

# 4 YEARS SINCE POCSO :

Unfolding of the POCSO Act  
In the State of Maharashtra



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## From the Research Director's Desk – A Note of Gratitude

Judging by professional criteria doing this study was an enriching experience. It is time to thank all those who have made it possible.

First and foremost, I thank my wife Priti for helping me at each stage of the study from conceptualizing to the chapter on recommendations. In every round of discussion with her I benefitted from her insights on the subject.

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We owe special thanks to all the research respondents for participating in this research by giving their valuable time from busy schedules.

Although we had earlier shared the salient findings and recommendations emerging from this study with important stakeholders the release of the complete report in its present format did get delayed. I take my part of the responsibility for the delay which was largely due to my other professional preoccupations.

I thank the ADM Capital Foundation (ADMCF) for sponsoring this Study. I thank Prerana for executing the study under The Aarambh India- its collaborative initiative with ADMCF.

I sincerely hope that this report will help the stakeholders in ironing out the identified dis-junctures, in building on the plus points and in bolstering the implementation of the POC SOA ultimately giving relief, justice and better protection to the child victims of sexual offences.

- Pravin Patkar PHD

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## ACRONYMS AND ABBREVIATIONS

A	Available
ABNS	Available But Not Sufficient
CLA	The Child Labour (Prohibition and Regulation) Amendment Act 2016
CrPC	Code of Criminal Procedure
CSO	Civil Society Organization
CWC	Child Welfare Committee
DCPU	District Child Protection Unit
DWCD	Department of Women and Child Welfare
FIR	First Information Report
GCA	The Goa Children's Act, 2003
GOI	Government of India
IPC	The Indian Penal Code
ITPA	The Immoral Traffic (Prevention) Act, 1956
JAPU	Juvenile Aid Police Unit
JJA	The Juvenile Justice (Care and Protection of Children) Act, 2015
JJB	Juvenile Justice Board
MWCD	Ministry for Women & Child Development
MTPA	The Medical Termination of Pregnancy (Amendment) Act, 2002
NA	Not Available
NGO	Non Governmental Organization
NR	No Response
OH	Observation Home
PHC	Primary Health Centre
PI	Police Inspector
POCMA	The Prohibition of Child Marriage Act, 2006
POCSO	Protection of Children from Sexual Offences
POCSOA	The Protection of Children from Sexual Offences Act, 2012
PP	Public Prosecutor
PSI	Police Sub Inspector
SIR	Social Investigation Report
SJPO	Special Juvenile Police Officer
SJPU	Special Juvenile Police Unit
SOAC	Sexual Offences Against Children
SOPs	Standard Operating Procedures



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**BACKGROUND**

**T**hat children are to be protected and nurtured by adult society is an unwritten but globally accepted principle of humanity. Every effort must be made to ensure that they grow to their fullest potentialities for individual fulfillment and social good.

However, adults have always fallen short of fulfilling this responsibility mainly on two grounds, one of which is the paucity of material resources and an inability to create and provide access to social, economic and political opportunities. Civilized societies consider this deficit either as unfortunate or designed by non-egalitarian social arrangements. They attempt to correct the situation by striving for sustainable and balanced development across and within the nations. The second shortfall has been that the children have not been provided with the protection that is due to them. Certain individuals are allowed to access and exploit them at no or low risk of punishment. This is now treated as a culpable neglect and an unacceptable offence.

Evolving societies try to correct this situation by formally imposing specific responsibilities on adult society and penalizing their willful omission and neglect. As a second common measure, they promulgate laws and declare willful violation of children's safety as a punishable offence.

In today's rapidly modernizing societies one comes across rampant rise in,

- Neglect and willful omission of their responsibilities by adults responsible for protecting their children.
- Widespread vulnerabilities and physical and sexual violence against children mostly by adults but also by other children.

Sexual violence against children represents the dark reality of the world we live in.

The scientific study of sexual violence against children has suffered mostly by the self-imposed limitations in conceptualization. The UN-WHO definition<sup>1</sup> of child sex abuse subsequently adopted by 'Child Abuse in India, the first national level research study conducted by the Government of India in 2007. Said definition limits the phenomenon of child sex abuse to the cases of sexual violence when committed by persons of trust and responsibility towards the child and the 'duty bearers'. This keeps out the 'sexual violence committed by the strangers' thereby excluding the facts around 'stranger danger'.

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1 WHO definition of Child Sexual Abuse: "Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to: — the inducement or coercion of a child to engage in any unlawful sexual activity; — the exploitative use of a child in prostitution or other unlawful sexual practices; — the exploitative use of children in pornographic performance and materials".

The trafficking of children for sex trade, sexual exploitation of children trafficked for exploitative labor, institutionalized religious and non-religious evil social customs of sexual exploitation of children all are an integral part of phenomenon described by the labels 'child sexual maltreatment', 'child sex abuse', or 'sexual violence against children'. When they are declared as punishable offences in the text of the law they also get qualified as sexual offences against children.

## **Study On Child Abuse In India 2007 by Government Of India**

The much quoted 2007 national level study 'Child Abuse in India' was special in many respects despite its limited scope, numerous and serious conceptual and methodological flaws and limitations in executing the research plan. First and foremost, being a study conducted by the Department of Women and Child Development, Government of India, it was perceived as a confession by the central government of the widespread scourge of physical and sexual violence against children in India.

## **The Goa Children's Act 2003 & Initiatives For Child Protection Bill Of Andhra Pradesh**

Between 1991 and 2001, several serious cases of child sexual exploitation got exposed in the coastal states of India. Goa, the state known for its beach-based tourism became infamous with rising exposes of child sexual exploitation cases in which foreign tourists, mostly Caucasian, came down to Goa and sexually exploited local children who were unprotected and vulnerable. Mostly it was illegal and unsupervised orphanages and shelter homes run by foreign child sex exploiters operating hand in gloves with local managers that served as a garb under which child sexual exploitation was carried out.

While the first sensational case which was exposed involved one Freddy Peats, a subsequent case was that of a German national Helmut Brinkman. In Mumbai, two Britons – Duncan Grant and Allen Waters, were arrested for running a child sexual exploitation racket behind the garb of an orphanage. A Swiss couple – Wilhelm Marty and Loshair Lily Marty were arrested by the Mumbai police for a similar offence near Aksa Beach, Mumbai. Similar phenomenon were also found prevalent in the Indian states of Odisha and Kerala.

These cases rightly received unparalleled publicity, although under the erroneous category of 'pedophilia'. The civil society sector in Goa took initiative in pressurizing the state government to enact a separate law to

address this issue. They met with the desired success and India's first law to specifically address the offences of sexual exploitation and sex tourism was passed in the year 2003 with the title – Goa Children's Act (GCA).

It was a state law and its jurisdiction was limited to the small state of Goa. However, it would not be incorrect to state that the Goa Children's Act 2003 was one of the precursors of the union law, the POCSO Act 2012.

In the year 2010 Government of Andhra Pradesh and UNICEF commissioned the present researcher (Order Ms. No, 31 dated 9 July 2010 of the Government of Andhra Pradesh issued by Ms. M. Chaya Ratan IAS, then Special Chief Secretary to Government of Andhra Pradesh) to draft a Child Protection Law for the state of Andhra Pradesh that gave emphasis on addressing sexual offences against children. Accordingly a comprehensive draft for the Andhra Pradesh Child Protection Act (briefly referred to as APCAP) was submitted in September 2010. It was later officially presented by the Government of Andhra Pradesh in a widely attended state level consultation in Hyderabad. The researcher also made the draft publicly available in January 2011 on the website [www.indiangos.com](http://www.indiangos.com), a web portal for resources on the NGO sector in India.

However, under the circumstances prevailing at the time, the central government being under the pressure to come up with a Union law to address the issue of child protection, the efforts of the State Government of Andhra Pradesh received a set back and the APCAP – 2010 was kept in cold storage. A quick glance at the Draft should suffice to bring out its comprehensiveness and how much of its text has been reflected in the POCSO Act – 2012.

## **The Promulgation of POCSOA-2012**

Against the background of the infamous Nithari scandal and compounded by the intensely rising expression of popular discontent against the central government that manifested on the streets and in the media, the central government found itself under immense pressure to expedite the otherwise slow paced process of forging a new law to effectively address violence against children. The then President of Indian National Congress Party, Ms. Sonia Gandhi wrote a strongly worded letter to the Law Minister and the Minister for Women and Child Development to improve the collaboration between them and finalize a bill of the new law.

Under this pressure, the earlier proposal for a comprehensive law 'Offence Against Children' (OAC) was dropped and a compact bill limited to addressing sexual offences against children was introduced with the name 'Protection Of Children From Sexual Offences Act' (POCSOA), which came into force in November 2012.

## The Amendments in the IPC

For many years and on various accounts, social forces have sought changes in IPC Sections 375 and 376 which deal with rape. However, they only met with moderate success.

That situation changed with the infamous Delhi gang rape of 16 December 2012 and the consequent public outrage expressed through unparalleled picketing and media outcry which put immense pressure on the Government of India. It resulted in the passage of the Criminal Law Amendment Bill in March 2013 that brought about several significant changes in the rape section of the IPC besides a few other amendments. Under the 2013 amendments some of the progressive and elaborately articulated provisions of the POCSOA were incorporated in the rape sections of the IPC as well as by elaborating Section 354 by adding

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**354 A** Sexual Harassment

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**354 B** Forcibly Disrobing

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**354 C** Voyeurism

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**354 D** Stalking

However, these amendments in the IPC discarded the proposal of making rape gender neutral unlike the POCSOA.

The discussions that followed the passage of the 2013 amendment bill focused on the above sections, but at the neglect of a minor but significant change in the introduction of Sec 42(A) in POCSOA. The insertion of Sec 42(A) explicitly provided an overriding effect to the provisions of POCSOA.

*POCSOA 42A. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.*

## **Protection of Male Children from Sexual Offences**

Penetrative sexual assault technically termed as 'rape' is a punishable offence against women in the text of the IPC. That provision also covers girl children in its ambit. Male children were however left out of any legal protection for a very long time.

At most, they could seek protection under Section 377 of IPC which punished sex against the 'order of nature'. With the increasing demand for the repeal of Sec 377 coming from a section of the society, a fear was expressed that with the repeal, male children would lose their sole protection from sexual offences under the law. However, the elaborate provisions of POCSOA and its gender neutrality have pre-empted that fear.

## **The Immoral Traffic (Prevention) Act 1956 (ITPA)**

The ITPA is one law which is as adjacent to POCSOA as the IPC. It addresses trafficking for commercial sexual exploitation. Its focus is on the trafficking for the destination crime of sexual exploitation more than the act of sexual exploitation per se. For the latter, it depends upon the IPC.

In 2005 an attempt was made to revise the ITPA. Several versions of the ITPA amendment bill have since been released by the Ministry of Women & Child, Government of India (whose website until July 2017 displayed the outdated amendment bill 2007). Between 2015 and 2017, over 10 versions of the bill for the proposed omnibus anti-trafficking law have been officially released, and against severe criticism, withdrawn by the MWCD-GOI. At the time of writing, the website displays the May 2016 version of the draft bill for a new law on trafficking which was to be tabled before the 2016 winter session of the Parliament.

## **The Long Pending Victim Witness Protection Bill**

Subsequent to the release of the Justice Malimath Committee Report on Reforms of the Criminal Justice System, a bill for a comprehensive Victim Witness Protection Act was circulated. It was never presented before the Parliament. Several international organizations whose membership cadre constituted of prosecutors like IAP (International Association of

Prosecutors) have suggested better provisions and practices to protect victim witnesses during the trial.

The Supreme Court of India has set some good practices for protection of victim witnesses especially for victims of sexual offences during the trial (e.g. Sakshi Vs. Union of India 2004, or Delhi Domestic Working Women's Forum Vs. Union of India 1994). Some of the best practices of the apex court around treating the child victims of sexual offences during the trial have been widely lauded. The various versions of the JJ Act right up to its 2015 re-enactment have instilled increasing child friendliness in the practices under the juvenile justice system.

Although the comprehensive Victim Witness Protection law has not seen the light of the day, POCSOA-2012 has attempted to introduce considerable child friendliness in its procedures.

## **Interface of POCSOA with Other Laws**

Globally, as a part of the overriding process of modernization, human societies and their legal instruments are getting increasingly differentiated and specialized. India being a functional democracy, the process of legal differentiation has been significant and rapid. Differentiation and consequent specialization do not make the evolving laws self-sufficient. Specialization also does not mean they can operate in isolation from other laws. On the contrary, they now have more interfaces with their legal and administrative environments.

The juvenile justice related law in India has often been considered as a procedural law. It did contain some provisions pertaining to offences against children (e.g. Sec 21, 22, 23, 24, 25, 26 etc. of JJ Act 1986) but they were piecemeal. One section of public administrators, law makers and activists constantly proposed omitting those provisions thereby keeping the JJ Act in the realm of being strictly procedural. Simultaneously, the recurrently expressed need to legally address the rising offences against children was creating a space for a special law. POCSOA-2012 was promulgated against this background.

POCSOA covers a large spectrum of sexual offences under its fold. Many of these offences were also covered partly in some other special laws. Although POCSOA like JJA lays down procedures for legally addressing the offences against children, it could not be self-sufficient in terms of the required procedures. Obviously, it has to refer to the other procedural laws like the CrPC.

POCSOA operates substantially in an environment of several special and procedural laws like the Indian Penal Code, Prohibition of Child Marriage Act 2006, Immoral Traffic (Prevention) Act 1956, Juvenile Justice (Care & Protection of Children) Act 2015, Child Labour (Prohibition & Regulation) Act 2016, Protection of Women from Domestic Violence Act 2005, Sexual Harassment at Workplace (Prevention & Prohibition) Act- 2013, Code of Criminal Procedures – 1973, Bonded Labour System (Abolition) Act 1977, Commission for the Protection of Child Rights Act- 2005, among others. The numerous interfaces that POCSOA has cannot be enforced without smooth interaction among those networks. Understanding POCSOA on the ground inevitably involves understanding the nature and status of these interfaces i.e. how a particular interface is understood and followed by the duty bearers and stakeholders under POCSOA.

Examining in details each of those interfaces is a subject matter for independent studies. The current study merely touches upon some of those interfaces, although it deals with POCSOA's interface with the IPC, CrPC, JJA etc. in relatively more detail.

## **The Provision for Training and Awareness**

A highly differentiated justice system cannot exist without a highly specialized structure of justice. This process of specialization manifests itself by creating specialized structures and roles. The rise of special courts in India like the Labour court, the Family court, the CBI court, the Consumer court, the Children's court and the Special Court under POCSOA, and of Special tribunals, etc. needed and therefore created specialized roles within the legal professionals like judicial officers, prosecutors, and lawyers who were highly specialized. This also meant they were uniformly not well informed and equipped in the laws other than their specialization. A peculiar quality of law is that once brought into effect through a high level formal process it operates upon all persons without exception regardless of their knowledge of the law let alone adequate understanding of it or functional familiarity with it. Ignorance of the law offers no immunity to a person subjected to the law.

Ironically, the laws and the State agencies in India have made little efforts to make the law known to the people subjected to it. In a society based on historical and acute inequalities and status disparities this unfairness in the justice system leads to grave consequences rendering justice a status of a service that can be purchased. A provision in the POCSOA-2012 however indicated a positive change in this situation.



*Section 43. of POCSOA - Public awareness about Act: provided as follows, 'The Central Government and every State Government, shall take all measures to ensure that—*

*(a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;*

*(b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.*

One hardly finds any visible efforts by the State to fulfill the obligations under Sec 43 (a) although it has done some work to fulfill its obligation under Sec. 43(b)

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# **INTRODUCTION**

## Time for Empirical Probe

The Protection of Children from Sexual Offences Act 2012 (popularly called POCSO Act), herein termed as POCSOA was an important, widely sought & much awaited instrument for the protection of children against a wide range of sexual offences. It came into force on 14 November 2012.

The current Study is about the unfolding of POCSOA on the ground in the State of Maharashtra and not about child sexual maltreatment per se. The latter area has received some attention of researchers in the past under various titles. Many studies on prostitution (also termed as commercial sexual exploitation) and sex trafficking have covered the issue although not by categorizing it specifically as child sexual maltreatment.

A number of studies on sex tourism or child sex tourism have covered child sexual maltreatment popularly though also erroneously by terming it 'pedophilia'. E.g. 'See The Evil: Tourism Related Pedophilia in Goa' - 2004 by Nishtha Desai, 'Sexual Abuse and Growth of Pedophilia- A Regional Profile of Goa' - 1998 etc.

Other studies on the evil social custom of prostitution or institutionalized sexual exploitation like Devadasi system too have studied child sexual maltreatment, to some extent of a dominant kind (e.g. 'Devadasi Cult: A Sociological Analysis'-1994 by Jogan Shankar). The evil Devadasi system essentially victimized children but by popular usage studies on 'child sexual abuse' remained limited to beach based sex tourism and that too around cases committed by Caucasian foreign nationals.

It is not incorrect to state that at a time when this study was undertaken there was a noticeable dearth of studies on POCSOA. The situation has not changed during the course of the study. The 2016 study 'Report of Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi' by Centre for Child and the Law, National Law School; Bangalore deserves a mention as an exception.

One of the obvious reasons for this is the very newness of the law. Every law requires mechanisms for its enforcement. Quite naturally every law faces teething troubles mostly due to the lack or newness of the structures and appointments made there under. Once the teething troubles are over and sufficient time has lapsed it is only rational to undertake a preliminary inquiry into how it is unfolding at various levels, including the ground level.

14<sup>th</sup> November 2017 marked 5 years since POCSOA first came into effect. It was felt that the time was appropriate to study the unfolding of POCSOA on the ground.

## The Implementation of POCSOA

Some of the areas that were anticipated as distinct areas of concern for the Study were as follows;

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### Pre-hoc analysis

Legal instruments are often complex. It is not uncommon to come across gaps within the text of a law which have the potentiality to lead to confusion and lack of clarity during its implementation. The Study examined the text of the POCSOA to understand its nature, flaws and gaps.

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### Interfaces

Each law operates in a social environment and the legal environment is a part of it. Every law has interfaces with other laws and the broader social system in which it operates. Any gaps, dis-junctures or contradictions at these interfaces are potential sources of confusion, duplication, breakdowns and perhaps conflicts. POCSOA is no exception to this. A careful logical examination of these interfaces was a cross cutting theme in this Study.

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### Provisions

The Study tried to examine the situation of the provisions of POCSOA on the ground.

- Material, infrastructure, super structure
- Victim assistance services
- Human resources
- Legal empowerment/entitlements

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### Knowledge & Awareness about the Provisions in the Law

POCSOA is distinct in its provision for facilitating awareness about the law and the training of the enforcement personnel on the law. There was a need to understand some basic facts about the incidence and impact of training on various duty bearers under POCSOA as well as to gain a better understanding of the areas that require training.

The Study tried to gauge the knowledge and awareness of the law among the enforcement personnel and duty bearers operating on the ground by focusing on;

- salient provisions in the POCSOA
  - roles and responsibilities of oneself and other duty bearers under the law.
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### Actual 'On Ground' Practices

The POCSOA has laid down some excellent procedures. The Study attempted to look at the actual practices on the ground- the practices expected as against practices followed by the duty bearers.

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### Referrals & Collusions

The implementation of POCSOA depends on harmoniously dovetailed collusions across several bodies, departments and agencies. A system of referral has been built in it. The Study tried to examine those collusions and referral systems by focusing on;

- status on the collusions with other stakeholders
  - networking and collaboration
- 

### Consent

A combination of sexual offence related provisions in the Indian Penal Code, the POCSOA, the CrPC, and the JJA has highlighted the importance of consent. Two types of consent have gained significance under this combination of laws namely, the Age of Consent for sex and the Consent for Medical Examination. This Study tried to examine the issue of Consent for Medical Examination.

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### Child Friendly Procedures

Introduction of Child Friendly Procedures is an important feature of the POCSOA. The Study tried to understand the status of child friendliness on the ground.

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## Mandatory Reporting

Although the Goa Children's Act 2003 made the first provision for mandatorily reporting of cases of sexual offences against children, it was of a limited nature. An important feature of the POCSOA is its comprehensive provision for mandatory reporting. This provision has led to considerable discussion and debate. The critical importance of this provision demands that the issues related with mandatory reporting provision must be studied in full depths.

Prerana is currently engaged in an independent study on mandatory reporting. The current Study makes a preliminary effort to understand the status of mandatory reporting and the opinions of the stakeholders thereupon.

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## Challenges Faced

The Study seeks to know the challenges faced by various duty bearers under POCSOA while working on the ground.

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## Expectations from Other Stakeholders

The Study also seeks to know the expectations of the stakeholders from other stakeholders under POCSOA while working on the ground.

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## Opinions and Suggestions to Bolster Implementation of POCSOA

The Study seeks the opinions and suggestions of the duty bearers for better implementation of the POCSOA.

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## Victim Compensation

Criminal injuries compensation to the victim of crime has been a part of the Criminal Procedure Code for decades. However, there was pervasive discontent over the status of victim compensation which in many cases vitiated justice. (e.g. Patkar, P. 'Restoring Justice: issues of penal provisions in cases of human trafficking of children and women', Combat Law, March 2003). Over years the issue has gained the increasing attention that it deserved.

In one public interest litigation (Ankur Gaikwad Vs. Union of India 2013), the Supreme Court stressed upon the need for the State to come up with concrete provisions for criminal injuries compensation. Most Indian states responded by passing their own compensation schemes. The State of Maharashtra announced a scheme for this purpose and named it the Manodhairya Victim Compensation Scheme.

More often than not, especially in the state of Maharashtra, the Manodhairya scheme is incorrectly considered to be an integral part of or borne out of POCSOA. There is no doubt that Manodhairya is a very important scheme and deserves to be studied carefully. This study however does not undertake any critical evaluation of Manodhairya but only modestly looks at its relevant interface with POCSOA.

## Objectives of the Study

Through a desk review and a scientific empirical inquiry;

1. Improve the understanding about the gaps and contradictions therein and strengths of the POCSOA
2. Acquire and enhance the understanding about the interaction between the text & spirit of the POCSOA and the duty bearers responsible for its implementation
3. Verify the existence and examine the effectiveness of the state and non-state mechanisms responsible for the implementation of the POCSOA
4. Understand how POCSOA interacts with its legal and administrative environment
5. Derive recommendations for strengthening the implementation of the law and revisions thereof
6. Obtain guidelines for better protection of children from sexual offences through POCSOA

## Nature of the Study

### Critical Desk Review

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Of the text of the POCSO-Act

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Of its textual interface with the other relevant general & special laws and procedural laws like the Indian Penal Code, the Code of Criminal Procedures, the Juvenile Justice Act, and schemes like Manodhairya Victim Compensation Scheme etc. as are relevant at the ground level

## Empirical Inquiry

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### Primary data collection

from various stake holders and duty bearers like Police, s, DCPUs, Prosecutors, Doctors, JJBs, Hospitals, CSOs

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### Secondary data

collection from government offices, courts, and other offices

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### Field observations

through field participant and non-participant observation

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### Areas of inquiry

The Study primarily focused upon the following areas of inquiry:

- Provisions in terms of :
  - Material, infrastructure, super structure
  - Victim assistance services
  - Human resources
  - Legal empowerment/entitlements
- Knowledge and awareness about the provisions in the law
- Actual 'On Ground' practices
- Interfaces between various laws
- Referrals & collusions
- Consent for medical examination
- Child friendly procedures
- Mandatory reporting
- Victim compensation
- Challenges faced
- Expectations from other stakeholders
- Opinions and suggestions to bolster implementation of POCSOA

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### Units of analysis

- Awareness
- Interpretation and application of law
- Provisions
- Gaps
- On-ground practices
- Opinions & suggestions.



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THREE

**RESEARCH DESIGN**

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## Research Design

A combination of research methods and techniques considered as the most suited for the phenomenon under study and to meet the objectives of the study was adopted.

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## Research Method

Stratified Sample Survey

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## Nature of Data

Primary Data & Secondary Data

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## Tools of Data Collection

Separate partly pre-coded Interview Schedules for each of the categories of selected sample of respondents, informal discussions with knowledgeable persons in each district and elsewhere, field observations, group discussions, desk reviews.

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## Techniques of Data Analysis

Quantitative Techniques & SPSS, Logical Qualitative Analysis

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## Respondents for Primary Data Collection

The respondents for primary data collection through a sample survey using Interview Schedule across 17 districts of Maharashtra were as follows:

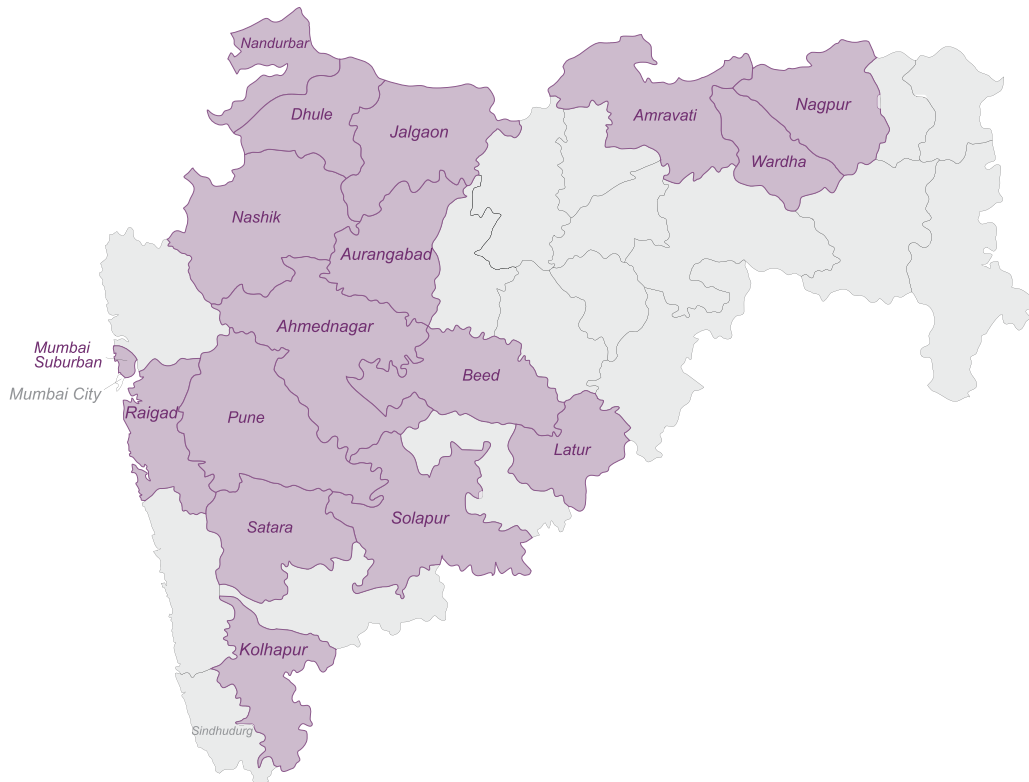


## Note

The number of respondents under the category JJB was limited due to the unavailability and unwillingness of some JJBs to respond to the interview on the grounds of professional ethics.

The number of CSO respondents was also limited as many districts did not have any CSO working on matters related to the implementation of POCSOA.

## Selected districts



1	Ahmednagar	10	Nagpur
2	Amravati	11	Nandurbar
3	Aurangabad	12	Nashik
4	Beed	13	Pune
5	Dhule	14	Raigad
6	Jalgaon	15	Satara
7	Kolhapur	16	Solapur
8	Latur	17	Wardha
9	Mumbai		

The data collection work on the research was completed between January 2016 and July 2016.

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## Challenges faced

- Non-availability of the judicial officers for formal interviews.
- Reluctance of most CWC members to appear individually for the interview and insistence on giving the interview only as a group. (We took into consideration the positive side of it as it is the collective knowledge and wisdom of such bodies that matters as they also approach the cases before them collectively.)
- Ensuring police respondents were available for sustained interviewing sessions.

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## Limitations

- The Study is limited to the ground level and still does not cover victim children. There are several legal, ethical and practical factors that come in the way of accessing victim children for interviewing for research purposes. As these factors are appropriate from the point of view of victim child's protection and dignity, they were respected by this Study.
- Discomfort over getting assessed kept some categories of respondents from giving the interview.
- Insufficient, inaccurate, and contradictory data was furnished by various government offices.
- Hospitals refused to give the data on the number of cases of POCSOA received and the number of teenage pregnancy cases since 2013, stating reasons of confidentiality.

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FOUR

**EXAMINING THE TEXT  
OF THE POCSOA**

## Need for Sharply Articulating the Provisions

In the drafting of a law, every word matters. Not just words but even an inappropriately placed punctuation mark can lead to entirely different meanings. In the case of the POCSOA, the drafting of the provisions that state the offences (Sec 3 onwards) was a challenging task and certain flaws have crept in it. A similar flaw is also seen in the Rape related provisions of the IPC.

Sec 3 of POCSOA-2012 states as follows;

### 3. Penetrative Sexual Assault:

A person is said to commit “penetrative sexual assault” if—

- a. he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- b. he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- c. he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person or
- d. he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

A similar offence also appears in the main criminal law of India the Indian Penal Code (IPC). Sec 375 of IPC states as follows;

Sec 375- A man is said to commit “rape” if he-

- a. Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person: or
- b. Inserts to any extent, any object or part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c. Manipulates any part of the body of a woman so as to cause penetration into the vagina, the urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

- d. Applies his mouth to the vagina, anus urethra of a woman or makes her to do so with him or any other person,

Going strictly by the text as per the IPC Sec 375 (c) if a man puts the finger of a woman in her or his own mouth against her wish and without her consent then it amounts to the offence of Rape.

Similarly, if a person (man or woman) puts his/her finger in the mouth of a child or make a child put the finger of a child in his or her mouth (consent as well as sexual intent are immaterial here) it amounts to penetrative sexual assault as per Sec 3 (c) of POCSOA.

## **Gap as Regards the Procedures for the Medical Examination of the Child Victim of POCSOA**

Sec 27 of the POCSO Act does not give the details of the procedures to be followed during medical examination of a child victim of POCSOA offences. It instructs the concerned agencies to follow the provisions of Sec 164A of the Code of Criminal Procedure.

The Sec 164A of CrPC is about the medical examination of a woman victim of Rape (rape as defined in Sec 375 of IPC). POCSOA is a gender neutral law and covers male child victims as well. The provisions under CrPC 164A are sensitive to a woman victim of rape but cannot be so for a child victim of POCSOA offences. For instance, the insistence of CrPC Sec 164A on the presence of a woman representative nominated by the medical institution conducting the examination, raises a serious question about its propriety and ramifications when it comes to the examination of a male child victim, especially a male child between the ages of 12 and 18 years. The discrepancy and inappropriateness of the provisions is discussed in details in the substantial data analysis chapter in this report.

## **Mandatory Reporting**

Although the Sec 19 to Sec 22 of POCSOA provide for mandatory reporting and punishment for non-reporting or false reporting, the POCSOA neither states explicitly nor does it imply, the time period within which the offence must be reported. This offers some relief to those interventionists who seemed nervous on noticing the seriousness of the provision when the law was promulgated.

## Sex with One's Wife between 15 and 18 Years of her Age

An issue has been raised and the intervention of the Supreme Court has been sought as regards the contradiction between the provisions of the POCSOA -2012 and the IPC as regards the culpability of a man having sex with his wife of age between 15 and 18 years.

As per POCSOA, a man having sex with his wife who is between the age of 15 years and 18 years is an offence. As per IPC Sec 375 Exception 2, it is not an offence. POCSOA was passed in 2012 and the IPC in 1860. Moreover, the rape related provisions of the IPC were amended drastically in the year 2013 vide the Criminal Law Amendment Bill 2013. The IPC Sec 375 revised in 2013 retained the provision, namely Exception-2, intact. Technically, the original POCSO Act passed in 2012 could not override the IPC amendment made in 2013 merely on the ground of the dates.

However, the little noticed fact is that the 2013 Criminal Law Amendment Bill also amended the POCSOA and added Sec. 42A to its previous Section 42 giving a clear cut overriding effect to the POCSOA. Hence the apparent contradiction and lack of clarity seems unfounded.



## FIVE

# DATA ANALYSIS

This chapter presents the analysis of the primary and secondary data for a number of respondents and the understanding derived therefrom.

### SECTION 1

## POLICE

64

police  
personnel

17

districts

The police are the frontline professionals that come across the complaints of offences under the POCSOA. In all, 64 police personnel from 17 districts were interviewed against a mostly pre-coded Interview Schedule. They belonged to a variety of categories like Superintendent of Police, Police Inspector, Police Sub Inspector or Police Naik.

Over and above that, a few senior police officers were also interviewed in an unstructured manner to gain further clarity to supplement some of the impressions gathered through the interview schedule. The research team visiting the offices of these respondents also gathered certain obvious field observations.

## Field Observations and Informal Discussions

POCSOA Section 24 states that as far as practicable a woman police officer not below the rank of sub-inspector shall record the statement of the child.

There was a stark difference noted in the availability of lady PSIs in Urban and Rural police stations. Out of 36 rural police stations visited by the research team, they did not find any lady Police Sub Inspector (PSIs) in 20 police stations. It was commonplace to find that there was just one lady PSI assigned to cases at over 15 or even 25 rural police stations. In urban areas, every police station had at least 1 lady PSI dedicated to working on cases of children.

It was stated that sometimes the lady PSI would have to travel several hours and at odd times to reach out to the victim child. There was no budget to cover her travel so she had to avail of cost-effective but slow public transport like buses. Thus there was inevitable delay in reaching the location of the victim child. All through the delay, it was reported that the child was required to wait at the police stations or in some cases, was sent back home without the complaint being registered.

At the constable level, a good number of women police personnel were observed. In both urban & rural areas, there were at least 2 or 3 lady constables in every police station.

In some police stations, in the absence of a lady PSI, members of the local Mahila Dakshata Samiti (Women Vigilance Committee) offer their presence & support during statement recording. In other police stations, the statement recording is conducted by a male police officer in the presence of lady police constable.

When available, lady PSIs are deputed on other duties (*bandobast*, escorting missing children etc.), there are instances where there is no lady officer who can attend to POCSOA cases. Also, if proceedings in multiple cases of POCSOA registered at a police station take place near-simultaneously, the lack of lady PSIs becomes a huge challenge.

It was also observed that in most police stations, only one police officer is in charge of managing cases under POCSOA. Where there is a lady PSI at the police station, it mostly falls under her purview.

During the visits of the research team, it was observed that approximately between 2 pm to 5 pm, there was not a single Police Officer (PSIs & PIs) present in 20 police stations.

Attempts were made by the field investigators to approach the SJPU (Special Juvenile Police Unit under Section 107 of the JJA 2015) at the district level for the interview. But in several instances it was observed that the staff at the police station was not aware of the existence of the SJPO.

There was no clarity at several police stations as to whether or not if they had a Child Welfare Police Officer (under Section 107 of the JJA 2015) and if they did, then which officer was appointed to the role.

## Infrastructure

Out of the 36 rural police stations visited, 23 (64%) had no separate rooms or waiting areas that could provide privacy to the victims or the families.

Majority of the rural police stations lacked functional toilets. The research team had to avail of facilities at the nearby bus stands.

The rural police stations are at a distance of 2 to 6 hours from the courts and the hospitals. Each of these police stations are given one vehicle, that is used for patrolling the villages under their jurisdiction. When cases of sexual offences against children comes to their attention, the child victims are either taken by the police in a bus or private vehicle to the district headquarters for medical examination. It was mentioned that in some cases, families are asked to reach and report to the district headquarters on their own. Thus the family has to spend a considerable amount on travel each time they are called to the district headquarters.

At times, the accused and the victim are taken in the same vehicle to the district headquarters.

## Training

All police respondents mentioned that they were trained at the district level in the law by their senior officers or legal experts from the local courts.

One police officer is trained in POCSOA from each police station. When this police officer is on leave or transferred, other officers are assigned to handle the cases without having the necessary training or orientation to do so. This, by the admittance of several police personnel, is problematic.

The text of the POCSOA is summarized and translated into Marathi by the police department and circulated in the police stations for reference.

## Practice

Although POCSOA demands otherwise, many police stations mentioned not taking down complaints of sexual offences against children that do not fall in their area of jurisdiction.

All police officers were aware of 2 provisions namely; i) police officers should not be in uniform while with a victim child; and ii) the need for a lady PSI to be present during the statement recording of the victim child. However, all of them mentioned various challenges of why these provisions could not be implemented on the ground.

“If a child is brought to us, we cannot make the child wait and rush in to change our uniform”, said one policeman.

## Informal Discussions

A couple of police personnel stated an opinion that urbanization and modernization have resulted in early maturity and early sexual experimentation among children.

Police personnel also blamed the parents of victim children for negligence which, they argued, makes the children vulnerable and causes their victimization.

One police personnel observed that the incidence of girls above 16 years of age turning hostile during trial is high but otherwise in the opinion of some police personnel, the conviction rate under POCSOA is as high as 70%.

One police personnel mentioned that the sensitization of enforcement personnel and the provision for mandatory reporting all have contributed to the rise in reporting of the offences.

A police personnel spoke on the need for an overall strengthening of the system.

Some police stations with newly appointed lady police officers arrange for their orientation and training on registering a POCSOA case, interviewing the victim child, collecting evidence, filing the charge-sheet etc.

The police personnel mentioned that they receive guidance from the prosecution and magistrates on how to handle the POCSOA cases.

Some among the police feel that strengthening of police personnel's understanding and implementation of POCSOA and its provision for Special Courts and speedy trials have boosted people's confidence in the police.

The police acknowledge that the video recording of evidence is an important aspect of POCSOA. Some police officers mentioned that they hire private videographers to record the statement of the victim children. However, a videographer may charge around Rs. 1,500/- for a single recording session. Thus, the recording of the statement of a victim under POCSOA as well as CrPC 164 often costs the police Rs. 3000/- per case. When the trial for the case comes up, the videographer is called in as a witness. The videographers are averse to getting entangled in the proceedings of the case and thus they have become less willing to undertake the work of the recording.

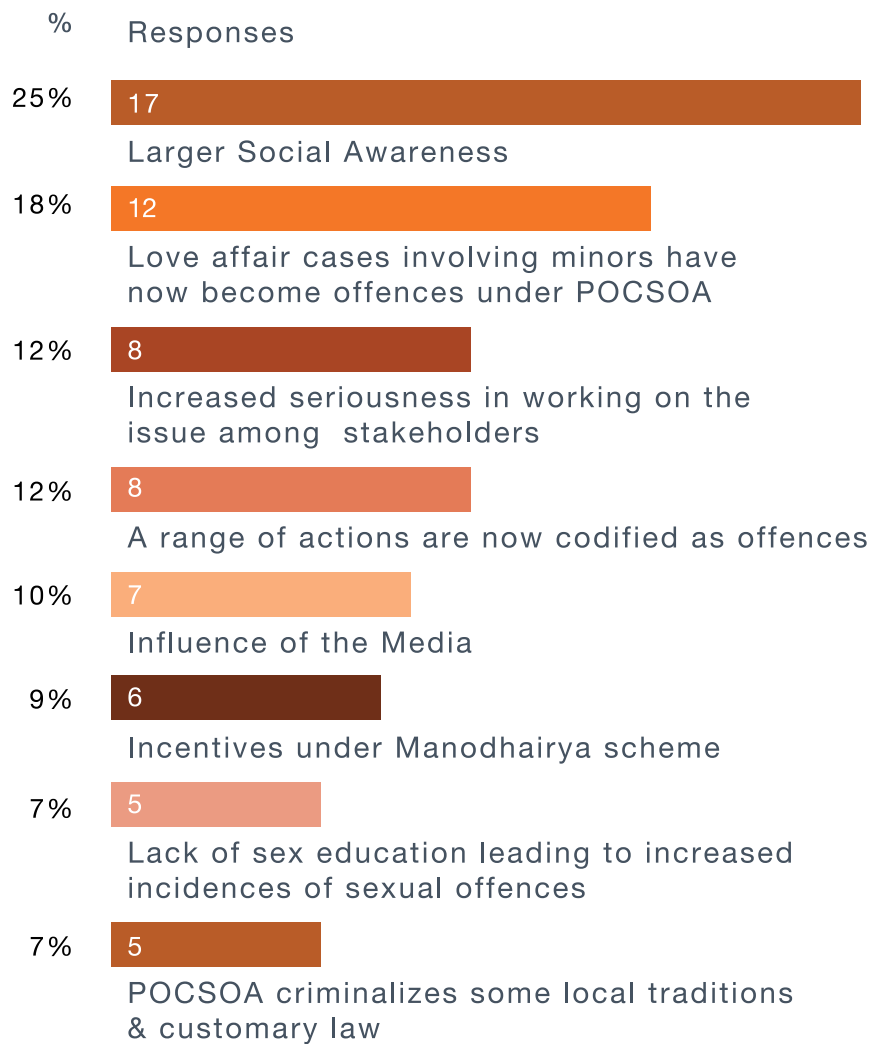
All police personnel stated that they theoretically understood the age of the child as 18 years old. However, during informal interactions, they mentioned that conventionally they treat any person below the age of 12 years as a minor. They added that the complaints in regards to children below 12 were genuine and that they did not find cases of love affairs among girls below 12 years of age. Also, in cases where the victim child is below 12, the police feel that it is reasonable to follow child friendly practices.

Several officers mentioned the use of a software application named Hashdroid while recording the evidence of the child using it as an audio-visual medium. The software assigns a unique ID (i.e. hash) to the digital file of the recording. This helps to prevent any form of tampering with video evidence. Some of these videos have been accepted in the court as evidence.

## **Information Through Interview Schedule**

### **Rise in Number of Cases**

The impression of the police was sought to know if there was any increase in the reporting of the cases of sexual offences against children in their district/jurisdiction. An overwhelming majority (63 out of 64 i.e. 98%) of police personnel replied positively stating that there was a definite rise in the reporting of cases of sexual offences against children. Several reasons cited for the increase are as follows;



Seventeen (25%) police respondents attributed the rise to increased social awareness on the issue. 12 (18%) mentioned that the disputed love affairs cases involving children between 16 and 18, especially one's where the girl's parents are not in favour of the affair, were now being registered as cases under POCSOA.

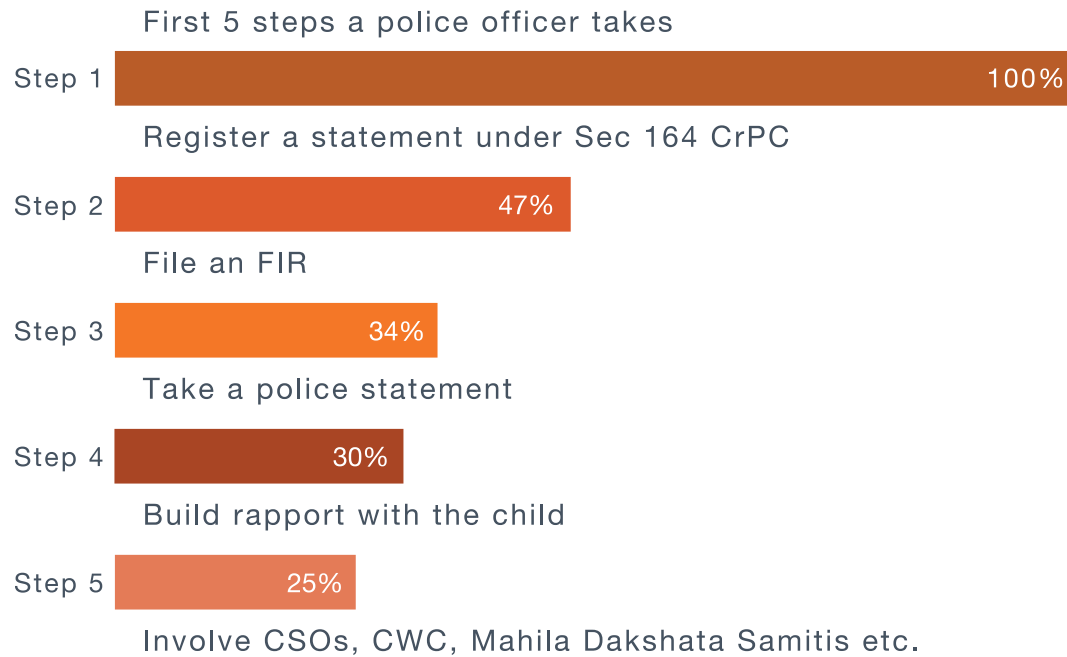
An additional 8 (12%) police personnel stated that with the arrival of POCSOA in 2012, several actions which were not considered offences under any law were now counted as offences and hence the rise in the number of cases.

Another 8 (12%) police personnel attributed the rise to increased seriousness among the stakeholders.

Only 6 (9%) felt that the incentive offered under the Manodhairya scheme of Government of Maharashtra was encouraging people to register a complaint under POCSOA.

## Practices

Some of the important steps that the police personnel take in handling of a case are very crucial in deciding the outcome of the investigation and the prosecution that follows. The respondents were asked to recount the first 5 steps a police officer takes when there is a complaint of sexual offences against a child.



All 64 (i.e. 100%) respondents mentioned recording of a statement of the child under Sec 164 of CrPC., while 30 (47%) respondents stated that they record an FIR. 23 (34%) stated that they take a police statement of the child. Only 16 (25%) mentioned that they involve the other stakeholders and service providers like the NGOs/CSOs, CWC, Mahila Dakshata Samiti, etc.

In the informal discussions and interviews with knowledgeable persons in the police, the following were mentioned as the other steps that the police personnel take on coming across a case of POCSOA.

- Provide security to the child and its family especially where there is a threat from the accused
- Use child friendly language while talking with the child
- Remove the fear of the accused from the mind of the child
- Seek help from a social worker

## Medical Examination

In the case of the rescued children, the ITP Act (Sec 15) demands that the child must be sent for medical examination to determine if the child has any injury as a result of sexual abuse or to find if there is any sexually transmitted infection. The report of such medical examination is crucial in deciding the charge and the culpability.

**ITP Sec 15 - (5-A)** states, Any person who is produced before a Magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases. Explanation.—In this sub-section, “registered medical practitioner” has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956).

ITP Section 6 further states as follows;

### **6. Detaining a person in premises where prostitution is carried on.**

(1) Any person who detains any other person, whether with or without his consent,— (a) in any brothel, or (b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees: .....

(2-A) Where a child found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.



Section 27 of POCSOA - 2012 provides as follows;

**POCSOA Sec. 27. Medical examination of a child:**

(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973.

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of any woman nominated by the head of the medical institution.

It is important also to see the provision under Sec 164-A of CrPC.

**Section-164 A of Cr.P.C.- Medical examination of the victim of rape.**

**164 A. Medical examination of the victim of rape. –**

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely:-

(I) the name and address of the woman and of the person by whom she was brought;

- (II) the age of the woman;
  - (III) the description of material taken from the person of the woman for DNA profiling;
  - (IV) marks of injury, if any, on the person of the woman;
  - (V) general mental condition of the woman; and
  - (VI) other material particulars in reasonable detail.
- (3) The report shall state precisely the reasons for each conclusion arrived at.
- (4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.
- (5) The exact time of commencement and completion of the examination shall also be noted in the report.
- (6) The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.
- (7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.
- Explanation. – For the purposes of this section, “examination” and “registered medical practitioner” shall have the same meanings as in section 53’

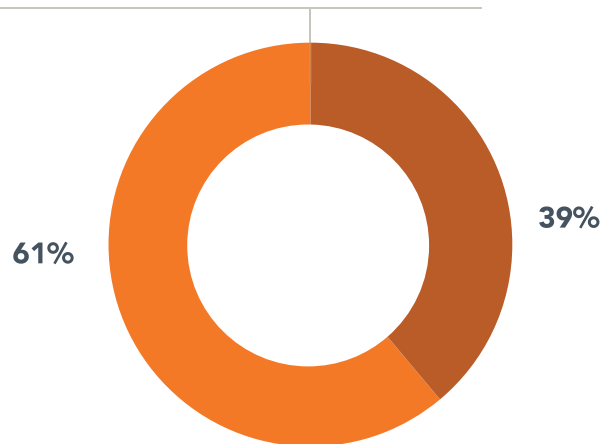
It is important to keep in mind that Sec 164-A of CrPC covers women victims of rape (as defined in Sec 375/376 IPC). It does not cover male children. CrPC Sec. 164-A Subsection (7) makes the consent of the woman victim of rape for medical examination mandatory, without which the examination shall be deemed unlawful. When the CrPC mandates the consent of the woman victim of rape, it has an adult woman in mind. Such a provision cannot dovetail well with the cases of children and especially male children. Neither POCSOA nor CrPC 164-A states its position on the medical examination of a male child victim under POCSOA (although it does prescribe that CrPC Sec. 164-A should be followed).

However, CrPC Sec. 164-A has not yet been amended in the light of its application to POCSOA cases. Thus the status of consent remains unclear.

It is a common practice at police stations to take the accused of any criminal offences for medical examination under CrPC Sec. 53 to collect the evidence. The victims of many other criminal offences are also sent for medical examination to ascertain injuries caused by the offence.

## Cases sent for Medical Examination

Are all children sent for medical examination?



Responses	No. of People	Percentage
● Yes	25	39%
● No	39	61%
Total	64	100%

Thirty nine (61%) police personnel stated that not every child against whom an offence under POCSOA has been committed is sent for medical examination.

Only 25 (39%) respondents affirmed that all children are sent for medical examination.

When asked to mention the kind of cases where they send the victim for medical examination, 25 (39%) police personnel mentioned that they only send cases of rape falling under IPC Sec 375/376. Six (9%) police personnel stated that only cases where physical contact is involved are sent for medical examination.

Another 7 (16%) respondents stated that they send all cases except those under IPC Sec. 354 (that covers assault or criminal force to woman with intent to outrage her modesty) or POCSOA Sec 11 (sexual harassment against children) for medical examination.

Yet another 6 (14%) police respondents stated cases where a parent or the child has given consent for medical examination.

### **The Indian Penal Code-Section 354**

**354. Assault or criminal force to woman with intent to outrage her modesty.**—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **POCSO Act 2012. E.—SEXUAL HARASSMENT AND PUNISHMENT THEREFORE**

**Sec 11. Sexual harassment :** A person is said to commit sexual harassment upon a child when such person with sexual intent,- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or (iii) shows any object to a child in any form or media for pornographic purposes; or (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or (vi) entices a child for pornographic purposes or gives gratification therefore.

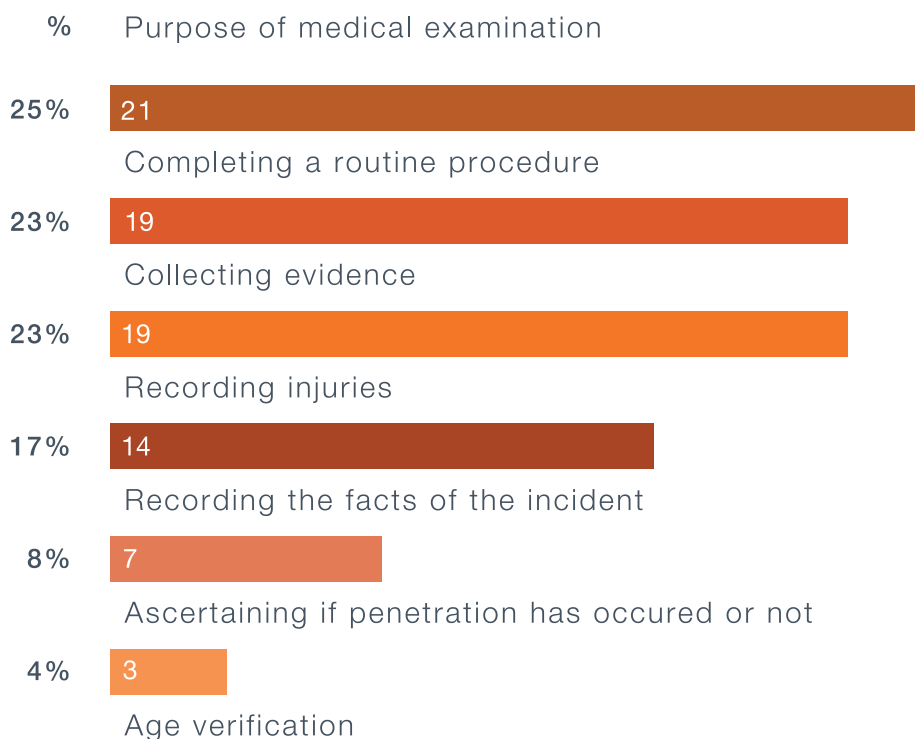
The understanding of the police personnel on the need for medical examination in cases of child victims of offences under POCSOA is at variance with what is mandated under the Act.

