

Refresher Course for POCSO Courts - (P-1447)

05th & 06th April, 2025

The objective of the refresher course was to enhance the expertise of judicial officers presiding over POCSO courts by focusing on critical aspects of handling cases under the Protection of Children from Sexual Offences (POCSO) Act. The course aimed to strengthen understanding of child-friendly court procedures and judicial attitudes. It provided insights into the complexities of determining the age of child victims and accused, and explored effective solutions for accurate age assessment. The program offered a platform to discuss the legal framework surrounding the burden of proof in POCSO cases, with particular attention to the concept of reverse burden of proof and its implications for judicial decision-making. Additionally, it highlighted the importance of comprehensive victim rehabilitation, legal provisions, and strategies for ensuring the physical, emotional, and psychological well-being of child victims, along with the effective implementation of victim compensation schemes. The course sought to enhance the capacity of POCSO courts to deliver justice effectively, efficiently, and compassionately, while upholding the rights and dignity of child victims.

Session 1 - Judicial Sensitization and Ethical Considerations in POCSO Cases **Speakers - Justice Aniruddha Bose, Justice P.N.Prakash & Mr Vijay Chandra**

The session commenced with stating a perspective that the increasing number of cases under the Protection of Children from Sexual Offences (POCSO) Act, especially in the post-COVID period, calls for greater sensitization among all stakeholders involved in the justice system. Continuous judicial thinking is essential to ensure that evolving social realities are taken into account while interpreting and implementing the law. It was highlighted that the age of consent is not a negotiable matter under POCSO, even in cases of elopement involving consensual romantic relationships between adolescents. In so-called "Romeo-Juliet" cases, where adolescents engage in consensual romantic relationships, the circumstances are often not rooted in criminal intent or any inherent propensity to commit a crime. It was advised that these cases, while falling under the legal purview of protective statutes like POCSO due to the age of consent, are essentially matters of youthful emotional and hormonal impulses rather than criminal behavior. Also, these situations,

while emotionally complex, must still be addressed within the strict legal framework designed to protect minors. However, such cases also highlight the need for a more compassionate and informed approach, where both legal and psychological aspects are considered. It is imperative that judges handling such cases are personally sensitized to the nuanced nature of these situations. The judiciary must approach them with empathy, recognizing the difference between predatory offenses and consensual adolescent relationships. Judges should possess the courage and sensitivity to grant bail when appropriate and not allow the rigidity of the law to overshadow the human context of the case. It was mentioned that as the law alone cannot always provide definitive answers, the role of the judge becomes crucial in interpreting situations with compassion and understanding. The initial remand of the accused in such cases should be approached with extreme caution and sensitivity, ensuring that justice is not only done but also perceived to be humane and just.

It was emphasized that the Support for victims under POCSO must go beyond legal remedies and include access to quality counseling, rehabilitation, and emotional support services. The role of Juvenile Justice Boards (JJB) must align with the objectives of POCSO to ensure a child-friendly and integrated approach to justice. Moreover, there is a pressing need to harmonize law with culture, recognizing the diverse social backgrounds of children and communities involved. Lastly, it was pressed that a sensitive, culturally aware, and psychologically informed framework will not only strengthen the implementation of POCSO but also uphold the best interests of the child. Furthermore, the idea of privacy vs. open challenge in POCSO cases refers to the delicate balance between protecting the identity and dignity of child victims and ensuring transparency and fairness in the legal process. It was mentioned that on one hand, privacy is a core principle in POCSO cases. The law mandates in-camera proceedings (closed courtrooms), prohibits the disclosure of the child's identity, and emphasizes a child-friendly atmosphere and on the other hand, the concept of an open challenge refers to the rights of the accused to a fair trial, which includes the opportunity to cross-examine witnesses, challenge evidence, and ensure that due process is followed.

It was advised that in POCSO cases, the challenge lies in maintaining a fair trial without compromising the privacy and protection of the child victim. The judicial system must navigate this balance carefully, ensuring that the victim's rights are safeguarded while also allowing the

accused a meaningful opportunity to defend themselves. This often requires sensitive handling, judicial discretion, and a child-centric approach that upholds both justice and compassion.

Session 2- Age Determination: Addressing Challenges and Exploring Solutions Scope of discussion

