

NATIONAL JUDICIAL ACADEMY, INDIA



National Seminar on POCSO Act

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Programme Report

ACADEMIC COORDINATORS

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The National Judicial Academy India organised a two-day National Seminar on POCSO Act from 18th to 19th November, 2023 at the NJA Bhopal wherein 44 judicial officers from various jurisdictions had participated. The objective of the course was, to acquaint participants with international perspectives on sexual offences, victim protection, child-friendly court procedures, and the best interest of child and Role of the POCSO court judges. The seminar facilitated discussion on issues related to recording and appreciation of evidence, presumption and burden of proof under the POCSO Act, age determination, and rehabilitation and compensation for child victims of sexual offences. The program provided a platform for judges to share experiences, insights and suggestions with resource persons on issues concerning adjudication of matter under the POCSO Act. The following report outlines the key discussions held during each session.

Session 1: Objective, Nature & Contours of the POCSO Act

The session commenced by highlighting that judges involved in the implementation of the Protection of Children from Sexual Offences (POCSO) Act function as special court judges, dealing exclusively with cases involving child victims and juveniles. The session touched upon the objectives, nature, and contours of the POCSO Act, delving into the reasons behind its enactment, its core focus, and the legal standing of children under the Act.

A brief legislative background of the Act was outlined wherein it was mentioned that the POCSO Act, enforced in 2012, was introduced to address the inadequacies in handling child sexual abuse cases and to establish a separate legal procedure specifically for children. Recognizing that 31% of India's population comprises children under 18 years, the Act acknowledges that children may find themselves as victims, offenders (children in conflict with the law), or witnesses. It was pointed out that the Act is our international commitment aligning with the Convention on Child Rights which upholds child's right to liberty, privacy, and protection. It was clarified that prior to the enactment of the Act, child abuse was recognized as an offense under the Indian Penal Code (IPC).

It was highlighted that the need for a dedicated legislation became evident through cases such as *State v. Freddy a. Peats and Others*, Sessions Case No. 24/1992, Criminal Appeal No. 4/1996., leading to the establishment of the Goa Act as the initial response. The inadequacies in the IPC were further emphasized by referring to the case *Sakshi v. Union of India* (1996) 6 SCC 591, where the court advocated for a separate body to handle child-related cases and ensured a suitable environment for children during court depositions. A mention was also made to the Reports by the Law Commission in 1971, 1997, and 2000 underscoring the necessity for a dedicated legislation to address the unique challenges posed by child sexual abuse cases. It was highlighted that the United Nations passed a general resolution in 2006, recognizing that sexual crimes against children are often underreported.

It was opined that despite the enactment of the POCSO Act, reporting child sexual abuse offenses remain a challenge in India. The session put forth that Special Courts were established to promote child-friendly justice, prevent secondary traumatization, and avoid re-victimization of the child; and that the Act provides for non-disclosure of the child's identity through Sec 23, 24(2), and s 27(3), as established in the case *Nipun Saxena v. UOI* (2019) 2 SCC 703. The session further reflected upon the reintegration of child victims into society as laid in the case *Re: Alarming Rise* (2020) 7 SCC 108. It was mentioned that the legal process, divided into pre-trial, trial, and post-trial stages, necessitates a comprehensive approach. Sec. 35 of the POCSO Act, as interpreted in *Hanumantha Mogaveera v. State of Karnataka* ILR 2021 Kar 3469, wherein the concern of the presiding officer, particularly regarding the molding post-grant of victim compensation was also highlighted.

The session included deliberations on the aspect of biological age over mental age and sensitivity in this regard wherein reference was made to the following cases *Jarnail Singh v. State of Haryana* (2013) 7 SCC 263 and *Eera v. State* (2017) 15 SCC 133 emphasizing the importance of considering the child's biological age in legal proceedings. It was addressed that challenges in determining the age of consent in cases of mutual agreement are evident, necessitating careful consideration. The judges were suggested to be sensitive while handling cases, especially those appearing romantic, as highlighted in *Independent Thought v. UOI* (2017) 10 SCC 800. It was advised that the overarching principle is to always prioritize the best interest of the child victim throughout legal proceedings.

The session further shed light on the unique challenges faced by judges in the adversarial system, particularly when dealing with cases of child abuse. It was opined that in such instances, the traditional neutral stance of a judge transforms into an inquisitorial role to ensure a conducive environment for children giving evidence. It was emphasized that a judge, often acting as an inquisitorial judge in POCSO cases, plays a pivotal role in creating a comfortable environment for the child witness. It was pointed out that the divergence of opinions prior to the enactment of the POCSO Act regarding the treatment of a child *versus* an adult and a victim *versus* an accused necessitated a conscious shift in judicial approach.

