

CHAPTER V

ENFORCEMENT MACHINERY AND THE CHALLENGES

“There can be no keener revelation of a society’s soul than the way in which it treats its children.”

- Nelson Mandela¹

As discussed in the preceding chapter on “legal provision against sexual abuse of children in India” there are multiple statutes consisting of several specific provisions mend for protection of children from abuse especially sexual abuse. However, bare provisions of law in the pages of the statute books will be a toothless tiger if there is no enforcement machinery to enforce the laws for the safety and protection of children against abuse. Many statutes have certain provision which either speaks for creation or authorization of certain agencies/machinery for implementation of its provisions. In this chapter, the researcher had elaborately explained the various enforcement machinery that are available under different laws and their role in protection of children from sexual abuse. The researcher had also used empirical method to find out the compliance of law by these agencies and challenges that the enforcement machinery face in implementing the special laws for protection of children.

5.1 Role of Enforcement Machineries’ under Various Statutes

Enforcement machineries play very important role in maintenance of law and order in a state but before analyzing the role one must understand the meaning of enforcement machineries. Enforcement machineries mean an agency that is entrusted with the duty to enforce the laws of the state. Enforce is a term which refers to the process of imposing the obedience of certain laws & rules framed by the state from time to time. These enforcement agencies are the backbone of a

¹ Former President of South Africa, Quoted in 8th May, 1995

civilized society because in their absence one cannot feel himself/herself to be safe and protected from the evil of the society. The enforcement agencies those who are empowered or specially established by a statute to enforce laws relating to child sexual abuse are elaborated below.

5.1.1. Special Juvenile Police Unit/ Local Police:

Police is perhaps the most common and chief enforcement agency since ages in almost all the countries and India is not an exception to it. In India police is a state subject matter as per the seventh schedule of the Constitution of India and hence, it is controlled and administered by the home department of the respective state government.

Police has number of activities to work out starting from prevention of crime, investigation, provide security of the VIP'S & VVIP'S so on and so forth. In a word police are overburdened with work due to which they could not function well as expected by the public at large. In order to overcome this problem to a certain extent specially in the cases of children and to train special officers to handle sensitive cases relating to children the Juvenile Justice Act has provided for establishment of Special Juvenile Police Unit(SJPU).² Special Juvenile Police Unit(SJPU) means a unit of police force who has been designated to handle juveniles or any other case related to a child.³ In every police station at least one police officer shall be designated as juvenile officer or child welfare officer who shall be properly trained from time to time to deal with matters related to juvenile or child. The Protection of Children from Sexual Offences Act, 2012 in short POCSO Act as discussed in the preceding chapter also provides for

² Juvenile Justice Act 2015, Sect. 107

³ *Ibid.*, Sect. 2(55)

complaint to SJPU or Local police in cases of child sexual abuse which indirectly empowers them under the Act.⁴

The Juvenile Justice Act and the POCSO Act mandates police to adopt special procedure which are child friendly while dealing with cases of child sexual abuse. The role of police and the procedure to be followed by police in cases of child sexual abuse is discussed in the following paragraphs.

The police need to act as fast as possible in the cases of sexual offence against a child so that the child doesn't have to go through any secondary trauma in the post victimization period. As per the Cr.P.C provision the information regarding apprehension of crime or commission of crime can be given to the police through any of the available mode like wireless services, messaging, telephone and FIR.

When an information regarding case of child sexual abuse is received by the police through telephone or wireless services the officer receiving the call shall make a note of all possible information disclosed by the informant like; name, address, age of the accused as well as the victim, place of occurrence and even the name, address and phone number of the informer, if possible for further investigation. The information shall be immediately forwarded to the Officer In Charge of the respective police station. If the call was regarding apprehension of sexual abuse the Officer In Charge shall take immediate step to prevent the same from being committed.

On the other hand if the information is given to the police by making an First Information Report(FIR) to the police station the officer in

⁴ POCSO Act, 2012, Sect. 19

charge shall register the FIR and start the investigation of the offence. If the FIR is lodged by the victim himself/herself the police shall give due empathy and care to the victim so that he/she feel comfortable.

While recording the statement of the child victim the police shall be in civil dress i.e not in police uniform so that the child don't feel afraid or awkward while narrating the incident.⁵ As far as possible the Investigating Officer (herein after IO) should be a women officer. It is also the duty of the officer that the procedure of recording the statement is done in a place where the child feel comfortable i.e. at the choice of the child.⁶ Moreover, the IO should conduct the investigation in such a manner that at no point of time the victim child comes in contact with the accused.⁷ The identity of the victim child should not be disclosed by the police before any person including media⁸ and the child shall not be detained in the police station during night for any reason.⁹ In case the victim has no place to stay or if the situation is such that the victim cannot be send back to his/her residence in such cases he/she may be sent to children homes or like institutions.

The statement must be recorded in the presence of the parents of the child but if the parents are the accused in such cases the parents should not be allowed to be present with the accused rather some other person whom the child trust should be allowed to be present with the child.¹⁰ The IO should not mechanically record the statement as in the case of an adult but he/she should take all necessary measures to access the psychology of

⁵ *Supra* note. 4, Sect. 24(2)

⁶ *Ibid.*, Sect. 24(1)

⁷ *Ibid.*, Sect. 24(3)

⁸ *Ibid.*, Sect. 24(5)

⁹ *Ibid.*, Sect. 24(4)

¹⁰ *Ibid.*, Sect. 26(1)

the victim so that the child victim is not traumatized by the questions put to him/her by the IO. The IO shall use his experience and knowledge while interacting with the child. Further, the IO may take the assistance of the special educator or translator or interpreter from the list of persons prepared and maintained by the DCPU(District Child Protection Unit) while recording statement from a child victim who is mentally or physically disabled.¹¹

As far as possible the statements shall be recorded in audio visual method/means.¹² Recording the statement from the child victim is probably the most critical part of investigation in a case of child sexual abuse because it is a time consuming activity where the IO need to keep patience and act friendly with the child so that the child fearlessly give the statement. The IO shall also be careful that the child is not hungry and is not forced to answer any question.

If the police need to make arrangement for medical examination of the victim by a registered medical practitioner in the nearest government hospital preferable within 24 hour¹³ and while doing so the IO shall be accompanied by a lady police officer. If the victim happens to be a girl child in such cases the examination need to be conducted by a lady doctor in the presence of the parents or guardian or any other person whom the child trust. If the condition of the child is not fit then the child shall be admitted in the hospital. In case the child is a minor and below 12 years of age the consent of the parents or guardian is necessarily to be taken before medical examination but if the child is above 12 years of age and disagrees

¹¹ Supra note.10. Sect. 19 & 26

¹² *Ibid.*, Sect. 26(4)

¹³ Cr.P.C. 1973, Sect. 164 A

to go for medical examination the IO shall record the statement of denial for examination which shall be countersigned by the victim, doctor and any the person with whom the victim was brought to the hospital. The IO shall ensure that the medical examination includes the examination of sexually transmitted diseases or infection in the victim so that the IO can put appropriate charges against the accused and also that the child can be given proper medical care if necessary. On completion of the medical examination the IO should not make any delay receiving the medical report because the report need to be produced before the Magistrate or CWC while recording the statement from the victim child under Section 164 of Cr.P.C. If everything is fine the victim shall be produced before the CWC(Child Welfare Committee) within 24 hours of reporting and if any delay occurs the IO need to give explanation for such delay caused.¹⁴

Rape cases and the cases registered under POCSO Act are regarded as ‘Special Report Cases which need to be carefully handled by the IO due to the seriousness of the offence and severity of punishment provided by the statutes.’¹⁵ Further, the IO on the basis of the FIR, statement recorded and medical report shall proceed with in-depth investigation including key collection and preservation of evidences against the accused so that the prosecutions do not loose the case. The IO shall send all the necessary evidence in the form of article, cloth etc. recovered in the crime scene which have correlation with the incident as per the statement of the victim to the forensic science laboratory through the court concerned preferably

¹⁴ POCSO Act 2012, Sect. 19 (6) and POCSO Rules 2020, Rule 4 (4)

¹⁵ Standing Order No. 01/2020, Sop/Guidelines For Police Response And Investigation In Cases Of Sexual Offence, (Office of the Director General Of Police) available at: <https://police.py.gov.in/SO.%20No.%2001-2020%20SOP%20or%20Guidelines%20for%20Police%20Response%20and%20Investigation%20in%20Cases%20of%20Sexual%20Offence.pdf> (Visited on Januray 22, 2020)

within a period of 7(Seven) days for minute examination of the evidences. The queries in the forensic science form should be very specific and evidence oriented so that the laboratory could give specific reply which can be helpful in further investigation of the offence and even in the trial of the case for the court to come to a conclusion. When any electronic record is seized a certificate should be obtained from the person authorized under the Information Technologies Act, 2000.¹⁶

In case where the accused is unidentified the police shall make all necessary effort to apprehend the accused as soon as possible. Once the accused is arrested the police shall immediately make arrangement for medical examination of the accused as per the due procedure.¹⁷ In addition to it the police shall make careful examination and interrogation of the accused and try to establish the connection of the accused with that of the offence committed.