There is an urgent need to remove the ambiguity and have clarity over the text and the spirit of the various legal provisions under different laws as regards medical examination, their overlaps and the gaps therein.

As stated above, the purposes of all medical examinations under the law is primarily that of collecting evidence and establishing harm or injury caused by the offence. However, the procedures as regards medical examination of the accused as against that of the victim, of adult as against child and of general criminal offences as against sexual offences need to be differentiated.

## What is being sought through the medical examination?

An inquiry was made to ascertain if the police personnel were clear about the purpose of medical examination. It had the following responses;



A quarter of the responses mentioned medical examination merely as completing a routine procedure. While an almost equal number of responses i.e. 23% each mentioned it was conducted for recording injuries and for collecting evidence.

It is clear that the prime and exhaustive purpose of conducting a medical examination for POCSOA cases is not clear to most police personnel on the frontline.

## Responsibilities of Police under POCSOA

Mainly Sec 19 and Sec 24 of POCSOA state the responsibilities of the police under POCSOA.

### **POCSO Section 19: Reporting of offences:**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, — (a) the Special Juvenile Police Unit; or (b) the local police.

(2) Every report given under sub-section (1) shall be—

(a) ascribed an entry number and recorded in writing; (b) be read over to the informant; (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under subsection (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard

(7) No person shall incur any liability, whether civil or criminal, for giving information in good faith for the purpose of sub-section (1)

#### **POCSO Section 24. Recording of statement of a child:**

(1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

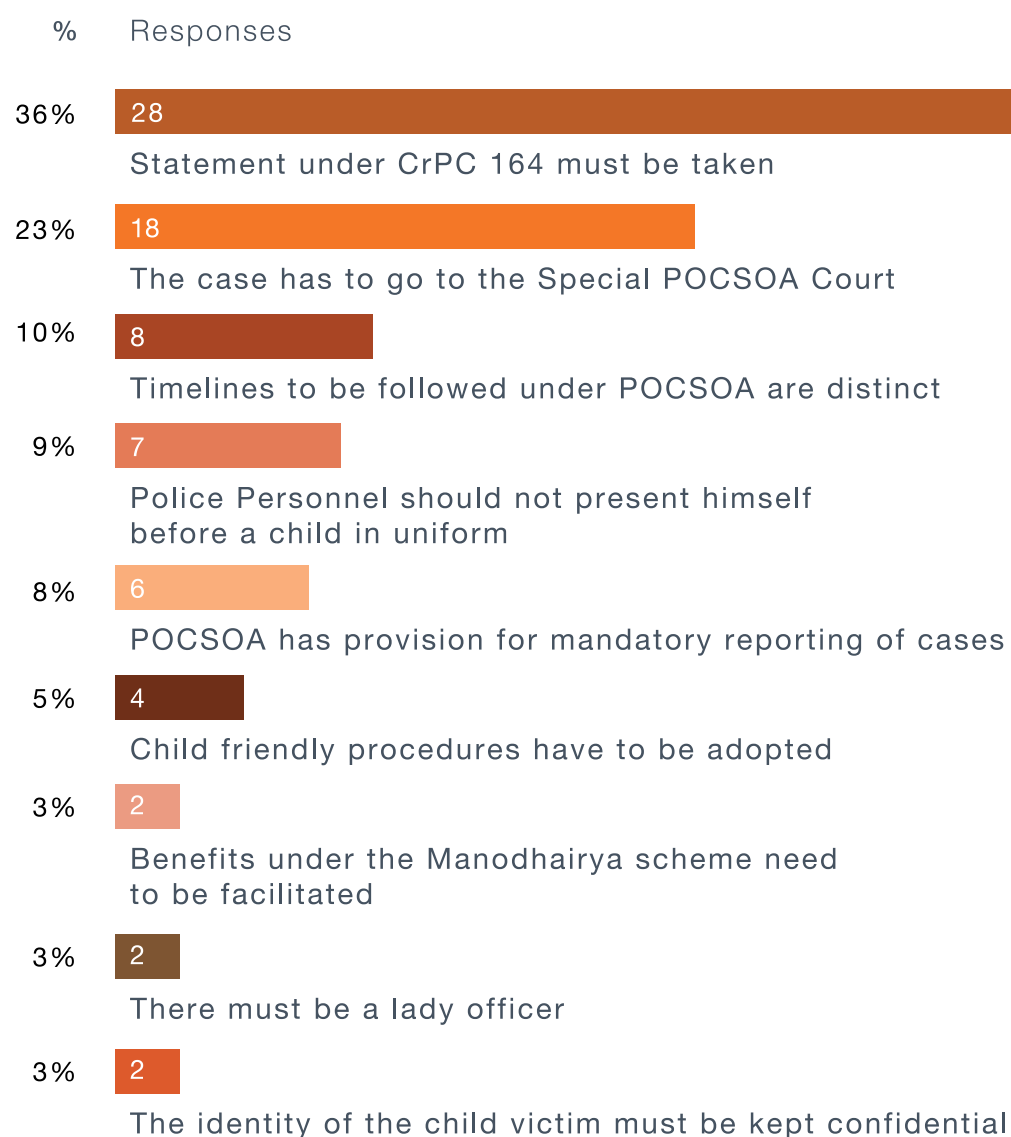
(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

Specific responsibilities have been placed upon the police under the POCSOA other than the usual responsibilities under the CrPC, Law of Evidence and IPC etc. while handling a child victim of sexual offences.

An attempt was made to understand if the police personnel are able to understand their responsibilities assigned under POCSOA as distinct from the responsibilities assigned under the other relevant criminal and procedural laws.

What specific responsibilities have been placed upon the police under POCSOA other than the usual responsibilities under the CrPC, Law of Evidence and IPC while handling a child victim of sexual offences? (mention what is peculiarly assigned to you by POCSOA)



Police personnel seem to give prime importance to recording the statement of the POCSOA victims under Sec. 164 of CrPC.

**The POCSOA considers it to be the responsibility of police personnel handling cases under it to ensure implementation of child friendly practices such as to not present themselves before a victim child in**

police uniform, to arrange for shelter and other needs of a child if said child is found in need of care and protection, to protect the identity of the child, to not let the accused and his representatives encounter the victim child, to report the matter to the CWC, to mobilize other service providers, and to follow a distinct timeline. This comprehensive overview was not reflected in the responses given, which shows poor understanding by the respondents on this front.

As established, and also concurred via discussions with police personnel, it was found that many police personnel misunderstand that the Manodhairya scheme was established under POCSOA. However, it is also important and satisfying to know that they link the Manodhairya compensation with the offences under the POCSOA.

In an informal discussion a police man stated that on receiving a complaint the police personnel must register an FIR as otherwise he is liable to be punished under the mandatory reporting clause of POCSOA.

## Awareness on POCSOA

POCSOA mentions various sexual organs with respect to which several offences have been defined.

Does touching the buttocks of a child or making the child touch the buttocks of another person amount to sexual assault under POCSOA?

Fifty three out of 64 (82%) of respondents mentioned that it is an offence under POCSOA.

One policeman stated that sexual intent has to be established to make it an offence while another stated that doing so to a girl child is an offence but not so if done to a male child. Only one person said that it was not an offence.

**POCSOA Part C. SEXUAL ASSAULT AND PUNISHMENT THEREFORE**  
Sec 7 deals with non-penetrative sexual offences in which there is physical contact.

Sec.7. Sexual assault: Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

The POCSOA is very specific while articulating sexual offences. The clear



mention of parts of the human body namely vagina, penis, urethra, anus or breast makes it appear that the other parts are not included in the offence. By this logic touching the buttocks of a child are excluded from the purview of the offence in Part C above.

However, two things require attention while reading Part C Sec 7. First, it mentions any other act with sexual intent which involves physical contact without penetration.

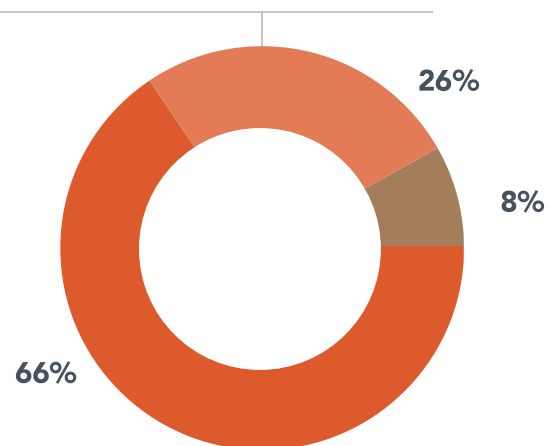
Second, the usage of the term 'sexual intent' is important. Hence touching the buttocks of a child with sexual intent is an offence under Sec 7 of POCSOA. This interpretation requires keen reading and analysis on the part of the police.

### Attempt to Commit an Offence

Sexual acts need not be completed to get covered as offences under the various criminal laws. Most laws penalize attempts to commit those offences. Even POCSOA has a special provision on this aspect.

**Section 18. Punishment for attempt to commit an offence.** - Whoever attempts to commit any offence punishable under this Act to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.

Is it necessary that to become an offence under POCSOA the act of offence must have been completed or is it enough to have planned it?



Responses	No. of People	Percentage
● Yes	17	26%
● No	42	66%
● Don't Know	5	8%
Total	64	100%

In response to the above question, most police personnel (66%) correctly responded with a 'No'. 17 out of 64 (i.e. 26%) responded with a 'Yes' and 5 (8%) stated they did not know.

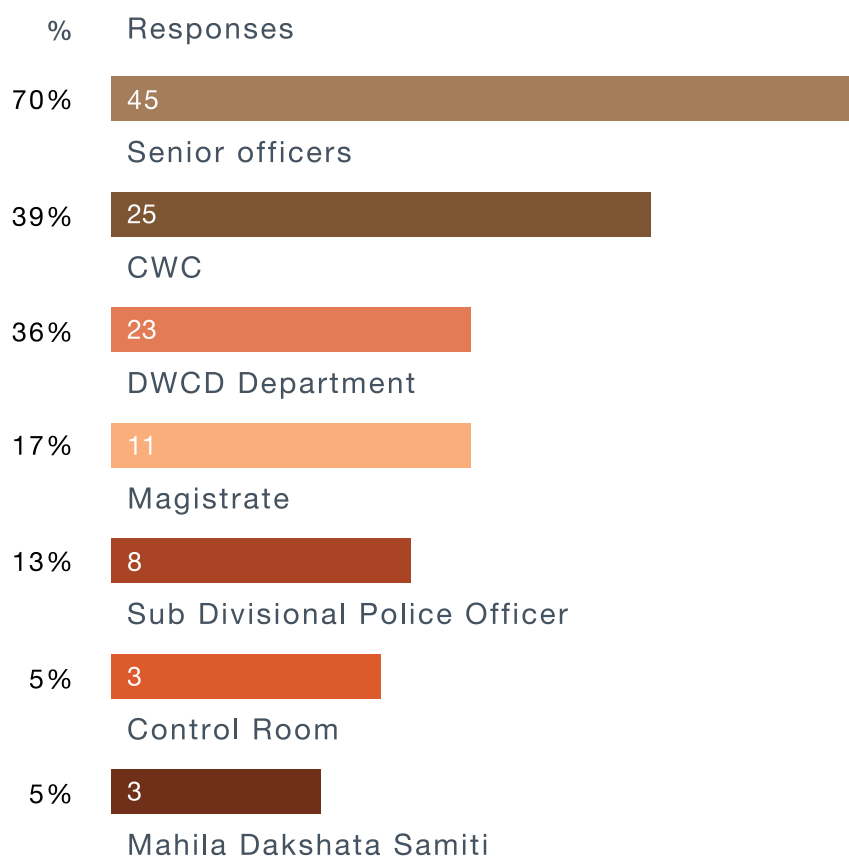
## Reporting

When you receive a complaint under POCSOA/ get information on an offence under POCSOA, do you have to report it to anyone else?

**POCSOA-Section 19 (6)** The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

Fifty four out of 64 police respondents (84%) stated that they are required to report the case to some other authority. Only 4 (6%) replied negatively.

When further asked to mention the authority to which they have to report they responded as follows:



Many authorities were cited by the police as to whom they are required to report POCSOA cases. Among them, their own seniors featured 45 times, followed by CWC (25 times), DWCD (23 times), and Magistrates appeared 11 times.

Only 39% mentioned that they have to report every case of POCSOA to the CWC while 17% mentioned Magistrate/Courts.

## Child Welfare Committee (CWC) and Police

Sec 19(6) of POCSOA and Rule 4 (3) of the JJA puts a time limit of 24 hours within which the police must report the case of the child to the CWC.

**Sec. 19. Reporting of offences Sub Section (6)** “The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.”

There is an element of vagueness in this provision. The main section is about ‘reporting the offence’ and not about ‘producing the child’ before any authority.

The JJA on the other hand specifically uses the term ‘production’ of the child before the CWC

**The JJ Act Sec 31. (1)** states, “Any child in need of care and protection may be \*produced before the Committee by any of the following persons, namely:—

- (i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;
- (ii) any public servant;
- (iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognized by the State Government;
- (iv) Child Welfare Officer or probation officer;
- (v) any social worker or a public spirited citizen;
- (vi) by the child himself; or

(vii) any nurse, doctor or management of a nursing home, hospital or maternity home: Provided that the \*child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey

\*\*

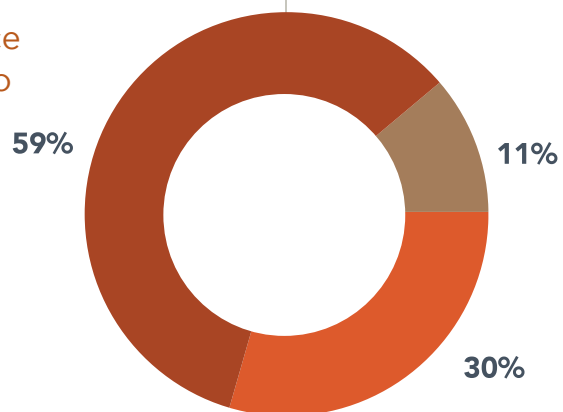
The POCSO Act mandates 'reporting of the offence to the CWC and the Special Court' and not necessarily 'producing the child before the CWC' The best interpretation of the provision could be that the policeman is required to arrive at a judgement if the child is in need of care and protection and arrange to provide the same immediately and subsequently but not later than 24 hours report the matter to the CWC and Special Court.

When inquired as to whether there is a time limit for reporting, 50 out of 64 (78%) police respondents replied in the positive. Only 6 (9%) said there was no such time limit and 8 (13%) did not respond to the question.

When the 50 who answered positively were asked as to what that time limit was;

Twenty seven mentioned that it should be done as a soon as possible. 22 responded accurately stating 24 hours as the time limit; and 1 respondent said that it was somewhere between 2 to 3 days.

Do the police have to produce every child under POCSOA to CWC?



Responses	No. of People	Percentage
● Yes	19	30%
● No	38	59%
● No Response	7	11%
Total	64	100%

POCSOA demands that every case of a child victim of sexual offences registered at the police station must be 'reported' to the respective CWC by the police. However, it does not mandate the police to 'physically produce' every such child before the CWC. Attempt was made to understand the awareness of the police respondents on this point.

Thirty eight respondents (59%) replied accurately when they said 'No' in their response. 19 respondents (30%) said that they have to produce every victim child under POCSOA before the CWC.

Those who stated that every child victim under POCSOA need not be produced by the police before the CWC were further requested to elaborate the circumstances under which a child victim should be produced before the CWC.

### If No, then under what circumstances are child victims under POCSOA produced before the CWC?

Only 18 (28% of 64) respondents could mention the required circumstances. 14 police personnel (22% of 64) said that child victims of POCSOA who need shelter placement should be produced before the CWC, 3 (5% of 64) stated that if a case looks complicated then the child should be produced before the CWC, and 1 said that if the CWC orders that a child should be produced before it, then one must produce the child.

**Sec. 19. Reporting of Offences** Sub Section (6) "The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard."

There is an element of vagueness in this provision. The main section is about 'reporting the offence' and not about 'producing the child' before any authority.

The JJA on the other hand specifically uses the term 'production' of the child before the CWC

**The JJ Act Sec 31. (1)** states, "Any child in need of care and protection may be \*produced before the Committee by any of the following persons, namely:—

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Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;

(ii) any public servant;

(iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;

(iv) Child Welfare Officer or probation officer;

(v) any social worker or a public spirited citizen;

(vi) by the child himself; or

(vii) any nurse, doctor or management of a nursing home, hospital or maternity home:

*Provided that the \*child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey*

Hence apparently there is a difference between reporting the offence to the CWC and producing the child before a CWC.

The POCSO Act mandates 'reporting of the offence to the CWC and the Special Court' and not necessarily 'producing the child before the CWC'

The best interpretation of the provision could be that the policeman is required to arrive at a judgement if the child is in need of care and protection and arrange to provide the same immediately and subsequently but not later than 24 hours report the matter to the CWC and Special Court.

**Thus, the text of the POCSO expects the policeman to exercise his discretion in judging if the child victim of POCSOA offences is a child in need of care and protection and then accordingly take the next step i.e. produce the child before the CWC, provide shelter etc. The understanding of the police personnel of the provisions of POCSOA and their role there under clearly does not match with the expectations of the law from them.**

## Challenges when dealing with the CWC

Responses

28

No challenges

24

No interaction with the CWC

3

CWC is not cooperative

3

CWC timings are unknown

3

Difficulties in contacting CWC in the night

2

Irregularly held CWC sessions

1

Differences in victims' statement of CWC and police creates a problem

As many as 28 responses stated that they do not face any challenges in dealing with the CWCs. 24 of the responses stated that they had no interaction with the CWCs. 6 responses quoted the timings and non-availability of the CWC at night time as the challenges.

A few police officers mentioned that the CWCs are irregular and do not keep time. In districts where there is no fixed location for CWC sittings, it creates confusion as to where to take the child in order to produce before the committee.

In the informal discussion with police officers, a few police personnel stated that the CWC members lacked awareness of the law as well as their responsibilities there under.

The respondents mentioned instances when children were made to wait long hours for the CWC members to arrive. At times, they mentioned, this has resulted in the child being forced to return home without so much as getting an audience with the Committee.

Is it mandatory to record the statement of every child victim of POCSOA under 164 of CrPC?

The provisions in the POCSOA as regards recording statement of the victim child are as follows;

**POCSOA Sec. 24. Recording of the statement of a child :**

- (1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.
- (2) The police officer while recording the statement of the child shall not be in uniform.
- (3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.
- (4) No child shall be detained in the police station in the night for any reason.
- (5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

**POCSOA Sec 25. Recording of statement of a child by Magistrate :**

- (1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child: Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.
- (2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

**26. Additional provisions regarding statement to be recorded:**

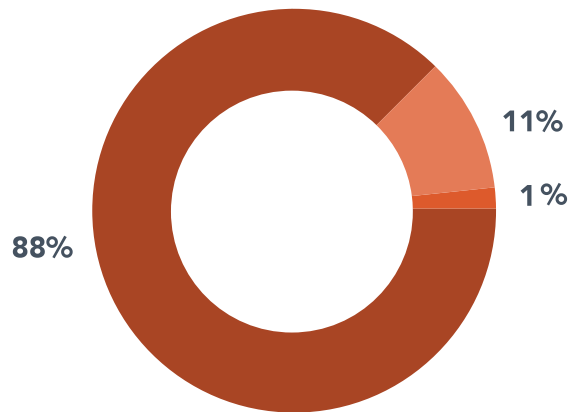
- (1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.
- (2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.
- (3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a



special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

Is it mandatory to take statement under 164 CrPC?



Responses	No. of People	Percentage
● Yes	56	88%
● No	7	11%
● No Response	1	1%
Total	64	100%

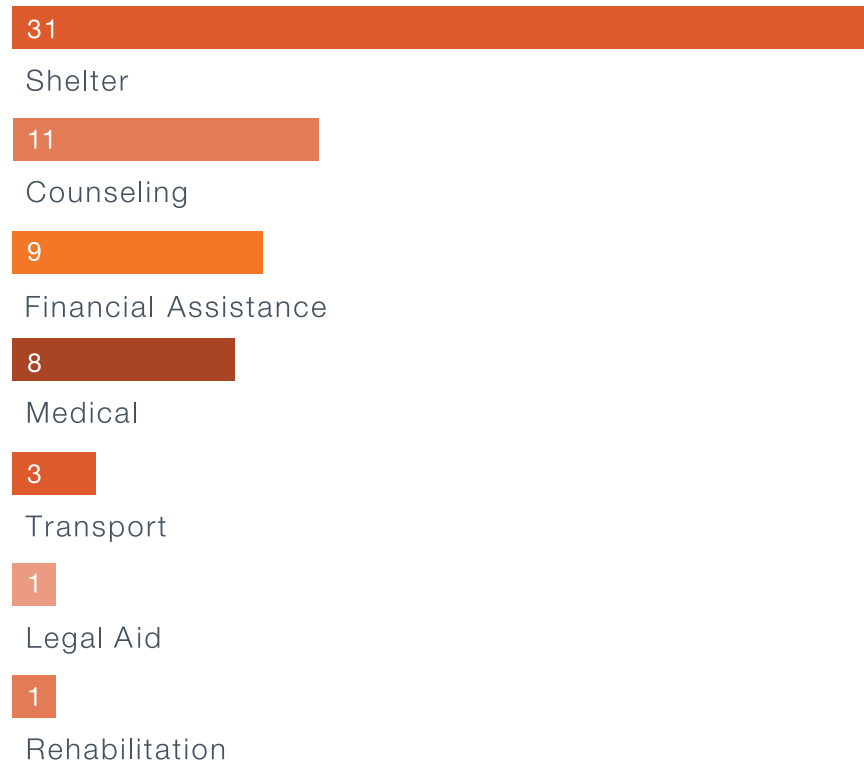
Fifty Six (88%) respondents stated that they are required to take statement under Sec. 164 CrPC from every child victim.

## Services

What kind of services are required for a child victim under POCSOA? Can you name any 4 services?

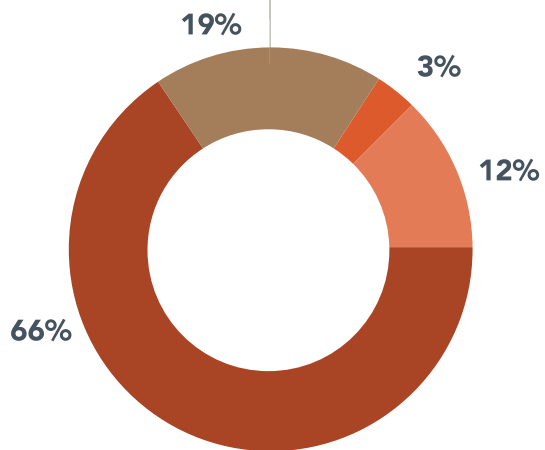
Not all respondents mentioned 4 services.

Responses



Thirty one responses mentioned shelter facilities as service required for child victims under POCSOA. 11 mentioned counseling services, 9 mentioned financial assistance, and 8 mentioned medical services.

Do you have access to service providers in and around the district whose services are required by you to help a child victim?



Responses	No. of People	Percentage
● Yes	42	66%
● No	12	19%
● Don't Know	2	3%
● No Response	8	12%
Total	64	100%

Forty two (66%) police personnel said that they do have access to service providers. 12 (19%) respondents stated otherwise, i.e. they do not have any access to service providers.

When asked who runs those services the police personnel responded as follows;

85% said the services they accessed were run by government, 14% said that both the government and the civil society organization provide such services.

### Are the services against charge or free?

92% stated that the services available were free of charge.

As regards the adequacy of the shelter services for children in their district, 42 (78%) out of 54 who responded said they were adequate while 12 (22%) said they were deficit.

POCSOA expects the policeman to arrange to provide for shelter and other needs of the child victim. Attempt was made to find out what challenges the police personnel face while providing care and protection to children.

Nineteen (30%) stated that they faced some challenges. 8 (13%) of them faced difficulties as the shelter facilities refuse to admit the child. 5 (8%) stated that getting women police officers was a challenge. 4 (6%) mentioned that providing care and protection services to the victim at night time becomes difficult.

## Victim Protection

Victim protection is an important service the police is required to provide. We tried to inquire as to what measures the police take when the victim's family is threatened by the offender or his representatives.

### Measures taken to protect the victim and the family from the accused

Responses

32

Take preventive action

14

Register a non-cognizable complaint

7

Try to get the bail cancelled

3

Put additional charges in the chargesheet

## Financial Compensation

The police play an important role in connecting the victim of sexual offences and such other grave offences like acid attack to Manodhairya scheme run by the State government of Maharashtra to compensate criminal injuries. Besides its direct financial benefits, the scheme intends to help the victim continue pursuing their case through the investigation and prosecution.

### **POCSOA - Rule 4:**

(12) The information to be provided by the SJPU, local police, or support person, to the child and his parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following (iii) the availability of victims' compensation benefits

When inquired whether they have heard about the Manodhairya scheme, 53 (83%) respondents said that they were aware of the scheme. Only 6 (9%) said they had not heard about it.

Out of those 53 who had heard about it, 50 (94%) stated that the police have a role to play in helping the victims and victim's family access benefits under Manodhairya. Only 1 police personnel stated that the police have no role in it whatsoever.

When further probed as to what role the police have in the scheme, 35 (70%) pointed out that they have to inform the Department of Women and Child Development, Government of Maharashtra about the case. 9(18%) said it is the Department of Social Justice that needs to be given the report. 3(6%) replied saying that the police has to inform the family members.

As regards challenges in helping the victim access compensation, as many as 35 police respondents (55%) replied that there were no challenges whatsoever. 2 (3%) respondents stated that the paper work was excessive. 2(3%) said the funds under the scheme were not enough and only 1 complained that there are fake cases brought to the police station.

It was mentioned that the police station or the investigation officer does not have the authority to decide on the compensation. The Police merely send a report of the case. The decision on the eligibility of the case for compensation as well as the amount sanctioned under it falls under the purview of the Department of Women and Child Development.

The investigation officer also does not conduct any follow up of the cases that they have sent for compensation. It is a task assigned to the crime branch. In some districts, senior officers like Inspector of Police have been given the responsibility to do the follow up.

Most police acknowledge that there is a possibility of registering fake cases. But they also mentioned it rarely happens in the case of children. Thus the police tend to send applications of all cases of sexual offences against children for the scheme. They mentioned that they exercise scrutiny when it comes to the cases in which victims are adult women.

Often victims who are migrants do not have bank accounts or address proofs and the police have to actively help them to open a bank account.

The police mentioned a lack of awareness of the scheme as a challenge. Most personnel do not know the nature of the papers that need to be filed for the application. Hence the compensation gets delayed.

Some police personnel mentioned that the scheme is likely to be revised soon.

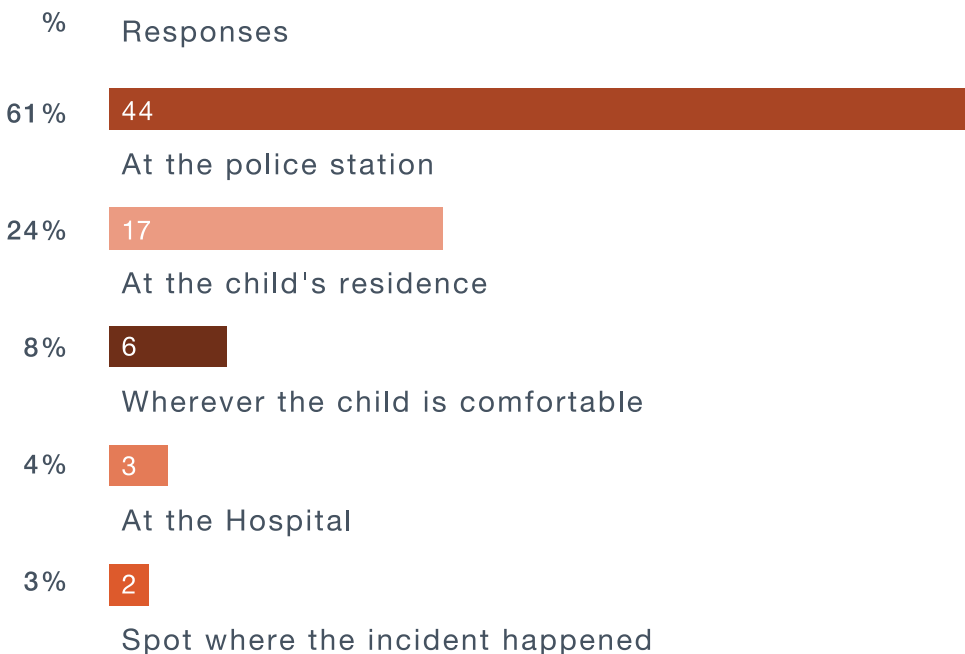
## Reporting and Investigation

POCSOA has elaborately mentioned the procedure for taking the statement of a child. We tried to find out the practice on the ground.

### 24. Recording of statement of a child.-

(1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

Where do you usually record the statement of the victim child?



Forty four (61 %) responses stated that the statement is taken at the police station. Off these, 2 police personnel specially mentioned that they record the statement *in camera* in a separate room inside the police station.

Seventeen (24%) responses stated the statement is taken at the child's residence. 6 (8%) stated 'wherever the child feels comfortable. 2 (3%) respondents indicated that the statement of the child is taken at the location where the incident has happened.

POCSOA is the first legislation that has introduced several new procedures at the police station level aimed at improving the practices followed at the police station while dealing with the sexual offences against children. The respondents were presented with questions in which they were asked to point out which important steps they would advise their subordinates to adopt in different areas of investigation, which are specific to POCSOA.

When you train police officers under you, what are the steps specific to POCSOA that you would ask them to take?

w.r.t Receiving a Report

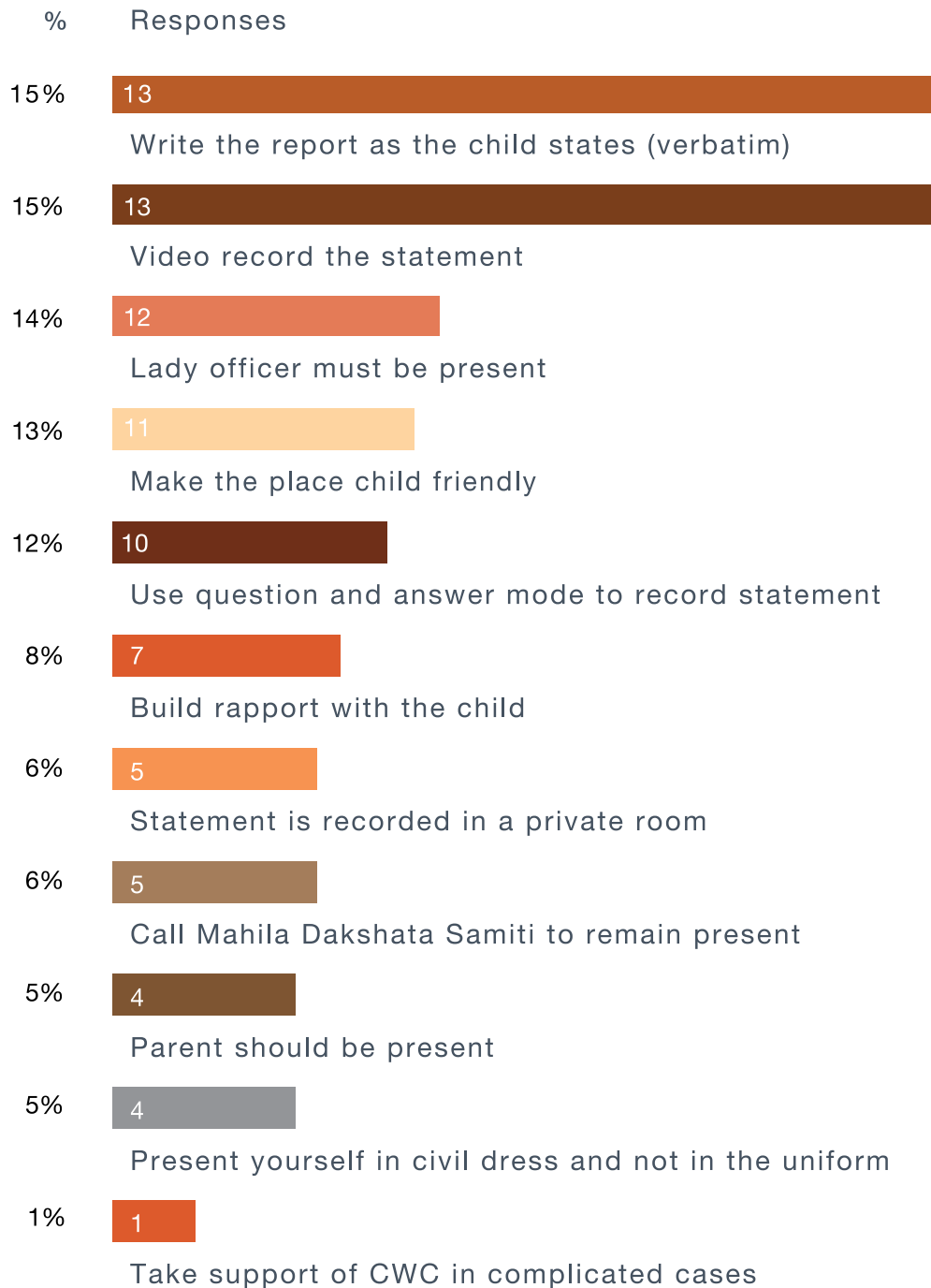


**While receiving a report on sexual offences against children, the police give importance to the presence of a lady officer, not being in uniform and building rapport with the child victim.**

However, it is to be noted that the POCSO Act, Section 19 mentions the following:

**Reporting of offences.**- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, — (a) the Special Juvenile Police Unit; or (b) the local police. (2) Every report given under sub-section (1) shall be— (a) ascribed an entry number and recorded in writing; (b) be read over to the informant; (c) shall be entered in a book to be kept by the Police Unit.

w.r.t. Recording the Child's Statement

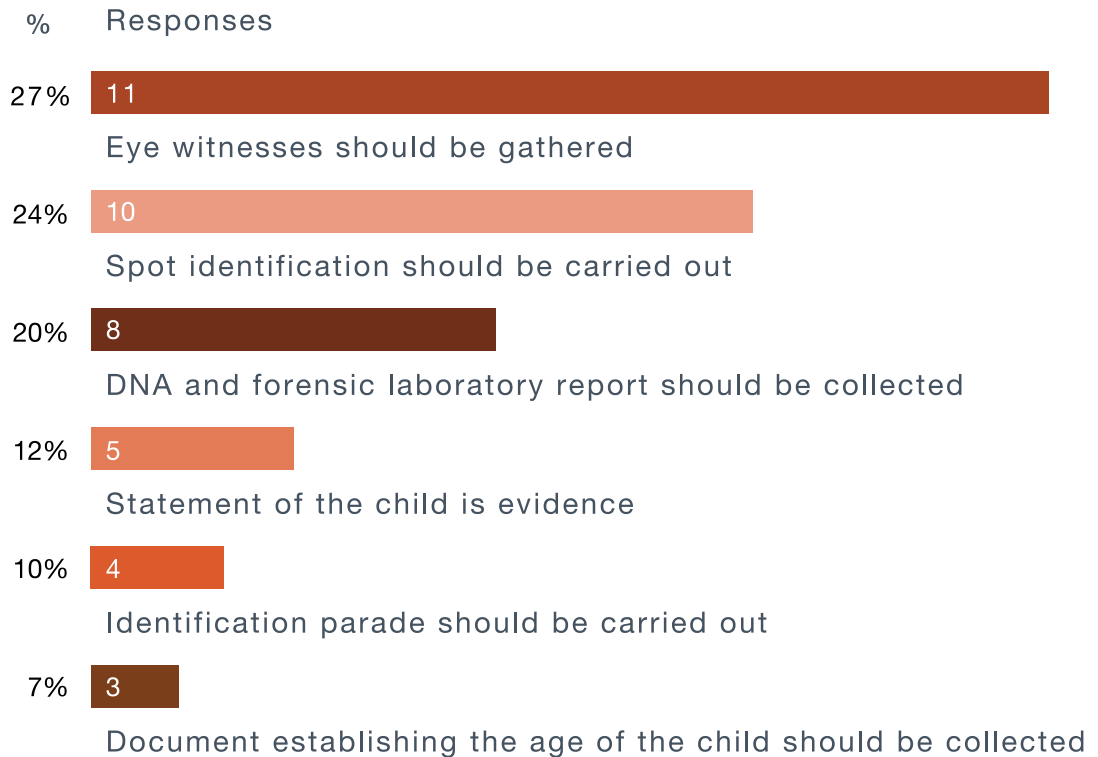


- The police personnel mentioned removing fear from the child's mind, developing rapport with the child and not using words & vocabulary which may pressurize the child.
- Parents are usually reluctant to file a complaint. The personnel suggested that they should be assured that they will not get harassed if they come forward and register their complaint.



- Some police were of the opinion that only Women police sub Inspector should take the statement.
- Police mentioned that they should ensure that statement should be in the language of the child and it should clearly state the facts as mentioned by the child.

### w.r.t. - Collecting Evidence



### w.r.t. - Medical Examination

Under the law the police are required to ensure the following things during medical examination of a child victim under POCSOA.

1. Medical examination of a girl child should be done by a lady doctor.
2. Police should not be in a uniform while accompanying the child for medical examination.
3. The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with Sec. 164-A of CrPC.

4. Medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
5. In case the parent of the child or trusted adult cannot be present, for any reason, the medical examination shall be conducted in the presence of a woman who is nominated by the head of the medical institution.

Important steps they would advise their subordinates to adopt which are specific to POCSOA

Responses

5

Medical Examination to be carried out as soon as possible

5

Civil vehicle should be used to take the child for the examination (police vehicle should be avoided)

4

Lady police must accompany the victim for medical

3

Confidentiality of the child is to be maintained

w.r.t. - Investigation

The police should observe following important things in investigation while handling a case under POCSOA

1. Inform the status of the investigation of the crime, to the victim to the extent it is appropriate and will not interfere with the investigation;
2. Maintain the confidentiality of the child at every step.
3. Ensure that at no point of time the child comes in contact in any way with the accused.

Actual responses by the police are as follows:

## Responses

5

Identification parade of the suspects should be carried out

4

Identity of the witness must be guarded

3

Spot panchanama must be carried out

3

Eye witnesses must be questioned

3

Chain of events must be built up

The following challenges and comments were also shared informally by the police officers as regards investigation;

- People are unwilling to go on record as the eye witnesses in a case of sexual offences against a child.
- As per the latest government Order, the police have to use government servants as *panchas*. The government officers to be engaged for this purpose are allotted by the Collector's office. There is a high rate of transfer among these officers and the persona occupying the positions constantly change. Also, they are reluctant to work after the office hours while the nature of the *pancha's* work often requires their presence late in the day or at night. This co-ordination is challenging for the police to facilitate.
- Witness counseling should be carried out to prevent the witnesses from dropping out or turning hostile.

### w.r.t. - Filing the Charge Sheet

Only 14% respondents quoted that the subordinates should take care to file the charge sheet in time.

## w.r.t. - Providing Child Friendly Atmosphere

### Responses

64

Lady police officer should be present

64

Police should be in civil dress

11

Do not call child to the police station

3

Rapport building is important

2

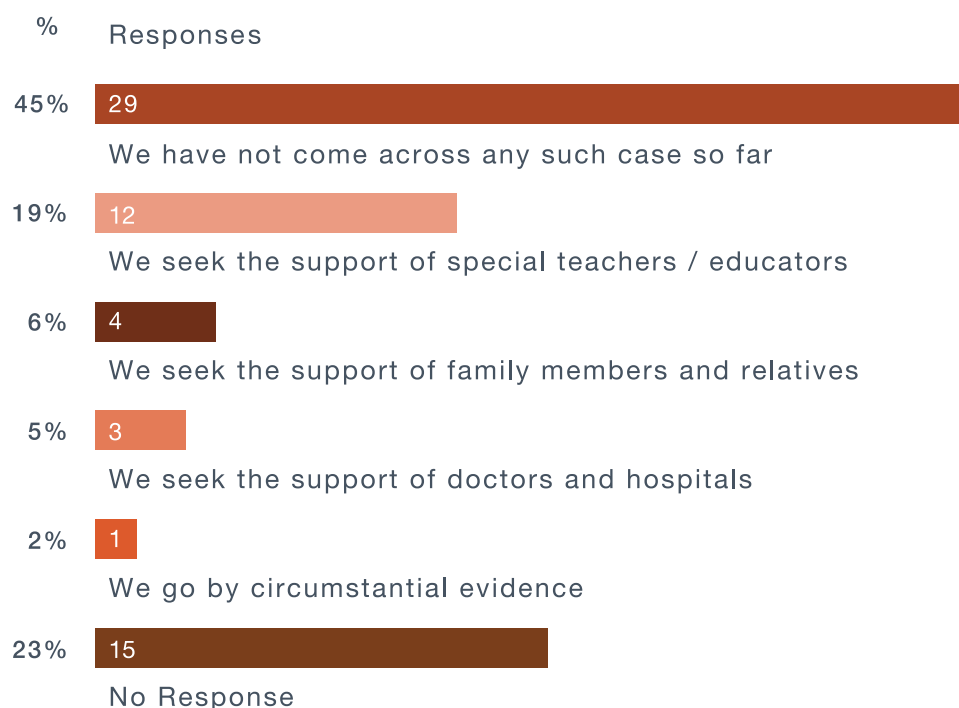
Confidentiality should be maintained

The presence of women police officers and the care to be taken not to present oneself before a child in police uniform seem to have been noted and registered by most of the police respondents.

**POCSOA Section 26 (3)** The Magistrate or the police officer, as the case may be, may, in the case of a child having mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

Differently abled children are especially vulnerable to the offences under POCSOA. Taking their statement can be a challenge. The police personnel were asked the following:

If there is a child who is mentally challenged, how do you ask your officers to proceed with the recording of the statement?



Twenty nine (45%) of the 64 respondents stated that they have not come across cases of differently able children victims of POCSOA offences. This indicates a possibility that these particular incidences may still be under-reported.

The response 'We go by circumstantial evidence' although given by a single respondent also indicates an ill attended area in intervention.

The respondents did not mention any of the points which usually should get covered in their training. Although the POCSOA makes very progressive provisions on many points the severe infrastructural, material and financial limitations under which the police stations and other helping institutions are operating, a conjecture can be made as to how much is being lost in translation between the provisions and reality.

**Section 26 (3)** The Magistrate or the police officer, as the case may be, may, in the case of a child having mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child

The provision of interpreters and special educators although against payment is one such provision. To know the ground reality, the police were asked to mention what challenges are faced by them in finding support like interpreters and special educators.

### Challenges in getting interpreters and special educators

#### Responses

20

Getting the interpreters locally is not a challenge

7

We have not come across any case where we need them

The police mentioned that it is a challenge to get special educators locally. In their absence, they seek support of family members who are able to communicate with the victim child.

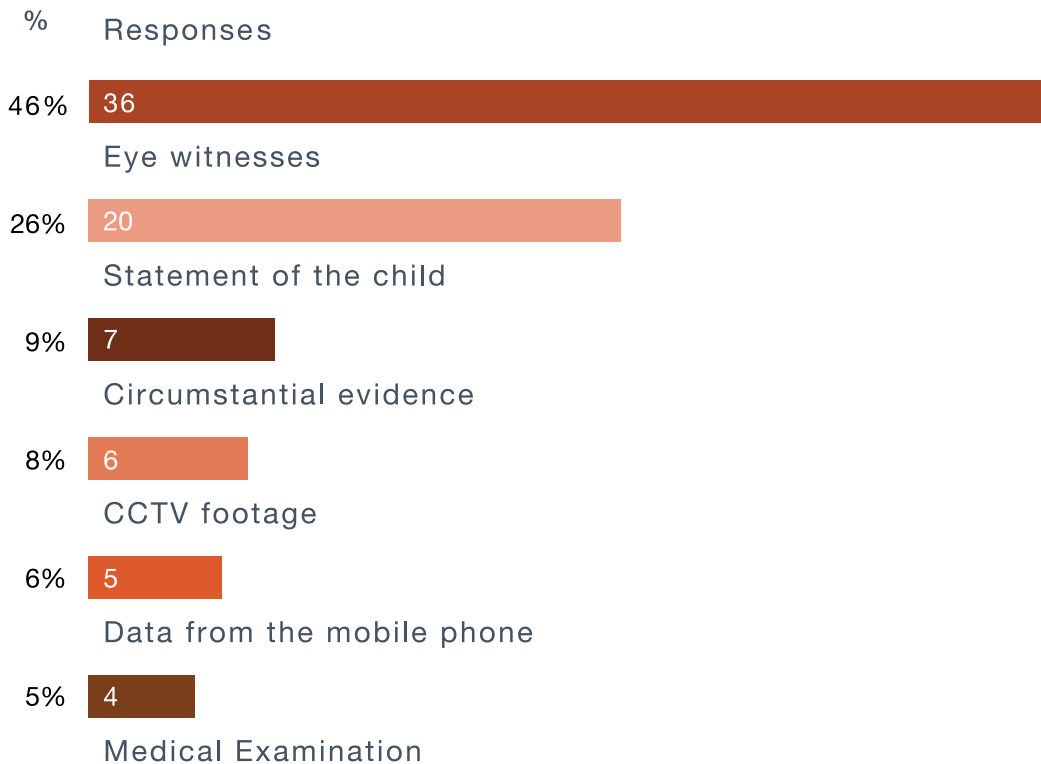
However, most respondents mentioned that getting interpreters was not a challenge. They said that even if there is a provision of some payment to these services, coordination between the services and the victims remains challenging in terms of getting appointments, arranging an interface etc.

### In case the offender under POCSOA a person below 18 years of age what are the specific steps that a police need to take?

All 64 respondents (100%) mentioned that if an offender under POCSOA is below the age of 18 years then they must be handed over to the Juvenile Justice Board set up under the JJ Act to deal with the children in conflict with the law.

## Evidence Collection

The police was asked what kind of evidence they collect when investigating into the complaints of sexual harassment:

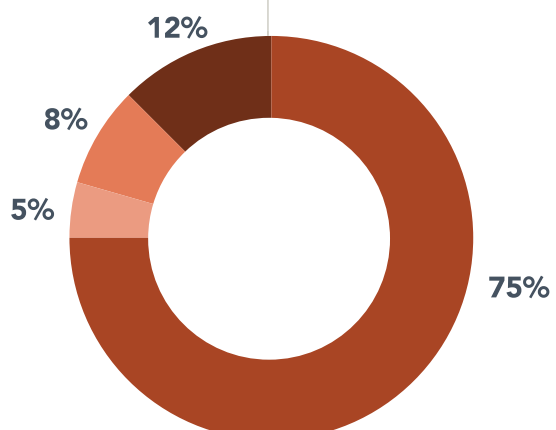


Only 20 police personnel (26%) have mentioned that statement of the child by itself is evidence. This is in line with the new addition brought about by the POC SOA.

## Awareness: Sections of Law

Subsequently a scenario was put to the respondent to understand how they apply their knowledge of the various laws that need to be applied while dealing with a case of sexual offences against children.

If a woman commits penetrative sexual assault or sexual assault on a boy who is 17 years of age who has given his consent will it be an offence under POC SOA?

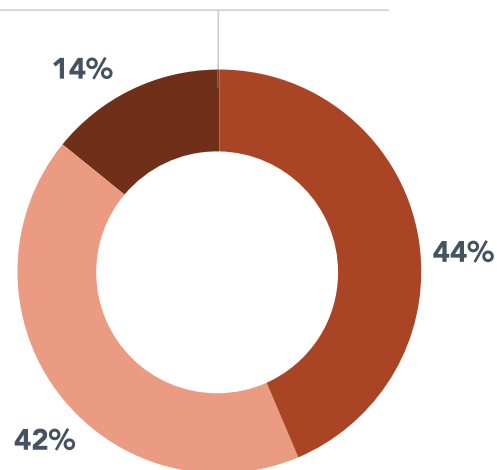


Responses	No. of People	Percentage
● Yes, it will be an offence under POCSOA	48	75%
● No. It will not be an offence under POCSOA	5	8%
● Don't know	3	5%
● No Response	8	12%
Total	64	100%

Forty Eight (75%) out of 64 answered that question correctly.

It is important to note that as per IPC the offence of rape (Sec 375/376) cannot be committed by a woman (whether w.r.t to a man or a woman) and hence it will not be an offence triable under the IPC. POCSO Act is however gender neutral and considers the above act as an offence. Also, consent by a person below 18 years is immaterial as per the law.

The respondent police personnel were asked if it would amount to an offence of rape under the IPC?



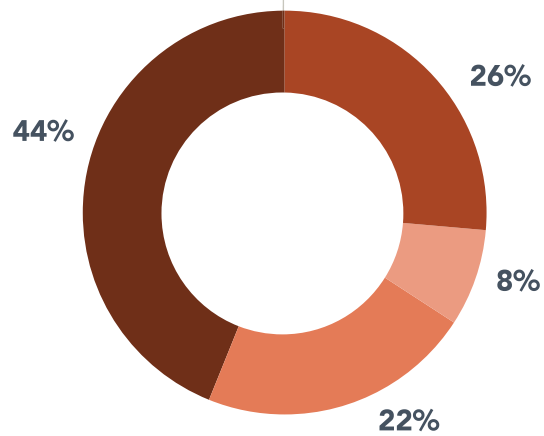
Responses	No. of People	Percentage
● Yes, it will be an offence under the IPC	28	44%
● Don't know/ No Response	27	42%
● No. It will not be an offence under the IPC	9	14%
Total	64	100%

Those 28 (44%) who replied that it would be an offence under IPC were incorrect. Although the age of the boy is below the age of consent it would not be the offence of rape as rape as per the IPC is committed by a man on a woman and not vice versa.



For further confirmation the respondents were asked -

Under which law would they consider that as an offence?

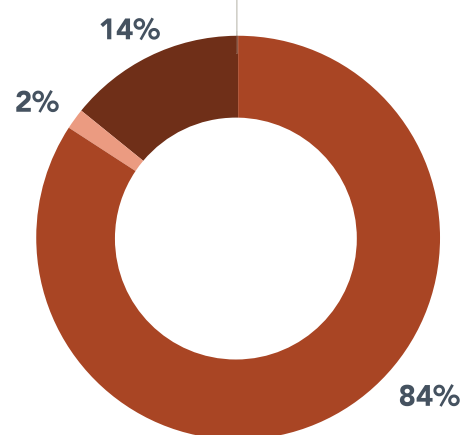


Responses	No. of People	Percentage
● POSCO Act	17	26%
● POSCOA and IPC	14	22%
● IPC	5	8%
● No Response / Don't know	28	44%
Total	64	100%

It is surprising as well as serious that only 17 (26%) police respondents considered this as an offence under POSCOA.

One more question was put to them to test their ability to apply different relevant laws when confronted by a case.

If two children both of whom are 16 years of age commit any of the acts defined as sexual offences under POSCOA between themselves will it be an offence?



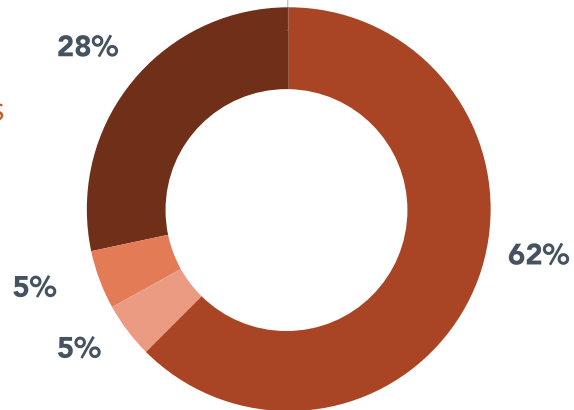
Responses	No. of People	Percentage
● Yes	54	84%
● No	1	2%
● No Response	9	14%
Total	64	100%

Although the 54 (84%) who considered it as an offence gave the correct answer, it is noteworthy that 9 (14%) could not respond and 1 (2%) replied negatively.

They were further asked if it would be an additional offence, if **both the children are of the same sex and if yes under which law would that be an offence?**

Their responses were as follows;

Would it be an additional offence, if both the children are of the same sex and if yes under which law would that be an offence?

