

# CHILD SEXUAL ABUSE CASES IN INDIA AND JUDICIAL OFFICERS' PERCEPTIONS AND EXPERIENCES OF POCSO-RELATED SPECIAL TRAINING\*

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*Stakeholder training has been considered essential to tackle the problem of poor engagement with child sexual abuse ('CSA') victims in the pre-trial and trial stages of the criminal process. Be it stakeholder attitudes and behaviour towards the CSA victims and the accused involved in CSA cases or stakeholders' procedural practices, more and improved training has been repeatedly emphasised. It is, therefore, pivotal to investigate what kind of special training is imparted to stakeholders under the Protection of Children from Sexual Offences ('POCSO') Act, 2012, as well as the challenges and limitations to such training. Also important is to analyse and discuss what, if any, implications such training has on stakeholder engagement with child victims and on CSA cases. This article answers these questions by employing a qualitative empirical method and a new set of data – in-depth face-to-face interviews with 17 judicial officers (Judicial Magistrates & POCSO Special Judges) on their perceptions and experiences of special training to deal with POCSO cases, along with court observations, conducted during six months' fieldwork (2019-2020) in India. The findings*

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\* Content warning: This article contains sexually explicit and graphic language in some places.

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*suggest that around half of these respondents received training on POCSO matters. Such training resulted in stakeholders, though not all, implementing the special POCSO procedures during pre-trial and trial stages. Through these findings, the article showcases that there are limitations to special training and to the law itself in its present form, given the infrastructural challenges that exist for these stakeholders and the socio-economic inequalities capturing both victims and accused in registered POCSO cases. Consequently, it aims to contribute to thinking through new ways on effective stakeholder training and of future directions of research, and argues that despite several limitations, the law remains a site of possibility to deliver improved experiences with the justice system to both CSA victims and accused.*

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## I. INTRODUCTION

The Protection of Children from Sexual Offences ('POCSO') Act, 2012, has led to a profound transformation in the legal position of child victims<sup>1</sup> and the accused in cases of sexual offences against children within the Indian criminal justice system ('CJS'). It has categorised these sexual offences in a comprehensive manner by considering not only the nature of care, power, trust and familial relationship between the child and the assaulter, and the nature of mental, physical and biological status of the child, but also the circumstances in which the assault was committed.<sup>2</sup> All the offences under the POCSO Act are gen-

<sup>1</sup> This paper uses the term 'child victim(s)' to encompass children who are victims or alleged victims, of sexual offence(s) under the POCSO Act, 2012. It should be noted that in some contexts this term is deemed problematic; for example, where the offence has not been proven, the term 'complainant' may be preferred from a legal perspective, while some commentators and campaigners on sexual violence opt for 'survivor' rather than 'victim' as a more positive designation. However, the general term 'victim' is applied as a shorthand here. Also, because child victims in POCSO cases are predominantly girls, and the accused are usually men, my pronouns usage may reflect that.

<sup>2</sup> The POCSO Act, 2012, ss 5 & 9. There are twenty-one ways in which the Act categorises aggravated penetrative sexual assault and aggravated sexual assault against children

der neutral and can be committed by any person against children, i.e., a person below the age of 18 years.<sup>3</sup> Moreover, all sexual activities involving children have been criminalised, including non-exploitative consensual cases.<sup>4</sup>

The POCSO Act has introduced special procedures and rules of evidence about reporting sexual offences against children and recording a child victim's testimony in the pre-trial and trial stages respectively.<sup>5</sup> There are provisions for special courts,<sup>6</sup> special judges, special public prosecutors,<sup>7</sup> and supporting staff,<sup>8</sup> such as support persons, interpreters, translators, special educators, and experts. There is a presumption of guilt rather than of innocence.<sup>9</sup> The burden of proof, thus, has been reversed from the prosecution to the accused persons.<sup>10</sup> There are harsher punishments since 2018, including death,<sup>11</sup> for certain sexual offences against children.

The Act introduced a provision to employ audio-video electronic means to record a child's statement by a police officer and judicial magistrate in the pre-trial stage, and a video-conferencing system or any other physical device to support a child witness in testifying before a special court during the trial.<sup>12</sup> The POCSO reforms target the Sessions Courts because these are the highest courts at the district level, where criminal trials take place in India and are held by the senior most members of the district judiciary, i.e., sessions judges. These courts, along with the nature of criminal process at the trial court level, have also been identified as one of the major contributors to inordinate delays and arrears that affect the delivery of criminal justice in India.<sup>13</sup> These reforms

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respectively.

<sup>3</sup> Ravinder Barn and Ved Kumari, 'Sentencing in Rape Cases: A Critical Appraisal of Judicial Decisions in India' (2017) 51(1) *Journal of the Indian Law Institute*, 1.

<sup>4</sup> Shraddha Chaudhary, 'Reforms to the Legal Framework of Child Sexual Abuse in India: Legislative Band-Aids on Systemic Wounds' (2020) 44(1), *Statute Law Review*, 1–22, <<https://doi.org/10.1093/slr/hmaa007>>. Swagata Raha, 'Criminalizing Adolescent Sexuality – The Protection of Children from Sexual Offences Act and the Rights of Adolescents' (2021) P39A *Criminal Law Blog*.

<sup>5</sup> The POCSO Act 2012, chs V, VI and VIII.

<sup>6</sup> This is a designated district-level criminal court - a Court of Session, for each district in India, with specific architectural and procedural requirements. Its objectives are to support effective engagement of child victims of sexual offences committed by adult defendants, and to provide for their speedy trial. See, s 28, the POCSO Act, 2012. The judicial officer presiding this special court is called a special (POCSO) judge.

<sup>7</sup> The POCSO Act 2012, s 32.

<sup>8</sup> The POCSO Rules 2020, Rules 2(1) and 5.

<sup>9</sup> The POCSO Act 2012, s 30.

<sup>10</sup> The POCSO Act 2012, s 39.

<sup>11</sup> The Indian Penal Code (IPC) 1860, ss 376-AB and 376-DB, which prescribe death as one of the maximum punishments for rape and gang rape of women under twelve years of age, read with s 42 of the POCSO Act 2012. These changes were brought by the Criminal Law (Amendment) Act, 2018, and discriminate against male children in the same age group and female children between under 12 years and 12-18 years age groups.

<sup>12</sup> The POCSO Act 2012, ss 26(4) and 36(2).

<sup>13</sup> Abhinav Sekhri, 'Pendency in the Indian Criminal Process: A Creature of Crisis or Flawed Design?' (2018) 15(1) *Socio-Legal Review*, 15.

seek to ensure speedy trials in POCSO cases. They also warrant that all the actors in the criminal process give priority to the child victims' needs and rights without jeopardising the accused's rights.<sup>14</sup> They ensure that the interest and well-being of the child is safeguarded at every stage of the judicial process by incorporating child-friendly procedures for the reporting of the offense, recording of evidence, investigation, and trial of POCSO offences.

The POCSO Act, therefore, mandates that the central government, and every state government, take measures to ensure that their officers and other connected persons (including the police officers) receive periodic training on the matters related to the implementation of its provisions.<sup>15</sup> The objective is the implementation of special procedures and rules of evidence.<sup>16</sup> However, the Act does not explain what it means by 'periodic' and 'training'.<sup>17</sup> This paper is an empirical study of the stakeholder perceptions and experiences of their training to deal with the cases under the POCSO Act. Scholars have argued for re-orienting legal and judicial reform in India by engaging in 'an empirically grounded, theoretically nuanced and systemic approach'.<sup>18</sup> Such an approach necessitates qualitative approaches to empirical research on the social policy reforms that are being implemented.<sup>19</sup>

## II. STAKEHOLDER TRAINING TO DEAL WITH THE POCSO CASES: ANALYSING ITS SIGNIFICANCE AND AVAILABLE LITERATURE

The previous section highlights the reforms that have been brought through the POCSO Act, and the pertinent roles that have been assigned to different

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<sup>14</sup> The POCSO Act 2012, s 36(1).

<sup>15</sup> The POCSO Act 2012, s 43(b).

<sup>16</sup> The onus of monitoring of design and implementation of modules for training police personnel and other concerned persons, including officers of the Centre and State Governments, for the effective discharge of their functions under the POCSO Act and for implementation of the provisions of the Act, has been put on the National Commission for the Protection of Child Rights or the relevant State Commission for the Protection of Child Rights. See, The POCSO Rules 2020, r 12(1)(d).

<sup>17</sup> The POCSO Rules 2020, though, talk about different aspects of such training, which are focused on sensitisation of stakeholders on child safety and protection, educating them regarding their responsibility under the POCSO Act, and building their capacities in their respective roles on a regular basis. Trainings are mandatory for all persons, whether regular or contractual, coming in contact with the children. See, Rules 3(4) & 3(6).

<sup>18</sup> Sudhir Krishnaswamy, Sindhu K Sivakumar, & Shishir Bail, 'Legal and Judicial Reform in India: A Call for Systemic and Empirical Approaches' (2014) 2(1) *Journal of National Law University, Delhi* 2, 3.

<sup>19</sup> Martin Partington, 'Empirical Legal Research and Policy-Making' in Peter Cane & Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010), 1002; Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane & Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010), 926.

actors, various stages of the criminal process, and technology in POCSO cases. A glance at the National Crime Records Bureau ('NCRB') India data suggests that there is low rate of completion of investigation of the POCSO cases, and a much lower rate of completion of trial, with a low rate of conviction.<sup>20</sup> However, when we look at the conviction rate in terms of POCSO cases whose trial was completed, then India's conviction rate goes up to 30-35%.

Conviction rates may not be directly linked to training as convictions depend on several factors. It is nonetheless important to note that given the conviction rate in cases with a completed trial is much higher than in total cases registered, and the charge-sheeting rate is around 90%, the main attrition must occur between the point of charge and trial.<sup>21</sup> Another aspect of the POCSO cases that the NCRB data reveals is the role of gender of both the child victim and the accused and their relationship with each other in how POCSO cases play out.<sup>22</sup>

It is evident that special training to implement the POCSO law flows from the creation of POCSO special courts. Further, the training is for the special judges, special prosecutors,<sup>23</sup> police personnel, and the members of the POCSO court staff. This might also include public defenders involved in POCSO cases who represent accused persons through the free state legal aid route, as the provision does state that for the Act's implementation, 'other connected persons' shall also be given periodic training. Public defenders are not 'officers' of the state but they play a significant role, particularly at the trial stage, and with their required cooperation with the special courts. The Act mandates that like prosecutors, defence counsels shall communicate the questions to be put to the child to the Special Court, which shall in turn put those questions to the child witnesses while examining them.<sup>24</sup>

Considering the reforms being envisaged by the Act, its implementation would largely depend on whether, how much, and what kind of training

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<sup>20</sup> See, NCRB (National Crime Records Bureau), *Crime in India, 2016-2020*.

<sup>21</sup> Shailesh Kumar, 'Access to Justice and Sexual Violence Against Children in India: An Empirical Study of the Reforms under the POCSO (Protection of Children from Sexual Offences) Act 2012' (2023) PhD thesis, Birkbeck, University of London.

<sup>22</sup> 99% of the child victims in registered POCSO cases are female. Accused persons are predominantly male. In 9 out of 10 cases of penetrative and aggravated penetrative sexual assault, offenders were known to child victims, while in one out of ten such cases the known offenders were family members of the child victims. See, NCRB (National Crime Records Bureau), *Crime in India, 2016-2019*.