As per the Criminal Law (Amendment) Act, 2018 the investigation of sexual offences registered under IPC and POCSO Act should be completed within a period of 60(sixty) days from the date of filling of FIR. In case of any delay the IO should give written explanation for the same. For a successful trial it is necessary that the IO maintain a coordination with the Special Public Prosecutor and take instruction from him to act accordingly. It is also necessary that the IO attend the trial whenever necessary without fail so that there is no delay in the court procedure.

¹⁶ Indian Evidence Act, 1872, Section 65-B

¹⁷ Supra note. 13., Section 53-A

5.1.2. Child Welfare Committee (CWC):

The CWC¹⁸ is a key stakeholder who plays important role to ensure necessary care and protection to the child victim. The SJPU or Local police need to inform the case of child sexual abuse within 24 hours before the CWC or Special Court along with the report prepared by the police. If the report submitted by the police indicate that the child is need of care and protection the CWC within a period of 3(three) days must determine whether the child need to be removed from his family and placed in a children's home or not.^{19 20} While taking such a decision the CWC should consider the opinion of the child as well as the safety and confidentiality of

¹⁸ Section 29- Child Welfare Committee.- (1) The State Government may, by notification in Official Gazette, constitute for every district or group of districts, specified in the notification, one or more Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act. (2) The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children. (3) The qualifications of the Chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed. (4) The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if- (i) he has been found guilty of misuse of power vested under this Act; (ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence; (iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year. (5) The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.

¹⁹ Section 34 of the Juvenile Justice Act, 2000- Children's homes.- (1) The State Government may establish and maintain either by itself or in association with the voluntary organisations, children's homes, in every district or group of districts, as the case may be, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation. (2) The State Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be provided by them, and the circumstances under which, and the manner in which, the certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn.

²⁰ JJ Act 2015 & Rule 4 (5) of POCSO Rules 2020

the child. The child parents, guardian or the custodian shall be well informed regarding the ongoing process.

The CWC however should keep in mind that every child victim of sexual abuse is not a child who is in need of care and protection under the JJ Act.²¹ A child need to be send to a children's home only when the accused is sharing the household with the victim child or if the child do not have any parental support or if the child is homeless etc.

The CWC is authorized to provide support person to the child for assistance during the entire period of investigation and trial at their own initiative or on a request of the family of the child.²² The support person may be any individual person or an organization having special knowledge and working in the field of child rights. The person involved as support

²¹ Section 2(14) "child in need of care and protection" means a child— (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or (iii) who resides with a person (whether a guardian of the child or not) and such person— (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or (x) who is being or is likely to be abused for unconscionable gains; or (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage

²² POCSO Rules 2020, Rule 4 (8)

person need to be monitored by the CWC and they have to submit regular written update regarding the case proceeding and if they fail to discharge the duty he may be removed in between the proceeding by the CWC. However, if the support person fails to perform his duty or the child do not feel comfortable with him and makes a complaint to the CWC he may be removed immediately.²³

5.1.3. Special Court:

Speedy justice has been the demand of the public since a long period and in order to give statutory status to such a demand Section 28 had been inserted in the POCSO Act, 2012 which provides for establishment or designation of special courts in order to try the cases of sexual abuse of children under the POCSO Act. As per the provision of Section 28 the State Government in consultation with the chief justice of the respective high court shall designate a court of sessions as special court for each session division within a State. It further provides that while trying an offence under the POCSO Act, a Special Court shall also try an offence with which the accused may, under the Cr.P.C be charged with the same trial.²⁴

It also provides that the Special Court constituted under the POCSO Act shall also have jurisdiction to try under Section 67-B of the Information Technology Act, 2000 in so far as its relates to publication or transmission of sexually explicit material depicting children in any act or conduct or facilitates abuse of children via online mode.²⁵

²³ *Supra* note. 22., Rule 4 (11)

²⁴ *Supra* note. 4., Sect. 28(2)

²⁵ *Ibid.*, Sect. 28(3)

The Special courts are empowered to presume against the accused in cases where he is prosecuted for violating Section 3, 5, 7, 9, 12, 13, 14 & 15 of the POCSO Act. The presumption may be regarding commission, abetment or attempt to commit the offence unless the contrary is proved which means that the onus lies on the accused to prove his/her innocence.²⁶

As per Section 30²⁷ the Special Court need to presume the culpable mental state of the accused. The term culpable mental state means and includes intention, motive, knowledge of the fact and belief of a person regarding something. However, the accused will always be given a chance to take his defence that he had no such mental state as has been presumed by the court.

The Special Court need to follow the procedure as provided under the provisions of Cr.P.C while trying any case under POCSO Act and the special court shall be deemed to be a Sessions Court for the purpose of the said provisions.²⁸

The Special Court is empowered to take cognizance of any offence when the court receives a complaint regarding some facts which constitute

²⁶ *Supra* note. 4., Sect. 29

²⁷ Sect. 30. Presumption of culpable mental state.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

²⁸ Sect. 31. Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.— Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974)(including the provisions as to bail and bonds)shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

offence or when a police report is made of such fact, even without the accused being committed to it for trial.²⁹ The Special Court have to play active role while examination of the victim child because the court cannot allow the Special Public Prosecutor to put the questions directly to the child as in any other case but the questions need to be put to the Special Court which shall in turn be put to the child in a child friendly manner by the court.³⁰ The Court shall create a child friendly atmosphere so that the child do not feel scared to depose his statements when asked any question by the Special Public Prosecutor or the Special Court and in order to create this type of environment the court shall allow any of the family member such as parents, guardian etc. whom the child trust or repose confidence to be present in the court along with him.³¹ The court may also give frequent breaks to the child during trial if the court feels to be necessary for the child.³² Further, the Special Court shall ensure that the child is not called repeatedly to testify in the court as it may lead to psychological stress upon the child.³³

The Special Court is also duty bound not to permit aggressive questioning or character assassination of the child during the entire trial procedure so that the dignity of the child is maintained.³⁴ The Special Court also has the duty to protect the identity of the child from being disclosed except in special circumstances where the court feels necessary to disclose the same.³⁵ However, in order to permit the same the Special Court need to

²⁹ Supra note 4., Sect. 33(1)

³⁰ *Ibid.*, Sect. 33(2)

³¹ *Ibid.*, Sect. 33(4)

³² *Ibid.*, Sect. 33(3)

³³ *Ibid.*, Sect. 33(5)

³⁴ *Ibid.*, Sect. 33(6)

³⁵ *Ibid.*, Sect. 33(7)

record the reasons in writing. Disclosing the identity of the child would mean and include disclosing the child family, school, relatives or any other information through which the identity of the child can be revealed.

The Special Court is also empowered to direct payment of compensation in addition to punishment if the court thinks fit for the purpose of immediate rehabilitation of the child from the trauma he is undergoing.³⁶

The apex court had also well observed the role of trial courts in cases of sexual assault specially related to child. In the case of *State of Karnataka v. Krishnappa*³⁷ the court was of the view that sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self esteem and dignity; it degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. Hence, the trial courts are expected to deal with cases of sexual crime against women with utmost sensitivity.

In cases where there lies any doubt in the mind of the Special Court that whether the accused is a child or a adult in such cases the Special Court shall determine the age of the accused on the basis of various evidences which are available.³⁸ As far as criminal cases are concerned, age of the accused has importance in fixing criminal responsibility as well as type and severity of punishment. Apart from it also act as an factor in fixing which procedure need to be adopted in the trial procedure because if a accused is a child he shall be dealt with under the provision of the

³⁶ *Supra* note. 4, Sect. 33(8)

³⁷ AIR 2000 SC 1470

³⁸ *Supra* note. 4, Sect. 34(2)

Juvenile Justice (Care and Protection of Children) Act, 2000.³⁹ Although the court may consider various evidences for determining the age of the accused but the most widely used evidences are birth certificate issued by the municipality under the Registration of Births and Death Act, 1969 and matriculation certificate issued by the concerned Central or State Board.⁴⁰ In the absence of birth or matriculation certificate, in order to record a finding in respect of age of person reliance can be made on the opinion of the medical board/ Doctor as the case may be on the basis of tests however it is not a conclusive proof of the age of the concerned person.⁴¹

In cases of charges under the POCSO Act the Special court shall record the evidence of the child within a period of 30 days after taking cognizance of the offence.⁴² In case any delay occurs in doing so; the court shall record the reasons in writing. In addition to it the Special Court is under legal obligation to complete the entire trial procedure within a period of one year from the date of taking cognizance of the offence.⁴³

The Special Court should ensure that the child do not face or see the accused while recording evidence. However, the accused should be allowed to be present in the court so that he can hear the statement of the child and prepare for his defence.⁴⁴ In order to ensure that the child is not exposed to accused at the time of testifying the Special Court is empowered

³⁹ *Supra* note. 4., Sect. 34(1)

⁴⁰ Kataria R.P, Commentary on The Protection of Children From Sexual Offences Act, 2012, 2nd Edition, Orient Publishing Company. Pp 696

⁴¹ *Ramdeo Chauhan Alias Raj Nath V. State Of Assam* (2001) 5 SCC 714

⁴² *Supra* note. 4, Sect. 35(1)

⁴³ *Ibid.*, Sect. 35(2)

⁴⁴ *Ibid.*, Sect. 36(1)

to record the statement even through video conferencing or by using single visibility mirrors or curtains or any other device as the court think fit.⁴⁵

The Special Court should make sure that the trial takes place *in camera* and in the presence of the parents or any other person whom the child takes in confidence.⁴⁶ However, in cases where the accused is the parent of the child or his near relative or guardian in such cases he/she shall not be allowed to be present with the child. If the Special Court is of the opinion that the child need to examine at any other place apart from court premises, the Court shall issue commission as per the provision of Section 284 of Cr. P.C.⁴⁷ for the examination of the child.

