



POCSO TRIALS

A Guide for Victims' Counsels



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PURPOSE

The Protection of Children from Sexual Offences Act, 2012 (“the POCSO Act”) is a comprehensive law providing for the protection of children from sexual offences. The law was first enacted in the year 2012 and has since been amended thrice – in 2013, 2018, and 2019. The POCSO Rules of 2012 (hereinafter referred to as “the POCSO Rules”) have also been replaced by new Rules enacted in 2020. Through the years, the roles of the police, child welfare committees, and victim’s counsels have evolved by way of legislative amendments and court judgments.

This guide is a tool created for lawyers working on POCSO cases. It contains summarised information on the roles of various government stakeholders as well as on the role of the victims' counsel. It also lists important judgments of the Supreme Court of India, and the High Courts of Delhi, Bombay, and Karnataka on the essential stages of a POCSO trial.

ROLES OF RELEVANT STAKEHOLDERS – AN OVERVIEW

ROLE OF POLICE/ SPECIAL JUVENILE POLICE UNIT (SJPU)

Register an FIR immediately on receiving information under the POCSO Act. Failure of the police to record an FIR is punishable under law. [S. 21(1)] A Complaint can be filed before the local police or the SJPU. [S. 19(1)]

Note: Any person, including a child victim, can report an offence under the POCSO Act. [S. 19(1)]

Furnish a copy of the FIR to the complainant, free of cost. [R. 4(3)(a)]

Complete the Preliminary Assessment Report that is provided in Form B of the POCSO Rules within 24 hours of registration of an FIR and submit the same to the CWC. [R.4(14)]

Take the child victim for medical examination within 24 hours from the time the case is reported to them. [S.27]

Record the statement of the child victim in a place of comfort and choice of the child victim. [S.24(1)]

Inform the child victim or complainant about any bail application being listed. [S. 31 CrPC]

Produce the child victim before the Child Welfare Committee (CWC) within 24 hours on receipt of information of an offence being committed or attempted or likely to be committed. [R.4(4)]

Register the complaint in simple language understandable to the child victim. [S.19(3)]

Facilitate emergency medical care immediately. [R.6(1)]

Inform the Special Court on the appointment of a support person assigned by the CWC in writing within 24 hours. [R.4(10)]

Inform the child victim or the child's parents, guardian, or any other person in whom the child victim has trust and confidence about the entitlements and services available to them under the POCSO Act and other laws. [R.4(3)(e)(f)]

Make relevant enquiries about the child victim's circumstances and document the same in order to facilitate effective representation and participation on their behalf and assist the court during the course of bail hearings.

ROLE OF CHILD WELFARE COMMITTEES

Determine within three days, on their own or with the assistance of a social worker, whether the child victim needs to be taken out of the custody of their family or shared household and placed in a Children's Home or a Shelter Home. [R. 4(5)]

Inform the police or SJPU regarding the appointment of the support person. [R. 4(8)]

Appoint support persons in cases where the child and/or their family are in need of assistance during the investigation and trial. [R. 4(8)]

Note - A support person can be an individual or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child or a person employed by the District Child Protection Unit (DCPU). [R. 4(8)]

Make a recommendation to the District Legal Services Authority (DLSA) to provide legal aid and assistance to the child victim, if needed. [R. 7(1)]

BEST PRACTICES

Ask an external agency for a thorough social investigation report of the child and the family in certain cases where deemed necessary.



TIP

Lawyers representing child victims can make applications before the CWC, invoking certain provisions of POCSO Rules/Juvenile Justice Act & Rules, to call upon the CWC to exercise its wide powers including to ensure that the child can access entitlements given under Form A appended to POCSO Rules.

ROLE OF SUPPORT PERSONS

Give regular written updates about the status of the proceedings of the child victim's case to the CWC. [R. 4(12)]

Maintain confidentiality of all information pertaining to the child victim. [R. 5(12)]

Inform the parents/guardians of the proceedings of the case with details of available assistance, judicial procedures, and potential outcomes of the case. [R. 4(9)].

