



Special Courts for Children; Lessons Learnt From India

ACADEMIC ARTICLE

RANJANA FERRAO 



ABSTRACT

Children may be victims of crime under the Indian Penal Code or the various preventive and protective laws. India has passed a special law called the Protection of Children from Sexual Offences Act, 2012 and set up special courts to try offences committed on children who have been victims. As of 2023, over 2,43,000 lakh POCSO cases are pending before the Special Courts. This indicates the growing incidence of sexual crimes against children. These courts have made some progress, but have also been faced with several difficulties. This article evaluates the Special Courts for children.

CORRESPONDING

AUTHOR:

Ranjana Ferrao

Associate Professor,
V.M.Salgaoacar College of
Law, Miramar, Panjim,
Goa, India

ranjanaferrao@gmail.com

KEYWORDS:

Special Courts; offences;
crimes against children

TO CITE THIS ARTICLE:

Ranjana Ferrao, 'Special Courts for Children; Lessons Learnt From India' (2024) 15(2) *International Journal for Court Administration* 7. DOI: <https://doi.org/10.36745/ijca.485>

India has the largest number of child population in the world where 444 million children are below the age of eighteen.¹ Increase in population has caused depletion of resources. People are left with few employment opportunities. Parents with many children are often neglecting their children. Children without parental care are targets of multiple crimes. The Indian National Crime Records Bureau has reported that India records more than 350 crimes on children each day.² Most of these crimes are physical acts which could permanently harm and destroy the child. For example, 38 percent of these crimes are sexual offences while 40 percent relate to murder and kidnapping.

Throughout the legal process, the legal system is required to safeguard the rights of child victims. The law makers have granted privileged status to children. A child is a victim of crime if it is below eighteen years of age. These crimes could be punished under the Indian Penal Code, 1860 and under a special law. The Protection of Children from Sexual Offences Act, 2012 is a special law which was enacted to deal with heinous crimes of sexual abuse and sexual exploitation of children.³ This law was passed to punish heinous crimes of sexual abuse and sexual exploitation of children and to provide stringent punishments. This law came into force on 19th June, 2012. This law enabled the setting up of “Special Courts” in each court district to process offences committed against children. As of March 2024, 409 Special courts were established in 30 States and Union Territories. These courts have disposed of 2,29,361 cases till date.⁴ Penetrative sexual assault and aggravated penetrative sexual assault are some of the categories of crime under which these courts hear cases.

The powers and processes of the Special Courts introduced by the new law are comprehensive in comparison with most other countries. The law allows a “Special Court” to impose severe penalties on offenders, including the power to imprison an offender for life and even capital punishment (introduced by a later amendment to the law in 2018). The law makes it a punishable offence for any person to fail to report a sexual crime against a child.⁵ Since there is no longer a statute of limitations in India, a child can report a crime even years after it was committed. Any disclosure that would identify the victim is forbidden by law. According to the 2022 Out of the Shadows Index (OOSI) benchmarks study, India's child protection laws were ranked fifth. Regarding its laws and procedures prohibiting child sex abuse and violence, India is placed 15th out of 60 countries which were evaluated.⁶

1 https://mospi.gov.in/sites/default/files/publication_reports/Children_in_India_2012-rev.pdf.

2 India Recorded Over 350 Crimes Against Children Each Day In 2020: NCRB Data, Outlook, Nov21, 2022 available at <https://www.outlookindia.com/website/story/india-news-india-recorded-over-350-crimes-against-children-each-day-in-2020/396394>.

3 Act No. 32 of 2012.

4 Department of justice, Ministry of Law and Justice, Government of India <https://doj.gov.in/fast-track-special-court-ftscs/#::~:~:text=971.70%20Cr.,as%20central%20share,than%201%2C20%2C000%20pending%20cases>.

5 S.19.

6 The index aims to capture the degree to which each country's legal framework acknowledges child sexual abuse and child sexual exploitation. This index is based on Economist who rank 60 countries in their preparedness to combat child sexual abuse and violence. India ranks 15th in policies, practices against child sexual violence. Available at <https://cdn.outoftheshadows.global/uploads/documents/Out-of-the-Shadows-Index-2022-Global-Report.pdf>.