The session included discussion on the active role of a judge in the proceedings i.e. establishing a friendly environment, giving assurance to the child, and employing measures such as having the accused stand behind a curtain become crucial steps. Sections 29 and 30 of the POCSO Act, pertaining to presumptions, were highlighted on the importance of an active judicial role during the child's deposition. It was opined that judge must navigate schemes of collecting evidence, considering the child's competency, mental age, and tender years. Addressing jurisdictional issues, the session emphasized the need for harmonious interpretation of laws related to children. The best interest of the

child, guided by Sec. 42 A of the POCSO Act, overriding effect of Sec. 20 of the SC ST Act, as affirmed by the unanimous stance of various High Courts were some areas delved upon during the session. It was pointed out that the comprehensive nature of the POCSO Act sometimes leads to conflicts with other legislation. In this regard following cases were mentioned viz. *Pramod Yadav v. State of MP*, 2021 SCC OnLine MP 3394 [illustrated the prevailing influence of the POCSO Act over the SC ST Act]; *Dinanath Manik Katkar v. State of Maharashtra*, Anticipatory Bail Application No. 2589 of 2023 delved into anticipatory bail issues under the POCSO Act, emphasizing the need for prima facie establishment of allegations.

The session concluded by highlighting the rigidity in the punishment under the POCSO Act, emphasizing that the sentencing should either be 20 years or imprisonment for life, without allowing for intermediate choices. This stance aims to ensure consistent and just outcomes in cases of child sexual offenses. The session underscored the imperative for a conscious and sensitive judicial approach in POCSO cases, prioritizing the well-being and interests of the child while ensuring the fair dispensation of justice.

Session 2: Age Determination: Addressing Challenges and Exploring Solutions

The session commenced with a quote by Mark Twain on age, establishing the premise that age holds legal significance in criminal jurisprudence as mentioned in the case of *Vinod Katara v. St of UP*, 2022. SCC OnLine SC 1204. The session detailed three methods for age verification: physical appearance and estimation, scrutiny of recorded documents, and medical examination. POCSO Act Section 34 (2) and Section 94 of the JJ Act, 2015 were highlighted as governing these procedures.

The discussion also focused upon different techniques for age verification. Chronological, biological, and mental age were discussed. It was pointed out that Biological age influenced by genetics and lifestyle, can vary. Techniques such as the ossification test, wisdom teeth test, radiographic techniques, and the epigenetic clock technique were presented. The session discussed traditional morphological inspections and modern molecular age estimation through DNA analysis, considering the latter as promising. The session further dwelt upon various complexities in age determination wherein it was mentioned that under POCSO Act, a child is defined as under 18 years. The lack of a specified procedure for age determination was noted. The session referred to the case of *Jarnail Singh v. State of Haryana*, AIR 2013 SC 3467, and emphasizing reliance on Rule 12(3) of the Juvenile Justice Act.

The repeal of the JJ Act, 2000, and its incorporation into the JJ Act, 2015, with the procedures for age determination now under Sec. 94, were discussed. It was highlighted that Sec. 34 of the POCSO Act outlined the procedure for dealing with offenses committed by a child. The session included a reference of following cases *P. Yuvaprakash v. State*,

2023 SCC OnLine SC 846 [The case involved voluntary elopement, marriage, and legal proceedings. The Supreme Court questioned age determination based on school records and referred to *Rishipal Singh Solanki v. St of UP*, (2022) 8 SCC 602]. The session highlighted that the ossification test alone cannot be the sole criterion for age determination. The statute prioritizes chronological age, resorting to expert opinion based on medical examination if chronological age proof is absent or doubtful.

The session further delved into the legal complexities surrounding the determination of age, with a specific focus on the use of medical advancements in the field. The session highlighted the evolving landscape of age determination techniques, emphasizing the need for the legal system to adapt to these changes. The session discussed significant legal precedents and international guidelines shaping the landscape of age determination. The Supreme Court's view on the bone ossification test and the margin of error principle, as elucidated in the cases of *Ram Suresh Singh v. Prabhat Singh* (2009) 6 SCC 681, *Jyoti Prakash Rai v. State of Bihar* (2008) 15 SCC 223, and *Aswin Kumar Saxena v. State of MP* (2012) 9 SCC 750, was presented. The court's stance on avoiding roving inquiries into birth certificates unless found fabricated or manipulated was emphasized upon.

During the course of discussion advanced medical technologies like the 'wisdom teeth' technique, epigenetic clock technique, and the use of DNA methylation as potential tools for age determination were briefed upon. The Supreme Court's recommendation in the *State of JK v. Shubam Sangra* 2022 SCC OnLine SC 1592 case highlighted the need to adopt these techniques in India. The epigenetic clock, based on DNA methylation levels, and telomere length as biomarkers were discussed, along with their applications and precision in estimating age.

