



TAMIL NADU STATE JUDICIAL ACADEMY

In association with

UNICEF



PROFESSIONAL DEVELOPMENT PROGRAMME ON
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

AND

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

21ST AUGUST 2021

EVENT REPORT

Welcome Address

The programme began with Mr. D. Lingeswaran, Director, TNSJA, delivering the welcome address. He welcomed all the Hon'ble Judges of the High Court of Madras, resource persons who have been invited for the programme, the associate partner, UNICEF represented by Mr. G. Kumaresan, Social Policy Specialist, UNICEF as well as the Special Judges, Principal Magistrates who participated in the programme. He highlighted the importance of child rights and the significance of the relevant conventions and international instruments. He explained the vulnerability of children and their rights in India, and the need to discuss and deliberate on these issues, thus setting the tone for the programme.

Introductory Address

The Introductory Address was delivered by Mr. G. Kumaresan, Social Policy Specialist, UNICEF, who expressed his appreciation for the long-standing association of UNICEF with TNSJA. He also emphasized on the responsibility of protecting the rights of children, particularly in the

aftermath of the Covid-19 pandemic, and made a call for organizing more programmes with this objective. He highlighted the major issue of pendency of cases and reaffirmed UNICEF's commitment to protect the best interests of the child. He proposed for collaborative knowledge-building exercises to be conducted routinely in judicial institutions throughout the State, to gain exposure to ground realities and collating the experiences of all the stakeholders.

Procedure and Powers of Special Courts and Recording of Evidence

Hon'ble Ms. Justice R.N. MANJULA, Judge, High Court of Madras, set the edifice for the programme by opening the discourse on Procedure and Powers of Special Courts and Recording of Evidence, expressing Her Lordship's concern over the lack of sensitization on the Protection of Children from Sexual Offences Act, 2012 and the prevalence of doubts amongst the Judicial Officers. Her Lordship quoted John Milton, who said "childhood shows the man, as morning shows the day", and explained how one's childhood plays an important role in shaping their personality and why it is important to have a happy and safe childhood. Her Lordship stressed on India's obligations to have a proper legal framework in tune with the Child Rights Convention.

On the need for a Special legislation to deal with child sexual abuse, Her Lordship explained that despite several legislations and amendments in criminal law, the issue of sexual offences against children still prevailed in

our system due to lack of specific definitions. Moreover, the standard procedures followed in criminal courts were not suited for children.

Her Lordship went on to discuss the background of the POCSO Act, and mentioned National Crime Records Bureau's (NCRB) study in 2007 which revealed a surge in sexual offences against children. The salient features of the POCSO Act were discussed, by reflecting upon a set of questions pertaining to the recording of Statements under Section 164, Cr.P.C., conducting proceedings *in camera*, and maintaining confidentiality of the identity of the child unless warranted by special circumstances. Her Lordship explained that in order to verify if a provision is mandatory, the consequences of not abiding by the provision need to be looked for. The classification of offences as ordinary and aggravated, vide. Sections 3, 5, 7 and 9, and the various kinds of perpetrators, such as offenders in a fiduciary capacity with the child victim, were discussed.

The importance of sensitization of Judges was discussed, and the following points were highlighted.

1. Children belong to one of the most vulnerable sections of the society.
2. Judges are one of the most important and powerful stakeholders on the issue of child sexual abuse.
3. Protecting the interests of the child as a victim and as a witness should be accorded utmost priority.
4. Judges should always strive to apply the POCSO Act comprehensively bearing in mind the child friendly procedures, and to safeguard the best interests of the child.

The issues that underlay the ever-increasing pendency figures were discussed. Her Lordship affirmed that, not every child needs to be produced before the Child Welfare Committee, and that this measure is meant for those children who were in need of such care and protection.

Going into Chapter VIII of the POCSO Act, that envisages procedures and powers of the Special Courts, Her Lordship discussed the legal provisions and various case laws that can help the judges while applying the law. While discussing the concept of direct cognizance under Section 33(1) the decision in *Murugasamy v. State* was highlighted and it was concluded that, "Courts ought not to increase the difficulties by magnifying theoretical possibilities. It is their province to deal with matters actual and material, to promote order, and not to hinder it by excessive theorising or by magnifying what in practice is really not important."

On the question how judges could be more sensitive and watchful in dealing with POCSO cases, Her Lordship discussed *Ram Chander v. State of Haryana, AIR 1981 SC 1036*, where the Supreme Court had condemned the trial Judge for threatening a witness with perjury action if they deviated from their statements under Sections 161 and 164, Cr.P.C., and called it an abandonment of the principle of fair trial, and held that, "If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine."