A proceeding is held to be *in camera*, if it takes place in the judge's private room, or in a court the doors of which have been kept closed and persons, persons other than those concerned in the case are excluded.⁴⁸ Such type of *in camera* procedure is conducted only on exceptional cases where publicity is undesirable such as cases of child sexual abuse. The legislature has inserted such special procedure so that it would enable the

⁴⁵ Supra note. 4., Sect. 36(2)

⁴⁶ *Ibid.*, Sect. 37

⁴⁷ Section 284. When attendance of witness may be dispensed with and commission issued.

(1) Whenever, in the course of any inquiry, trial or other proceeding under this Code, it appears to a Court of Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the Court or Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the provisions of the chapter: Provided that where the examination of the President or the Vice-President of India or the Governor of a State or the Administrator of a Union Territory as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness.

(2) The Court may, when issuing a commission for the examination of a witness for the prosecution direct that such amount as the Court considers reasonable to meet the expenses of the accused including the pleader's fees, be paid by the prosecution.

⁴⁸ R.P. Kataria, *Commentary On Protection Of Children From Sexual Offences Act 2012* 712 (Orient Publishing Company, Allahabad, 2nd edn. 2017)

victim of crime to be a little comfortable and answer the questions with greater ease. *In camera* proceeding would not only help to maintain the self respect of the victim, but is likely to improve the quality of evidence of a prosecutix because he/she would not hesitate or bashful to depose frankly as she/he may be in an open Court, under the gaze of public. The improved quality of victim evidence would assist the courts in arriving at the truth.

Apart from the POCSO Act Section 327 of Cr.P.C provides for *in camera* procedure in sensitive cases especially in cases of rape. Section 327(3) provides that the in camera proceedings should not be published in any form except with the permission of the court. This would save any further embarrassment being caused to the victim of sex crime.

Further, the Special Court is authorized to take the assistance of an interpreter or translator whenever the court thinks to be necessary while recording of evidence of the child. However, while appointing a translator or an interpreter the court should be sure that such a person is well experienced and having prescribed qualification for doing the same.⁴⁹ The Special Court is also empowered to take the assistance of a special educator or an expert in that field if the child victim has some kind of mental or physical disability.⁵⁰

Depending on the case the Special Court is also authorized to order interim compensation for the rehabilitation of the child if the court feels to be necessary.⁵¹ Such type of order can be passed by the court on basis of an application made by the victim himself or on his behalf or even *suo motto*

⁴⁹ *Supra* note. 4., Sect. 38(1)

⁵⁰ *Ibid.*, Section 38(2)

⁵¹ POCSO Rules 2020, Rule 9(1)

by the trial Court.⁵² The burden to pay such compensation is upon the State Government, which is to be paid within a period of 30 days from the date of order, from the Victim Compensation Fund or other similar fund kept for such purpose under Section 357A of Cr.P.C.⁵³ However, while granting final compensation the Special Court shall take into consideration all relevant factors concerning the loss or any type of damage caused to the victim as specified under Rule 9(1)⁵⁴ of the POCSO Rules, 2012.

5.1.4. District Child Protection Unit (DCPU):

District Child Protection Unit (DCPU) is a statutory body established under the Juvenile Justice Act along with the State Child

⁵² *Supra* note. 51.

⁵³ Section 357A. Victim Compensation Scheme.

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

⁵⁴ Rule 9. Compensation.—(1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

Protection Society by the respective State Government.⁵⁵ The basic object behind establishment of the DCPU under the Juvenile Justice Act is to implement child rights and to protect the children who are in need of care and protection as well as those who are in conflict with law. Although DCPU was established under the JJ Act, but the role of DCPU had been enlarged widely by the POCSO Act and POCSO Rules in the year 2012 by entrusting certain duties to the DCPU along with ICPS.⁵⁶

Integrated Child Protection Scheme(herein after ICPS) is a Central Government Scheme under the Ministry of Women and Child Development which was approved for implementation on 26th of February, 2009 for the protection and welfare of the children as provided under Juvenile Justice Act. The objective with which the ICPS was launched can be highlighted below:

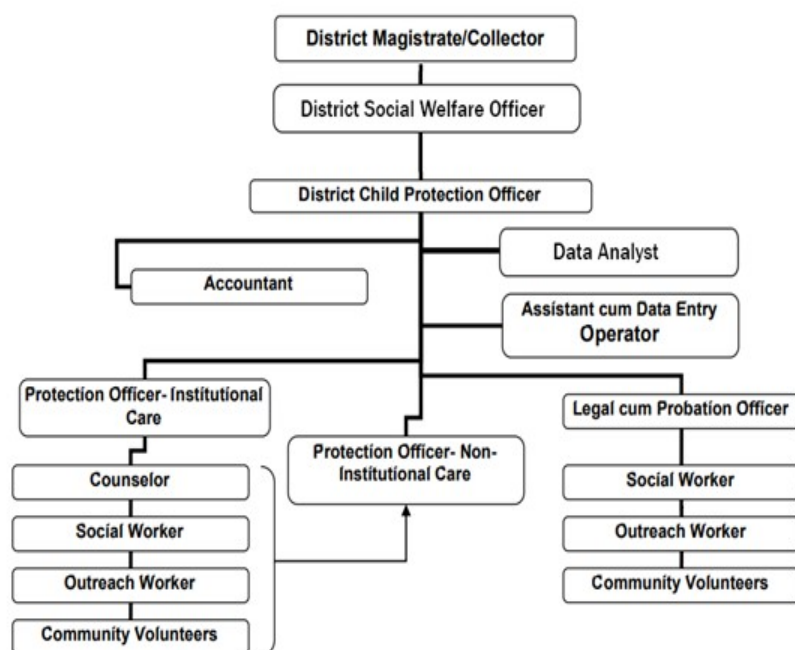
- ✓ To institutionalize essential services relating to protection of child rights
- ✓ To strengthen the various outreach and support services at all levels such as National, State, District and Block level
- ✓ To support and strengthen the functionaries such as police, local bodies, judiciary, other allied department working for rights of child.
- ✓ To create database with the help of research for monitoring child protection services and better implementation of the rights available to the children
- ✓ To create public awareness and make the people aware of the rights available to the children
- ✓ To promote and undertake all possible preventive measures for protecting children from vulnerability and abuse.

⁵⁵ The Juvenile Justice (Care and Protection of Children) Act 2015, Sect. 106

⁵⁶ *Supra* note. 51., Rule 3 (1)

In order to achieve these above-mentioned objectives of the ICPS and implement the special laws like JJ Act and POCSO Act, the DCPU is constituted in every district, which shall function under the overall supervision of the District Magistrate/District Collector of the concerned district. DCPU is a child friendly organization which is headed by the District Child Protection Officer to be assisted by a team consisting of Legal Cum Probation Officer, Protection Officer(Institutional Care), Protection Officer(Non-Institutional Care), Counselor, Social Worker, Outreach Worker and Community Volunteers.

Structure of District Child Protection Unit(DCPU)



SOURCE: Social Welfare Department, Government of Assam

The office of District Child Protection Officer (herein after DCPO) is to be filled up on deputation or Contractual Basis by the respective State Government. The DCPO is responsible for the overall implementation of the ICPS and other rights of child including providing legal and social protection under the POCSO Act as well as JJ Act. He needs to keep constant supervision and coordination between all the institution, Agencies, NGO, Programs, Police, CWC, JJB, DLSA and Project which shall be reported to the SCPS of the respective State.