The justice process begins when the offence is reported. The police⁷ or a child helpline⁸ must be notified about the offence. An adult or the child's friend must report an offence on their behalf because the child is unable to do so on their own. Once the police record the complaint, it must be put down in a written form and a First Information Report must be registered.⁹ The police officer records the child's statement at the home or another location where the child feels at ease.¹⁰ Children in need of assistance can receive it from translators, interpreters, and support personnel if they are unable to understand the language used by the judicial system.¹¹

The next step is to take the child for a medical examination, especially if the child is a victim of sexual offence. Child victim must be examined by a doctor within twenty-four hours.¹² Following the medical examination, the physician is required to provide the police a report of the examination.¹³ The police must report the offence to the Child Welfare Committee and the Special Court.¹⁴ The Child Welfare Committee may provide support and assistance to the child. The police must gather evidence, submit samples for forensic analysis, and call witnesses. Within ninety days, the inquiry must be finished and a chargesheet presented to the Special Court.¹⁵

A Crime and Criminal Tracking Network and Systems (CCTNS) has been established. The CCTNS keeps records pertaining to crimes and offenders. This has aided in connecting the police stations. Victims can now obtain antecedent verifications of offenders from the police, report the offence with ease and monitor their complaints effectively. An online analytical tool called the Investigation Tracking System for Sexual offences (ITSSO) has been introduced to track and monitor police investigations. Sexual offences must be investigated within a two-month timeframe. India has established the Inter-operable Criminal Justice System as well. Police post important documents on this website, documents like charge sheets, case diaries, and FIRs are now uploaded online. The authorities in charge of jails, courts, forensic labs, and law enforcement can easily access these documents. India also has also setup National Database on Sexual Offenders-NDSO.¹⁶ This database is used by police to find repeat offenders, get alerts on sexual offenders, and identify sensitive locations such as public transport, hotels, and educational institutions where the sexual offence may be committed.

⁷ See S.19.

⁸ Rule 4(2).

⁹ FIR, First Information Report, See S.19.

¹⁰ See S.24.

¹¹ See S.26.

¹² See S.19(5).

¹³ See Rule 6(5).

¹⁴ See S.19(6).

¹⁵ See S.173 Cr.P.C.

¹⁶ Sheraksha, Ministry of Home Affairs, Volume 1, Launch Issue 1, January–March 2019.

The state of Goa established the Children's Court in 2004 and became the first state in India to approve a unique statute known as the Goa Children's Act, 2004. This children's court is set up to make the trial process for children very friendly and safeguards the rights of children. Until 2016, this court also served as a Special Court. In 2016 separate special courts were notified. A "Special Court" is established by the State Government in conjunction with the "Chief Justice of the High Court" under the POSCO Act. A "Special Court" is a "Court of Sessions" and has powers under Criminal Procedure Code. Delhi had also instituted special courts called as Vulnerable Witness Deposition Courts at Kakardooma in the year 2012, at Saket in 2014 and Dwarka in 2017. These courts were later designated as Special Courts. These courts in Delhi have a special room to record the child's statement. A separate room is also provided to record the testimony of the accused. There is a play room for the child. It is equipped with a kitchen and court room. In South India the Special Court was set up in 2016 at Nampally in Hyderabad in the state of Telangana. In 2017 in the state of Karnataka, Bengaluru set up a Special Court. However, not all special courts in India have similar infrastructures, many are housed in court buildings and lack even a waiting room for children.

A Judge and Public Prosecutor who are specially trained in child psychology are appointed for these special courts. The first stage is to record the statement from the child. This statement must be recorded by the judge in the presence of a parent, guardian or relative.¹⁷ The statement must be recorded within thirty days by the court.¹⁸ This process must be conducted in-camera. Care and precautions must be exercised to make sure that the child will not meet the accused at any stage of the trial. The child's identity must never be revealed by the courts to preserve the child's dignity.¹⁹ The court has a responsibility to establish a child-friendly atmosphere. The judge, not the counsel, should pose the questions to the child. The courts must also put an end to any questioning that is hostile towards the child. Above all, the child should not be called before the court on a regular basis to testify. Efforts must be taken to complete the child's statement in a single visit only. Throughout the process the judge must make sure that the child is not questioned in an aggressive manner and make efforts to reduce the trauma already caused to the child.