BEST PRACTICES

- Conduct a thorough needs assessment/home study of the child victim with prior permission of the CWC.
- Accompany the child victim for recording of the statement under section 164 of the Code of Criminal Procedure, 1973 (CrPC) (if appointed by the CWC by this stage).
- Accompany the victim's counsel for pre-testimony meetings to meet the witness.
- Take steps to involve translators, special educators, and other experts whenever needed over the course of the investigation or trial.
- Be present in the vulnerable witness room alongside the child victim.
- Be present through the medical examination of the child victim (if appointed by the CWC by this stage).

ROLE OF VICTIM'S COUNSEL

STAGE-WISE SUMMARY OF THE ROLES

STAGE OF TRIAL	ROLE OF VICTIM'S COUNSEL ^{*A}
Investigation (if the chargesheet has been filed)	If the investigation has not been conducted properly, move an application under Section 173(8) CrPC for further investigation.
Filing of Chargesheet	Move an application for interim compensation under Section 357A CrPC read with Rule 9(1) of POCSO Rules. ^{*B}
Cognisance (Closure report filed by Investigating Officer)	If a closure report is filed, or the court fails to take cognisance of the case, file a protest petition.
Bail (Anticipatory – in case the accused is not arrested)	Oppose any anticipatory bail application filed on behalf of the accused, if required.
Framing of Charges	<p>Submit written submissions on the point of charge and assist the public prosecutor by making arguments.</p> <p><i>In cases of child sexual abuse where the age of the survivor is close to being an adult, the defence may raise the issue of age as a defence during the trial. It is good practice to ensure that charges are framed under both the POCSO Act and the IPC.</i></p>

^{*A} - Since the role of a victim's counsel is not defined but is restricted to assisting the special public prosecutor, the lawyer representing the child victim may file an application u/s 301(2) to assist the special public prosecutor along with the vakalatnama.

^{*B} - An application for grant of interim compensation can be moved any time after an FIR is registered. Special Courts do not need to wait for an application to be filed, and can suo moto initiate action to grant interim compensation.

STAGE OF TRIAL	ROLE OF VICTIM'S COUNSEL
<p>Bail Application *C</p>	<p>Keeping in mind the best interest and instructions received by the child victim, represent the child victim at the hearing and oppose the bail application if required.</p> <p><i>In case the child victim does not wish to oppose a bail application filed by the accused, it is helpful for the victim's counsel to be present as this means that the child victim need not be present in court which consequently reduces their chances of getting retraumatised.</i></p>
<p>Admission and Denial of Documents/Witnesses *D</p>	<p>Assist the special public prosecutor in admitting and denying the genuineness of documents included in the chargesheet.</p>
<p>Prosecution Evidence</p> <ul style="list-style-type: none"> • Pre-testimony intervention • Role of victim's counsel during child victim's testimony 	<p>Pre-testimony intervention</p> <ul style="list-style-type: none"> • Conduct pre-testimony meetings with the child victim/witness (or any other witness as considered necessary) before their deposition along with the social worker. • Explain the procedure that would be followed for recording their testimony, including layout of the court and role played by the judge, prosecutor, defence counsel etc. Inform them that they can request the support person to accompany them in the vulnerable witness room. <p><i>Lawyers representing survivors of abuse should prepare a list of questions that could possibly be asked to the child victim at the stage of recording of their examination in chief and cross-examination and should also take them through their previous statements (u/s 161 and 164 of CrPC).</i></p> <ul style="list-style-type: none"> • Administrative responsibilities: Ensure in advance that summons have been served to the child victim to appear for the testimony.

*C - A bail application can be filed at any stage of the trial and clear instructions should be sought from the child victim on their wishes to oppose the bail applications. In a case a bail application is allowed, an application for cancellation of bail can be filed at the appellate court.

*D - Admission/denial of documents can be done at any stage of the trial.

