IN THE HIGH COURT OF DELHI AT NEW DELHI

6556-6568
No. _____/DHC/Gaz-IB/G-2/Misc/2025 Dated: 27 November, 2025.

From:

The Registrar General,
High Court of Delhi,
New Delhi-110003.

To,

1. The Principal District & Sessions Judge (HQ), Tis Hazari Courts Complex, Delhi.
2. The Principal District & Sessions Judge (New Delhi), Patiala House Courts Complex, New Delhi.
3. The Principal District & Sessions Judge (South), Saket Courts Complex, New Delhi
4. The Principal District & Sessions Judge (South-East), Saket Courts complex, Delhi.
5. The Principal District & Sessions Judge (East), Karkardooma Courts Complex, Delhi.
6. The Principal District & Sessions Judge (North-West), Rohini Courts Complex, Delhi.
7. The Principal District & Sessions Judge (North-East), Karkardooma Courts Complex, Delhi.
8. The Principal District & Sessions Judge (Shahdara), Karkardooma Courts Complex, Delhi.
9. The Principal District & Sessions Judge (South-West), Dwarka Courts Complex, New Delhi.
10. The Principal District & Sessions Judge (West), Tis Hazari Courts Complex, Delhi.
11. The Principal District & Sessions Judge (North), Rohini Courts Complex, Delhi.
12. The Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), RACC, New Delhi.
13. The Principal Judge (HQ), Family Courts, Dwarka, New Delhi.

Sub: **Standard Operating Procedures (SoPs) and Training Module for the Fast Track Special Courts (FTSCs) Scheme-reg**

Sir/ Madam,

I am directed to forward herewith a copy of letter no. 15011/18/2022-Jus-II/7504 dated 09.10.2025 received from Mr. Biswanath Sahoo, Deputy Secretary, Ministry of Law & Justice, Department of Justice, Government of India, along with its enclosures on the abovementioned subject and to request you to circulate the same amongst all the Judicial Officers working under your respective control for information and necessary compliance.

Yours faithfully,

(Vinay Sharma)
Deputy Registrar (Gazette-IB)
For Registrar General.

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE: ROHINI COURTS, DELHI

No. 45725-45800 ...Genl.I/F. 3(A)/N-W & N/RC/2025 Dated 10.12.2025

Copy forwarded, alongwith its enclosures **(through electronic mode)** for information & necessary action, to :-

1. All Ld. Judicial Officers posted at **North-West & North District**, Rohini Courts, Delhi.
2. The Dealing Official, Computer Branch, Rohini Courts for uploading the same on WEBSITE.
3. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.

(VINOD YADAV)
Officer In-Charge, General Branch
North-West & North District
Rohini Court Complex, Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI

6556-6568
No._____/DHC/Gaz-IB/G-2/Misc/2025 Dated: 27 November, 2025.

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Sub: Standard Operating Procedures (SoPs) and Training Module for the Fast Track Special Courts (FTSCs) Scheme-reg

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(Vinay Sharma)
Deputy Registrar (Gazette-IB)
For Registrar General.

Marked to OIC (Genl)
Nishal
PDJSJ (NW)
01/12/25

Encl: As above.

No. 15011/18/2022-Jus-II/7504
Government of India
Ministry of Law & Justice
Department of Justice
***

Jaisalmer House, 26 Mansingh Road,
New Delhi-110011
Dated: the 09th October, 2025

To,

Registrars General of the High Courts (As per list attached)

Sub: Standard Operating Procedures (SoPs) and Training Module for the Fast Track Special Courts (FTSCs) Scheme - reg.

Madam/Sir,

I am directed to refer to the subject cited above and to state that during the 27th meeting of the Western Zonal Council held under the Chairmanship of Hon'ble Union Home Minister on 22.02.2025 at Pune, certain directions were issued for speedy disposal of cases in Fast Track Special Courts (FTSCs). In this regard, the National Judicial Academy (NJA) has prepared draft *Standard Operating Procedures (SoPs)* for Judicial Officers presiding over FTSC and a *Training Module* for the FTSCs. Copies of the same are forwarded for information and necessary action please.

Encl: As above

Yours faithfully,

(Biswanath Sahoo)
Deputy Secretary to the Government of India

Copy to: - The Law Secretaries of the States/UTs

UNCITRAL

WORLD BANK GROUP

UNCITRAL-World Bank Group Judicial Capacity-Building Initiative on International Best Practices in Insolvency Law

Third session (Safeguards against improper commencement of insolvency proceedings)

5 November 2025, 12:30 pm to 3:30 pm Central European Time (CET)

Register here

(Open the above link using "Ctrl plus left clik" or by pasting the link below in the address bar)

https://forms.office.com/pages/responsepage.aspx?id=2zWeD09UYE-9zF6kFubccLfo56rtujFMpUGqeKnbIo5UNkE2VjVUTiJWQ0c1TFZOOTJTNzExWk05TC4u&route=shorturl

Online, Zoom

PURPOSE

The joint UNCITRAL-World Bank Judicial Capacity-Building Initiative on International Best Practices in the Area of Insolvency Law is intended to serve as a platform for judges, in particular from developing countries, to exchange their views and experiences with handling domestic insolvency law cases and to learn, in that context, about the **UNCITRAL Legislative Guide on Insolvency Law** and the **World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes**.

As a continuation of the second session, the third session of the Initiative will focus on the improper commencement of insolvency proceedings, either by the debtor or creditors, and the tools available to judges under the **UNCITRAL Legislative Guide on Insolvency Law** and the **World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes** to handle such cases. These tools may include, for example, denying an application for the commencement of insolvency proceedings or dismissing proceedings already commenced.

Programme	Time (CET)
Welcome and introductory statements - Opening remarks by Anna Joubin Bret, United Nations Office of Legal Affairs/International Trade Law Division, UNCITRAL secretariat - Opening remarks by Antonia Menezes, Finance, Competitiveness & Investment Global Practice, World Bank Group **Introduction to the International Insolvency Standard Guidance related to safeguards against improper commencement of insolvency proceedings** - The UNCITRAL Legislative Guide on Insolvency Law, Samira Musayeva, UNCITRAL secretariat - The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes, Nina Mocheva, Senior Financial Sector Specialist, Insolvency & Debt Resolution, World Bank Group *Moderator: Benjamin Herisset, UNCITRAL secretariat*	12:30 pm-1 pm (30 minutes)
Comparative overview of domestic approaches to denial of an application for commencement of an insolvency proceeding or dismissal of the already commenced insolvency proceeding, led by Judge YA Tan Sri Nallini Pathmanathan (Federal Court of Appeal of Malaysia) and Judge Marko Radovic (Commercial Court of Belgrade, Serbia) The session will feature an interactive discussion between judges from different legal systems with practical examples of cases where improper commencement of insolvency proceedings was involved, and will cover the following issues: - What is an improper commencement of insolvency proceedings? - What safeguards are available to protect both debtors and creditors from an improper commencement of insolvency proceedings? - What are the consequences of a denial or dismissal for improper commencement (sanctions, costs, etc.)?	1 pm-1:50 pm (50 minutes)
Break	1:50 pm-2 pm (10 minutes)
Overview of a case study presented by Judge YA Tan Sri Nallini Pathmanathan and Judge Marko Radovic	2 pm-2:10 pm (10 minutes)
Moderated breakout room discussion of the case study by participating judges	2:10 pm-2:40 pm (30 minutes)
Reports from the breakout rooms to the plenary	2:40 pm-3:20 pm (40 minutes)
Concluding remarks by the co-organizers	3:20 pm- 3:30 pm (10 minutes)

"Training Module for Fast Track Special Courts"
Department of Justice

Submitted By

Mr. Vijay Chandra, Registrar (Admin)
(Principal District & Session's Judge)

Dr. Sonam Jain
Assistant Professor

NATIONAL JUDICIAL ACADEMY INDIA

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Introduction

In its steadfast commitment to ensuring the safety and security of women and the girl child, the Government of India enacted the Criminal Law (Amendment) Act, 2018, introducing stringent punishments, including the death penalty, for perpetrators of rape. Rising incidents of sexual offences and prolonged trials highlighted the urgent need for a dedicated judicial mechanism to provide swift justice and immediate relief to victims.

To address this need, the Department of Justice has been implementing, since October 2019, a Centrally Sponsored Scheme for the establishment of Fast Track Special Courts (FTSCs), including exclusive Protection of Children from Sexual Offences (POCSO) Courts, across the country for expeditious trial of sexual offence cases. Each court comprises one Judicial Officer and seven supporting staff members. Out of 31 eligible States and Union Territories, 30 have joined the scheme. Puducherry, by special request, operationalized its exclusive POCSO Court in May 2023.

Initially sanctioned for one year (2019–20 to 2020–21) with a total outlay of ₹767.25 crore, including ₹474.00 crore as the Central share from the Nirbhaya Fund, the scheme has been extended multiple times. It continued until March 2023 with an outlay of ₹1,572.86 crore (₹971.70 crore Central share) and was further extended by the Union Cabinet on 28 November 2023 for three more years, from 1 April 2023 to 31 March 2026, with a financial outlay of ₹1,952.23 crore, including ₹1,207.24 crore as the Central share.

Central share allocations to States/UTs have been released as follows: ₹140.00 crore in FY 2019–20; ₹160.00 crore in FY 2020–21; ₹134.56 crore in FY 2021–22; ₹200.00 crore each in FY 2022–23, FY 2023–24, and FY 2024–25. For FY 2025–26, an allocation of ₹200.00 crore has been earmarked, out of which an amount of Rs.65.52 cr. has been released till 30.09.2025.[1]

[1] *https://doj.gov.in/fast-track-special-court-ftscs/.*

As of August 2025, 773 FTSCs including 400 exclusive POCSO Courts are operational across 29 States/UTs, collectively disposing of 3,44,880 cases, thereby significantly contributing to the delivery of timely justice.

This Training Module aims to guide concerned judges across India in understanding the concept of Fast Tack Special Courts – their purpose, reason for establishment, and the extent to which they can assist judges in expeditiously deciding matters.

Fast track special Courts are dedicated courts set up to ensure speedy trial and disposal of specific categories of sensitive cases, particularly those involving sexual offence and cases under the Protection of Children from Sexual Offences (POCSO) Act. Its establishment in India followed clear directives from the Supreme Court in ***RE: ALARMING RISE IN THE NUMBER OF REPORTED CHILD RAPE INCIDENTS,*** SUO MOTO WRIT (CRIMINAL) NO.1/2019.

Objective

To suggest uniform procedures for the presiding officers of POCSO courts, the present scheme of Department of Justice aims at effective implementation of Criminal Law Amendment Act, 2018 by ensuring targeted disposal of pending Rape & POCSO Act cases by expediting the judicial process and increasing the efficiency of Fast Track Special Courts (FTSCs) across the country. It is to ensure speedy, sensitive, and victim-centric justice in cases involving sexual violence.