<sup>23</sup> The Code of Criminal Procedure (CrPC) 1973, s 24(8): The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor. A proviso was inserted in 2009 by Act 5 of 2009, s 3 (w.e.f. 31-12-2009), which provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

<sup>24</sup> The POCSO Act 2012, s 33(2).

is given to the stakeholders working on POCSO cases. The link between the POCSO training regime and any issues with the implementation of the POCSO law, including the operation of the special courts, cannot be established without empirical evidence on the nature of such training. In this regard, it is important to explore the existing literature on the status of stakeholder training related to implementation of the POCSO law and sexual offences against children in India.

An empirical study of POCSO Special Courts in Delhi & Mumbai from 2012 to 2015 argues that they use the same yardstick and competencies as used for adults, when dealing with and weighing the evidence of a child, thus defeating the objectives of the POCSO Act.<sup>25</sup> It also found that training modules have been developed around the law, and training sessions are being regularly held by the judicial academies, national and state legal services authorities as well as the police.

In one report based on structured interviews with 22 key stakeholders carried out in February 2015 and May 2015 and an analysis of judgments of the POCSO Special Courts in Delhi, a lack of sufficient training was found.<sup>26</sup> Several stakeholders from this study stated that they had never been trained on the POCSO Act prior to taking up a post or even after, and felt that training is needed not just on the POCSO Act but on several related aspects such as child psychology and child sexual abuse in general.<sup>27</sup> This report gave recommendations to the Hon'ble Delhi High Court ('DHC') and the Delhi government to periodically train judges, judicial magistrates, prosecutors, legal aid lawyers, and police, on age and developmentally appropriate techniques of interviewing children and appreciating their statement, and to address preparation of a child victim without it leading to tutoring.<sup>28</sup> It also argued that in order to be 'special', there is a need for orientation and training of judges, prosecutors, and court staff to enable them to conduct the trial in a child-sensitive manner.<sup>29</sup>

Another study, an edited volume published in 2018, on the working of POCSO special courts in five states, namely, Delhi, Assam, Maharashtra, Karnataka, and Andhra Pradesh, found that special public prosecutors often

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<sup>25</sup> Bharti Ali, Maharukh Adenwalla & Sangeeta Punekar, 'Implementation of the POCSO Act: Goals, Gaps and Challenges- Study of Cases of Special Courts in Delhi & Mumbai (2012-2015)' (*HAQ: Centre for Child Rights, Forum Against Sexual Exploitation of Children*, 2017) <<http://haqrc.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf>> accessed (date unknown).

<sup>26</sup> The sample for this study did not include POCSO special judges; Centre for Child and the Law, NLSIU 'Report of Study on the working of Special Courts under the POCSO Act, 2012 in Delhi' (2016).

<sup>27</sup> *ibid.*, 24.

<sup>28</sup> *ibid.*, 26.

<sup>29</sup> *ibid.*, 116.

lack training on how to question and communicate with the child.<sup>30</sup> Findings from the study also revealed that the Special Courts failed to stop defence lawyers from cross-examining children directly, thereby not enforcing the law to reduce a major source of secondary victimization.<sup>31</sup> Courts were either handing over their authority to the defence counsel or were exercising judicial discretion, where none existed. This meant that the judges were making the law rather than enforcing it, thus reducing the rule of law to “rule by judge”, weakening judicial institutions, and also violating the child’s right to a fair and child-friendly trial.<sup>32</sup>

Moreover, stakeholders at all levels were found ill-equipped to engage with children, leave alone child victims of sexual abuse, and most did not have the necessary skills to enable them to elicit information from children in a non-threatening and child-friendly manner.<sup>33</sup> The study proposed that to address the gap of lack of understanding of the dynamics of child sexual abuse, all special judges should be provided with preparatory training or at least with quality reading material on the complexity of POCSO cases as well on judicial precedents, which should ideally be provided before the Judge takes charge of the Special Court.<sup>34</sup> Another important proposal was made to the DHC to consider issuing guidance notes to Magistrates, on core minimum measures that should be taken to ensure compliance with the child-friendly procedures under the POCSO.<sup>35</sup>

Another empirical research study, though not directly linked to the operation of POCSO reforms, explored High Court judges’ accounts and perceptions of rape and sentencing in India.<sup>36</sup> It was based on in-depth semi-structured interviews with 10 High Court judges, and survey data from 261 criminal justice professionals along with an analysis of rape cases. It found that there is an urgent need to train criminal justice professionals in sentencing in rape cases, in both the trial courts and the High Courts.

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<sup>30</sup> Sonia Pereira and Swagata Raha, ‘Structural Compliance of Special Courts with the POCSO Act 2012’, in Centre for Child and the Law, NLSIU (ed) *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (National Printing Press 2018), 1-10.

<sup>31</sup> Michelle Mendonca, ‘Factors Affecting Acquittals in Special Courts’, in Centre for Child and the Law, NLSIU (ed) *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (National Printing Press 2018), 31-49, 39.

<sup>32</sup> *ibid.*

<sup>33</sup> Kushi Kushalappa & Suja Sukumaran, ‘Support Gaps and Linkages Between the Criminal Justice and Child Protection Systems’, in Centre for Child and the Law, NLSIU (ed) *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (National Printing Press 2018), 177-189, 182.

<sup>34</sup> Mendonca (n 31) 38.

<sup>35</sup> Centre for Child and the Law, NLSIU (ed) *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (National Printing Press 2018), 209.

<sup>36</sup> Barn and Kumari (n 3).

There are also judicial recommendations regarding POCSO-related personnel training. The Supreme Court has recommended a two-pronged approach to address investigative and prosecutorial failure - *first*, by building the capacity of the police and public prosecutors through training, and *second*, to hold them accountable for their lapses leading to acquittals.<sup>37</sup> These studies were carried out till the year 2015 and the recommendations are in place since then. It is thus important to know if and how the situation has changed since then in terms of stakeholder training with regards to dealing with POCSO cases in India.

### III. METHODOLOGY & ACCESSIBILITY: APPROACH AND CHALLENGES

To carry out this research in India, I selected Bihar and Delhi as the two field sites. The two regions were selected based on their contrasting nature and certain relevant commonalities. While there are a few studies carried out on Delhi, I struggled to find empirical research on the implementation of POCSO reforms, including POCSO-related stakeholder training in Bihar. The findings of the Ministry of Women and Child Development's 2007 Report stated that two of the four states with the highest percentage of sexual abuse among both boys and girls are Bihar (68%) and Delhi (72%).<sup>38</sup> For sexual assault cases too, Bihar and Delhi reported the highest incidence.

Further, there is a difference in conviction rates as a percentage of registered POCSO cases in Bihar and Delhi. While the conviction rate was only 3% in Bihar from years 2012 to 2016; in Delhi, it was exponentially higher than in Bihar, i.e., 18% from years 2014 to 2016. However, when we look at the conviction rate in terms of POCSO cases whose trial was completed, then the percentages obviously go up, and it is Bihar with 63% that has a higher conviction rate than Delhi which has a 58% conviction rate. These conviction rates are from years 2017 to 2019, and are much higher than India's conviction rate, i.e., 30-35%.

A healthy justice delivery system is a prerequisite for strengthening democratic norms, improving access to justice, enforcing the rule of law, and having a check on state excesses, which in turn are significant for human development.<sup>39</sup> Bihar and Delhi, therefore, seemed very important for a comparative case study. Delhi, the Indian Capital city and a Union Territory, and Bihar, a

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<sup>37</sup> *State of Gujarat v Kishanbhai* (2014) 5 SCC 108.

<sup>38</sup> Loveleen Kacker, Srinivas Varadan & Pravesh Kumar, *Study on Child Abuse: India 2007* (Ministry of Women and Child Development, New Delhi 2007).

<sup>39</sup> Pratiksha Baxi, 'Access to Justice and Rule-of (Good) Law: The Cunning of Judicial Reform in India' (2007) UN Commission on the Legal Empowerment of the Poor, Institute of Human Development, New Delhi, <<https://www.researchgate.net/>



north Indian state, stand at two ends of the spectrum of Human Development Index ('HDI') and Gender Development Index ('GDI') categories, which look at three dimensions of human development - health, literacy, and standard of living, with Delhi being much ahead of Bihar.<sup>40</sup>

In 2011-12, Bihar was the only state in the Low HDI category out of the 36 Indian states and Union Territories (UTs), which slightly improved in the 2017-18 HDI rankings, putting Bihar into the Medium HDI category- though still on the last – 36<sup>th</sup> position.<sup>41</sup> Delhi, on the other hand, continues to be in the Very High HDI category, and topped India with the highest HDI score of 0.839 in the 2017-18 rankings. In the GDI, divided in five groups from High Equality to Low Equality, while Delhi was in the third category, Bihar was in the fifth. In terms of the percentage of budget spent on the judiciary, Delhi is much ahead of Bihar, as it was the only state/UT that spent more than 1 per cent of its budget on the judiciary – 1.9 %, while Bihar was among the lowest to spend on its judiciary.<sup>42</sup> Further, while Delhi's per capita pending criminal cases in its district courts is double of those in Bihar's district courts (Delhi has 0.6 while Bihar has 0.3),<sup>43</sup> Delhi also occupies a distinctive position in the journey of institutional and procedural reforms related to sexual offences, including CSA cases.<sup>44</sup>

The two sites and the interviewees were selected and recruited respectively using the purposive & opportunistic sampling techniques. The project employed a mixed-methods approach. It combined in-depth semi-structured

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publication/228914213\_Access\_to\_Justice\_and\_Rule-of\_Good\_Law\_The\_Cunning\_of\_Judicial\_Reform\_in\_India> accessed 18 April 2023; Krishnaswamy, Sivakumar, & Bail, (n 18).

<sup>40</sup> Ankur Bharadwaj, 'HDI: How States Fare in Human Development' (Centre for Economic Data and Analysis, 14 June 2021), <<https://ceda.ashoka.edu.in/hdi-how-states-fare-in-human-development/>> accessed 18 April 2023. See also, Bihar, India, Subnational HDI (2019, Global Data Lab, Institute for Management Research, Radboud University) <<https://globaldatalab.org/shdi/table/shdi/?levels=1+4&interpolation=0&extrapolation=0>> accessed 18 April 2023.

<sup>41</sup> *ibid.*

<sup>42</sup> India Justice Report: Ranking States on Police, Judiciary, Prisons & Legal Aid (2019, Tata Trusts).

<sup>43</sup> See, National Judicial Data Grid (District and Taluka Courts of India). The total number of pending criminal cases of Bihar is 2,938,662, while that of Delhi is 1,048,573 (data as on 31 December 2020). Bihar population is 104,099,452, while that of Delhi is 16,787,941 (as per the 2011 census).