The DCPU as a whole have to perform proactive role and multiple function as provided under the ICPS some of which are highlighted below:

- To work for proper implementation of the various legislation enacted, Scheme launched and policy framed for the protection of children and promotion of child rights.
- To rescue children in need of care and protection⁵⁷

⁵⁷ Sect. 2 (14)- Juvenile Justice(Care and Protection of Children) Act 2015 “child in need of care and protection” means a child— (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or (iii) who resides with a person (whether a guardian of the child or not) and such person— (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or (x) who is being or is likely to be abused for unconscionable gains; or (xi) who is victim of or affected by any armed conflict, civil unrest or natural

- To maintain a data base of all the children living in the shelter homes, children homes⁵⁸ or in observation homes.⁵⁹
- To monitor the functioning of the After-Care institutions in order to find out that whether these organizations are maintained in the manner prescribed under ICPS.
- Maintain a networking and coordination between all the stakeholders relating to protection of children rights.
- Make possible arrangements for training the stakeholders like, Police, NGO, Counselor, Medical Professionals, Teachers, Block Level Committee etc. on matters of child related cases and the methods to deal with the same.
- As a statutory requirement under ICPS the DCPU shall appoint at least two paid social workers for the help and assistance of the SJPU of the district. Out of the two social workers appointed one should be mandatorily a Women and the other should be a person having experience in child protection.
- Support the victim child as well as the family members through the non institutional care.
- Ensure setting up of child protection committee at all level of the society such as Village Level and Block Level.

calamity; or (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;

⁵⁸ Section 2(19), Juvenile Justice(Care and Protection of Children) Act 2015- “Children’s Home” means a Children’s Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50;

⁵⁹ Section 2(40), Juvenile Justice(Care and Protection of Children) Act 2015- “observation home” means an observation home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such, for the purposes specified in sub-section (1) of section 47;

- Organize meeting on regular basis with the stakeholders in order to review the activities and keep a check on their activities.
- Make regular reporting to the State level bodies such as SCPS, SARA etc of their activities.
- Encourage participation of the youth in protection of child rights.
- Spread awareness among the general masses on the topic of child rights, problem faced by child, legal remedies, special protection etc. so that people does not ignore such a severe problem.
- To provide counseling services through a qualified counselor to a child who is in need of such counseling, which may be due to severe form of abuse including sexual abuse.
- Support CWC in the process of inquiry and restoration of child.
- Maintain a list of person who may be appointed as support person whenever necessary by the Juvenile Police, CWC, Prosecutor, Special Court etc. The list may include the name of NGO who work with children and have special skill in dealing with them.
- DCPU must make suitable arrangements for training the support persons so that they could understand their individual role in a sensitive case where child is involved before they are engaged in their duty.
- The support persons are to be paid by the DCPU at the prefixed rates which are either fixed by the State government or the DCPU from time to time.
- Assist the DLSA to fix the amount of compensation that is to be given to the child in a case registered under POCSO Act.

5.1.5. Special Public Prosecutor:

Crime is presumed to be a wrong against the State along with the Victim because State is liable to protect its people and hence in order to protect and give justice to the victim of serious offences like murder, rape, sexual abuse of children etc. both the State Government and the Central Government are empowered to appoint Public Prosecutor in various criminal courts of India. Public Prosecutors are necessary for conducting prosecutions and other criminal proceeding on behalf of the Government with an intention to bring the truth before the court regarding the case which he is prosecuting. Although the Cr.P.C does not mention about the spirit in which the duties of the prosecutor are to be discharged but the principles in this regard are well settled. The Honorable Supreme Court in the case of *Srilekha Vidyarthi v. State of U.P.*⁶⁰ has highlighted the importance and nature of the office of the Public Prosecutor. It has been ruled that this is a public office of much importance and that the present spoiled system of appointments to the office of Public Prosecutors followed by the political parties should be done away with.

In the leading case⁶¹ the Apex Court well stated that the duty of the prosecutor in a criminal trial is not merely to secure conviction at all costs, but to place before the court whatever evidence is in his possession, whether it be in favour or against the accused and to leave it to the court to decide upon all such evidence whether the accused was

⁶⁰ (1991) 1 SCC 212

⁶¹ *S.B Sahane v. State of Maharashtra* 1995 SCC (Cri) 787

or was not guilty of the offence alleged. It is not part of the prosecutor's duty to obtain conviction by any means.⁶²

The Special Public Prosecutor is one among the class of prosecutors who are appointed for one special case or a class of special cases. The Cr.P.C under Section 24(8) empowers both the State as well as the Central government to appoint special public prosecutors. As per the section an advocate who has been in practice for not less than 10 years may be appointed as a Special Public Prosecutor.

Similarly, Section 32 of the POCSO Act makes provision for appointment of Special Public Prosecutors for each special court under the provisions of POCSO Act.⁶³ As per the provision under the said Act any advocate who has an experience of 7 years or more may be appointed as a Special Public Prosecutor who shall be deemed to be Public Prosecutor under Cr.P.C.

The SPP have a key role to play in order to ensure that all the special measures and rights available for child under the POCSO Act are applied during trial and the victim is protected from further harassment. The SPP need to facilitate appreciation of medical evidences and forensic reports in order to bring the truth before the court so that the offender don't go unpunished. These SPPs have to

⁶² K.N. Chandrasekharan Pillai, *R.V Kelkar's Lectures on Criminal Procedure* 11(Eastern Book Company, Lucknow, 4th edn, 2006)

⁶³ Section 32. Special Public Prosecutors.—(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. (2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate. (3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and provision of that Code shall have effect accordingly.

ensure better application of Rule 7 of POCSO Act which emphasizes on interim compensation that need to be paid to the victim child to meet immediate needs depending on the case.

5.1.6. NGO's:

Non-Governmental Organisation in short NGO are those organization which are formed basically by a group of social activist for welfare of the common people or a class of people or animals etc. by performing various types of social welfare activities without direct involvement of Government. NGO have evolved as one of the most important agencies in implementing the government policies and thus connect public with legal machinery as well as the law makers.

Although it is the duty and responsibilities of the State to provide immediate assistance to the victim of sexual abuse specially in case of child victim but due to slow working system, lack of willingness, training or fear of enforcement agencies in the mind of the victim or victims family in many cases the victim do not get the immediate support which they require. In such situation the NGOs plays important role to give immediate medical and legal support including counseling to the victim and victims family so that they do not hesitate to open up to the police and take legal help. This is one of the most important step because as discussed in the earlier chapter non reporting of offence of sexual abuse is one of the most dominating factors responsible for the rise of such heinous crimes in the society.

Now days, NGOs reach out to the victims of sexual abuse with all possible help even before police to give guidance and other support so that they would cooperate with the Police in the entire process of investigation and recording of statement. In fact, many times the victim or victims family

find it comfortable to go to a NGO rather than Police station due to various reasons like fear of re-victimization in the hands of police, or due to lack of awareness or any other reasons. In such cases the NGO aware about their legal rights and the importance of police where after they advice them to lodge an FIR and if they hesitate the NGO personals accompanies them to the station.

Apart from these curative measures or post victimization measures within their area, the NGOs specially working in the field of child rights or juvenile justice or Sexual abuse matters play tremendous role in spreading awareness among the public about offences like sexual abuse, child trafficking by holding workshop, seminars, conferences and even meetings in the grass root level of the society.

Apart from medical and legal support to the victim the POCSO Act and Rules envisages the involvement of NGOs as support persons and various other functions. The provisions of the POCSO Act and POCSO Rules that provides the involvement directly or indirectly are as below:

- ❖ The POCSO Act under Section 19(1) provides that even an NGO is authorized to make report to the police if they come to know that any offence under the POCSO Act is likely to be committed or had been already committed. This provision gives liberty to the victim or his family members or even any other person to give information to a NGO if they hesitate to directly report the same to the Police Station. In addition to the above an NGO is bound by law to report a case of child sexual abuse if they come to know of it from any source.⁶⁴

⁶⁴ *Supra* note. 4., Section 21(1)

- ❖ Further, an NGO personal can act as an person of trust and confidence who are permitted under the POCSO Act to be present with the child victim at the time of recording of statement by the Police or Magistrate⁶⁵, while conducting medical examination⁶⁶ and even in the trial proceeding before the Special Court.⁶⁷
- ❖ There is also provision for appointment of NGO personal as support person to assist the child victim in the entire pre-trial and trial procedure.⁶⁸ In case where an NGO is appointed as a support person, the members of the NGO has legal right to get the updates development off the case as they need to communicate the same to the victim and victim family.⁶⁹
- ❖ An NGO also have a right to make application for interim as well as final compensation on behalf of the victim before the Special Court and the District Legal Services Authority.⁷⁰

5.1.7. District Legal Services Authority (DLSA):

DLSA is a statutory authority that is to be established in each District under the Legal Services Authority Act, 1987. The Legal Services Authority Act, 1987 was enacted in order to give easy and quick justice to the people. This Act provides for the establishment of various authorities in the national level, state level as well as in the district level for purposes like organizing Lok Adalat, provide free legal aid to the litigants, create legal

⁶⁵ Supra note 4., Sect. 26(1)

⁶⁶ *Ibid.*, Sect. 27(3)

⁶⁷ *Ibid.*, Sect. 33(4) & 37

⁶⁸ POCSO Rules 2020, Sub-Rule 7 of Rule 4

⁶⁹ *Ibid.*, Sub-Rule 11 of Rule 4

⁷⁰ *Ibid.*, Rule 7

awareness, give victim compensation etc. DLSA is the district level authority, which is chaired by the District Judge as its Chairman and a Senior Judicial Magistrate as its Member Secretary. Among the various duties of the DLSA, the two most important duties or role which the DLSA need to play with regard to a case of child sexual abuse under the POCSO Act as well as IPC, are to provide legal aid and assistance to the Victim⁷¹ regarding the matter whenever the victim or his family seeks and to make necessary arrangement for compensation amount to the victim and his/her family members from the Victim Compensation Fund or the scheme or fund established by the State Government for the purpose of compensating and rehabilitant victims under section 375-A of Cr.P.C or any other laws for the time being in force.

