside the court
5. The child cannot be examined in a place other than the special court
6. Public is not allowed during the trial of POCSO cases
7. Lawyers for the accused and public prosecutor can directly ask questions to the child
8. During recording of evidence, the accused can not be brought before the child victim
9. Once the special court takes up the matter the trial must be completed within 1 year
10. The statement of the child recorded by a Magistrate can not be admitted for trial
11. When the child does not understand the language, services of an interpreter can be used
12. Questions that demean the character of the child are not allowed to be asked
13. The child can be asked details about the sexual abuse in order to clarify
14. If the accused is below 18 years, he is produced before the special court
15. A child victim is not entitled to legal assistance other than the ones provided by special public prosecutor

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The Government of India enacted the POCSO Act 2012 to specifically address protection of children from sexual offences and access to justice for those who suffered such abuse. It aimed to create child-friendly and effective systems for reporting, investigation and trial of the crime, by giving specific directions to all stakeholders involved in the process.

The Department of Women and Child Development (DWCD), GoK, took the initiative to ascertain the implementation of the same in the state, entrusting Enfold Proactive Health Trust with conducting a pilot study.

100 cases registered under the POCSO Act in 10 districts across Karnataka were selected for the pilot study. Stakeholders involved in the process of POCSO implementation i.e. police, doctors, prosecutors, and CWC members were interviewed, to assess their level of awareness of POCSO guidelines and to understand the challenges they faced in its implementation. Families of the child victims were interviewed regarding their experience with the criminal justice system and their views on the outcome of reporting abuse.

This evidence based report aims to support the DWCD in creating a practical and multidisciplinary plan of action to strengthen systems and processes, furthering the cause of justice and dignity of the child.

Enfold Proactive Health Trust was the implementing partner and Eudaimonic Centre for Positive Change & Well Being, Bangalore was the Research Support Partner.