The session addressed challenges in age determination, including issues arising from the lack of birth registration, discrepancies in school records, and inconsistent reliance on school certificates. The importance of the legal framework, such as Sec. 34 of the POCSO Act, was underscored in dealing with cases involving children. Relevant court decisions were cited, such as *State of MP vs. Anoop Singh* (2015) 7 SCC 773; *Dayal Singh vs. State of Uttaranchal* AIR 2012 SC 3046; *Mahadeo v. Maharashtra* (2013) 14 SCC 637; *State v. Dayal Sahu* AIR 2005 SCC 2471; and *Eera through Manjula Krippendorf v. State (Govt of NCT Delhi) and Ors* (2017) 15 SCC 133. These decisions clarified the court's stance on the admissibility of medical opinions and the weightage given to school records in age determination.

The session explored the question of whether the benefit of doubt should be given to the accused or the victim in cases of margin of error in age determination, especially with regard to the ossification test. The discussion touched upon the delicate balance between protecting children under the POSCO Act and ensuring justice for the accused. Lastly, it was emphasized that there is urgent need for embracing advanced medical technologies for age determination, overcoming challenges in existing methods, and ensuring a fair and

accurate legal process. The discussion underscored the importance of aligning legal frameworks with evolving scientific advancements to enhance the precision and reliability of age determination processes.

Session 3: Presumption and Burden of Proof: Navigating the Legal Landscape of the POCSO Act

The session delved into the legal landscape of the Protection of Children from Sexual Offences (POCSO) Act, with a specific focus on its Chapters II and III. The session comprehensively dealt with different kinds of sexual offenses against children and the statutory presumptions incorporated by the legislature. It was highlighted that Chapters II and III of the POCSO Act play a crucial role in protecting children from sexual offenses. Key provisions including Part A addressing penetrative sexual assault on a child (Section 3), Part B dealing with aggravated penetrative sexual assault (Section 5), Part C defining sexual assault (Section 7), Part D covering aggravated sexual assault (Section 9), and Part E outlining sexual harassment (Section 11) were pointed out. Further, it was emphasized that Chapter III focuses on offenses relating to using a child for pornographic purposes, with reference to Section 67B of the Information Technology Act, 2000.

It was mentioned that punishments under the POCSO Act are directly proportional to the severity of the offense. Notably, Section 3 (penetrative sexual assault) carries a minimum of ten years imprisonment, while Section 5 (aggravated penetrative sexual assault) entails a rigorous imprisonment term of up to twenty years. A reference was also made to Sections 7 and 9, addressing sexual assault and aggravated sexual assault, respectively, which prescribe imprisonment terms and fines. It was opined that to address the seriousness of offenses under the POCSO Act, the legislature has incorporated statutory presumptions which fall under two categories: Presumptions of Fact (or Natural Presumptions) and Presumptions of Law (or Artificial Presumptions).

On presumptions of fact it was detailed that they are inferences drawn from facts by the human mind, irrespective of their legal effect. The court may refuse to draw these inferences, and they are generally rebuttable. Rules of presumption are drawn from the connection, relation, and coincidence of facts and circumstances, providing permissive and discretionary powers to the court. While, presumptions of law are arbitrary consequences attached by law to particular facts, and they may be conclusive or rebuttable. It was explained that Section 4 of the Indian Evidence Act defines "Shall presume," stating that the court shall presume a fact, regarding it as proved unless and until disproved. Sections 29 and 30 of the POCSO Act were also reflected upon stating that these provisions introduce specific presumptions related to certain offenses under Sections 3, 5, 7, and 9 of the Act. It was also mentioned that Section 29 establishes a presumption as to certain offenses, stating that the Special Court shall presume the accused has committed or abetted the offense unless proven otherwise. Section 30 deals

with the presumption of culpable mental state, and while the Special Court presumes its existence, the accused can defend by proving the absence of such mental state. The session also dwelt upon Reverse Burden of Proof wherein it was outlined that Sections 3, 5, 7, and 9 of the POCSO Act, coupled with presumptions under Sections 29 and 30, impose a reverse burden of proof on the accused. It was put forth that these provisions implies that the accused must rebut the presumption and prove their innocence, which is distinct from the general practice under the Code of Criminal Procedure.