Functioning of the FTSCs

FTSCs in India were designed with the primary goal of expediting the judicial process, particularly in cases of serious offenses, such as sexual assault, rape and POCSO cases. These courts function with a streamlined approach compared to regular courts, allowing them to focus on specific case categories with heightened efficiency. Structurally, FTCs resemble regular courts, featuring a presiding judge, court staff, and essential infrastructure. What sets them apart is their distinct specialization in managing cases requiring urgent attention. Judges in these FTSCs often undergo special training, especially for handling sensitive cases involving child sexual abuse, enabling them to address unique challenges such as confidentiality, sensitivity, and the need for quick resolutions. In terms of operations, FTCs work under a mandate to prioritize cases within their

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jurisdiction, by employing rigorous case management practices where cases are scheduled and heard on an expedited timeline. Unlike regular courts with a broader caseload, FTCs focus on a limited set of cases, allowing for faster case disposals. These courts frequently utilize technological tools, such as videoconferencing and digital case management, to further enhance their procedural efficiency.

Key Clarification

1. FTSCs are initially set up for **one year**, with periodical extensions.
2. The Scheme does **not** aim to create permanent infrastructure.
3. FTSCs will function in **suitable premises** taken on lease or as notified by the States/UTs and respective High Courts.
4. Each FTSC will have:
    - **One Judicial Officer**
    - **Seven staff members**
5. The Judicial Officer and staff will work **exclusively** for disposal of **Rape and POCSO Act cases** under this Scheme. **No other cases** of crimes against women and children should be transferred to these courts.
6. **Additional charge** of FTSCs will **not** be assigned to any existing Judicial Officer or court staff.
7. States/UTs may appoint court staff on a **contractual basis** if sufficient manpower is unavailable.
8. **Retired Judicial Officers** with relevant experience with the subject matter may also be engaged for disposal of such cases.
9. All pending rape and POCSO Act cases in other courts may be identified and transferred to the newly established FTSCs under the Scheme.
10. Each FTSC should be designated as a Fast Track Court in the Master Data, and the 'Judicial Officer Code' of the Presiding Officer should be recorded with the FTSC in the National Judicial Data Grid (NJDG) for efficient tracking of case disposal.
11. A dedicated budget head should be established to receive funds for the FTSCs. These funds may be utilized for payment of salaries and honoraria, maintenance and operation of court

premises, procurement of equipment and technology, specialized training, implementation of case management systems, and support services for victim welfare and rehabilitation. The Law Departments of States/UTs should promptly inform the Department of Justice about the action taken in this regard to facilitate early fund transfers.

Overview and Objectives of the Training Module

The training module has been designed to provide participants with a comprehensive understanding of the provisions of the Act, its underlying objectives, and its practical implementation in the justice system. Presented in a structured, point-wise manner, the module aims to enhance knowledge, build sensitivity, and streamline and expedite the handling of cases involving child victims with care, efficiency, and sensitivity by the Judicial Officers of FTSCs.

Theme I: Evidentiary Challenges and Reverse Burden in POCSO Cases – Addressing Complexities and Enhancing Judicial Evaluation

Sub-themes:

- *Collection, preservation & appreciation of evidence*
- *Standard of proof & presumption of culpable mental state*
- *Section 29 presumption vis-à-vis cumulative charges under BNS*

Objective: Evidentiary issues in POCSO cases are often complex, requiring courts to carefully balance legal standards with scientific and technological inputs. Medical examinations, while essential in establishing signs of abuse, may not always yield conclusive proof, especially in instances where physical evidence is absent or delayed. Similarly, forensic evidence, though valuable, can be compromised by lapses in collection, preservation, or chain of custody. With the increasing role of technology, digital evidence—such as electronic communications, photographs, and online activity—has emerged as a crucial tool, but it too presents challenges relating to authenticity, admissibility, and privacy. In addition to these evidentiary hurdles, POCSO trials are governed by the special statutory framework of reverse burden and presumptions under the Act, which places a heightened responsibility on the accused to rebut allegations once a prima facie case is established. This distinctive feature, while designed to strengthen child protection, also necessitates that judge's exercise caution to safeguard the rights of both the victim and the accused. Thus,

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navigating medical, forensic, and digital evidence in conjunction with the principles of presumption and reverse burden calls for a nuanced and sensitive judicial approach, ensuring that the quest for truth does not compromise fairness or due process.

This session will equip judges to evaluate evidence in POCSO cases with precision, particularly medical, forensic, and digital evidence. It will emphasize the chain of custody, appreciation of expert reports, and statutory presumptions. Judges will also reflect on balancing the presumption of innocence with legislative mandates designed to protect child victims. It will unpack the delicate balance between child protection laws and constitutional rights. Judges will discuss the scope and application of reverse burden clauses, their practical implications in trial, and strategies to ensure that while child victims are safeguarded, the accused's right to fair trial is not compromised.

Theme II: Age Determination in POCSO Cases – Addressing Challenges and Implementing Uniform Guidelines

Sub-themes:

- *Procedures for age verification*
- *Complexities in age determination*
- *Advanced medical technology, precedents & global practices*
- *Burden & reverse burden of proof*
- *Standard of proof & culpable mental state*
- *Reverse burden of proof - prosecution's role*
- *Balancing the trial with rights of the accused*

Objective: The determination of age in cases under the POCSO Act holds critical significance, as it directly impacts the applicability of the law and the degree of protection afforded to the child victim. However, this process often presents multiple challenges, such as the absence of reliable documentary evidence, inconsistencies in school records, or lack of timely registration of births in certain regions. In such situations, courts are frequently required to rely on medical opinions, including ossification tests, which may not always provide precise results and are subject to a margin of error. These difficulties highlight the need for evolving more robust and uniform practices for age verification. By addressing these challenges with both legal clarity and scientific accuracy, the justice system can ensure that the protective framework of the POCSO Act is implemented effectively and fairly. To provide judges with a nuanced understanding of the legal and scientific challenges in age determination, especially in sensitive cases involving consent, the discussion will cover medical techniques, documentary evidence, and jurisprudential debates, enabling judges to adopt approaches consistent with both fairness and child rights.

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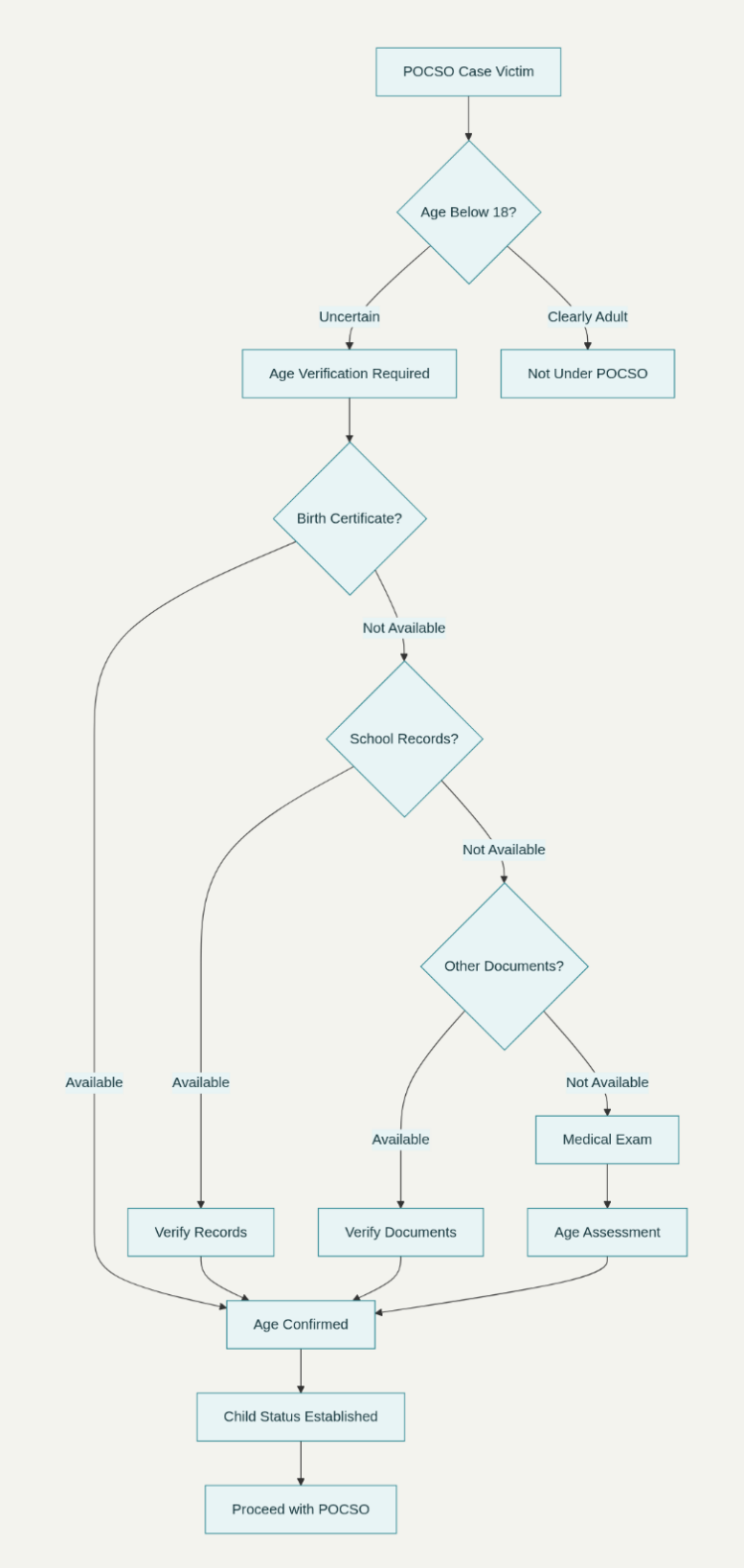


Figure 1 – Determination of Age in POCSO Act

Theme III: Rehabilitation and Compensation of Victims – Ensuring Timely Relief and Preventing Re-traumatization

Sub-themes:

- *Timely action on compensation applications*
- *Criteria for interim & final compensation*
- *Access to support services*
- *Preventing re-victimization & stigmatization*
- *Understanding child psychology*
- *Approach of POCSO court judges*
- *Handling psychosocial pressures*

Objective: Rehabilitation and compensation form an integral part of the victim-centric framework envisioned under the POCSO Act and allied legal provisions. Beyond securing conviction of the offender, the justice system has a duty to ensure that child victims are provided with adequate care, support, and opportunities to rebuild their lives with dignity. Rehabilitation encompasses a range of measures, including psychological counselling, medical assistance, educational support, and social reintegration, all of which are essential to address the trauma suffered by the child. Compensation, whether interim or final, serves as both a recognition of the harm endured and a means to provide financial assistance for medical treatment, education, and long-term rehabilitation needs. Effective implementation requires timely assessment of the child's requirements, coordination among judicial authorities, child welfare committees, and government agencies, and sensitivity to the best interests of the child. Together, rehabilitation and compensation reinforce the principle that justice for child victims must go beyond punishment of the perpetrator to ensuring healing, empowerment, and restoration of a safe and supportive environment. This session will deepen judges' understanding of the psychological impact of abuse, trauma, and court processes on children. By recognizing behavioral changes and emotional responses, judges can develop empathetic courtroom practices that reduce secondary trauma, foster trust, and strengthen the quality of testimony.