<sup>44</sup> In 2010, the Delhi High Court had constituted a committee to monitor proper implementation of several guidelines laid down by Hon'ble Supreme Court as well as Hon'ble High Court for dealing with matters pertaining to sexual offences and child witnesses. Under its aegis, in 2012, the country's first Vulnerable Witness Deposition Complex was established in Karkardooma courts in Delhi, designed to spatially separate and shield the prosecutrix from the accused during deposition. It was followed by district-wise trainings for judicial officers, police, legal aid lawyers/ prosecutors aimed towards enhancing responsiveness of the system to victims of sexual offences. See, Partners for Law in Development, 'Towards Victim Friendly Responses and Procedures for Prosecuting Rape: A Study of Pre-Trial and Trial Stages of Rape Prosecutions in Delhi' (2017, PLD, New Delhi).

interviews with key stakeholders<sup>45</sup> (n=17) at the two Indian locations: Bihar (n=8; 2 females and 6 males)<sup>46</sup> and Delhi (n=9; 4 females and 5 males),<sup>47</sup> with the site visits and the observation of proceedings in POCSO special courts in those two jurisdictions.<sup>48</sup> Interviews and observation were conducted in 2019-2020 (six months' fieldwork). Interviews were anonymised in accordance with the research ethics committee approval.<sup>49</sup> The selection of an appropriate sample design, it has been argued, is a key decision that affects the type of conclusions that one can draw later during data analysis.<sup>50</sup> I adopted a mix of purposive & opportunistic sampling – reflecting pragmatic constraints as well as the focus of the investigation. Participants were recruited through invitations and the snowballing method. Rowden has employed a similar sampling process to recruit her participants to seek their opinions on the remote appearance of participants by video link in Australian courts.<sup>51</sup>

Sampling methods where personal contacts are involved have certain disadvantages such as getting skewed samples. As in the snowball method, 'those who have been interviewed are asked, who else they could recommend for an interview, this procedure leads to clustered samples, because nominations take place, as a rule, within a circle of acquaintances'.<sup>52</sup> Put differently, such a sample has the potential to result in bias and may not be a true reflection of the diversity of the professional groups whose members I interviewed. But it has been said, "In qualitative studies, the stimulus for empirical data collection

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<sup>45</sup> These stakeholders, who were either working during my fieldwork or had worked in the past in POCSO special courts, are categorised into two groups: POCSO special judges and judicial magistrates. They were interviewed, subject to their informed consent to participate in this research.

<sup>46</sup> POCSO (special) judges: 4 (4 males), Judicial Magistrates: 4 (2 females and 2 males).

<sup>47</sup> POCSO (special) judges: 7 (2 females and 5 males), Judicial Magistrates: 2 (both females).

<sup>48</sup> Ethics permission was granted for this project by the Ethics Committee of the School of Law, Birkbeck College, University of London, and in India, the respondents and POCSO special courtrooms were accessed through different routes and informal permissions secured by using personal and professional contacts. Site visits and observation of trials in POCSO special courts were conducted in Bihar and Delhi. A total of seven court complexes - four in Bihar and three in Delhi, which represent four (out of 38) Bihar and six (out of 11) Delhi districts respectively, were visited. Special efforts were made to choose districts in a way that they represent different regions of Bihar and Delhi. Eleven POCSO special courts across these locations, along with the vulnerable witness deposition rooms and video-linkage rooms wherever available and permitted, were observed.

<sup>49</sup> Interviews were numbered and given an alphabetic code to specify the jurisdiction and category of the interviewee. For example, BPJ 2, B = Bihar, PJ = POCSO (special) judge, 2 = Interviewee number 02. Other codes include: D = Delhi, JM = Judicial Magistrate. Some professional details of the respondents have also been concealed to further the objective of anonymity.

<sup>50</sup> Sharon Rivera, Polina Kozyreva and Eduard Sarovskii, 'Interviewing Political Elites: Lessons from Russia', (2002) December, *Political Science & Politics*, 683.

<sup>51</sup> Emma Rowden, 'Distributed Courts and Legitimacy: What do we Lose when we Lose the Courthouse?', (2018) 14(2) *Law, Culture and the Humanities* 263.

<sup>52</sup> Uwe Flick, Ernst Von Kardoff & Ines Steinke (eds), *A Companion to Qualitative Research* (Sage Publications Ltd 2004), 167.

often consists of guaranteeing accessibility to a particular case or a particular group or institution. Then it is not particular selection procedures that are in the foreground, but rather that the selection is constituted by accessibility.<sup>53</sup>

Though it is true that access is important and challenging, addressing the issue of bias is also important, particularly in policy research, where the objective is to apply the findings to other courts, situations, or locations. In this regard, the actual sample that came about is sufficiently large and covers various parameters of seniority, locations, and gender to allay any bias. Moreover, such research is important to conduct in the interest of access to justice.

Accessibility plays an important role in the choice of interview subjects. This approach was considered by Krishnan et al. in their ethnographic work on access to justice in the district-level courts of three Indian states.<sup>54</sup> I had no prior contact with any of my participants. The biggest accessibility challenge was to access the judiciary, an issue highlighted by scholars<sup>55</sup> from different jurisdictions and an Indian research organisation<sup>56</sup> in its report on the working on children's rights. Being elites,<sup>57</sup> they were the most difficult to access. Further, as there is no defined formal institutional process in India to access the subordinate judiciary for the purpose of research, nor there has been enough empirical legal research and institutional deliberations to drive that process forward, access became more arduous. Also, it was not necessary that every participant, especially the elite interviewees such as the judges, despite being accessible, would be willing to be interviewed.

Further, the number of participants for the project has been fixed by keeping in mind the time and resource constraints and the importance of their knowledge and experience to address the project's research questions. So, in the sample of 17 judicial officers, the number of POCSO special judges (n=11; 2 females and 9 males) is more than that of judicial magistrates (n=6; 4 females and 2 males) because the special judges preside over special courts, supervise POCSO trials, and decide POCSO cases, while judicial magistrates record a child's statement during the pre-trial stage and attend to the accused under police custody. Such a small sample size is an inherent limitation of qualitative

<sup>53</sup> *ibid*, 166.

<sup>54</sup> Shirish Kavadi, Jayanth Krishnan & Kalindi Kokal, 'Grappling at the Grassroots: Access to Justice in India's Lower Tier' (2014) 27 *Harvard Human Rights Journal* 151.

<sup>55</sup> Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (Oxford University Press 2014), 170. She argues that 'by and large, judges are forbidden to speak on matters before them and refuse to give interviews'. See also Jennifer Ward, *Transforming Summary Justice: Modernisation in the Lower Criminal Courts* (Routledge 2017). On conducting research on members of the lower judiciary in England & Wales, Ward points out accessibility difficulties such as the lengthy permission process and institutional resistance.

<sup>56</sup> Centre for Child and the Law, 'Report of Study on the working of Special Courts under the POCSO Act, 2012 in Delhi' (2016 NLSIU), 11.

<sup>57</sup> Bogdan Denitch, 'Elite Interviewing and Social Structure: An Example From Yugoslavia', 1972 36(2) *The Public Opinion Quarterly* 143.

works but also one of its strengths, which is to give an in-depth understanding of the law, legal processes, legal actors, and their experiences.<sup>58</sup> That is why qualitative works necessarily entail working with small samples.<sup>59</sup>

Some qualitative methods were directed to more precise issues within the general field of inquiry. The observation focused primarily on the extent to which judicial officers engage with child victims and the accused, follow the special procedures, and use technology during the POCSO trials. The interview schedules were varied as per the role of the stakeholder in a POCSO proceeding. So, for example, Judicial Magistrates were asked questions about their experiences of recording a child victim's statement and of using video-conferencing to not only record a child's statement but also when they attended to a POCSO accused virtually produced before them. The interviews, in the context of this paper, sought to examine the judicial experiences and perceptions of the POCSO-related training.<sup>60</sup> These methods yielded a wealth of qualitative data.

Five of the seventeen interviews were tape-recorded and subsequently transcribed; in the other cases, detailed notes were taken by the researcher and then immediately typed up. The data from interviews where one or more languages and dialects such as Hindi, Magahi, and Bhojpuri were used was first translated into English. Thereafter, the transcribed data from all the interviews and observations was imported into the MAXQDA software, where it was organised and coded,<sup>61</sup> and then analysed with the help of thematic method.<sup>62</sup> Before I present my findings, it is important to find out the nature of POCSO-related training the Bihar and Delhi governments claim to have imparted to the stakeholders.

<sup>58</sup> Richard Tewkesbury, 'Qualitative Versus Quantitative Methods: Understanding Why Qualitative Methods are Superior for Criminology and Criminal Justice', 2009 1(1) *Journal of Theoretical and Philosophical Criminology* 38.

<sup>59</sup> Kathy Mack and Sharyn Roach Anleu, 'Performing Impartiality: Judicial Demeanor and Legitimacy' (2010) 35(1) *Law & Social Inquiry* 137; Jessica Jacobson, Gillian Hunter, and Amy Kirby, *Inside Crown Court: Personal Experiences and Questions of Legitimacy* (Policy Press 2016); Carolyn McKay, 'Video Links from Prison: Permeability and the Carceral World' (2016) 5(1) *International Journal for Crime, Justice and Social Democracy* 21; Ward (n 55); Rowden (n 51).

<sup>60</sup> While there are many agencies that conduct trainings for these stakeholders in India, such as the state legal services authorities, and the Special Police Unit for Women and Children (in Delhi), this research is confined to trainings organised by the national and state judicial academies.

<sup>61</sup> Stefan Rädiker and Udo Kuckartz, *Focused Analysis of Qualitative Interviews with MAXQDA: Step by Step* (MAXQDA Press 2020), Udo Kuckartz and Stefan Rädiker, *Analyzing Qualitative Data with MAXQDA: Text, Audio, and Video* (Springer 2019).

<sup>62</sup> Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology', 2006 3(2) *Qualitative Research in Psychology* 77.

#### IV. SPECIAL TRAINING OF THE JUDICIAL OFFICERS DEALING WITH POCSO CASES: WHAT DO THE GOVERNMENTS CLAIM?

The previous section set out the methodological approach adopted, and challenges faced during the fieldwork. This section explores the trainers, i.e., people and institutions, responsible to train the POCSO stakeholders and the nature and key features of their training as per the public information from the year 2015 to 2020 available on the websites of the relevant institutions and of the governments of Bihar and Delhi.

The institutions responsible to provide induction and in-service training to the newly appointed judicial officers and in-service judicial officers of all categories in the subordinate judiciary respectively are the state-level judicial academies. The academies organise refresher courses, core competence building and sensitisation programmes, orientation and collaborative programmes, stress management retreats, and village immersion programmes. Alongside the computer training and management skill development, the academies also organise seminars and workshops for different stakeholders under the guidance of the Judges of the High Courts. The High Court judges, senior judicial officers, eminent lawyers, and subject experts preside over the training sessions of the officers on selected topics of law followed by a discussion and interaction.

The district judiciary in Bihar and Delhi are trained by the Bihar Judicial Academy ('BJA') and the Delhi Judicial Academy ('DJA'), respectively.<sup>63</sup> There are academic calendars published on the two academy's website which mention the education and training programmes for different stakeholders. The DJA website is well maintained and updated while that of the BJA is poorly maintained and not updated.<sup>64</sup> The former had voluminous academic calendars of six years (2015- 2020), with details of the training programs of different stakeholders with names and designations of contributors and resource persons, alongside pictures of retreats and trainings.<sup>65</sup> On the other hand, the only aca-

<sup>63</sup> The Bihar Judicial Academy has been established in 2003 on the recommendations of the Shetty Commission with the aim and to impart training to inter alia the Judicial Officer of State to improve Judicial Administration and other matters incidental thereto. See, About Us, Bihar Judicial Academy, (*Patna High Court*) <<http://patnahighcourt.gov.in/bja/AboutUs.aspx>> accessed 18 April 2023. The Delhi Judicial Academy has started functioning formally since 2002, though it started imparting judicial education since 1992. See, Academic Calendar 2019, 5.