Speakers - Justice S. Nagamuthu & Mr E.V. Chandru

During the session, it was emphasized that judicial presumption is not a mere assumption but a legal presumption grounded in statutory provisions and judicial interpretation. It was acknowledged that in POCSO cases, determining age often involves considerable speculation, as age assessments are not always scientific but may be influenced by perception and circumstantial factors. A clear distinction was drawn between courts, noting that the High Court functions as a court of justice with a broader interpretative approach, while the District Court operates as a court of law, where statutes must be strictly adhered to. Extensive discussion took place regarding the varying treatment of age across different legal frameworks, including the POCSO Act, the Juvenile Justice (Care and Protection of Children) Act (JJJ), and the Probation of Offenders Act. It was underlined that any legal presumption made must be substantial and not arbitrary. The complexities that arise when the accused in a POCSO case is a child were also considered, with a focus on the necessity of registering a preliminary inquiry, assessing the mental capacity of the minor, and ensuring that the JJJ is appropriately involved. In contrast, it was noted that no such preliminary assessment is mandated under the JJJ framework when the child is a victim. In POCSO cases, the concepts of 'love' and 'consent' often present complex challenges, particularly when both the victim and the accused are adolescents involved in a consensual romantic relationship. While the emotional bond and mutual consent between minors may be genuine, the law does not recognize consent given by a person below the age of 18 as valid. Under POCSO, any sexual activity involving a minor is deemed an offence, regardless of consent. This strict interpretation is designed to protect children from exploitation; however, it can sometimes criminalize relationships that lack criminal intent. Therefore, courts must approach such cases with sensitivity, distinguishing between exploitative acts and situations arising from youthful affection, while still adhering to the letter of the law.

A detailed reference was made to *Jarnail Singh v. State of Haryana AIR 2013 SC 3467*, on the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted – (i) the matriculation or equivalent certificates, (ii) the date of birth certificate from the school, (iii) the birth certificate given by a corporation or a municipal authority or a panchayat and lastly, only in the absence of either (i), (ii) or (iii), the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. Other cases that were discussed include *Eera through Manjula Krippendorf v. State (Govt. of NCT of Delhi) and Ors (2017) 15 SCC 133*; *Birad Mal Singhvi v. Anand Purohit, 1988 Supp SCC 604*; *Shilpa Mittal v. State (NCT of Delhi), (2020) 2 SCC 787*.

Ultimately, it was stressed that judicial conscience must be fully satisfied when delivering judgments in such sensitive matters, ensuring a fair and just approach to all parties involved. Since these judgments can deeply affect the lives of both the victims and the accused—who are often children themselves—the judge’s role goes beyond just applying the law by the book. Judges need to act with a strong sense of responsibility, keeping in mind not only the legal rules but also the need for fairness, empathy, and an understanding of the social and emotional background of each case.

Session 3 - Evidence in POCSO Cases: Collection, Appreciation, Presumption and Burden of Proof

Speakers - Justice S. Nagamuthu & Justice P.N. Prakash

The session highlighted the importance of the manner and methodology in which samples are to be collected, preserved, and examined in a court of law, particularly in cases under the POCSO Act. Proper forensic protocols and adherence to established procedures are essential to ensure the integrity and admissibility of evidence. The discussion emphasized the protocols that must be followed while arriving at conclusions in POCSO cases, especially considering the sensitive nature of the offences and the vulnerability of the victims involved. A key aspect discussed was the application of the reverse burden of proof under the POCSO Act, which allows a prima facie case to be established by the prosecution, thereby shifting the onus onto the accused to prove their innocence. The extent to which the accused must discharge this burden was also examined—

whether it should meet the standard of "beyond reasonable doubt" or merely a "preponderance of probability." In this context, a comparison was drawn with the NDPS Act, where the accused must establish their innocence beyond reasonable doubt. However, under POCSO, it was noted that the burden may be satisfied on the basis of a preponderance of probability, making it relatively less stringent but still significant. It was suggested that this distinction underscores the need for careful judicial scrutiny, balanced with procedural fairness and sensitivity toward the rights of both the victim and the accused.

The discussion provided a comprehensive overview of key evidentiary principles crucial to the effective handling of POCSO cases, with particular focus on the chain of custody, the handling of material and immaterial records, and the burden of proof. It was emphasized that maintaining an unbroken and well-documented chain of custody is vital to preserve the integrity and admissibility of physical evidence. The distinction between material and immaterial records was also explored, with attention given to their roles in strengthening the prosecution's case. The concept of benefit of doubt was examined in the context of child sexual offences, where the balance between safeguarding the accused's rights and ensuring justice for the child victim must be carefully maintained. A detailed analysis of Sections 29 and 30 of the POCSO Act was undertaken—Section 29 deals with the presumption of guilt of the accused once a prima facie case is made, while Section 30 addresses the presumption regarding mental culpability, especially where intent or knowledge is in question. Further, the discussion also categorized different types of presumptions, including rebuttable and non-rebuttable presumptions, and stressed the need for the court to assess whether the foundational facts supporting these presumptions have been adequately established. Lastly, in criminal law, the circumstances surrounding the offence often play a critical role, and the importance of corroboration and the analysis of contradictions in witness statements and other forms of evidence was highlighted. Under POCSO, corroborative evidence can significantly strengthen the child's testimony, while contradictions—if minor—should be evaluated in the broader context of the child's vulnerability and the trauma experienced.