STAGE OF TRIAL	ROLE OF VICTIM'S COUNSEL
	<p>Role of victim's counsel during child victim's testimony</p> <ul style="list-style-type: none"> • Be present in court while the child victim's testimony is being recorded. • Ensure all child-friendly court procedures are followed including: <ul style="list-style-type: none"> 1. Child victims are made to wait in the vulnerable witness room for their hearing. 2. Proceedings are conducted in camera. 3. Experts like interpreters and special educators are available to support children during their testimony, when required. <p><i>It is incumbent on the lawyer representing the victim to ensure that the child-friendly procedures as mandated in the POCSO Act and guidelines are followed. The lawyer can object if the procedures are not being followed. Not every court might be proactive in complying with these procedures and the victim's counsel may need to ensure compliance of the same.</i></p> <ul style="list-style-type: none"> • While recording the child victim's statement, ensure that there is no aggressive/repetitive questioning or leading questions posed to him/her. • Ensure that the child victim is given breaks as and when needed and that questions are asked in a manner understandable to the child victim. • Assist the special public prosecutor with putting questions to the child victim to ensure that all allegations against the accused person(s) are covered. • If any evidence is given on a point not covered by the charges, move an application for alteration/amendment of charges u/s 216 CrPC. ^{*E} • Administrative responsibilities: Ensure that diet allowance and travel expenses are provided for child survivors and other witnesses when they attend court.

*E- An application for alteration/amendment of charges can be filed at any stage of the trial prior to the final arguments.

STAGE OF TRIAL	ROLE OF VICTIM'S COUNSEL
Prosecution Evidence (Formal Witness)	Assist the special public prosecutor to ensure that the evidence of every witness is recorded in totality and correctly.
Recall of Witness*F	<p>In the case of a child victim, oppose recalling of the child victim unless absolutely necessary. In case an application is filed to recall the child victim and/or any other public witness to clarify information for the court, meet/speak to the child victim/witness to explain the reason for recall.</p> <p><i>Recall of witnesses under section 311 CrPC can also be resorted to by the accused for the purpose of delaying the trial. There are several Supreme Court judgments that circumscribe a wide discretionary power to the courts. [1] In State of Haryana vs. Ram Mehar [2], the Doctrine of Balance was laid down holding that the interests of the accused and victim must be balanced and the concept of fair trial cannot be stretched limitlessly to permit recall of witnesses endlessly on ground of magnanimity etc.</i></p>
Statement of the Accused	Represent the child victim and ensure that the statement of the accused is recorded properly.
Defence Evidence	Assist the special public prosecutor in cross-examining any witness produced by the defence.
Final Arguments	<p>Assist the special public prosecutor in making final arguments summing up the entire prosecution evidence and rebutting any evidence/arguments led by the accused.</p> <p>Additionally, file written submissions to assist the court.</p>

*F - An application for recall of the child victim/witness is not mandatory and is subjective to any clarification required by the court.

[1] For a summarised compilation of such studies, see - <https://districts.ecourts.gov.in/sites/default/files/document.pdf>
 [2] (2016) 8 SCC 762

STAGE OF TRIAL	ROLE OF VICTIM'S COUNSEL
Arguments on Sentencing	Assist the special public prosecutor in making arguments on sentencing. File an application for final compensation under Section 357/357-A CrPC read with Section 33(8) POCSO Act, and Rule 9 of POCSO rules.(*G)
Appeal	File an appeal against an order of acquittal, conviction for lesser offence, or inadequate compensation.

**G - An application for grant of final compensation need not necessarily be moved and the Special Court may also take suo moto cognisance and award final compensation without any formal application being filed on behalf of the child victim.*

IMPORTANT JUDGMENTS

S.No	Rationale	Proposition	Case Details	Relevant Paragraphs
1.	Right of victim to participate in the trial	“The victim has a legally vested right to be heard at every stage of the criminal proceedings after occurrence of the offence.”	Jagjeet Singh v. Ashish Mishra (2022) SCC OnLine SC 453	Paras 15-24
2.	Compensation	Guidelines for victim compensation	Nipun Saxena v. Union of India (2019) 2 SCC 703	Annexure 1, Para 9
		Role of Special Courts and DSLSA/DLSA with respect to compensation	X v. State of NCT of Delhi (acting through its secretary) and Anr. (2022) SCC OnLine Del 3496	Para 41-43, 48, 54, 56-62, 82-87, 92-94, 110-114
		Second application for interim compensation	Mother Minor Victim No.1 & 2 v. State & Ors (2020) SCC OnLine Del 2388	Para 11, 20, 21, 25, 26
		Guidelines for victim impact report	Karan v. State of NCT of Delhi (2020) SCC OnLine Del 775.	Para 84, 85, 93, 94, 168, 169, 170, 172, 173-179
		Compensation for child born out of sexual assault	Ramesh Tukaram Varekar v. State of Maharashtra (2022) SCC OnLine Bom 373	Para 63, 66, 67
3.	Safeguards while recording child victim’s testimony	<i>“Definition of ‘vulnerable witnesses’ shall not be limited to only child witnesses, but age neutral victims of sexual assault”</i>	Smruti Taukaram Badade v. State of Maharashtra (2019) SCC OnLine SC 78	Para 5