<sup>64</sup> See, Academic Calendar, Bihar Judicial Academy, (*Patna High Court*) <[http://patnahighcourt.gov.in/bja/PDF/Academic\\_Calendar\\_2019.pdf](http://patnahighcourt.gov.in/bja/PDF/Academic_Calendar_2019.pdf)> accessed 18 April 2023. See also, Academic Calendar, Delhi Judicial Academy, (*Judicial Academy*) <<http://www.judicialacademy.nic.in/activities-and-calendar/academic-calendar>> accessed 18 April 2023. This website had the academic calendars of the years 2019 and 2020 alongside the archive of previous years' (2015-18) calendars.

<sup>65</sup> All academic calendars were of around or over 100 pages.

demical calendar I found on the BJA's website was of the year 2019, which was a brief eight-page document with no details of the courses, trainings, and trainers. Even the archive of the previous years' academic calendars of the BJA was absent.

The DJA's academic calendars of the years 2015 to 2019 contain dates for annual training events of different stakeholders on a variety of related topics; child rights, gender justice, and the POCSO law. Since 2014, there has been a social context adjudication programme for the lower judiciary on rights of children and judicial contribution in developing children's rights jurisprudence. There have also been programmes for POCSO special judges on court procedure, attitude building, skill, and personality development. The pedagogy highlighted is of consultation before the preparation of training modules. The methodology of training has been mentioned as an inter-disciplinary approach to understand the social context in which laws/systems exist and operate.

There have also been conferences by the DJA on 'strengthening the justice delivery system through integration of knowledge, skill and attitude in adjudication', 'towards excellence in qualitative & quantitative justice', and 'substantive and procedural challenges in trial related to sexual offences' for Additional Sessions Judges (ASJs), i.e. special judges, of the POCSO courts.<sup>66</sup> These conferences had sessions on understanding the psychology of children in conflict with law, impact of social media, understanding Post-Traumatic Stress Disorder faced by victims, the jurisdiction of special children courts, the appreciation of evidence, settlement in sexual offences, challenges in sentencing, importance of counselling of victims of sexual abuse, the psychological impact of child sexual abuse on victims, sensitive handling of witnesses/victims, and giving due regard to mental health during trials.<sup>67</sup>

These conferences were of one to three days with a methodology of lectures, group presentations by participants, and exercises, role-playing and audio-visual media including PPTs. The participation was sometimes mandatory (jurisdiction-wise), sometimes on a voluntary basis, and other times by nomination by the concerned District & Sessions Judge or the Director of Prosecution. In 2017, the DJA also conducted six on-site programmes at the six district court complexes in Delhi on issues relating to repatriation, restoration, rehabilitation, age inquiry, adoption and minimizing bias for children.<sup>68</sup>

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<sup>66</sup> DJA Academic Calendar 2015, 37; DJA Academic Calendar 2016, 36; DJA Academic Calendar 2017, 33; DJA Academic Calendar 2018, 30, 55; DJA Academic Calendar 2019, 14, 65-66; DJA Training Calendar, 2020, 48-49.

<sup>67</sup> The details of sessions are available only in the 2019 and 2020 academic calendars of the DJA.

<sup>68</sup> DJA Training Calendar, 2018, 11. This followed the Delhi High Court's directions in *Chanderjeet Kumar v State*, 2016 SCC OnLine Del 5431.

Refresher courses, seminars, and workshops for the judges of POCSO courts have also been provided by the National Judicial Academy ('NJA').<sup>69</sup> Its publicly accessible website contains the details of the programmes like the schedule, reading material, list of participants, resource persons, and evaluation reports from 2015 to 2020. The materials cover different aspects and stages of the POCSO cases, POCSO special courts, and their stakeholders, including handling of child witnesses. Many of the resource persons and trainers were women with their professional background as a High Court judge, lawyer, academic, NGO personnel, or forensic scientist. Overall, in these five years, the NJA could train only 7 POCSO special judges from Delhi and only 8 POCSO special judges from Bihar. It is important to note here that the number of POCSO special judges that were working in Delhi and Bihar at any given point in the year 2019-20 were 19 and 38 respectively.

## V. MAPPING THE POCSO-RELATED TRAINING PROVISION IN THE TWO LOCATIONS

In this section, I explore the experiences and perceptions of my respondents about special training to deal with POCSO cases. I present my interview and observational data to assess the frequency and quality of POCSO-related training given to them, their practice to implement the POCSO Act by employing that training, and the challenges they face in doing so. I examine the perceptions of the respondents about what they consider to be requisite training to handle POCSO cases and whether they have undergone such training or not. I also explore the reasons for them not receiving special training. I further study whether they are willing to undergo training if they have not received it, and if there is unwillingness then the factors behind that. I also outline their views on other legal actors from their or other professional groups.

Overall, 14 respondents (82 percent), i.e., slightly more than three-quarters of the total 17 respondents, across the two field sites, gave a positive response when asked if they received any professional training in their judicial career. Out of these 14 respondents, 8 respondents (47 percent) reported receiving special training on POCSO matters. The rest of the 6 respondents reported of receiving only the general training to deal with criminal cases. Out of those eight respondents who reported of receiving the special POCSO training, six

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<sup>69</sup> There have been three Refresher Courses in January 2020, September 2018, and September 2017; a 'National Seminar on Working of the POCSO courts in India' in March 2017; and a 'Workshop to Assess nature of difficulties faced by POCSO courts' in September 2015. All these five events were for the POCSO special court judges and were of two to four days with seven to fifteen sessions. On an average, there were 37 participants in each event, with one to five participants from different districts of Delhi and Bihar. See, Concluded Programmes, (*National Judicial Academy, Bhopal*) <[https://nja.gov.in/concluded\\_programmes.html](https://nja.gov.in/concluded_programmes.html)> accessed on 11 January 2021.

respondents reported their satisfaction with it. Two respondents who reported of not being satisfied had varied opinions: 'more training is needed' (BPJ 2) and 'training is not much important' (BPJ 3). They gave an account of their practice of implementing POCSO special procedures. It was evident that the special training led these respondents, except for some, to implement the special procedures, which I discuss later in this section.

Among three (18 percent) of the 17 respondents with no response to training, one respondent (DPJ 5) did not want to respond to the question on training, while the other two (DPJ 4 & BJM 4) were short of time for the interview to reach the question on training. All the POCSO special judges across the two sites, who responded to the question, mentioned receiving the routinised general training. Further, one stakeholder's accounts, a POCSO judge in Bihar (BPJ 1), showed a clear rejection of the idea that formal special training is required to deal with POCSO matters.

The presentation of data and analysis in this section has been organised based on the sequence of sites during my fieldwork visits, i.e., Bihar, followed by Delhi. In terms of the respondents, I begin with the judicial magistrates and then go on to discuss the perceptions and experiences of the special POCSO judges. The logic behind this approach is at what stage of the criminal process in POCSO cases a group of respondents play a role. So, a judicial magistrate who records a child victim's statement in the pre-trial stage has got precedence followed by the responses of the POCSO special judges who preside over the trial and sentencing stages. Further, positive responses have been discussed first, followed by the negative ones.

## A. Training Provisions in Bihar

A total of 4 (50 percent) out of 8 Bihar respondents said they received the special POCSO training. While 2 of these respondents (BPJ 2 & BPJ 3) were special POCSO judges, 2 were judicial magistrates.

### 1. *Judicial Magistrates*

A judicial magistrate is the first point of contact between a child victim and the judiciary. They are responsible for recording the child's statement, and because of the independence of the institution of judiciary, such a statement becomes vital during the trial.<sup>70</sup> The POCSO Act states that the Magistrate shall record the statement as spoken by the child without the presence of the

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<sup>70</sup> The Code of Criminal Procedure, 1973, s 164(5A) (b): Moreover, a statement made by a child with temporary or permanent mental or physical disability who is victim of rape before a Magistrate shall be considered a statement in lieu of examination-in-chief and the child can be cross-examined on such statement without the need for recording the same at the time of trial.



advocate of the accused and in the presence of the parents of the child or any other person in whom the child has trust or confidence.<sup>71</sup> There is also a provision for the Magistrate to take the assistance of a translator or an interpreter, or special educator, or any person familiar with the manner of communication of the child or an expert in that field, while recording the statement of the child, if needed.<sup>72</sup> The Act further mandates the Magistrate to ensure that, wherever possible, the statement of the child is also recorded by audio-video electronic means.<sup>73</sup>

Describing the process of recording a child's statement, one female Magistrate (BJM 2), who joined the Bihar Judiciary in 2017 and reported of receiving the special POCSO training, said that she writes down all things pertaining to essential ingredients in a POCSO case. In case she is unable to note down *verbatim*, she said that she notes down the important phrases or words. She also gives chocolates and toffees to a child while recording their statement. She reported that prior to recording the statement, she asks about colours and objects such as frock, *Sameej*, or *Salwar* to test the child's capacity to give a statement.

She further stated that she always records Section 164<sup>74</sup> statements in her courtroom without the presence of the accused's advocate and has never used audio-video electronic means while recording such statements. While highlighting the difficulty faced by many POCSO victims who commute to Patna, she said it is a big problem for them as there are various peripheral cities of Patna district like *Punpun*, *Barh*, *Bikram*, *Mokama*, *Hathidah*, which are very far from Patna and yet victims from all these places must come to Patna by themselves. They spend their own money to come to Patna, she added. To tackle this problem and to benefit the victims, she suggested the use of audio-visual system, but then pointed out the lack of infrastructure:

*There is no audio-visual recording support system. Even if it is there, it is at the output end, and it is not there at the input end. So, it may be at the Police Station, NIC Centre (National Informatica Centre),<sup>75</sup> or DM (District Magistrate)*

<sup>71</sup> The POCSO Act, 2012, ss 25(1) & 26(1).

<sup>72</sup> The POCSO Act, 2012, ss 26(2) & 26(3).

<sup>73</sup> The POCSO Act, 2012, s 26(4).

<sup>74</sup> CrPC, 1973, ss 164(1) & 164(5A)(a): Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any...statement made to him in the course of an investigation...or at any time afterwards before the commencement of the inquiry or trial. Regarding the recording of statement in sexual offences, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed...as soon as the commission of the offence is brought to the notice of the police.

<sup>75</sup> National Informatics Centre. It provides nationwide ICT infrastructure to support e-Governance services and various initiatives of Digital India. To design, develop and implement various e-Governance initiatives and Digital India programme, NIC State Centre in 36 States/UTs along with 741 District Centres are continually engaged to automate and accelerate

*Office, but it is not at the places where the victims usually live. (BJM 2).*

Still, she believed the office of the SDM (Sub-Divisional Magistrate) can be used for taking 164 statements with the help of NIC. Adding that the victims are usually scared and shocked when they come for the 164 statements, she proposed recording of a child's statement by a local Judicial Magistrate First Class (JMFC), say, of subdivisions like Barh, where the victim resides. She said that the immediate recording of witnesses' statements is very important and would be very significant for the POCSO cases.