The right to free legal services is clearly an essential ingredient of ‘reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence of incommunicado situation and state is under a mandate to provide a lawyer to an accused person if the circumstances of the case and needs of justice so required, provided of course the accused person does not object to provision of such lawyer.’⁷²

Article 21 is a fundamental right conferred under Part III of the constitution. Whereas Article 30-A is one of the directive principles of the state policy under Part IV of the Constitution. It has been held by the constitutional bench of Supreme Court in *Chandra Bhawan Boarding and*

⁷¹ *Supra* note., 68., Rule 7(2)

⁷² *Hussainara Khatoon v. Home Secretary, State of Bihar* AIR 1979 SC 1369

*Loadging Bangalore v. State of Mysore*⁷³ that while rights conferred under Part IV are fundamental in the governance of the country. There is no conflict on the whole between the provisions contained in Part III and Part IV as because they are complementary and supplementary to each other.

Further in the case of state of *Mahashrashtra v. Munubhai Pragaji-Vashi*⁷⁴ the Supreme Court held that the principles contained in Article 39-A⁷⁵ are fundamental and cast a duty on the State to secure that the operation of the legal system promotes justice on the basis of equal opportunities and further mandates to provide free legal aid in any way by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or any other disabilities.

5.1.8. The National Commission for Protection of Child Rights and State Commission for Protection of Child Rights:

The National Commission for Protection of Child Rights (herein after NCPCR)⁷⁶ and State Commission for Protection of Child Rights (herein after SCPCR)⁷⁷ are the statutory authorities constituted by the Central Government and the State Government respectively under the provision of the Commission for Protection of Child Rights Act, 2005. Both these Commissions are entrusted with the duty to protect the children from being abused or become victim of any kind of violation of rights.

⁷³ AIR 1970 SC 2042

⁷⁴ AIR 1996 SC 1

⁷⁵ Article 39 A- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

⁷⁶ Commission for Protection of Child Rights Act 2005, Sect. 3

⁷⁷ *Ibid.*, Sect. 17

They are authorized with various powers so that they could do the needful for the betterment of children in all possible aspects specially in protecting their rights. Among the various powers and duties the most important for ensuring protection to the children from various abuse including sexual abuse are worth mentioning-

- the commission may examine and review the safeguards under any law for the protection of children and if found that these laws are not properly implemented they could recommend measures for their effective implementation
- the commission need to prepare annual report regarding working and implementation of the safeguards provided under various laws. However, the commission may also prepare mid-term report if at all necessary and present the same to the Central Government or the State Government as the case may be.
- It is empowered to make inquire into violation of child rights and initiate criminal proceeding against the violator in such cases
- To conduct research in order to find the probable factors that hinder the enjoyment of rights of children those are affected by HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography & prostitution and so on so that appropriate recommendation can be given to the Government to remove those hurdles.
- Take necessary steps for implementation of the provisions under law for betterment and protection of children.

- Spread and promote awareness regarding provisions that are available for protection of child rights through various means like seminar, awareness program, media etc.
- Inspect shelter homes, observation homes, orphanage, rehabilitation centre for children, Jails etc. under the control of the Central Government or State Government and recommend necessary measures that need to be taken care off for betterment of these institutions.

Apart from the above, the NCPCR and the SCPCR are entrusted with certain special duty under Rule 12 of the POCSO Rules to monitor the implementation of the POCSA Act provisions. The specific functions are-

- To monitor the steps taken by the State Government for designation of Special courts and appointment of Special Public Prosecutor in those courts
- To monitor formulation of guidelines to be used by the NGO's, support persons, professionals, etc. under the POCSO Act while assisting the child.
- To supervise the modules prepared for training the official and persons associated with child
- Support Government in spreading awareness about the PCSO Act through all possible means
- Collect information and prepare report on various aspects of CSA specially under POCSO Act, such as; cases reported and disposed off.

Under the power to make inquiries the Commission can enjoy the power of a Civil Court while trying a suit under CPC, 1908.⁷⁸ Apart from the power to recommend measures to Government for better implication of any act, the

⁷⁸ *Supra* note. 76., Section 14

Commission can also approach the higher judiciary for the suitable order and direction to the enforcement machineries.⁷⁹

5.2 Findings on Compliance and Challenges in implementation of POCSO Act and other allied laws in the districts of Dibrugarh, Tinsukia and Dhemaji:

5.2.1. Compliance of Assam State Commission for Protection of Child Rights (herein after ASCPCR) and Challenges:

To analyze the role and function played by ASCPCR in implementation of POCSO Act and POCSO Rules in Assam for protection of children from Sexual abuse, the following factors are examined, while interviewing the Members of ASCPCR:

- Steps taken to spread awareness about the POCSO Act
- Formulation of Guidelines for the use of stakeholders like NGO, teachers, support person, profession for better application of POCSO Act
- Data collection and report preparation on various aspects of Child sexual abuse
- Challenges faced by State Commission in discharging their duty

As per Rule 12(e) the State Commission need to support the State Govt. and take appropriate steps for creating public awareness about the POCSO Act through media. Interview with respondents from ASCPCR revealed that the commission along with UNICEF published pages in social media to create awareness among people about various rights of child in general. She also informed that although till date no awareness programme specially about POCSO Act and CSA was hold but they are planning to organize awareness for school teachers of all the districts through online mode.

⁷⁹ *Supra* note. 76., Section 15(ii)

As per Rule 12(c), the state Commission have to monitor the formulation of guidelines for the use of stakeholders working with child victims of sexual abuse. These would also include preparing handbook for NGO, Professional, Expert, Social Worker, Counselor, Medical Practitioner, Media, support person and so on.

Apart from a handbook on child rights for Panchayat and a Guidebook for media persons to guide them while reporting of any case where the accused or victim is a child, no guidelines were formulated. However, the respondents opined that the commission is willing to publish certain guidelines specially for school teachers and management so that they take all the precautionary and procedural step that they need to adopt in school for protection of their students from sexual abuse in any form.

The commission need to collect data of reported cases on sexual abuse in various aspects like number of reported cases, details of offence, compliance of Special Court, Special Public Prosecutor, Police, rate of conviction, number of pending cases and so on. The data collected should be formulated as a report which shall be shared with the Central Govt., State Govt. and NCPCR.

The ASCPCR had not taken such initiative, which is evident after visiting the website of the Commission, and the statement recorded from the respondents. The respondents also opined that they are not aware of such function of the Commission. This is one of the essential functions of every State Commission so that the authority can keep a check on the problem of CSA and prepare policies for curing such problems.

When the interviewee was asked to state the challenges that the commission faces in discharging their duty, she pointed out some of the key problems which need to be removed for smooth functioning of the Commission. They are-

- the districts like South Salmara and West Karbi Anglong along with the newly formed districts do not have full-fledged mechanism under the POCSO Act to implement the Act as per the provisions and are purely dependent on other district mechanism. Whereas, in few other district although they have the mechanism but the DCPO who is responsible for coordinating these mechanisms are overburdened with duty as no such officers' are appointed solely for the purpose of protecting child rights rather the officers of other department are designated as DCPO.
- the Commission do not have any legal consultant to assist the Commission members in monitoring and implementation of the Act. A legal consultant is very essential because the members of the commission come from different discipline and hence there is every possibility that they don't understand what they need to do as per law.
- there is insufficient number of office assistant which lead to slow working of the commission.

5.2.2. Compliance of Child Welfare Committee(hereinafter CWC) & the challenges:

To analyse the problem faced by CWC in protecting right of child from sexual abuse the following are examined-

- Training of CWC members to deal with CSA cases
- Availability of the list of support persons
- Secretarial support of DCPU to CWC
- Major problems faced by CWC in discharging their responsibility

No one can deny the importance of training to any mechanism specially those working with/for children. For discharging the duty it is very essential that the CWC members after appointment undergo a training regarding the rules, guidelines and most importantly drafting skills. It is mandatory under Rule 15(5)

of the Juvenile Justice Rules because the member of CWC are not always from law background and hence many times they are unaware of the rules and other guidelines which become a hurdle in their working.

The respondents from CWC of Dibrugarh, Tinsukia and Dhemaji revealed that no training had been imparted to the members including the Chairpersons of the CWC. The interviewee stated that although meeting are frequently organized in the district level but no specific training is provided as to the modes and methods of functioning. One of the member of Dibrugarh CWC opined that CWC being a body with few judicial powers have to make inquiry regarding the vulnerability of the child, draft order for the police, NGO, CCI etc. and make recommendation to the DLSA. All these functions need special knowledge and skill and hence without training it becomes a challenge for them in discharging their duties.

The CWC have a duty to provide support persons to the child victim for his assistance if the child is actual need of such support, as per Rule 4(8). This support person whose name are enlisted as support person in the list prepared by DCPU under Rule 5 whenever the child or his family or any person whom the child trust makes an request to the CWC or on own initiative of CWC. These support person are necessary to act as an anchor who will support the child in all aspects, specifically during the trial procedure.

In Dhemaji, the DCPU has not provided any such list of resource person and hence there is no scope for the CWC to appoint support person to any victim of sexual abuse as stated in law, which is evident from the statement of the respondent from CWC of Dhemaji. On the other hand in Dibrugarh and Tinsukia the list of support persons is available but not upto date with efficient no of persons as per the respondents from Dibrugarh and Tinsukia district. The

respondents from DCPU Dibrugarh opined that this is mostly due to lack of such experiences and qualified people in the district.