Several judgments were discussed during the session to provide clarity on the interpretation and application of legal principles. These include: *Hawkins v. Powells Tillery Steam Coal Co. Ltd.* (1911 (1) KB 988); *Shatrughna Baban Meshram v State of Maharashtra*, 2021 (1) SCC 596; *Vikram Singh & Ors. v. State of Punjab* [2010 (3) SCC 56]; *Mr. J.S. Choudhary v Mr. Mahesh Bora* (S.B. Criminal Revision Pet. No.192/2014); *Attorney General for India v Satish & Anr.* (CA 1410/2021); and, *Shivaji Sahebrao Bobade v State of Maharashtra* (AIR 1973 SC 2622).

Understanding the importance of circumstantial evidence, the session explored its role in establishing guilt and the standards required for relying on such evidence. The maxim "*Falsus in Uno, Falsus in Omnibus*" was discussed, and it was clarified that Indian courts do not strictly adhere to this maxim. The session also touched upon electronic evidence, focusing on Section 65B of the Indian Evidence Act. Various cases, including *Anwar P.V. (S) v. P.K. Basir*, (2014) 10 SCC 473, *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal* (2020) 7 SCC 1, were cited to emphasize the importance of source and authenticity in electronic evidence. The discussions highlighted the importance of a cautious approach in legal proceedings and the need for a robust legal framework to protect children from sexual offenses. Participants were encouraged to apply these principles judiciously in their respective legal practices.

The session on "*Evidentiary Challenges in POCSO Cases: Navigating Medical, Forensic, and Digital Evidence*" emphasised that adjudication of cases under the Protection of Children from Sexual Offences (POCSO) Act necessitates a comprehensive exploration of evidentiary challenges. The session delved into the intricacies of handling these challenges, by focusing on the meticulous procedures governing the collection, examination, and reliability of forensic evidence, in addition to the intricate landscape of digital evidence and cybercrimes. The session drew insights from pertinent case laws, underlining the discourse with a robust legal framework. In addressing the alarming rise in reported child rape incidents, the session highlighted the case of *Alarming Rise in the Number of Reported Child Rape Incidents, In re*, (2019) 8 SCC 300, which underscored the urgency of effective legal responses in such cases. The discussion on medical evidence incorporated insights from *Pattu Rajan v. State of Tamil Nadu*, (2019) 4 SCC 771, emphasizing the need for accurate and timely medical examination in sexual offense cases.

The session iterated observations by the Supreme Court in *Prem Sagar Manocha v. State (NCT of Delhi) (2016) 4 SCC 571*, highlighting the importance of preserving medical evidence for its admissibility and reliability. In exploring the forensic landscape, the session drew upon the case of *State of Karnataka v. Jayalalitha (2017) 6 SCC 263*, which provided valuable insights into maintaining the integrity and scientific scrutiny of forensic evidence. Furthermore, the session drew upon the international precedent established in *Frye v. United States, 293 F. 1013 (D.C. Cir.), 1923*, enhancing comprehension of the criteria governing the admissibility of forensic evidence and shaping the legal discussion surrounding expert witness testimonies.

The session on *Judicial Sensitization and Ethical Considerations in POCSO Cases*, focused on the imperative need for judicial sensitization and ethical considerations in POCSO cases, emphasizing the multifaceted responsibilities of the judiciary. The overarching theme encompassed the development of judicial sensitivity, mitigation of biases and stereotypes, ensuring privacy and confidentiality, facilitating access to support services, understanding the impact of POCSO offenses on victims, and striking a delicate balance between justice and child welfare. The session delved into the pivotal role of victim compensation, legal representation, and judicious exercise of court powers, witness protection, and the right to be heard during bail as crucial elements in mitigating the impact of child sexual abuse. The legal framework, particularly Section 33(8) of the POCSO Act and corresponding rules, was explored, elucidating the three types of compensation - immediate, interim, and final. The nuanced discussion on the granting of final compensation, irrespective of case outcomes, underscored the principle that compensation is independent of conviction or acquittal.

The impact of sexual abuse on children was recognized as extending beyond legal proceedings, with a particular emphasis on the mental health concerns arising from such traumatic experiences. The session emphasized the vital but often overlooked role of healing in the rehabilitation plan for victims. The appointment of a support person by the Child Welfare Committee, as outlined in Rule 4(8) of the POCSO Rules, 2020, was highlighted as a crucial step towards providing the necessary assistance to victims. Several judicial pronouncements, including *Delhi Domestic Working Women's Forum v. Union of India (UOI) and Ors. (1995) 1 SCC 14*, *Tekan v. State of Madhya Pradesh AIR 2016 SC 817*, and others, were referenced to provide a jurisprudential context for the discussed themes. The participant judges were advised to prioritize the timely provision of interim compensation to child victims, proactively consider compensation applications, and not to hesitate from exercising suo-motu powers when necessary. The participants were suggested to foster a judicial environment that is not only legally sound but also ethically attuned to the sensitive nature of POCSO cases.