A young male Magistrate (BJM 3), working as a member of the Bihar judiciary since 2013, also reported of receiving special POCSO training. He explained its effect on the implementation of POCSO procedures while recording a child's statement. He said he records a child's statement in a closed court and the statement is made voluntarily. If he finds any problem with a child victim, for example, of health, or if he feels coercion is involved, then he asks the victim to return. He further said that if it is a small kid then he initially asks a couple of questions to the victim to test their competence before moving on to record their statement.

On being asked about the reason behind it and what kind of questions he asks, he reported asking different questions of simple nature. He said that if they give rational answers to those questions as per their age and understanding, then he concludes the child as a competent witness and moves ahead to record the 164 statements. Giving examples of the simple questions, he said, if there is a female child victim of six to seven years, then he asks child's name, father's name, school's name, where have you come, who brought you here, and so on. He went on to narrate, "Why have you come here? To get my testimony recorded (*Bayaan dene*), she will say. Did your mother say that you have to give so and so statement (*Apki mummy ne bataya ki ye bayan dena hai*)? No, she will say. (BJM 3)" He added that after he finds the child to be competent, he also writes a letter in that regard giving his reasons.

Talking about the courtroom environment that is made available to record a child's 164 statement, he said that his courtroom is different from a POCSO court, which is a special courtroom. A first-class Judicial Magistrate's court is not a child-friendly court, he added. Further, he said that one can make an exception by recording the 164 statements in the chamber. Talking about his practice, he stated that for security purposes, he keeps his courtroom's door open, and makes the guardian sits outside. If he finds a victim is scared, then he asks victim's mother to sit inside. If a victim is unable to speak, then he

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e-Governance processes in close interaction with Government Departments. See, District Officer (*National Informatics Centre*) <<https://www.nic.in/district-offices/>> accessed 18 April 2023.

gives biscuits and toffees to make her mentally free and asks her to give statement only if she feels secured. Once the testimony is recorded, then he either asks the victim to read it or he reads it to her. Then it is sealed in an envelope, he added.

He also raised concerns about victims' security when they come to give a statement. He said that because of disturbance in the gallery, it becomes difficult for Police to bring and take victims back, as there is no special task force yet. Reporting that there are many kinds of interferences, such as, by parents, by in-laws, by involvement of political people, he recalled an incident when he faced such an interference. He said there was one situation where a father slapped the victim twice and then the village people barged into courtroom. In another instance, he stated, it was an inter-caste issue and the whole gallery outside the courtroom was full. Reflecting on his helplessness in handling such situations, he advised that there needs to be proper security to tackle such incidents as police cannot understand what to do in such circumstances.

This Magistrate (BJM 3) also said that he is using the video conferencing (VC) technique since the last two years for attending the production of accused from jails, and for recording the statements of juvenile accused persons in the POCSO cases from observation homes. A Magistrate, being the first line of defence against the state to check on state excesses, has the duty to look after the safety and security of the accused. Explaining that the production of accused via VC is only when the accused is under enquiry and not under trial, the Magistrate (BJM 3) said he asks the accused if he wants to have free legal aid or not, and about his health condition.

He further added that the accused is produced via VC only till the charge-sheet has not been filed, and after the filing of the charge-sheet the production is made through accused's physical presence. Talking about the usefulness of VC for producing accused in POCSO cases, he said if a jail is 25 kms away, then police is required to bring an accused from there, which is a big security issue as there have been some incidents of running away or escaping by the prisoners in the past. So, the use of VC is about securing transportation of accused persons from and to jails, saving time and alleviating constraint on resources, he added.

He further said he had even used WhatsApp and Skype due to problems with internet connectivity to record a minor accused's statement in a POCSO case when he was produced before him from an Observation Home of another district in Bihar. Emphasising, however, the repercussions of these platforms he argued that there are chances of confidentiality breaches and moreover, third parties are involved in this process, who are not aware of the issue of privacy yet. While he said he is trained to use the VC technology, he raised the issue of other staff members involved in the process not being trained in its usage,

saying ‘operator training should also be there’. He suggested that the Social Welfare Department should take initiative in this regard. Advocating the need for training in technological knowledge for judicial officers, he claimed ‘there are still training gaps between judicial officers’ work and their technological knowledge (BJM 3).’

On the other hand, one young female judicial magistrate, who reported of not receiving special POCSO training, believed she did not need training on the usage of VC when an accused person under police custody is produced virtually, as for her,

*...it is a very normal thing. There is nothing much to know about it because the questions that you are supposed to ask are almost the same, that how you are...are you getting correct treatment...whether or not you are being beaten up. So, that does not require much of a training. That comes from handling the court anyways. (BJM 1).*

One judicial magistrate (BJM 3) also highlighted the benefits of using VC to record child victims’ statements. It was his belief that VC would be very useful in mitigating the distance and security issues, say, in cases where a victim is at any distant location like other city, state or country for study purpose or where there are threats to child victims in public transport systems. He then pointed out how the lack of necessary infrastructure to meet the requirements of a special law like the POCSO Act can impact the functioning of even trained judicial officers expected to implement such special POCSO provisions. He said there are issues of weak internet connection and non-availability of continuous electricity, which leads to disturbances in video connectivity.

He suggested having continuous back-up of electricity for courts. He further said there needs to be reliable equipment and infrastructure and reported that 70% of offices are such where training has been given but there is no computer, and the broadband connection that is used is slower. He said that the lease line is very good but there is no knowledge on the technology part. He then claimed that the concerned person did not know the difference between a broadband and a Lease line and even the policymakers need to be aware of all these problems.

I observed in one of the Bihar districts that the Magistrates went to a special VC room or had access to VC facility to attend virtually produced accused persons. These facilities, however, were unavailable to record child victims’ 164 statements, which was conducted in person in a Magistrate’s office in all the districts I visited.

## 2. *Special POCSO Judges*

Talking about his training, one male Judge from Bihar said, ‘I have received general bookish training in relation to POCSO’ (BPJ 2). However, he added that ‘more training should be given’. When asked about what exactly he would like to learn about in the training, he suggested that information about best practices of special POCSO courts in a particular state in India or of the foreign courts dealing with child sexual abuse cases should be discussed during the training. Another judge agreed to have received ‘general training’ on POCSO matters (BPJ 3). He then spoke in a disinterested tone about the importance of special training to judges for POCSO matters: ‘I think training is not that much important’, as he just needs to follow the Act. Showing his procedural knowledge of the POCSO trial, he further stated that a questionnaire during trial is a must, which should be submitted by the Prosecutor and by the Defence Counsel that such and such questions will be asked from the child witness. He will then peruse it and only after his permission, the lawyers will ask those questions. My observation, however, indicates that while he was aware of the trial procedure, this was not being implemented.

Thereafter, he (BPJ 3) went on to talk about the procedural abuses by lawyers working in the special POCSO court he presides over. He said that there needs to be more sensitivity on part of the lawyers as they cannot misbehave with a seven-eight year old child. They cannot ask her about the size of penis or mode of sexual intercourse, which is impermissible. He further suggested the necessity of ‘self-teaching’ to handle POCSO matters. He went on to discuss the ‘misuse’ of POCSO matters. He said, in land disputes, people are projecting children as pawns. Discussing a case in which a six-month baby was a rape victim, he said that Doctor and Investigating Officer (IO) were also deposing against the accused person in the case. And then he said, “she is a six-month baby; if the accused person throws her on the floor, she will die. Why will he rape her? What will he gain by raping her? (BPJ 3)”<sup>76</sup> This statement reflects not only his own insensitivity towards child victims of POCSO offences but also a lack of empathy and understanding the motivations behind child sexual abuse.

When I asked him about his approach to cases where he thought the POCSO law is being misused, he said he just looks at the evidence and decides the matter. He then highlighted the reasons for his approach and the tension between a judge’s knowledge and implementation of law vis-à-vis knowledge of social ‘realities’, i.e., what goes outside the courtroom. He said, “Why should I take the burden on my head? Why should I make an enemy? Have all the social reformers died? If I do something, who will then protect me?

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<sup>76</sup> Translated from Hindi: *Chhe mahina ki bachchi hai. Patak dega, mar jaayegi. Rape kyun karega? Rape karne se kya milega?*

(BPJ 3)<sup>77</sup> Pointing out the lacunas, he then blamed the Police that it is their responsibility to bring correct people as witnesses during the investigation and claimed that they write the Case Diary sitting at home.

Among the POCSO special judges who said they did not receive training, one stated that there was no specific training given to him to deal with the POCSO cases (BPJ 1). Upon being asked if he needs such training, he said he does not think there is any need of special training for such matters. He claimed that working for so many years in the judiciary has given him 'enough experience to deal with such cases.' He also seemed to be consciously offering a reason for his lack of knowledge of the POCSO law that was reflected from his responses during the beginning of the interview. He said he joined as a special POCSO judge only 3-4 months ago, and he has learnt about the POCSO law in the court itself, and soon he is being transferred to another court because of his promotion.

Through the in-court learning, this judge (BPJ 1) knew the POCSO special procedures about victim's deposition through video linkage and Vulnerable Witness Deposition Room during the trial and called these as important changes. He explained to me that the victim sits in a separate room and can see only him and nothing else while deposing through the video-link, and the accused person cannot see the victim. The judge then said that he puts questions before the child victim, and she responds. My observation data of his court, however, suggests that this was not put in regular practice, as in most cases the child victim was required to be in the courtroom in an almirah like box with a one-sided mirror. Further, both public prosecutor and defence counsel asked questions directly to child victims, which sometimes were even inappropriate, without any interference by him. He also said that he rejects all bail petitions in POCSO cases.

Another judge also said that he did not receive any training after his appointment as a POCSO special Judge and claimed that the trainings occurred regularly but were 'only interaction' (BPJ 4). He said that he just needs to see the evidence and work as per the POCSO Act. Shifting focus on prosecutors' training, he said that even the Prosecution agency undergoes training, but not in a proper manner. He argued that investigation in POCSO matters is poor because of lack of training to the police officers, and that he thinks that there should also be sensitisation program for the police officers. This judge pointed out that there were many instances when the Investigating Officer did not get the medical examination of the child victim conducted or when they did then were late in doing so, and that they are unable to get it done on the spot.

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<sup>77</sup> Translated from Hindi/Magahi: *Hum kaahe ke liye apne sir pe lein? Hum kyun dushman banayein? Saare social reformer mar gaye hain? Hum kuchh karein, fir who will protect me?*

## B. Training Provisions in Delhi

The overall training provision as reported by the Delhi respondents was not very different from those of Bihar. A total of 4 (44 percent) out of 9 Delhi respondents said they received the special POCSO training. While 2 of these respondents (DPJ 6 & DPJ 7) were special POCSO judges, others were the two Delhi judicial magistrates.