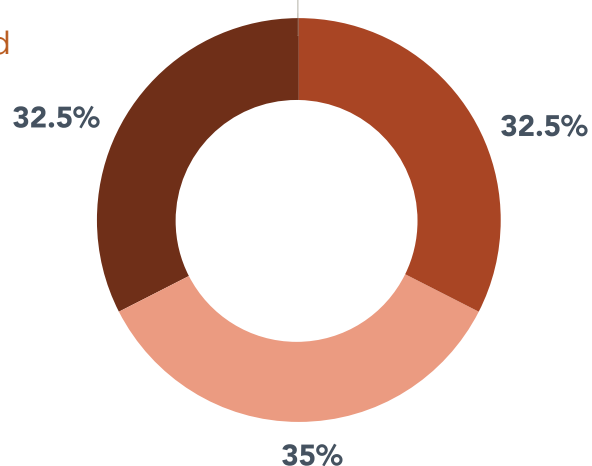


Responses	No. of People	Percentage
● Yes	40	62%
● No	3	5%
● Don't Know	3	5%
● No Response	18	28%
Total	64	100%

As many as 40 (62%) police respondents stated that it would amount to an additional offence.

Those 40 who replied positively were further asked to state the law under which it would be an additional offence. They replied as follows;

If yes under which law would that be an offence?



Responses	No. of People	Percentage
● IPC	14	35%
● POSCOA and IPC	13	32.5%
● POCSOA	13	32.5%
Total	40	100%

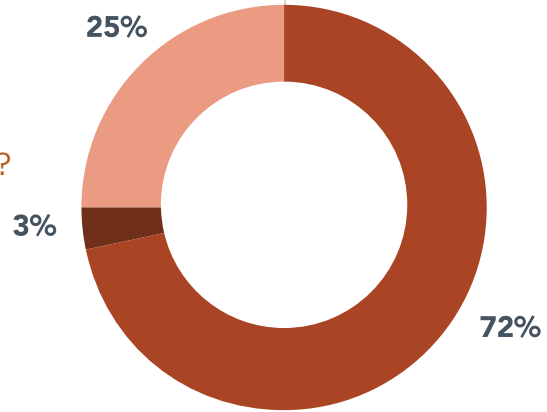
Thirteen of the 40 (i.e. 32.5%) considered it as an additional offence under POCSOA which is incorrect. Only 14 (35%) stated it to be an offence under the IPC which is correct. (It would be an offence as per Sec 377 IPC) and the same number replied saying 'under both the laws'.

The nuances of the various laws, their overlapping areas and the gaps between them are not clear to most of the police personnel. The response pattern indicates a need for further clarity and training for the police personnel on applying relevant laws in a correct manner.

### Advantages of POCSO

The police are used to applying the IPC as it is a most used law at the police station. POCSO Act is a specialized law limited to sexual offences against children and has elaborated and articulated many offences and made many victim friendly provisions in the procedure. The police personnel were asked;

When it comes to child victims of sexual offences do you think that POCSO Act has any advantages over IPC?



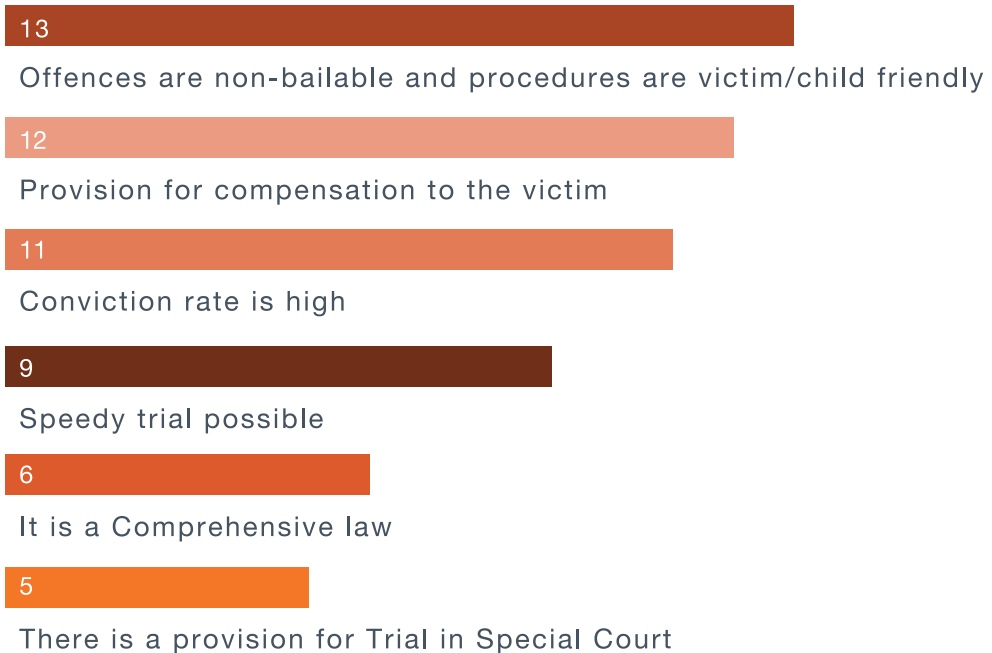
Responses	No. of People	Percentage
● Yes	46	72%
● No	2	3%
● Don't Know	16	25%
Total	64	100%

The correct answer expected was affirmative.

Although 46 (72%) out of 64 consider POCSO Act to be superior to IPC on matters of sexual offences against children, there were as many as 28% who were not clear.

Those who thought that the POCSO Act had more advantage over IPC were asked to substantiate their response for stating so.

Responses



## Opinions

### Mandatory Reporting

POCSOA has a new provision namely mandatory reporting of sexual offence which has led to public debates about its utility and invited criticism from a section of child rights activists and service providers.

#### **POCSOA Section 19.** Reporting of offences.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, — (a) the Special Juvenile Police Unit; or (b) the local police.

(2) Every report given under sub-section (1) shall be—

(a) ascribed an entry number and recorded in writing; (b) be read over to the informant; (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under subsection (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub section (1).

**Section 21. Punishment for failure to report or record a case.-**

(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

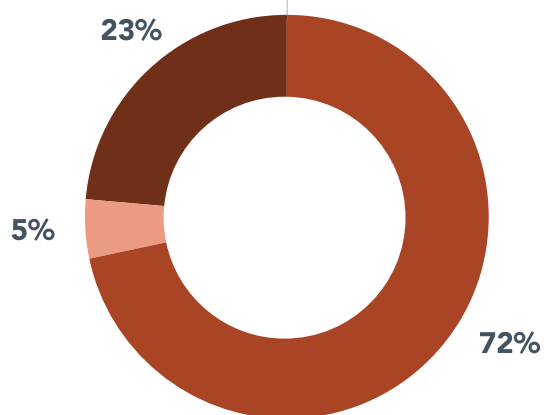
(3) The provisions of sub-section (1) shall not apply to a child under this Act.

It was feared by some that the deficit drafting of the Section on mandatory reporting might lead to confusion and chaos if implemented in text and spirit.

Although many service providers have complained that the provision was counter- productive and stated that it slowed down their activities, the expected commotion did not take place. One possible reason for that could be that the provision was not taken up seriously by the police and was not enforced in text and spirit.

The police respondents were asked if they had booked anyone under POCSOA for non-reporting of an offence.

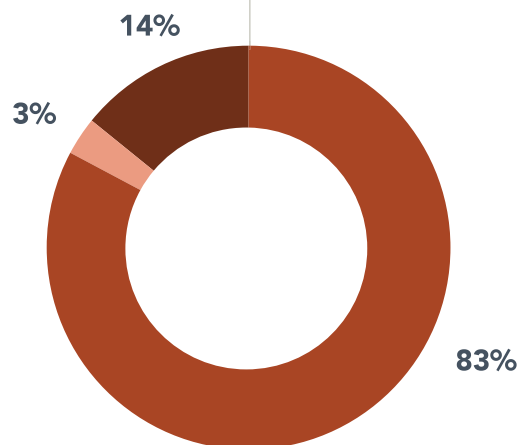
Have you booked anyone under POCSOA for not reporting an offence?



Responses	No. of People	Percentage
Yes	3	5%
No	46	72%
No Response	15	23%
Total	64	100%

This aspect was further probed by asking the respondents if they were aware of any other place where cases were booked for violation of mandatory reporting provision of POCSOA.

Have you heard of any one booked under POCSO Act for non reporting the offence?



Responses	No. of People	Percentage
Yes	2	3%
No	53	83%
No Response	9	14%
Total	64	100%

The following cases which were booked under the provision for Mandatory Reporting under POCSOA were highlighted by police personnel in informal discussions;

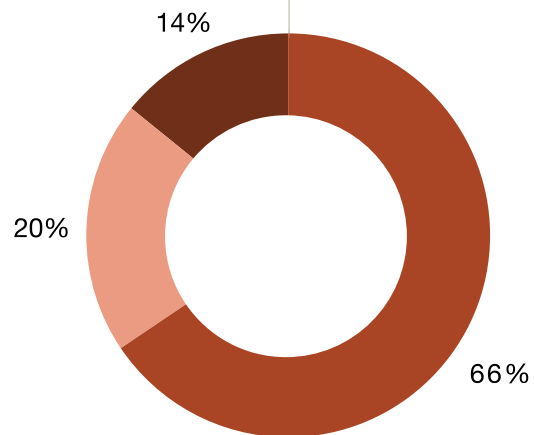
In a tribal school during a routine medical examination, doctors detected pregnancy in one of the students. The doctors reported the case to the school principal but no action was taken. The medical report was submitted to the Collector who then passed orders to take action. The police then arrested the accused and registered a case. They also filed a case against the school principal.

#### Tapovan Case

**A minor girl at an institution in Tapovan, Amravati was raped. The staff at the institution including the superintendent try to hush up the matter. However, the word spread and a case was registered under POCSOA. The staff members and the superintendent were booked for non-reporting.**

All of this supports the impression that the clause is not being implemented seriously in text and spirit.

POCSOA makes it mandatory for anyone (who is aware of the case or suspects SOAC) to report sexual offences against children to police. What is your opinion on this?



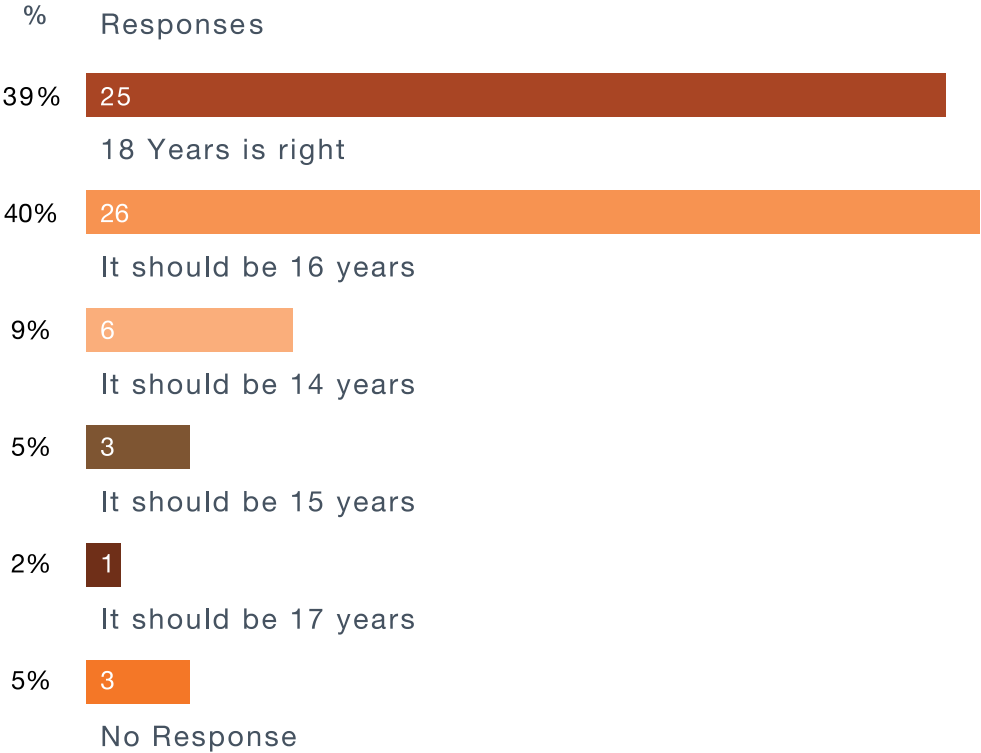
Responses	No. of People	Percentage
● The provision for mandatory reporting must be there	42	66%
● The provision should not be there	13	20%
● No Response	9	14%
Total	64	100%

A majority (66%) of the police personnel feel that the provision of mandatory reporting is appropriate.



### Age of Consent

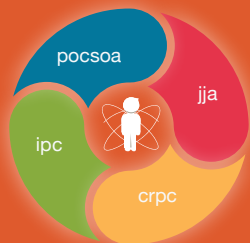
The police respondents were requested to give their opinion on 18 years being the age of consent for sexual activity as mentioned under POCSOA.



Twenty five (39%) out of 64 police personnel feel that the age of consent should be 18 years while 26 (40%) feel it should be 16 years. 2% feel it should be 17 years while 9% also feel that it should be 14 years. The majority of police personnel are not in agreement over the legal position of 18 years as the cut off age for age of consent.

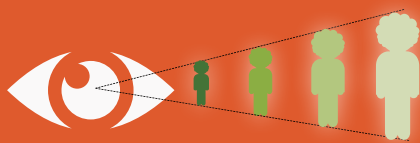
## Conclusions

1. The awareness score (focused on their responsibilities under POCSOA) for the police respondents was **56%**.



The salient features of the various laws, the overlapping areas and the gaps between them are not clear to most police personnel.

2. The **nuances of the various laws**, their overlapping areas and the gaps between them are not clear to most of the police personnel.
3. POCSOA considers it to be the responsibility of the police personnel handling cases to ensure child friendly practices such as - not presenting themselves before a victim child in police uniform, arranging for shelter and other needs of the child if found in need of care and protection, protecting the identity of the child, not letting the accused and his representatives encounter the victim child, reporting the matter to the CWC, mobilizing the other service providers, and to follow a distinct timeline. **The comprehensive understanding of child friendly practices was not reflected in the responses given.**



All police personnel knew that they had to consider anyone below the age of 18 years as a child.

However they also mentioned that, in practice, they view only persons below 12 as a minor.

4. All (64) police respondents stated that theoretically they understood the age of the child as 18 years old, **however in every interaction they mentioned that they only view any person below the age of 12 years as a minor.** They also mentioned that they felt that cases of children below 12 are always genuine. They admitted that child friendly practices are unhesitatingly followed when the child is below 12 years of age.

5. **In a vast majority of police stations there are no women PSIs.** There was a stark difference noted in the availability of lady PSIs in urban and rural areas. In urban areas, every police station had at least 1 lady PSI dedicated to working on cases of children. In rural areas it was not uncommon to find only 1 lady PSI for 15 or even 25 police stations.



56%

of rural police stations did not have women Police Sub-Inspectors appointed. It was not uncommon to find only 1 lady PSI for 15 to 25 rural police stations. In urban areas, every police station had at least 1 lady PSI.

6. Between 2 pm to 5 pm there was not a single police officer (of the levels of PSI & PI) present in 20 police stations that were visited.



64%

rural police stations had no separate rooms or waiting areas that could provide privacy to the victim or the family. Majority of the rural police stations also lacked functional toilets.

7. **Majority of the police stations had no separate rooms or waiting areas** that could provide privacy to the victim or the family. 64% of rural police stations had no separate waiting rooms.
8. Majority of the **rural police stations lacked functional toilets.**
9. In most districts, when a case comes to their attention, the police take the victim child in a bus or a private vehicle to the district head-quarters. In some cases families are asked to reach the district headquarters on their own. Thus the family has to spend a considerable amount of money every time they are called to the court. Sometimes **the accused and the victim are taken in the same vehicle to the district headquarters.**

10. **Only one police officer is trained in POCSOA from each police station.** When this police officer is on leave or transferred, other officers are assigned to handle the cases without having the necessary orientation to do so. This, by the police personnel's own admittance, is problematic.
11. Several officers mentioned the use of a software application named Hashdroid while recording the evidence of the child using an audio-visual medium. **Hashdroid assigns a unique ID (i.e hash) to the digital file of the recording. This helps prevent any form of tampering with video evidence.** Some of these videos have been accepted in the court as evidence.
12. **Many police stations mentioned not taking down complaints which do not fall in their jurisdiction** although POCSOA states otherwise. However, all police respondents also admitted that they had to mandatorily record every complaint under POCSOA that comes to their police station. This is a paradox.



100%

All police personnel mentioned recording of a statement of a child under **Sec 164 of CrPC** as among the first 5 steps they would take on receiving a POCSOA complaint.

13. Despite the fact that the law does not make it mandatory, **all the police respondents (100%) mentioned that recording of a statement of the child under Sec 164 of CrPC as among the most important 5 steps they would follow** on receiving a POCSOA complaint.
14. The understanding of the police personnel on the need for medical examination in cases of child victims of offences under POCSO Act is at variance with what is mandated under POCSOA.



61%

of the responses stated that the child's statement is taken at the police station.

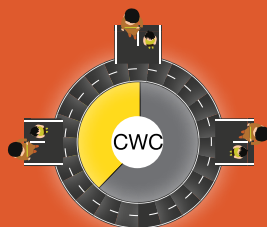
15. More than half of the police respondents (61%) stated that not every child against whom an offence under POCSOA has been allegedly committed is sent for medical examination.



39%

police respondents mentioned that they send only the cases of 'rape' falling under IPC Sec 375 and 376 for medical examination.

16. **39% police respondents mentioned that they send only the cases of 'rape' falling under IPC Sec 375/376 for medical examination.** This is a serious misunderstanding.
17. **The prime and exhaustive purpose of conducting a medical examination for POCSOA cases is not clear to most of the police** personnel working on the frontline.
18. **Less than half (39%) police respondents mentioned that they have to report every case of POCSOA to the CWC** and another 17% mentioned they have to report every case to a court.
19. Although the majority of the police respondents stated that they had no challenges in working with CWC, **38% of the police respondents also stated that they had no interaction with the CWCs on the POCSOA cases** that they handled.



38%

police respondents stated that they had no interaction with the CWCs on POCSOA cases.

20. As regards the adequacy of the services for children in their district **78% said service were adequate while 22% said they were deficit.**
21. **83% police respondents were aware of the Manodhairya scheme and 78% were aware of their role** under it.
22. As many as **61 % of the responses stated that the child's statement is taken at the police station** which is against the spirit of POCSOA. Of these, 2 police personnel specially mentioned that they record the statement in camera in a private room inside the police station.
23. **The presence of a women police officer and the care to be taken not to present oneself before a child in police uniform seem to have been noted** and registered by most of the police respondents as the key child friendly practices to be followed under POCSOA.
24. 45% police respondents stated that they had not come across cases of differently abled child victims of POCSOA offences. This indicates a worrying possibility that **incidences of sexual abuse against differently abled children may still be going unreported.**
25. Only **20 police personnel mentioned that a statement of the victim child by itself is evidence**, in line with the new addition brought about by the POCSOA.
26. A majority (66%) of the police personnel feel that the provision for mandatory reporting should be kept. However, there is also an indication that the provision is not taken up seriously by the police and the state and is not being enforced in text and spirit.

## FIVE

# DATA ANALYSIS

This chapter presents the analysis of the primary and secondary data for a number of respondents and the understanding derived therefrom.

## SECTION 2

### PUBLIC PROSECUTORS

18

public  
prosecutors

To facilitate a child friendly and speedy process of trial, Sec 32 (1) of POCSO Act provides for the appointment of Special Public Prosecutors:

It states,

17

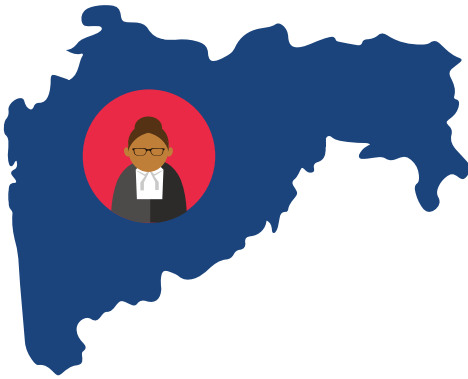
districts


POCSO Act 2012- Sec 32(1) - 'The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.'

For this study, 18\* public prosecutors from 17 districts were interviewed against an Interview Schedule. 9 public prosecutors (50%) were from the urban areas and the other 9 (50%) from the rural areas.

*\*Two special public prosecutors from Mumbai were interviewed.*

## Field Observations



 50% of prosecutors interviewed were based in urban areas.

 The other 50% were based in rural areas.



15 out of 18 (83%) PPs stated that they had dealt with cases of sexual offences against children before POCSOA came into force.

## Special courts

Section 28 Designation of Special Courts.- (1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000 (21 of 2000), shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilities abuse of children online.



Fifteen (83%) respondents mentioned that they have designated court rooms to handle cases under POCSOA. However, these courts are not exclusive POCSOA courts as they also deal with other cases of women. In the remaining districts, POCSOA cases are either allotted randomly to certain courts or to courts with a lady magistrate. The number of special courts in a district varied from 1 to 3 based upon the geographical area and population of the district.

Only 8 (42%) courts had a designated Special Public Prosecutor who was assigned to attend to cases under POCSOA. Nine (47%) courts did not have a Special Public Prosecutor.

The practice followed in the allotment of courts and appointment of Public Prosecutors was varied across districts. In 10 districts (59%), the District General Prosecutor (DGP) allotted cases to the prosecutors based on their availability.

In courts where a Special Public Prosecutor was not appointed, a woman prosecutor was assigned by the DGP every time when cases under the POCSOA came to the court.

As mentioned by one of the prosecutors, a government circular has been issued stating that the senior-most judge has to work on cases under the POCSOA. The gender of the judge does not seem to be a consideration.

With an exception of 1 court, there was no separate waiting room for victims across the 17 districts. The victim children are made to wait either in the Public Prosecutor's office or outside the courtroom risking proximity and contact with the accused and/or his representatives.

Prosecutors of 13 districts stated that they had cameras and screens / curtains in the court room to ensure that there is no direct contact between the victim and the accused during the statement recording and trial. Field observations in 4 districts confirmed the presence of camera and the screen/ curtains. In courts where there is more than one courtroom attending to cases under POCSOA, only one room was found fitted with camera and screens/ curtains.

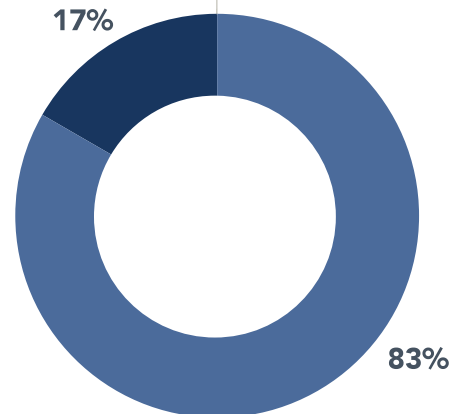
Though POCSOA Section 2 (d) mentions the age of the child as below 18 years, the researchers were told that child friendly procedures are adopted only in those cases where the victim child is 12 years or below.

In 3 districts, the team observed the Prosecutors preparing victim children for the trial by familiarizing them with the court proceedings. The child was made to sit in the prosecutor's cabin, where other prosecutors were also present and was being asked questions to orient and prepare her for the cross examination. The researchers were not allowed to be inside the room during the preparation.

## Information Through Interview Schedule

Have you dealt with the cases of sexual offenses against children (SOAC) even before the POCSOA came into force?

Have you dealt with SOAC cases before POCSOA?



Responses	No. of People	Percentage
● Yes	15	83%
● No	3	17%
Total	18	100%

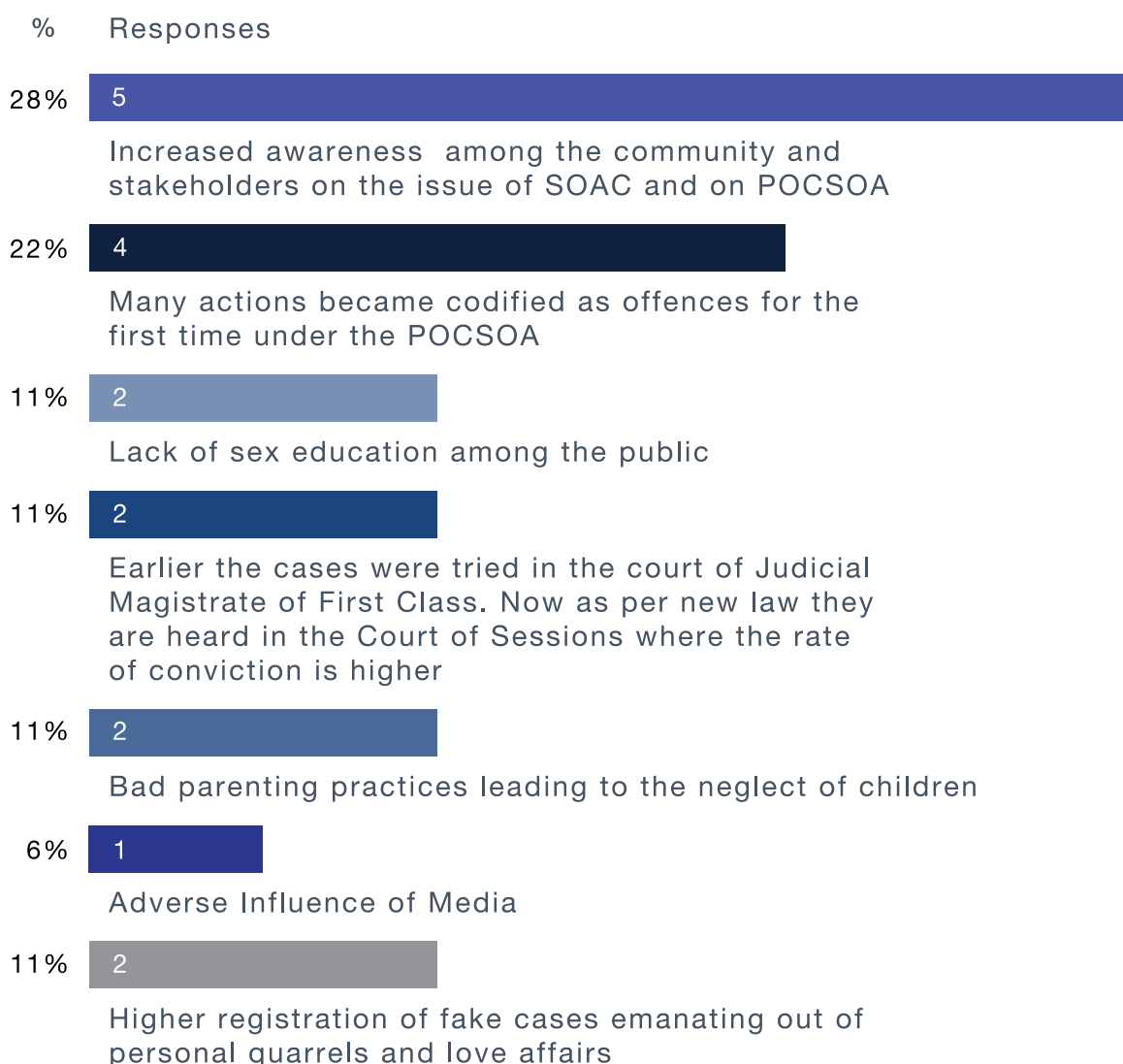
It is noteworthy that 15 out of 18 (83%) PPs stated that they had dealt with cases of sexual offences against children before POCSOA came into force.

Have you observed an increase in the number of cases of Sexual Offences against children that have come to your court since 2012?

In response to this all of the public prosecutors (100%) affirmed that there was an increase in the number of cases of SOAC that came to their court.

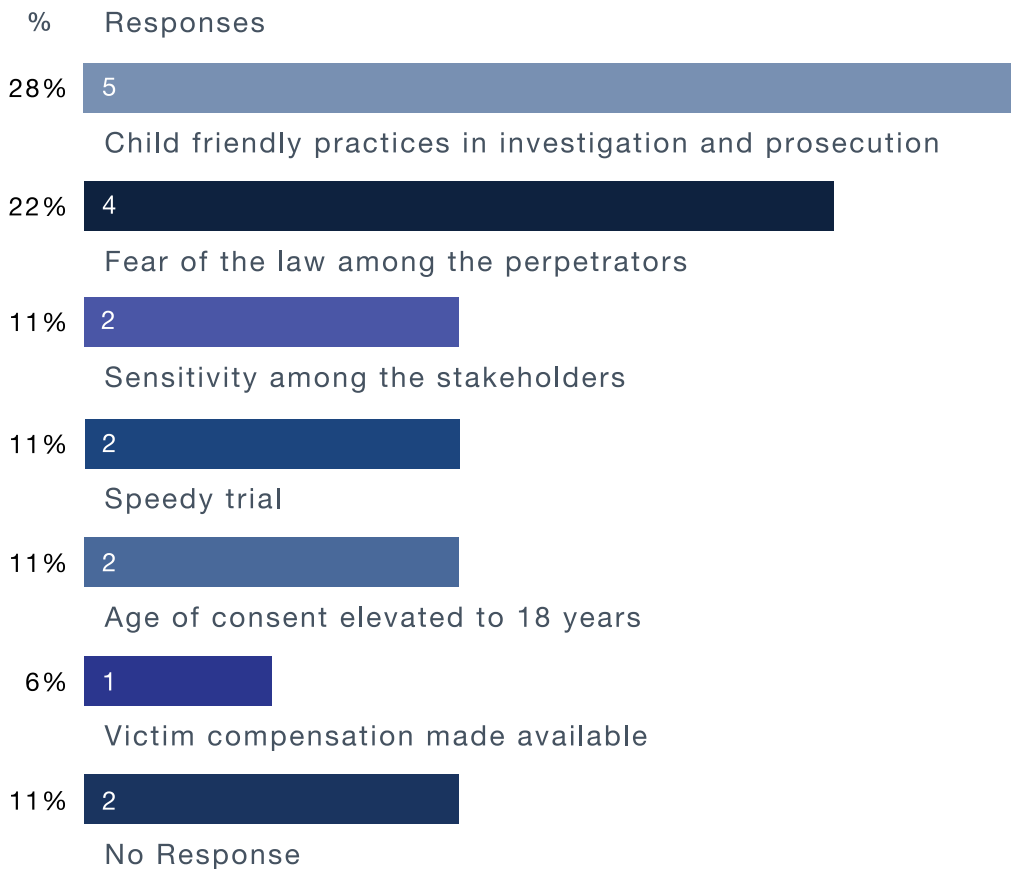
The respondents were requested to identify the reasons for the increase.

What do you think are the reasons for the increase in the number of cases?



As is commonly seen in most other categories of respondents under the Study, this question has been answered by referring to both- increased acts of offences as well as increased reporting of the offences.

What according to you are the positive changes that POCSOA has brought in for handling cases of sexual offences against children?



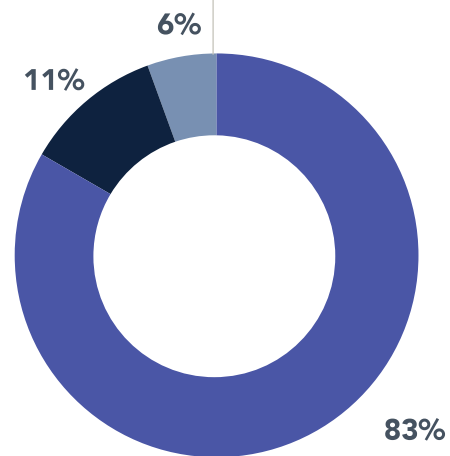
When asked about positive changes brought in by the law, 5 (28%) prosecutors stated that POCSOA defined child friendly practices to be followed during investigation and prosecution.

Four (22%) prosecutors stated that POCSOA provided for stricter punishment and trials at the Court of Sessions where conviction is higher. They mentioned that these in turn have created a prohibitive fear among the general public against committing the crime.

Two (11%) prosecutors stated that POCSOA has facilitated higher sensitivity among the stakeholders towards the victim. 2 (11%) prosecutors mentioned that POCSOA provided for speedy trial thereby instilling confidence in the victims' families to register cases and seek justice. Another 2 (11%) prosecutors mentioned the change of age of consent from 16 to 18 as a positive change brought by the POCSOA. While 1 prosecutor mentioned victim compensation as a welcome change introduced by POCSOA.

Does the provision of a Special POCSOA Court help in the trials of POCSOA cases?

Has the provision of Special POCSOA Court helped?

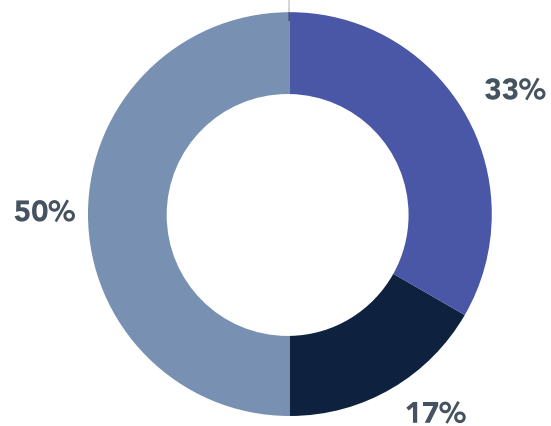


Responses	No. of People	Percentage
● Yes	15	83%
● No	2	11%
● Don't Know	1	6%
Total	18	100%

Fifteen out of 18 Prosecutors (83%) mentioned that allotting a Special Court to deal with cases of POCSOA has indeed led to speedy disposal of cases.

They were requested to give reasons for stating so.

Why do you believe that Special Courts have helped?

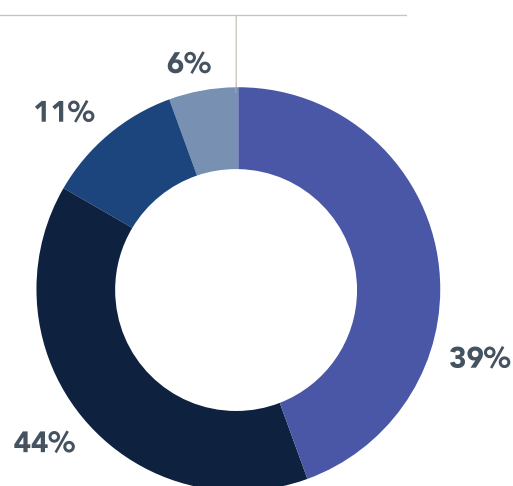


Responses	No. of People	Percentage
● POCSOA cases get priority	6	33%
● Cases get disposed very fast	3	17%
● No Response	9	50%
Total	18	100%

A total of 9 (50%) prosecutors stated that due to presence of special courts, POCSOA cases get priority and are being disposed faster. Out of the respondents, one prosecutor added that due to a designated special court, convictions now happen within a time-span of 1 to 1 1/2 years from the date of reporting of the offence. It is also to be noted that 9 (50%) prosecutors did not cite specific reasons as to why they believe that the special courts have helped cases under POCSOA.

Under POCSOA what specific responsibilities other than your usual responsibilities under the CrPC, Law of Evidence and IPC have been placed upon you as a public prosecutor? (mention what is peculiarly assigned to you by POCSOA)

What specific duties have been placed upon you as a public prosecutor?



Responses	No. of People	Percentage
● No special responsibilities	8	44%
● We have to ensure a child friendly trial	7	39%
● We have to ensure that the trial is speedy	2	11%
● Lady staff magistrate and Lady PP to be appointed	1	6%
Total	18	100%

Eight (44%) respondents mentioned that there are no specific responsibilities placed on them under POCSOA.

However, 7 (39%) stated that POCSOA recommends that prosecutor's ensure child friendly trials. Another 2 (11%) stated that speedy and time bound trials are additional responsibilities placed upon them by POCSOA.

## Recording Statement under CrPC Sec. 164

25. Recording the statement of the child by Magistrate.- (1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:

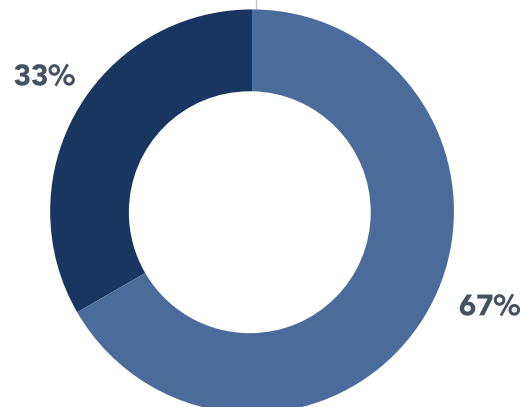
*Provided that the provisions contained in the first proviso to sub-section*

*(1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.*

*(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code*

Is it mandatory that the statement of every child victim under POCSO must be recorded in as per Section 164 CrPC.?

Is it mandatory to take every victim child's statement under CrPC Sec. 164?

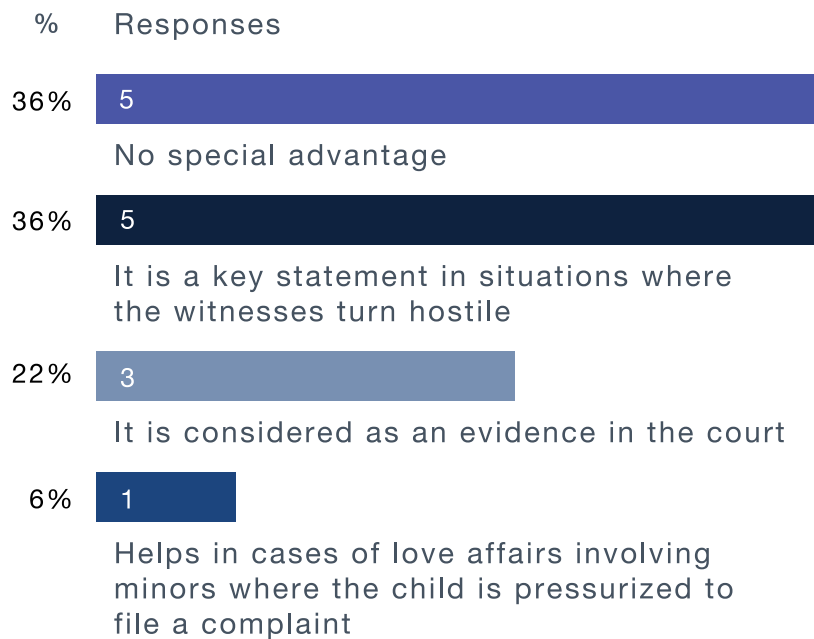


Responses	No. of People	Percentage
● Yes	12	67%
● No	6	33%
Total	18	100%

Twelve (67%) respondents gave a positive response.

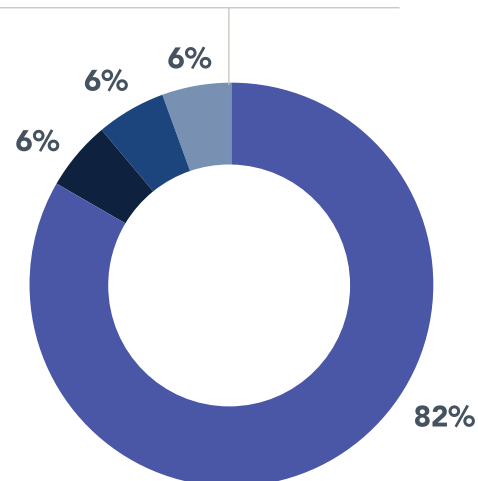
They were further requested to quote the advantages of recording the statements under CrPC Sec.164.

If yes, what are the advantages of recording the statement as per CrPC Sec. 164?



Five (36%) mentioned that there was no special advantage in recording a statement as per section 164 under CrPC. Another 5(36%) said that such a statement could be helpful in situations where a victim turns hostile. 3 (22%) said that a CrPC Sec. 164 statement is an important piece of evidence.

Who can be present during the recording of the statement of the child under CrPC Sec. 164?



Responses	No. of People	Percentage
● The Judge and the stenographer	15	82%
● The Judge, the stenographer and the parents	1	6%
● The Judge, the stenographer, parents, public prosecutor and defense lawyer	1	6%
● No Response	1	6%
Total	18	100%



Fifteen (82%) prosecutors affirmed that only the judge and the steno can be present while taking the statement of the child, while 1 (6%) stated that the defense counsel also can be present which goes against POCSO Act.

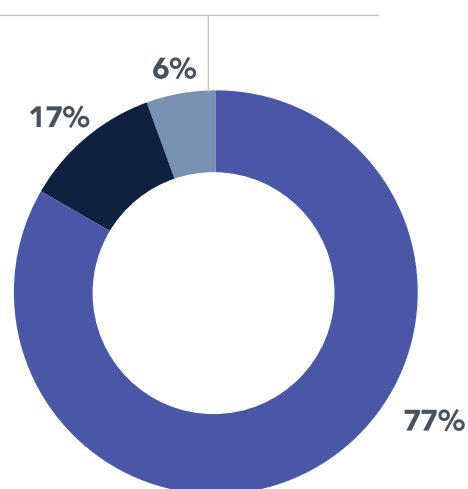
POCSOA lays emphasis on ensuring child friendly trial procedures. The presence of person/s in whom the child has trust while recording the statement of the child is considered an important measure to ensure child friendliness in the procedures.

Though POCSOA provides for recording of the statement of the child by the magistrate under Section 164 of Cr.PC, it does not allow the presence of the advocate of the accused. Attempt was made to check the knowledge of the prosecutors on this point.

CrPC Sec. 164 allows the advocate of the accused to remain present while the magistrate/ police is recording the statement of the victim.

Can the advocate of the accused remain present when the magistrate / police is recording the statement under CrPC 164 in case the victim is a child victim of offences under the POCSOA?

Can the advocate of the accused be present?



Responses	No. of People	Percentage
● Yes	3	17%
● No	14	77%
● No Response	1	6%
Total	18	100%

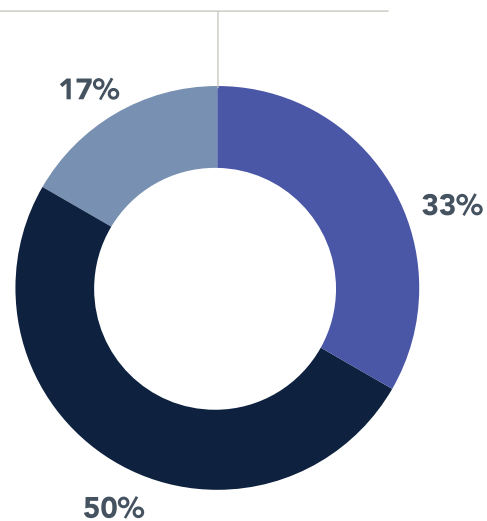
Fourteen out of 18 (77%) prosecutors rightly stated that the advocate of the accused is not allowed to remain present when the statement of the child victim of POCSOA offences is being recorded by a magistrate under CrPC Sec. 164. Worryingly, 3 out of 18 (i.e. 17%) stated that as per the law the defense advocate can remain present.

Universally, most evolving and progressive legislations and organizations of prosecutors have strongly recommended sight and sound separation between the child victim of sexual offences and the accused or the latter’s representatives. The prosecutor respondents were asked if there are any circumstances in which POCSO permits interaction between the victim and the accused or his/her representatives.

## Practices

Are there any circumstances in which POCSO permits interaction between the victim and the accused or his/her representatives?

Is any interaction between the accused and the victim allowed?



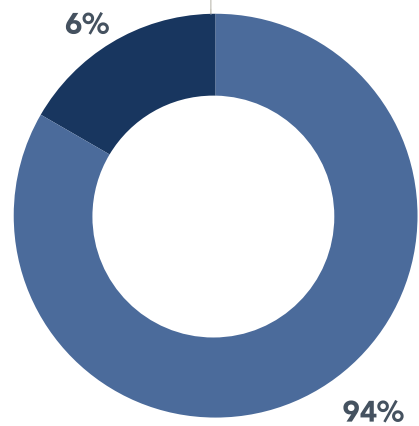
Reponses	No. of People	Percentage
● Yes	6	33%
● No	9	50%
● No Response	3	17%
Total	18	100%

Half of the prosecutors (50%) stated that POCSOA under no circumstances permits any interaction between the victim child and the accused or his representatives. As many as 6 out of 18 (33%) stated that it does permit interaction between the victim and the accused or his/her representatives while 3 (17%) gave no response.

However the reasons they have given for stating “yes” to the above question, suggests that they are not implying that the accused has a right to interact directly with the victims.

The prosecutor respondents were asked as to whom all could be present in the court room during the trial.

Who all can be present in the court during a trial under POCSO?



Reponses	No. of People	Percentage
● All (i.e. Judge, Steno, Parents, Accused and his Legal Counsel, Public Prosecutor)	17	94%
● Only the Judge	1	6%
Total	18	100%

Seventeen out of 18 (94%) PPs stated that the Judge, the public prosecutor, the accused, the advocate of the accused, the steno and the parents of the child victim can be present in the courtroom at the time of the trial.

POCSO is a unique and novel law that for the first time introduces child friendly practices in investigation and prosecution. Summarily speaking, those relevant for Special Court are as follows;

**POCSO Sec 33 states,**

**Procedure and powers of Special Court:**

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The **Special Public Prosecutor**, or as the case may be, **the counsel appearing for the accused shall**, while recording the examination-in-chief, cross-examination or re-examination of the child, **communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.**

(3) The Special Court may, **if it considers necessary, permit frequent breaks for the child during the trial.**

(4) The Special Court shall **create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.**

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit **aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained** at all times during the trial.

(7) The Special Court shall ensure that **the identity of the child is not disclosed at any time during the course of investigation or trial:** Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

**POCSO Sec. 36 states;**

(1) The Special Court shall **ensure that the child is not exposed in any way to the accused at the time of recording of the evidence**, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court **may record the statement of a child through video conferencing or by utilizing single visibility mirrors** or curtains or any other device.

As a prosecutor is meant to assist the court in delivering justice and as the prosecutors are specially appointed for the POCSOA cases it is expected that the prosecutors should be very well aware of the above measures for child friendliness.

What are the procedures/arrangements that court rooms must have as per POCSOA to ensure child friendliness in the courtroom?

#### Responses

7

Use one way mirror/curtain

4

Hold 'in camera' trial

3

Use the chamber of the Judge for recording the evidence of the child

3

Use short circuit TV (CCTV) for taking evidence and cross examination

2

Use separate rooms for the accused and the victim

2

Police should be in informal clothing

Seven PPs mentioned that one-way mirror or curtain should be used to keep the victim away from the accused. 4 PPs mentioned that the trials should be conducted in camera while 3 stated that they use the chamber of the Judge and video conferencing for evidence and cross examination.

Section 41 of POCSO makes an exception for medical doctors who are conducting examination of a child. It states that the provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

If during medical examination the medical practitioner touches the vagina of a child, will it amount to sexual assault under section (5) of POCSO?

It is interesting to know that only 3 (17%) of the respondents stated that it will not be an offence under POCSO. 4 affirmed that it would be an offence. Others did not give any reply.

Sec 33 (2) states 'The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.'

To gauge their awareness of this provision a question was put to them-

Under what circumstances can the defense counsel directly question the child during the trial process as per POCSO?



Only 2 (11%) of the prosecutors rightly stated that direct questioning by the defense is not permitted at all for examination of the victim under POCSOA. 67% confirmed that the defense counsel can directly question the child in various circumstances. This is in contravention to what is stated in POCSOA.

The above responses indicate that the prosecutors are not very sure about the provision.

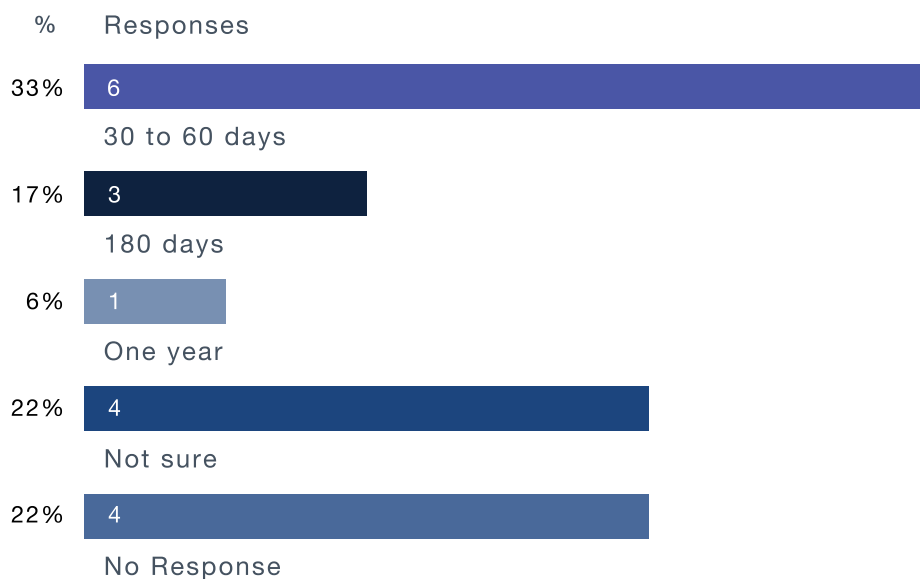
Section 35: of POCSO has fixed the time limits for recording of evidence of child and disposal of case:

(1) The **evidence of the child shall be recorded within a period of thirty days** of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall **complete the trial, as far as possible, within a period of one year** from the date of taking cognizance of the offence.

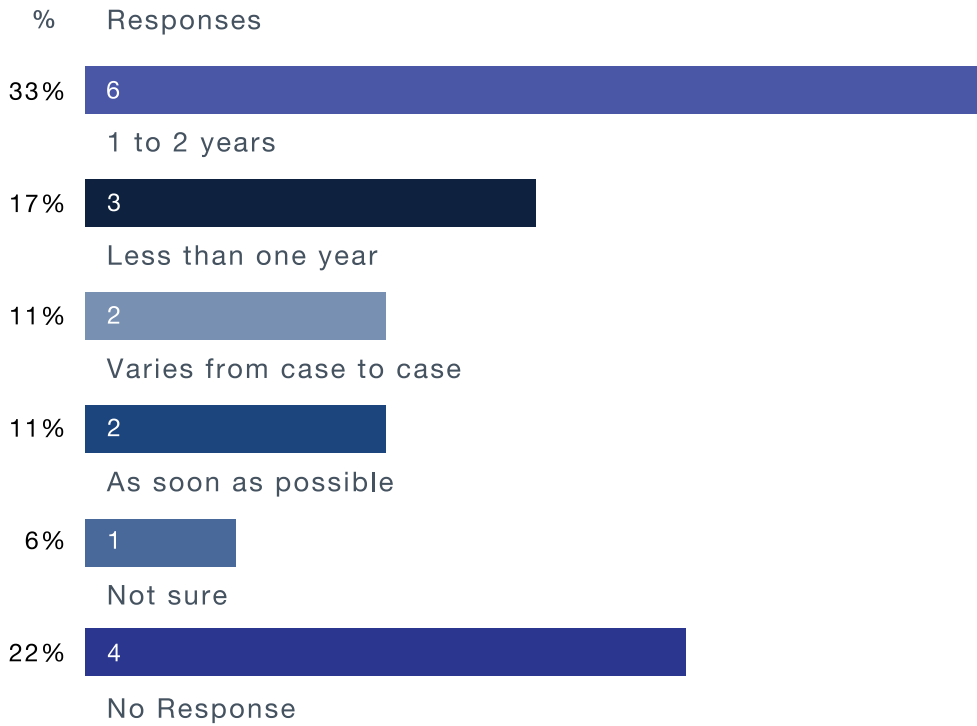
The knowledge of the prosecutors was assessed against this provision through the next two questions:

As per POCSOA, what is the time period prescribed for recording of the evidence of the child victim after the court has taken cognizance of the offence?



Only 6 (33%) of the prosecutors seem to have given roughly the correct answer which is 30 days. While 4 (22 %) refrained from responding and equal number stated that they were not sure about the time limit. 4 (i.e. 23%) stated it to be 6 months to one year which is incorrect.