When the respondents were asked about the problems that create hurdle for CWC in discharging their functions, the problems highlighted by the respondents were common for all the three district. They were-

- i. The Child Care Institutions were not satisfactory because in all these three district the intake capacity of CCI are less which need to be increased and moreover the building where the CCI are operating are rented structure due to which the requirement prescribed in the Juvenile Justice Act and other guidelines are not complied with.
- ii. The DCPU is duty bound to assist the CWC as per ICPS guidelines but due to lack of manpower resulting from multiple vacancies in various post they could not support the CWC as per demand of CWC.

Apart from these common problems the respondents from Dibrugarh mentioned a specific problem of CWC Dibrugarh, i.e. vacancy in the post of Chairperson since 2019 due to which the members are facing administrative problems.

5.2.3. Compliance of DLSA and Challenges:

The following factors were examined to find out the compliance and challenges of DLSA under POCSO Act & Legal Services Authority Act-

- does DLSA provide advocate to the Child Victim of sexual Abuse? If provided, whether such advocates are trained to play his role ?
- problems faced by DLSA while determining compensation to the victims of sexual offence.

As per section 40 of POCSO Act, Rule 7(2) of POCSO and Section 12 & 13 of Legal Services Authority Act, the child victim have the right to legal aid

and assistance which is to be provided by the DLSA that is generally in the form of engagement of penal advocate to assist the child in the entire trial procedure. This provision was inserted to make the child feel comfortable during the trial period.

Interview with the respondents from judicial fraternity of Dibrugarh, Tinsukia & Dhemaji revealed that DLSA provide legal aid and assistance whenever asked for by the child family or when recommended by the CWC although they do not have a separate penal of Legal Aid Lawyer for such cases. To be specific the respondents from Dibrugarh and Tinsukia informed that they do not maintain separate list of penal lawyer for POCSO cases and hence no specific training is provided. However, they admitted that they engage lawyer from other legal aid penal who act as support person to the child not only during trial but also while determining compensation.

When asked about the problems faced by the Authority in determining and giving compensation, the respondents' from Dibrugarh and Tinsukia opined that since compensation is paid as per the Assam Victim Compensation Scheme, 2012; it becomes difficult to pay compensation to all child victims of sexual abuse, such as; sexual harassment, because the scheme does not permit payment of compensation in such cases as per the schedule dated 5th March, 2016. The probable reason behind excluding sexual harassment from the list of beneficiary of the scheme may be the view that harassment does not result in any physical injury but mental or psychological injury is inevitable from any type of sexual abuse irrespective of its type.

5.2.4. Compliance of NGO's:

NGO's are although not govt. agency but their role is inevitable in today's welfare State with so many government scheme and policies, for implementation

of which, Government do not have sufficient agencies considering the vast population of India. These NGO's work in the grassroot level of the society in coordination with the Govt. departments for the benefit of the marginalized section of the society. The POCSO Act also recognizes the role of NGO in protection of children from sexual abuse and hence section 19(1) of the Act authorises a NGO to make report to police whenever they come to know of any incident of sexual abuse of child. Similarly the NGO's can work as a person of trust and support to the child during the medical examination, recording of statement and trial before special court as provided under Section 27(3), 33(4), 37 of the POCSO Act and Rule 4(7) & 4(11) of the POCSO Rules. In addition NGO's are also authorized to make application seeking for compensation on behalf of the child victim under Rule 7.

There is not a single NGO working for protection of children or performing any other responsibilities authorized by the POCSO Act in Dibrugarh and Tinsukia except CHILDLINE, which is revealed from the response from the officials of DCPU. Whereas the respondents from Dhemaji stated that there is no CHILDLINE Unit which is a severe problem for Dhemaji because CHILDLINE is a specialized Central Government recognized agency with well trained staff which gives emergency service in rescue operation over a phone call in a quick manner for 24 hours.

5.2.5. Compliance of DCPU & Challenges:

In order to find out the compliance of DCPU in POCSO cases the following factors were considered-

- Does the DCPU officials receive training to handle sensitive cases relating to sexual abuse
- Do they organize training programs for the stakeholders working with child victims like Police, NGO's, Councillors, Medical practitioners', support persons, Teachers etc.

- Response of stakeholders towards such training
- Number and quality of Child Care Institutions in district
- Problems faced by DCPU in dealing with the cases of Child Sexual Abuse

DCPU established under Section 106 of the Juvenile Justice Act are also authorized and entrusted with several duty under the POCSO Act and ICPS guidelines. As per chapter 3 of ICPS guidelines every district should have a set up of DCPU which shall consist of DCPO, Protection Officer(Institutional Care), Protection Officer(Non-Institutional Care), Legal Cum Probation Officer, Councillor, Social Worker, Outreach Worker and number of supporting staff.

While interacting with the respondents from DCPU it was found that Dibrugarh, Tinsukia & Dhemaji have DCPU as per ICPS guidelines which is praiseworthy but there are several vacancies in the Unit of all the three districts. In Dibrugarh & Tinsukia there is vacancy in the post of Protection Officer(Institutional Care) as well as insufficient number of office staff for supporting the officials of DCPU & CWC.

On the other hand the respondents from Dhemaji disclosed that there is vacancy in the post of Counselor, Social Worker and Outreach Worker which are very essential element of DCPU for efficient working.

As per ICPS guideline under Chapter 3, the DCPU need to organize training programs to train and build capacity of all government and non-governmental personnels working under Child Protection system such as Police, NGO, Counselor, Teacher, Social Worker, Member of Block level Committee etc.

The respondents from DCPU of Dibrugarh & Tinsukia district opined that they had been organizing training programs on a regular basis for different stakeholders but, sometimes they fail to organize such programs due to shortage of

fund for such purpose from the State Government because without fund such programs cannot be organized. The respondents also informed that the attendance of the stakeholders to such programme is not satisfactory and many times the Officer In-Charge of the Police stations depute such officers who are below the rank of Sub-Inspector. Whereas, the interviewees from Dhemaji informed that no such training programs are organized for any stakeholders specially for POCSO cases. Training a Assistant Sub-Inspector is not helpful because any officer below the rank of Sub Inspector, are not preferred under Section 24(1) of the POCSO Act to handle cases and not organizing training program simply shows the reluctance of the officials of DCPU Dhemaji violating the ICPS guidelines, which may hamper the entire system of child protection.

Once the child victim in need of care and protection is produced before the CWC under section 19(5) of POCSO Act, the CWC must determine within three days that whether the child need to be placed in a Child Care Institution(hereinafter CCI) under Section 31(1) of the Juvenile Justice Act, 2015 or not. If the CWC descide to send the child to CCI, they would instruct the DCPU to make arrangement for sending the child to a CCI with adequate facility as per rule 29 to 35 of Juvenile Justice Act. The term CCI⁸⁰ is a broad term which include all types of shelter homes.

On interview with the respondents from DCPU it was revealed that there are insufficient number of CCI in comparison to the number of children in need of such institutions in all the three districts of study. Dibrugarh and Tinsukia have two(2) Institutions but not with adequate facility as per JJ Rules mostly because these institutions are operating in rented buildings with minimum infrastructure. They informed that the condition of the existing CCI in the districts are not in ideal state. One reason for lack of appropriate facility is recognized as lack of

⁸⁰ Section 2 (21) JJ Act, 2015

government initiative with sufficient financial grants to the CCI managements. Whereas, in Dhemaji the condition is more pathetic as there is only one CCI namely, 'Anajori' with maximum intake of 25 children which is not sufficient and hence mostly it remain over crowded exceeding the maximum strength.

The DCPU is casted with the duty to maintain a register of interpreter, translator, expert, special educator & support persons having sufficient qualification & experience, with proper name and address which should be made available to every Police Station within the district as per Rule 5(1) of the POCSO Act.

The respondents from police department of various police stations of Dibrugarh, Tinsukia & Dhemaji revealed that no such list was provided in the majority of the Police Stations and the few stations where list is available are mostly outdated. The interviewee from DCPU officials of Dibrugarh and Tinsukia disclosed the reason for non-availability of updated list as dearth of qualified and experienced persons within the district.

5.2.6. Compliance of Police & Challenges:

In order to find out the compliance of police in enforcement of POCSO and other allied laws in protection of children from sexual abuse, the following factors were considered-

- ❖ Procedural Compliance: Under procedural compliance the following are examined-
 - Does the informant is provided with the name, designation, address and phone number of the police officer recording information?
 - Production of Child in need of care and protection before CWC within 24 hours of reporting to police

- Dressing of the police officer while interacting and recording statement of the child
- Place of recording the statement of the child
- Information regarding free legal aid and compensation to child and his family
- Provision to allow parents or any person whom the child trust to be present with the child during his/her examination and recording statement
- Use of audio- visual electronic means while recording statement of the child
- Whether the Model Guideline, 2013 prepared under POCSO Act is followed?
- ❖ Other problems within the department which act as hurdle in proper implementation of law

The police after receiving information regarding commission of sexual offence against a child shall disclose his name, address, designation and phone number to the informant who so ever he/she may be as per Rule 4(1) of POCSO Act.