### 1. *Judicial Magistrates*

Both judicial magistrates in Delhi reported receiving special POCSO training. One of these Magistrates (DJM 1), who joined the Delhi Judicial Services (DJS) around 10 years ago, told me about the nature of a very young child victim and its impact on the process of recording their statement:

*When a child is very small, you can say about, till five years six years, the child actually does not know what to say and how to say. And they are actually clueless also that such a heinous offence has [been] committed upon them. They don't know that they have been molested or something, whatever has happened to them. So...they are actually scared to come and disclose everything to a third person who they never know. When they grow up, and when they become aware of the body, then the realisation comes. I think after six to eight, six onwards, I think the realisation is more, that this is wrong. (DJM 1).*

She then explained how she records a child's statement:

*Initially the comfort level has to come. We make them comfortable. You have to go down to their language: "Was the [penile] penetration at the urinal area? Was the [penile] penetration at the anal area? Did he insert his finger? What do you say? Did he take off your underwear?"<sup>78</sup> So, all those languages that a child understands, you have to go down to that level. You have to make them feel a lot comfortable, so...I used to give chocolates. Sometimes make them sit on my lap, to make them comfortable. You make a parent sit behind. The parent sits on the sofa, so that the parent knows nothing hanky-panky is coming up. Sometimes you even have to, means, point finger [to body parts]. And then you write. I pointed. The child nodded. (DJM 1).*

<sup>78</sup> Translated from Hindi: *Sushu wali jagah pe kiya tha? Potty wali jagah pe kiya tha? Ungli kiya tha? Aap kya bolte ho? Kachchi utaara tha?*

She then added that ‘you basically write *ad verbatim* what happens, and that’s how it is interpreted...because these statements are not on oath. Below twelve, it is not on oath. So, you have to ask a lot of question so that the child actually understands what you are saying.’ She reported having recorded the statements of children who have been molested in school cars, school vans or by their brother. Therefore, she said, ‘It takes time for them to open up to a stranger.’

When I asked about the location where she records a child’s statement, she replied, ‘Initially, it was my chamber, but then after the [relevant] rule and regulation came, we had to go to the Vulnerable Witness Room. So, we went there.’ She further emphasised that ‘the victim does not travel (within the court building). The child stays in the Vulnerable Witness Room. It is the IO (Investigating Officer) who does all the running to help the child reach the Vulnerable Witness Room. The child is never made to run from pillar to post.’ Even the Magistrates come to the victims, the victim does not go to the Magistrate, she added. Regarding the design and environment of the Witness Room, she said that “the identity [of victim] is protected in every manner. There is a separate pathway for the child. Victims are not made to enter through the common gates. Even the accused is kept in a separate barrack.”

Highlighting the role of gender in policy development, she said that as per the guidelines, ‘now the rule is that only women record [164 statements], as being considerate...you are able to extract better of what has happened.’ She added that every female magistrate is allotted one child victim to record their statement.

She also reflected on the challenges to record statements of children who are in 15-18 years age group:

*By the age they are fifteen sixteen, it is more of a love affair. If it is concocted, then it is [a] love affair. Then they...they just bluntly refuse. ‘I did not say anything (Main to kuchh kaha hi nahi tha).’ Then they are very arrogant also. ‘I want to take it [complaint] back. How does one do it? (Mujhe to wapas leni hai. Kaise lete hain?). So, we write that ‘I want to take it back. How does one do it? (Mujhe to wapas leni hai. Kaise lete hain?),’ and then sign it.”*

She further talked about cases where victims in this age-group say, ‘I committed mistake in writing, because my parents were not marrying me to my boyfriend’<sup>79</sup>. Emphasising on recording the statement as it is given by a child, she said,

<sup>79</sup> Translated from Hindi: *writing me maine galat kar di thi, kyunki mere maa-baap mere boyfriend se meri shaadi nahi kara rahe the.*



*Ad verbatim you write, and you send it. You cannot add a sentence...because you give a certificate in the end, "whatever has been said, has been written." So, you write, and you make them sign, "I do not want to pursue this case. I was deposing. It was my false complaint (mera false complaint tha)." You sign.*

She also highlighted that improvement in public awareness about the POCSO law and stakeholders' special training by the District Legal Services Authorities, other legal authorities, and Non-Governmental Organisations, along with establishment of more POCSO special courts in Delhi, have led to increase in access to courts and improvement in access to justice for the public in POCSO cases.

Another female judicial magistrate (DJM 2), who joined the DJS in 2018, also reported positively on receiving special POCSO training. She said that while going through the one-year training at the Delhi Judicial Academy after joining DJS, there were sessions, where the resource person gave training on how to record 164 statements and discussed the law in that regard. Regarding recording a child victim's statements, she said she was given a full day training and was even taken to the Vulnerable Witness Room.

She discussed the procedure she follows to record a victim's statement. She said 'we generally make sure that the child is without any fear, whatever he is saying, he is saying it voluntarily, and what all he wants to say...for 164. Then he has to depose as per...whatever he remembers, and then we jot it down and record it accordingly.' On being asked whether she faces any challenge in performing this task for which she was specially trained, she mentioned that recording a child's statement in verbatim by hand has always had a potential of human error.

She contended that she has to hear and jot down every word of a child victim's narration properly and for this purpose she has to keep asking questions repeatedly. Sometimes she had to record in writing a long statement of seven-eight pages. To tackle this challenge, she recommended mandatory video recording of 164 statements, which as per her would not only save the time but will also prevent a child witness from repeating their story again and again. Arguing that this would be a better approach, she further added that the recording can then be sent to the POCSO court for its usage. Another issue she flagged was when children breakdown while giving the statement. She said usually it's the adolescents who breakdown because young children simply depose, whatever they have to say. To handle this situation, she said, 'we say that, okay take a pause, calm yourself, and then you tell. Only me and you are there, nobody else is there. So, be fearless and tell whatever you have to say.'

## 2. *Special POCSO Judges*

One Delhi male judge (DPJ 6), who joined DJS more than a decade ago and became a POCSO special judge in 2019, contended that a good amount of special training was given to the POCSO judges, including the training on child psychology. Talking about how he uses the training provided to him, he said that to record a child's testimony during the trial, he uses confidence building measures, as one would not touch such a topic directly and there should be general conversation to begin with. So, he puts some introductory questions to the child, an approach he argued is quite helpful, particularly for a child below twelve years of age but works generally well for other children too, and even the child is able to respond in a better way. He said one should not expect that children would give narratives during trial and that even the higher courts have said that child victims' statements should be taken in the Question-and-Answer format to extract their responses in a better manner. He also highlighted a ready-made pro forma, which has been written in a manner that the other party [defendant] would not raise any objections.

Praising the use of video-link and the Vulnerable Witness Courtroom ('VWC')<sup>80</sup> during trial, he claimed that if the video-link system would not be there, then in 80-90% cases it would be very difficult for the child to depose, as there are such statements given during the trial that even the lawyers tend to skip them in the court. He then gave an example where a girl said during trial, "the uncle tried to insert into my urinal spot, but when it did not get in, then the uncle applied oil on it."<sup>81</sup> So, in such situations even the in-camera pro-

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<sup>80</sup> This is a unique architectural and digital arrangement that has been made to facilitate recording of statements by child victims during POCSO trials. In Delhi, under this arrangement, there are three separate rooms, two of which are connected digitally to each other. One, the special POCSO courtroom, which is publicly accessible and used for all the case proceedings except the recording of child victim's testimony and is not connected to the other two rooms; two, the Vulnerable Witness Courtroom (VWC) – a separate courtroom, which is on the same or a different floor of the building in which the special POCSO courtroom is situated, and where only the special judge, special public prosecutor, defence lawyer, stenographer, police personnel, and accused person can be present; and the third, called a Video Linkage Room (VLR) – a live link room with sofas, chairs, tables, and an adjacent children's play area, with nothing that is courtroom-like, where a child sits with a support person without anyone else's presence except the child's parent or guardian. The second and third rooms are digitally connected through a live video-link in a way that the audio-video feed of VLR is produced in VWC on a computer screen for the accused person and others to hear and watch, and the judge's voice from the VWC to reach only to the support person in VLR. So, the child in the VLR, who is giving evidence by live link, hears only what the support person says and cannot see the accused, or any other person, present in the VWC, except when they need to do so for identifying the accused person(s), and therefore feels that they are not in a courtroom. My observational data say that while in Delhi, all district court complexes I visited and observed had at least one VWC being used by POCSO courts, in Bihar this facility was available only in one of the four districts I observed, and even that one was not used regularly.

<sup>81</sup> Translated from Hindi: *Mere shushu waley jagah me daalne ki koshish kiye, nahi gaya tab uncle ne fir tel lagaya.*

ceedings do not work, because you cannot avoid the presence of Stenographer in courtroom, he argued. Further, as per his experience, younger the child the more difficult it is to get good evidence or response from them:

*They will say that he did it to my urinal spot.<sup>82</sup> Then, I will ask what exactly he did. Did he just touch it, or did he insert? Because touching and penetrative sexual assault have big difference in terms of punishment. Also, you cannot put leading questions to the victim. (DPJ 6).*

He highlighted the pro-active role that POCSO special judges need to play. He said that gone are those days when Judges used to sit idle with calmness, and used to listen and watch quietly whatever is happening in the court. Now, every judge is pro-active, as they must constantly watch that there is no character assassination of the child by the Defence Counsel, he added. He also said that he does not give any leverage now and even the Defence Counsels' body language has been taken care of, and he just tells them that they can watch the victim on the computer screen present in the Vulnerable Witness Courtroom.

Talking further about engaging with victims during trial, he narrated a case of child prostitution he was dealing with, where the girl was brought from another place for prostitution in Delhi. He said that Police tried to change the statement of the victim and the Child Welfare Committee's observation was that her mother used to receive money for that, and some government officer was involved who gradually developed an individual interest in the victim. While deposing, the victim could not say anything in the courtroom despite that being an in-camera proceedings, the judge added. This is when he asked her to come to his chamber, where he could successfully secure her statement, and where she said many things to him, which he was unable to share with me during the interview. He argued that this process needed a rapport-building by him with the victim, which at times, he claimed, a support person is unable to do.

While this Judge was satisfied with the special training given to him, he highlighted lack of training of other stakeholders and certain socio-legal and infrastructural limitations, which despite him being specially trained, pose challenge to him in dealing with POCSO cases. He criticised the role of support persons and discussed the repercussion of their lack of training on recording a child's testimony during trial.

Talking about the VWC rules, i.e., the lawyers putting the questions to the Judge, the Judge relaying it to the Support Person, and who in turn asking

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<sup>82</sup> Translated from Hindi: *Wo kahenge ki meri shushu wali jagah kiya tha. Fir hum poochenge kya kiya tha. Touch kiya tha kewal, ya andar dala tha?*

those questions to a child, this Judge noted that the quality of support persons is a concern. He said support persons are mostly lawyers who are not getting any briefs, but in a way, are replacing a Judge in POCSO trials. He argued that there needs to be a process of zone-making where he makes child victims comfortable first, but in the present process, his voice does not reach them. Questioning why his voice should go into the Support Person's ears, he contended that his expression would be lost in the voice of the Support Person. Asking how it makes a difference if the victim hears the voice of the Judge directly, he proposed that the victim should hear the voice of the Judge and the present system of relaying questions to a child through a support person should go away unless the support persons are very well trained.