When crimes are committed against children,²⁰ the special court must issue instructions to the police to find the accused issues them warrants. The accused is then arrested by the police and placed in police custody. This guarantees that the accused will be present through-out the court trial. The Indian criminal justice system has provided several rights to the accused. The foremost being, a "right to a fair trial." Charges against the accused are framed following hearings from the prosecution and defence. The accused is also examined. At this stage the courts must be cautious and prevent the accused from seeing or meeting the child in the court's premises.²¹ The accused may be found guilty of the crime they committed if they plead guilty.

¹⁷ See S.33.

¹⁸ See S.33(2).

¹⁹ Sampurna Behura vs. Union of India and Others, (2018) 4 SCC 433.

²⁰ See S.33(1).

²¹ See S.36.

If no such plea is accepted, the gathering of evidence starts the trial. The accused would be released if the court finds no evidence against them.

The reality is that children are called repeatedly to the court to testify. The courts are also granting adjournments and the child must go back home without testifying. In some cases, a long date is issued and this results in delaying the trials. The Calcutta High Court in *Soumen Biswas @ Litan Biswas vs State of West Bengal*²² issued several directions on this practice. The court has prohibited the granting of adjournments where a child victim is brought to the court. Adjournment can only be granted if the child is unwell. Refusal by a lawyer to examine a child because of a lawyer's strike would amount to professional misconduct, making the lawyer be liable for criminal contempt of court. If the child needs to travel to attend a court hearing from outside the state, then video conferencing should be used instead.

If the court cannot record sufficient evidence to frame the accused the Court would acquit the accused.²³ A rising percentage of criminal cases filed under the 2012 Protection of Children from Sexual Offences Act the accused have been found not guilty. There could be several reasons for the higher rate of acquittals. Many cases are filed by young children who are romantically involved and indulge in sexual relations. Some cases are filed against relatives who are offenders of the crime. In this situation it is difficult to collect evidence. In most cases the victims are pressurized and traumatized. Many victims fail to appear before the Special Court, which ultimately results in collapse of the trail. The justice process is also slow and time consuming, the police are not able to find witness who can testify the crime as this is a hidden crime.

In an event the accused is convicted the Special Court can pass a sentence of imprisonment and impose fine. The victim is usually awarded compensation.²⁴ The Ministry of Law and Justice has made budgetary allocations for providing compensation to victims. This fund is given to the District Legal Services Authority which is housed in every District Level Court. The District Legal Services Authority have a special scheme for victims of sexual offences and payments to the victims are made based on the need and rehabilitation plan formulated for the victim.

CHALLENGES FACED BY SPECIAL COURTS

Most countries have been unable to prevent the commission of crimes against children. While in general terms the Protection of Children from Sexual Offences Act is reformist and in the right direction, it has had little measurable impact on the rates of crimes against children. In terms of the procedures applied by the Special Courts in processing cases more effectively, there are still many challenges to be overcome. Here are some of the problems yet to be solved.

²² C.R.M. (DB) 2220 of 2022.

Kailash Satyarthi Foundation for Children, Disposal of Cases under Protection of Children from Sexual Offences Act and Fast Track Courts in India, 2023 available at https://satyarthi.org.in/wp-content/uploads/2023/04/Paper-on-Pendency-of-POCSO-Cases_Jan23.pdf.

²³ See S.232 Cr.P.C.

²⁴ See S.33.

There are several challenges for the judges of the special courts. Cases where crimes have been committed on children by their own family members or a person known to the child. In such a situation the child may also be pregnant with the child of the accused. Sometimes the courts are faced with the difficult question of whether the court can grant permission to the accused to marry the child on attaining adulthood. Though this might seem a logical solution it could prove dangerous to the child. The child can be prevented from reporting the offence in several ways. The accused may meet up with the child in the court or outside the court room premises. The accused are known to have used retaliation measures and often resort to blackmailing and threatening the child to prevent reporting of complaints. The parents of the child could be threatened. The child could be kidnapped and even murdered.