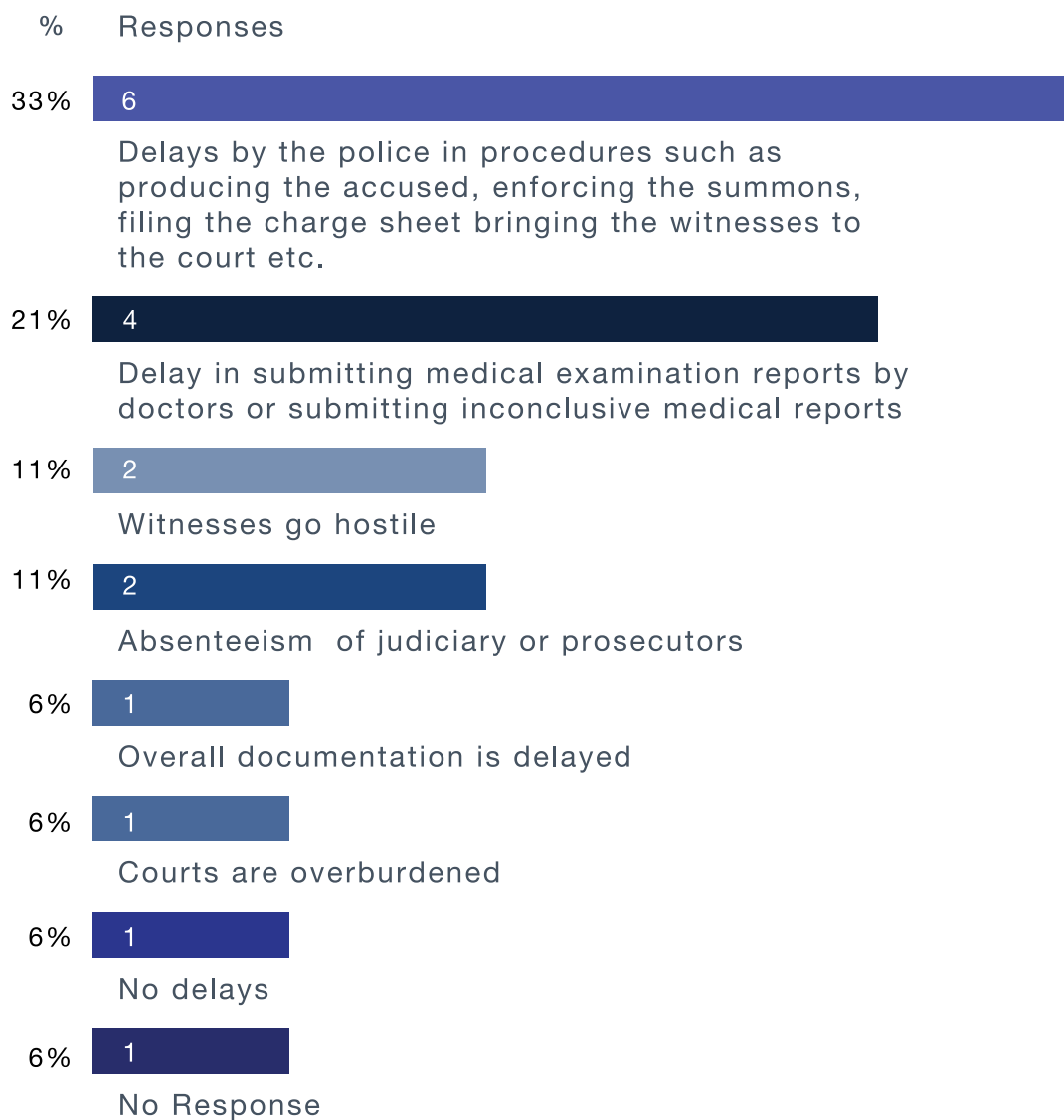
As per POCSOA what is the time period recommended for the completion of a trial?



Again, Nine (50%) of the prosecutor respondents seem to have given a roughly correct response regarding the specified time for completing the cases as per POCSOA.



The prosecutors were requested to mention the challenges faced in time-bound completion of cases under POCSOA. The following responses were given:



A total of 10 prosecutors (54%) mentioned that delays by police and doctors in producing reports and evidence is a major challenge.

The amendments effected through JJ Act 2015 create a special category of children in conflict with law who have committed a heinous crime like gang rape, murder etc and who are between 16 and 18 years of age. The JJB after examination of the case is required to send such cases to the Court of Sessions for trial. The said child gets treated as an adult once the Court of Sessions has examined the propriety of such referral by the JJB. However, nothing of the new amendment affects the existing practice as per which a child below 16 years of age who is in conflict with the law must be tried by the JJB regardless of the nature of the offence. To understand the clarity on the same among the prosecutors they were asked the following question.

In case an offender under POCSOA is below 16 years of age what steps must be followed?

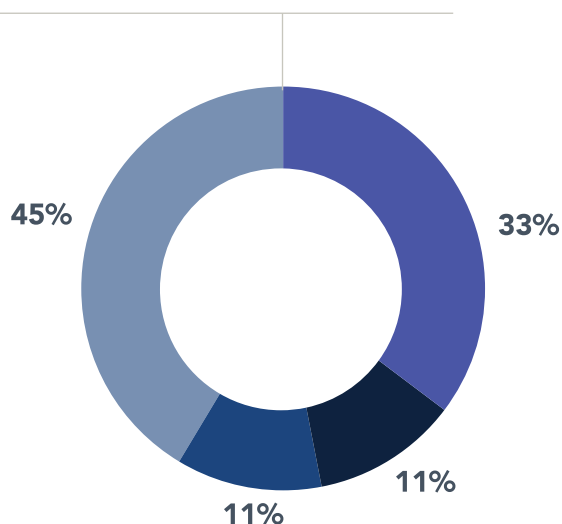
All (100%) prosecutors gave a correct response i.e. the child should be sent to the Juvenile Justice Board.

We tried to know from the prosecutors as to what steps they could take to ensure that a child’s statement is appropriately recorded in the court in case the child victim has a learning disability.

On this point POCSOA Section 26 (3) provides as follows – “The Magistrate or the police officer, as the case may be, may, in the case of a child having mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.”

In a case where the child victim has a learning disability and has severe difficulty in communication, as per POCSOA what steps can you take to ensure that this child’s statement is appropriately recorded in the court?

What are the steps when recording the statement of a disabled child?



Responses	No. of People	Percentage
● Engage a Special Educator	6	33%
● Take assistance of relatives	2	11%
● Take assistance from a department of Psychiatry	2	11%
● No Response	8	45%
Total	18	100%

Six (33%) of them gave the correct response that they would engage special educators to support the recording of the statement of the child.

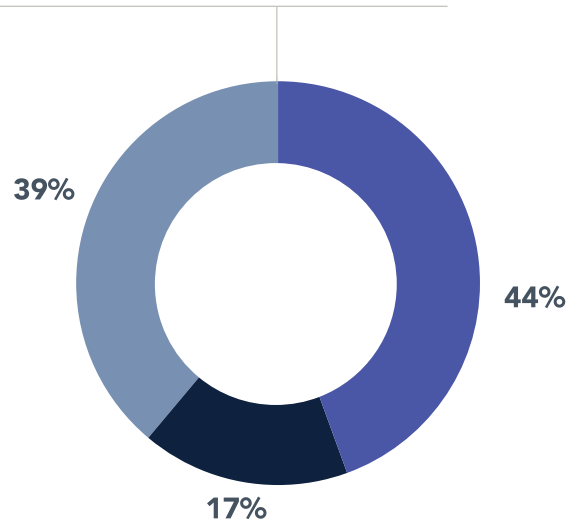
On the matter of penetrative sexual assault the POCSOA is gender neutral i.e. the crime can be committed by both a male and a female. But IPC considers that the offence of rape can be only committed by a man on a woman.

We put the following question before the prosecutors to test their awareness of the same;

Does the IPC Section 376 (rape) or any other provision in IPC consider it an offence if committed by a woman on a man?

The responses were as follows:

If committed by a woman, does penetrative sexual assault amount to rape under IPC?

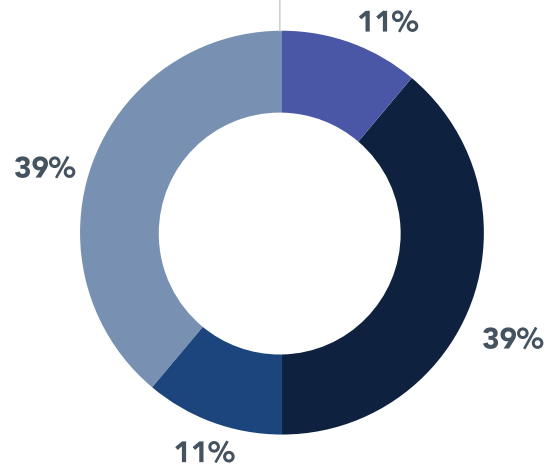


Responses	No. of People	Percentage
● Yes	3	17%
● No	8	44%
● No Response	7	39%
Total	18	100%

While 8 (44%) of prosecutors gave the correct answer, 3 (17%) felt that it is an offence under the IPC. 7 did not answer that question.

If a woman commits penetrative sexual assault on a boy who is 17 years of age and who has given his consent will it be an offence under POCSO Act?

Is it a crime if a woman commits penetrative sexual assault on a boy under 17 under POCSOA?



Responses	No. of People	Percentage
● Yes	7	39%
● No	2	11%
● Don't know	2	11%
● No Response	7	39%
Total	18	100%

Only 7 (39%) answered the question correctly and said 'Yes'.

The study further tried to understand what challenges the prosecutors face in their work under POCSO Act with respect to the different work areas therein.

What difficulties have you encountered while doing the following under POCSO?

w.r.t. Questioning the Child

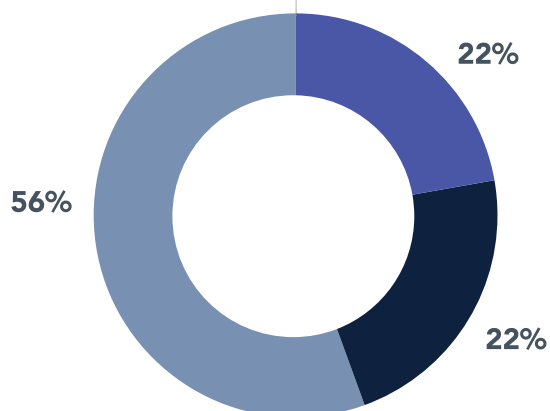
What are the challenges in understanding the language of the child?



Seven (39%) prosecutors stated that they do not face any challenge in questioning the child. 4 (22%) mentioned that it is difficult when the child is feeling under pressure or emotionally disturbed. 2(11%) mentioned that it is difficult when the child is young.

## w.r.t Understanding the Language of the Child

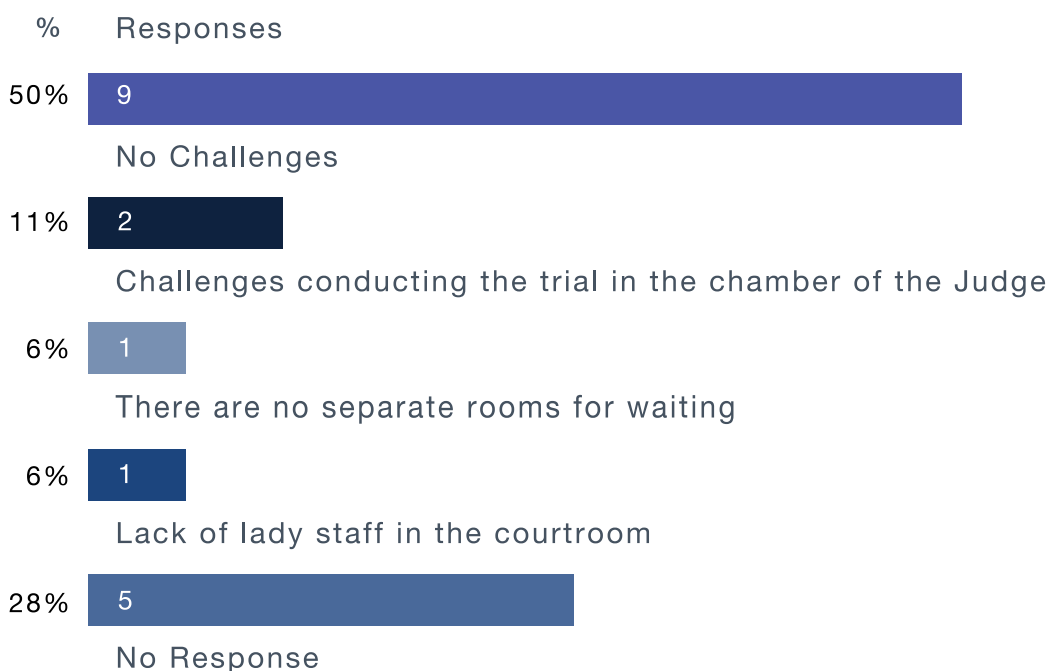
What are the challenges in understanding the language of the child?



Responses	No. of People	Percentage
● No Challenges	4	22%
● It is difficult to understand the language if the child is too small	4	22%
● No Response	10	56%
Total	18	100%

Four (22%) of the respondents mentioned that it is difficult to understand the language of the child victim when they are extremely young of age, while an equal proportion mentioned that they do not face any challenges.

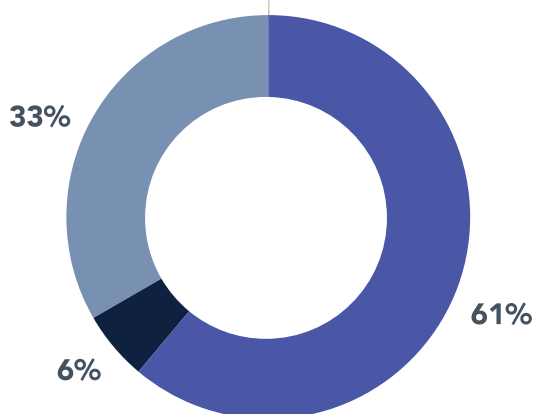
### w.r.t. Providing Child Friendly Facilities in the Courtroom



Nine of the 18 Prosecutors (i.e. 50%) felt no difficulties in providing child friendly facilities in the courtroom. 2 (11%) experienced difficulties in conducting the trial in the Chamber of the Judge. Only 1 prosecutor each mentioned that not having a separate room and not having a lady staff are hurdles in providing child friendly facilities to the child.

### w.r.t Protecting the Identity of the Child

What are the challenges in protecting the child's identity?



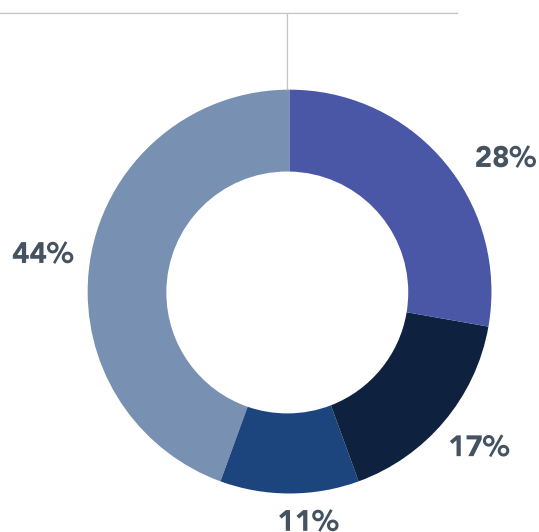
Responses	No. of People	Percentage
● No challenges	11	61%
● Police documents often reveal the identity of the child	1	6%
● No Response	6	33%
Total	18	100%

Six (33%) or a third of the prosecutors gave no response. 11(61%) stated that there were no challenges in protecting the identity of the child.

Given the serious lack of infrastructure and superstructure essential for protecting the identity at the trial court such responses indicate a worryingly casual approach to the issue of confidentiality.

w.r.t Analyzing the Evidence Report made by the Police

What are the challenges in analyzing police report?



Responses	No. of People	Percentage
● No Challenges	5	28%
● Many errors while framing charges and collecting evidence	3	17%
● Doctor's opinion is missing	2	11%
● No Response	8	44%
Total	18	100%

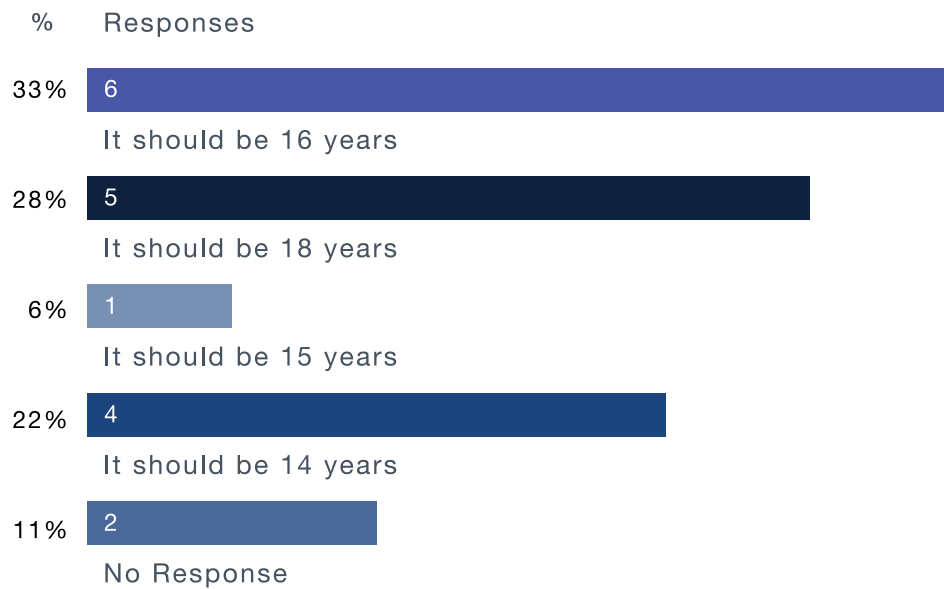
While 5 (28%) of the prosecutors stated that there were no challenges in analyzing evidence report made by the police, 8(44%) refrained from commenting. 2(11%) mentioned that the doctor's opinion is missing while 3 (17%) mentioned several errors in evidence gathering by the police.



## Opinions

### Age of Consent

The age of consent for sexual activity as mentioned under POCSO is 18 years. We would like to hear your opinion on this.

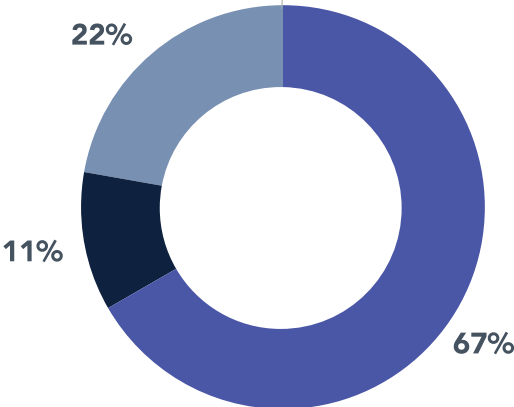


While only 5 (28%) of the Prosecutors opined that the age of consent should be 18 years, a substantial 33% held that it should be 16 years and almost a quarter of them (22%) opined that it should be 14 years.

# Mandatory Reporting

POCSO makes it mandatory for anyone (who is aware of a sexual offence against a child or suspects that it has taken place) to report cases of sexual offences against children to the police. What is your opinion on this?

What is your opinion on mandatory reporting?



Responses	No. of People	Percentage
● It should be there in the law	12	67%
● It should not be there in the law	2	11%
● No Response	4	22%
Total	18	100%

A majority of Public Prosecutors (12 out of 18 i.e. 67%) answered in favor of keeping the provision of mandatory reporting.

Only 11% replied against it.

This point needs to be understood in the context of the fact that the mandatory reporting provision is not being enforced in text and spirit. Hence there is little scope to believe that the prosecutors have any experience of handling the cases of mandatory reporting and understanding the complexities involved therein.

## Conclusions

1. The average awareness score of the Prosecutors about their specific responsibilities under the POCSOA and its Rules was **48%**.
2. A large majority of prosecutors had dealt with cases of sexual offences against children prior to POCSOA.



It was observed that most district courts adopted child friendly procedures only when the child is below 12 years of age.

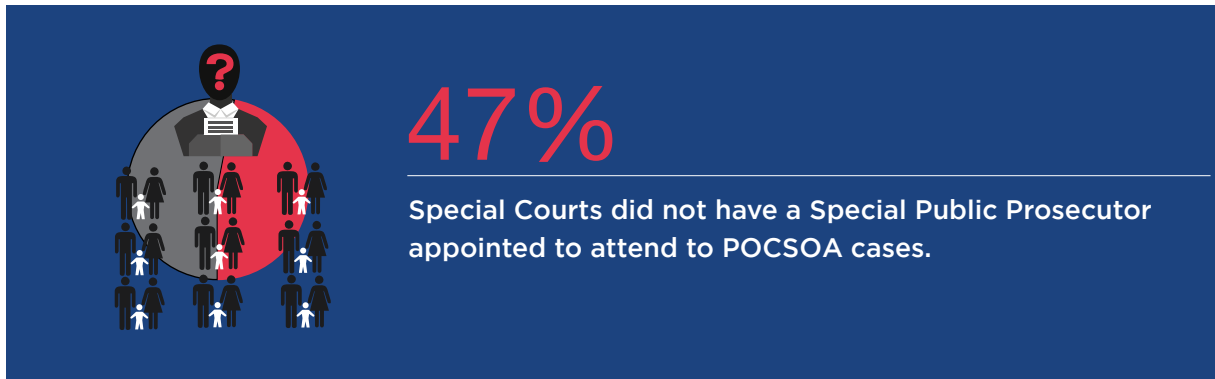
3. Notwithstanding the fact that POCSOA mentions the age of the child as 18, in the understanding of the prosecutors, **child friendly procedures are being adopted in most districts courts only when the child is 12 years or below.**
4. **Although a large majority (83%) of public prosecutors mentioned that they have designated court rooms for POCSOA, the courts are not exclusively dedicated to POCSOA cases.** They also try other cases in which adult women are involved.



Except for a few, no Special Court has a separate room for the victim to ensure 'sight and sound separation' between the accused and the victim.

5. With negligible exception, all the **special courts in these districts do not have a separate waiting room for the victim.** The victim is made to wait either in the public prosecutor's office or outside the court room risking exposure to and contact with the accused and/or his representatives.
6. **Most district courts (71%) had cameras and curtains/ screens** to separate the victim and the accused. However, not all courtrooms in a court that are used as special POCSOA courts are thus equipped.

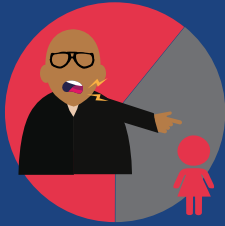
7. The above fact compounded by the appalling **lack of child friendly infrastructure and facilities indicate a worryingly casual approach to the issue of confidentiality and dignity of the child.**



8. Almost **half of the special courts (53%) did not have a special public prosecutor** for POCSOA cases.



9. Half (50%) of the prosecutors observed that **POCSOA special courts have expedited the disposal of cases.**
10. There is lack of understanding and clarity with respect to certain procedures laid down by POCSO to protect the identity of the victim and follow child friendly practices. Some examples cited by the respondents included:
- The defense counsel remains present while the statement of the child is recorded under CrPC 164.**
  - Interaction between the accused or his/her representatives and the victim is allowed.**
  - Direct questioning of the child by the defense counsel is allowed.**



61%

prosecutors said that the defence counsel can directly question the victim child in court.

11. The prosecutors blame the **delay by the police and doctors in submitting their reports as the major reasons for delayed disposal of cases.**
12. Prosecutors have difficulties in understanding the language of the victim child when they are extremely young of age.
13. A majority of prosecutors are in favour of keeping the provision of mandatory reporting intact.

## FIVE

# DATA ANALYSIS

This chapter presents the analysis of the primary and secondary data for a number of respondents and the understanding derived therefrom.

### SECTION 3

## JUVENILE JUSTICE BOARD

# 7

JJBs

A Juvenile Justice Board (JJB) is constituted under Sec 4 of the Juvenile Justice Act (JJA) 2015.

#### JJ Act Sec 4 -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

As per the law, a child accused of having committed any offence is to be considered as a 'child in conflict with the law' and his or her case is to be handled by the JJB under Sec 4 of the JJA.

The new JJA makes two explicit categories for children in conflict with the law –

- those below 16 years and
- those between 16 and 18 years of age

For those between the age of 16 to 18 years, the JJA makes an additional category of children who are accused of having committed a heinous crime. In such cases, after some preliminary inquiry, if the JJB comes to the conclusion that the child is likely to have committed such a 'heinous crime' and should be treated as an adult, then the JJB is required to send the case of the accused child to the Special court (or a Court of Sessions where a Special Court does not exist). The Special Court has to once again look into the propriety of treating the accused child as an adult and either go ahead with a full trial or send the case back to the JJB for trial where the accused is treated as a child.

In dealing with the POCSOA cases, the JJB is required to hear both - the victim child as well as the accused child. The JJB must be able to treat both in a child friendly manner while fully acknowledging the distinction between the two.

*\*The respondents in JJB were limited due to unavailability and non-response of JJBs the researchers reached out to. The magistrates expressed certain limitations in terms of giving interviews to outsiders. Even the 7 JJBs who gave consent were not willing to undergo a formal interview. Hence the interview was conducted informally.*

## Field Observations

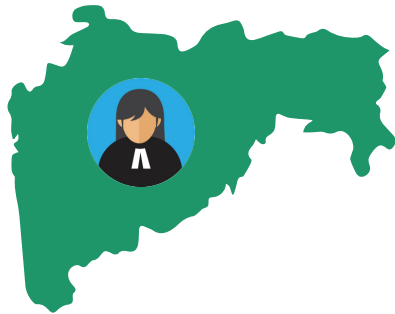
All the JJBs had full-time women Magistrates appointed.

The JJBs are located in the premises of the Observation Homes where one room is allocated to the Board. The JJBs had necessary support staff for registering and digitizing the cases.

There are no separate rooms for the purpose of waiting and counseling of the victims under POCSOA.

## Information through Interview Schedule

In your opinion, has there been a rise in number of cases of sexual offences against children?



6 out of the 7 JJBs mentioned that there has been increase in the number of cases under POCSOA.

They mentioned the following reasons for the increase



Increased awareness about the law



Sexual curiosity and experimentation among adolescents which the law now considers as an offence



Spread of android/smart cell phones which facilitates easy access to pornographic material



Impact of mass media resulting in early sexual experimentation

When asked about the most common offences for which children are booked under POCSOA in their jurisdiction the JJBs mentioned the following:

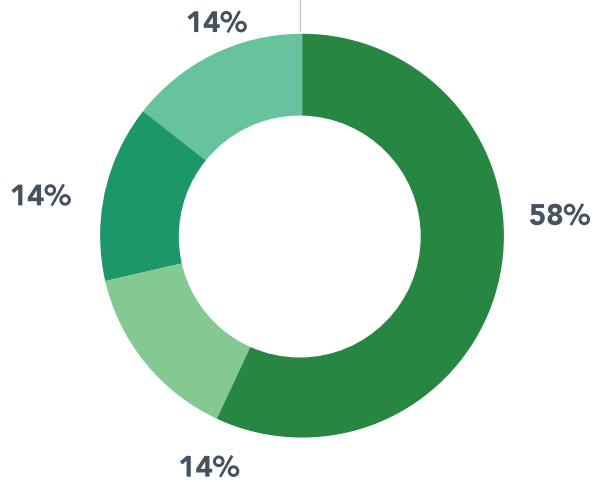
- Cases involving penetrative sexual assault under IPC Sec 375/376
- Cases of love affairs and stalking under IPC Sec 354D
- Older boys sexually abusing other younger boys under IPC Sec 377
- Sexual molestation and harassment under IPC Sec 294 or 509

As indicated by the above responses, there is still some confusion among the JJBs as regards to the provisions under POCSOA and those under IPC.



## What is the average age of juvenile accused booked under POCSOA brought before you?

What is the average age of accused under POCSOA?



Responses	No. of People	Percentage
● Above 16 Years of age	4	58%
● Above 12 years of age	1	14%
● Above 14 Years of age	1	14%
● No Response	1	14%
Total	7	100%

When asked about the average age of a juvenile offender booked under POCSOA, 4 JJBs (58%) mentioned the average age to be above 16 years. 1 JJB mentioned that it was above 12 years of age. Another 1 pegged the average age as above 14 years.

None of the JJBs mentioned that they have come across any child accused under POCSOA below 12 years of age.

### Who reports the cases of Juvenile accused under POCSOA to the JJB?

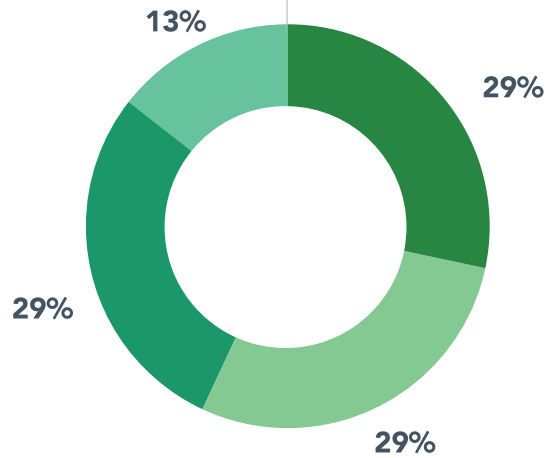
All (100%) of the JJBs mentioned that cases were brought to them by the police.

All (100%) of the JJBs also mentioned that the cases were brought directly to them once they were registered at the police station.

## Practices

In cases where the age of the accused is not clear, how is the age of the accused determined?

How is the age of the accused determined?



Responses	No. of People	Percentage
● Documentary evidence	2	29%
● Follow protocol as per JJA	2	29%
● Order for a Medical examination for age verification	2	29%
● No Response	1	13%
Total	7	100%

Two (29%) JJBs out of 7 said they determine the age based on the documentary evidence such as the Transfer Certificate from the school. Another 2 (29%) stated that they follow the protocol given in the JJ Act and 2 (29%) more stated that they send the case for medical verification of age.

The JJBs were asked about the steps that JJB members must take when a juvenile accused under POCSOA is presented to the JJB. 6 JJBs responded to the question.

**What are the various steps that JJB members must take when a juvenile accused under POCSOA is presented to the board?**

The various points mentioned by the JJBs are:

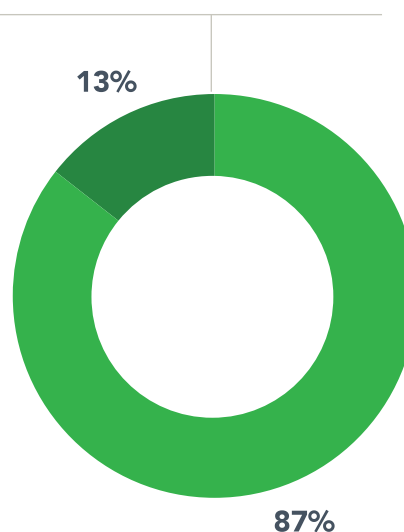
- Ensure physical separation of the victim child and the accused child. They should not be allowed to come face-to-face with each other
- Interact with the juvenile and verify the necessary documents to determine juvenility
- Provide legal aid
- Provide counseling
- Conduct a social investigation to understand the situation of the juvenile

- Determine if it is a heinous crime and refer the case to the Special Court/ Court of Sessions if it is so determined
- Grant bail to the accused juvenile if it is not a heinous crime
- Send juveniles above 15 years of age to Mumbai for an after-care program

In order to assess the awareness of the JJBs in regards to the provisions in the POCSOA, we asked them some questions.

Are there circumstances where the accused child needs to be taken to the Special court?

Circumstances for referral to Special Court



Responses	No. of People	Percentage
● Not necessary to take the child to the special court	6	87%
● In case of heinous crimes	1	13%
Total	7	100%

Only one JJB answered correctly stating “Yes, in cases of heinous crimes”. The remaining 6 (87%) stated that there is no need to send the juvenile to a Special Court.

Is it necessary to make a Social Investigation Report in case of every child produced before the JJB as the accused under POCSOA?

All the JJBs mentioned that an SIR has to be prepared for all Juveniles accused under POCSOA.

Although 5 JJBs (71%) mentioned that the SIR is prepared by the Probation Officer, 2 (29%) JJBs stated that the police can also prepare the SIR.

The SIR is an important tool in juvenile justice system that has the potentiality to enhance the overall understanding about the child and help make decisions in the best interest of the child. We tried to explore how the JJB members understand the importance of the SIRs.

They mentioned that SIRs help in facilitating an understanding of:

- the background of the child and the various factors related to the incidence of offence
- whether or not the offence has occurred in the first place

Not making a child appear repeatedly before the CWC or JJB or any regular court is an important element of child friendliness underlying the procedure in the Juvenile Justice System.

All 7 JJBs rightly mentioned that a child is required to appear before the JJB just once or at the most twice.

One magistrate of the JJB stated that she specifically ensures that a victim is not called multiple times to the JJB. In cases of POCSOA, she mentioned that the victim is called only once for recording the statement.

The above indicates a good practice but also a possible lack of clarity about POCSOA as the magistrate is talking about a victim child while the JJB is also supposed to give child friendly treatment to the child produced before them as a child in conflict with law whether under POCSOA or any other criminal law.

All respondents mentioned that the identification parade, an essential part of investigation of the crime, is carried out in the premises of the Observation Home itself. This helps reduce the stress of physical transportation of the accused child.

Once the crime of the accused juvenile is established, can the child be released on bail? If yes, under what circumstances?

All of the JJBs agreed that they grant bail to the accused juvenile even when the offence is *prima facie* established. They all confirmed that bail is given in all cases except when it is realized that it is not safe environment for the child to go back to. Bails are granted within 24 hours.

In regards to their usual practice, we tried to know as to the maximum and minimum punishment they could award to a child convicted under POCSOA.

What are the various orders that you award to the juvenile found in conflict with POC SOA?

- The JJBs mentioned that they follow Section 15 of JJA in passing the Orders pertaining to a juvenile found in conflict with POC SOA.

JJ Act Section 15. (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of Section 18: Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence. (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973: Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101: Provided further that the assessment under this section shall be completed within the period specified in section 14

- Assign Community Service as per interest of the child like tree plantation, gardening, reading in a library etc.
- Detain the child in Observation Home or Special Home for long term

The JJBs mentioned that although it is appropriate and possible to pass more creative orders like open community service, there is a serious shortage of human resources to monitor the implementation. As a result, such orders are not being passed.

Who makes the individual care plan for the child?

Only 2 (29%) out of 7 JJBs stated that the individual care plan for the child is prepared by the Probation Officers.

All 7 JJBs confirmed that they do come across cases where both the victim and the accused are under 18 years of age and contend that the sexual act was performed with mutual consent. The JJBs further elaborated by stating that in such cases, at the first appearance the girl denies that she had consented as she is under parental pressure but eventually as the case proceeds, she states that she had given the consent.

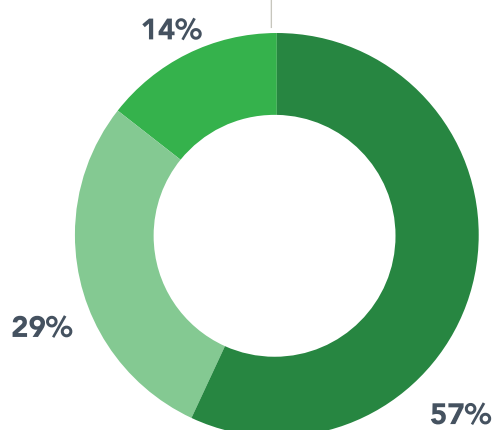
One respondent among them did state that if a child is below 18 years, then the issue of consent simply does not arise.

## Opinions

### Age of Consent

What is your opinion on the age of consent for sex being increased to 18 years?

Opinion on age of consent



Responses	No. of People	Percentage
● 18 is appropriate age for consent	4	57%
● 16 is appropriate age for consent	2	29%
● Should depend on the social background of the child	1	14%
Total	7	100%

Four out of 7 JJBs (i.e. 57%) felt that 18 is appropriate age for consent while 2 JJBs felt that it should be 16 years. One JJB wanted it to be determined as per the social background of the child.

## Services

### What is your opinion on the services provided in the Observation Homes?

All the JJBs agreed that their districts had sufficient infrastructure i.e. in terms of buildings for the OHs. But they all agreed that they were marred by a lack of minimum quality of services and human resources. And this shortcoming continues to adversely affect the rehabilitation of the children.

Some of them stated that they have to send the children to cities like Pune or Mumbai for vocational training. In some districts there is no Observation Home for girls and they have to be sent to the OHs of the neighbouring district.

Some mentioned that provision for counseling services in the Observation Homes can only be effective if the DCPU has a staff with skills/qualifications in professional counseling.

They also lamented that quality educational and vocational training services and life skills programs were lacking in their districts. All of the JJBs felt that the services given in the OH needed an immediate upgrade in quality. The JJBs were asked about rehabilitation measures planned for the juvenile accused under POCSOA.

### Rehabilitation measures planned for the juvenile accused under POCSOA:

Responses

2

Provide counseling

2

Grant bail

1

Provide vocational training

1

The rehabilitation plan is left to the NGO's

1

No Response

The answers given indicate that the JJBs do not have a concrete idea of how to rehabilitate the accused under POCSOA. They also pointed out that there was a serious shortage of financial resources.

## What are the infrastructural challenges faced by JJB while handling cases under POCSOA?

Responses	No. of People	Percentage
● No separate rooms for waiting	4	58%
● No infrastructure available for JJB to provide (Lack of adequate space to manage cases)	1	14%

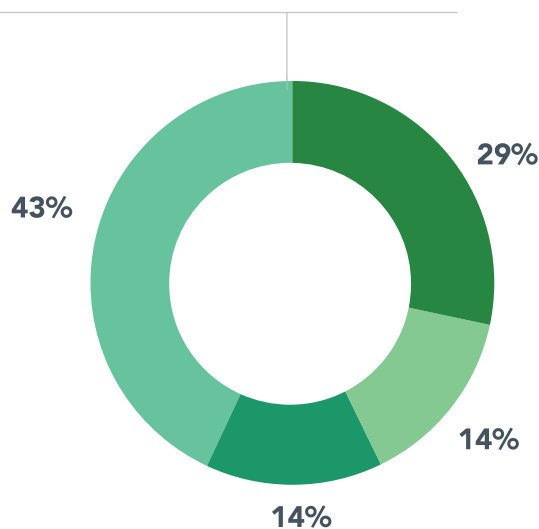
The 5 JJBs who responded to the question state that more needs to be done to ensure basic infrastructure like separate waiting rooms which could help maintain privacy and confidentiality of children.

An important aspect of a child friendly justice system is the fast disposal of the cases in the courts.

The JJA Sec 14 has set the time limits for disposal of the case to 4 months from the date of the first production of the child, extendable by 2 more months. Sec 35 of POCSO Act sets the time limit to 1 year. Attempt was made to find out the awareness of the JJBs as regards the time frames.

## Is there any stipulated time for disposal of cases under POCSOA?

Is there any time limit for disposal of cases?



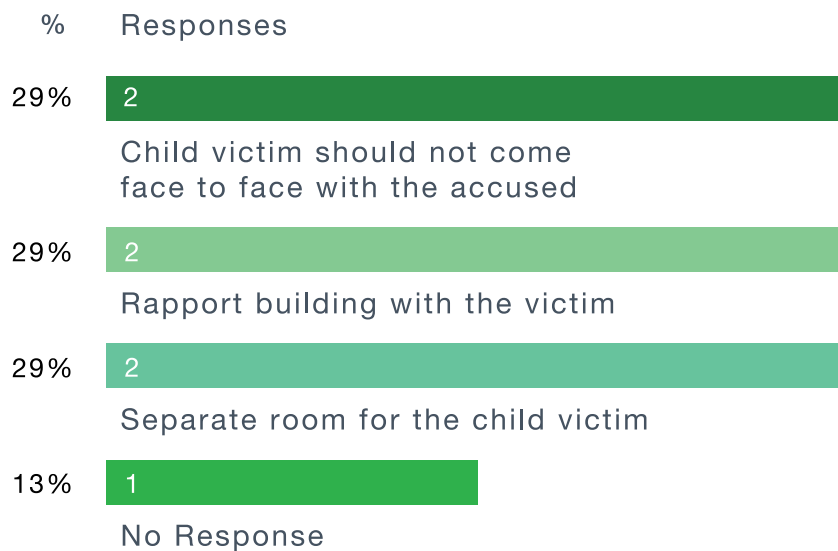
Responses	No. of People	Percentage
● 7 to 8 months	2	29%
● Max 6 months	1	14%
● 4 to 5 days	1	14%
● Don't Know	3	43%
Total	7	100%

No JJB mentioned the stipulated time period to be 1 year as stated under POCSOA.



What is the understanding of the JJBs in regards to the child friendly procedures to be followed in the JJB when dealing with a Juvenile in a POCSOA case?

When asked the following responses were received;



What are the challenges faced by you while providing rehabilitation measures for the accused child?

The JJBs mentioned the following challenges faced by them:

- There is no resource directory available that gives critical information about training opportunities and resources available for the children.
- There is inadequate human resources to facilitate comprehensive follow-up of the cases.
- There is need for vocational training centers to be located within the Observation Homes.
- There is no clarity in the law with regards to the rehabilitation of the child.
- Comprehensive family and community-based intervention is lacking, which can help improve the child's immediate environment.

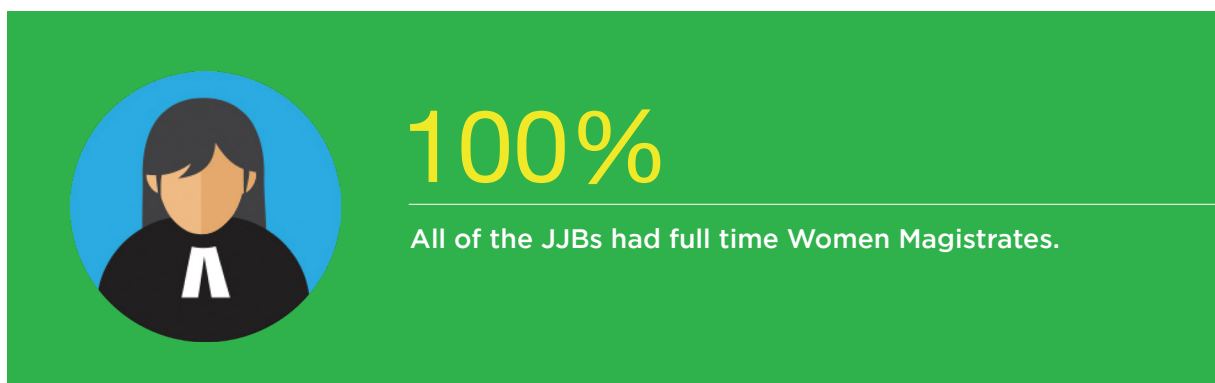
In your experience of working with Juvenile accused under POCSOA, did you identify any gaps with regards to provisions for Juvenile accused?

The following gaps were stated:

- Only Section 15 of the JJA mentions punishment. This needs to be elaborated.
- The children accused under the law are also victims of circumstances so they need rehabilitation not punishment. But there is no legal clarity on rehabilitation.
- Though the law defines social punishment, there are no such fit institutions where the child can be sent to for social service.

## Conclusions

1. **All of the JJBs had full time women Magistrates** appointed to them. The JJBs were located in the premises of the Observation Homes (OHs) where one room was allocated to the JJB. However, there are no separate rooms for the purpose of waiting and counseling of the victims of POCSOA cases.
2. The JJBs had support staff for registering and digitalizing the cases.



3. **No JJB mentioned coming across any accused child under POCSOA below 12 years of age.**
4. Most JJBs thought that the increase in the number of cases of sexual offences against children is due to sexual curiosity & experimentation among teenagers which has been fueled by exposure to media and internet.
5. **All the JJBs mentioned that they conduct a social investigation report for every child** that enhances their overall understanding about the child and helps them make decisions in the best interest of the child. One of the factors responsible for this consciousness could be the Order given by the Mumbai High Court in Prerana Vs. State of Maharashtra case (Criminal Writ Petition No 1694 of 2003).
6. **All JJBs are aware that the child victim must not appear in court multiple times and efforts need to be made in this direction.** This indicates a good practice but may also indicate a possible lack of clarity about the POCSOA as the magistrate is talking about a victim child while JJB is also supposed to give child friendly treatment to the child produced before them as a child in conflict with law.

7. All JJBs mentioned that **the identification parade, an essential part of investigation of the crime is carried out in the premises of the Observation Home itself**. This helps reduce the stress of physical transportation of the accused child. However it still raises the question whether such exposure of the victim child to the accused should be avoided or not.



100%

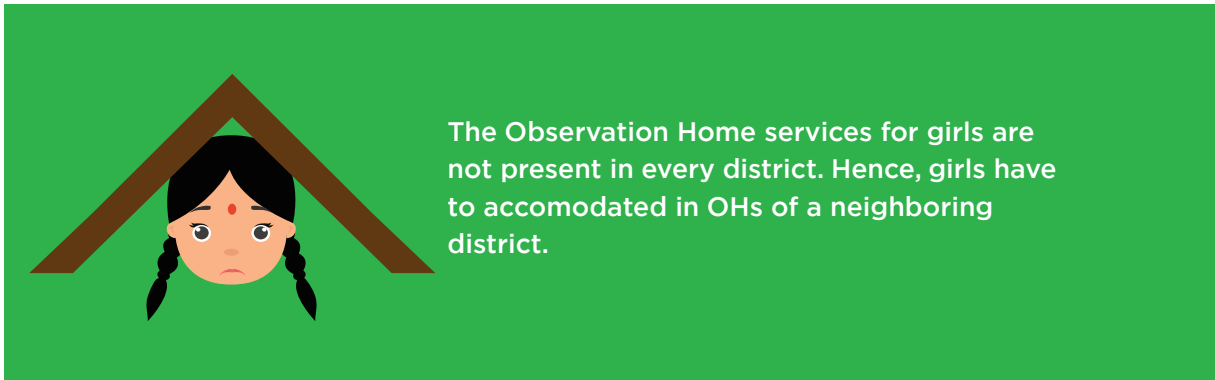
All JJBs grant bail to the accused child even when the offence is prima facie established. Bails are granted in one day.

8. All of the JJBs agreed **that they grant bail to the accused child even when the offence is prima facie established**. They all confirmed that bail is given in all cases except when it is felt that it is not safe for the child to go back to. **Bails are granted within 24 hours**.



There is a mismatch between needs & provisions in the JJ mechanism. Creative orders like open community service can be issued in case of a child in conflict with POCSOA. But there is a shortage of human resources to monitor such placements.

9. The JJBs mentioned that **more creative orders like open community service can be issued in case of a child found in conflict with POCSOA but there is a serious shortage of human resources to monitor** such placements. There is a mismatch between the need and the provisions especially in the JJ mechanisms.



10. The JJBs pointed out **serious shortage of financial resources**.

11. All the JJBs agreed that their districts had sufficient infrastructure in terms of OHs but they all lacked the minimum quality of services and human resources. This adversely affects the rehabilitation of the child. They lamented that educational and vocational training services were found to be seriously lacking in their districts. All of the JJBs felt that the **services given in the OH need quality up-gradation. In some districts there is no Observation Home for girls and such girls are sent to the OHs of the neighbouring district.** There is a need for proper legal provisions in the law for the rehabilitation of the accused child for the rehabilitation of the accused child.

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## FIVE

# DATA ANALYSIS

This chapter presents the analysis of the primary and secondary data for a number of respondents and the understanding derived therefrom.

### SECTION 4

## CHILD WELFARE COMMITTEE

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# 17

## CWCs

Constituted under Sec 27 of the Juvenile Justice Act (JJA) 2015, the Child Welfare Committee (CWC) is a key structure and mechanism to address cases of children 'in need of care and protection' as defined under Sec 2-14 of the JJA 2015. As per the definitions, actual or potential child victims of sexual offences are classified as 'in need of care and protection'.

A CWC is a semi-judicial body. It consists of a Chairperson and 4 members with at least one of the five being a woman and another, an expert on matters concerning children. In the given scope of the JJA, as a bench it enjoys the powers of a Metropolitan Magistrate (in urban areas) and Judicial Magistrate of the First Class (in rural areas). It is expected to follow child friendly procedures in its functioning. It is guided by the principle of the 'best interest' of the child.

Although the current study covers 17 districts across Maharashtra, data was collected from 16 CWCs. At the time of data collection for this study, the CWCs of 2 districts (Ahmednagar & Nagpur) had been dissolved and the CWCs of the adjacent districts were appointed on additional charge. The Ahmednagar CWC was managed by Nasik CWC on additional charge & the Nagpur CWC was managed by Bhandara CWC on additional charge.

The CWCs agreed to respond to the interview differently – in half of the cases, it was the Chairperson who responded to the interview. In 5 cases, they preferred to respond collectively. In the case of 3 CWCs, the respondent was one of the CWC members (who was not the Chairperson).

## Field Observations & Informal Discussions





The CWCs are aware that they are an important mechanism that link POCSOA and the JJA. They looked at their role under POCSOA in a positive light.

### CHILD WELFARE COMMITTEES



CWC members were evenly spread along the age range of 41 to 57 years. They were uniformly well educated.

75% of the CWCs interviewed did not have a full chair of 5 members.

Strength of the CWC Team	No. of Districts
5 	4
4 	4
3 	5
2 	3

The members of CWC are evenly spread across the age range of 41 years to 57 years. The educational background of the CWC members who responded to the interviews is impressive. One of them possess a doctoral degree, two hold M. Phil Degrees, ten had Masters Degrees and three are graduates.

**Under the JJA 2015, the total strength of a CWC must be 5 members on the committee. Out of the 16 CWCs interviewed, only 4 (25%) have a complete bench with 5 members, 4 CWCs (25%) have 4 members and 8 CWCs (50%) have either 2 or 3 members only.**

The insistence on the recommended odd number of 5 is to facilitate a majority decision when there is difference of opinion within. However, in one district, it was observed that mostly two members attended the sitting and they often had a difference of opinion among them.

Every CWC displayed the names and personal phone numbers of the CWC members and the timing of the CWC sessions outside the CWC office to facilitate easy access to those who needed their services.

However, 14 (88%) of the 16 CWC did not start the sittings at the times mentioned on the display boards. The delay ranged from 1 hour to 2 hours. There was no proper seating arrangement for children, families and other stakeholders as they waited for the CWC members to arrive.

In cases where the CWC for a district was not constituted, or was dysfunctional or had been liquidated, the CWC of a neighboring district was given charge on a visiting basis. However, the visiting CWC was never present at the additional CWC office in full strength. Often just one or two members would attend the sitting in the additional district.

In some districts, where the term of a previous CWC had expired, a new CWC had not been constituted even after a period of 8 months.

With the exception of Mumbai and Nagpur CWCs, no other CWC had any support staff from JAPU or SJPU for the protection of children within the CWC premises.

CWCs lamented that provisions in terms of budget, manpower, and infrastructure do not take into consideration the workload on the CWC as well as the size and the population of the district. Some CWC members complained that the honorarium and travel grants were meager and that this grossly de-motivated the members.

Some CWC members stated that as per their responsibilities, they are required to ensure good conditions in the Shelter Homes under their



jurisdiction. For this, they are required to visit those Homes. However, with the travel grants being meager and only bus travel for CWC members being eligible for compensation, members were unable to perform this task effectively in the given limitations of time.

Many CWCs did not have the infrastructure for a separate room to ensure privacy of the child victim. As a result of this, when a POCSOA case arrives in front of the CWC, they would have to pause their current work and divert their energies to clearing and cordoning the place so that a private & confidential interaction with the child could be facilitated.

Mumbai has 4 CWCs and sometimes two CWCs operate out of the same room. They often have a crowd of children, their parents, family members, supporting NGOs, etc. present all together. This results in parallel interviews being carried out on the same table at the same time.

In another district, the CWC did not have any office of its own. It had been displaced to grant priority access to the JJB in the district.

Most CWCs lacked drinking water and toilet facilities for children and their family members.

In a coastal district, it was observed that as the CWC did not have an office, the sessions would take place in the office of one of the members who was an advocate by profession and had an office of his own. There have been cases where one member conducts the sitting and prepares the Order. And then, the representatives of the child in need of care and protection would have to travel around 50 kms across the district with the Order to the location of a second member just to get their signature.

In one district, it was mentioned that on different days the CWC would sit in different locations thereby causing considerable confusion for the public and the police. Later that system was rectified.

The CWCs do not proactively work with the police. They interact only with those members of the police who accompany the children to be produced before the CWC at their sittings.

The CWC members complained about the inordinate delay at police stations in filing an FIR.

Certain CWC members observed that there is a lack of clarity among the police on whether recording of the statement under Section 164 of CrPC should be done at the office of the Judicial Magistrate of First Class or at the office of the CWC.

In districts where the CWCs, Juvenile Justice Boards (JJBs) and District Child Protection Units (DCPUs) were located in a common premise, they exhibited better coordination amongst themselves.

In some districts, the CWCs and the DCPUs work in collaboration and the DCPU provides varied assistance to the CWCs.