Speaking on behalf of himself and his fellow POCSO special judges, he then outlined three major socio-legal challenges that they face while dealing with POCSO cases. First is what he called 'the cases of elopement'. Explaining the pattern in such cases, he further said that a girl of sixteen and a half years or seventeen years or just short of majority of 18 years under the POCSO law consensually goes away with a guy and has penetrative sex with him, including on occasions many times in one night which is normal. Noting that the POCSO Act has taken away the concept of consent for such girls, which earlier was considered legal, he argued that such instances now fall under the severe offence category of repetitive penetrative sexual assault. In such cases, he argued that despite the victim deposing in favour of the defendant, the defendant must be found guilty and be severely punished for a minimum of twenty years. He added that a very important issue in a case under the POCSO Act is that the entire case rests on a victim's statement as there would not be any public witnesses.

The second socio-legal challenge in handling the POCSO cases, he argued, comes up in those instances where parties are accused of child marriage. He said while the POCSO Act is a gender-neutral and a secular legislation and applies even to cases of marriage provided the bride and/or groom is under 18 years of age, child marriage is still rampant in the Indian society. He noted that the practice is more among Muslims than Hindus, as under Muslim personal law, puberty is a criterion for marriage, and that there is a conflict between the POCSO law and personal law which has not been taken care of. Moreover, he argued that discretion has been taken away from courts on this issue, and he and other judges have to punish the boy who had consensual (non-exploitative) sexual relationship within marriage with, say, a seventeen-year-old girl. He further contended that not only the POCSO Act but also the later enhancement of punishment are products of knee-jerk reactions.

The third challenge, more of a socio-economical in nature, he talked about, was in incest cases where in a poor family, a father rapes his minor daughter while also being the sole bread winner of the family. He discussed a case of a

fifteen-year-old girl who lodged a complaint against her father for being raped since the last four years. She had an illiterate home maker mother, who did not have any skill to earn money, and four other children to feed, he said. Arguing that usually bail is not granted in POCSO cases, especially in aggravated cases, the Judge said the man is behind bar now and raised several livelihood questions for the family: “Now just think how they will live. What will they do? How will they run their family?” While he emphasised on “law taking care of some of her things, say through compensation, but not other things”, asserting he gave her a rightful compensation of one lakh (rupees), he went on to blame the child: “Because of her, the father is inside jail.” “Economics always prevails,” he added, arguing that there is no assistance by law or government for a family in such situation, and a girl is bound to turn hostile if she goes home. To prevent this, he directs such victims to be put in the child homes – a decision usually taken by the Child Welfare Committee. While he did raise some valid points such as insufficient compensation and witness becoming hostile, he also clearly displayed victim-blaming attitude, despite having received special training to deal with POCSO cases.

In terms of infrastructural limitations that make the POCSO’s legislative mandate impossible to achieve, he argued that the provision to record a child’s testimony within a month of taking cognisance is just not possible. There are around four hundred to five hundred cases in one POCSO court in a month, and for implementing this provision, charges need to be framed within one month, and so do recording of the child’s testimony, he said. Noting that there are now four-five POCSO courts here in his district, but only two Vulnerable Witness Courtrooms, he proposed that there should be six to seven POCSO courtrooms as well as the same number of Vulnerable Witness Courtrooms in his district.

Another male judge (DPJ 7), working with the DJS for more than a decade, and who became a POCSO judge around the same time as DPJ 6, said that he along with other judges have undergone regular training and there were regular programs at intervals of three to six months. He mentioned a sensitisation training in relation to POCSO cases and said that he had been lectured by High Court Judges, Delhi Judicial Academy and sometimes even by the Bar. The training also included sessions on how to take evidence of different age groups of child victims – a child victim of below twelve years of age requires a different kind of indulgence than a child of a tender age of four-five years, and a different approach is needed if you have to record evidence for fourteen to sixteen years, and sixteen to eighteen years age groups, he added. He asserted that recording statements while in office since the last ten years has also provided him sufficient experience of recording testimonies of victims of any age-group, adding: “You just have to treat the child as your own,” thereby overlapping judicial and parental empathy.

Talking about his engagement with a child during trial, he said he asks the child to sit beside him near the dais in case they feel uncomfortable in saying anything from the VLR. Claiming that for a four to eight years child, it does not make any difference who is asking question, he said he sends the Police officer outside the VWC in such situation, and it has once happened that a child witness was unable to give statement in the VLR but easily said whatever he wanted to in the VWC. When I asked in what situations he brings a child near the dais, he argued that when sometimes a child is not comfortable with both the parents or mother or father being present in the VLR, he asks the child to come to VWC and sit near him.

Explaining the nature of questions he asks a child, and how he creates a 'child-friendly' environment, he claimed that when he finds a child witness is not feeling comfortable because of any reason, he gives them Frooti (Mango juice), or even Chips. He contended that he asks questions in a very informal manner with a joking outlook like one would usually talk to a child in daily life: "You know I also have a son of your age", "Was this the uncle who did wrong act with you?" If the child has been tutored by parent to not say anything in the court, then the child will say, "Nothing happened to me," he added. Still, he said, he would ask the child repeatedly and then she would tell him, claiming that she is trying to open up gradually, and so you cannot rush with her. He went on saying that then he would ask, "But the uncle did touch you, right?", and then, "Where did the uncle touch you?" Then, he said, if she does not respond, he would prompt, "Okay, he touched your cheek,," then, she will say, "No, not cheek. He touched my chest." He also discussed the challenges in incest cases and what he called as 'love-affairs cases' under POCSO.

While this Judge, like DPJ 6, appreciated the use of video-link during trial, noting that it takes care of secondary victimisation of child victims by providing them comfortable environment during their depositions, he raised concern about its implications on the rights of the accused person. He contended that the use of video link hampers accused's rights, "because the manner in which she speaks cannot be perceived in the same way through video-link as it can be when the child is physically present." He emphasised on demeanour, saying it has its own value in a criminal trial and added that the problem is further exacerbated when sometimes the victim is inaudible from the VLR.

One male Delhi respondent (DPJ 3), who had worked for around two years as a POCSO judge without any special training, said: "There was no such formal training. Some one-day seminar type event was organised, and I attended that." On further questioning about how then he dealt with POCSO matters, he responded: "I am a Judge. I am trained. I have trained myself in that manner." Upon being asked how he formulated his approach towards a child witness, the judge said, "These were through hit and trial. This is how it goes." He stated that it continues to be the case that specific training is not given to the judges.

One female judge from Delhi (DPJ 2), who said she did not receive any training after her direct appointment to the Delhi Higher Judicial Services ('HJS'), stressed on the need for POCSO training. She described how she, along with two other newly appointed judges, trained themselves to handle the POCSO matters:

*We quickly trained ourselves with the help of our neighbours, by asking them, they gave their judgments. All three of us came together, and we collected whatever materials was possible for us to collect and shared amongst ourselves. (DPJ 2).*

The neighbours here were not her peer judges but her former students who became judges. She revealed that there is a lack of space for peer-level interaction in the lower judiciary. Emphasising the importance of interpersonal relations in lower courts and the difference between law-in-books and law-in-practice, she said she had learnt more than half of her word from her stenographer who was far more practically experienced than her. She believed that special POCSO training is a must for special POCSO judges, saying that 'most importantly sensitisation is needed'. As per her, special judges need POCSO training also to know the roles of NGO members and the Delhi Commission for Women members in POCSO proceedings, and how can they control them or seek their assistance. She also suggested that as part of judges' POCSO training "We should have been made to sit in the sitting [POCSO] courts" for a week or ten days, to enhance judges' learning.

Another notable comment about self-training was made by a Delhi male judge, who said that he had received routine training but no specific training to deal with POCSO matters, and he had sensitised himself to work in a better manner in this Court (DPJ 1). When I asked how, he replied, by watching movies on sexual violence against children. He gave me a brief description of a Bollywood movie, titled 'That Girl in Yellow Boots',<sup>83</sup> which he had watched.

## VI. ANALYSIS AND DISCUSSION

The POCSO Act and Rules mandate the central and state governments to take measures to ensure that the judicial officers receive periodic training on the matters related to its implementation. The data from the BJA's website, which was limited in comparison to those from the DJA's website available in much-detailed manner, and other training agencies, show that POCSO-related special training was imparted to judicial officers. However, the frequency of

<sup>83</sup> A 2011 Indian Hindi-language thriller film by director Anurag Kashyap, starring Kalki Koechlin and Naseeruddin Shah. It is a story of Ruth, a British woman, coming to India in search of her father who is of Indian descent. It is based on the themes of child (sexual) abuse, drug addiction, and incest.

POCSO-related training and if it was sufficient were difficult to gather, mainly in the case of Bihar.

Further, the interview data tells a different story – one that is a mixed bag and can be unevenly divided into three groups of respondents based on their responses – (1) received POCSO-related special training and satisfied, (2) received POCSO-related special training and dissatisfied, and (3) did not receive POCSO-related special training. On a positive note, around half of the total respondents, 4 out of 8 in Bihar and 4 out of 9 in Delhi, said they received special training to deal with POCSO cases, with one Delhi Judge saying that he received training even on the related aspect of child psychology. Out of these eight, six said they were satisfied with the training provided to them and were all based in Delhi. Two of these eight respondents reported of not being satisfied and were from Bihar. While one said, ‘more training is needed’, the other said, ‘training is not much important’, showing a clear rejection of the idea that formal training is required to handle POCSO matters.

On the other hand, a minority of 6 respondents across the two locations responded negatively saying they never received special POCSO-related training. The remaining three respondents, which included two Delhi POCSO special Judges, either could not or did not say anything on the POCSO-related special training. All POCSO judges, however, mentioned receiving the routinised general training upon their induction into lower judiciary as magistrates. Thus, there was a similarity in terms of percentages of respondents across the two locations who reported of receiving POCSO special training, i.e., 50% in Bihar and 44% in Delhi.

Nevertheless, this similarity was not reflected in the observational data, which revealed that in terms of the implementation of POCSO special procedures by judicial officers, particularly by POCSO judges at the trial stage, Delhi was way ahead of Bihar. The reason behind this difference was that the Delhi respondents put their special training in practice by implementing POCSO procedures in their courts and their functioning. On the other hand, the Bihar respondents, even those who reported of being specially trained, or those who at least knew the POCSO special procedures, did not do so, thus blatantly violating the POCSO Act, and thereby the rule of law.

My findings suggest that there was a clear link between training, learning, and implementation of the POCSO procedures, in Delhi, both at pre-trial and trial stages, on how to question and communicate with the child. There was proper engagement with the child by judicial officers with special training. However, such training could neither eliminate a victim-blaming attitude nor could evoke child sensitisation completely. The nature and mode of questions asked during recording of 164 statements by judicial magistrates were reported to be in line with the POCSO Act, except that there was no use of



audio-video electronic means for this purpose – a mandate of law subject to ‘wherever possible’, a phrase speaking about perhaps the *possibility* of availability of resources and/or circumstances. This issue was highlighted by one Delhi judicial magistrate (DJM 2) who proposed it should be made mandatory.

