

STUDY ON THE WORKING OF SPECIAL COURTS UNDER THE POCSO ACT IN ASSAM

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ABSTRACT

Child sexual abuse (CSA) remains a hidden problem in India which is an issue of great concern. Child sexual abuse crimes remains unaddressed, unreported and unattended mainly due to shame, stigma, prestige, family honour etc., The Indian Penal Code did not address to CSA cases which led to the enactment of the POCSO Act, 2012 by Government of India and came into force on 14-11-2012. The main objective of the Act is to provide safeguards to children against sexual assault, sexual harassment and pornography and provides for the establishment of special courts to deal with such crimes ensuring speedy trial. Thus, the act incorporates child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The objective of this study is to analysis whether special courts in Assam are “*child-friendly*” and comply with the rules of the Act. It was held in *Alakh Alok Srivastava versus Union of India*¹that the objective of the POCSO Act is to protect the child from many aspects so that he/she does not feel a sense of discomfort or fear or is reminded of the horrified experience and further there has to be a child friendly atmosphere.

Key words: Child sexual abuse (CSA), child friendly, special courts, Protection of Children from Sexual Offences (POCSO) Act, 2012, Special Public Prosecutor (SPP),

INTRODUCTION

The study is carried out with an objective to determine if special courts were facilitating “child-friendly justice” from the commencement of trial till its conclusion. The term “child-friendly justice” includes speedy trial and inclusion of proper procedures to deal with victims of such crimes. The special judges must ensure that children are

¹ Alakh Alok Srivastava versus Union of India, 2018 Cri LJ 2929 (SC).

questioned in a friendly manner by creating a friendly atmosphere so that the victim gets comfortable during trial process. The paper also seeks to understand if structural and procedural aspect as enumerated in the Act is complied by the courts in Assam. The study also aims to examine the manner in which Principal Magistrates JJB deals with such cases but the study does not focus on the role and functioning of Investigating agencies, medical officers, any other authorities under the Act as it is beyond the scope of the study. The districts of Kamrup (M), Lakhimpur and Hailakandi were selected for the purpose of this study based on the cases registered under the Act and the infrastructural compliance.

Child-friendly in context of Special Courts

The term 'child-friendly', has not been mentioned or explained in the Act but it has brought and introduced procedures aiming at making a child/victim comfortable in the court. This means and include

- (i) Courts can take up the case directly without it being committed by the Magistrate Court.
- (ii) While hearing on evidence the Presiding Officer must put question to child and the procedure adopted must be child-friendly and the child is not to be called repeatedly before the court to testify.
- (iii) Structural changes to the courtroom by altering designs and atmosphere so that it does not look like a regular courtroom. Proper infrastructure such as video conferencing, one-way mirror should be used so that the child/victim does not come into direct contact with the accused.
- (iv) At the time of recording of evidence a child/victim is entitled to be accompanied by her parent, guardian, or any other person whom she or he trusts.
- (v) The identity of the child victim cannot be disclosed and is to be protected throughout the proceeding. Such trials must be held in camera and matter should be disposed within a period of one year.

Challenges faced of the Special Court -

A provision was made to appoint Public Prosecutor in each District of the State of Assam by notification dated 03rd August 2013², to act as Special Public Prosecutor under Section 32 of the POCSO Act. For the purpose of this study, e-Courts data from the District courts of Kamrup (M), Lakhimpur and Hailakandi have been obtained and analysed for the period 2022 to February, 2024. Secondary data in the form of judicial decisions and precedents has been analysed. Not all districts in Assam have a special court and in the absence of a proper infrastructure it becomes difficult for judges to conduct such cases. During my study it was found that only Lakhimpur and Kamrup (M) have designated special court but in Hailakandi the District and Session Judge deals with POCSO cases as there is no designated special court.

Again during my study it was seen that no special rooms are found to be available for recording testimony of the child in the district of Hailakandi and is recorded in the chamber of the concerned Presiding Officer/Judge. However, the vulnerable witness room is under construction and is yet to be completed. A response received from the judicial fraternity of Hailakandi stated that although there is no special court to deal with such cases and the District and Session Judge deals with such cases but is assisted by Special Public Prosecutor (SPP).

As response received from the District Courts of Kamrup (M) Lakhimpur reveal that special rooms are available for recording the testimony of the child witness also called as “*Vulnerable Witness Room*” which is adopted by Special Courts as per the modules of the Act.