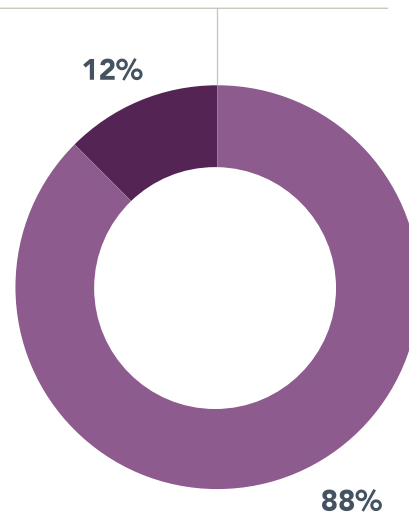
In some districts, the relations between the CWC and the DCPU were strained. The CWCs complained about undue dominance and interference by the DCPU.

None of the CWCs interact with courts or the hospitals that handle cases under POCSOA.

## Information through Interview Schedule

Has there been an increase in the sexual offences against children since 2012? (i.e. on the passage of POCSO Act?)

Has there been increase in offences?



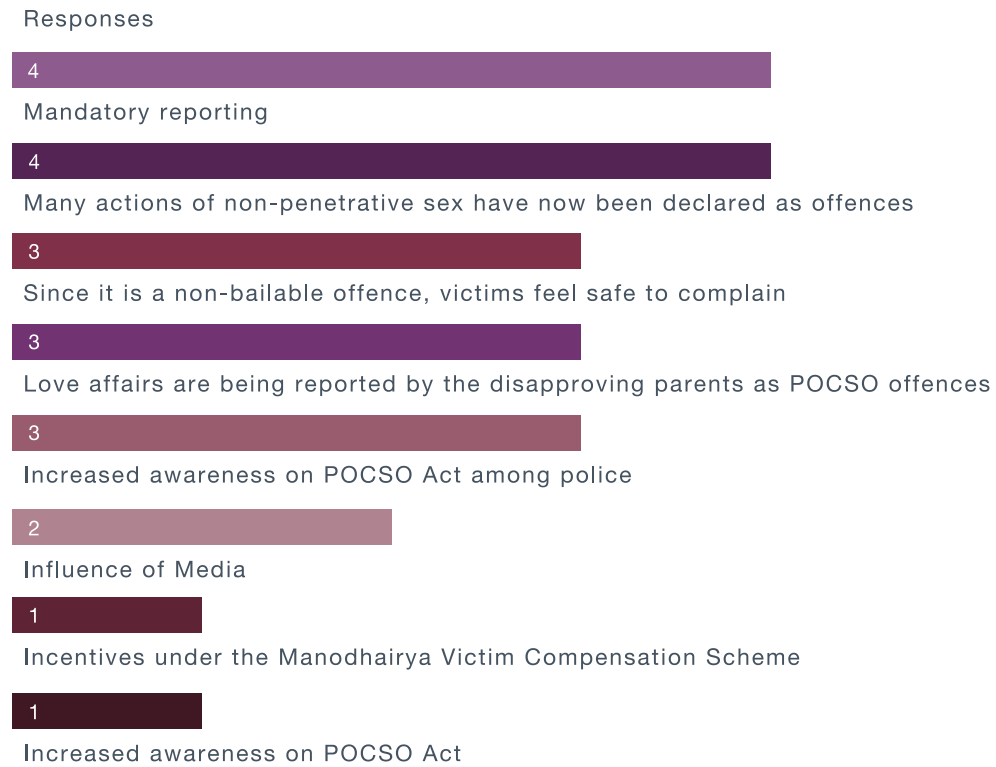
Responses	No. of People	Percentage
● Yes	14	88%
● No	2	12%
Total	16	100%

It is important to note here that whichever way the question was perceived i.e. as actual increase in the crime or increase in the reporting of the crime, 12% CWCs thought that there was no increase in the offence.

The CWCs who felt that there was indeed an increase clarified that there has been increased reporting rather than increased incidences of crime.

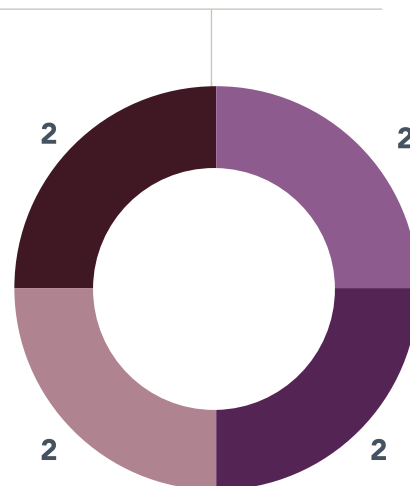
The respondents were requested to provide reasons. Some respondents gave more than one reasons.

## Reasons given by the CWCs for Increased Reporting



## Reasons given by the CWCs for Increased Crime

What are the reasons for increase in crime?

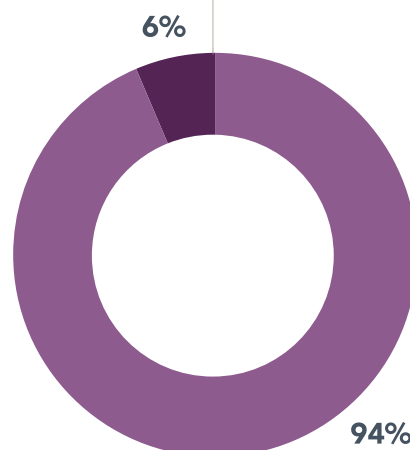


Responses	No. of People
● Bad parenting, rising incidence of incest	2
● Media influence	2
● Growth of slums and population density has increased the offence	2
● Lack of sex education	2

## Training and Capacity Building

Did you have an opportunity to undergo any orientation or training on POCSO Act?

Have you undergone training?



Responses	No. of People	Percentage
● Yes	15	94%
● No	1	6%
Total	16	100%

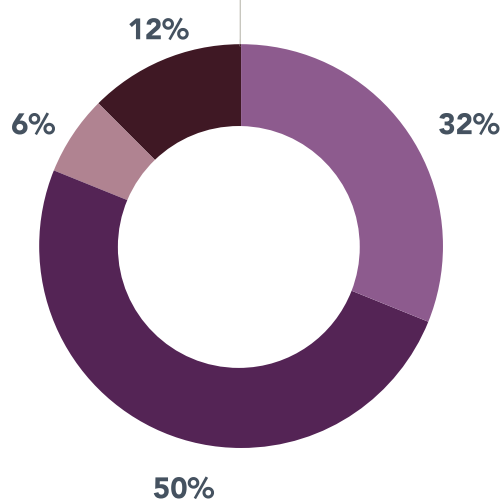
Fifteen out of 16 (94%) CWCs reported that they had an opportunity to undergo training on POCSO Act.

In the case of 8 of them, the training was organized by the government department and in the case of 4 by a CSO/NGO.

Various agencies of the State such as NIPCCD (National Institute for Public Co-operation & Child Development), Yashada, DWCD (Department for Women & Child Development), ICPS (Integrated Child Protection Scheme) organized the training by inviting resource persons from CSOs like Justice and Care, Prerana, IJM, Swapnabhoomi etc. to conduct the sessions.

Do you think the training has equipped you to handle cases under POCSOA?

Has the training equipped you?



Responses	No. of People	Percentage
● Yes	5	32%
● No	8	50%
● No Response	1	6%
● Don't Know	2	12%
Total	16	100%

**It is important to note that only 5 (32%) of the CWCs felt that the training equipped them to handle cases under POCSOA. While 8 (50%) categorically denied that the training had equipped them to handle POCSOA cases.**

The CWCs mentioned that the training programs were mostly one day episodic events effectively running for durations of around/less than 5 hours. Hence they were insufficient in equipping the CWCs to handle POCSOA cases.

Over 82% (i.e.14) CWCs felt that they require further relevant training on POCSOA. Only one CWC stated that no training was needed.

Out of the 14 who stated that training was necessary, 5 felt that a comprehensive training was required while 3 wanted training on understanding how to handle different cases under POCSOA.

One CWC mentioned that a specific training on roles and responsibilities of CWCs under POCSOA was required. Another CWC mentioned that it required training in POCSOA per se.

In your opinion are most CWCs in the state of Maharashtra efficiently performing their roles and responsibilities under POCSO?

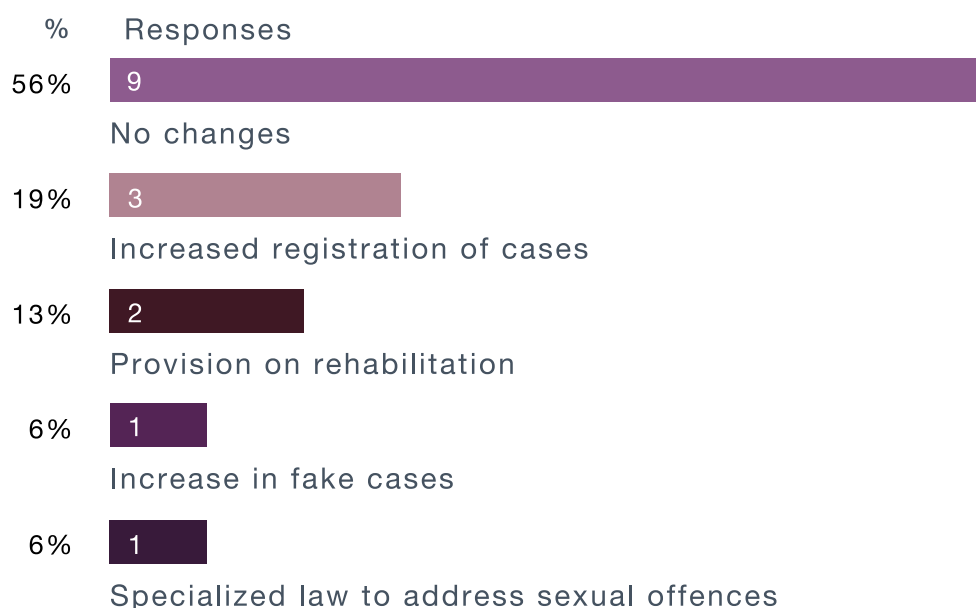
Seven CWCs (44%) replied positively and 3 negatively. The rest did not comment and they observed that as they do not have the opportunities to interact with the other CWCs in the state, they are not competent to comment.

When asked to attribute the positive functioning of most CWCs, only 3 CWCs attributed it to the training. In regards to the negative responses, 2 out of 3 stated that it was because of lack of proper training.

CWCs used to deal with the cases of child victims of sexual offences even prior to the passage of POCSOA. The pre-existing JJA offered enormous flexibility in interpreting sexual maltreatment and abuse in a comprehensive manner by not defining sexual abuse or assault. By defining a large spectrum of sexual offences comprehensively, POCSOA ensured that taking cognizance of the sexual offences was not limited to and by the creativity of and interpretation by the CWCs

## Awareness

The Juvenile Justice Act always considered 'children who are being or are likely to be sexually abused' as children in need of care and protection and hence you were anyway addressing their cases even in the past. What change has been brought about by the passage of POCSO in the area of your work?

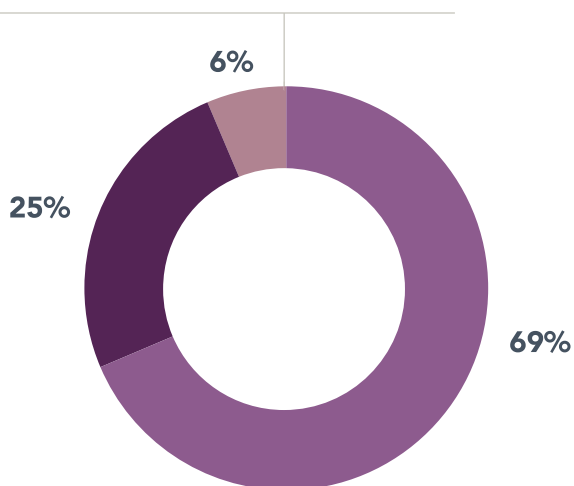


Nine (56%) CWCs stated that POCSOA has not brought in any change in this matter. 3 (19%) stated that POCSOA has bolstered higher registration of complaints. 2 (13%) replied that the provision of rehabilitation is a new addition brought about by POCSOA. One CWC stated that POCSOA has led to reporting of fake cases and also mentioned that parents force their children to register fake cases under POCSOA.

The CWCs were requested to respond to a few objective questions on the POCSOA.

As per the JJ Act, is every child who is a victim of offences under POCSOA a child in need of care and protection?

Is every child victim under POCSOA a child in need of care and protection?



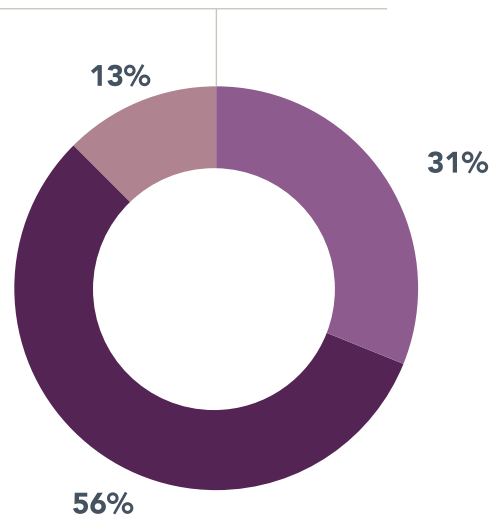
Responses	No. of People	Percentage
● Yes	11	69%
● No	4	25%
● Don't Know	1	6%
Total	16	100%

Out of the 16 CWCs who answered this question, 11 (69%) affirmed that a child victim of offences under POCSOA is indeed a “child in need of care and protection” as per the JJA.

Surprisingly, 4 i.e. 25% replied negatively and 1 was unsure.

Do you consider that POCSOA has put an extra burden on the CWCs?

Is there extra burden due to POCSOA?



Responses	No. of People	Percentage
● Yes	5	31%
● No	9	56%
● No Response	2	13%
Total	16	100%

There was a general perception that the CWCs in some of the more populous districts, who were barely able to manage their workload prior to POCSOA, were now being placed under extra work load as a direct result of the Act coming into effect.

When inquired about it, 9 (56%) out of the 16 reported that they did not feel that POCSOA had added any extra workload on them.

Those who stated that it has added to their workload explained that it was because cases of 'love affairs gone sour' are being reported under POCSOA as sexual offences and sent to the CWCs. Therefore the overall time required to look into the POCSOA cases had increased considerably.

The CWCs were presented with a case.

A child working as a domestic help is rescued and produced before the CWC. During the interaction, the child discloses penetrative sexual assault by the employer. Based on your experience as the CWC what are the steps that you think must be taken by you?

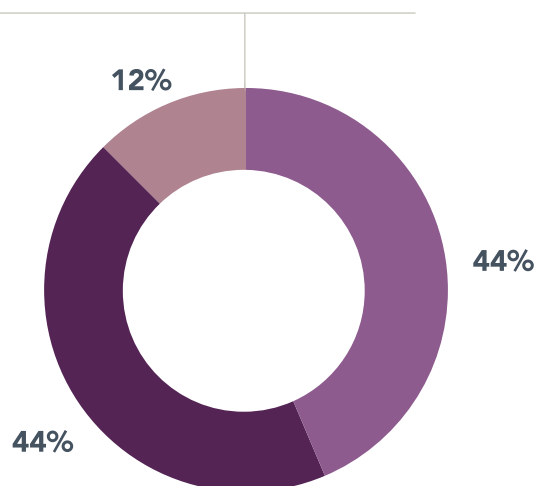


Almost all of them mentioned that an FIR should be registered. Only 2 CWCs mentioned that a statement of the child should be recorded and that medical treatment should commence. 2 CWCs also mentioned that besides the medical treatment and FIR, the child should be provided with shelter facility. One CWC mentioned that it had not come across any such case and was not aware of what should be done.

If two children both of 16 years of age are brought to the CWC under POCSOA, one is a victim and the other is an offender. Would they both be considered as 'children in need of care and protection under the Juvenile Justice Act'? Give reasons for your response.

Going by the correct interpretation of the JJA, the victim child should be considered as a child in need of care and protection while the other child should be treated as a child in conflict with law.

Would they both be considered as 'children in need of care and protection under the Juvenile Justice Act'?



Responses	No. of People	Percentage
● Yes	7	44%
● No	7	44%
● No Response	2	12%
Total	16	100%

Out of the 7 (44%) CWCs who replied that both the children cannot be considered as children in need of care and protection, 4 stated that since one of the boys had committed an offence he should be considered as a juvenile in conflict with law.

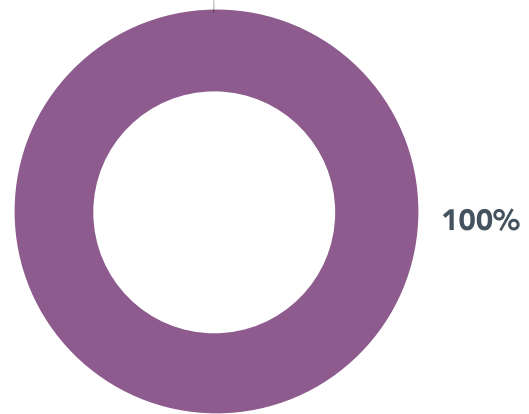
Out of the 7 who said yes, 3 could not give any reason for their response while 4 CWCs stated that since both the children are below 18 years of age they will be treated as children in need of care and protection under the JJA

Two CWCs commented that one must take into consideration the background of the child produced and not treat every child as a ‘child in need of care and protection.’

## Reporting by Police

Is it mandatory for the police/SJPU to ‘report’ every case registered under POCSO to the CWC?

Is it mandatory for police to report every case to CWC?

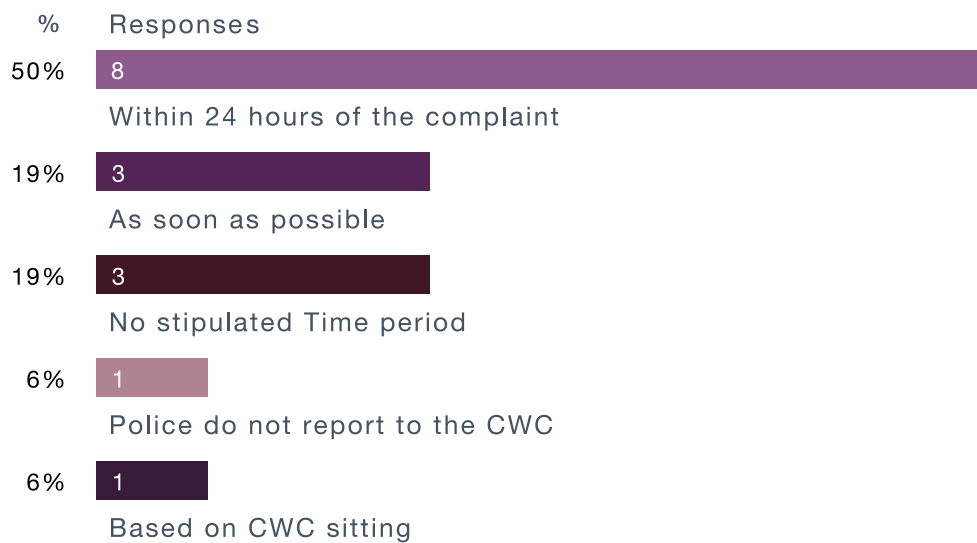


Responses	No. of People	Percentage
● Yes	16	100%

When asked if it was mandatory for the police/SJPU to ‘report’ every case registered under POCSOA to the CWC, all 16 CWCs (100%) stated that it was indeed mandatory for the police.

What is the stipulated time period within which the police must report a case to the CWC under POCSO?

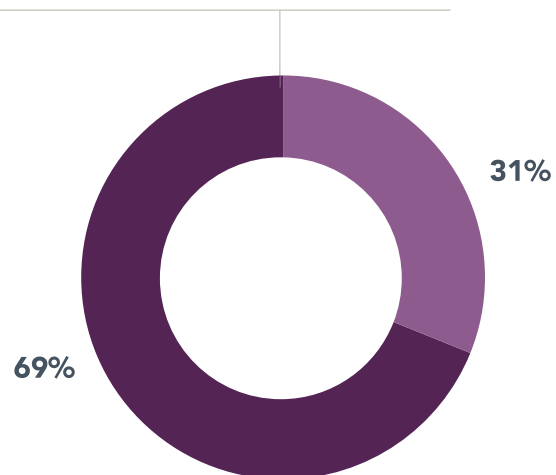
POCSOA Section 19 (6) states: “The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.”



The CWCs were not equivocal when asked about the time limit within which the police must report if they need to. 8 out of 16 (50%) stated the time limit to be within 24 hours of the complaint being registered. While 3 out of 16 stated that there was no time limit stipulated for reporting by the police, 2 mentioned that it should be done as soon as possible.

Do the police report the matter to the CWC in the stipulated time as mentioned by you?

Do the police report in time?

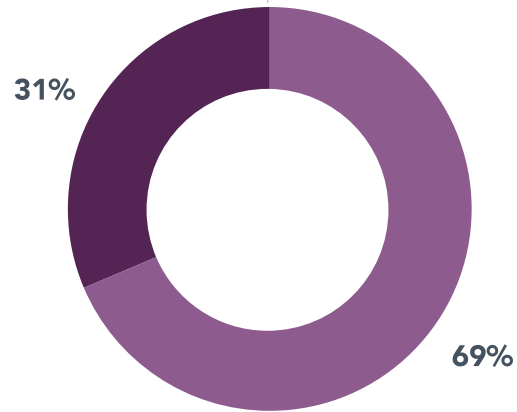


Responses	No. of People	Percentage
● Yes	5	31%
● No	11	69%
Total	16	100%

Although they were divided on the time limit for reporting, when asked if the police does report to them within the given time period, 11 out of 16 (i.e. 69%) answered in the negative.

Is it mandatory for the police/SJPU to 'produce' every case registered under POCSO before the CWC?

Is it mandatory to produce every case before CWC?



Responses	No. of People	Percentage
● Yes	11	69%
● No	5	31%
Total	16	100%

Eleven CWCs (69%) stated that the police have to 'produce' every case registered under POCSOA before the CWC while 5 replied in the negative.

**POCSOA Rule 4 Sub rule 3** Where the SJPU or the local police receives information under sub-section (1) of Section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section.

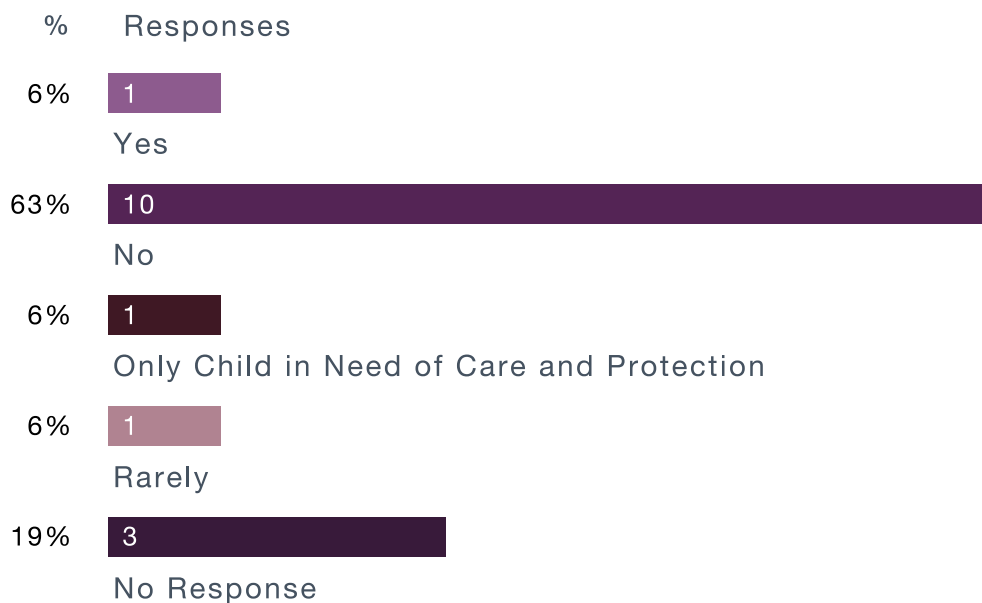
On reporting to the CWC, Sec 19(5) and 19(6) of the POCSOA state as follows;

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons

in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty- four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

Does the police/SJPU 'produce' every child victim under POCSOA in front of the CWC?

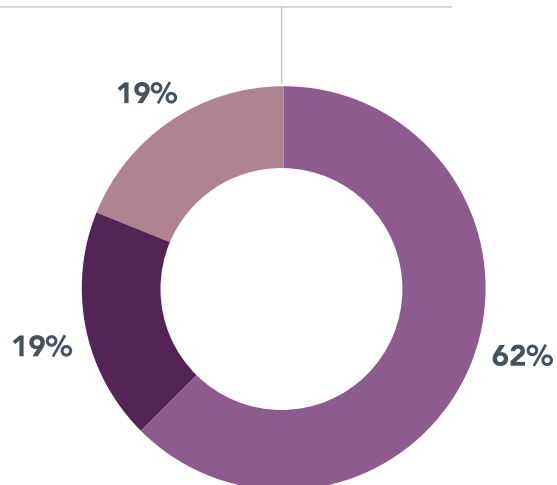


When asked if the police/SJPU follow the practice of 'producing' every child victim under POCSOA before the CWC, 10 out of 16 (63%) replied in the negative.

One CWC mentioned that the child is produced before them only when the police feel that there is a need for shelter. 1 stated they do so only in rare instances while another said that the police do indeed 'produce' every victim of POCSOA offence before them.

If the Police/SJPU is satisfied that the child against whom an offence has been committed under POCSOA is not a child in need of care and protection, then should he/she still 'report' the matter to the CWC?

If the Police/SJPU is satisfied that the child against whom an offence has been committed under POCSOA is not a child in need of care and protection, then should he/she still 'report' the matter to the CWC?



Responses	No. of People	Percentage
● Yes	10	62%
● No	3	19%
● No Response	3	19%
Total	16	100%

Ten (62%) CWCs stated that the police still have to 'report' the matter to the CWC. 3 (19%) CWCs felt that the police need not 'report' the matter before them if they feel that the child is not in need of care and protection.

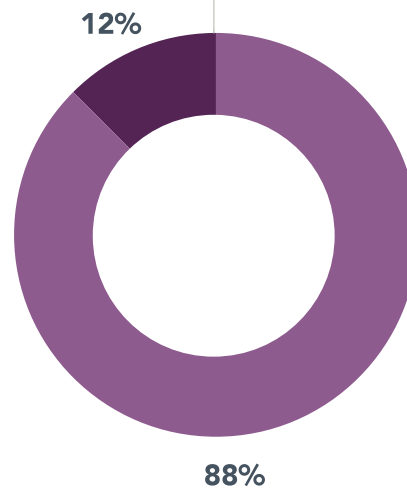
They were further asked whether, in such cases, they as the CWC member/ Chairperson had ordered the police to produce that child before the CWC.

Six out of 16 preferred not to respond. 5 replied in the positive while 4 replied in the negative.

It is a common observation that the police and other service providers face difficulties in producing a child in need of care and protection before the CWC if the latter is not in session. The CWCs were asked as to how do the police/ SJPU reach out to the CWC in such a scenario.

How does the police/SJPU reach out to the CWC when the CWC is not in session?

How do the police access the CWC when it is not in session?



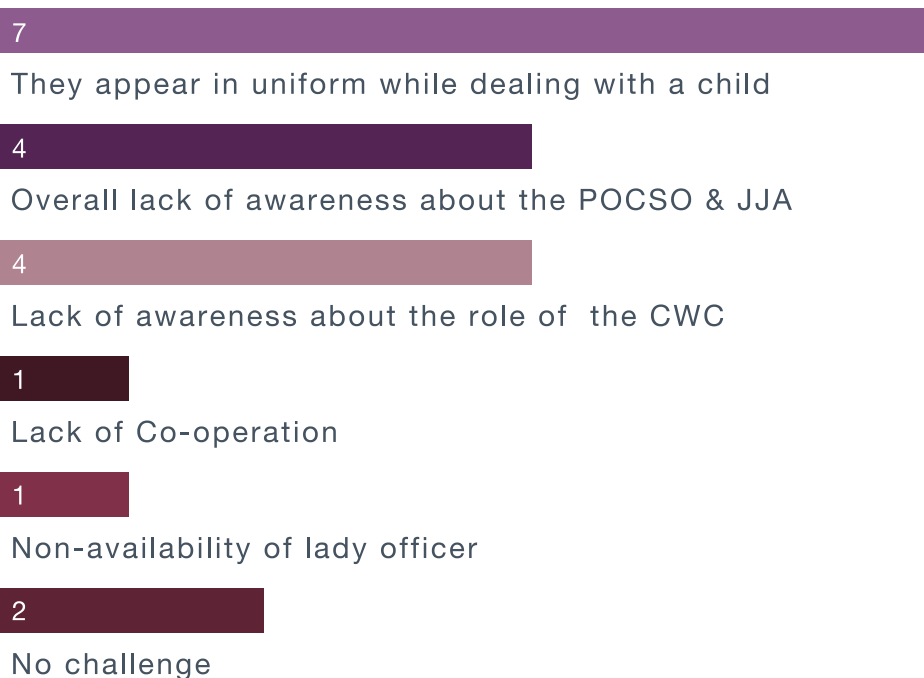
Responses	No. of People	Percentage
● Call the CWC on their phone	14	88%
● Go to the residence of the CWC member	2	12%
Total	16	100%

Fourteen out of 16 (88%) CWCs stated that the police can call them on phone when the CWC is not in session.

Questions were asked to know what challenges the CWCs face while dealing with the police in handling the POCSOA cases.

What are the challenges that you face during your interaction with the police/SJPU while handling cases of POCSOA?

Responses



That the police appear in uniform while dealing with a child appears to be the most common challenge faced by the CWCs while dealing with the police and the SJPUs.

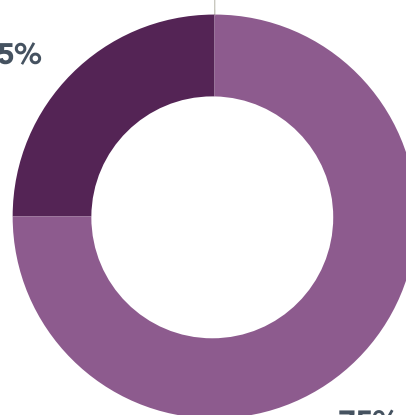
## Recording the Statement of the Child at CWC

*Note: The law does not mention that the CWC has to record a statement of the child*

Is it necessary to record the statement of every child victim under POCSOA when the child is brought to the CWC?

Is it mandatory for CWCs to record statement of child?

25%



75%

Responses	No. of People	Percentage
● Yes	12	75%
● No	4	25%
Total	16	100%

Twelve out of 16 (i.e.75%) CWCs stated that it was necessary to record the statement of every child victim under POCSO Act when the child is brought to the CWC.

Of these, 6 CWCs opined that the CWC provides the requisite child friendly environment to take the statement which will help the child record their statement without fear. 2 CWCs felt that such statements create additional evidence while one felt that it is necessary only when the child requires shelter services. 4 (25%) stated that the statement recording at the CWCs was not necessary.



What are some of the challenges you face while recording the statement of child victims?

Responses

4

Developing the required rapport with the child before taking the statement

4

Finding the truth

3

The child is under fear so they refuse to respond

5

No Response

Who is required to be present during statement recording?

Responses

10

CWC member

5

Parent

4

Superintendent of the shelter home

1

Trusted adult

1

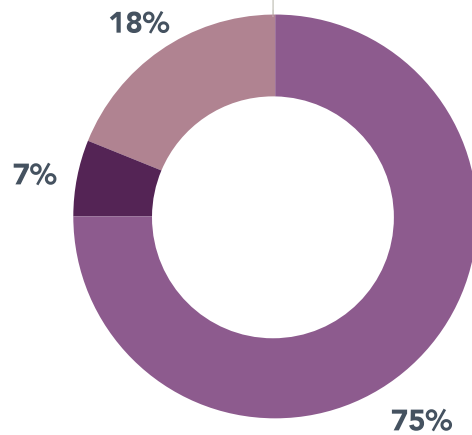
Police

While 5 CWCs felt that the child's parents should be present, 3 CWCs categorically mentioned that parents were not allowed in the room where the child victim's statement was being recorded.

Clearly there is a serious lack of clarity and wide variation in the understanding of the CWCs on this point.

Is it always possible to get such (above mentioned) persons to be present?

Is it always possible to get such persons?



Responses	No. of People	Percentage
● Yes	12	75%
● No	1	7%
● No Response	3	18%
Total	16	100%

Although a law may put certain procedural conditions, there is likelihood that they are not always met. To understand the full meaning of this response, one must read it along with the response for the question on who is required to be present.

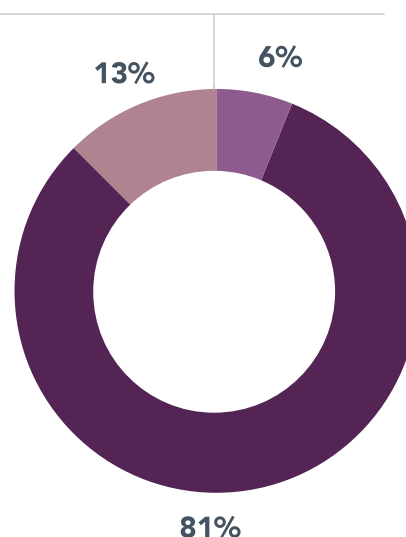
The CWCs were asked as to the procedure they follow in cases where such persons are not present. Only one CWC which mentioned that such persons are not always present stated that in such cases they seek and receive support from the counselor at the Observation Home in their district.

What are the challenges faced by them at the CWC in ensuring privacy and protecting the identity of the child victim of sexual offences?



Do you feel that the infrastructure at the CWC is sufficient to ensure privacy when child victims of sexual offences are brought to you?

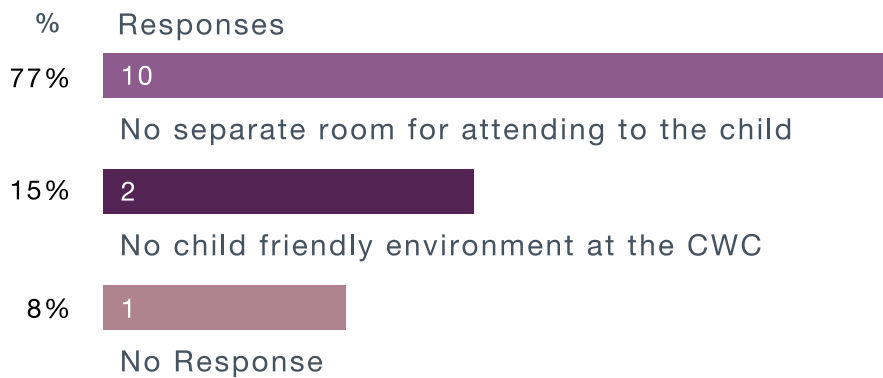
Is the infrastructure sufficient for privacy?



Responses	No. of People	Percentage
Yes	1	6%
No	13	81%
No Response	2	13%
Total	16	100%

Thirteen out of 16 (81%) CWCs stated that the CWCs do not have adequate infrastructure to ensure minimal privacy & confidentiality of the victim child produced before the CWC.

If No, what are the gaps and missing elements? Specify



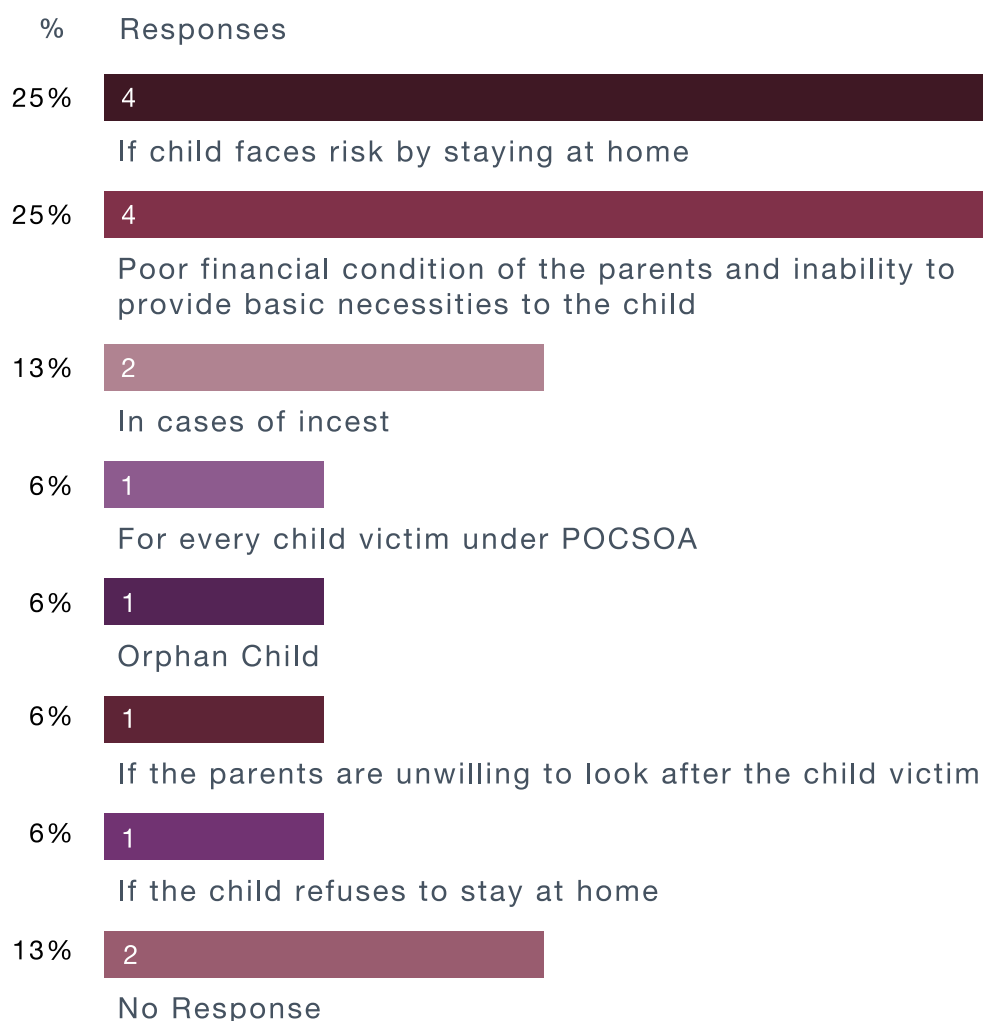
Ten out of 13 CWCs (77%) mentioned that not having a separate room to deal with the child was a major deficiency. 2 CWC felt that there was a distinct lack of child friendly environment at the CWC. 1 preferred not to comment.

## Shelter Facilities

The main principle of the JJA (Objectives) and of the UNCRC is to keep the child with the family as long as it does not go against the principle of serving the best interest of the child.

To understand the practices under POCSOA better, the CWCs were asked as to under what circumstances do they consider it necessary to provide shelter facility to the child produced before them who is a victim under POCSOA.

## When is providing shelter necessary?



The responses were varied though satisfactory.

The child victims of POCSOA offences happen to come in contact with the police at any hour of the day or night. POCSOA Section 24 (4) provides that no child shall be detained in the police station in the night for any reason. Hence they are to be brought to the institutions under the JJA such as the Children's Homes or Shelters. These institutions are mandated to receive the child at any hour of the day or night. The position of the CWCs on this point was sought under a question.

If there is a case under POCSOA where the child victim is in need of urgent shelter based care for the night and the police take the child to a shelter, can the shelter home refuse admission stating that the CWC has not yet passed an Order?

Can a Shelter Home refuse admission?



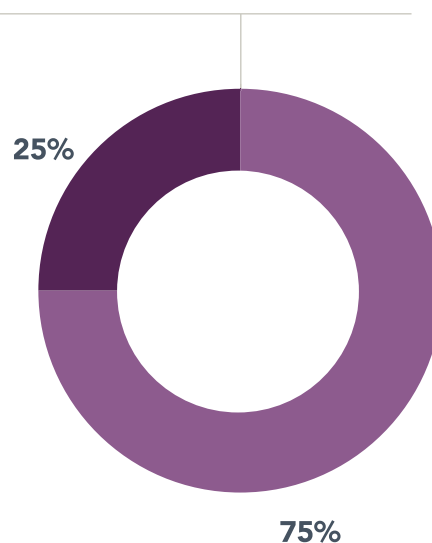
Responses	No. of People	Percentage
● Yes	1	6%
● No	15	94%
Total	16	100%

Remarkably, 15 out of 16 (94%) CWCs affirmed that the Home must admit the child and have no right to refuse admission on the grounds that the CWC has not issued any such order in the case of that child.

Only one CWC stated that the Home authorities can refuse admission citing that the CWC has not passed an Order.

What should police or an organization do under the above-mentioned circumstances?

What to do if refused admission as above?



Responses	No. of People	Percentage
● Call the CWC	12	75%
● No Response	4	25%
Total	16	100%

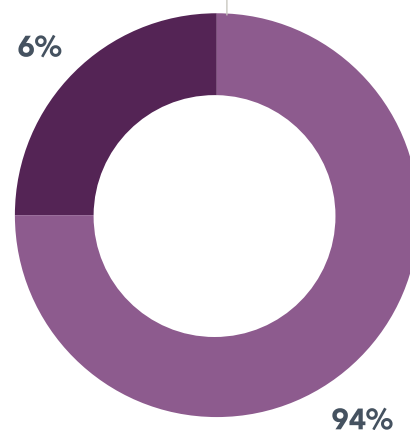
Twelve out of 16 CWCs stated that they should call the CWC. 4 CWCs did not respond.

### Existence of Structures and Agencies for Implementation of POCSOA

Attempt was made to find out if the additional responsibilities on CWC were matched by additional administrative provisions such as budget, infrastructure, manpower etc.

Do you think the additional responsibilities placed by POCSO on the CWC are not matched by any administrative provisions or budgets to the CWC?

Are the responsibilities not matched by funds?



Responses	No. of People	Percentage
● Yes	15	94%
● No	1	6%
Total	16	100%

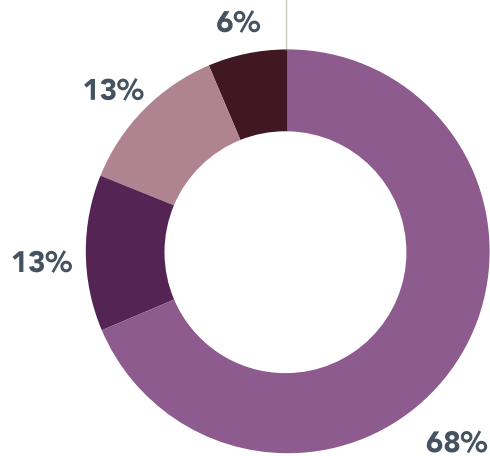
Fifteen out of 16 (94%) emphatically mentioned that the additional responsibilities are not matched by any administrative provisions or budgets to the CWC.

## Manpower

Speaking specifically on the various heads of provision, most pointed out 'manpower shortage' as a major deficit. Some CWCs also mentioned that there was no person from the Juvenile Aid Police Unit (JAPU) to provide for safety and protection within the CWC premises.



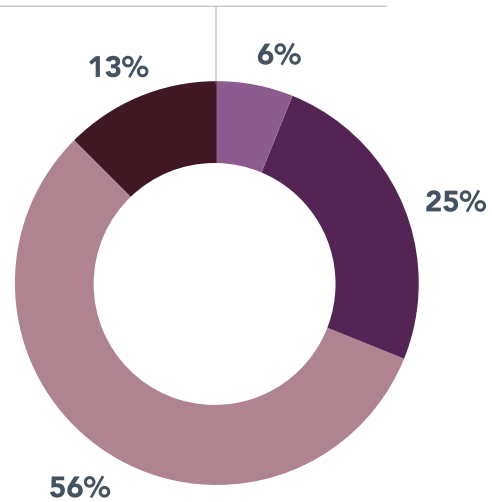
What are the challenges that you face with the lack of availability of manpower?



Responses	No. of People	Percentage
Shortage of staff	11	68%
We receive support from ICPS	2	13%
No challenges	2	13%
No staff for safety and protection(SJPU/JAPU)	1	6%
Total	16	100%

## Budgetary Provisions

What are the challenges that you face with budgetary provisions?

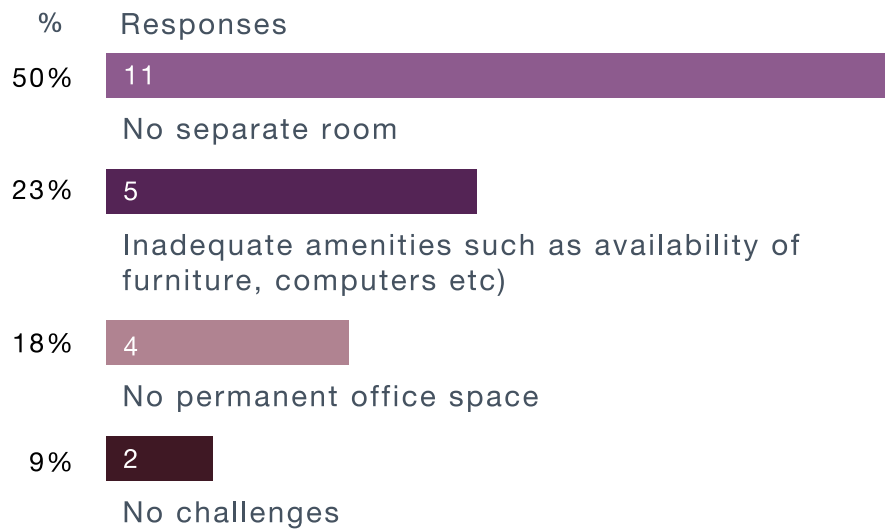


Responses	No. of People	Percentage
Insufficient budget	9	56%
Lack of travel allowance	4	25%
Delay in release of funds	1	6%
No challenges	2	13%
Total	16	100%

Nine CWCs (56%) quoted that the budget was in short supply. 4 CWCs (25%) felt that there was not enough travel allowance and one mentioned that there was delay in processing and release of the funds.

## Infrastructure

What are the challenges that you face with regards to infrastructure?



In regards to the infrastructure, almost 50% (11 out of 16) responses mention that there are no separate rooms for interacting with a child victim of sexual offences. 5 responses indicated inadequate amenities while 4 responses mentioned that there was no permanent office space for the CWC to operate out of.

Only 2 said that there were no challenges.

## Administrative Powers

As regards the provision of administrative powers, 7 out of 16 CWCs felt that they did not have enough powers. Only one observed that the CWCs had enough power. Most of them mentioned that the other stakeholders, especially the police, are not aware of the powers that the CWCs have.

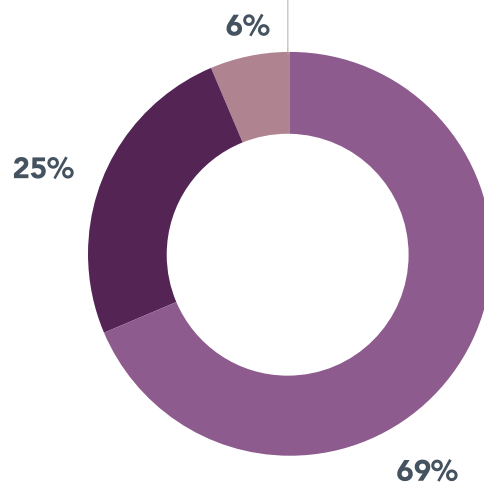
Seven (44%) CWCs mentioned that the police do not follow instructions and do not appear before the Committee in spite of being summoned by the CWCs.

## Awareness on Services

The victims of offences under POCSOA need a variety of services which the CWCs are expected to facilitate from within their environment. This presupposes that the CWCs are equipped with the knowledge of the types of resources and services available in their environment, their accessibility and whereabouts. When asked -

‘Do you have access to service providers in and around your area of jurisdiction whose services are required by you to help certain child victims of sexual offences?’

Do you have access to service providers?



Responses	No. of People	Percentage
● Yes	11	69%
● No	4	25%
● No Response	1	6%
Total	16	100%

Four (25%) CWCs denied having access while 11 out of 16 CWCs replied positively.

The accessibility to different types of services was further inquired into. (District wise tables attached as annexure)

- **Residential Care for Girl Victims** - 10 (62%) CWCs stated that such services were available in their jurisdiction, 3 (19%) stated that they were not available while 3(19%) lamented that the services were not sufficient.
- **Residential Care for Boy Victims** - 10 (62 %) CWCs confirmed the availability, 1 CWC said they were not available while 5 (31%) CWCs stated that the services were not sufficient
- **Medical Care** - 14 out of 16 (i.e. 88%) CWCs affirmed that medical services for the child victims of POCSOA offences were available in their jurisdiction while other 2 (12%) stated that while available, the services did not have good quality.
- **Counselling** - Only 6(37%) out of 16 CWCs affirmed that counseling services for child victims of POCSOA could be accessed by them in their jurisdiction. 4 (25%) said they were simply not available. 3 (19%) stated that they were insufficient and another 3 (19 %) said that they were of poor quality.
- **Support Persons** - A crucially important and unique provision under POCSOA Rule 2 (f), the support person is expected to play a key role in helping the child go through the POCSOA process by creating a comfort zone for the child and family by allaying fears and creating clarity. Shockingly, 12 (75%) out of 16 CWCs denied having any facility of support persons or support agencies, 3 (19%) CWCs did not reply while only one (6%) CWC stated that support persons were available in their jurisdiction.
- **Translators** - The children who are found victims of POCSOA offences may also be migrants and do not speak Hindi, English or the state language. This poses a challenge before the stakeholders in registering a complaint, making inquiries, getting statements and providing facilities for the victim child. To overcome this difficulty, POCSOA under Sec-38 has made provisions for hiring translators. Only 6 (38%) CWCs mentioned that they do get the services of translators in their jurisdiction. 10 out of 16 CWCs (62%) stated that translators are not available for them
- **Interpreters** - Similar inquiry about the availability of interpreters showed that in a majority (56%) of cases they were not available and only 7 (44%) affirmed their availability.

- **Special Educators** - As regards the availability of Special educators in their jurisdiction a majority (56%) of CWCs mentioned that special educators were not available and only 7 (44%) affirmed their availability.
- **Legal Services** - In case of the availability in their jurisdiction of legal services to help a child victim of POCSOA offences, majority CWCs (56%) affirmed their availability, while 7 out of 16 i.e. (44%) said that such services were not available.

## Support Persons

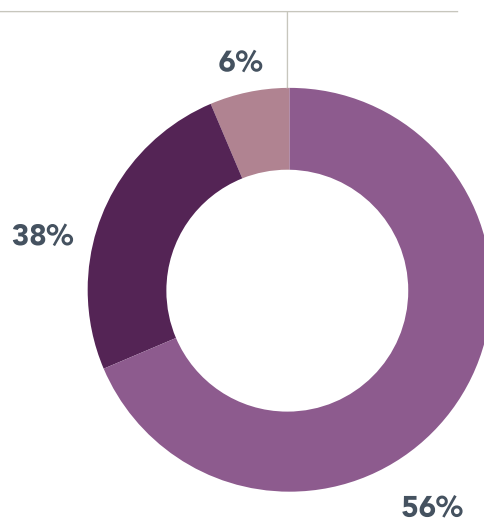
POCSOA makes various provisions to help a child victim of a variety of sexual offences.

POCSOA Rules 2 Definitions: f) “Support Person” means a person assigned by a Child Welfare Committee, in accordance with sub-rule (8) of Rule 4, to render assistance to the child through the process of Investigation and trial or any other assisting the child in the pre-trial or trial process in respect of an offence under the Act.

When asked,

Does the CWC need to appoint a Support person for every case that is registered under POCSOA?

Are support persons required in every case?



Responses	No. of People	Percentage
Yes	1	6%
No	6	38%
Don't Know	9	56%
Total	16	100%

A majority, 9 out of 16 (56%), CWCs stated that they did not know the answer. 6 (38%) CWCs stated that they do not have to appoint a support person in every case.

Only one CWC answered positively.

The researchers tried to know if there was a list available with the CWC that listed individuals and/or organizations that could be appointed as support persons. Except for one CWC, it was clear that the others were unaware of such a list.

A vast majority of the CWCs seemed fundamentally unaware of the provision of Support Person in POC SOA Rules.