The module will focus on restorative justice by exploring frameworks for rehabilitation and compensation of child victims. Participants will analyze compensation mechanisms, judicial guidelines, and the importance of psychosocial and economic support. The session will underscore how judicial interventions can facilitate healing.

Theme IV: Evidence Eliciting under POCSO – Child Friendly Methods & Techniques

Sub-themes:

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- *Judicial role in recording testimony*
- *Child-friendly techniques for eliciting evidence*
- *Minimizing secondary victimization*

Objective: Eliciting evidence in POCSO cases requires a careful, sensitive, and child-centric approach that prioritizes the safety and emotional well-being of the victim while ensuring that reliable testimony is obtained. Unlike adult witnesses, children may find it difficult to articulate experiences of abuse due to fear, trauma, or lack of vocabulary. Therefore, judicial officers, prosecutors, and investigators must adopt child-friendly methods that minimize intimidation and avoid re-traumatization. This includes creating a supportive environment, using simple and age-appropriate language, allowing the presence of a trusted guardian or support person, and avoiding repeated or aggressive questioning. Specialized interviewing techniques, such as open-ended questioning, rapport-building, and the use of non-threatening settings, help children share their experiences more comfortably and accurately. The law itself emphasizes the importance of such approaches, mandating that the dignity of the child be preserved throughout the proceedings. By combining legal safeguards with psychologically informed methods, courts can ensure that the process of evidence elicitation is not only effective in establishing the truth but also respectful of the child's rights, dignity, and need for protection. The module will train judges in techniques for eliciting testimony from children in a non-intimidating manner. By adopting child-friendly practices such as open-ended questioning, avoiding legal jargon, and ensuring a supportive courtroom environment, judges can enhance both the reliability of testimony and the dignity of the child.

Theme V: Judicial Efficiency and Case Management – Streamlining Procedures for Speedy Disposal

Sub-themes:

- *Early Case Intervention and Taking Cognizance under POCSO Provisions*
- *Time-bound Trial under Section 35 of the POCSO Act*
- *Control of Adjournments and Enforcement of Court Timelines*
- *Case Prioritization and Scheduling in Fast Track Special Courts (FTSCs)*
- *Use of Technology for Digital Case Management and Remote Hearings*
- *Supervision and Monitoring by High Courts*

Objective: The goal of this theme is to present judicial officers with a blend of legal principles and technological best practices that may be leveraged to promote expeditious disposal of cases in POCSO courts. Judicial officers, working within the statutory framework, may adhere to prescribed trial timelines and judiciously use their discretion to curtail avoidable delays. The theme underscores the utility of digital innovations; from AI-driven case analytics and e-filing to virtual hearings and biometric attendance systems, that can be adopted to streamline judicial workflows and facilitate timely justice delivery. Utilizing

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data-driven monitoring and fostering cooperation among judicial and investigative agencies are also highlighted as complementary strategies. Collectively, these approaches aim to strengthen judicial efficiency, reduce case backlog, and uphold the fundamental right to a speedy trial in cases involving vulnerable child victims.

Theme VI: Judicial Sensitization and Ethical Considerations – Promoting Fairness, Confidentiality, and Empathy

Sub-themes:

- *Developing judicial sensitivity & addressing stereotypes*
- *Ensuring privacy & confidentiality*
- *Balancing justice & child welfare*

Objective: In cases arising under the Protection of Children from Sexual Offences (POCSO) Act, the role of the judiciary extends beyond the strict application of law to encompass sensitivity, empathy, and ethical responsibility. Judicial sensitization refers to the process of equipping judges with the awareness and understanding necessary to handle child victims and witnesses with care, ensuring that the courtroom environment does not cause further trauma. Ethical considerations, on the other hand, demand that judicial officers maintain impartiality, confidentiality, dignity, and respect for the rights of the child throughout the proceedings. Together, these aspects underscore the importance of adopting a child-centric approach in adjudication—where every stage of the trial, from recording statements to delivering judgments, is guided not only by legal principles but also by compassion, fairness, and adherence to the highest standards of judicial conduct. It will explore the ethical responsibilities of judges in POCSO trials. Participants will learn how to identify and overcome conscious and unconscious biases, safeguard the privacy of victims, and balance the twin goals of justice delivery and child welfare. The emphasis will be on fostering a judicial approach that instills confidence in victims while ensuring their dignity and rights are respected throughout the legal process.

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"Standard Operating Procedure for Judicial Officers Presiding over FTSCs"

Department of Justice

Submitted By

Mr. Vijay Chandra, Registrar (Admin)
(Principal District & Session's Judge)

Dr. Sonam Jain
Assistant Professor

NATIONAL JUDICIAL ACADEMY INDIA

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STANDARD OPERATING PROCEDURES FOR JUDICIAL OFFICERS PRESIDING OVER FTSCs

The strengthening of Fast Track Special Courts (FTSCs) dealing with cases relating to rape and those registered under the Protection of Children from Sexual Offences (POCSO) Act, 2012 is of paramount importance today. After due deliberations over the subject matter, consultation with Judges of Fast Track Special Courts, and following the directions laid down over a catena of decisions of the Supreme Court, several procedural limitations have come to light. The best practices adopted by courts in India and abroad have also been analyzed. In this backdrop, the following procedures may be adopted by Judicial Officers of the Special Courts to ensure a smooth, prompt and seamless prosecution in cases of sexual offences against children.

1. Jurisdiction and Cognizance

i. Sexual offences involving children shall be tried in Special Courts designated as Courts of Sessions [POCSO Act, Sections 28(1), 33(9)].

ii. The Special Court shall take cognizance of offences promptly upon receipt of complaint or chargesheet [POCSO Section 33(1)].

iii. Chargesheet should ideally be filed within 2 months to avoid trial delays [*Bharatiya Nagrik Suraksha Sanhita*, Section 193(2)].

iv. Sexual offences committed by minors shall be referred to Juvenile Justice Board [POCSO Section 34(1)].

v. The court shall determine and record the victim or accused's age if in doubt by referring to school records, birth certificates, or ossification tests [POCSO Section 34(2)].

vi. While trying POCSO offences, the Special Court may try other offences the accused is charged with at the same trial [POCSO Section 28(2)].

Furthermore, when two special laws with overriding clauses conflict, the law enacted later or the more specific one will generally prevail. ***Yakub Abdul Razak Memon v. State of Maharashtra*** clarifies that when two special statutes both contain overriding clauses; courts must balance legislative intent and apply principles such as the latter Act prevailing over the earlier one and specificity overriding generality. Likewise, in ***Solidaire India Ltd. v. Fairgrowth Financial***

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Services, the Supreme Court held that when both statutes contain non obstante clauses, the later enactment is intended to prevail unless stated otherwise by the legislature.

The stance of High Courts on this issue has been consistent as well, as seen in ***Pramod Yadav v. State of MP***, where the MP High Court decided that in cases involving composite offences under the SC/ST Act and POCSO Act, the Special Court under POCSO has exclusive jurisdiction and its provisions prevail. This has similarly been the case for the High Courts of Bombay, Chhattisgarh, Patna, Andhra Pradesh, Allahabad, and Gujarat.

As an illustration, the chart, Figure 1, below illustrates the distribution of functional Fast Track Special Courts (FTSCs), including exclusive POCSO (e-POCSO) courts, across various States and Union Territories in India. Certain large states and regions have notably higher numbers of such courts, underscoring the variation in infrastructure and resources tailored to regional case volumes, which is why timing is crucial in these cases.

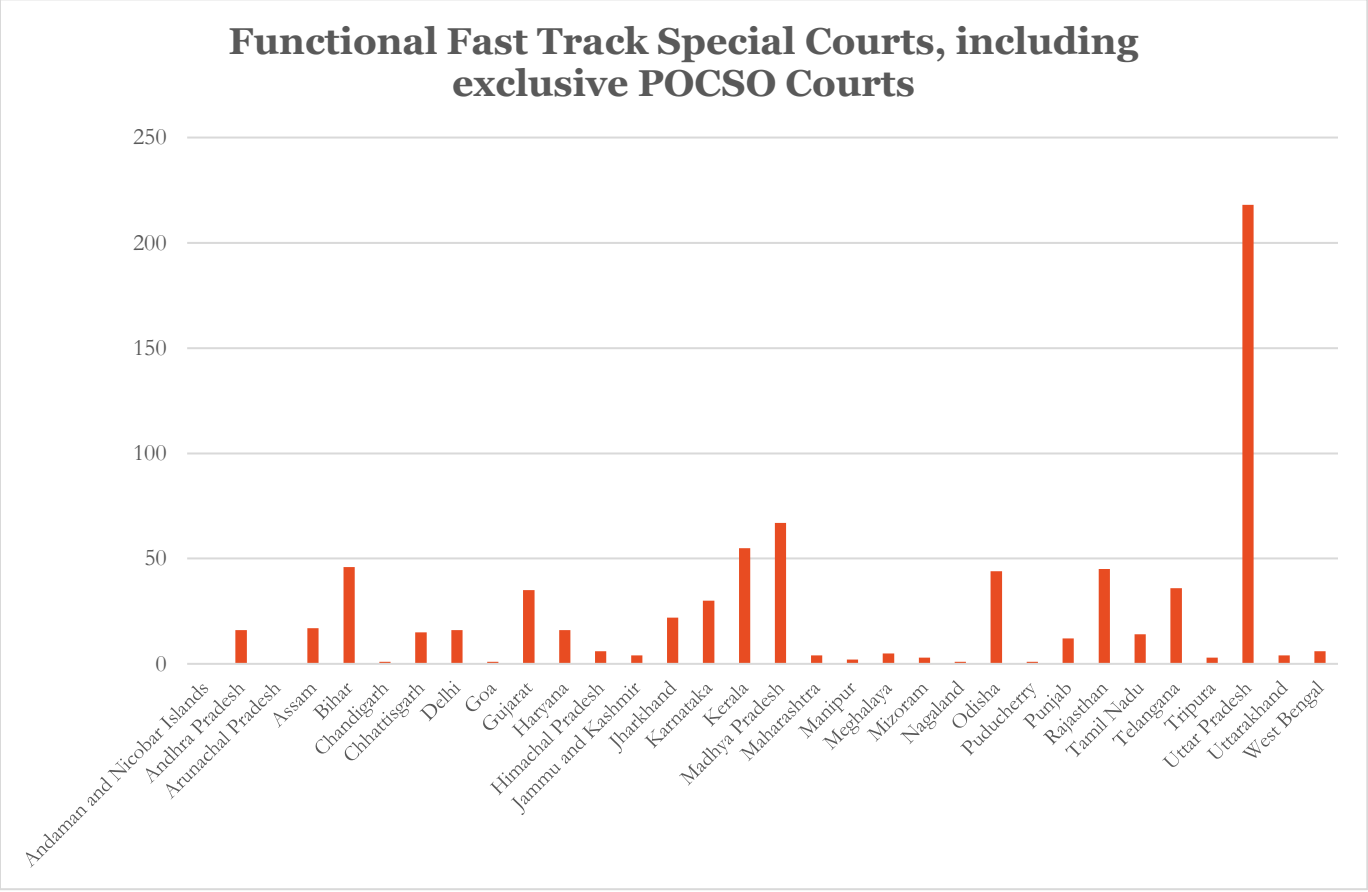


Figure 1

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2. Preparation and Case Management