As per section 33(4) of the Act a child-friendly environment is to be created by allowing family members, guardian or a relative of the child upon whom the child has trust or confidence to be present in the court along with the child. Surprisingly only in a few cases support person has accompanied a child victim to the courts at Lakhimpur,

² Notification No.JDJ:220/2013/43

Kamrup (M) as well as Hailakandi and in this regard the Special Court exercises its discretion. From the presiding judges of the district court of Lakhimpur, Kamrup (M), and Hailakandi it was learnt that if the child victim appears to be prompt and response confidently then the parents are withdrawn from the chamber but if the child appears to be nervous then parents are allowed to be with the victim during trial. Further it was shared that if child feels uncomfortable with the court environment then parents and guardians are allowed to stand near the child. If a parent of a child is a witness then they are examined first and thereafter the child is called for examination so as to ensure that the child is not carried away by their statement. The reason for enacting such provision is to ensure that the child do not feel scared or unsafe while giving testimony. From the responses received from the Special Courts in these three districts and after interviewing with the judges, counsels, litigants and stakeholders it emerged that the courts record the testimony of the child in-camera trial and in some cases it is recorded in the vulnerable witness deposition centre. A respondent from the Lakhimpur judiciary shared that they have children room as well as a crèche where toys and games are provided to children with an intent make them feel at ease. The child enters the chamber of the Presiding Officer and the accused is made to stand in a chamber where a one way mirror is used so that both the accused and the victim do not come in contact with each other during recording of statement.

A Special Public Prosecutors (SPP) from Lakhimpur stated that he does not come into any contact with the victim before recording testimony as the defence might take a plea that the victim is being tutored by the prosecution. Another Special Public Prosecutor from Hailakandi stated while dealing with the child victim he makes conscious effort so as to avoid the allegation of tutoring by the defence. A member of the judiciary stated that he never calls the child victims twice for testifying in compliance with the provisions under the Act.³

With regards to Juvenile Justice Board, the Principle Magistrate deals with POCSO cases and at the end of trial a final inquiry is pronounced and not judgment unlike the Special courts. However in the District of Kamrup (M) and Lakhimpur there is no

³ Section 33(5), POCSO Act.

separate room for child victims attending JJB proceedings and there is also no means to prevent confrontation between the child victim and child alleged to be in conflict with law (CICL). Response received from the judicial fraternity of Hailakandi submitted that as the post of Principal Magistrate is lying vacant since long the cases related to POCSO under JJB are tried by Additional Chief Judicial Magistrate which again is not the mandate of the POCSO Act. Also there is no proper infrastructure and the child victim often comes into contact with the child-in-conflict with law (CICL).

The Hon'ble Gauhati High Court, in consultation with the Assam Government must ensure that special courts in every district must exclusively deal with POCSO cases. Proper infrastructure relating to construction of rooms in all court establishments mainly for victims of sexual abuse are to be looked into so that such victims are not exposed to the accused. The funds made available under the National Mission for Justice Delivery and Legal Reforms schemes. The recommendations also focused on appointment of trained para-legal volunteers to support child victims during the entire course of the investigation and trial that the CWCs could draw from for the appointment of Support persons.

**Recent structural compliance of Special Courts in the District of Kamrup
(Metro), Lakhimpur and Hailakandi**

Structural Compliance	Kamrup (Metro)	Lakhimpur	Hailakandi
POCSO cases exclusively tried by special courts	Yes	Yes	No
Catering the needs of persons with disabilities	No	No	No
Designated as POCSO Courts	Yes	Yes	No
Availability of Special Public Prosecutors	Yes	Yes	Yes
Special Public Prosecutors deals with such cases	Yes	Yes	Yes
Provision for separate entrance inside courtroom	Yes	Yes	No
Provision for separate waiting room	Yes	Yes	No

Availability of washrooms in the court premises	Yes	Yes	Yes
Availability of washrooms for persons with disabilities	No	No	No
Availability of audio visual means for recording evidence	Yes	Yes	Yes
Precautionary measures to prevent child victim coming into contact with the accused inside court room	Yes	Yes	No
Availability of separate room for recording evidence of child witness	Yes	Yes	No