## Practices

Attempt was made to know the difficulties faced by the CWCs in different areas of their functioning by asking questions about each of the following areas;

### Difficulties faced by CWCs



Five (31%) CWCs mentioned that the quality of home investigation reports that they receive are not up to mark and not enough for them to assess the situation of the child. 3 (18%) mentioned that tracing the family of the child victim was a challenge.

With regards to assessing the situation of the child, the CWCs felt that it was difficult to assess the psychological condition of the child. Others stated that contacting the family and paying a home visit was a challenge.

4 (25%) CWCs mention that they do not conduct a Social Investigation Report of the cases presented to them.

The CWCs were asked as to who prepares the home investigation reports to which they replied stating that on case to case basis they take the support of various stakeholders.

Who does the Social investigation in cases registered under POCSO?

Responses



The PO of the DWCD



DCPU



NGOs



CHILDLINE



Interns/Social Work Students



Superintendent/PO of shelter home

The Home Investigation report is made by a variety of stakeholders from within the government as well as the non-state agencies.

## Opinions

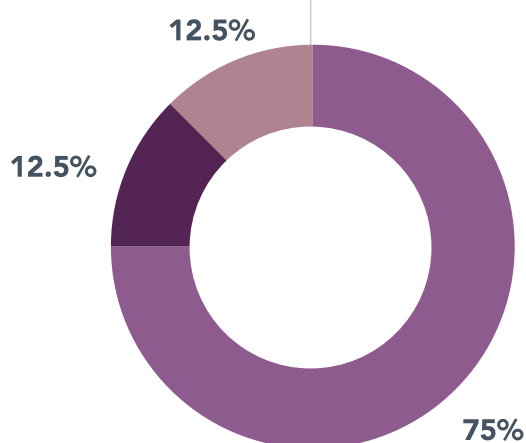
### Mandatory Reporting

For a higher scale of detection and reporting of sexual offences against children, the government felt it necessary to introduce a provision of mandatory reporting in the law. Mandatory Reporting provisions do exist in the laws of many developed countries although with significant variations.

A similar provision of mandatory reporting has been introduced under Sec 19, 20, 21, 22 of POCSO Act. This had both good and undesirable effects on victim children as well as on their service providers. The researchers tried to find out the opinion of the CWCs on this much discussed and disputed provision of POCSOA.

POCSOA makes it mandatory for anyone, who is aware of or suspects Sexual offence against children to report the case to the police. What is your opinion on this?

#### Mandatory Reporting



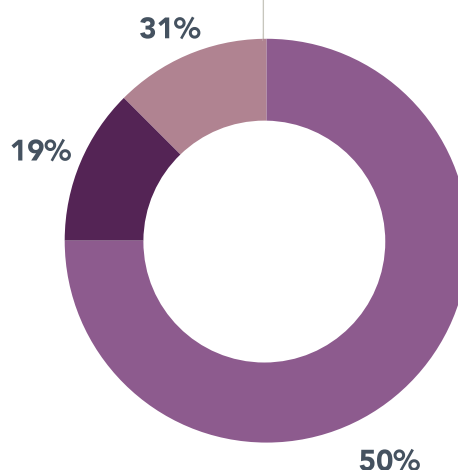
Responses	No. of People	Percentage
● Mandatory reporting should be there	12	75%
● Mandatory reporting should not be there	2	12.5%
● Conflicting opinion among the members and chairperson	2	12.5%
Total	16	100%

Twelve (75%) CWCs stated that mandatory reporting was desirable and should be retained. While 2 CWCs mentioned that it is not desirable. In the case of 2 CWCs, there was a conflicting opinion between the chairpersons and members as regards the provision.



Whether every case in which a child discloses to the CWC of being a victim of sexual offence should be reported to the police by the CWC?

Should every case of SOAC be reported to the police?



Responses	No. of People	Percentage
● Yes	8	50%
● No	3	19%
● No Response	5	31%
Total	16	100%

Half (50%) of the CWCs answered the question affirmatively that they do indeed report to the police. 3 (19%) replied negatively indicating that mandatory reporting is not being observed as a practice by some CWCs themselves.

This area was further probed for better clarity by asking the question -

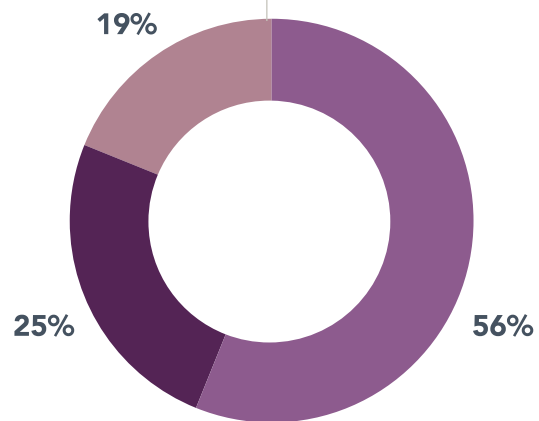
Are there cases of sexual offences under POCSOA where the CWC feels it not necessary to report to the police?

Ten out of 16 (62%) CWCs felt that all POCSOA cases should be reported to police while 6 did not respond.

## Age of Consent

Through POCSOA in the year 2012 the age of consent for sexual activity was raised from the previous 16 years to 18 years. The researchers tried to seek the reaction of the CWCs on this change. Most shared what they thought was the right cut off age instead of giving an overall opinion on the new age of consent.

What is your opinion on the age of consent?



Responses	No. of People	Percentage
● 18 must be age of consent	9	56%
● 16 must be age of consent	4	25%
● 15 must be age of consent	3	19%
Total	16	100%

Nine out of 16 (i.e. 56%) CWCs stated that the age of consent should be 18 years, 4 stated it should be 16 years and 3 CWCs suggested that the age of consent should be 14 years. Substantial number of CWCs recommended a different cut off age than what is given under the law.

Fourteen CWCs explained why they suggested the age they did and two CWCs did not explain their response. Most i.e. (11 out of 16) (69%) of the justifications were based upon the criteria of maturity.

## Services

Do you have access to service providers in and around your area of jurisdiction whose services are required by you to help a child victim of sexual offences?

N No   
 Y Yes   
 IN Insufficient   
 PQ Poor Quality   
 WN When Necessary

District	Residential care for girls	Residential care for boys	Medical Care	Cousselling	Support Persons & Support Agencies	Translators	Interpreters	Special Educators	Special Educators	
Amravati	IN	IN	Y	Y	N	N	N	N	N	Police, CSOs, and CHILDINE make them available when necessary
Aurangabad	IN	IN	Y	IN	N	WN	WN	WN	Y	
Beed	Y	Y	Y	PQ	N	Y	Y	N	WN	
Dhule	Y	Y	Y	N	N	N	Y	Y	Y	Superintendent of the shelter home supports the child.
Jalgaon	Y	Y	Y	IN	WN	N	N	N	Y	
Kohlapur	N	N	Y	N	N	N	N	N	N	DCPU and CWC provide counselling
Latur	Y	Y	Y	Y	N	N	N	N	N	
Mumbai Suburban	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Nagpur	IN	IN	PQ	IN	N	Y	Y	Y	Y	
Nandurbar	Y	Y	N	Y	N	N	N	N	Y	
Nasik	Y	Y	Y	N	N	Y	Y	Y	N	
Pune	Y	Y	Y	Y	N	N	N	N	N	
Raigad	N	IN	PQ	PQ	N	N	N	N	N	
Satara	Y	Y	Y	Y	N	N	N	N	N	
Sholapur	Y	Y	Y	N	N	N	N	N	WN	
Wardha	N	IN	Y	Y	N	N	N	N	Y	

## Conclusions

1. The CWCs scored **43%** in the test of awareness about their responsibilities as per the POCSOA. This is an area of concern.
2. **A large majority (75%) of CWCs did not have the full strength** of 5 members. There was rampant absenteeism. In many places, barely two members were managing the affairs of the CWC.
3. The provision of an odd number of 5 in the composition of the CWCs was made to facilitate a majority decision when there is difference of opinion within the CWC. In one district, it was observed that mostly two members attended the sitting and almost always, they had a difference of opinion between them. Two CWCs did not have a Chairperson. The deficit composition of the CWCs becomes all the more serious as POCSOA has definitely added to the workload and responsibilities of the CWCs. **The absence of the full number of members appointed on the CWCs and the routine operation of the CWCs with deficit number of members also raises a serious question about the legal validity of their Orders and decisions.**
4. It was a good practice that all CWCs had a board outside their offices displaying the details of the CWC members along with their phone numbers and the days, time of the sittings. However **a large majority (88%) of CWCs did not start without a delay of an hour or two.** The **absence of seating arrangements** for the children, their parents and other stakeholders causes considerable inconvenience to them as they wait for the CWCs to start their work.



# 88%

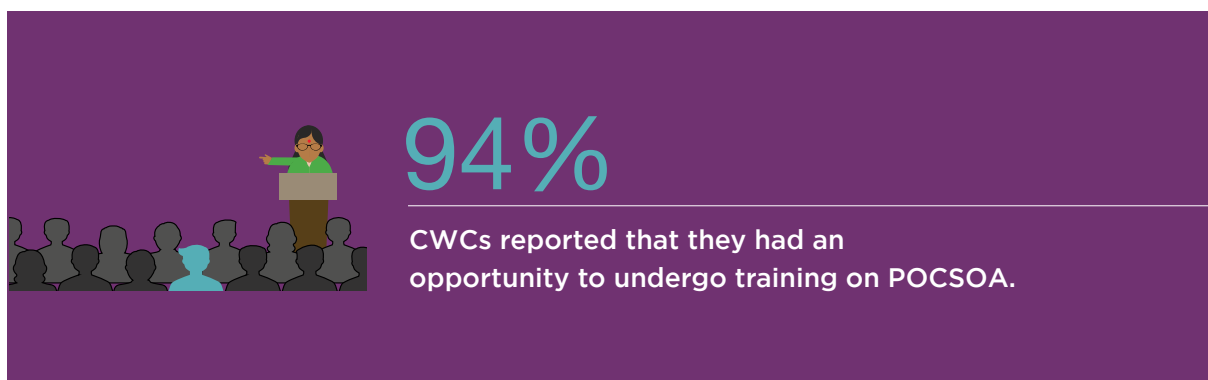


CWCs did not start the sittings on time. The time delay ranged from 1 hour to 2 hours.

There was no proper seating arrangement for children & families as they waited for the members to arrive.

5. The **absence of separate room for victim children in most CWCs (77%)** causes serious violation of the privacy of the child.
6. In districts where the **CWCs, Juvenile Justice Boards (JJBs) and District Child Protection Units (DCPUs) were located in a common premise, they exhibited better coordination** amongst themselves.

7. Almost all CWCs (94%) claimed to have obtained some training on POCSOA but **half (50%) of them admitted that the trainings did not equip them to handle POCSOA cases.**



8. Just a third (31%) of the CWCs mentioned that the police report every case of SOAC to the CWC in the stipulated time. **44% of the CWCs complained that the police do not appear before the CWC in spite of having been summoned.**



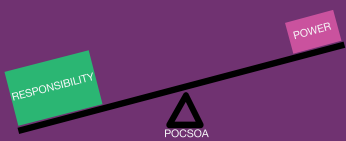
9. A majority (**69%**) of CWCs are under the impression that **every child victim under POCSOA must be 'produced' before them.** They complain that in most districts the police do not actually 'produce' every single child victim before the CWC.



69%

CWCs stated that the police have to produce every child victim in a case registered under POCSOA before the committee.

10. Almost all CWCs (94%) complained that the **additional responsibilities placed upon them** under the POCSOA are not matched by any administrative provisions or budgets to the CWC.



94%

CWCs emphatically mentioned that the additional responsibilities under POCSOA are not matched by any additional administrative provisions or budgets.

11. Almost all (94%) CWCs were found unaware of the provision of appointing a **Support person** as per the POCSOA Rules. This is a key provision. Most CWCs seem not to have used that provision at all.



ONLY 6%

CWCs were aware of the provision of appointing a Support person as per the POCSOA Rules. Most CWCs seem not to have used that provision at all.

12. The CWCs mention that **they have access to shelter facilities as well as legal and medical services for child victims of sexual offences** in their districts. However their access to counsellors, interpreters, translators and special educators was poor.



13. There is a **serious lack of connection and mutual awareness let alone collaboration and multi stakeholder team approach between the CWCs and the various stakeholders**. Such a situation is bound to affect the child victim of SOAC under POCSOA.

## FIVE

# DATA ANALYSIS

This chapter presents the analysis of the primary and secondary data for a number of respondents and the understanding derived therefrom.

### SECTION 5

## DISTRICT CHILD PROTECTION UNIT

# 14

DCPUs

The District Child Protection Unit is a key district level structure under the Integrated Child Protection Scheme (ICPS) of the Government of India. The ICPS came into existence in 2009. Subsequently, the DCPUs were created under the ICPS to ensure its effective implementation. They were essentially a district-level coordinating entity expected to work with other relevant government departments and civil society organizations to protect children.

The ICPS lays out numerous provisions outlining the role of the DCPUs. One of the key mandates of the DCPUs is to ensure effective implementation of various child protection laws and schemes in their district. Thus it falls under their purview to facilitate the effective implementation of the POCSOA in their district. Also, the POCSOA rules lay down specific responsibilities to be carried out by the DCPU in every district.

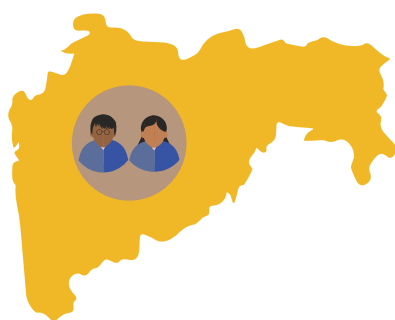


Out of the 17 districts covered under this study, the DCPUs of 2 districts had been dissolved as their terms had expired. New DCPUs had not been appointed in their place. In yet another district, the DCPU seemed reluctant to meet with the research team despite continued follow up.

Therefore, 14 DCPUs were covered in the data collection round. Individual members of the DCPU (i.e. District Child Protection Officers, Social Workers, Lawyers, Counsellors etc.) who were available during the time of data collection we interviewed.

## Field Observations & Informal Discussions

### DISTRICT CHILD PROTECTION UNITS



All the DCPUs across the 14 districts were **understaffed**.



Not a single DCPU had a team of 13 members as prescribed under the ICPS. Even the DCPU with the most staff had a maximum of 7 members.

### Manpower

At the time of data collection it was learnt that the office of the Department of Women & Child Development, Government of Maharashtra had passed an Order stating that DCPUs across the state where the contracts of the members had lapsed must be dissolved and new members be appointed in their place. The DCPUs we met mentioned that it was in the light of this Order that the DCPUs in two of the sampled 17 districts had been dissolved.

## Team Strength

No. of districts	Team Strength
2	6 Member team
5	6 Member team
2	5 Member team
4	4 Member team
2	1 Member team
2	Dissolved

All the DCPUs across the 14 districts were understaffed. Not a single DCPU had a full team of 13 members as prescribed under the ICPS. The maximum number of members among the DCPUs we interviewed was 7. Two DCPUs were functioning with just 1 member each.

The lack of adequate human resources posed severe challenges to the overall functioning of the DCPUs. They seemed unable to devote sufficient time to comprehensively carry out their myriad responsibilities under various departments, schemes & laws.

e.g. - If the members were engaged in building and strengthening the Village Child Protection Committees (VCPC) then they failed to organize sufficient trainings for other stakeholders.

Given the vast geographical area of each district, it seemed to be a challenge for a singular DCPU to comprehensively cover their jurisdiction.

The appointment of staff to the DCPU is on a contractual basis. Salaries are not released on time. Thus most of the members of the DCPUs mentioned being highly demotivated. High attrition and turnover rates across all DCPUs was mentioned.

One DCPU was observed taking support of interns from social work colleges for preparing Social Investigation Reports and conducting follow-ups.

## Where are the DCPU offices located?

### Responses

8

In the premises of the district headquarters of the DWCD

5

In the premises of an Observation Home, along with the CWC and JJB.

1

Independent office

The offices of the DCPUs in 5 districts were in the same premises as that of the CWC and JJB. In such situations, it was learnt, that these three systems work very well together. DCPUs attend the sessions of CWCs and offer support to them, as and when required.

The DCPUs in majority of the districts (8) were in the same premises as the DWCD office. In such cases we were informed that there seemed to be a lack of autonomy among the DCPUs. They claimed to be burdened with tasks beyond their mandate that were assigned to them by the DWCD. This engagement in the day-to-day work of DWCD was disruptive to the normal functioning of the DCPUs. The units are expected to conduct Home Investigation Reports for the *Bal Sangopan Yojna* as well as for the cases of Domestic violence which are well outside their purview.

In districts where the DCPUs have established a good rapport and linkages with other stakeholders, cases under POCSO seem to have been handled relatively well. In one district, the DCPU acted as an efficient liaison between the other systems and the victims. A case was mentioned in which the police sent the victim from the rural village to the district hospital. The DCPU was asked by the police to coordinate with the victim and the hospital. The DCPU arranged for the medical examination before the victim arrived to ensure that there was no delay.

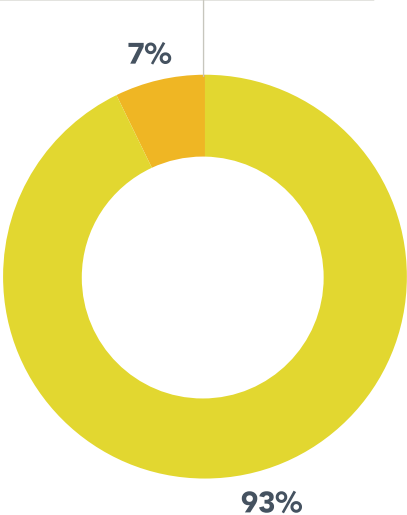
DCPUs in most of the districts have worked with police exclusively on Operation Smile (which is responsible for the tracing of missing children.) None of the DCPUs had any interaction with courts and only in the rarest of cases, with hospitals. Vice Versa, there is no awareness about the existence of the DCPUs among other stakeholders especially medical professionals, police, and the Courts.

## Information Through Interview Schedule

We tried to find out whether the DCPUs sensed that there was any increase in sexual offences against children (SOAC) in their respective districts since 2012.

Is there an increase in sexual offences against children since 2012 in your district?

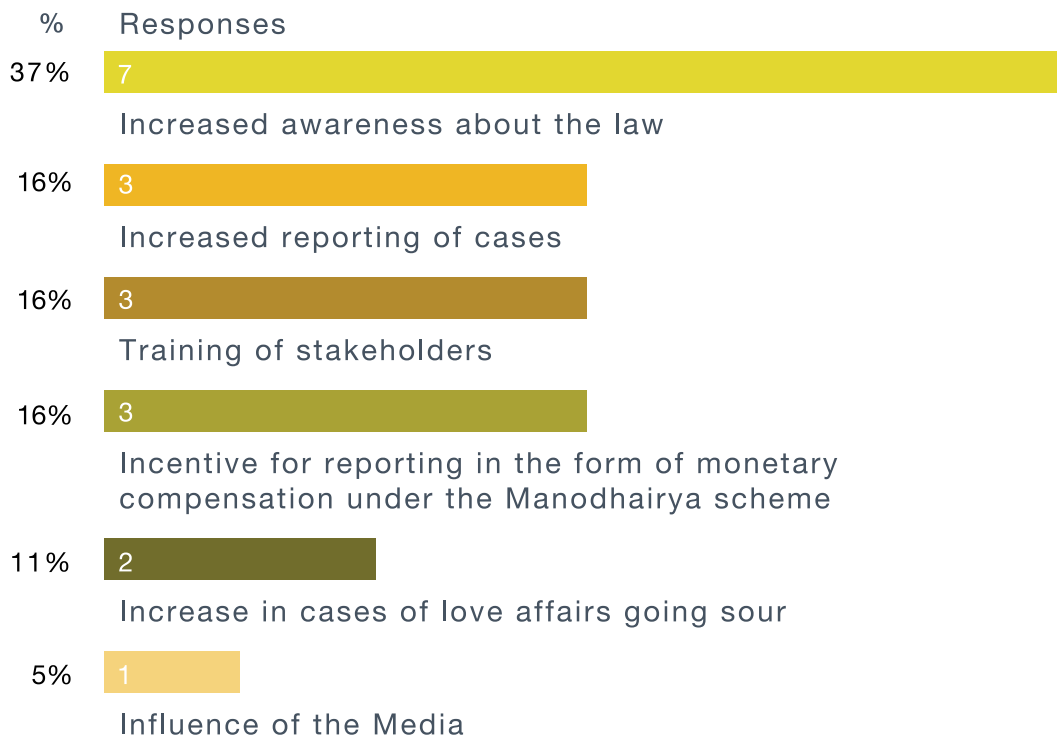
Has there been an increase in SOAC?



Responses	No. of People	Percentage
● Yes	13	93%
● No	1	7%
Total	14	100%

An overwhelming majority of respondents stated that there was an increase in sexual offences against children since 2012 in their districts. They were requested to give reasons for their above reply.

If yes, what do you think are some of the reasons for the increased incidence in your jurisdiction?



Most responses given referred to a higher incidence of reporting of the offences

The DCPUs were asked if there were any social groups or communities in their districts that were particularly susceptible to SOAC.

Are there any special groups/communities in your district that are susceptible to child sexual offences? If yes, can you mention a few?



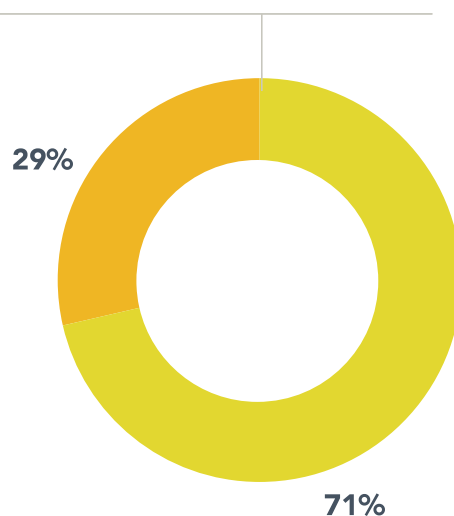
Slum Communities in Mumbai (in particular the Wadala slums) were highlighted as extremely high-risk places owing to a lack of space coupled with high density of population, which includes high proportion of migrant population.

Amravati, Jalgaon and Ahmednagar districts mentioned higher susceptibility of the SC/ST communities. Amravati mentioned that men from neighboring states which register adverse sex ratio/deficit female population visit Amravati district and buy young girls as wives.

Nagpur was referred to as a well-connected city with a high proportion of abandoned and trafficked children. It was mentioned that Ganga-Jamuna the infamous red light district of Nagpur harbors several children from far off places- specifically from the Dharmavath and Karmavath communities from Madhya Pradesh. Children from Chhattisgarh and Bangladesh who were victims of human trafficking were specifically mentioned as being more susceptible to SOAC.

Was there any particular incident that led to higher reporting of cases of sexual offences against children in your jurisdiction?

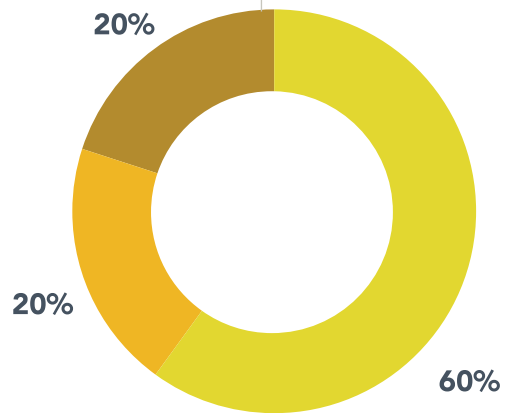
Has there been a particular incident causing higher reporting?



Responses	No. of People	Percentage
● Yes	10	71%
● No	4	29%
Total	14	100%

If yes, please elaborate on the incident?

What are the details of incidence leading to higher reporting?



Responses	No. of People	Percentage
Cases of sexual abuse in shelter homes	6	60%
Cases of sexual abuse in educational institutions	2	20%
No Response	2	20%
Total	10	100%

When an attempt was made to find out if any specific incidence had caused the rise in reporting, 10 out of 14 (71%) DCPUs stated that the reporting of the SOAC got a fillip in their respective district after certain incidents came to light and then snowballed into creating large scale awareness in the public.

A majority (80%) of these cases were of incidents of SOAC that took place in institutional settings. Of these, a majority (60%) concerned shelter homes while some (20%) mentioned other education institutions.

Does the DCPU get information of the cases registered under POCSOA in the district?

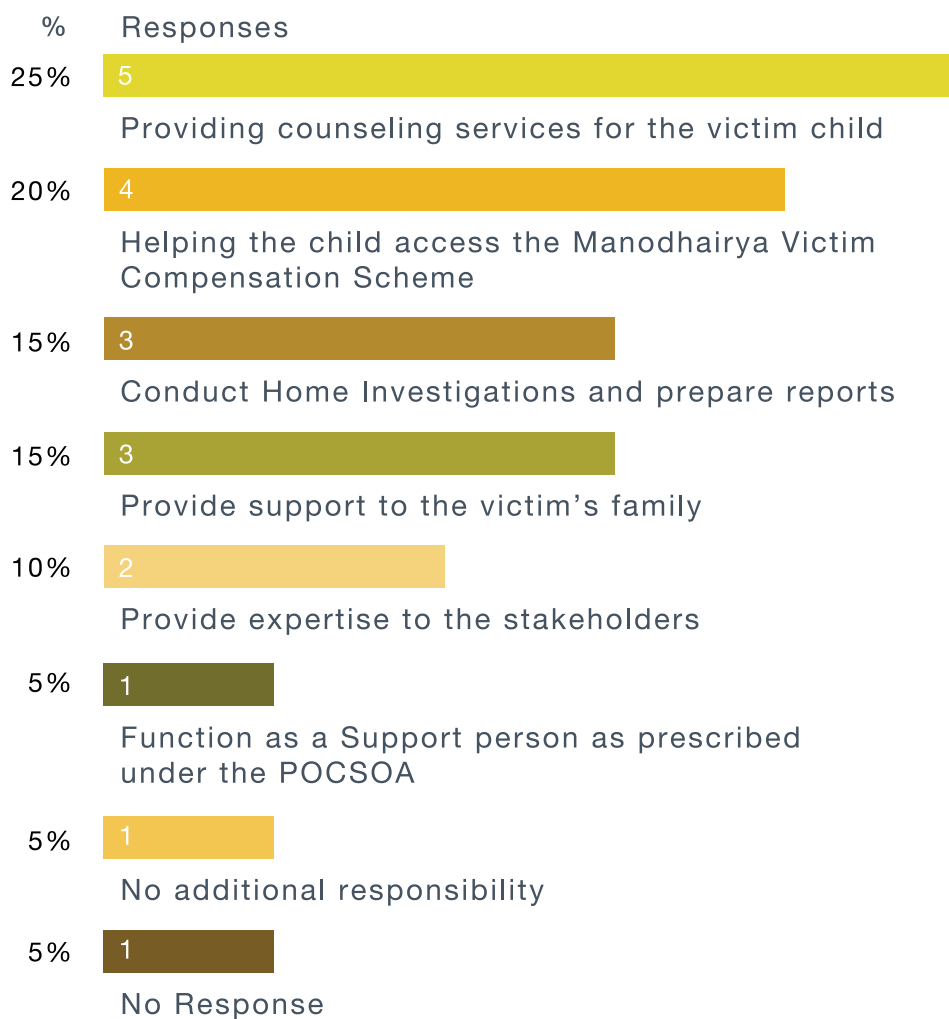
Does the DCPU get information on registered cases under POCSOA?



Responses	No. of People	Percentage
Yes	6	43%
No	8	57%
Total	14	100%

A majority of DCPUs (57%) mentioned that they do not get the information of the POCSOA cases registered in their district. Of those who do, most are informed by the police, DWCD, community, Aanganwadi (ICDS) workers or the VCPCs (Village Child Protection Committees) under ICPS.

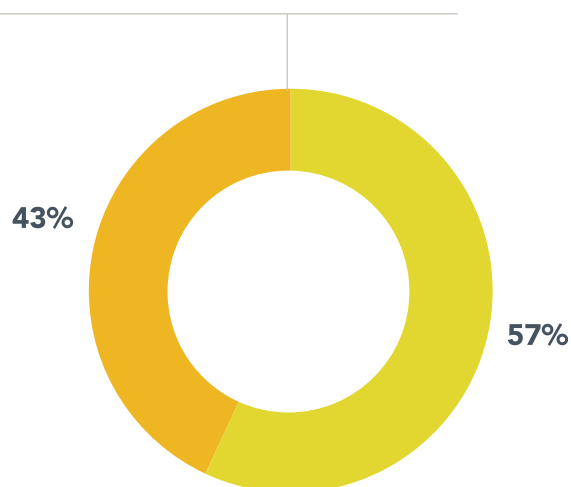
Under POCSOA, what are the specific responsibilities that have been placed upon the District Child Protection Unit, other than your usual responsibilities under the ICPS?





Do you consider that POCSOA has put an extra workload on the DCPUs?

Has extra workload been placed on DCPUs by POCSOA?



Responses	No. of People	Percentage
● Yes	8	57%
● No	6	43%
Total	14	100%

There is a lack of clarity among the DCPUs as to their responsibilities in cases under POCSOA. Most mentioned offering counseling services and helping victims access compensation under the Manodhairya Victim Compensation Scheme as their responsibility.

While 57% DCPUs confirmed that they were under extra workload with POCSOA coming into effect, 43% maintained that there was no extra workload.

Out of the 8 DCPUs who felt that there was extra workload, most stated that there had been no additional budget and infrastructure sanctioned to match the additional responsibilities. This strained the already meagre resources available. Others felt that POCSOA cases had become their priority and hence, their other responsibilities got left behind.

Many DCPUs complained that they have limited budgetary discretion and that every decision they make needs to be cleared in advance by the state level ICPS. This adversely affects the functioning of the units.

## Interpreters, Translators and Special Educators

POCOSA Rules 3 Interpreters, translators and special educators:-

(1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators and special educators for the purposes of the Act, and this register shall be available to the Special Juvenile Police Unit ( hereafter referred to as “ SJPU”), local police, magistrate or Special Court, as and when require

Attempt was made to know if the DCPUs were aware of some of their special responsibilities under POCSOA for which cases were given to them as follows;

If an intellectually disabled child or a child who doesn't speak the language that is understood by the local authorities is sexually assaulted in your district; a case is lodged under POCSOA. How can you (i.e.DCPU) support the police in this case?

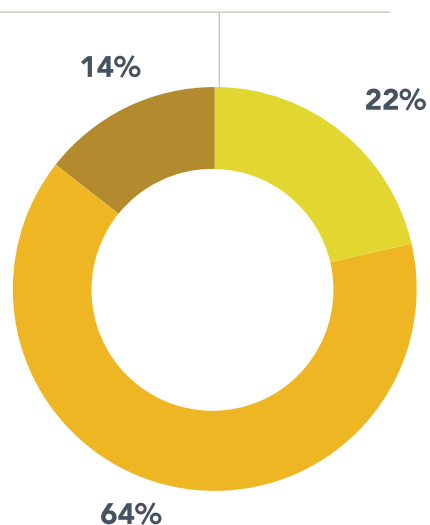
In response to the above question where the child doesn't speak the language or is intellectually challenged, half (7) of the DCPUs mentioned that there are no such cases, and if there were to be any, they would take support of experts.

POCOSA Rule 3(6) states that “Payment for the services of an interpreter, translator, Special educator or expert whose name is enrolled in the register maintained under sub-rule (1) or otherwise, shall be made by the State Government from the Fund maintained under Section 61 of the Juvenile Justice Act, 2000, or from other funds placed at the disposal of the DCPU, at the rates determined by them, and on receipt of the requisition in such format as the State Government may prescribe in this behalf.”

The following questions were asked to find out about the procedure for payment and the amount paid for the services.

## Are these translators/special educators paid?

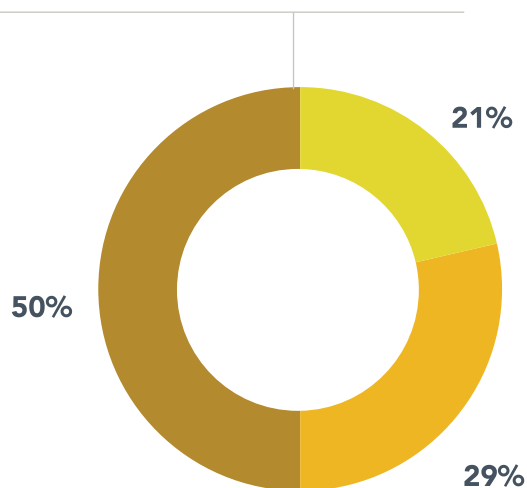
Are Translators/ Special Educators paid?



Responses	No. of People	Percentage
Yes	3	22%
No	9	64%
No Response	2	14%
Total	14	100%

From which budget are the funds allocated to pay these translators/special educators?

What are the source of funds?



Responses	No. of People	Percentage
No budgetary allocation	4	29%
ICPS and JJ fund	3	21%
No Response	7	50%
Total	14	100%

POCSOA provides for special educators and translators or language resource persons to be hired against payment. The DCPUs were asked if they had to make any payments to these resources.

Only 3 DCPUs replied in the positive while 9 DCPUs said that no payment is made to these special resources. 4 DCPUs stated that there was no budgetary allocation for the same. 3 DCPUs mentioned that the budget for JJA and ICPS may be utilized for paying the special educators and translators.

However in practice, none of the DCPUs (0%) had paid for any services rendered by the experts. The reason stated was the lack of funds.

Coordinating the work of different agencies working for child protection being the main role of the DCPUs under the ICPS, they are also required to coordinate the processes and practices in relation to the victims under POCSOA. Resource mobilization is one responsibility the DCPUs are required to perform very often for which they must have resource directories of a variety of service providers, facilities and experts like translators, interpreters, special educators, counselors and shelter homes. The following tables show the situation on this front.

## Do you have the list of the following resources?

Status of resource directories across the districts as on June 2016

District	Status				
	Translators	Interpreters	Special Educators	Counselors	Shelter Homes
Amravati	N	N	N	N	Y
Ahmednagar	Y	Y	Y	Y	Y
Aurangabad	N	N	N	N	Y
Beed	N	N	N	N	Y
Dhule	N	N	N	N	Y
Jalgaon	N	N	N	N	Y
Latur	N	N	N	N	Y
Mumbai	IP	IP	IP	IP	IP
Nagpur	Y	Y	Y	Y	Y
Pune	Y	Y	Y	Y	Y
Nandurbar	N	N	N	N	Y
Nashik	Y	Y	Y	Y	Y
Solapur	Y	Y	Y	Y	Y
Wardha	N	N	N	N	N

Twelve (i.e. 86%) of the DCPUs had a list of shelter homes in their area. Only 5 had a list of translators and special educators, 5 had a list of interpreters, and another 5 had a list of counselors. One DCPU stated that these were in the process of being prepared for their district.

In short, the availability of resource directories with DCPUs is patchy at best.

None of the DCPUs that had the list had disseminated it among other stakeholders. The reason cited was the lack of funds for printing the resource directory.

We tried to find out what challenges were faced by the DCPUs in putting together the lists of the above resources like translators, interpreters, counselors, special educators and shelter homes.

What are the challenges faced by the DCPU in putting together a list of interpreters, translators and special educators?



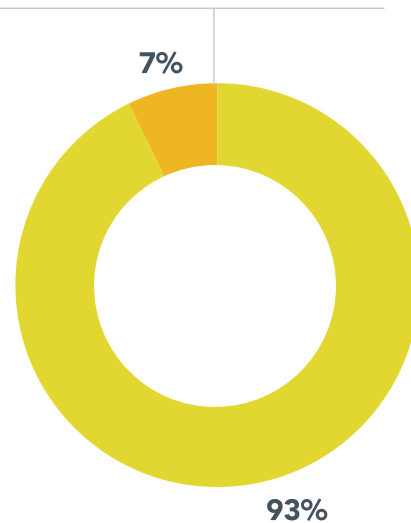
### Support Person

Being a 'Support Person' is a crucial role added by the POCSOA Rules for helping the child victims of sexual offences through investigation, prosecution and rehabilitation.

Rule 4 (7) The CWC, on receiving a report under sub-section (6) of Section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organization 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 DCPU:

Was any member from the DCPU appointed as a Support Person in a POCSOA case?

Is there an appointed Support person?



Responses	No. of People	Percentage
No	13	93%
No Response	1	7%
Total	14	100%

None of the DCPUs (0%) were aware of the provisions where they could be appointed as a Support person under POCSOA Rules.

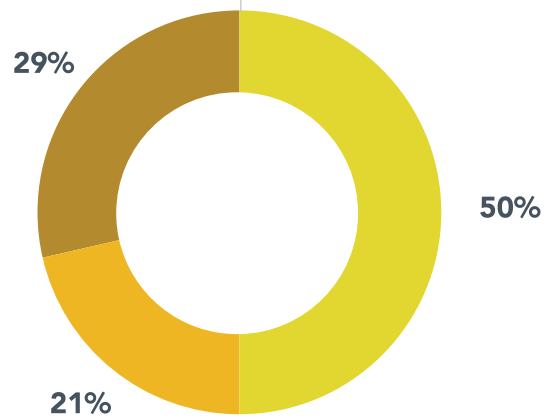
13(93%) stated that they were never appointed as the Support person for a child victim or its family under POCSOA cases.

### Counselors

The DCPUs are expected to provide counseling services to the victim children and their families.

Are the services of the DCPU’s counselor used for providing counseling for child victims under POCSOA?

Are DCPU Counselors used?



Responses	No. of People	Percentage
Yes	7	50%
No	3	21%
DCPU does not have a counselor appointed	4	29%
Total	14	100%

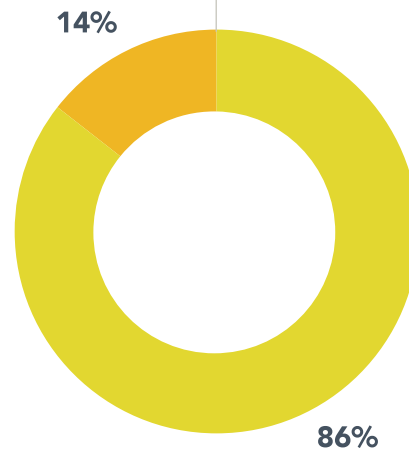
Half of the DCPUs we interviewed stated that they were used for providing counseling services to child victims of sexual offences. 4 DCPUs (29%) did not have counselors to offer the service and 3 (21%) said their services were not being used.



## Social Investigation Reports

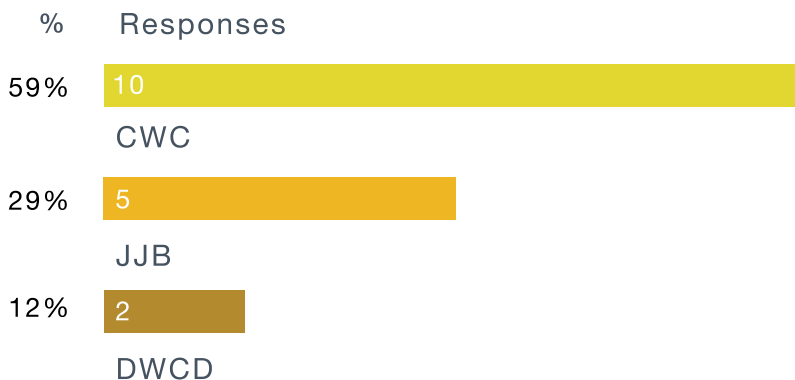
Is the DCPU appointed to conduct a home investigation report/social investigation report (HIR/SIR) for cases registered under POCSOA?

Is the DCPU appointed for HIR/SIR?



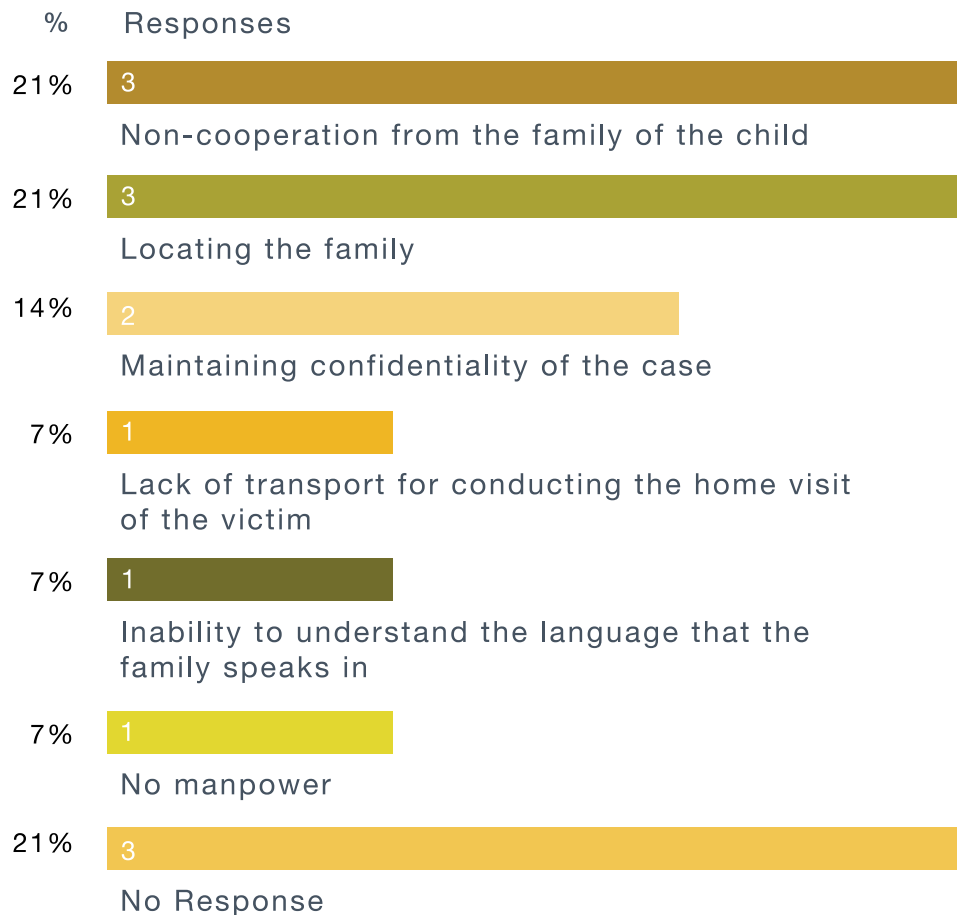
Responses	No. of People	Percentage
Yes	12	86%
No	2	14%
Total	14	100%

If yes, who appointed them?



12 (86%) DCPUs mentioned that they did conduct Home Investigation of cases registered under POCSOA in their district, submitted reports and followed up with the family to ensure that victims get compensation. Ten DCPUs were appointed by the CWCs and 5 by JJB for making the HIR.

## What challenges were faced by the DCPUs while conducting an HIR?



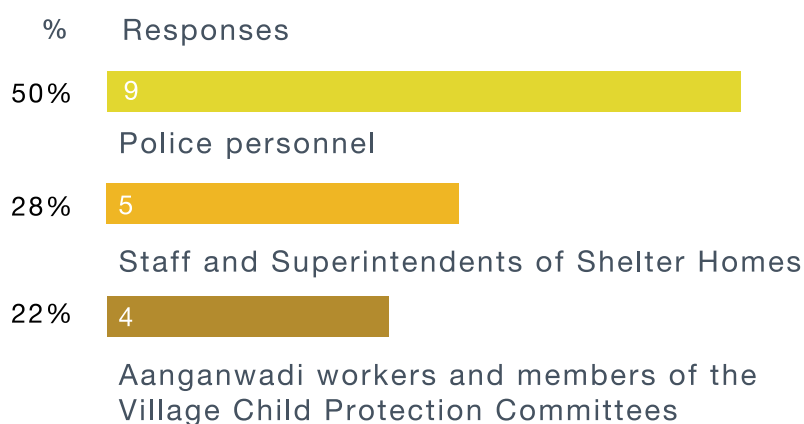
Locating the family, ensuring the cooperation of the family were some of the challenges faced in preparing a HIR mentioned by the DCPUs. These were compounded by non-availability of manpower and transportation.

## Trainings

Has the DCPU organized any training on POCSOA in the district?

Ten DCPUs (71%) mentioned that they have organized trainings for various stakeholders in the districts on child rights which include JJ Act and POCSOA.

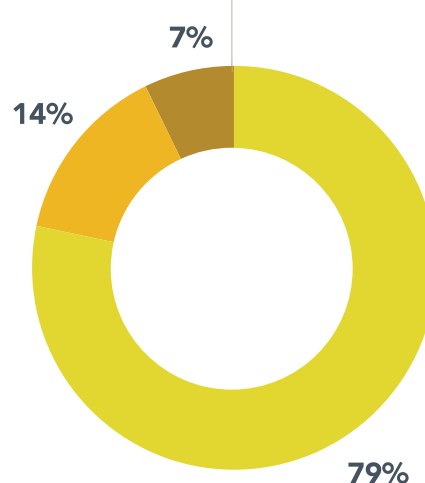
### For whom were the trainings organized?



Manodhairya Victim Compensation Scheme of the Government of Maharashtra that is meant for specific groups of victims of crime is a significant provision for providing immediate financial compensation and rehabilitation for the victims.

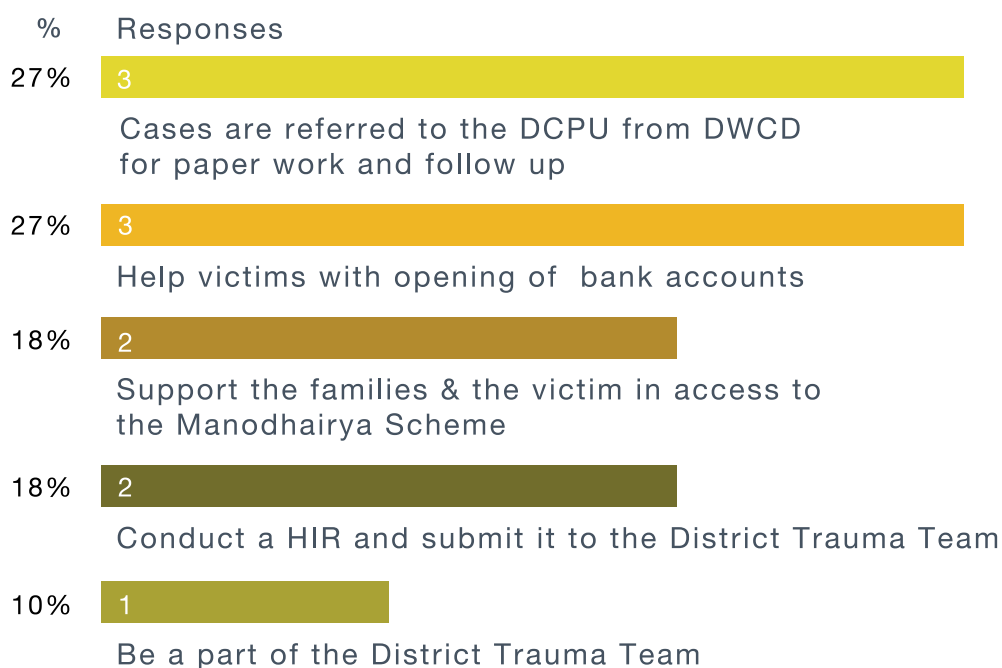
### Does the DCPU have any role in the implementation of Manodhairya?

Does DCPU have any role in implementation of the Manodhairya Scheme?

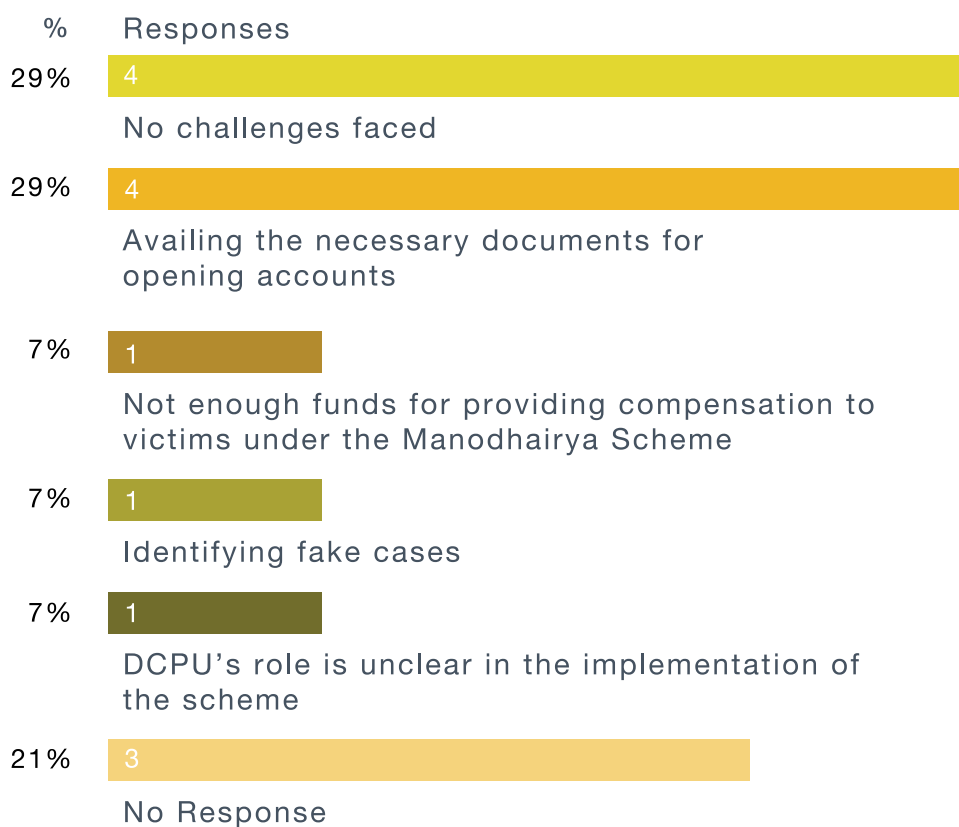


Responses	No. of People	Percentage
Yes	11	79%
No	2	14%
The role of the DCPU is not clear in the Government Resolution	1	7%
Total	14	100%

### Can you elaborate your role under Manodhairya?



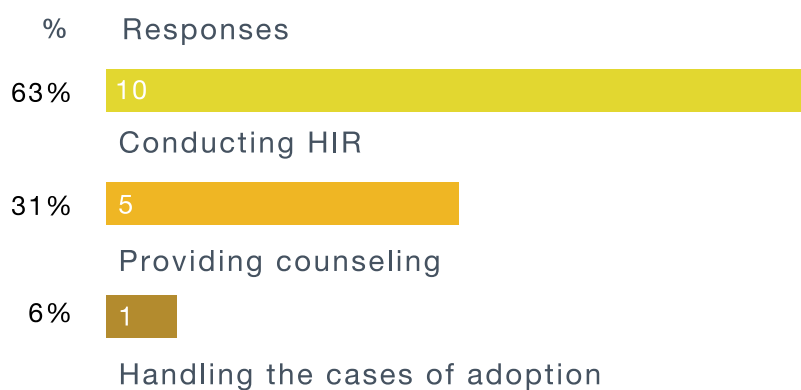
### What are the challenges faced by you for the implementation of the Manodhairya scheme?



As many as 11 (79%) DCPU respondents stated that they did have a role to play in Manodhairya. They mentioned that following up on the paperwork required for the disbursement of the scheme and helping a victim open a bank account as some of their major responsibilities.

The securing of necessary documents to open a bank account for victims was also mentioned as one of the main challenges faced.

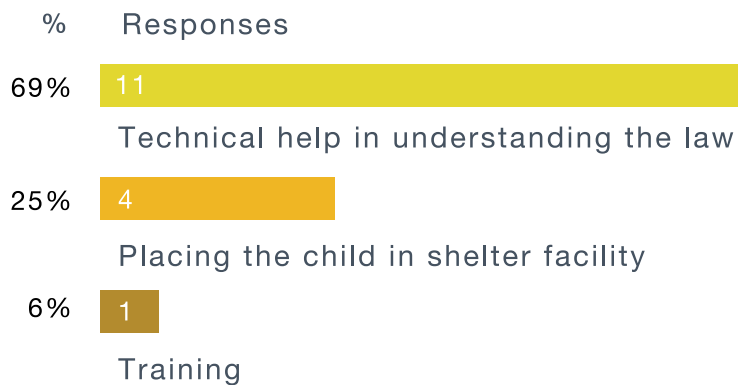
### What kind of help is sought by other stakeholders from the DCPUs in POCSOA cases?