i. A detailed case calendar must be prepared after framing charges as per Section 253 BNSS specifying examination-in-chief, cross-examination, and re-examination dates for all witnesses, scheduling testimony of witnesses on the same subject-matter proximately.

ii. The request for a deferral under Section 254(3) BNSS must preferably be made before case calendar preparation and only allowed for sufficient reasons justifying the deferral of cross-examination of each witness. The courts must then specify a proximate date for the same.

iii. Strict adherence to the case calendar shall be made mandatory by the court unless exceptional circumstances arise, documented in the order sheet.

iv. The trial should proceed on a day-to-day basis once fixed, avoiding backlog and overcrowding that cause undue adjournments.

v. The Judicial Officers must maintain a diary ensuring an optimal manageable number of cases per day aimed at minimizing overcrowding and unnecessary delays.

vi. Statistics of pending cases beyond 3 years shall be reported monthly to Principal District Judges and respective High Court committees for corrective actions.

vii. The POCSO Act read with Rules 4(13) and 4(15) of the POCSO Rules, by the Ministry of Women and Child Development [POSCO Rules] recognize a statutory entitlement to the assistance of and representation by legal counsel for the family or the guardian of the child and entitlement to be present and to participate in proceedings in accordance with the said provision. As a necessary corollary, there is also an entitlement of such persons to be made aware of the filing of applications and the hearings scheduled on such applications at the various stages of the proceedings.

viii. The appropriate court, before proceeding to hear the above application, shall ascertain the status of service of notice, and if it is found that notice has not been issued, the court may make such reasoned order as it deems fit to secure the ends of justice, taking into account any emergent circumstances that warrant dealing with the application in the absence of the child's family or guardian or legal counsel.

ix. In the event despite issuance of notice, the child's family, guardian or legal counsel, does not attend the hearing, the court may proceed further without the presence of such

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noticee, or issue a fresh notice, as the court may deem fit and proper, considering the interest of justice.

Exclusive and trained Special Public Prosecutors are essential for speedy and sensitive handling of POCSO cases, as emphasized in ***Alarming Rise in Reported Child Rape Incidents, In re***, which stated that appointing exclusive, specially trained Public Prosecutors for POCSO cases are necessary to ensure empathetic and efficient trials.

The need for the above arises from the fact that there are differences in regional resource allocation and workload prioritization. The figure 2 below presents the distribution of Special Public Prosecutors appointed across some States and Union Territories, with a focus on those exclusively handling POCSO cases, where a stark difference is observed.

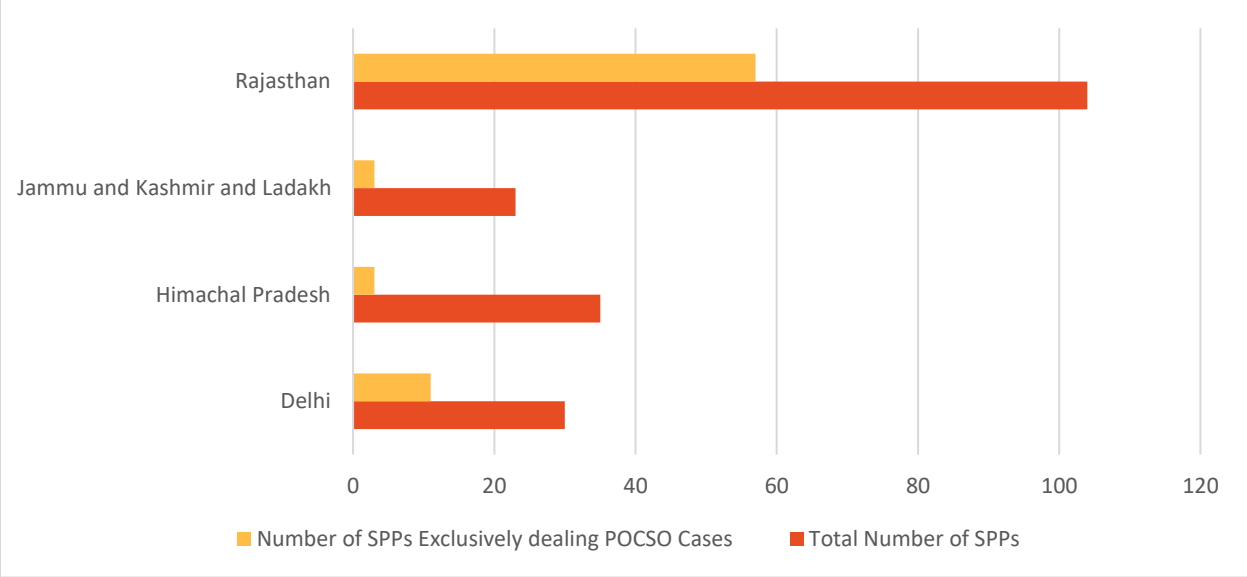


Figure 2

3. Child Victim Testimony and Protection

i. The evidence of a child victim shall be recorded within thirty days of taking cognizance [POCSO Section 35(1)].

ii. The Special Court shall not call the child repeatedly for recording her testimony to minimize trauma and inconvenience [POCSO Section 33(5)].

iii. The Special Court shall ensure a child-friendly atmosphere, allowing presence of a trusted family member, guardian, friend, or relative during the recording [POCSO Section 33(4)].

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iv. Frequent breaks during testimony may be allowed by the Special Court as necessary [POCSO Section 33(3)].

v. The testimony may be recorded via video-conferencing or with use of single-visibility mirrors or curtains so that the child does not face the accused during trial [POCSO Section 36(2)].

vi. The court shall conduct proceedings in camera and in the presence of persons trusted by the child, preserving dignity and privacy [POCSO Section 37].

vii. Legal aid for the child shall be ensured, with counsel provided by Legal Services Authority if required [POCSO Section 40].

viii. The child's statement before the Magistrate shall be recorded verbatim, audio/video recorded where possible, and considered examination-in-chief if the child has disabilities [POCSO Sections 25(1), 26(4), BNSS Section 183(6)(a)].

Under POCSO, the statutory age of consent is strictly enforced, so consent is legally irrelevant if the victim is a minor, as clarified by the Supreme Court in ***Independent Thought v. Union of India*** and ***Eera v. State (NCT of Delhi)***.

4. Recording Testimony through Videoconferencing

i. Videoconferencing shall be preferred for inter-State/inter-district child sexual assault cases at court complex video-conferencing rooms, vulnerable witness rooms, District Legal Services Authority (DLSA) offices, or Taluk/Sub-Divisional court complexes where such facilities exist.

ii. District Judges shall report availability of video-conferencing facilities to the High Court, which will publish this for transparency and facilitate infrastructure expansion.

iii. Remote Point Coordinator (RPC), usually the DLSA Secretary or a retired judicial officer appointed, shall coordinate proceedings at the Remote Point.

iv. The trial court at the Court Point shall coordinate with RPC at the Remote Point to schedule testimony, issue summons (including RPC contact details), and ensure identification documents presentation by the child witness.

v. Child witnesses shall be entitled to a designated support person and protections such as diet money commensurate with travel, police presence to prevent contact with accused or relatives, and prevention of unauthorized persons or recording devices.

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vi. The RPC shall facilitate examination, including translation services or special educators if needed, and ensure no tutoring or undue influence during testimony.

vii. The Fast Track Special Court (FTSC) Judge will channel the questions to the witness, maintaining appropriate judicial control.

viii. Upon completion, the deposition will be emailed to RPC for reading back to the witness for verification and signature/thumb impression, then securely returned to the trial court by Speed Post and electronically.

ix. For witnesses residing in other States, intimation shall be sent to respective High Court Registrars to coordinate assistance. The procedure shall comply with the video conferencing rules framed by respective High Courts.

Courts can convict even if the Forensic Science Laboratory (FSL) report is not available, provided other evidence is reliable, as laid down in ***Jamnalal v. State of Rajasthan***. Furthermore, the prosecution must rigorously prove the chain of custody for forensic samples to ensure admissibility of DNA evidence, as stated by the Supreme Court in ***Karandeep Sharma v. State of Uttarakhand***.

5. Protection, Privacy, and Legal Safeguards

i. The Special Courts, to further ensure that the child is not exposed to the accused during testimony, may direct that the accused may hear and communicate through counsels only [POCSO Section 36(1)].

ii. The Special Court shall ensure that there isn't aggressive or character-assassinating questioning of the child; and that their dignity is maintained [POCSO Section 33(6)].

iii. Evidence on the victim's character or previous sexual history is inadmissible [Section 48 of the Bharatiya Sakshya Adhiniyam].

For illustration, judges should be very strict in discouraging and disallowing questions that blame or shame the child. For example,

- "Why didn't you scream or run away?"
- "Why did you go with the accused willingly?"
- "Why didn't you tell your parents earlier?"
- "Were you enjoying it?"

Similarly, questions about past sexual history or character of the child should be avoided at all costs. For example,

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- "Have you had a boyfriend before?"
- "Have you been sexually active before this incident?"
- "Do you usually dress like this?"

Again, suggestive or intimidating questions and intrusive or graphic questions should be avoided. For example,

- "If he goes to jail, will you be happy?"
- "Describe exactly how he touched you in detail."
- "Show us what position you were in?"
- "Did it hurt a lot when it happened?"
- "How can you say it was sexual, if you are so young?"