Further, my findings from Delhi also indicate that there is use of separate entrances and vehicles at the trial itself that facilitate discreet arrival and departure of child victims from court. Moreover, to create a child-friendly environment during trial, certain practices were being employed, some of which do not even find mention in the POCSO law. The trial was conducted using the live video-link. There was a practice by special Judges of giving fruit juice and chocolates to the child giving their testimony. The Judges seemed to be actively supervising the proceedings in a manner that no lawyer was able to ask any question directly to a child, thereby strictly adhering to the law. The Judges appeared well versed with age and developmentally appropriate techniques of questioning children and appreciating their statement and employed these techniques without leading it to tutoring. The Judges also used what they argued to be a child-friendly measure for young children, a technique of calling the child near themselves in Vulnerable Witness Courtroom when they found the child unable to testify via the live video-link from the Video Linkage Room. Important to note here is that the accused in the VWC was kept behind a one-way view mirror, so that even when a child testifies in the VWC, they are unable to see the accused, but then the idea of not letting children encounter a court room space fails in such a situation. Even the reported practice of making the child sit on one’s lap seems to assume of it being a child-friendly behaviour, which needs critical consideration. Moreover, there seemed to be a lack of clarity among the special judges about the precise role of support persons in POCSO trials, with some respondents finding their presence unnecessary or conflicting, particularly because of reported lack of availability of trained support persons.

The findings from Bihar, even after more than a decade of the POCSO Act, and past recommendations from researchers, remain a serious concern. While at the pre-trial stage, the nature and mode of questions asked during recording of 164 statement by judicial magistrates and facilities for children to access magistrates were in line with the POCSO Act, yet not child-friendly to the level that they were in Delhi, the trial stage had many flaws. Although the special Judges were aware of the special procedures, they were not implementing these, leading to the secondary victimisation of children at the hands of lawyers in violation of the law. Even in the districts where there was no video-link infrastructure available, the special Judges could have actively supervised the trial proceedings, preventing the lawyers from directly asking questions and that too inappropriate ones, to the child, but it seemed absent. The suggestion of recording a child’s 164 statement at the local judicial magistrate, rather than at the judicial magistrate’s court situated in district headquarters, should be

considered to prevent harassment of children and their caregivers, and ensure their safety.

It has been argued, albeit in the context of police interventions in domestic violence cases, that training, as a lever of change, is expected to be a mechanism to change stakeholder actions and responses, but thinking about training as a mechanism of change too often removes it from the culture and structures within which those stakeholders make their decisions.<sup>84</sup> Thus the issue of judicial officers' perceptions and experiences of POCSO-related special training in the two places and the lack of implementation of special procedures particularly in the trial stage in Bihar, can be linked to the contrasting nature of the socioeconomic, cultural, and infrastructural factors of the two locations, suggesting a situation of law-in-books versus law-in-practice, as well as to the fact that judicial officers do not operate in vacuum but along with other legal actors.

Further, the data revealed that there is an assertion on part of a few judges of the belief in their intrinsic abilities and knowledge of court procedures. This suggests that while subordinate judicial culture and personnel are changing over time, the judicial training is largely wrapped within the core culture of subordinate judiciary, i.e., lack of judicial diversity, a know-all judicial attitude, and a command ethos. The data also reveals the significance of courtroom interaction among different groups of court personnel as a learning tool for the special Judges to carry their professional task effectively. The findings highlight the responses of court personnel's self-training through a fictional movie, which, in the absence of formal institutional training and guidance to use it as an aid, could be rather fatal to their understanding of the real-life issues in POCSO cases.

Being mandated under the POCSO Act, the importance of POCSO-related personnel training has been emphasised time and again for the welfare of child victims in the criminal and judicial processes by child rights organisations and activists, researchers, and higher courts. The lack of training of judicial officers, particularly the special Judges, can adversely affect the rights of children, the accused, and the fairness of the trial. Although there appears to be improvement in the judicial officers' POCSO-related special training, much more needs to be done, particularly in Bihar. In 2021, the Patna High Court recommended special training for a special judge while setting aside

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<sup>84</sup> Carolyn Hoyle, *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Oxford University Press 2000); Elizabeth Stanko and Katrin Hohl, 'Why Training is not Improving the Police Response to Sexual Violence Against Women: A Glimpse into the 'Black Box' of Police Training', in Emma Milne, Karen Brennan, Nigel South, and Jackie Turton (eds) *Women and the Criminal Justice System: Failing Victims and Offenders?* (Palgrave Macmillan 2018), 168-186.

his judgment awarding 10 years' rigorous imprisonment to an accused in a POCSO case.<sup>85</sup> It observed:

*A trial Judge especially a Judge having power to award death sentence must have correct knowledge of legal principles and zeal to its proper application while exercising the most onerous responsibility of taking decision on the life and liberty of person before him. Lack of knowledge of legal principles leads to miscarriage of justice and unnecessary harassment to the parties to the litigation. Bias and prejudices, conjectures and surmises and personal views contrary to the material on the record have no place in the court of law.*<sup>86</sup>

## VII. CONCLUSION AND THE WAY FORWARD

This article aims to kindle critical debate about the special training of judicial officers – both judicial magistrates and special Judges, who deal with the cases of sexual violence against children in India under the POCSO Act, which are very sensitive and could potentially be emotionally draining. Because of the nature of these cases, there is also a possibility of their personal biases finding their ways into their engagement with child victims and accused and decision making.

I began this article with an assessment of the status and nature of training given to these stakeholders, who are responsible for the implementation of the POCSO reforms, as shown by the available research works. The paper then embarked to find out the status of the training given to judicial officers and nature of implementation of the POCSO reforms employing a qualitative empirical approach. It outlined the methodology and challenges involved in conducting qualitative empirical research in the area of child sexual abuse in India, particularly the issue of accessing elite respondents like the (district) judiciary. The paper then analysed and discussed the data generated from the stakeholder interviews on the experiences and perceptions of their special training, their self-reported practices, the observation of POCSO courts and trials, and the implications of these findings.

The findings show improvements over the last couple of years in terms of stakeholder periodic training and implementation of POCSO reforms by judicial officers dealing with POCSO cases and their engagement with child

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<sup>85</sup> *Deepak Mahto v State of Bihar*, (2021) 3 BLJ 328: The court further directed forwarding its judgment and the judgment of the POCSO special Judge to the director of the Bihar Judicial Academy to ensure proper academic training to the judicial officers to make them conversant with the correct legal proposition.

<sup>86</sup> *ibid*, 17.

victims. However, there were certain situations when the Judges have pictured children insensitively, showcasing not only patriarchal and stereotypical thoughts at work but raising questions of whether training has interrupted male state power or has it entrenched or modified it. Further, challenges and limitations highlighted by the participants in the form of socio-legal, economic, and infrastructural factors such as 'love-affairs', child marriage, and incest cases in poor families and lack of sufficient number of Vulnerable Witness Courtrooms as well as absence of video recording of child's statement by Magistrates were reported to act as barriers in effective engagement with child victims and accused and delivering justice in POCSO cases. These barriers will need to be tackled by bringing substantive and procedural changes to the present POCSO law as well as through sex education and public awareness programmes.

Recording a child's statement, particularly young ones, in the pre-trial stage, and their testimony in the trial stage poses several challenges to judicial officers – rapport building with and understanding the past and present situation of child victims and managing their own emotions and biases. They also need to coordinate with and supervise lawyers, support persons, police officers and other court staff members to ensure that the child has access to emotional support to reduce anxiety and distress, improve the accuracy of their recall of who sexually abused them and when and in what order the events took place, and most importantly, to heal. They also need to safeguard the rights of accused during the trial. A trained support person is a must in POCSO trials, particularly when the child is of tender age.

Considering, as one Delhi judge said, that both the parties in a POCSO case mostly – in 99.9 % of cases – belong to the poor strata, which means also from socially marginalised communities such as Dalits, Adivasis, and Muslims, would the training imparted to the judicial officers on POCSO matters and related aspects such as child psychology be sufficient if it is devoid of the aspects of caste, class, disability, gender, race, religion, and sexuality. As per their responses, children seemed a monolith category, raising the question if such training approach ignores a child's intersectional experiences as well as the fact that a child's identity and lived experience can affect how they engage with professionals and services at every stage of the judicial process. Might, therefore, an intersectional framework be adopted to prepare training materials, to train stakeholders, and to engage with children in an alien environment as per their differential need?

My findings suggest that individual initiatives like the one mentioned above by the Patna High Court cannot have a true systemic impact on improvement of the status of judicial officers' POCSO-related training. The efforts to impart such training must be able to acknowledge, assess and tackle the socio-legal and economic factors and the cultural practices that perpetuate inequality and endorse violence against women and children that exist in

society, along with improving state funding towards the training. Moreover, given India's predominant caste system and patriarchal structures leading to increased criminalisation of the poor and the socially marginalised, insights from the feminist and Dalit rights research on sexual violence against women and children ought to inform the content and content delivery mechanism of stakeholder training for the POCSO cases.<sup>87</sup> We need to think and ask questions such as how the materials and trainers are put together to deliver judicial training in POCSO matters, and what is the socio-economic and educational background of those trainers. Finally, this work demonstrates the significance of intra-country comparative empirical research, and I hope it would pave the way for more such works to enhance our understanding of the nature of implementation of the POCSO law and similar social and legal policies in India and the Global South.

I envision several avenues for continued study of the POCSO reforms, judicial and other stakeholder training, and delivery of justice to child sexual abuse victims and accused. For instance, it is possible that studying perceptions and experiences of child victims about the gender of the stakeholders would yield insights on the nature of stakeholder engagement and behaviour, which data limitations prevented me from exploring in this paper. Future research might also investigate lawyers' and police officers' perceptions and experiences of their POCSO-related training. Another aspect that could be examined is socio-economic background and intersectional experiences of child victims and accused and their implications on judicial engagement during the criminal process and decision-making. The role of emotional labour in stakeholder training and engagement with child victims, and how emotions are constituted, mobilised, and embodied by judges while recording child testimony via live link during POCSO trials could be another area worth exploring.

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<sup>87</sup> Bincy Wilson, 'Can Legislation Alone Protect Devadasi Girls from Child Sexual Abuse and Exploitation?' (2020) 29(5) *Journal of Child Sexual Abuse*, 606-625, DOI: 10.1080/10538712.2020.1774696. Aishah Shahidah Simmons (ed), *Love with Accountability: Digging Up the Roots of Child Sexual Abuse* (AK Press 2019). Sunaina Arya and Aakash Singh Rathore (eds.), *Dalit Feminist Theory: A Reader* (Routledge 2020). Sameena Mulla, *The Violence of Care: Rape Victims, Forensic Nurses, and Sexual Assault Intervention* (New York University Press 2014). Arushi Garg, 'Conjugalities and Crime: Hegemonic Constructions of Rape Laws in India' (2018) vol XX, no X, *Social & Legal Studies*, 1-18, <<https://doi.org/10.1177/0964663918808069>>. Aakash Singh Rathore and Garima Goswamy, 'Rape and Security: A Buddhist Vantage Point' in *Rethinking Indian Jurisprudence: An Introduction to the Philosophy of Law* (Routledge 2018). Srujana Bej, Nikita Sonavane, and Ameya Bokil, 'Construction(s) of Female Criminality: Gender, Caste and State Violence' (2021) 56(36) *Economic & Political Weekly*. Gaurav Bhawnani, 'The Mother's "Character" on Trial in Child Sexual Abuse Cases' (2021) *Indian Law Review*, DOI: 10.1080/24730580.2021.1952376. Alankaar Sharma, 'Disclosure of Child Sexual Abuse: Experiences of Men Survivors in India' (2022) *British Journal of Social Work*, 1-18, <https://doi.org/10.1093/bjsw/bcac073>.