When asked whether any of the other stakeholders seek help from the DCPUs in dealing with POCSOA and cases under it, all DCPU respondents replied positively.

The CWCs seem to be relying on the DCPUs in the general administration of the JJA. The higher mention (63%) of conducting HIR may be due to the CWCs assigning the task to the DCPUs. It may be kept in mind that HIRs are required not just in POCSOA cases but in other types of cases coming before the CWCs as well.

What kind of support does the police seek from the DCPU in POCSOA cases?



POCSOA is still a relatively new law. It is possible that while handling a child victim of sexual offences, the police may be needing clarity and guidance on the position of POCSOA.

11 DCPUs (69%) stated that the police take their help in understanding the POCSOA. However it is important to note when we asked the police in their interviews, they claimed to not know of the existence of the DCPU.

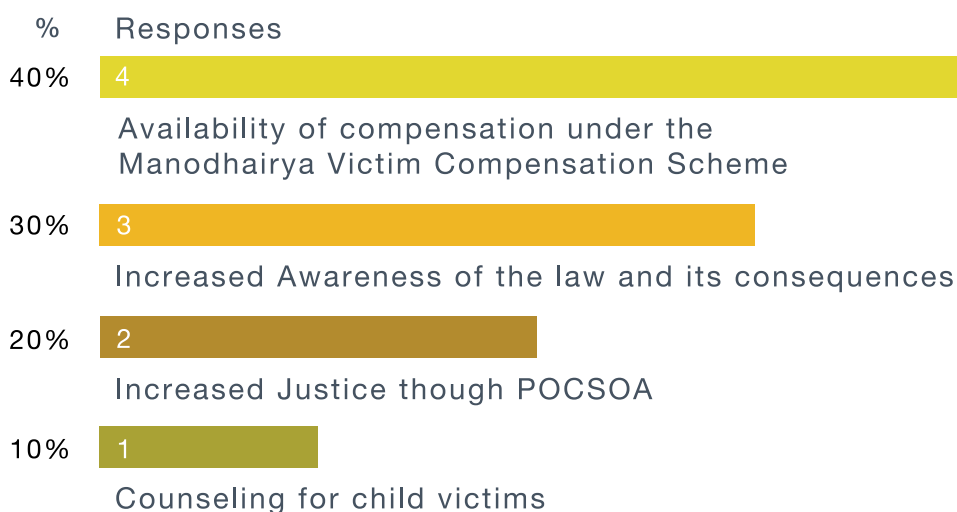
## Special Initiatives For Creating Child Friendly Environment

Are there any special initiatives taken by the other stakeholders to provide a child friendly environment for the child victims in your district?

Ten out of 14 DCPUs replied that in their district special initiatives were being taken to create a child friendly environment. When asked to elaborate the same they stated the following responses:



State in detail important positive changes caused due to the passage of POC SOA



Four out of 10 DCPU's (i.e. 40%) respondents who answered the question mentioned the victim compensation scheme Manodhairya as the benefit of POC SOA. 2 (20%) of respondents thought that POC SOA grants a greater access to justice for victim children. Also they mentioned that there is greater awareness of the law and the offences, which helps in prevention & protection.

## Opinions

### Mandatory Reporting

POCSOA makes it mandatory for anyone (who is aware of or suspects SOAC) to report the case of sexual offence against children to the police. What is your opinion on this?

Opinion on mandatory reporting

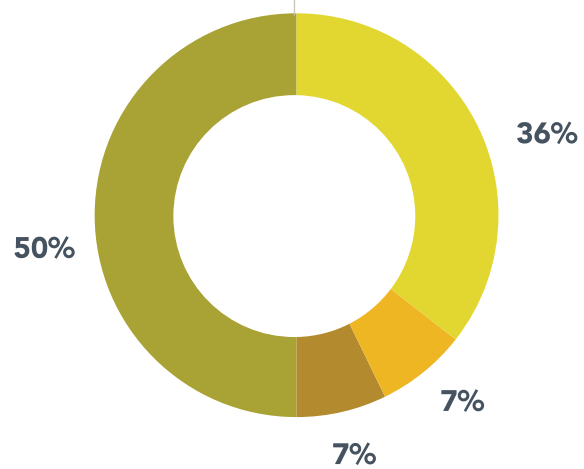


Responses	No. of People	Percentage
● Mandatory reporting should be present in the law	14	100%

We sought the opinion of the DCPUs on the provision in POCSOA of mandatory reporting of the offence. Interestingly, all of them felt that the provision is appropriate. When asked to justify almost half of them did not offer a response. The rest stated as follows;



Justifications for mandatory reporting provision



Responses	No. of People	Percentage
● It creates larger social responsibility	5	36%
● It strengthens child protection	1	7%
● It can help detect and facilitate reporting of cases of incest	1	7%
● No Response	7	50%
Total	14	100%

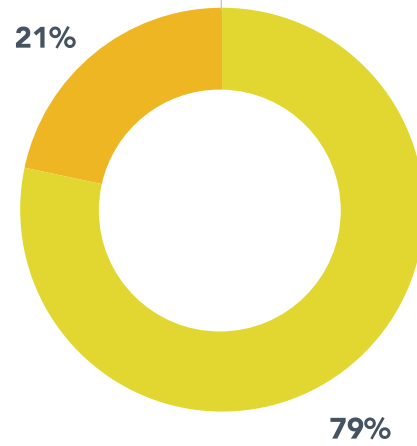
It is one thing to appreciate a provision and quite another to make use of it. When asked if they had registered any case under the mandatory reporting clause, 12 out of 14 DCPUs stated that they had not. Only two mentioned that they had used the provision and registered a complaint.

Are the DCPUs planning any initiatives for better implementation of POCSOA?

Almost half of them said they were not planning any such initiative. Only 4 said they were and 3 did not quote any.

## Age of Consent

What should be the age of consent?



Responses	No. of People	Percentage
● 18 years of age	11	79%
● 16 years of age	3	21%
Total	14	100%

When their opinion on the age of consent was sought 11 out of 14 preferred it to be 18 and only 3 felt that it should have been 16 years.

## Conclusions

1. The average score of awareness of the DCPUs was **34%** (the questions were limited to the awareness of their responsibilities under POCSOA). On the background of the fact that the DCPU is expected to be a crucial agency meant to facilitate better co-ordination among the various duty bearer agencies under the POCSOA, the current awareness level is dismal.
2. **All the DCPUs across the districts were understaffed.** Not a single DCPU had a full team of 13 members as prescribed under the ICPS.
3. The **lack of adequate human resources in the DCPUs posed severe challenges to their overall functioning.** They seemed unable to devote sufficient time to comprehensively carry out their myriad responsibilities viz a viz numerous departments, schemes & laws.
4. Given the vast geographical area of each district, it becomes a challenge for a single DCPU to cover their jurisdiction.
5. The appointment of the DCPU staff is contractual and the **staff salaries are not released on time.** Thus most of the members of the DCPUs mentioned being highly demotivated.



In districts where the offices of the DCPU, CWC and JJB were within the same premises, the co-ordination among the systems was better.

6. The offices of the DCPUs in 5 districts were in the same premises as that of the CWCs and the JJBs. In such scenarios it has been observed that these three systems work very well together. On the other hand, the DCPUs in majority of the districts (8) were in the same premises as the DWCD office. In such scenarios, **there seemed to be a lack of autonomy among the DCPUs who claimed to be burdened by the DWCD with tasks other than their mandate.**
7. Wherever the DCPUs claim to have managed to establish good rapport and linkages with the other stakeholders, the cases under POCSOA appeared to have been handled relatively well.
8. **There is no awareness among other stakeholders especially medical professionals, police, and the Courts about the existence of the DCPUs.** Only 68% of respondents interviewed were aware of their existence.



57%

DCPUs stated that they do not get information about POCSOA cases in their jurisdiction. Other stakeholders are **not** aware about the existence of the DCPUs.

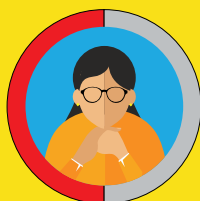
9. A **majority (57%)** of the DCPUs do not get informed about the POCSOA cases registered in their districts.
10. The **availability of resource directories with the DCPUs is patchy at best.** Even those DCPUs who have the lists have not yet disseminated them among other stakeholders citing the lack of funds for printing.
11. Many DCPUs complained that **they have limited budgetary discretion** and that every decision they make needs to be cleared in advance by the state level ICPS. None of the DCPUs paid for any services rendered by the experts while handling the POCSOA cases.



The availability of Resources Directories with the DCPUs is **tenous at the best.**

Even the ones who have certain lists have not yet disseminated them among the stakeholders.

12. **Half of the DCPUs (50%) provided counseling services.** Almost a quarter had appointed counselors whose services were not being used. The remaining did not have counselors.



50%

of the DCPUs claimed that they provide counseling services to victim children.

13. It is shocking to note that **not a single DCPU under the Study was aware of the provisions where they could be appointed as a Support Person** under POCSO Rules.



0%

No DCPUs were aware of the provisions where they could be appointed as a Support Person under POCSO Rules.

14. An **overwhelming majority of DCPUs (86%) claimed that they conducted Home Investigation, submitted Home Investigation Reports** and followed up with the victims' families to ensure that the victims get criminal injuries compensation.

15. **Majority DCPUs (71%) claimed to have organized trainings** on JJA and POCSOA for the various stakeholders in their districts.



71%

DCPUs claimed to have organized trainings for various stakeholders in the districts on child rights including JJA and POCSOA.

16. Majority DCPUs stated that the police take their help in understanding the POCSOA. Surprisingly however, the police in their interviews have said that they did not know of the existence of the DCPUs in their district.

17. **A dominant majority of DCPUs (71%) replied that special initiatives were being taken in their district to create child friendly environment.** These ranged from creation of child friendly CWCs to setting up VCPCs in communities & children's committees in Shelter homes to create broader awareness about the law and for creating systems of co-ordination among the stakeholders.



0%

No DCPUs had paid for services rendered by experts (special educators, translators, interpreters, among others) in a POCSO case.

## FIVE

# DATA ANALYSIS

This chapter presents the analysis of the primary and secondary data for a number of respondents and the understanding derived therefrom.

### SECTION 6

## HOSPITALS

# 13

hospitals

Out of the 17 districts, 4 district hospitals denied permission for conducting the interview on the grounds of confidentiality of the information. Hence the final number of respondents was 13.

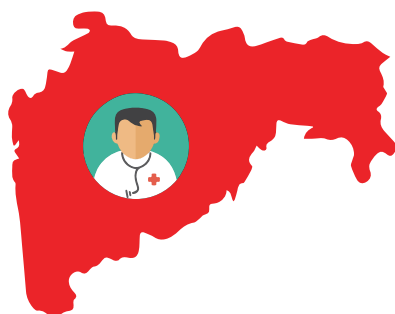
In the rural areas, the research team approached the 3 Primary Health Centres (PHCs). The doctors of those PHCs mentioned that due to lack of the required infra-structural facilities and lady doctors, the medical examination of child victims of sexual offences is conducted only in the district hospitals located in the district headquarters. Thus the district hospitals were approached for the interviews for the primary data collection.

## Field Observations and Informal Discussions

### Medical Examination of Victims of Sexual Offences

POCSOA Section 27 states “..... the Medical examination of a girl child shall be conducted by a woman doctor, in presence of a parent or a trusted adult. In case parents or trusted adults, cannot be present, the medical examination is to be conducted in the presence of a woman nominated by the head of the medical institution.”

#### HOSPITALS



70% of the Hospitals reported that since 2012 there was an increase in the cases of child victims of sexual offences being brought to them.

#### Nature of Sexual Offences for which the Children were brought to the Hospital

Rape	<b>38%</b>
Sexual Offences that involve Touch	<b>31%</b>
All cases of Sexual Offences	<b>31%</b>

PHCs in rural areas did not have lady doctors or specialists.

We were told that in every case of child sexual assault in rural areas, the victim is taken to the nearest district hospital. The time taken to travel from the place where the cases are registered to the nearest district hospital can go up to 5 to 6 hours across districts.

At several district hospitals, excessive workload was cited as one of the main reasons for delay in medical examination of child victims of sexual offences. For instance, in one of the districts, both the doctor and the district child protection unit member mentioned an instance where a child was made to wait for 6 hours since the doctors were busy. In the



meanwhile, the news of sexual assault was published in the afternoon edition of a local newspaper. The news report even stated that the victim was kept waiting for hours in the hospital. By the time the child was interviewed by the doctor, even the child had already read the news.

Some doctors mentioned that lack of coordination between the departments (Gynecology, Forensic, Pediatric) of the hospitals leads to delay in the medical examination procedure.

## **Procedures followed during Medical Examination**

It was observed that hospitals do not use uniform formats and protocols for medical examination of child victims. Three different formats were observed across the hospitals we visited. Some hospitals were found using old formats like the Proforma for Medical Examination of Sexual Assault, 2012 developed by CEHAT for medical examination and evidence collection. Lack of availability of updated formats was cited as a reason for using old formats.

Doctors in a majority of the districts did not have access to Forensic Science Laboratories (FSL) and did not have DNA kits. FSL laboratories are located in metropolitan areas and are few and far between. It was stated that there is a delay in acquiring DNA kits, adding to the overall delay in the entire process of evidence collection. In one hospital, evidence collection was delayed as there was a lack of clarity among doctors and police officers as to whose responsibility was it to procure the DNA kits.

## **Coordination with Stakeholders**

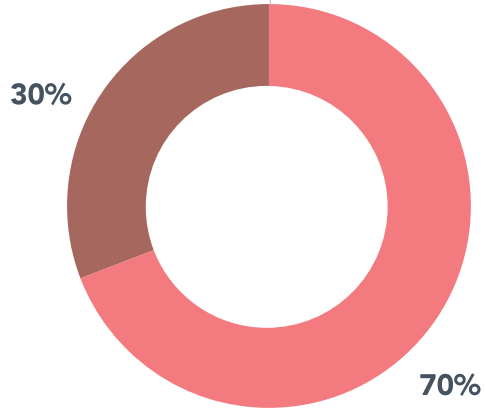
Only 1 out of the 13 respondents was aware of the existence of Child Welfare Committees and District Child Protection Units.

The medical fraternity interfaces with police and the courts on a case-by-case basis.

It was uniformly heard across the districts that the medical fraternity operates in isolation. They do not collaborate with the other stakeholders in child protection like CWCs or DCPUs while handling cases of sexual offences against children.

Since 2012, have you observed an increase in the number of children who are victims of sexual offences in your hospital?

Has there been an increase in sexual offences?

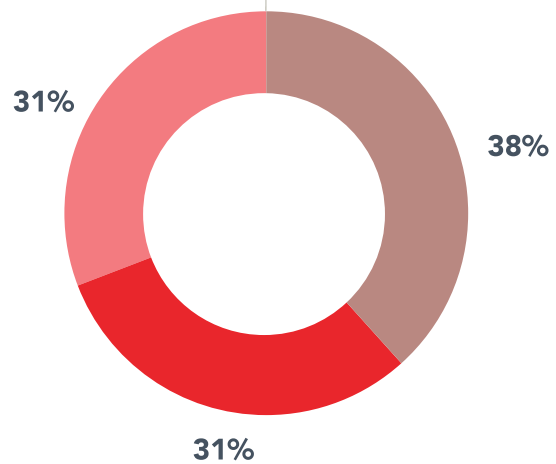


Responses	No. of People	Percentage
● Yes	9	70%
● No	4	30%
Total	13	100%

Nine (70%) hospitals reported that since 2012 there was an increase in the cases of child victims of sexual offences being brought to their hospital.

What are the sexual offences committed against children for which they are brought to the hospital for treatment?

What is the nature of Sexual Offences?

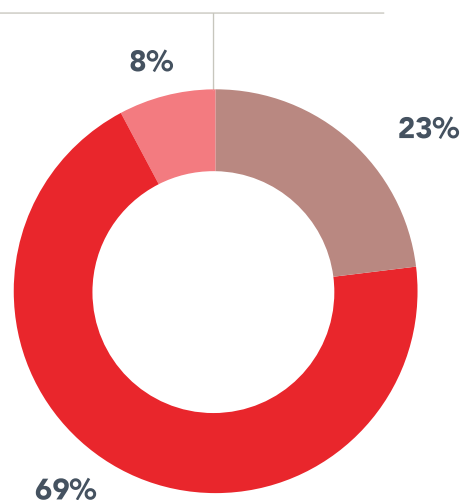


Responses	No. of People	Percentage
● Rape	5	38%
● Any case of sexual offence which involves touch	4	31%
● All cases of sexual offences (involving touch & non-touch offences)	4	31%
Total	13	100%

Five (38%) respondents mentioned rape while 4 (31%) mentioned any sexual offence involving touch as the offences for which a victim child is brought to the hospital for treatment. Another 4 (31%) mentioned all cases of sexual offences (involving touch & non-touch offences) are referred to the hospital for treatment.

In cases of sexual offences against children, where (which department) do parents or the police first take the child to as soon as they are brought to the hospital?

Which is the first department of referral?



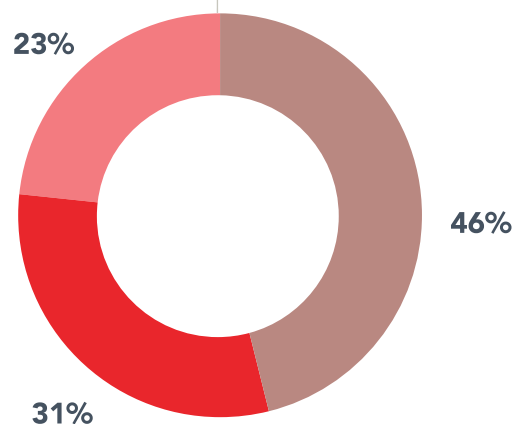
Responses	No. of People	Percentage
● Gynecology	3	23%
● Casualty	9	69%
● Pediatric	1	8%
Total	13	100%

Nine (69%) hospitals mentioned that the victim child under POCSO Act is brought first to the Casualty Department of the hospital. 3 (23%) mentioned Gynecology Department. One (8%) mentioned that the first department of contact is Pediatrics.

The general trend observed is that as soon as a case of child sexual offence comes to the hospital, it goes to the Casualty Department and is handled by the Casualty Medical Officer. Depending on the nature of the case and gender of the victim, the case is then referred to the different departments.

Is it necessary to receive a legal or magisterial requisition or any other documentation before conducting Medical examination of a child victim?

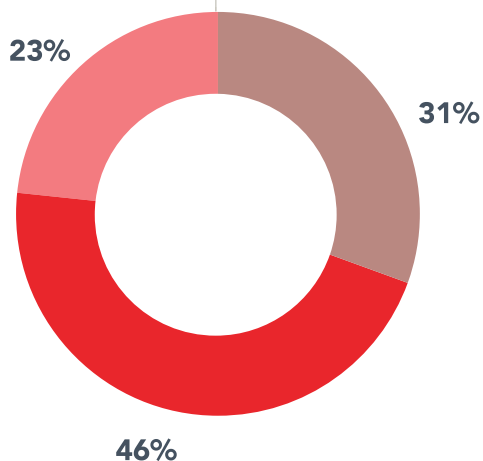
Is it necessary to receive a legal or magisterial requisition or any other documentation before conducting Medical examination of a child victim?



Responses	No. of People	Percentage
● Yes	6	46%
● No	4	31%
● Any other response	3	23%
Total	13	100%

Is it necessary to receive a legal or magisterial requisition or any other documentation before providing medical treatment for the child victim of sexual offences?

Is it necessary to receive a legal or magisterial requisition or any other documentation before conducting Medical treatment of a child victim?



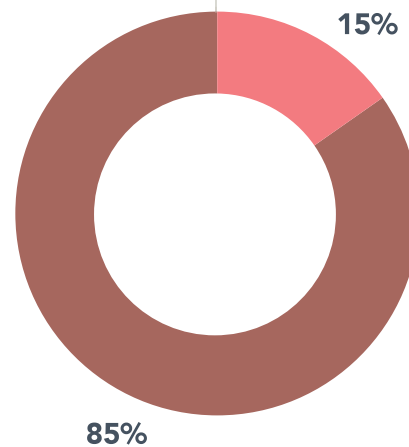
Responses	No. of People	Percentage
● Yes	4	31%
● No	6	46%
● Any other response	3	23%
Total	13	100%

**POCSOA-Section 27. Medical examination of a child.-** (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164 A of the Code of Criminal Procedure, 1973 (2 of 1974)

In contravention to what Section 27 of POCSO says, 6 (46%) of the hospitals mentioned that there is a need to have a police or magisterial requisition for conducting medical examination. 31% mentioned that they need it for medical treatment.

Are there cases where child victims of penetrative sexual assault are brought to the hospital by the parents without having registered a police complaint?

Are child victims brought to hospital without first going to police?



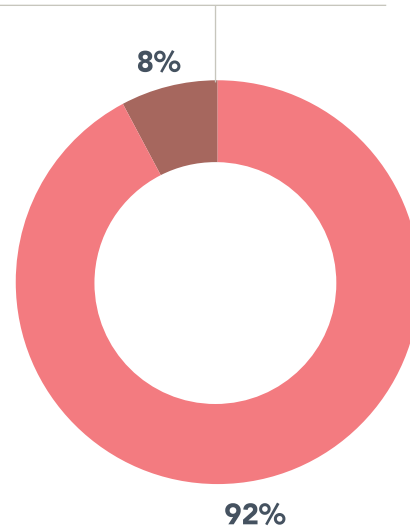
Responses	No. of People	Percentage
● Yes	2	15%
● No	11	85%
Total	13	100%

Eleven respondents (85%) mentioned that child victims of penetrative sexual assault are brought to the hospital only after a police complaint is registered

Two (15%) highlighted the cases of teenage pregnancies as well as those involving severe injuries sustained when the victim is brought to the hospital first before going to the police.

## Do the police request for specific findings when they bring a child victim of sexual offences for medical examination?

Do the police ask for anything specific in medical examination?



Responses	No. of People	Percentage
● Yes	12	92%
● No	1	8%
Total	13	100%

Majority of hospitals (92%) stated that when the police bring the child to their hospital they ask for some specific details in the report.

### If yes, what are the specific findings that they ask for?

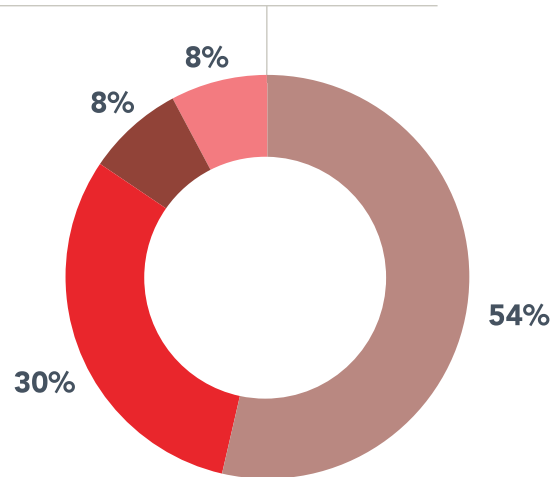
Four (30%) hospitals mentioned that the police request details on nature of injuries sustained by the victim, especially in their genital region. 2 (15%) said that the police wants to know from the report whether the child is capable of sexual activity. Another 2 (15%) mentioned that police wants all possible evidence (forensic & DNA) which can prove the sexual assault.

It was mentioned that the Police have a standard memo with a set of questions on a case to case basis: the nature of injuries, whether rape happened or not, whether the injuries mentioned match the statement or not etc.

The hospitals also mentioned that the police ask the doctors leading questions hoping to ascertain injury and assault.

Who is authorized to conduct a medical examination on a child victim of sexual offence?

Who is authorized to conduct medical examination?



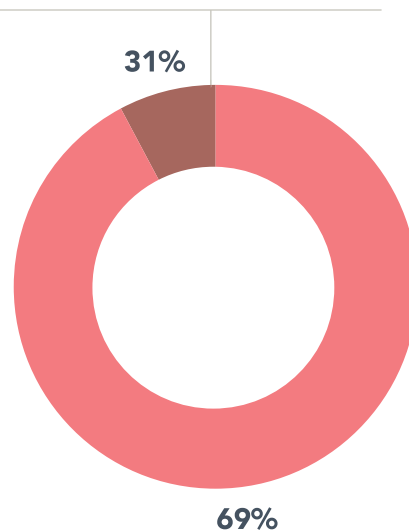
Responses	No. of People	Percentage
Gynecologist	7	54%
Casualty Medical Officer	4	30%
Team of all Doctors	1	8%
Any Registered Medical Practitioner	1	8%
Total	13	100%

Seven (54%) respondents consider the medical examination of a child victim of sexual offences as the duty of gynecologists. 4 (30%) respondents mentioned the Casualty Medical Officer. Only 1 respondent mentioned that any Registered Medical Practitioner was fit to examine the child victim.

A further question was asked to ascertain the on-ground scenario at the hospitals as to who conducts the medical examination. The responses were the same as the response to the above question.

Who is supposed to conduct the medical examination if the victim is a girl?

Who is supposed to conduct the medical examination if the victim is a girl?



Responses	No. of People	Percentage
● On duty doctor	9	69%
● Female doctor	4	31%
Total	13	100%

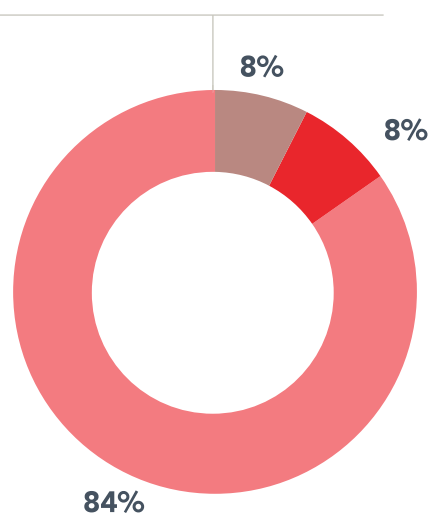
*Section 27 (2) of the POCSO Act mentions that in case the victim is a girl child, the medical examination shall be conducted by a woman doctor.*

Surprisingly, 9 (69%) hospitals stated that any on-duty doctor can conduct the examination if the victim is a girl child. Only 4 (31%) replied that it has to be a woman doctor only.

The question was reframed and asked in the context of the case of a boy victim:

Who is supposed to conduct the medical examination if the victim is a boy?

Who is supposed to conduct medical examination for boys?

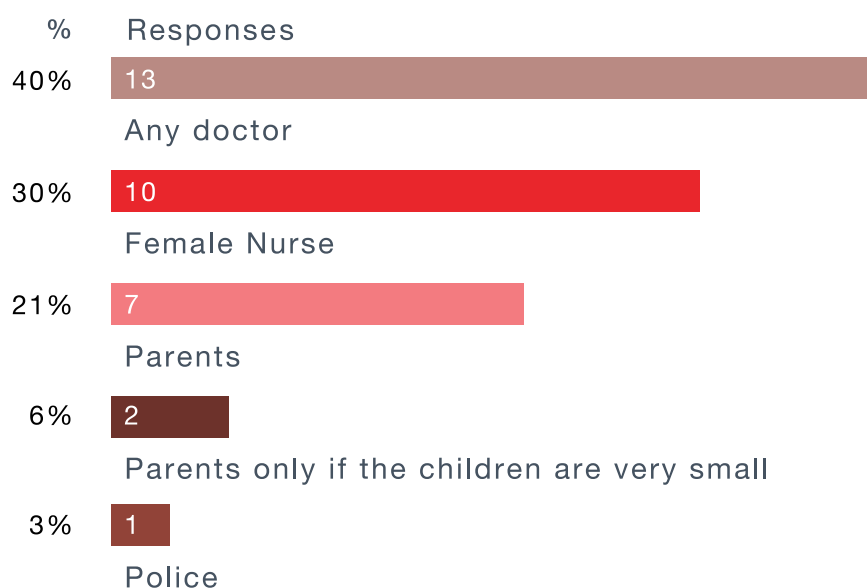


Responses	No. of People	Percentage
● On duty doctor	11	84%
● Female doctor	1	8%
● Male doctor	1	8%
Total	13	100%

A large majority of medical professionals (84%) stated that the medical examination on a boy can be conducted by any on duty doctor male or female. Hospitals connected with medical colleges mentioned that any doctor at or above the post of assistant professors alone can conduct a medical examination.



## Who is allowed to be present during the medical examination of the child?



Section 27 of the POCSO Act gives guidelines as to who should be present during the medical examination.

### Section 27: Medical examination of a Child –

(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164 A of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

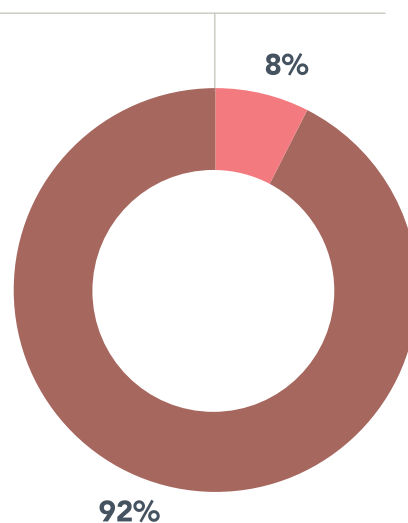
(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

7 (21%) responses mentioned that parents should be present during medical examination of child. 2 responses (6%) opined that parents should be present only if the child is too small. There were 10 responses indicating a female nurse should be present. One response mentioned that the police should be present.

Is it necessary to have a woman police officer as a part of the medical examination of a child victim under POCSO?

Are women police officers required for medical examination?



Responses	No. of People	Percentage
● Yes	1	8%
● No	12	92%
Total	13	100%

When asked if it was necessary to have a woman police officer as part of medical examination team of a child victim under POCSO Act, 12 hospitals (92%) stated that it was not necessary while one hospital stated it that was.

Given your vast experience in the field, what are the procedures that you would recommend that doctors perform during the medical examination of children who are victims of sexual offences?

Three (22%) respondents mentioned providing medical treatment to victims. 2 (14%) mentioned creating a child friendly atmosphere.

It was suggested that if a child is cranky then the child should be made comfortable and only then should the examination be conducted. It was also mentioned that it would be good practice to interview the child and the parents separately as it would reveal more facts.

What are the routine tests that doctors perform during medical examination when a child victim of sexual offences is brought to the hospital?

The respondents mentioned that they conduct the following tests routinely when they examine a child victim of sexual offences under POCSO Act.

1. Blood Test
2. Pregnancy Test
3. Forensic Evidence
4. Identification & Recording of Injuries marking an assault
5. Age determination

What are the things that doctors must ascertain while taking the history during the medical examination?

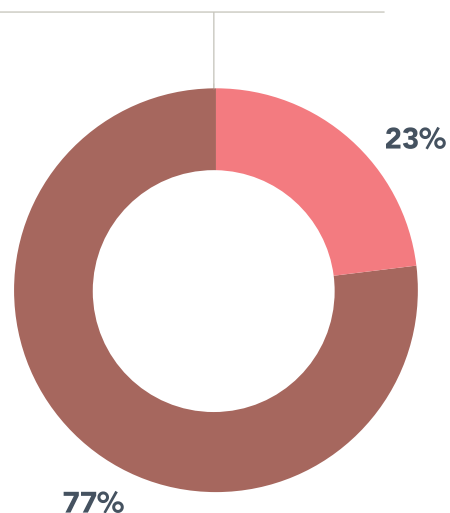
Majority of the respondents mentioned that they take a detailed history of the victim. Some of them gave specific responses like:

- Specific details of the Incident
- Details of previous injuries
- Gynecological history

As per the 2014 the Ministry of Health and Family Welfare Guidelines & Protocols for Medico-Legal care of survivors/victims of Sexual Violence, one of the components of a comprehensive response to victims of sexual offences include establishing a uniform method of examination and evidence collection by following the protocols [in the Sexual Assault Forensic Evidence kit (SAFE kit)].

Is there a specific kit that doctors in your hospital use for conducting medical examination of victims of sexual assault?

Do doctors use a specific kit?



Responses	No. of People	Percentage
● Yes	3	23%
● No	10	77%
Total	13	100%

Ten respondents (i.e. 77%) stated that they do not use any specific kit for the purpose of conducting medical examination of victims of sexual assault. Only 3 hospitals answered in the positive.

When further asked what kits they use, the hospitals responded mentioning evidence collection kits like swabs, envelopes etc.

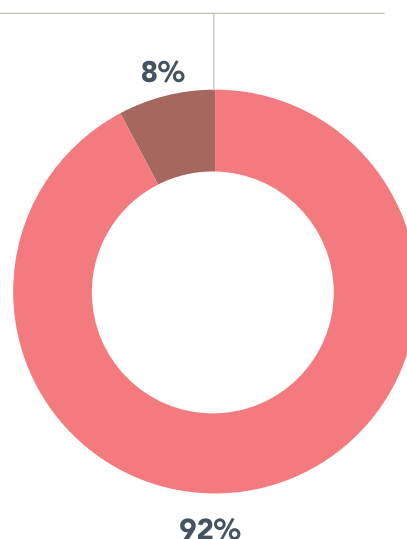
Only 6 (43%) doctors across the 13 districts had heard about the 'SAFE kits'. Except for respondents from 1 hospital in Mumbai, none of the other respondents mentioned that they use the SAFE kit.

## Consent for Medical Examination

As per the Ministry of Health and Family Welfare Guidelines & Protocols for Medico-Legal care of survivors/victims of Sexual Violence, 2014 states that the consent form must be signed by the person him/herself if s/he is above 12 years of age. Consent must be taken from the guardian/ parent if the survivor is under the age of 12 years.

Do you need the consent of the child before conducting the medical examination?

Do you need the consent of the child?

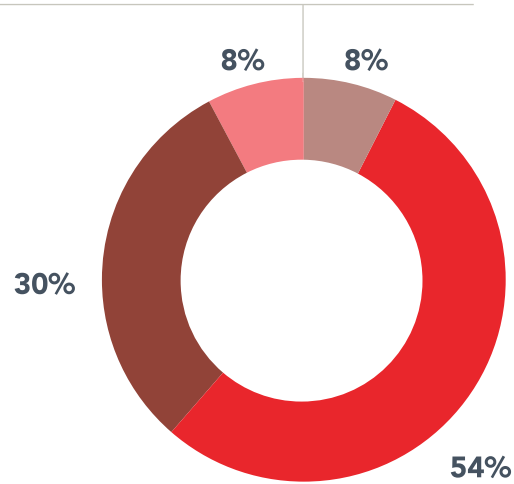


Responses	No. of People	Percentage
● Yes	12	92%
● No	1	8%
Total	13	100%

Twelve (92%) respondents stated that they do need to take the consent of the child before conducting a medical examination.

What are the different procedures for which you need to take consent from the child/trusted adult?

What are the procedures requiring consent?

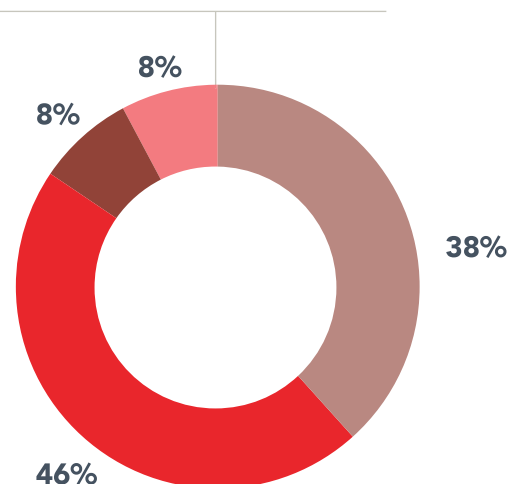


Responses	No. of People	Percentage
● All Procedures (Medical examination, Medical Treatment and Evidence collection)	7	54%
● Blanket consent	4	30%
● Only Medical Examination	1	8%
● No Response	1	8%
Total	13	100%

Seven (54%) hospitals stated that consent is required for medical examination, medical treatment and evidence collection. 30% hospitals stated that they need a blanket consent covering all procedures. 8 % mentioned that consent is taken only for medical examination.

What is the age of consent for medical examination and treatment?

What is the age of consent for medical examination?



Responses	No. of People	Percentage
● 12 Years	6	46%
● 18 Years	5	38%
● 13 years	1	8%
● 16 Years	1	8%
Total	13	100%

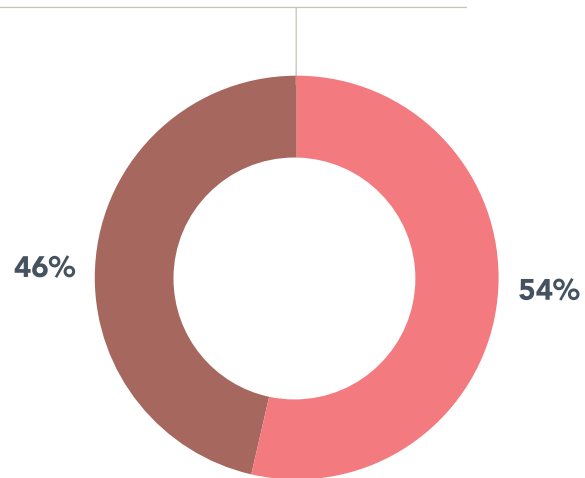
Six (46%) doctors stated that the age of consent for medical examination was 12 years while 5 (38%) stated that it was 18. One replied it was 13 years and another said it was 16 years.

There is a wide variation in the hospital's understanding about the age of consent for medical examination.

When asked whose consent is needed to be taken in a scenario where a child victim is below 10 years of age, all the respondents agreed that the parents' consent is necessary.

**If the child victim is 14 years old and refuses to get the medical examination done what would you do?**

What if a child above 14 years refuses to consent?

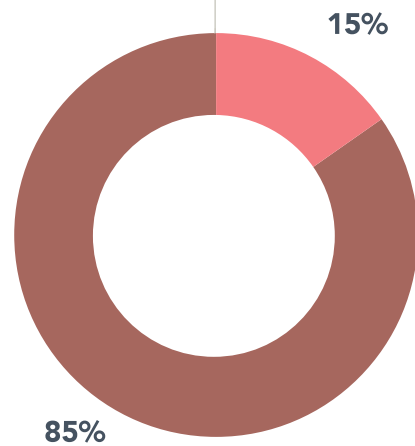


Responses	No. of People	Percentage
● Take consent of Parent	7	54%
● Examination is not conducted	6	46%
Total	13	100%

Seven respondents out of 13 (54%) stated that in that case they would take the consent of the parents and proceed with the medical examination. 6 hospitals (46%) stated that they would abandon the medical examination in the absence of consent.

Would you advise doctors to conduct medical examination without consent of the child victim?

Would you advise proceeding without consent?

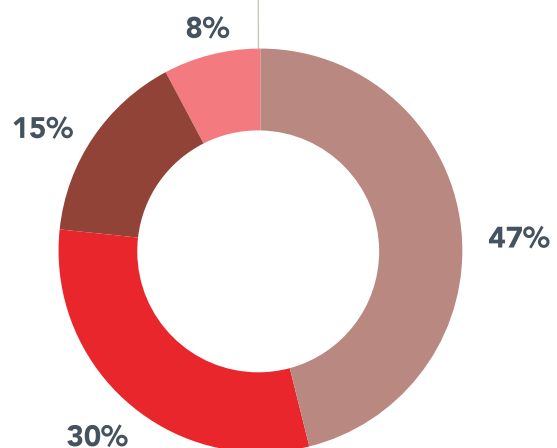


Responses	No. of People	Percentage
● Yes	2	15%
● No	11	85%
Total	13	100%

Eleven out of 13 (85%) opined against conducting medical examination in absence of consent. Only 2 hospitals said yes

What steps should a doctor take in circumstances where the child /trusted adult refuses to give consent for reporting of a sexual offence?

What if consent is not given?



Responses	No. of People	Percentage
● Take the reasons for refusal in writing	6	47%
● Do not conduct medical examination	4	30%
● Try to counsel and explain to the family	2	15%
● No such cases have come to us	1	8%
Total	13	100%

Six (47%) hospitals stated that they would take in writing the reasons for refusal from the parents of the child victim.

**There was a unanimous understanding of the fact that the consent of the victim and/or the family had to be taken for medical examination, treatment and other procedures.**

**However there was confusion in terms of who gives consent and the circumstances under which it is given.**

Many doctors opined that only parents can give consent for the medical examination of children irrespective of the age of the child. One of the doctors cited a case example where a doctor refused to conduct medical examination of the child since the child was not accompanied by parents.

Some doctors mentioned that consent is treated as rote formality. Most of the times, parents are asked to just sign the consent form after the examination is done.

The doctors mentioned that additional consent can be taken from parents and guardians as there is no upper limit mentioned for the number of consultations for taking consent.

The doctors clarified that they will not take consent from police.

We were also told that if the child is unconscious and brought to the hospital with severe injuries or is in life-threatening situation and if there is danger of the evidence being lost; then the doctor can conduct the medical examination in good faith under IPC Section 92.

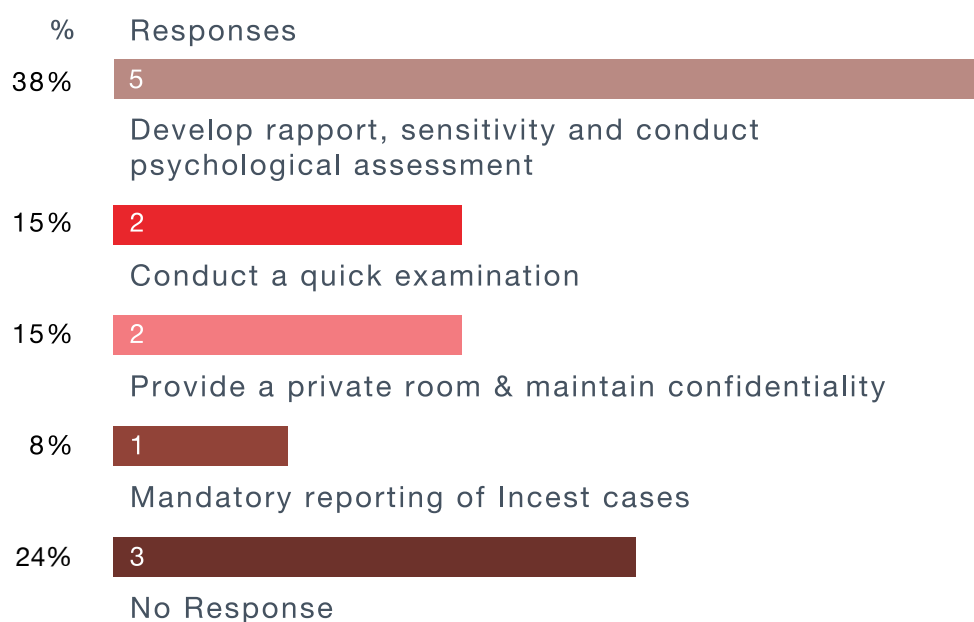


What are the immediate treatments that you would recommend for young doctors who treat victims of penetrative sexual assault and sexual assault?

The following steps were mentioned in response

- Stabilize patient
- Collect evidence
- Suture the injuries
- Admit if required
- In cases of penetrative sexual assault take steps to prevent pregnancy and STIs.
- In case of serious injuries, the child is treated under anesthesia.

Is there any special care that you would advise doctors to take while dealing with child victims of sexual offences?

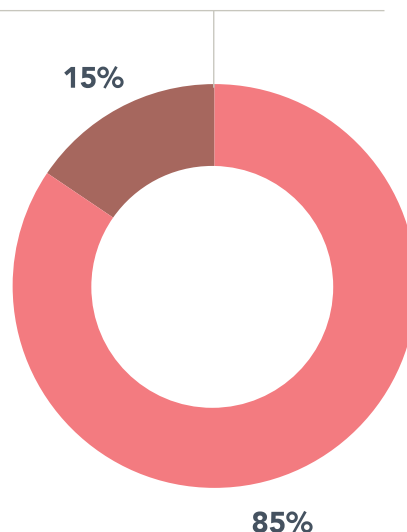


The respondents mentioned that assessing the psychological condition of the victim child, developing a rapport with them and helping them relax prepares them for the medical procedures to follow. The doctors mentioned that it is important to ensure that the victim is not scared.

A private room to ensure safe environment and maintain confidentiality of the victim was mentioned by some respondents.

How would you advise doctors to help ensure privacy and dignity of the victim during the process of medical examination & treatment?

Advice for keeping dignity and privacy of victim under POCSOA



Responses	No. of People	Percentage
● Examination to be done in a separate room	11	85%
● No Response	2	15%
Total	13	100%

85% of respondents mentioned using private room for examination to ensure privacy and dignity of victim.

The respondents mentioned various methods by which they maintain the confidentiality of the victims. For e.g:- a child was kept in the ICU to shield her identity from media presence at the hospital.

At Beed, Kolhapur, Mumbai and Nagpur specific examples of cases were cited and the researchers were shown the separate rooms that were used for medical examination of victims.

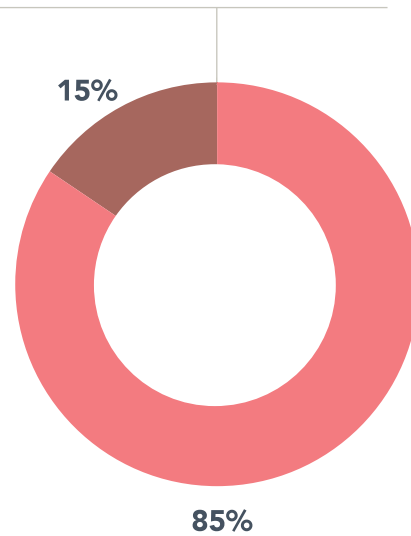
It was a recurring concern that sometimes police accompanying the child victim to the hospitals are in uniform. This compromises the confidentiality of the child.

**Field observation** – In one of the districts, in the middle of the research interview, the CMO was approached by a police constable accompanying a victim child. He submitted a memo to the doctor which requested the doctor to conduct the medical examination under 164A CrPC. The memo did not mention any sections pertaining to the offence. The casualty medical officer questioned the police constable about the case but he could not answer any of the doctor’s questions. Then the doctor lost his temper and in full view of everyone around asked the girl if she was a ‘case of rape’.

The doctor then started complaining to the research team as to how the whole responsibility of the medical examination is given to CMOs and that specialist doctors do not take any responsibility. The doctor also complained about how the police always bring the victims towards the end of their duty hours.

If a child victim who has come for medical examination seems to be under severe depression what should be done?

What if the victim is depressed?



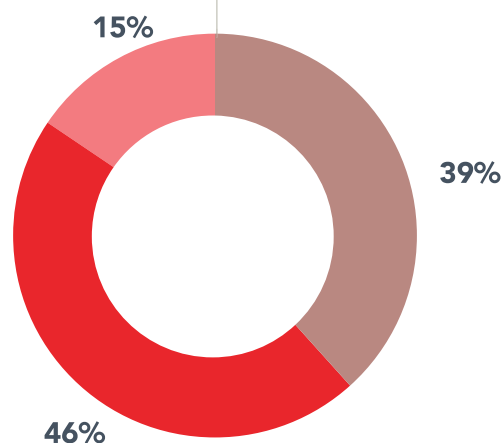
Responses	No. of People	Percentage
● Referral to Psychiatry Department based on the need	11	85%
● No Response	2	15%
Total	13	100%

Eleven (85%) hospitals stated that if a child victim is brought to them in a state of severe depression, they would immediately refer the child to the psychiatric department.

One of those hospitals mentioned that it had a multidisciplinary approach in which they have a psychiatrist in the team of doctors who attend to the victim child.

## Do doctors conduct the 'two finger test' during medical examination?

Is the two finger test conducted?



Responses	No. of People	Percentage
● Yes	5	39%
● No	6	46%
● No Response	2	15%
Total	13	100%

While 6 (46%) of the hospitals denied that their doctors conduct the infamous two finger test during the medical examination, a good 39% hospitals affirmed that they do.

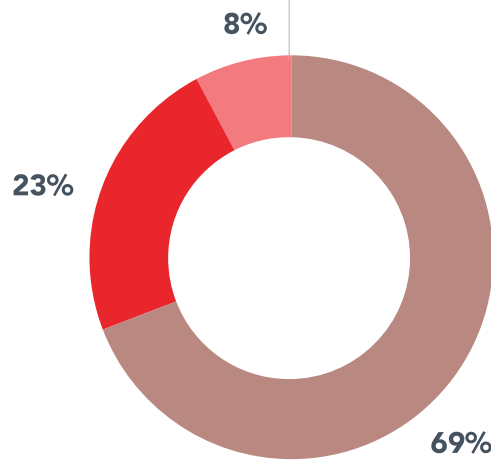
All of those who said they would conduct two finger test mentioned that they do it only to record vaginal injuries.

A doctor categorically mentioned that, “The two finger test is a myth. Nonetheless, if there is laceration the doctor has to insert two fingers to see the depth of the laceration and other injuries.”

It was added that a pediatric speculum is used during examination of children to ensure that it is not very painful for the child.

Do you think it is important to mention the elasticity of the vagina or hymen status to make an effective report?

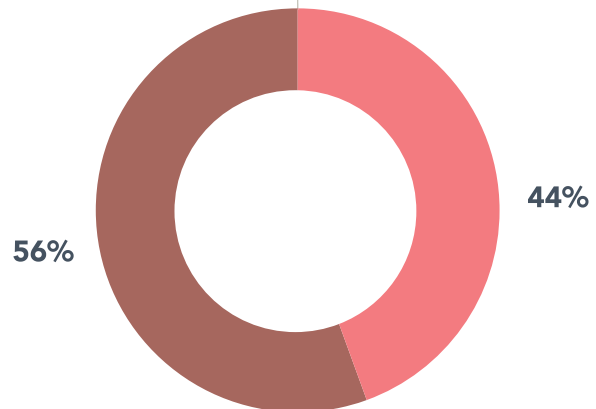
Is it necessary to state elasticity of vagina or hymen status?



Responses	No. of People	Percentage
● Yes	9	69%
● No	3	23%
● No Response	1	8%
Total	13	100%

If Yes, Why?

Why is it necessary?



Responses	No. of People	Percentage
● Police ask for the findings	4	44%
● No Response	5	56%
Total	9	100%

Nine (69%) hospitals replied that it is important to mention the elasticity of the vagina or hymen status to make an effective report.

Four (44%) of those that replied in the positive mentioned that they did so because the police asked for the same.

## What are the different challenges that you come across while conducting medical examination of child victims of sexual assault?

A majority of the respondents had no comments to this question. They mentioned that they had no challenges to speak of.

Some mentioned lack of cooperation from family of the child victim. Other challenges mentioned include non-availability of hospital staff, and delay in reporting by the police.

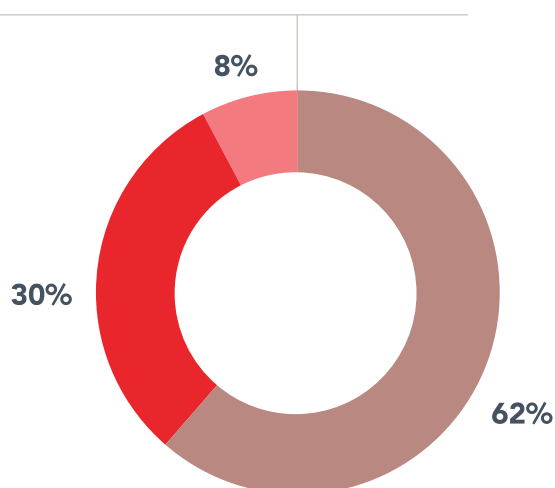
It was mentioned that delay in reporting by the police, especially in cases of Rape under IPC Section 376, leads to difficulty in collection of evidence. Many a times, this results in the loss of evidence.

There were specific concerns raised about the storage of the evidence sample once it is handed over to the police. The doctors feared that the samples might become negative due to improper handling and storage.

**One district hospital stated that the police bring the child after a critical amount of time has passed. Thus most of the evidence is lost. The doctor also mentioned that the police do not mention the sections under which case is registered in the memo. They only mention that a 164A CrPC is to be conducted.**

## Is it necessary for the doctors to attend the trial for every case of sexual offences that they examine?

Is it necessary for the doctors to attend the trial for every case of sexual offences that they examine?