The main effort should be that judges should ensure that questioning in court is simple, age-appropriate, and non-suggestive. It should focus on facts necessary to establish the offence or otherwise. It can be conducted with the assistance of support persons or child psychologist when required. All concerned should also keep in mind the "Handbook on Combating Gender Stereotypes" released by the Supreme Court of India.

iv. Strict confidentiality must be maintained to prevent disclosure of the child's identity in media or public records unless specifically permitted by the court for the child's interest [POCSO Sections 23(1), 23(2), 33(7)].

v. The Special Court shall prohibit and punish false complaints or false information, except when made by the child victim, in which case no punishment shall be imposed on the child [POCSO Section 22].

It is necessary that the trial court must clearly put all material circumstances to the accused during Section 351 BNSS examination to ensure fairness, as per ***Nababuddin v. State of Haryana*** and ***Raj Kumar v. State NCT of Delhi***, which established the judicial duty to put every material circumstance to the accused under Section 313 CrPC/Section 351 BNSS, and failure to do so can vitiate trial if it causes prejudice to the trial.

6. Presumptions and Trial Completion

i. The Special court shall presume commission of offence and culpable intent under specified offences in the POCSO Act unless disproved [POCSO Sections 29, 30].

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Under the act, absence of physical injury on the prosecutrix is not a ground for acquittal in sexual offence cases if her testimony is credible, as held by the Supreme Court in ***Deepak Kumar Sahu v. State of Chhattisgarh***. Also, in ***State of Punjab v. Gurmit Singh***, it was clarified that lack of injuries on the prosecutrix, especially if a child, is immaterial to the veracity of allegations in sexual offence cases.

Furthermore, corroboration of the victim's testimony is not required if the child's account is trustworthy and inspires confidence. In ***Bhanei Prasad Raju v. State of HP***, the Supreme Court held that under POCSO, a child victim's credible testimony does not require independent corroboration and statutory presumptions aid prosecution.

Additionally, the Special Court is permitted to draw statutory presumptions of guilt and culpable mental state under Sections 29 and 30, shifting the burden of proof to the accused, as clarified in ***Pappu v. State of UP*** and ***Attorney General v. Satish***.

ii. Trials under POCSO should be completed as far as possible within one year from the date of taking cognizance [POCSO Section 35(2)].

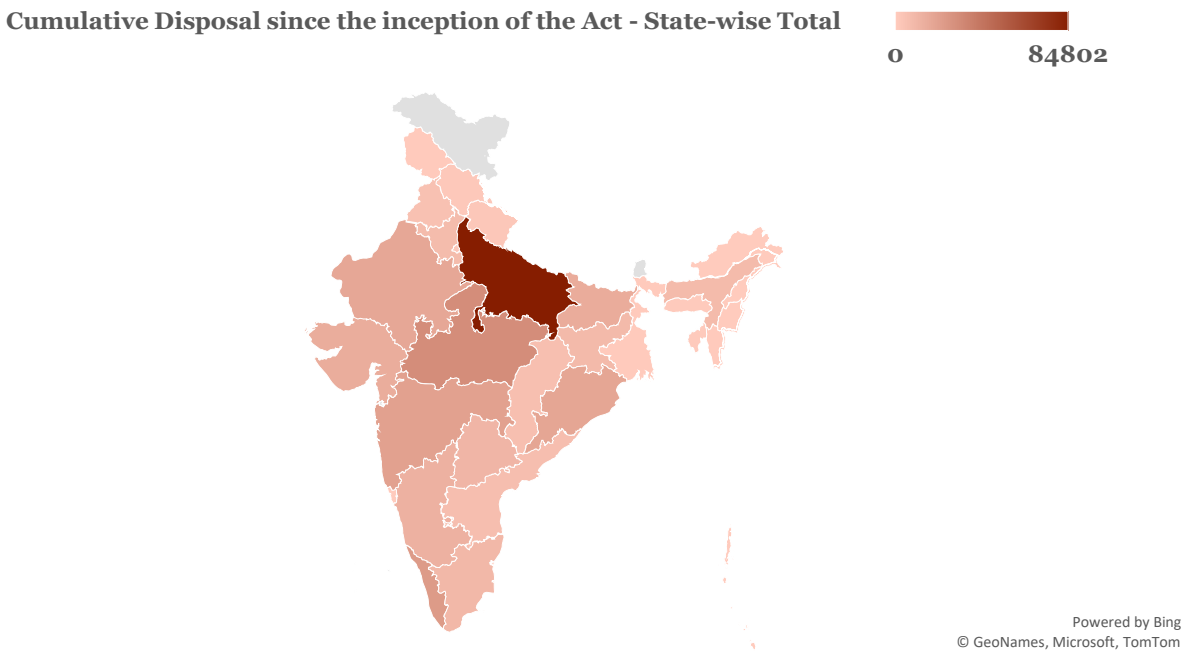


Figure 3

The chart above (Figure 3) highlights the distribution of cases registered and disposed across States and Union Territories within POCSO Fast Track Special Courts since the scheme's inception, revealing regional disparities in case volumes and judicial capacity. Certain states bear a

significantly higher judicial load, owing to factors including population density and reporting awareness, while others register relatively fewer cases. And that is why there is a critical need for continuous monitoring and targeted resource allocation to optimize judicial responsiveness and reduce backlog in child sexual offence cases.

Additionally, Figure 4 below represents the cumulative disposal of cases by exclusive POCSO courts across States and Union Territories from 2019 to May 2024. There is both progress and an ongoing challenge in case resolution, underscoring the importance of further augmenting judicial resources and implementing procedural efficiencies to ensure timely and effective delivery of justice.

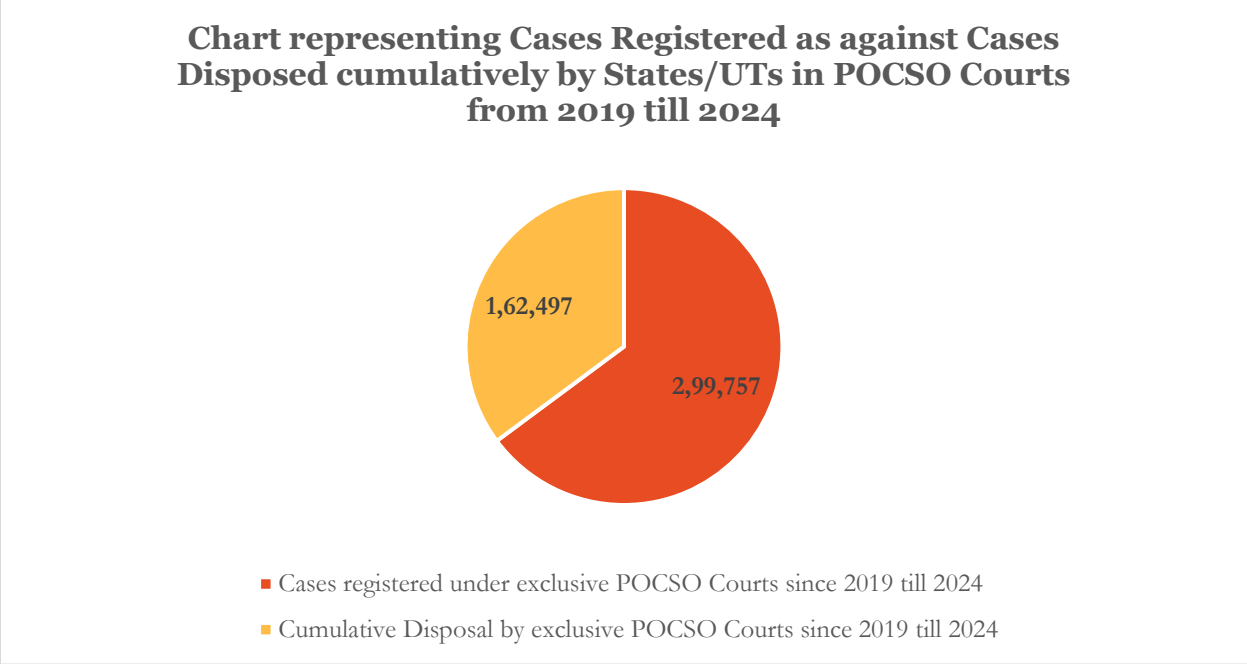


Figure 4

Furthermore, Figure 5 below illustrates the current pendency of cases. There are substantial variations across States and Union Territories, with certain regions facing a notably heavy caseload yet to be adjudicated, which calls for stringent case management reforms and enhanced resource allocation to ensure timely justice and minimize delays for vulnerable victims.

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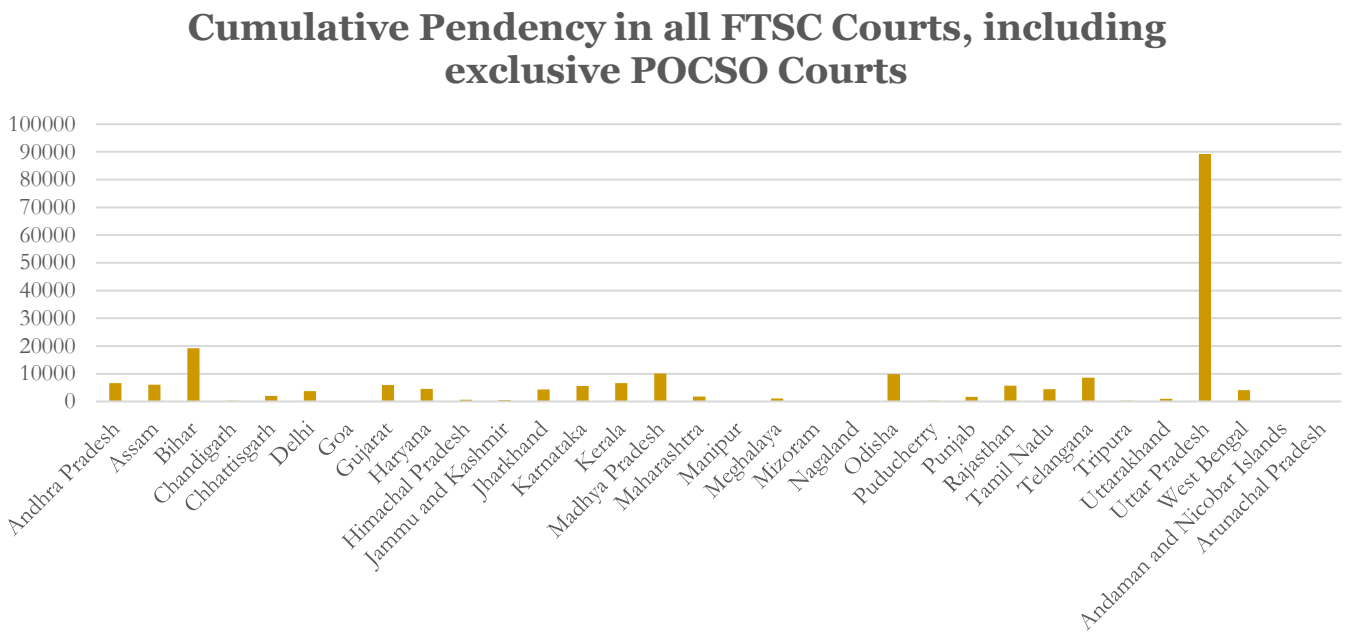


Figure 5

7. Compensation and Rehabilitation

i. The Special Court may direct payment of such compensation in addition to punishment for physical/mental trauma and immediate rehabilitation [POCSO Section 33(8)].

ii. Interim compensation may be ordered at any stage after FIR registration, subject to adjustment at final compensation [POCSO Rules, 9(1)].

iii. Compensation is payable even in acquittal, discharge, or when accused is untraceable, considering relevant factors like harm severity and medical expenses [POCSO Rules 9(2), (3)].

iv. Compensation is payable from Victim Compensation Fund or State Government schemes and shall be paid within 30 days of order [POCSO Rules 9(4), (5)].