Identifying a child victim is extremely difficult for the police. The police receive information about the commission of crime only after the crime has occurred. Most children do not know an offence has been committed on them, hence fail to report the crime. There are occasions where the crime is registered but the child is not available for recording the statement before the court. In sexual offences children cannot explain their body parts which have been infringed by the offender. This has resulted in collapse of the trial.

THE RIGHTS OF CHILD VICTIMS IN SPECIAL COURTS

A unique situation arises when the child/adolescent refuses to undergo medical examination but the family member or investigating officer insists that the medical examination must be conducted. In a situation such as this, the law is silent on what is the way forward. The Special Courts in India can hear the cases only if the victim is a child. Unfortunately, the law has not provided a procedure to determine the age of the child victim where the age cannot be ascertained.

Children suffer from severe physical injuries as a result of the crime. The mental health of the child could be compromised. The parents might be unable to afford the medical treatment specially in those case when the child must be treated in a private hospital. There are no provisions made in the law for ensuring payments for such treatments. Social impediments may cause additional problems like ostracizing the child or affect the safety of the child. In such situations the family of the child may have to relocate their residence and find alternative educational facilities and employment for the child.

Several rights of the child have remained unaddressed. The courts have failed to address the child's individual needs and views. Child victims must be provided with a right to notice. This right will guarantee information about the case. The victims must be guaranteed a right to protection. This will always keep the victim safe from the offender. Another important right is the right to be present. This will enable the victim to follow-up on the entire process of the case. Victims must also be given "right to employment" and to protect existing employment if any must be guaranteed to the victim.

The Judge usually looks at the issue of providing compensation to the victims and planning their rehabilitation. The Supreme Court of India has held that in 99% of the cases interim and final compensation has not been paid to the child victims.²⁵The

²⁵ Re: Alarming Rise in The Number Of Reported Child Rape Incidents SMW (Cr.) No. 1/2019 Vide Order Dated 13.11.2019.

courts normally could grant 700000 as compensation for an offence of sexual assault which is an amount stipulated in the Victim Compensation Scheme. The Delhi High Court in *X Vs. State of Nct of Delhi (Acting Through Its Secretary) & Anr*²⁶ realizing that this amount is not sufficient specially in cases where the child had a grievous injury. The amount prescribed might not cover the cost of medical treatment. The court instructed the Delhi Legal Services Authority to pay the child 700000 +50% of 700000 i.e., 10.50000. This is a unique case where justice was truly done to the child. Victims must be allowed to prepare their own plan for their education and attaining life skills which help them obtain gainful employment. The courts in *Hanumantha Mogaveera Vs State of Karnataka*²⁷ have held that 'A dedicated unit must be set up in every District Hospital to attend to the child victim and provide proper medical facilities and whenever necessary children must be referred to a private hospital. States must provide available mental health professionals to every child to overcome the trauma. The rehabilitation cost must be borne by the state.'

CONCLUSION

The courts have been successful in convicting the accused. In most case cases the norm is to pronounce life term imprisonment or even death sentence to the accused for having committed a grievous crime. The biggest achievement of the court has been trying to safeguard the rights of the child. More and more cases are being registered. The courts are more mindful towards the needs of the child at every stage of the trial. Though a lot more is hoped to be achieved. The future could also see punishments like castration for the accused and death penalty.

COMPETING INTERESTS

The author has no competing interests to declare.

AUTHOR NOTE

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AUTHOR AFFILIATIONS

Ranjana Ferrao  orcid.org/0000-0002-9273-0777
 Associate Professor, V.M.Salgaocar College of Law, Miramar, Panjim, Goa, India

TO CITE THIS ARTICLE:

Ranjana Ferrao, 'Special Courts for Children; Lessons Learnt From India' (2024) 15(2) *International Journal for Court Administration* 7. DOI: <https://doi.org/10.36745/ijca.485>

Published: 20 August 2024

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²⁶ CRL.A. 63/2022.

²⁷ Criminal Petition No.2951 OF 2020 Connected with Criminal Petition No.3000 OF 2020.