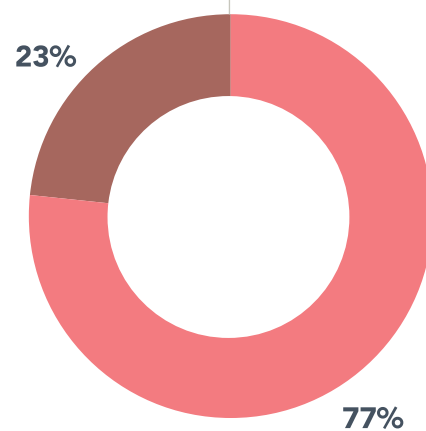
Responses	No. of People	Percentage
Yes	8	62%
No	4	30%
No Response	1	8%
Total	13	100%

Eight (62%) doctors mentioned that it is necessary for them to attend trial for every case of sexual offence that they examine.

When asked about the challenges they face during trial, the time taken for evidence recording in the court, lack of travel and daily allowance for doctors and the hostile attitude of courts towards doctors were mentioned.

POCSO makes it mandatory for anyone (who is aware of or suspects sexual offences against children) to report cases of sexual offences against children to the police. What is your opinion on this?

What is your opinion?



Responses	No. of People	Percentage
● In Support of Mandatory Reporting	10	77%
● Against Mandatory Reporting	3	23%
Total	13	100%

A majority (77%) of the respondents were in support of mandatory reporting of sexual offences.

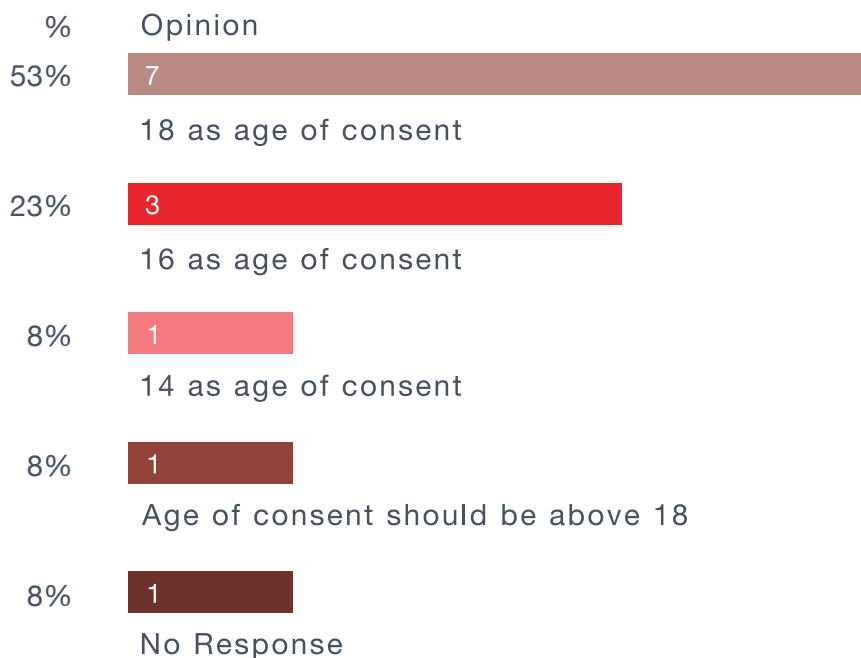
Reasons why mandatory reporting should not be part of the law – respondents' views

- Mandatory reporting is essential as the girl who becomes a victim of circumstances is stigmatized while the boy is not affected.
- Mandatory reporting forces the families to go to quacks to terminate pregnancy, and then, they are admitted with complications to the hospital.
- It becomes a problem when a married minor becomes pregnant and comes to the hospital for delivery, MTP or other services. Then mandatory reporting becomes an obstacle. When the girl/family gets to know that the matter will get reported to the police, they may not approach the hospital for treatment & care.

- For families who are not willing to report, the fact should be taken in writing and they should be left alone.
- There isn't enough awareness about the law and the provision. And hence, there is a failure to implement it.
- It creates an ethical dilemma for the doctors who are meant to maintain the confidentiality of their patient.
- The age of puberty has decreased and children now have started becoming sexually active earlier than in previous generations. Many cases of sexual intercourse do not come to light as they are 'consensual relationships'.
- When there is no additional pressure on the victim and the family from the accused or any other agency there can be relaxation of mandatory reporting.

One doctor also quoted a case, where the girl child came to him for stomach ache and was found to be two months pregnant. The sister did not want to file case as the girl was to get married soon and was worried that the whole family would be shamed by society if the incident came to light.

The age of consent for sexual activity as mentioned under POCSO is 18 years. We would like to hear your opinion on this:



Seven (54%) doctors agreed that 18 is the right age of consent. 23% felt it should be lowered to 16 years; and 8% felt it should be 14 years.



## Conclusions

1. The average score of awareness among the hospitals about their specific responsibilities under the POCSO Act and POCSOA Rules was a mere **43%**.



The hospitals lacked clarity as regards the legally binding procedures of:



Medical Examination



Consent for Medical Examination



Child Friendly Procedures

2. **There was no clarity and uniformity at the level of the hospitals as regards the legally binding procedures of medical examination, consent for medical examination and child friendly procedures etc.** Even on the issues of procedures of medical examination of child victims of sexual offences under POCSOA such as age of consent for medical examination, reporting format, examining doctor, forensic kits & tools etc. there is a wide variance and a serious lack of uniformity across the districts.
3. There was a **gross lack of sensitivity in hospitals as regards the dignity and privacy of the female child victim** as witnessed in the field observations gathered by the research team.
4. **Mostly cases of penetrative sexual assault under POCSOA and Rape (Sec. 376 IPC) are brought to the hospitals for medical examination and treatment.** Only in a minority of cases, victims of all kinds of sexual offences under POCSOA (touch & non-touch offences) are brought to the hospital.
5. Due to the lack of infrastructural facilities and lady doctors at the PHC levels all **child victims under POCSOA are brought to the district level hospitals for medical examination.** Their families are often told by the police to report to the district hospital on their own. This causes considerable inconvenience to the victim and his family and may also be resulting in loss of critical evidence.



Hospitals attribute the delay in medical examination of the child victims of POCSOA to excessive workload.



69%

hospitals stated that any on-duty doctor, male or female, can conduct the examination if the victim is a girl child.



84%

hospitals stated that any on-duty doctor, male or female, can conduct the examination if the victim is a boy child.

6. The **hospitals attribute the delay in medical examination of the child victims of POCSOA to excessive workload.** It was not a part of this Study to verify this claim.
7. The **absence of convergence among the various departments within the hospitals appears to be a common problem** affecting the functioning of the duty bearers under POCSOA.
8. **Mostly the child victims of sexual offences are brought to the Casualty department.** They are also taken to the Gynecology and Pediatric departments as well.
9. Unlike what is stated under the CrPC and (therefore also in the POCSOA) the **hospitals think that the specialists like the gynecologists and forensic experts of the hospital are supposed to conduct the medical examination of a child victim** of sexual offences.



77%

hospitals stated that they do not use any specific kit for the purpose of conducting Medical Examination of victims of sexual assault.



92%

hospitals stated that they do need to take the consent of the child before conducting a medical examination.



85%

hospitals opined against conducting medical examination in absence of consent



85%

hospitals stated that when a child victim is brought to them in a state of severe depression, they would immediately refer the child to the psychiatric department.

10. Notwithstanding the wide variation in the doctors' understanding about the age of consent for medical examination, they all are in **agreement that parental consent is necessary if the child to be examined is below 10 years**. The confusion is about the cut-off age and not about the need for the consent.
11. As the **DNA and Forensic labs are located only in some of the metropolises like Mumbai**, samples under POCSOA from across the state are sent there causing serious delay in receiving reports, leading to delay in filing the charge sheet.

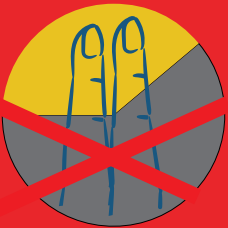
12. Mostly, the **police department influences the medical examination by asking for specific findings**. Over and above there is no uniformity in the memos submitted by the police of different districts causing large variation in the medical reports.



92%

Hospitals stated that when the police brings the child victim for examination they ask for specific details in the report (like genital injuries, other evidence of sexual assault, if the child is capable of sexual activity etc).

13. The much criticized and recently banned **'two fingers test' is still conducted on female children victims of sexual offences**. All of the hospitals justified it on the grounds of the need to ascertain vaginal injuries.



39%

Hospitals affirmed that their doctors conduct the infamous two finger test during the medical examination.

14. **69% hospitals state that it is important to mention the elasticity of the vagina or the hymen status to make an effective medical examination report.**



69%

Hospitals replied that it is important to mention the elasticity of the vagina or hymen status in the medical report.

44% of those who replied in the positive mentioned that they did so because the police asked for the same.

15. As feared by some quarters the provision of mandatory reporting is proving counterproductive in some ways. It may in turn be pushing the crime under the carpet.
16. There is a **serious absence of networking between the hospitals and the other mechanisms** under POCSOA. It needs to be corrected forthwith.



There is a lack of infrastructural facilities and lady doctors at the Primary Health Centre levels.

Therefore, all child victims under POCSOA have to be brought to the district level hospitals.

## FIVE

# DATA ANALYSIS

This chapter presents the analysis of the primary and secondary data for a number of respondents and the understanding derived therefrom

### SECTION 7

## CIVIL SOCIETY ORGANIZATIONS

# 14

CSOs

Social reforms in India have almost always been pioneered and led by its vibrant and innovative Civil Society Organizations (CSOs). The CSO sector of India has played a key role in suggesting, demanding, and advocating for a law to address sexual offences against children. It has also substantially contributed to the content of the law. It has been actively engaged in addressing the issue on the ground and evolving a variety of interventions on all fronts from prevention to rehabilitation and prosecution. The CSO sector is also a major service provider in the area of child sexual offences.

Surprisingly, the text of the POCSO Act 2012 made no efforts to facilitate active participation of CSOs in the implementation of the law although it made provisions for engaging against payments the professional services of interpreters, special educators and counselors in order to assist the victim child and thereby facilitate investigation of the crime and delivery of justice to the victim.

On consideration it does seem appropriate to not make any assistance or activity dependent on an active role of a CSO since the presence and activity of a CSO cannot be taken for granted all over the country.

Also, the gap with regards to CSOs is partly addressed in the Rules of POCSO Act. The POCSO Rules Sec 4 created a role for 'Support Organization' for providing overall psychosocial and managerial assistance to the victims and their near ones.

Rules 4(7) The CWC, on receiving a report under sub-section (6) of Section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organization 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 DCPU: (emphasis given)

Provided that nothing in these rules shall prevent the child and his parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organization for proceedings under the Act.

In the process of understanding how POCSOA unfolds on the ground it is of great value to understand the role, experiences and recommendations of the CSO sector.

Out of the 17 districts that the research team visited, in 3 districts it did not come across any CSO dedicated to bolster the enforcement of POCSO Act. Hence a total of 14 CSOs were administered the interview as part of the research.

## Does your organization work on the issue of sexual offences against children?



Out of 14 CSOs interviewed, 13 had worked on the issue of sexual offences against children.



Out of the 14 CSOs, 13 had worked on the issue of sexual offences against children. As many as 6 (43%) were the partners of CHILDLINE, 2 (14%) were service providers, 3(21%) were engaged in creating awareness about the issue of sexual offences against children and POCSOA and 3(21%) conducted trainings and organized workshops on POCSOA.

This is a very important observation. The State mistakenly operates on a belief that CSOs/NGOs are omnipresent and omni-willing to carry out any work assigned by the State. A State and its government are meant to be omnipresent all over the territory of a country at all times but CSOs/ NGOs need not be and are not. The CSOs/NGOs are, by their spirit, few and far between. They have their own areas of operation and specialization and hence no law can expect them to be present in every district available for every kind of work.

Hence making a CSO/NGO an indispensable part of a law or programme is inherently incorrect.



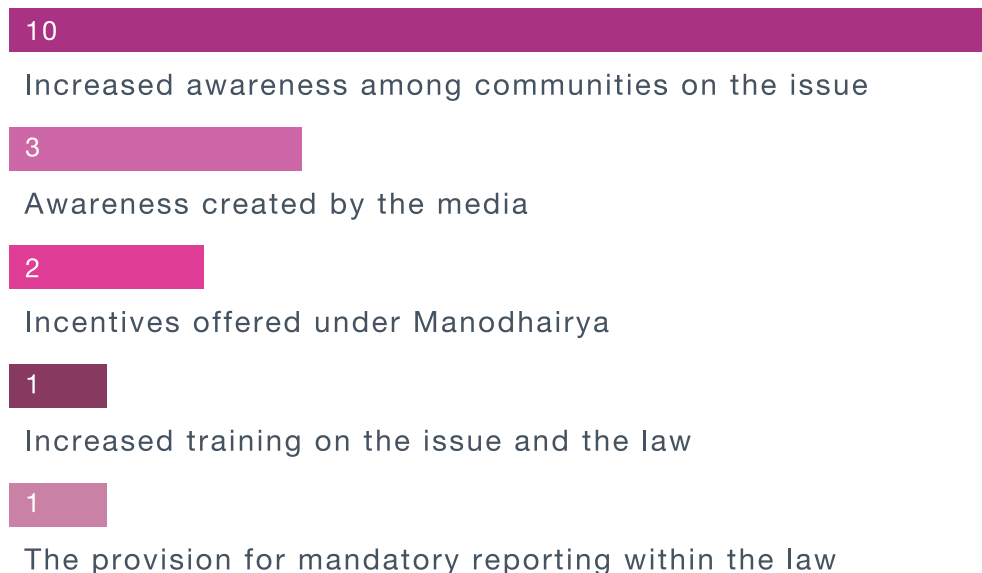
The CSO sector in general has a wide range of programs on the issue of sexual offences against children such as;

- Preventive services
- Awareness building
- Stakeholders' training
- Shelter services
- Adoption services (teenage pregnancies of female victims)
- Serve as resource persons in training programmes on POCSOA
- Conducting safety sessions in schools
- Open House, Community Awareness, School Protection, Safety Awareness,
- CHILDLINE services
- Direct case work
- Home visits
- Counseling
- Legal follow up
- Socio-legal guidance for victims
- Follow up of Manodhairya Victim Compensation Scheme
- Empowerment of victims
- Networking
- Campaigning to address the issue

Thirteen (93%) out of 14 organizations replied that there had indeed been an increase in the number of cases reported. They cited the following reasons for the same;

Since 2012, have you seen an increase in the 'reporting' of cases of sexual offences against children in your district?

#### Responses

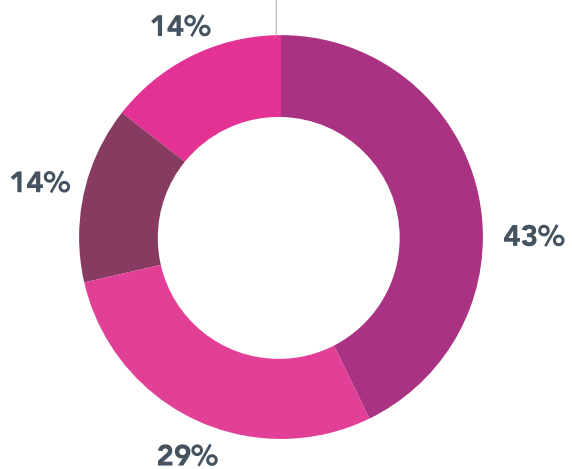


## Has your organization handled cases of sexual offences against children?

Thirteen (93%) of 14 organizations had handled cases of sexual offences against children.

### If Yes, how did you come to know about the case?

How did you come to know about the case?

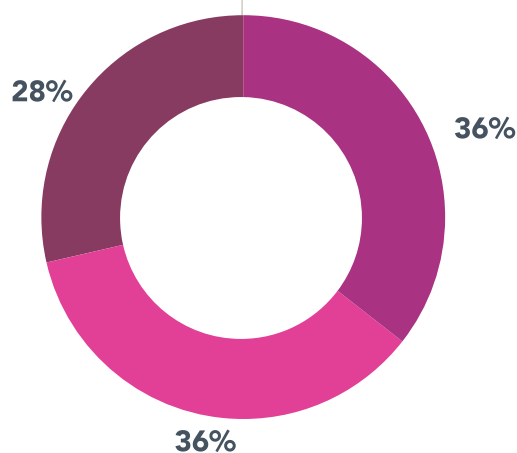


Responses	No. of People	Percentage
● Through the Child Line Helpline	6	43%
● Referred by Police, Community, CWCs	4	29%
● Community based volunteers	2	14%
● As they approached for services like shelter home & MTP	2	14%

All 6 of the CHILDLINE partners mentioned the helpline as the source of how cases under POSCO were referred to them. The others mentioned other stakeholders like police, CWC, the communities etc. who would refer a victim to them for care and support services.

## What are the first five steps the CSO takes when a case is brought to them?

What are the first five steps taken when a case is brought to the CSO?



Responses	No. of People	Percentage
● Before reporting to the police confirm the details of the case	5	36%
● On receiving a call visit the site, counsel the parents, talk to the child and only then report to the CWC and Police	5	36%
● Inform the CWC, register a case and facilitate support services for the victim	4	28%
Total	14	100%

Interestingly, 9 (64%) CSOs/ NGOs mentioned reporting to the CWCs even before informing the police.

Does your organization have any protocol (written or unwritten) on what steps to take when the organization comes across a case of sexual offences against children? If yes, please elaborate

It was observed that except for CSOs associated with CHILDLINE no other CSO/NGO (43% of the respondents) had a written protocol for handling the cases of sexual offences against children.

The comments of the CSOs were gathered about the availability of essential services in their districts for the children under POCSO Act.

Can you provide us with some information on child protection services available in your district?

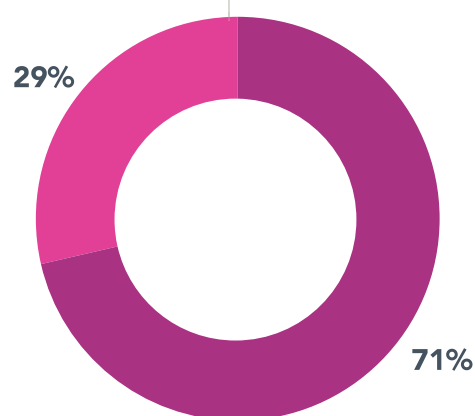
District	Residential care for Girls	Residential care for Boys	Medical Care	Psycho social Counseling	Education	Vocational Skills	Legal Aid	Gender and sexuality training/ awareness
Nagpur	NA	A	A	NA	A	A	A	A
Satara	A	A	A	A	A	NA	A	NA
Kolhapur	A	A	A	ABNS	A	NA	NA	NA
Solapur	ABNS	ABNS	NA	NA	A	ABNS	A	ABNS
Ahmednagar	ABNS	ABNS	A	A	A	A	A	A
Amravati	A	A	A	NA	A	ABNS	A	A
Pune	ABNS	ABNS	A	A	A	A	NA	A
Beed	A	A	A	ABNS	NA	NA	NA	NA
Mumbai	ABNS	ABNS	A	NA	A	NA	A	A
Latur	ABNS	ABNS	A	NA	A	ABNS	ABNS	A
Nasik	A	A	A	NA	A	NA	A	A
Wardha	A	A	A	A	A	NA	A	NA
Aurangabad	A	A	A	A	A	A	A	A

The CSOs were requested to mention if there were any services other than these which they thought were necessary for the child victims of sexual offences. They mentioned the following:

- Counselling and Counselling centers at District and *Tahsil* levels
- Long term Rehabilitation
- Financial assistance
- Training of Stakeholders
- Vocational Training
- Victim Protection
- Victim Assistance Centers (Helplines, One Stop Crisis Centers, Toll Free Helpline for adolescents who need information and guidance)
- Shelter home for children of special needs

Are there any special groups/communities in your district that are particularly vulnerable to sexual offences against children?

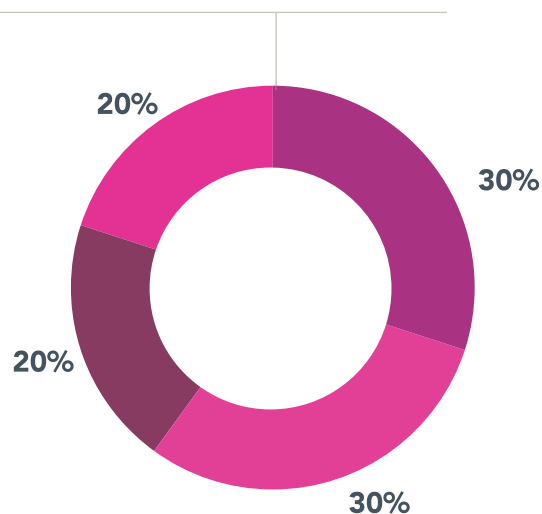
Are any communities particularly vulnerable?



Responses	No. of People	Percentage
● Yes	10	71%
● No	4	29%
Total	14	100%

## If yes, can you mention a few?

Can you mention any special groups/communities in your district that are particularly vulnerable to sexual offences against children?



Responses	No. of People	Percentage
● SC/ST communities	3	30%
● Slum Communities	3	30%
● Muslim communities	2	20%
● No Response	2	20%
Total	10	100%

Ten (71%) respondents stated that their districts did have special groups/communities whose children were particularly vulnerable to sexual offences.

The reasons they mentioned for naming these specific groups included:

- Low socio-economic development
- Caste based practices that put children at risk of sexual offences (e. g:- caste based customary prostitution among the *Bharadi* community)
- Living in congested spaces with little privacy and protection in houses or neighbourhoods
- Deficit parental care
- Migrant population hence disintegrated protective mechanisms
- Prevalence of child labour

## Do you report all cases of sexual offences against children to the police?

All (100%) NGOs mentioned that they report all the cases of sexual offences to the police.

## What challenges have you faced in reporting cases of sexual offences against children to the police?

Among the challenges they faced in reporting the cases of sexual offences against children to the police they mentioned the followings;

### Responses

5

Police do not register the FIR and force the victims and their families to work out a settlement

3

The child is scared to report (especially in cases of girl children)

2

Procedural difficulties like delay in filing FIRs, taking multiple statements of child etc

2

Lack of services for child ,like shelter homes, adequate and efficient medical response etc

1

Social stigma: villagers force the victim family out of the village if the case is reported

1

Social stratification: Accused are mainly from a higher caste and victims from the labour caste & class

Among the purely procedural challenges they face in reporting to the police they mentioned the following:

- It takes 5-6 hours to file an FIR
- Multiple statements cause re-victimization of the victims
- Lack of proper investigation of the case

They also pointed out that the lack of victim assistance services like hospitals equipped and willing to conduct medical examination of a victim child as yet another reason for their (i.e. CSOs) skepticism around reporting.

### Can CSOs /individuals play a role during pre-trial and trial phases in cases of sexual offences against children?

Nine (64%) out of 14 CSOs mentioned that they play an important role in the pre-trial and trial phase. They enumerated their roles as;

- Providing overall support to the victim
- Helping victim's family in filing FIR
- Helping the victim and family during recording the statement under CrPC 164
- Helping victim and family during recovery and rehabilitation
- Handholding during the process of trial
- Providing counseling
- Providing shelter-based care to the victim

### Has your organization been appointed as a Support person in any of the cases of sexual offences against children?

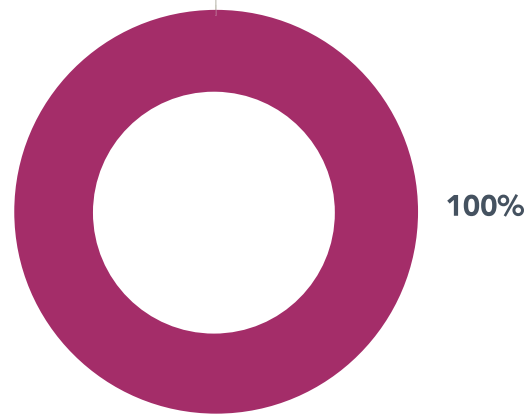
All (100%) organizations mentioned that they did not receive any official order from the CWC to be support persons. Even as they provided support to the victim and family, they mentioned not being formally appointed as per POCSOA Rules.



## Mandatory Reporting

The POCSO law makes it mandatory for anyone (who is aware of or suspects sexual offences against children) to report cases of sexual offences against children to the police. What is your opinion on mandatory reporting? Give detailed comments

What is your opinion on mandatory reporting?



Opinion	No. of People	Percentage
● Mandatory reporting is necessary	14	100%

All (100%) CSOs appreciated the need for mandatory reporting but also emphasized a need for mandatory reporting to be qualified. They had the following comments to make on the subject;

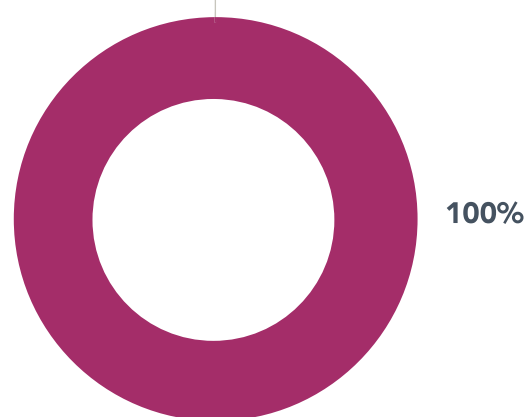
- Mandatory Reporting provision needs guidelines in a situation where the parents are not prepared to complain.
- Awareness is the key for implementation of the provision of Mandatory Reporting.
- India has diverse cultural and family norms. These may create hurdles to Mandatory Reporting.
- Mandatory Reporting should be limited to heinous crimes alone.
- Schools avoid reporting as they get blamed for the offence. There should be a separate system for schools where they should be rewarded for reporting.
- The systems should be strengthened to handle mandatory reporting.

## Are there any special initiatives in your district for child victims of sexual offences?

All (100%) CSOs mentioned that there were no special initiatives that they knew off in their districts for helping the victims of sexual offences. This indicates a key child protection gap in sector that needs to be worked on.

## Have you heard about the Manodhairya Scheme for victim compensation?

Have you heard about the Manodhairya Scheme for victim compensation?



Responses	No. of People	Percentage
● Yes	14	100%

All CSOs affirmed that they knew about Manodhairya and had been working on it. In their understanding the DWCD/DCPU is the nodal organization for the implementation of Manodhairya.

## What are the challenges faced in availing the Manodhairya compensation?

The organizations mentioned the following challenges:

- Incomplete or incorrect address makes tracing the family/home of the victim child very difficult
- Police do not register all cases
- Trauma Teams have not been formed. If they have been formed, they are inefficient and limited to approving Manodhairya benefits
- Lack of funds is a major problem

The age of consent for sexual activity has been increased from 16 years to 18 years. What is your opinion on that?



Responses	No. of People	Percentage
● 18 years is the right age	11	71%
● 16 years is the right age	3	29%
Total	14	100%

Three (29%) out of 14 CSOs opined that the age of consent should be 16, while the remaining 11 (71%) felt that 18 years is the right age for consent.

## Conclusions

1. Rule 4 (Sec 7) of POCSO (The 'Support Person/Organization' provisions) operates on a fallacy that CSOs/NGOs like the State are omnipresent and omni-willing to carry out every kind of work on every kind of issue.
2. Almost all CSOs (93%) under the Study had handled the cases of sexual offences against children.



64%

CSOs report cases of sexual offences against a child to the nearby CWCs even before informing the local police.

3. All CSOs mentioned that they report all the cases of sexual offences to the police. However, a vast majority of the CSOs mentioned that **they have reported the cases of sexual offences against a child to the nearby CWCs even before informing the local police** about it. This is perhaps indicative of their familiarity with the CWC.



57%

CSOs had no written protocols for handling the cases of sexual offences against children.

4. Except for the CSOs that were associated with the CHILDLINE **no other CSO had a written protocol for handling the cases of sexual offences against children.**
5. All CSOs faced **challenges ranging from the procedural (delays in filing FIRs, taking multiple statements of the child) to general and socio-cultural (social stigma & taboo around the issue) and the lack of support services** like shelter homes, counselling services etc.

6. All CSOs mentioned that **they did not receive any official order from the CWC to function as Support person**. Even as they provided support to the victim and family on their own they were not formally appointed as Support person. This indicates a colossal wastage of a crucially important provision under the POCSOA Rules.



100%

NGOs mentioned that they did not receive any official order from the local CWC to be Support Persons for Child Victims of Sexual Offences.

7. Majority of the CSOs (64%) mentioned that they **play an important role in the pre-trial and trial phases**.
8. All CSOs appreciated the need for mandatory reporting but not without emphasizing the need for further qualifying mandatory reporting unlike the current sweeping provision.
9. All CSOs pointed out that **there were no special initiatives that they knew off in their districts** for helping the child victims of sexual offences.



100%

NGOs mentioned that they report all cases of sexual offences to the police.

**6**

SIX

**THE TRAINING  
ON POCSOA**

Unlike most legislations of the past, POCSOA makes a specific provision (Sec. 43) for creating mass awareness about the law.

**POCSO Sec 43. Public awareness about Act :** The Central Government and every State Government, shall take all measures to ensure that—

- a. the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;
- b. the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

With increased specialization among judicial officers and legal practitioners, there is a consequent incomprehension about the laws outside their chosen field of specialization. However, ignorance of law is not considered a valid defense for the common person, howsoever under-privileged or socio economically suppressed he is.

In this scenario, the appreciation of the need and responsibility to create awareness about the provisions of a law is a welcome step in the direction of correcting this unjust discrepancy.

Yet another welcome feature of POCSOA was the long and consistent involvement of CSOs and child rights / child protection activists during the making of the law. The CSOs had *suo motu* assumed the responsibility of spreading awareness about the law. Even prior to the passage of the law they had started creating mass awareness about child sexual maltreatment.

This original enthusiasm for awareness generation was dampened if not brought to a halt due to the provision for Mandatory Reporting in the new law POCSOA-2012. The CSO sector realized that conducting POCSOA awareness programmers with actual or potential victims as well as the duty bearers and service providers was full of possibilities of a close encounter with the provisions of Mandatory Reporting. This perhaps was one of the factors that slowed down the progress of the art and science of awareness building and training specifically on POCSOA and on child sexual maltreatment in general. This needs to be empirically verified.

POCSOA is also one of those exceptional laws which have a large interface with several other laws in its legal environment such as the IPC, the CrPC, the JJA, the Immoral Traffic Prevention Act, the Child Labour (Prohibition and Regulation) Act, the Prohibition of Child Marriages Act, the Bombay Prevention of Begging Act 1959, the Medical Termination of Pregnancy Act, etc. Any effort to impart training on POCSOA to its various stakeholders meant equipping them to appreciate this interface.

**The discussions with knowledgeable persons, desk review, group discussions with stake holders, and secondary data showed:**

- None of the training programmes had to follow a curriculum accredited by a body of experts or the State.
- The duration of the training programmes was not suggested or approved by any accreditation authority. It randomly varied from a session of 1 hour to two substantial days.
- No minimum standards were to be followed in terms of the expertise of the resource persons. The resource persons ranged from a fresh graduates working in a CSO with one year experience in working on human trafficking to a police officer or social worker with more than five years' experience in any field.
- Sometimes very resourceful persons from different fields like social work, law, CSO sector, medicine, are engaged as speakers whose sessions become very educative. Often they are given a session of an hour as part of a poorly designed and administered programme. As the overall design of the training programme lacks professionalism and accountability in spite of involving such speakers, the training programme fails to make the needed impact.
- No minimum standards were followed w.r.t to the training and communication methods used.
- There is an overall rigidity in deciding the trainee group. The training is almost always arranged as per the category of duty bearers. In the field a POCSOA case requires each duty bearer to work in collaboration with another as a team. However training occurs in isolated groups and is almost never given to a well-presented & mixed group of relevant duty-bearers.
- Neither the State nor the CSO sector organizations undertaking the training had evolved a standard set of background material or case material as take away for the trainees.
- There was no standard or uniform pre training and post training evaluation to assess the immediate impact of training.



- The trainings on POCSOA was understood as primarily giving out the provisions of the important part of the text of POCSOA piece by piece.
- The trainings did not cover the broader topics like child sexual maltreatment, child trafficking, violence against children, child protection, gender violence, etc which are intimately connected with the issue central to POCSOA.
- The trainings did not use case materials that could have helped the trainees apply their learning to concrete situations.
- The curriculum content of trainings lacked research based empirically verified knowledge. More often than not some striking and sensational statistics from a single research study the Government of India's 2007 study Child Abuse in India were uncritically cited.
- There is no follow up or continuity of the training programmes. Some duty bearers who while attending a training programme take initiative in taking up the contact details of the individual trainers also contact them subsequently when they are confronted with any complicated case.

It is no surprise then that most respondents felt that as the primary level data shows;

**Although the respondents like Police, CWCs, JJBs have undergone some training on POCSOA mostly they admitted that the training was not sufficient and did not equip them to handle POCSOA cases in the field.**

7

SEVEN

**SUGGESTIONS FOR EACH  
STAKEHOLDER BY OTHER  
STAKEHOLDERS**

We asked all the respondents to provide suggestions for their colleagues who are also responsible for implementation of the POCSOA.

Every category expects the other category to be better trained, exhibit better sensitivity and be more efficient and coordinated. This was a uniform response.

Some specific suggestions for stakeholders are mentioned below:

## SUGGESTIONS FOR POLICE

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**In depth and comprehensive training** for the Police was suggested by all stakeholders. The training programs could start at the academy level and should go into the depths of not only the various aspects such as procedures to be followed as per POCSOA, collection of evidence, filing of chargesheet and responding sensitively to the cases etc but also in conducting non-judgmental and unbiased reporting and investigation.

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**Police must avoid procedural delays and register every case** that comes to the Police Station. They must follow procedures and not discriminate among the cases on the basis of what they feel will stand in the court.

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**Police must not put pressure on the medical professionals** to influence the process of medical examination.

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Half of the Child Welfare Committees interviewed mentioned that the police do not understand the importance of their summons and do not enforce them. It was suggested that policemen and women should have **a formal orientation and introduction to the Child Welfare Systems under the JJA and ICPS for them to develop a proper working relationship with the CWCs.**

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**At the Police Station, comprehensive Case Documentation of all cases registered under POCSO** is a must. It has been observed that once the Investigating Officer in a POCSO case gets transferred, the new officer doesn't have all the information related to the case. The internal communication within the Police department especially within every police station must be improved to ensure there is a proper handover and taking over of cases.

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Police should arrange for medical follow up for the victim child in serious cases.

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Police should insist on doing medical examination in PHCs. For collection of simple evidence, it is not necessary to traumatize the child, family and police by making them travel to the district hospitals.

Police should be made aware that any hospital can do the medical examination of the child.

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Police should take serious action against media who reveal the identity of the child.

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Police should be better equipped in terms of Human Resources.

## SUGGESTIONS FOR COURTS

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**Courts must expedite trials in all cases of POCSOA.** The courts have to reduce the number of times the victims are called in to testify.

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**Courts must ensure that Child Friendly Practices are adopted during the trial.** Especially when the child is below 12 years of age they must provide for a separate room, an informal environment, one way mirrors etc. The magistrates should adjourn the case when the child is not ready. They must restrain the defence lawyer from questioning the child.

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**Courts must impose a heavy penalty on the accused and the lawyer of the accused if they don't turn up on the day of victim child's testimony.**

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**The Public Prosecutors in cases of POCSOA should make themselves more visible and available to work with all the stakeholders.** They must do their homework and prepare other stakeholders for the case proceedings.

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**The medical fraternity suggested that the courts should be a bit more sensitive towards Doctors when they are called as witnesses to testify.** It was suggested that the statement of the doctors should be taken during the early hours of the day and must be completed in one day.

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**Courts need to understand the need for fast-tracked judgements in certain cases, especially in cases involving teenage pregnancies so that the girl can go for MTP.** Delay in the judgment in such cases can prove fatal for the child.

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Once in 3 months, the district judge should call a meeting, discuss cases and train the legal aid professionals to provide quality service. The copy of the judgment should be given to the police and the doctor so that they understand the errors and oversights made during the process of filing the chargesheet.

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The case management system in courts should be improved. They must not allot dates when the judge is on leave or allot excessive cases on a single day.

## SUGGESTIONS FOR DISTRICT CHILD PROTECTION UNITS

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68% of the respondents did not know of the existence of the DCPUs thus had no suggestions for them.

## SUGGESTIONS FOR CHILD WELFARE COMMITTEES

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It was suggested that the CWCs should take more responsibility of POCSOA cases in the district.

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CWCs should take a lead in ensuring collaboration among the various Child Welfare agencies and institutions to provide services for the child.

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CWCs should organise monthly meetings with all the stakeholders in the district and get an update on the cases.

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There is a need to widely publicise the members of the CWC to ensure that everyone in the district knows who they are and when they are available.

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CWCs need more training and awareness of the law and their responsibilities.

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The accessibility to the CWC must be improved and it must be ensured that the whole bench attends the sittings (Improve accountability of the members).

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The member selection committee should consider skill and knowledge before the CWC member is appointed.

## SUGGESTIONS FOR DOCTORS

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Doctors must **expedite the procedures for medical examination of victims of sexual violence.**

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Doctors must follow the **standardised procedures** in all cases of sexual violence against children.

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**The rural hospitals and PHCs must be equipped to conduct preliminary medical examination** so as to avoid the long and repeated journeys for victims and families.

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There is an **urgent need for improvement in the quality of Medical Reports submitted by doctors.** It should be legible and in simple language with an unbiased opinion from the doctors.

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All GMPs in the districts should undergo **regular and comprehensive training and sensitisation** on how to handle cases of sexual violence against children.

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The hospitals should have a standard procedure of examination for disabled children. Along with the medical report they should also issue disability certificate.

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A special medical officer should be appointed to manage the Medico-legal Cases (MLC) in each hospital. Doctors should explain the process of medical examination in simple language to the victim and the family.

## SUGGESTIONS FOR CIVIL SOCIETY ORGANIZATIONS

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50% of the other stakeholders mentioned the need for more NGOs to be working at the district level on prevention of Child Sexual Offences and protection of victims.

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There is a need for more NGOs to work in the rural areas of Maharashtra.

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NGOs should focus more on the rehabilitative aspects for a victim.

8

EIGHT

RECOMMENDATIONS

## RECOMMENDATION TO THE STATE

### Training

- 1 Pre-service and In-service training should be given the importance that is due to it.
- 2 The State should not interfere excessively in the training or strictly impose a certain curriculum and format on the state and the non-state entities undertaking training on the subject.
- 3 Ideally the State should, in collaboration with the CSO sector and other experts, evolve and disseminate minimum standards for the training content, methods and resource persons to the state and non-state agencies who are interested in undertaking training on POCSOA and other related issues or are entrusted with the responsibility. These minimum standards should equip the trainers and training bodies with background information, situation analysis, case materials, pre-test and post-test evaluation formats, minimum duration, communication technology, use of audio visuals etc.
- 4 The important duty bearers like the personnel of SJPU, members of CWC & JJB, Superintendents of JJ institutions, hostel wardens, recognized service providers must be made to appear for an online test on POCSO - the Act, the Rules and the broader issues of child protection.
- 5 Effective incentives and disincentives should be attached to their performance in the proposed test.
- 6 Training should be given to multi-duty bearer teams rather than to isolated categories of duty bearers.
- 7 The training should give emphasis on using carefully chosen case material which can encourage the trainees to apply various legal and programmatic provisions to the individual case.
- 8 POCSOA, child sexual maltreatment and the above mentioned topics which are related to it should be incorporated in the syllabi and training contents for professional training of social workers, teachers, police, judicial officers, CWC/JJB members, hostel wardens, etc.
- 9 The state and non-state entities undertaking training should instill accountability in training.



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- 10 The State should create a pool of experts who function as trainers who can be made available to the duty bearers in the field for occasional consultation and guidance when in need.

## OTHER RECOMMENDATIONS

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- 1 The Health Department, the Home Department, and the Department of WCD must act in convergence to bring in uniformity in procedures and understanding while dealing with victims and families under POCSOA.

- 2 Currently the prevalent common practice is of taking the statement of the child at the police station. Sec. 24 of POCSOA clearly states that the statement of the victim child can be recorded at the residence of the child or at a place where he usually resides or at a place of his choice. Although the POCSOA does not categorically state that the child's statement should not be recorded at the police station, it does imply that. As a police station is less likely to be a place of a child's choice. It is recommended that the state should formally convey that the victim child's statement should not be recorded at the police station.

- 3 While the CWCs believe and expect that the police should produce every case under POCSOA before them, the text of the POCSOA and Rules do not state so. A substantial section of the police has stated that it has not interacted with the CWC. There appears to be a situation of gap and misinterpretation between these two agencies. The State should clarify to both these agencies the position of the law on this point and the various interfaces as per the law.

- 4 The State must release clear guidelines on medical examination of victims under POCSOA which will comprehensively clarify the steps to be taken and conditions to be met while conducting a medical examination. The following factors need clarity;
- The age of consent for medical examination.
  - The indispensability of consent and particularly of a child victim and of a child accused.
  - The propriety of the compulsory presence of a woman representative nominated by the medical institution while conducting medical examination of a male victim especially between 12 to 18 years of age.

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5 The confusion between the legality of the established practice of a medical examination of a woman (or female child) by any registered medical practitioner (male or female) in case a woman doctor is not available and the condition in the text of the law Sec 27(2) stating 'in case a victim is a girl child, the medical examination shall be conducted by a woman doctor' needs to be removed.

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6 The State should make the DNA and forensic lab testing facilities easily and promptly accessible.

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7 There is a clear lack of understanding about the provisions in the POCSOA and the function of the various other duty bearers created under POCSOA. A better convergence and victim assistance may be attempted in the first instance by having joint training and sensitisation across multi stakeholder and duty bearer groups and not separate for each individual category. This will create a better understanding about the presence, roles and responsibilities of the other stake holders and duty bearers with regards to POCSOA.

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8 The spirit and the substance of child friendliness in procedures and practices should be elaborately codified and mainstreamed through protocols, SOPs, manuals, checklists, training programmes and online courses.

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9 At the district level there is a urgent need to create collaborative multi-stakeholder structures which make it compulsory to handle the task under POCSOA in coordination with one another.

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10 The relevant rulings given by various courts should be integrated into the POCSOA training content for the duty bearers.

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11 There is a need to start child protection initiatives in most districts in partnership with CSOs and existing Government stakeholders.

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12 Although most stakeholders in the Study opined that the age of consent may be retained at 18 years, there is a need to qualify the provision and not go with a flat cut off age. The age group of 16 to 18 years needs special scholarly examination and special provisions rather than criminalizing it.

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- 13 In absence of any other corroborating responses like the actual registering of any cases of non-reporting, the suggestion of many respondents that ‘the provision of mandatory reporting should be retained in the law’ appears like a casual and uninformed response.
- 
- 14 The provision of mandatory reporting in POCSOA is a highly controversial provision and various stakeholders hold diverse opinion on it. The provision should not be enforced strictly without any regards to its real and feared counterproductive effects. Similarly, repealing it outright would amount to throwing the baby with the bath water. There is an urgent need to study this provision more scientifically, exhaustively, comparitively and empirically and to learn from the experiences of the other nations who have been enforcing it for some years.
- 
- 15 The families of the victim child do not disclose teenage pregnancies with the fear of getting dragged in police case inescapably. When they encounter that possibility they walk out and discontinue being in touch with the hospital. As a result the hospitals have stopped reporting such cases under the pressure from the parents. This situation should be addressed by modifying the provision of mandatory reporting. The provision of mandatory reporting must be immediately revised and made useful by eliminating its negative potentialities.

# RECOMMENDATIONS FOR SPECIFIC STAKEHOLDERS

## Police

- 1** The current level of awareness of the police as the frontline duty bearers about their role and responsibilities, the salient provisions of the POCSOA, and its interfaces with the other important laws is far from satisfactory. This needs to be improved through formally accredited capacity building programmes.
- 2** The police needs to be sensitized, trained and supervised to ensure that it adopts child friendly practices while dealing with children under POCSOA. This must apply to all persons below 18 years of age regardless of the police personnel's individual biases and preferences.
- 3** Most social legislation requires sensitive handling of women and children at all levels including the police stations. This in turn requires the presence of a trained woman police officer. It is recommended that every police station must have at least one woman PSI. The current discrepancy between urban and rural police stations with respect to the presence of woman PSI is serious and needs to be corrected.
- 4** All police stations should be equipped with a spare room which can be used as a separate room for the victim and her/his legal guardians and support persons in order to ensure their privacy to them. The police stations must observe certain minimum standards in terms of infrastructure, super structure and amenities like toilets, washrooms, eating areas etc.
- 5** It is necessary to transport the accused and the victims in separate vehicles in order to ensure sight and sound separation between them. However it is noted that practical considerations may make it difficult to keep a special vehicle for the same. Notwithstanding that, the above separation can be ensured by temporarily hiring a separate vehicle for this purpose. The transportation facility must also be offered to the parents/ legal guardians of the child victim especially in rural areas especially if they are required to report to the district headquarters.
- 6** The police officer/ personnel who are deputed for the external sensitisation & training or capacity building programmes should have the responsibility to train a couple of other personnel from their police station. They can then work as short term substitutes in situations where the trained officer is on leave.

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7 Registration of FIR under POCSOA should not be left at the discretion of the staff and officers at the police station alone considering the age old reluctance of the police stations to register an FIR. The police superior should closely supervise if the IO is taking all the required / essential steps required under the law and the rules when a complaint under POCSOA is made. The use of net based digital technology for monitoring is highly recommended.

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8 All police stations must be well equipped to handle the computer hardware and software and internet based solutions to the extent required of them.

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9 In terms of the handling of the POCSOA cases at the police station level, several factors can cause a great variance including the level of understanding of the field level police personnel about POCSOA, their roles and responsibilities under POCSOA, and the scope for them to interpret the provisions and to use their discretion. Often a medical examination under POCSOA is understood in a limited manner as mere physical examination to ascertain sexual penetration or to record physical injuries if any. Hence where there is no complaint about penetrative sexual offence the police tend to use their discretion and conclude that a medical examination is not necessary. As the first corrective step the police should not be given the authority to use this discretion. Secondly, in light of the fact that considerable injury is caused to the victim that is psychological in nature, mere physical examination cannot bring it on record. The law or the Rules of POCSOA may be suitably changed to make provision for a mandatory psychiatric assessment of the impact of the offence on the victim.

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10 The near absence of registration of complaints of sexual offences against the differently abled children points towards a grave situation of complete silence and non-disclosure of offences on this front.

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11 The police and other frontline duty bearers who come across POCSOA victims must be made aware of their responsibilities under the POCSOA. As of now, there is a differential interpretation of their roles under POCSOA.

## Prosecutors

- 1 The State should undertake accredited sensitisation and training of the Public Prosecutors handling the POCSOA cases.
- 2 The State should urgently provide at least the minimally required infrastructure, basic amenities and facilities under POCSOA at the District courts. The current state of affairs indicates gross violation of the text and spirit of the POCSOA.
- 3 The appointment of special public prosecutors should be made on priority basis.
- 4 Like the other stakeholders and duty bearers, child friendliness of the procedures under POCSOA is little understood by the prosecutors. The spirit and the substance of child friendliness procedures and practices should be elaborately codified and mainstreamed through protocols, SOPs, manuals, checklists, training programmes and online courses for prosecutors.

## Juvenile Justice Boards

- 1 It may be a good practice to have an even allocation of male and female Magistrates on the JJB instead of appointing only women magistrates.
- 2 The needs and rights of the juvenile found in conflict with POCSOA should not get neglected while strengthening the mechanisms under POCSOA. The POCSOA offender if juvenile must get rightful treatment as per the JJ Act.
- 3 Better provisions should be made for sight and sound separation between the victim child and the accused and his representatives.
- 4 The provisions in the Observation Homes should follow minimum standards of quantity and quality
- 5 OH services for girls should be made available in every district.
- 6 The law should make proper legal provisions for the rehabilitation of the accused child.

## Child Welfare Committees

- 1 The CWCs should be revamped in terms of their constitution ensuring that the appointments are made in time and no position on the CWC is kept vacant for more than 45 days.
- 2 The performance of the CWC members should be closely monitored in terms of their attendance, participation in training programmes, and participation in the functioning of the CWC.
- 3 The important provision of Support Person has been largely left unused by the CWCs. It is recommended that CHILDLINE which is a national programme of the government may be appointed to function as the Support Person where other willing and competent persons or bodies are not available.
- 4 On its part the CWCs on their own must prepare a list of organizations that can be appointed as Support Organizations.
- 5 Under the POCSOA Rules, the CWC has to issue the Order appointing a Support Person. The CWCs should be made aware of this provision in the Rules. The CWCs should be made aware that the work of the organizations in helping the victim child in the court gets considerably boosted if the CSO possesses the above Order and produces it in the court. The CWC should know that the police too are mandated to inform the Court about the appointment of the Support Person. The CWCs should make the maximum use of this valuable provision in POCSOA Rules
- 6 The JJA Rules should be amended suitably or elaborated in order to bring more clarity on the validity of decisions and Orders passed by the CWC when the attendance of the members is in deficit.
- 7 The training programmes for CWCs should have higher accountability.
- 8 The CWCs need to be provided with a comprehensive and accredited training on POCSOA and on its interface with the JJA.
- 9 The CWCs should be put in touch with the various service providers whose expertise and goodwill can be harnessed in the handling of POCSOA cases for better child protection.
- 10 There is an urgent need to ensure that the CWCs routinely work in collaboration with the other stake-holders

## District Child Protection Units

- 1 The grimly low awareness score of the DCPUs about their own role and responsibilities under POCSOA and that of the other duty bearers is a cause for concern. This must be corrected by orienting them properly, facilitating team work and implementing accountability mechanisms.
- 2 The DCPU despite being key coordination mechanisms for child protection, and hence for JJA as well as POCSOA, is a highly under-provided and ill-equipped agency. It needs optimum provisioning in terms of staff, infrastructure, and other resources as that could directly contribute to the better functioning of several other mechanisms meant for child protection.
- 3 The roles and responsibilities of DCPUs as currently mentioned are numerous but mismatched not just by the lack of provisions but also by lack of clarity about it. This situation needs to be corrected and the DCPUs should be encouraged to focus on their role as coordinators and facilitators of various other key inputs for the systems working under the POCSOA and the JJA.
- 4 The existence and roles of the DCPUs must be made known to the other stakeholders under the JJA and the POCSOA in the district for their optimum utilization.
- 5 The evident gulf between the POCSOA mechanisms and DCPUs needs to be bridged urgently.
- 6 The DCPUs should provide resource directories and lists of service providers to the various stakeholders under POCSOA. This has to be matched by budgetary provisions and/or a mechanism for digital dissemination of the resource directories.
- 7 The lack of knowledge about the key provisions of the POCSOA among the DCPUs especially about the provision to appoint Support Persons or Support Organizations and the gap among the various duty bearers under the POCSOA should be corrected.
- 8 Although the DCPUs claim to have conducted many training programmes the situation does not show any significantly positive impact of the trainings. It is necessary to upgrade the training activity and make it accountable.



## Hospitals

- 1 The Hospitals must be held responsible for the violation of privacy and dignity of the child victims.
- 2 Medical examination facilities must be made available at the PHC levels.
- 3 The reasons for the delays in medical examination at the hospital should be probed.
- 4 The procedures at the hospital level must be streamlined and dis-junctures among them should be ironed out. The State should bring in uniformity across the district hospitals in the state on issues like the age of consent for examination, reporting format, examining doctor, forensic kits & tools etc.

## Civil Society Organizations

- 1 While making laws, policies, and programmes the law makers and public administrators should not presume that; the CSOs are present in all parts of the country, CSOs all over the country have uniform background, resource base, mandate, objectives and areas of work, all CSOS are eligible and willing to carry out the work assigned to them by the State or under the law at all times.
- 2 As many CSOs seem to have handled the cases of sexual offences against children they may constitute an important asset and maximum effort should be made to tap their expertise and good will wherever available and possible.
- 3 The CSOs have a relatively better understanding of the rule of law and best interest of child and their good practice of involving the juvenile justice system should be tapped as an asset and used for better implementation of the POCSOA in every way possible.
- 4 The provision of Support Person is extremely crucial. It is unfortunate that it is not made in the text of the law but forms a part of the rules. Further, this provision is not being used by the CWC even when fit support persons or organizations are available in their area of jurisdiction. The dismal state is further compounded by the fact that CSOs are already involved in helping

the child victim and are yet not appointed as the Support person in the respective case. This appears unreasonable. It may also be possible that many of these CSOs may not even expect any payments for their services as Support Persons.

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5 Considering the fact that; the CSOs have a spirit of voluntariness as well as a diverse and non-static nature, they are varied with respect to their understanding and style of working. Capacity building efforts should be made and useful protocols and SOPs should be evolved for their better integration in the implementation of POCSOA intensive.

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6 The intervention and functioning of the CSOs working on POCSOA for better child protection should be facilitated in every aspect.





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