8. Monitoring and Accountability

i. Hon'ble Chief Justices of the High Courts shall constitute committees to regulate and monitor trial progress and pendency of POCSO cases.

ii. Courts to give due effect to cost provisions, penalizing parties who seek frivolous adjournments to deter dilatory tactics.

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Underlying Principles for Judicial Officers' Guidance

- Sui generis cases: Recognize differing vulnerabilities and needs; adopt individualized approaches.
- Child-Friendliness: Provide empathetic, supportive environment to gain the child victim's trust and confidence.
- Immediacy: Address urgent needs of child victim promptly to prevent additional trauma.
- Best Interest: Ensure every decision prioritizes child welfare as a primary concern [Convention on the Rights of Child, Article 3].
- Dignity and Care: Uphold inherent dignity with respectful treatment of the child during trial.
- Supportive Communication: Enable open, non-threatening, problem-focused communication with the victim.
- Protection: Safeguard child from secondary victimization and exposure to harm throughout judicial process.

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Road map for Concluding Trial Proceedings of Child Sexual Abuse cases in stipulated time:[1]

Reference may be drawn to the below chart (Figure 6) which highlight key directives to reduce trial time by maintaining an optimal caseload in Special Courts and relying on cogent forensic evidence. Effective distribution of caseload and diligent case management are crucial to ensuring that judicial resources are optimally utilized, thereby facilitating speedy trials.

Weeks	Week 1-2	Week 3	Week 8-10	Week 11-13	Week 14-15	Week 16
For Charge-sheet	Cognizance and summons to accused. • Supply of chargesheet and documents to accused and child/guardian. • Admission, denial, and charge arguments. • Order on charges. • Decide Section 94 BNSS application, if any. • Examination of prosecutrix.	Examination and cross-examination of relevant witnesses (including eyewitnesses, family, site-plan witnesses)	Examine and cross-examine IO. Complete pending proceedings. Close prosecution examination. Record Section 351 BNSS statement.	Submit list of Defence Witnesses. Decide on accused's Section 94 BNSS application. Examine and cross-examine defence witnesses. Close defence examination.	Final arguments/submissions and Fixing date for judgement.	Judgement pronounced along with the quantum of punishment.
For Closure Report	Examination of the closure report	Inform complainant of closure report; allow two weeks to contest. Receive police reply and fix hearing date.	Hear parties (complainant and police); decide on closure—accept, order further investigation, or take compliance.	-	-	-

Figure 6

[1] G.K. Goswami and Aditi Goswami, Procedural Road Map for Handling Child Sexual Abuse under the POCSO Act, 2012, (2021) 3 SCC J-1.

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The chart below (Figure 7) also stress close coordination between Investigating Officers, police, and prosecution to avoid delays. They further instruct that not more than one adjournment should be allowed during the examination of the victim or other critically relevant witnesses, and that such examinations should proceed on a continuous day-to-day basis until completion.

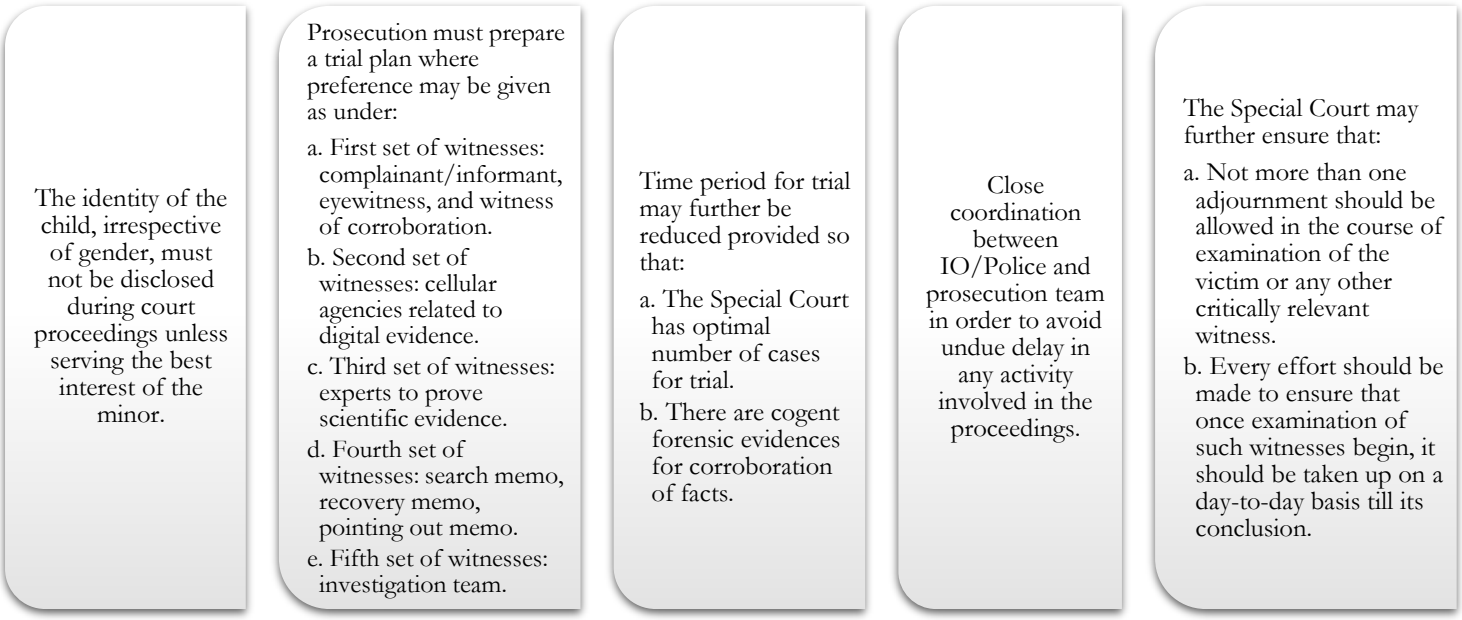


Figure 7

Empirical Findings:

Based on interviews with judicial officers, varying approaches and challenges were highlighted in the functioning of POCSO courts across different regions. In larger districts, notably in Telangana, Gujarat, and Uttar Pradesh, specialized courts exclusively handling POCSO cases are more common, while in smaller districts, judges often manage POCSO cases as additional charges due to lower caseloads. Notwithstanding these arrangements, many such courts face substantial workload pressures.

Judicial observations indicated that cases resulting in acquittals frequently involve scenarios where the parties were consenting, which aligns with the ongoing judicial discourse on revisiting the age of consent. Infrastructure limitations pose significant challenges, particularly in Telangana, parts

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of Uttar Pradesh and other remote areas of the country, where inadequate internet connectivity and video conferencing facilities contribute to underutilization of courtrooms. Additionally, staff training deficiencies, as noted in some regions such as West Bengal, Bihar, etc., affect procedural accuracy, with instances of non-specialized personnel managing critical administrative tasks, leading to unreliable adjournment recording and inappropriate usage of procedures not applicable to POCSO cases.

The utilization of expert assistance under Section 39 of the POCSO Act tends to be reserved for more serious cases, with the vast majority of cases, including those involving close-in-age relationships, being handled without such support due to caseload constraints. Factors contributing to delays include non-appearance of witnesses, compromises between parties, forensic report delays, case volume, appellate stays, shortage of designated public prosecutors, and hostile testimony by child witnesses. Suggestions emerging from these judicial perspectives emphasize the implementation of case calendars and electronic summons to enhance trial efficiency and reduce avoidable delays.

ANNEXURE I: REFERENCES

- Assessment of the Criminal Justice System in Response to Sexual Offences, In re, (2020) 18 SCC 540.
- Ministry of Women and Child Development, https://missionvatsalya.wcd.gov.in/public/pdf/children-related-law/POCSO%20Rules%202020.pdf.
- DECODING THE CONCURRENCY OF LAWS RELATED TO CHILD VICTIMS IN INDIAN CONTEXT - A PERSPECTIVE, R.Malathi M.L., Tamil Nadu State Judicial Academy.
- G.K. Goswami and Aditi Goswami, Procedural Road Map for Handling Child Sexual Abuse under the POCSO Act, 2012, (2021) 3 SCC J-1.
- POCSO, Open Government Data, https://www.data.gov.in/keywords/POCSO.

List of Cases:

- Sampurna Behura v. Union of India, (2018) 4 SCC 433.
- Nipun Saxena v. Union of India, (2019) 2 SCC 703.
- Alarming Rise In The Number Of Reported Child Rape Incidents, In Re (2020) 7 SCC 87.
- Yashpal Jain v. Suhshila Devi, 2023 INSC 948.
- Arjun Kishanrao Malge v. State of Maharashtra, (2021) 1 HCC (Bom) 275.
- Children in Street Situations, In re, (2022) 20 SCC 729.
- Soumen Biswas, In re, 2022 SCC OnLine Cal 3380.
- Imtiyaz Ramzan Khan v. State of Maharashtra, (2018) 9 SCC 160.
- Alakh Alok Srivastava v. Union of India and Others, 2018 SCC Online SC 478.

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ANNEXURE II: EXTRACTS OF JUDICIAL PRECEDENTS

I. QUESTION: Conflict Between Two Special Acts – Which Shall Prevail?

Supreme Court:

Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 SCC 1

1515. Admittedly, the TADA Act, 1985/1987 and the JJ Act, 1986/2000, both contained provisions providing overriding effect on any other law for the time being in force.