REVIEW OF LITERATURE

- (i) **The POCSO Act of 2012** is a special legislature that safeguards children from offences of sexual assault, sexual harassment and pornography and provides for the establishment of special courts and has laid immense emphasis in the scheme of legislation so that the courts exercises its power in the true sense to provide justice to the child victims by following the structural and procedural aspects of the legislation.
- (ii) **Study on the working of Special Courts under the POCSO Act, Centre for child and law, NLIU, Bangalore-** The researcher specifically dealt with the concept of “child-friendly justice” and focused on speedy trial and infrastructural compliances and procedures to cater to the need of child victims.
- (iii) **A Decade of POCSO Developments, Challenges and Insights from Judicial Data** by Apoorva, Aditya Ranjan, Sandeep Bhupatiraju, Shareen Joshi, and Daniel L. Chen in their research paper concluded that the main purpose of the POCSO Act was creation of a child friendly justice delivery system that provides for speedy trial.
- (iv) **Lack of special courts under Protection of Children from Sexual Offences Act: A structural deficit** by Deepak Juyal, Ajay Setia, Ashutosh Sayana, Adarsh Kumar, Vyas Kumar Rathaur, and Benu Dhawan- The Act was enacted to address heinous crimes of CSA and sexual exploitation of children but the act has

faced challenges and criticism in its failure to set up special courts in all the districts of the country.

- (v) **Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues-** The POCSO Act signifies implementation of the obligation under the UNCRC to prevent abuse and exploitation of children acknowledging that such crimes are heinous in nature. The Act provides for establishment of special courts but in most cases it is seen that such courts deals with all types of matter and is not restricted within the Pocso cases. The Act is silent on accessibility of disabled children to the courtroom. The best interest and welfare of the child is the prime consideration of the Act and it provides for legal aid assistance and support persons to cater to the need of such children who seek reliefs.
- (vi) **Child Sexual Abuse- An exclusive Commentary on the Protection of Children from Sexual Offences Act of 2012 (POCSO) and rules as amended by the Criminal Law (Amendment) Act 2018 by S.K.P Srinivas** illustrates and comprehends the new facets of crime as enacted under the Act.
- (vii) Srishti Agnihotri and Minakshi Das in their research paper **“Reviewing India’s Protection of Children from Sexual Offences Act”** assess the effectiveness of the POCSO Act and identify the implementation gaps, and suggest policy recommendations to fill these gaps by providing a three pronged analysis of the progress of the POCSO Act so far from legislative, judicial and administrative perspective.

AIM AND OBJECTIVE OF THE STUDY

The aim and objective of the study is listed below-

- (i) Whether Special Courts in Assam are child-friendly.
- (ii) To examine the infrastructural and procedural challenges faced by of the Special Courts in Assam.
- (iii) To identify gaps and challenges in the functioning of the Special Courts.
- (iv) Good and best practices adopted by Special Courts to deal with such cases of CSA.

RESEARCH METHODOLOGY

- (i) Literature reviews, interviews with stakeholders such as CWC, DCPO, JJB, Special Judge, Advocates, child victim, public prosecutors, NGO's, litigants etc., helped in arriving at a conclusion of all the important issues and concepts that paves way for the creation of a child-friendly justice delivery system.
- (ii) Case-laws and judicial precedents were studied to identify and understand the role of judiciary in dealing with cases of CSA.
- (iii) Official website of the Hon'ble Gauhati High Court, District Courts and Assam State Legal Services Authority were browsed seeking information about the procedural compliance and infrastructure of the Special Court.
- (iv) Attending JJB Stakeholders meeting organised by District Legal Service Authority, Lakhimpur, North Lakhimpur.

CONCLUSION AND SUGGESTIONS

Child Sexual Abuse is a menace in our society and a multidimensional approach is required to curb such crime from the society. Child rape incidents occur due to of perverse lust for sex where innocent children are not spared in pursuit of the sexual pleasures. Such episodes of heinous crimes are not brought into light because of the social stigma and family honour attached to it. Child abuse neglect in the family has reached distressing proportions in India. The burden lies on various agencies such as the government, civil and police administration, judicial system, medical fraternity and most importantly the society to implement the act in its full spirit. The Hon'ble Apex Court of India made it mandatory that every district shall constitute Special Courts funded by the Government to ensure speedy trial but a reality check signifies that there is lack of such courts in many states of India and also in some district of the State of Assam. This stands as a strict non adherence to the norms of the act and the real purpose behind the enactment of the act remains unexecuted. Proper implementation of the act and facing new challenges is the need of the hour as crime

against CSA is on the rapid increase. Unfortunately, the research on child sexual abuse in India is at the nascent stage with reported incidents only. The Act has made commitments in dealing with cases of CSA and has recognized and condemned sexual practices against child. It is equally true that there are drawbacks and loopholes in the Act and hence amendment is the need of the hour. The most important consideration under the Act is safety and best interest of the child and it is equally important that there must be strict adherence to infrastructural and procedural aspect so that cases of CSA can be dealt effectively providing speedy trial and disposal of cases.