Session 4 - Rehabilitation and Compensation of Victim
Speakers - Mr E.V. Chandru & Dr Sonam Jain

The session commenced by clearing a fact that among the most emotionally taxing cases a judge may encounter, those involving child sexual abuse under the Protection of Children from Sexual Offences (POCSO) Act, 2012, stand among the most distressing. These cases demand not only legal acumen but also deep sensitivity, as the well-being of the child is paramount—something that, unfortunately, can sometimes be overlooked in the pursuit of procedural rigor. The POCSO Act lays down clear rules to protect child victims of sexual abuse, beginning with the immediate acknowledgment and registration of complaints. Authorities are required to register First Information Reports (FIRs) without delay and send ongoing case details to the Investigating Officer and the Special POCSO Court quickly. A key part of the process is making sure the child is safe and supported. This includes placing the child in a secure environment away from the accused, arranging counseling or medical help if needed, and providing police protection if there are any threats. It was highlighted that the investigation and court process must move quickly, with charge sheets filed on time and trials held only in Special POCSO Courts, ensuring that the child does not come in contact with the accused. It was stressed that the Act also includes provisions for financial compensation and rehabilitation, allowing victims to access legal aid, shelter, and psychological support. Protecting the child's identity is extremely important, and all proceedings should be carried out in a way that is sensitive and does not cause more trauma. Further, under the POCSO Act, victims can receive medical treatment, psychological care, legal help, and support to continue their education or receive vocational training. Child Welfare Committees, along with government and non-government organizations, play a major role in making sure these services are available. With child-friendly reporting systems, free legal aid, and shelter support under the Juvenile Justice Act, the entire process is meant to protect and support the child at every step. The main goal is to ensure that justice is done in a way that respects the child's dignity, safety, and emotional health.

The session rolled to the impact of POCSO cases on child victims who often suffer long-term effects that go beyond the legal process. These effects include physical, emotional, psychological, social, and financial difficulties. Many victims experience deep emotional trauma, such as post-

traumatic stress disorder (PTSD), anxiety, depression, nightmares, and feelings of guilt or fear. They may struggle with trusting others, especially adults. Socially, the victims and their families may face stigma, isolation, and discrimination, particularly in rural or conservative communities. Victims are sometimes blamed or shamed, even by their own families, which can lead them to withdraw from social and educational activities. Many children drop out of school due to trauma or the need to relocate for safety. Legally, while the POCSO Act includes child-friendly procedures, victims often find the court process difficult and intimidating. Long and stressful trials, threats from the accused, and uncomfortable court environments add to their suffering. It was opined that despite these challenges, there are also positive aspects. When justice is delivered, it can bring a sense of closure and empowerment to the victim. Government agencies and NGOs provide counseling, legal aid, rehabilitation services, and financial compensation through various schemes.

Talking about revictimization and stigmatization of POCSO Victims, it was mentioned that social stigma can have lasting effects on their mental, emotional, and economic well-being. Revictimization happens when the victim has to relive the trauma repeatedly—during legal procedures, through social judgment, or even within their own families. Stigmatization occurs when the victim is blamed or shamed by society, often leading to isolation. They are often labeled or seen as "damaged," which affects their personal identity and future relationships. This can result in deep emotional wounds, self-blame, depression, and suicidal thoughts. Lastly, the session concluded with factors that need to be considered while granting interim or final compensation along with the related case laws which includes; *In Re : Right to Privacy of Adolescents, 2024 SCC OnLine SC 2055*; *Nipun Saxena v. Union of India, (2019) 13 SCC 715*; *Tekan v. State of Madhya Pradesh AIR 2016 SC 817* etc.

Session 5 - Exploring Psycho-Social Aspects of POCSO Cases **Speaker - Dr Harish Shetty**

The last session discussed more about the demeanor of judges and how they should be handling psycho-social pressure while handling POCSO cases. It was mentioned that often judge face emotional and mental strain due to the sensitive and disturbing nature of the offenses involved. It is common for them to become emotionally detached or dehumanized over time as a way to cope with the intensity of such cases. To maintain balance and well-being, judges are advised to be

aware of their emotional responses and personal biases, while also protecting themselves from becoming overly sympathetic in a way that may affect impartiality. It was advised that simple techniques such as playing with water or adopting a child-like (not childish) mindset can help calm the mind and reduce stress. Practicing mindfulness is also recommended as a way to manage emotional damage and stay present in the moment. Ultimately, handling POCSO cases is a deeply humanizing experience, and it is important for judges to remain connected to their sense of empathy and responsibility while maintaining professional balance.

The importance for judges to have a clear understanding of child psychology was highlighted. Children who are victims of abuse often respond differently from adults due to their age, emotional development, and trauma. Judges must recognize that a child's behavior, silence, fear, or inconsistent statements are often a result of psychological distress rather than dishonesty. It was mentioned that understanding the impact of trauma, fear of authority, and the need for a safe environment is crucial while interacting with child victims or evaluating their testimony. It was advised to adopt a child-sensitive approach in the courtroom, including using simple language, maintaining a calm atmosphere, and avoiding intimidating questions, can make a significant difference. Judges who are aware of child psychology are better equipped to ensure a fair, sensitive, and supportive legal process for young victims.