S.No	Rationale	Proposition	Case Details	Relevant Paragraphs
			State of Maharashtra v. Bandu. (2018) 11 SCC 163	Paras 10-12
		Recording of statement of POCSO victims	Court on its Own Motion v. State (2018) SCC OnLine Del 10301	Para 6-10, 12, 15, 16, 18-20, 77-82, 88-90
		Guidelines to record the statement of the child witness/victim	State v. Sujeet Kumar (2014) SCC OnLine Del 1952	Para 45, 46, 48, 49, 50-52
			Atul Gorakhnath Ambale v. State of Maharashtra (2022) SCC OnLine Bom 873	Para 11-15
			Hanumantha Mogaveera v. State of Karnataka, Criminal Petition (2021) SCC OnLine Kar 12300	Para 21-27, 41-44, 49, 50, 56-61
4.	Age determination of prosecutrix		State of M.P. v. Anoop Singh (2015) 7 SCC 773	Paras 14-17
			State v. Tejveer @ Guddu & Ors. Crl. Rev. P. 628/2018 (DHC)	Para 9-12
5.	Bail	The presence of the victim cannot be insisted upon for all bail hearings	Babu Lal v. State CRL. A 198/2020 (DHC)	Para 2, 3

S.No	Rationale	Proposition	Case Details	Relevant Paragraphs
		<p><i>"If the victim authorizes the presence of her counsel/parent/guardian/support person in writing, her presence cannot be insisted upon."</i></p>		
		<p>Notice to informant before bail / victim for grant of bail</p>	<p>Reena Jha & Anr v. Union of India & Ors [Delhi High Court, Division Bench] W.P.(C) 5011/2017</p> <p>Miss G (Minor) through her Mother. v. State of NCT of Delhi and Ors (2020) SCC OnLine Del 629</p> <p>Arjun Kishanrao Malge v. State of Maharashtra and Ors. (2021) SCC OnLine Bom 551</p> <p>Bibi Ayesha Khanum v. Union Of India W.P. 2318/2022 (KHC)</p>	<p>Para 4-6</p> <p>Para 23, 24</p> <p>Para 14, 15, 17, 20</p> <p>Para 16, 17</p>
		<p>Factors governing grant of bail</p>	<p>Dharmendar Singh v. State (Govt of NCT of Delhi) GNCTD (2020) SCC OnLine Del 1267</p>	<p>Para 51-54, 64-79</p>
<p>6.</p>	<p>Recall of witness</p>	<p>Prosecution evidence (miscellaneous)</p>	<p>State of Haryana v. Ram Mehar (2016) 8 SCC 762</p>	<p>Paras 39, 42</p>

S.No	Rationale	Proposition	Case Details	Relevant Paragraphs
7.	Effect of defective investigation	Defect in investigation by itself cannot be a ground for acquittal	C. Muniappan v. State of Tamil Nadu (2010) 9 SCC 567	Para 55
8.	Appreciation of evidence	Minor discrepancies not a ground for acquittal	Subodh Nath v. State of Tripura (2013) 4 SCC 122	Para 16
9.	Conviction can be based on sole testimony of the victim	Grounds for conviction	Phool Singh v. State of MP (2022) 2 SCC 74	Paras 7-17
			Ganesan v. State (2020) 10 SCC 573	Paras 10-12
			State of Himachal Pradesh v. Manga Singh (2019) 16 SCC 759	Paras 10, 11
			State of Himachal Pradesh v. Sanjay Kumar alias Sunny (2017) 2 SCC 51	Paras 18, 31
			State of Rajasthan v. N.K (2000) 5 SCC 30	Para 11, 19
			Vijay alias Chinee v. State of Madhya Pradesh (2010) 8 SCC 191	Paras 9-15