On the question, how Judges can be an effective player in the conduct of such cases, *Nipun Saxena v. Union Of India, 2019 (2) SCC 703*, were discussed, wherein it was held that, "The Special Court shall ensure

that the trial in cases under POCSO is not unduly protracted and shall take all measures to conclude the trial as expeditiously as possible preferably within a year from taking cognizance of the offence without granting unreasonable adjournment to the parties”.

Regarding grant of compensation, Her Lordship avowed that, compensation should be considered as a matter of right and cannot be delayed. The decision in *Alakh Alok Srivastava v. Union of India & Ors.*, 2018 (7) SCALE 88, wherein Supreme Court issued a plethora of crucial directions for speedy disposal of cases involving sexual offences against children was analyzed.

Subsequently the discussion culminated on the point that, the State shall prepare guidelines and use NGOs, professionals, experts, persons having knowledge of psychology, social work, physical work mental health, and child development during the pre-trial, and the trial stage, as per the terms of Section 39. The guidelines framed under Section 39, i.e., G.O. Ms. 17 of Social Welfare and Nutritious Meal Programme (SWS) Department dated 18.3.2015 were also mentioned. The discourse witnessed discussion on various dimensions of the POSCO Act and ended with a call for better sensitivity and watchfulness.

Special Address

Hon'ble Mr. Justice M.M. SUNDRESH, Judge, High Court of Madras/President, Board of Governors, TNSJA, graced the programme with his august presence. His Lordship gave his views on the design of the programme and the need to have more of such sessions. His Lordship

opined that, when one is thorough with the scheme of the Act, every aspect becomes clear. His Lordship called for sensitivity amongst judicial officers by invoking the principle of *parens patriae* and stated that, considering the victim child as their own child while deciding each case. His Lordship concluded by saying that, “to understand, to supervise, and to sensitize is the essence” that can improve the working of the POCSO Act.

Panel Discussion

The panel discussion on appreciation of evidence in POCSO cases, the concept of reverse burden and presumption under POCSO Act was held by the esteemed panelists, namely Hon'ble Dr. Justice G. JAYACHANDRAN, Judge, High Court of Madras/Member, Board of Governors, TNSJA, Hon'ble Mr. Justice P. VELMURUGAN, Judge, High Court of Madras and Hon'ble Mr. Justice N. SATHISH KUMAR, Judge, High Court of Madras.

Hon'ble Dr. Justice G. JAYACHANDRAN drew the outline for the panel discussion and gave way for Hon'ble Mr. Justice P. VELMURUGAN. His Lordship gave his conscious concerns on various issues pertaining to POCSO cases emphasized the importance of proper and careful appreciation of evidence in such cases. His Lordship stated that, judges are the stakeholders who have a multifaceted role in dealing with child victims.

His Lordship highlighted the various precautionary steps to be taken by the judges. His Lordship explained that the Trial Judge is to decide three things: [1] whether the concerned victim is a child or not, following the procedure laid down in Section 94 of the JJ Act, 2015, [2] whether the act of sexual abuse was committed or not?, and [3] who is the offender?.

His Lordship supplied emphasis that, "*Judges... have to go through all the records, documents and should be considered giving due regard to the procedure established by law*", and that the FIR is not an encyclopedia. His Lordship further explained that a small typing error by the typist can have a rippling impact over the subsequent stages of a case.

Hon'ble Dr. Justice G. JAYACHANDRAN and Hon'ble Mr. Justice N. SATHISH KUMAR also shared their concerns touching upon the issue.

Challenges faced by POCSO Courts when the accused and victim are children

Hon'ble Dr. Justice S. VIMALA, Former Judge, High Court of Madras, dealt with the post-lunch sessions on various practical aspects of POCSO cases. The first session was on the challenges faced by the courts when both the accused and victim are children, and the need for trial of the child as an adult, with regard to the factors to be considered after receipt of preliminary assessment report from the Juvenile Justice Board.

The use of Child Rights Convention in Indian Courts expounding Article 51 of the Constitution of India and the guidelines under *Vishaka v. State of Rajasthan, AIR 1997 SCC 3011*, were discussed, along with the JJ Act, 2015. Her Lordship stressed that, the judge needs to step into the shoes of the child and further 'child-friendly justice', before, during and after the judicial proceedings, in tandem with Article 40 of the Child Rights Convention, where parties are obligated to take necessary steps to promote the establishment of laws, procedures, and institutions specifically

applicable to children. The discussion on Preliminary Assessment Report of the Juvenile Justice Board was primordially three-fold.