1516. A statute must be interpreted having regard to the purport and object of the Act. The doctrine of purposive construction must be resorted to. It would not be permissible for the court to construe the provisions in such a manner which would destroy the very purpose for which the same was enacted. The principles in regard to the approach of the court in interpreting the provisions of a statute with the change in the societal condition must also be borne in mind. The rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfil its constitutional obligations. It is the duty of the court to adopt a harmonious construction by which both the provisions remain operative.

1517. Where two statutes provide for overriding effect on the other law for the time being in force and the court has to examine which one of them must prevail, the court has to examine the issue considering the following two basic principles of statutory interpretation:

1. Leges posteriores priores contrarias abrogant (later laws abrogate earlier contrary laws).

2. Generalia specialibus non derogant (a general provision does not derogate from a special one.)

1518. The principle that the latter Act would prevail the earlier Act has consistently been held to be subject to the exception that a general provision does not derogate from a special one. It means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it would be presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one.

1519. The basic rule that a general provisions should yield to the specific provisions is based on the principle that if two directions are issued by the competent authority, one covering a large number of matters in general and another to only some of them, his intention is that these latter

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directions should prevail as regards these while as regards all the rest the earlier directions must be given effect to.

1520. It is a settled legal proposition that while passing a special Act, the legislature devotes its entire consideration to a peculiar subject. Therefore, when a general Act is subsequently passed, it is logical to presume that the legislature has not repealed or modified the former special Act unless an inference may be drawn from the language of the special Act itself.

1521. In order to determine whether a statute is special or general one, the court has to take into consideration the principal subject-matter of the statute and the particular perspective for the reason that for certain purposes an Act may be general and for certain other purposes it may be special and such a distinction cannot be blurred.

1522. Thus, where there is inconsistency between the provisions of two statutes and both can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment of the legislature conveyed by the language of the relevant provisions therein."

Solidaire India Ltd. v. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71

"10. We may notice that the Special Court had in another case dealt with a similar contention. In Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd. [(1997) 89 Comp Cas 547 (Special Court)] it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the Special Court had come to the conclusion that the Special Court Act being a later enactment would prevail. The headnote which brings out succinctly the ratio of the said decision is as follows:

"Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply.

The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, provides in Section 13, that its provisions are to prevail over any other Act. Being a later enactment, it would prevail over the Sick Industrial Companies (Special Provisions) Act, 1985. Had the Legislature

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wanted to exclude the provisions of the Sick Companies Act from the ambit of the said Act, the Legislature would have specifically so provided. The fact that the Legislature did not specifically so provide necessarily means that the Legislature intended that the provisions of the said Act were to prevail even over the provisions of the Sick Companies Act.

Under Section 3 of the 1992 Act, all property of notified persons is to stand attached. Under Section 3(4), it is only the Special Court which can give directions to the Custodian in respect of property of the notified party. Similarly, under Section 11(1), the Special Court can give directions regarding property of a notified party. Under Section 11(2), the Special Court is to distribute the assets of the notified party in the manner set out thereunder. Monies payable to the notified parties are assets of the notified party and are, therefore, assets which stand attached. These are assets which have to be collected by the Special Court for the purposes of distribution under Section 11(2). The distribution can only take place provided the assets are first collected. The whole aim of these provisions is to ensure that monies which are siphoned off from banks and financial institutions into private pockets are returned to the banks and financial institutions. The time and manner of distribution is to be decided by the Special Court only. Under Section 22 of the 1985 Act, recovery proceedings can only be with the consent of the Board for Industrial and Financial Reconstruction or the appellate authority under that Act. The Legislature being aware of the provisions of Section 22 under the 1985 Act still empowered only the Special Court under the 1992 Act to give directions to recover and to distribute the assets of the notified persons in the manner set down under Section 11(2) of the 1992 Act. This can only mean that the Legislature wanted the provisions of Section 11(2) of the 1992 Act to prevail over the provisions of any other law including those of the Sick Industrial Companies (Special Provisions) Act, 1985.

It is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the latter must be adopted."

High Court Cases:

- *Madhya Pradesh High Court*

  Pramod Yadav v. State of M.P., 2021 SCC OnLine MP 3394 : ILR 2021 MP 1151 [DB]

  "28. In view of the above, it must be held that "even though the learned Single Judge in last para of the judgment in Mohd. Juried (supra) mentioned that if the offences have been registered under the Atrocities Act and POCSO Act and such offences would be tried by the

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Court of Sessions under the provisions of Atrocities Act with the aid of Section 9 of Cr.P.C. and as per language of the notification". But at the same time, the learned Single Judge also made it clear that "POCSO Act being latter enactment shall prevail to the provisions of the Atrocities Act in case of any inconsistency". Then learned Single Judge further held that "mere filing of challan before the Court of Sessions as appears in the present case will not vitiate the trial in the light of the judgment of the Apex Court in Rattiram (supra)". The observances in the first and third part of this para should, therefore, be taken to have been confined to the facts of that particular case in view of peculiarity attached to that case by relying on the ratio of the Supreme Court in Rattiram (supra) to repel the argument that trial of the case was vitiated but simultaneously it was also held by the learned Single Judge in that very judgment on the authority of several Supreme Court judgments that in case of conflict between two enactments having non-obstante clause, apart from object and purpose for which the Act has been enacted, the latter enactment shall prevail over the provisions of the former Act. This was the precious view taken by another Single Bench in Smt. Sunita Gandharva (supra). That being the crux of the judgment in Mohd. Juned (supra), it must be held that there in fact is no conflict between the ratio of the two judgments.

29. In view of the above discussions, the question No. 1 is answered in the terms that the trial of a case instituted under the provisions of two special Acts viz. Atrocities Act and POCSO Act, shall be conducted by the Special Courts constituted under the POCSO Act."

- *Bombay High Court*

  Suraj S. Paithankar v. The State of Maharashtra, Bail Application No. 817/2020 where a similar question arose, followed most of the judgments which have been referred to above and held that in the composite offence involving POCSO Act and S.C.S.T. Act, the provision of the POCSO Act will prevail. The trial of the case will also be done by Special Court constituted under POCSO Act. Similarly, the Rajasthan High Court in Lokesh Kumar Jangid (supra) also held that no appeal will lie in a composite offence of POCSO and SC ST Act and a regular bail application under Section 439 would be maintainable.

- *Chhattisgarh High Court*

  Ram Swarup Rajwade v. State of Chhattisgarh in W.P. (Cr.) No. 540/2020 on this aspect of the matter had the following observations to make in para 40 and 41 of the report:— "40. A careful perusal of Section 28(2) read with Sections 31 and 42A of the POCSO Act read with

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Sections 26 and 220 of the Code of 1973, would reveal that it makes the path for operation/provisions of other laws particularly the trial of offences under the provisions of other law if the accused is charged at the same trial. In other words, the POCSO Act harmoniously allows the incorporation of other Acts for their operation by virtue of Section 28(2) of the POCSO Act. In this regard, there is neither any inconsistency nor any conflict in the POCSO Act and as such, the SC-ST Act of 1989 and the POCSO Act can co-exist and stand independently together with each other for operational purpose and as such, "Special Court" designated under the POCSO Act would have exclusive jurisdiction to try the offence of both the Acts if arise out of same crime in one incident. 41. Similarly, it is well settled position of law that if two Acts operate in the same field then the Act which is later enacted will prevail over the earlier one. This legal principle is based on the foundation that at the time of enactment of the later statute, the Legislature was well aware of the earlier legislation and its non obstante clause. Since the Legislature still confers the later enactment with a non obstante clause, it means that the Legislature wanted that enactment to prevail."

- *Patna High Court*

  Guddu Kumar Yadav v. The State of Bihar, Cr. Misc. No. 52792 of 2019 after considering all the relevant provisions and case law held as under:— "21. After comparative analysis of the object, scheme and scope of the both Special Acts, i.e. POCSO Act and SC/ST Act, I, nowhere find such Special Provisions or procedure under the SC/ST Act for reporting of cases, recording of statements of the victim child, safeguard provided at the time of testifying the victim child and such a broad scheme of compensation and rehabilitation for child victim and the power invested to the Special Court as to grant interim compensation or compensations notwithstanding the result of the prosecution, as being contemplated under the POCSO Act. In the SC/ST Act, no special procedure being contemplated for trial of the offences. The Special Court constituted under the SC/ST Act, shall follow almost procedure contemplated under the Cr. P.C. for trial of Session Cases. In the said Act there being no separate provision for investigation of the offences relating to child victims belonging to that section of the society. 22. Therefore, this Court is of the opinion that the POCSO Act takes within its fold the protection of children of all sections of the society including those belonging to SC/ST. The POCSO Act, being later legislation than the SC/ST Act, and a self-contained legislation having

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number of safeguards to the children at every stage of proceeding with the better scheme of compensation and rehabilitation for child victims including those belonging to SC/ST."

- *Andhra Pradesh High Court*

  State of Andhra Pradesh v. Mangali Yadagiri, 2016 Cri LJ 1415 in paragraph Nos. 19 and 20 held as under:—

  "19. A perusal of both the enactments would show that POSCO Act is a self-contained legislature which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and other allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non obstante clause in Section 42-A of the POSCO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POSCO Act, though the legislature was aware about the existence of non obstante clause in Section 20 of the SC/ST Act. 20. Applying the test of chronology the POSCO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POSCO Act being beneficial to all and later in point of time, it is to be held that the provisions of POSCO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments."

- *Allahabad High Court*

  Rinku v. State of U.P., Criminal Misc. Bail Application No. 33075/2018 after elaborate discussions of the law in para 14 to 16 of the report held as under:— "14. Conflict of jurisdiction between two special Acts operating in the same field, both carrying non obstante clauses, is not a new phenomenon to confront courts. When the question does arise as to which special statute would prevail generally, or over a certain part of the rights and liabilities regulated, the procedure or jurisdiction provided, there are no thumb rules to determine the conflict. There are, however, well settled principles for guidance to be applied in such situations, in order to resolve which of the two special enactments would prevail. The first and the more pervasive of the principles to be applied, is to look to the object and the purpose of the enactments that operate in the same field. Here, it has to be the endeavor of the Court to find out the legislative priority. It has to be discerned by the Court where in the compete and conflict between two special statutes, the legislative priority lies. This conflict can arise between two provisions of the same statute, and that is why it is commonplace to come across

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statutory phraseology that seeks to obviate the conflict by wording the non obstante clause in one of the two provisions in the same statute saying, "notwithstanding anything in this Act or any other law for the time being in force……..…". 15. The test of looking to the object of the two special statutes to determine which of the two would prevail, in cases where there is a conflict between the two, is the more enduring one to guide. The other that is invariably applied, or may be alongside the first, is to see which of the two special statutes, both carrying non obstante clauses was enacted subsequent in point of time. It is a dependable principle that a subsequent legislation is enacted by the legislature with knowledge of the provisions of the earlier special statute. Thus, it is presumed that if a subsequent statute gives overriding effect to a particular provision, that impinges upon the field occupied by an existing special statute, the legislature is presumed to have intended the subsequent enactment to take precedence over the former. But, it may not be always so. There the wider tests relating to the objects of the two legislations is to be applied alongside, in order to arrive at a construction that resolves the conflict, giving fullest effect to the legislative intent."