The response from the majority respondents of police department deployed in various police stations of the districts revealed that in all the three district of study the police do not provide information regarding their name, designation, address and phone number to the informant. Only one respondent from Dibrugarh and two from Dhemaji stated that sometimes they use to give such information but only if the informant ask for the same. Such act of police is violative to the aforesaid rule and is the result of either reluctance or unawareness about the procedural laws.

As per Section 19(5) & Rule 4(4) of the POCSO Act, the police is duty bound to produce the child victim in need of care and protection, before the CWC within a period of 24 hours from time of receiving such information, along with a letter stating the reason as to why the child is deemed to be in need of special care and protection. This proviso has been inserted in the Act as a measure to help the child, so that a child who has already suffered a sexual abuse or is in apprehension of such abuse can be shifted to a CCI or any other place away from the accused as the CWC deem fit.

The respondents from police department of all the three district stated that they produce the child in need of care & protection soon as possible and preferably within 24 hours before the CWC but in certain exceptional cases they fail to produce due to various difficulties. Whereas, the respondents from CWC opined that the police rarely produce the child in need of care and protection within 24 hours stating the reasons like; lack of manpower, non-availability of vehicles to bring the child for production, unawareness of such provision and so on. One of the interviewee narrated that, *“in one case the child victim was made to walk to the CWC by a lady constable as there was no vehicle available”*.

To create a child friendly environment whenever the police interact with the child for the purpose of investigation and recording of statement, it is necessary that the Investigating officer(hereinafter IO) shall not be in uniform as per Section 24(2) of POCSO Act.

In Dibrugarh and Tinsukia the IO mostly wear uniform while interacting with the child or recording his/her statement, which is evident from the response of the respondents from police department itself of various stations in the two districts. On the other hand, in Dhemaji the result is a mix one. Few respondents opined that they use to wear uniform and few said that it depends on situation or

workload, whether they would wear uniform or not. Thus, it can be said that overall in all the districts of study the police do not follow Section 24(2) of the POCSO Act which is a mandatory provision.

As per Section 24(1) of the POCSO Act, the child victim statement shall be recorded in such a place where the child feels comfort such as his own home or a place of child choice. This provision is intended to relax the child in homely environment while depositing the statement to the police.

The respondents from police of Dibrugarh, Tinsukia and Dhemaji revealed that in almost all cases the police use to record the statement of the child in police station itself. Such misconduct of police is not acceptable because it clearly violates Sub-Section(1) of Section 24 POCSO Act leading to failure of the special law.

The police have a duty to inform the child or his/her family member or any person whom the child trust regarding the right to free legal aid as per Rule 4(14) and as per Rule 4(3)(e) assist them in contracting the person responsible for providing such services. This provision is cardinal because right to free legal aid is now recognized as fundamental right and is certainly essential for a child victim of sexual abuse because in most cases the victim belong to poor, illiterate and ignorant section of the society.

In all the districts the respondents opined that they do not give such information to the child family or any other person. Such practice certainly deprives the victim from his right.

The child have the right to be accompanied by his parents or any person whom the child trust during recording of statement by Police or Magistrate as the case may be as provided under Section 26(1).

The response from the respondents disclose that in all the three districts the act of police is same, i.e. they exercise discretion regarding allowing or disallowing the parents or any person of child choice to be present during the entire process of recording statement. A few respondent expressed that although the parents of any person is allowed they are kept in distance place and few stated that the person is not allowed to be present in the entire process of recording. Thus, it clearly indicate that the nature of the provision has been changed from ‘mandatory’ to ‘discretionary’.

Section 26(4) provides that as far as possible the statement of the child is to be recorded by audio-visual means so that the defense cannot question the veracity of the statement and thereby reduce the evidentiary value of such statement.

The respondents denied the use of such facility for recording statement of child. This practice is common for Dibrugarh, Tinsukia as well as Dhemaji.

The Model Guidelines framed by the Ministry of Women & Child development, Govt. of India under Section 39 of the POCSO Act is a ideal guideline which are to be used by all stake holders including police dealing with child sexual abuse cases specifically under POCSO. The most essential part for police in these guidelines is the guidelines on interviewing technique on a child. Following these guidelines would help the police to obtain statement of the child in a manner that is unbiased & truth seeking which help the police in corroborating evidence and giving justice to the victim. It will also help to ensure that the interaction with the child does not become traumatic for him/her.

Response from the respondents of police department of all the three district reveal that they are not aware of such Model Guidelines. It indicate the lack of training and consciousness among the police to keep themselves updated. Training is a must for a important department like police as per Section 107 of Juvenile

Justice Act, 2015 because to deal with sensitive cases like CSA police have to understand the special procedures, guidelines and in calculate friendly techniques to interact and question child victims which would help them to collect evidence for prosecution.

The respondents from Dibrugarh, Tinsukia and Dhemaji revealed that no special training is given to the Police officer to handle cases relating to CSA. Due to lack of training many times the IO do not follow the special procedure prescribed under POCSO Act and perform their duty as the case is of a adult victim resulting into negative consequence like re-victimization of the Child in the hands of police during reporting, investigation, recording statement and so on.

The ill effects of lack of training was witnessed when all the respondents denied the fact that a child victim of sexual assault in need of urgent medical care can be taken to the nearest private hospital if the government hospital is not available or is far away. On the other hand section 357(c) of Cr.P.C makes it mandatory for the government as well as private hospital to give free medical treatment to victims of sexual offence if it falls under section 376 and other recognized aggravated form of rape. In addition to it rule 6 of the POCSO clearly provides that, when police is satisfied that the child is in need of urgent medical care, such officer shall take the child to the nearest hospital. Again, as per rule 6 a child will be deemed to be in need of urgent medical treatment if the offence committed fall within section 3, 5, 7 & 9 of the POCSO Act.

The researcher found that the police faced certain problems in enforcement of the POCSO Act or other special legislation related to child due to; lack of sufficient number of manpower specially in the rank of Sub-Inspector for conducting investigation as per the POCSO Act; insufficient number of women police officer to handle such sensitive cases relating to child; lack of sufficient

training in procedural compliance; delay in lodging FIR regarding such offence resulting in insufficient evidence; overburden with multiple duty including maintenance of law & order, VIP duty etc; insufficient number of Forensic laboratory and so on.

5.2.7. Compliance of Special Public Prosecutor and Special Court & the Challenges:

To find out the structural and procedural compliance of the Special Court and Special Public Prosecutor in trial of POCSO cases several factors were examined under the following-

- Structural Compliance of the Special Court
- Procedural Compliance of the Special Court
- Problems faced by Special Public Prosecutors

a) Structural Compliance of the Special Court-

As per section 28(1) of the POCSO Act, the State Government in consultation with the respective high court shall designate the Session Judge as special court to try offences under POCSO Act. The Governor of Assam had designated the Session Judge of Dibrugarh, Tinsukia and Dhemaji as Special Court for the each session divisions. Further, the respondents from Prosecution of all the three districts of study opined that although the Session Court had been designated as Special Court but the these courts donot exclusively deal with POCSO cases because being a Session Court it tries almost all the severe crimes for which the punishment prescribed is more than 10 years imprisonment. They further stated that due to no separate Special Court for solely trying POCSO cases the designated Court is overburden with lots of pending cases which result in very limited time to give special importance to CSA cases.

The object of POCSO Act is to give a child friendly procedure of trial so that the victims are not re-victimized in the Court which is evident from the various child friendly procedure provided under the Act. But, most importantly no provision of the law provides for measures like separate waiting for children or child friendly design of the Court room which are essential so that the victim while coming to court does not face the accused at any point of time as per Section 36(1) of POCSO Act and feel comfortable.

In all the three district, there is no arrangement of waiting room for children in the court complex due to lack of infrastructure and the child have to wait for hours in the corridor of the court complex or inside the court room as per the response of the respondents from Prosecution. Thus, there is every possibility that the child face all types of hardened criminals, police and sometimes even the accused of his/her case.

Similarly, the design of the Court rooms are not child friendly as per the interviewees because the designated Special Court which also act as the Session Court deals with several other offences and hence it is not possible to make the court room child friendly to look at.

As per Section 36(2) the Special Court may use video-conferencing method to record the statement of the child without calling him to court so that the victim would not face the accuse and the court atmosphere while coming to court.

The designated Special Courts of Dibrugarh, Tinsukia and Dhemaji did not have the facility of such video conferencing to record the statement of the child victim, which is evident from the statement of the respondents of all the three districts dealing with POCSO cases. Absence of such facility means that the child have to physically come to court to depose his/her statement.

b) Procedural Compliance of the Special Court-

Section 33(1) of the POCSO Act empowers the designated Special Court to take direct cognizance of an offence punishable under POCSO Act either on the basis of police report or complaint. This proviso is meant to put an end to the general practice of committal proceedings by magistrate to the Session court for trial. Such proviso was inserted primarily to facilitate speedy trial in cases of Sexual offence against Children.

Interviewee with the respondents from prosecutors in all the three district of study revealed that the special court take direct cognizance of cases under POCSO Act, which is a praiseworthy practice of the special court, helping the child to get quick justice.

As per section 33(4) of the POCSO Act, the special court shall allow the parent or any other family member or any other person whom the child trust to be present with the child during trial specially while examination of the child, so that the child do not feel awkward or nervous in the court.