1. Juvenile aged between 16-18 years can be deemed to be an adult in case of commission of heinous offences.
2. Tried before a Children's court having jurisdiction to try such offences.
3. Section 15 of the Act provides the mechanism for determination of the mental and physical capacity of a child of such age regarding the commission of the offences and the consequences thereof in order to presume such child 'as an adult' by employing legal fiction.

It was also discussed that, an Order under Section 15 of the Act not only gives a different legal character to a child aged between 16 to 18 years thereby presuming the said child to be an adult in the contemplation of law, but also takes away the application of the beneficial provisions enumerated under Sections 18(1) and (2) of the Act. In *Gopal & Sons (HUF) v. CIT, (2017) 3 SCC 574*, it was held that, "A deeming provision deserves strict construction, and it eventually determines the forum for trial, procedure for trial and the punishment that can ultimately be imposed in case the said juvenile is found to be guilty".

Interactive Session on Juvenile Justice (Care and Protection of Children), 2015

Ms. R.S. AKILA, Advocate, High Court of Madras discussed the impact of recent amendments to Juvenile Justice (Care and Protection of Children) Act, 2015. She discussed the following aspects:

1. To strengthen child protection at district level by empowering district magistrate to effectively coordinate and monitor the functions of various agencies responsible for implementation of the JJ Act.
2. To empower District Magistrate to authorize orders of adoption in order to address issues of delay in adoption and to propose that appeals on the orders of adoption to be preferred to the Divisional Commissioner.
3. To Strengthen the Child Welfare Committee by incorporating provisions relating to educational qualifications for the members and stipulating eligibility conditions for selection to the committee.
4. To categorize offences wherein maximum sentences more than 7 years imprisonment but no minimum sentence or a minimum sentence of less than 7 years to be 'serious offences' under JJ Act.

The Juvenile Justice (Amendment) Act, 2021 were discoursed in detail critically on the various grounds that, it would violate the principle of separation of powers. Its impacts were analyzed and participants were highlighted with the ripple effect of this new Amendment that would bring paradigm shift in the existing position of law. The aspects regarding ousting the jurisdiction of courts on the grounds of delay and pendency were also discussed.

Rehabilitation of and compensation for victims under POCSO Act

The last session of the day was concluded with Hon'ble Dr. Justice S. VIMALA discussing the still prevalent issue of child marriage, which has seen a surge during the pandemic. Her Lordship spoke about the rehabilitation of child marriage victims as well as the rehabilitation and

compensation for victims under POCSO Act. Her Lordship emphasized on the following concerns:

1. Rehabilitation of children is the weakest component under the POCSO Act and poor implementation combined with lack of necessary convergence and coordination make things worse for children.
2. Even the few necessary linkages between JJ Act and POCSO Act that stand established in law, are missing on ground.
3. Special Courts need to use services of support persons who can not only help with case work management but also help the courts with needs assessments, including witness protection needs.

On understanding the impact of POCSO Offences on the Victim and the inadequacies of the law providing for their rehabilitation,

1. The substantive laws were very inadequate to deal with cases of child sexual abuse. The diverse types of sexual offences committed against children were not finely calibrated.
2. Sections 375 and 376 (2) of the IPC were invoked in cases of penetrative sexual abuse of a girl, and Section 377 of IPC when the victim was a boy. If no penetration had taken place, sexual crimes were reported under Sections 354 and 509 of the IPC, when the victim was a girl, but there was no such corresponding provision for a boy.
3. Gross failure to support and rehabilitate the victim and her family.
4. Timely payment of compensation and due rehabilitation of the victim is a key to ensure a proper trial that actually brings out the truth.

On Prevention of child marriage and rehabilitation of child marriage victims, Bhanwari Devi's case study were discussed and prohibition of Child Marriage Act, 2006 were also discussed in detail, finding the various important statement of object with which such a law is designed. The reasons for child marriages, their existence even today, and the aftershocks of child marriage such as early age pregnancy were analyzed.

Mr. A.S. RAVI, Special Judge, Special Court under T.N.P.I.D Act, gave his feedback about the programme. The day concluded with Mr. R.A.S. ANANDRAJ, Deputy Director, TNSJA, proposing Vote of Thanks.