- *Gujarat High Court*

  Vikrambhai Amrabhai Malivad v. State of Gujarat, R/Criminal Misc. Application No. 11014/2020 in para 12 and 13 of the report held as under:— "12. In the present application, the applicant accused had approached the Court of Additional Sessions Judge & Special POCSO Judge & Special Atrocity Judge by filing Criminal Misc. Application No. 272 of 2020 under section 439 of the Cr.P.C. which resulted into rejection. The applicant, thereafter has filed the captioned application seeking bail by invoking the provisions of section 439 of the Cr.P.C. The powers of granting bail by the High Court under section 439 of the Cr.P.C. will not get diluted even after the special court has exercised such powers. Once it is established that the POCSO Act will have overriding effect on the Atrocity Act the provisions of section 31 of the POCSO Act will come into play which speaks of applicability of the provisions of Cr.P.C. The same declares that the Special Court shall be deemed to be a Sessions Court, whereas such deeming fiction is conspicuously absent in section 14 of the Atrocity Act Section 33 of the POCSO Act mandates the procedure for safeguarding the interest of the child during the trial proceedings. Thus, the comparative analysis of provisions of both the Acts, leads to sole conclusion, that the legislature in its wisdom has conferred precedence on the POCSO Act above the Atrocity Act. Hence, the only remedy available for the applicant will be of filing an

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application under section 439 of the Cr.P.C. before the High Court… I am in complete agreement with the final opinion expressed by the Patna High Court with regard to the maintainability of an application for bail in terms of section 439 of the Cr.P.C. in a case involving the POCSO Act and the Atrocity Act."

II. QUESTION: Consensual Sex – Does Consent Matter in POCSO?

Independent Thought v. Union of India, (2017) 10 SCC 800

"176. In this case, we are concerned mainly with Articles 14 and 21 of the Constitution of India. The legislative history given above clearly indicates that a child has universally been defined as a person below 18 years of age in all the enactments. This has been done for the reason that it is perceived that a person below the age of 18 years is not fully developed and does not know the consequences of his/her actions. Not only is a person below the age of 18 years treated to be a child, but is also not even entitled to deal with his property, enter into a contract or even vote."

"84. … There is no question of a girl child giving express or implied consent for sexual intercourse. The age of consent is statutorily and definitively fixed at 18 years and there is no law that provides for any specific deviation from this. Therefore unless Parliament gives any specific indication (and it has not given any such indication) that the age of consent could be deviated from for any rational reason, we cannot assume that a girl child who is otherwise incapable of giving consent for sexual intercourse has nevertheless given such consent by implication, necessary or otherwise only by virtue of being married. It would be reading too much into the mind of the girl child and assuming a state of affairs for which there is neither any specific indication nor any warrant. It must be remembered that those days are long gone when a married woman or a married girl child could be treated as subordinate to her husband or at his beck and call or as his property. Constitutionally a female has equal rights as a male and no statute should be interpreted or understood to derogate from this position. If there is some theory that propounds such an unconstitutional myth, then that theory deserves to be completely demolished."

Eera v. State (NCT of Delhi), (2017) 15 SCC 133

"The Pocso Act has identified minors and protected them by prescribing the statutory age which has nexus with the legal eligibility to give consent. Parliament has felt it appropriate that the definition of the term "age" by chronological age or biological age to be the safest yardstick than referring to a person having mental retardation. It may be due to the fact that the standards of

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mental retardation are different and they require to be determined by an expert body. The degree is also different. Parliament, as it seems, has not included mental age. It is within the domain of legislative wisdom. Be it noted, a procedure for determination of age had been provided under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2000. The procedure was meant for determination of the biological age. It may be stated here that Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) defines "child" to mean a person who has not completed eighteen years of age. There is a procedure provided for determination of the biological age. The purpose of stating so is that Parliament has deliberately fixed the age of the child and it is in the prism of biological age. If any determination is required, it only pertains to the biological age, and nothing else."

III. QUESTION: Lack Of Injury on The Body of Prosecutrix – Ground for Acquittal?

Deepak Kumar Sahu v. State of Chhattisgarh, 2025 SCC OnLine SC 1610 [DB]

"In *State of Punjab vs. Gurmit Singh [(1996) 2 SCC 384]* it was observed: In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case."

Raju v. State of M.P., (2025) 8 SCC 281

"Her evidence that no definite opinion could be given, and that no other injury other than the one on the lip of 'R' was present, does not mean that sexual assault was not committed on the prosecutrix 'R'. It is also well settled that where the ocular evidence is clear, it will prevail over the medical evidence. [See *CBI* v. *Mohd. Parvez Abdul Kayuum* [*CBI* v. *Mohd. Parvez Abdul Kayuum*, (2019) 12 SCC 1 : (2019) 4 SCC (Cri) 32] (para 65).]"

IV. QUESTION: Can Courts Award Punishment in the Absence of FSL Report?

Jamnalal v. State of Rajasthan, 2025 SCC OnLine SC 1641

"All that the medical evidence said was that no conclusive opinion about the crime could be given since FSL Report was awaited. That does not mean that the ocular evidence could be ignored. As far as non-availability of FSL Report is concerned, the prosecution has explained the situation and

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the Trial Court has also found that the non-availability of the DNA Report did not adversely affect the case of the prosecution. The reasoning that despite the availability of washrooms in the house it was difficult to believe that the prosecutrix could go out for the toilet, is conjectural in nature."

V. QUESTION: Sanctity of Collection and Sending Forensic Sample to the FSL

Karandeep Sharma v. State of Uttarakhand, 2025 SCC OnLine SC 773

"54. In order to make the DNA report acceptable, reliable and admissible, the prosecution would first be required to prove the sanctity and chain of custody of the samples/articles right from the time of their preparation/collection till the time they reached the FSL. For this purpose, the link evidence would have to be established by examining the concerned witness."

VI. QUESTION: Corroboration in Cases of Rape and POCSO – Whether Not Required?

Bhanei Prasad @ Raju v. State Of Himachal Pradesh 2025 INSC 934 [DB]

"5. The jurisprudence under the POCSO Act has evolved as a bulwark against the predatory crimes targeting the innocence of childhood. Section 29 of the POCSO Act creates a statutory presumption of guilt, once foundational facts are established. In the present case, this presumption stood unrebutted. The victim's testimony was unwavering, medically corroborated, and free from embellishment. Her disclosure, though delayed, was truthful and borne out of perennial trauma and threats she has undergone.

6. It is now well settled that the testimony of a child victim, if found credible and trustworthy, requires no corroboration. The Courts below have not merely accepted the victim's account, they have validated it through unimpeachable scientific evidence. The DNA report sealed the evidentiary chain and has dispelled all doubts in the prosecution case which is sought to be assailed by the petitioner."

Raju v. State of M.P., (2025) 8 SCC 281

"The charges under Sections 366, 376(2)(g) and 342IPC are clearly made out. It is now fairly well settled that the prosecutrix is not an accomplice and that if the evidence of the prosecutrix inspires confidence it can be acted upon without corroboration."

VII. QUESTION: Role Of Public Prosecutors in Ensuring Speedy Trial

Alarming Rise in the Number of Reported Child Rape Incidents, In re, (2020) 7 SCC 130

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"7. … The language of the Act leaves no manner of doubt that the Special Public Prosecutor under the Act should not deal with other cases.

8. There is a salutary reason for appointing Public Prosecutors exclusively for Pocso cases. Public Prosecutors must be trained to deal with child victims and child witnesses. They need to understand the psychology of children. They need to empathise with children. They need to know how to bring out the truth from children who are victims of sexual abuse and have to undergo the trauma again while recounting the traumatic experience.

9. The job assigned to the Public Prosecutor for Pocso cases is a very onerous one which must be carried out with great care and sensitivity. Therefore, not only is there a need to have exclusive Public Prosecutors but there is also a need to develop a training programme where these Special Public Prosecutors should be trained to deal with issues which will arise in their courts. These issues may not be confined to legal issues which otherwise Public Prosecutors may be trained to deal with. The issues may be psychological, health and other related issues.

10. Keeping in view these factors, we direct all the States who are present before us to take steps to appoint exclusive Public Prosecutors in all the courts which have been set up exclusively for Pocso cases. We request the Chief Justices of all the High Courts to ensure that in the Judicial Academy of the State special programmes are developed so that these Special Public Prosecutors attached to Pocso Courts are imparted training not only in law but also in child psychology, child behaviour, health issues, etc. We also request the Director of the National Judicial Academy to ensure that a training programme is developed in the National Judicial Academy to train master trainers who can then work in the Judicial Academies in each State. We realise that the National Judicial Academy cannot train all the Special Public Prosecutors in the country but they can prepare a team of master trainers who can travel from State to State to impart training to the persons appointed as Special Public Prosecutors."

VIII. QUESTION: 351 BNSS/313 CrPC – Statement of the Accused

Nababuddin v. State of Haryana, 2023 SCC OnLine SC 1534

"Regarding the importance of the examination of the accused under Section 313 of CrPC, we may refer to a judgment of this Court in the case of *Raj Kumar v. State (NCT of Delhi)*. In paragraph 17, this Court has summarized the law on the aspect which reads thus:

"17. The law consistently laid down by this Court can be summarized as under:

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i. It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;

ii. The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

iii. The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

iv. The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

v. If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

vi. In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

vii. In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

viii. While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

IX. QUESTION: Section 29, 30 POCSO – Statutory Presumptions

Pappu v. State of U.P., (2022) 10 SCC 321, at page 374

"When there is a recovery of an object of crime on the basis of information given by the accused which provides a link in the chain of circumstances, such information leading to discovery is admissible. It has also been held that minor loopholes and irregularities in investigating process cannot form the crux of the case on which the accused can rely upon to prove his innocence, when there is strong circumstantial evidence deduced from the investigation which logically and rationally points towards the guilt of the accused."

Attorney General v. Satish, (2022) 5 SCC 545, at page 574

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"Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per sub-section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to Section 30 clarifies that "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. Thus, on the conjoint reading of Sections 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, "sexual intent" would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of "culpable mental state" on the part of the accused."

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