S.No	Rationale	Proposition	Case Details	Relevant Paragraphs
10.	Delay in filing complaint	<i>"Delay in lodging the FIR cannot be a ground for discarding the case of the prosecution"</i>	State of Himachal Pradesh v. Gian Chand (2001) 6 SCC 71	Para 12
			Ramdas v. State of Maharashtra (2007) 2 SCC 170	Para 24
11.	Effect of delay in lodging FIR in POCSO case		Gaya Prasad Pal v. State 235 (2016) DLT 264 Crl. A. 538/2016	Para 22, 23
12.	Evidentiary value of statement under section 164 CrPC		Imran Shabbir Gauri v. State of Maharashtra (2021) SCC OnLine Bom 511	Para 16, 17, 20, 21
13.	Conviction in case the victim turns hostile		Imran Shamim Khan v. State of Maharashtra Crl Appeal no. 936 of 2014 (BHC)	Para 8, 10, 12
14.	Speedy trial	Timely investigation and speedy trial	Vinay v. The State of Karnataka (2017) SCC OnLine Kar 6713	Para 11-14
			Mohiddun v. State of Karnataka (2017) SCC OnLine Kar 5687	Para 11, 19
			Narayana v. State of Karnataka Criminal Petition No. 9519/2017 (KHC)	Para 11, 12
		Accused is not entitled to bail on non-completion of trial within two months	Hanumantha Mogaveera v. State of Karnataka Criminal Petition No.2951/2020 (KHC)	Para 22-27, 41-44, 49, 50, 56-61

S.No	Rationale	Proposition	Case Details	Relevant Paragraphs
15.	Alteration of charges can be done at any stage before judgment		Ananda v. State of Karnataka (2022) SCC OnLine Kar 1377	Para 9, 10
16.	POCSO overrides personal laws		Aleem Pasha v. State and Anr. (2022) SCC OnLine Kar 1588	Para 5
17.	Sentence below minimum sentence cannot be awarded		State of Karnataka v. Shaik Rouf Criminal Appeal No. 200060/2016 (KHC)	Para 15, 16

USEFUL RESOURCES

1. Centre for Child and the Law, NLSIU, Bangalore 'Report on the Study on the working of Special Courts under the POCSO Act, 2012 in Delhi' (29 January 2016)
2. Vidhi Centre for Legal Policy, 'A Decade of POCSO: Developments, Challenges and Insights from Judicial Data'.
3. Ministry of Women and Child Development, A Victim of Child Sexual Abuse can file a complaint at any time irrespective of his/her present age.
4. Central Forensic Science Laboratory, 'Forensic Medical Examination in Sexual Assault Cases'.
5. Powers and Restrictions Under Section 309 and 311, Cr.P.C.
6. Legal Awareness Programme by National Legal Services Authority in collaboration with National Commission for Women, 'IEC & Training Module for Resource Persons' (pg 360 onwards).
7. HAQ Centre for Child Rights, 'Handbook for Public Prosecutors Issues under the POCSO Act: A Compilation of Legal Cases and Facts'.
8. Delhi Commission for Protection of Child Rights, 'Mapping of Needs and Priorities: A Study of Child Rape Victims in Delhi'.

ABOUT iProbono

iProbono is a social justice organisation whose mission is to enable people to access their rights. iProbono was born of the recognition that legal professionals have a responsibility to use their skills to serve and empower individuals and communities who require support. We bring together the legal expertise of our carefully curated community of panel lawyers, ground-level insights of our grassroots partners, and the ethos of social action litigation to advance justice and equality in India.

One of the main pillars of our work is litigation, in which we focus on cases of children in need of care and protection including survivors of sexual abuse, trafficking, and bonded labour. We engage in this work with the support of our panel advocates in Delhi, Mumbai, Bengaluru, Kolkata, Jaipur, and Jodhpur.

In addition to this, our team of social workers provide psychosocial support to child victims of abuse and their families. We also work towards systemic change by conducting training sessions and creating resource materials for NGOs, lawyers, and communities to build awareness on a variety of laws and also through targeted research and policy advocacy efforts with government agencies.