On analysis of the statement of the respondents it was found that in all the three district the special court allow at least one person whom the child prefer to be present with the child during examination of the child that generally takes place in camera, i.e. Judges Chamber. However, the respondent from Tinsukia added that if the child do not fear or feel nervous and respond confidently then the parents or any other person are not allowed. The practice of exercising discretion by the court regarding allowing or not allowing person of child choice during trial is not acceptable because the provision clearly states that it is mandatory for the court to allow such person to make the court atmosphere child friendly. Again, it is not necessary that a child who feels comfortable at the beginning will remain confident for the entire trial.

The special court is responsible to monitor that no question is put to the child directly by the Special Public Prosecutor(herein after SPP) or by defence lawyer during examination in chief, cross-examination and re-examination, rather the questions need to be routed through the Special Court as per section 33(2) of the POCSO Act. This proviso aims to ensure that the lawyer do not intimidate the child by putting aggressive or tricky questions.

Interviewee with the respondents revealed that in Dibrugarh & Dhemaji questions are generally routed through the judge but sometimes defense put direct questions and court intervene them only in exceptional cases, i.e. basically when the Prosecutor raise objection to such practice. Whereas, in Tinsukia the court do not follow a fixed procedure regarding questioning of the child. It depends on case to case. In some cases question are routed through judge whereas, in some cases the court permit the SPP & defense to put direct questions to the child. It appears that the judge exercise discretion while applying this provision.

Discretion have been given to the special court to give frequent break to the child during trial under section 33(3) so that the child do not get exhausted and always remain fresh minded.

The respondents from all the three districts opined that usually no such break is given but in Tinsukia it is a practice that if the SPP ask for such break the court allows whereas, in Dibrugarh and Dhemaji, breaks are allowed only in those cases where the child is very young. The respondents also opined that breaks are not allowed, so that the trial gets completed quickly and the child need not come to court to testify. Recording the evidence of the child in one single day is a good practice and is in compliance to section 33(5) of POCSO Act which discourages repeated calling of children to testify in court. However, breaks should be given as

far as possible so that the child do not get exhausted or stressed, irrespective of whether the SPP or defense lawyer is asking for such break or not.

Section 35(2) of the POCSO Act states that the trial of POCSO cases shall be completed within a period of one year by the special court from the date of taking cognizance for the sake of speedy justice to the victim.

Respondents interviewed disclosed that in none of the district 100 percent cases are disposed of within one year. The reason for such delay are common for Dibrugarh, Tinsukia and Dhemaji, i.e. non-appearance of victim, frequent adjournment my defense, overburden of court with other cases etc. Although a list of reason are highlighted by the respondents but they cannot be an excuse for delay in disposal of cases because failure to dispose the case within a period of one year as per the Act simply means failure of the special court to give speedy justice to the victim, which is not acceptable. It is the court which should take all necessary steps for completion of the trial within the time frame specified by the Act.

Success of a substantive law is always dependent on the rate of conviction because if the conviction rate is high the victim faith on law and judiciary retains and vice versa. Moreover, the deterrence effect of punishment vanishes if conviction rate is low due to which the offender do not fear the law and abstain from committing any offence.

On analysis of the response of the respondents of all the three districts from prosecution it was found that the maximum conviction rate among the three district is in Dhemaji with 50 to 60 percent conviction rate followed by Dibrugarh with 40 to 50 percent conviction rate and Tinsukia with 20 to 30 percent conviction rate. Comparatively although it is Dhemaji with the highest conviction rate but from the point of view of deterrence and justice to victim, the conviction

rate is very low in all the three district. When question was paused, to know the reason behind poor conviction rate, the respondents stated some common reasons, namely; forceful compromise by paying handsome money to the parents of the victim resulting in turning the victim hostile during examination, weak evidence which is mostly due to poor investigation of the I.O and benefit of doubt to the accused when it becomes difficult for the court to decide the actual age of the victim on the basis of medical report in the absence of certificates admissible in the court of law under Evidence Act.

c) Problems faced by Special Public Prosecutors :

As per section 32(1) it is the responsibility of the state government to appoint a advocate with minimum 7 years of experience in bar as SPP for the special cour under POCSO Act for prosecuting all the cases registered under the special law. This provision have been inserted so that the advocate appointed as SPP can handle the cases with his experience and develop special skills to deal with child victims. Appointment of separate prosecutor is also necessary so that the SPP will not be overburden with other cases and will get enough time to prepare and prosecute the cases in the best manner in order to achieve the object of the special law.

The respondents from Dibrugarh and Dhemaji revealed that no SPP had been appointed rather the Public Prosecutor (hereinafter PP) of the district is designated as SPP as an additional duty. Hence, the PP has to handle all the severe cases that are tried in the Session court in addition to the POCSO cases. This simply indicates that the object with which section 32(1) was inserted in the POCSO Act is not complied with. However, the respondent from Tinsukia informed that in the year 2018 full fledged SPP had been appointed and since then the SPP is exclusively dealing with POCSO cases. However, no training is given to the SPP to prosecute such sensitive cases.

The Prosecutor from Tinsukia also opined that the police need to be trained to investigate such sensitive cases because many times the police fail to gather appropriate evidence due to lack of knowledge. Simultaneously the respondent stated that in maximum cases the Doctor performing the medical examination of the victim does not include the most vital points due to which the evidence gets disproved in the court leading to acquittal of the accused.

5.3. Discussion:

The researcher in this chapter has studied the various enforcement agencies empowered under the POCSO Act and other allied laws for protection of children from sexual offences. In the first half of the chapter the researcher analysed the role of SJPU or Local police, Child Welfare Committee, Special Court, District Child Protection Unit, Special Public Prosecutor, NGO's, District Legal Services Authority, National Commission for Protection of Child Rights and State Commission for Protection of Child Rights, as provided under the statute which, is necessary to know before conducting empirical study. On analyzing the role of the enforcement agencies, under POCSO Act and other allied laws, it was found that all the agencies have crucial role to play for the success of the POCSO Act, and other laws enacted with the object to give protection to children against offences like sexual abuse, provided they comply with the provisions as provided by these statutes.

The second half of the chapter is devoted to empirical study where the researcher tried to find out whether the duty casted by the Various statutes for protection of children from sexual offences are duly complied with or not. In a way, it was an attempt to find out whether the statutory laws enacted with special purpose were actually enforced in practice or just lying in the books of law.

In field study conducted by the researcher several facts were disclosed regarding non-compliance of law and challenges faced by these agencies in enforcement of laws. It

was revealed that the ASCPCR had not taken any specific initiatives for spread of awareness about the POCSO Act and formulation of guidelines for the use of stakeholders like NGO, school teachers', support persons etc. Further, the ASCPCR had not taken any step for data collection to prepare report on various aspects of CSA in the state to know the actual status regarding enforcement of POCSO Act. However, it is found that the Commission is facing several problems while discharging their duty like non-availability of legal consultant to assist the commission in monitoring compliance of law, insufficient number of office staff and lack of full-fledged POCSO mechanism in a number of districts of the State of Assam.

The researcher observed that the CWC members are not trained to deal with CSA cases due to which they sometimes face problem in the procedural aspects of the POCSO Act. The CWC of all the three districts do not have updated list of support person mostly due to non-availability of such persons in the district and sometimes due to non-willingness or negligence of the DCPU in the district like Dhemaji. Moreover, the DCPU could not give sufficient secretarial support to the CWC due to vacancy in office staff of DCPU. Apart from these, it was found that there is not sufficient number of CCI as per the requirement prescribed in the Juvenile Justice Act in all the three district but the condition of Dhemaji is worst with only one CCI with a intake capacity of 25 for both boys and girls. Again, in Dibrugarh the post of chairperson is lying vacant since 2019 due to which the members are facing administrative problems in discharging their duty.

On analysis of the data, it is observed that the DLSA of each district of study provided free legal aid advocates to the child victim mostly as support person during the trial and while determining compensation but none of the DLSA had maintained a separate list of trained advocates as empanelled legal aid lawyer specifically for POCSO cases. The only problem found in giving compensation as disclosed by DLSA Secretary of Dibrugarh & Tinsukia is that, the Assam Victim Compensation Act, 2012 does not

allow payment of compensation to the victims of non-touch sexual offences which are recognized under POCSO Act.

Unfortunately, it was found that there is not a single NGO working for protection of children in Dibrugarh and Tinsukia apart from CHILD LINE. On the other hand, Dhemaji even do not have the CHILD LINE service.

The researcher while studying the working of DCPU it was revealed that the officials of DCPU receives periodic training on POCSO Act and cases which help them to function well. The DCPU of Dibrugarh and Tinsukia do organize training programs for stakeholders working with child victims like Police, NGO, Councillor, Support person etc but the response of the stakeholder who are invited for such training is not satisfactory as they are not liable to the DCPU. Many times the officer in Charge of the Police Station deputed such officers for training who are not the member of SJPU or never engaged as I.O of such sensitive cases. Whereas, the DCPU of Dhemaji have not organized such training till 2020 which is violative of the ICPS guidelines and shows the reluctance of the DCPU officials. It was also found that there are vacancies in the post of Protection Officer(Institutional Care) and office staff in Dibrugarh & Tinsukia district and in Dhemaji there is vacancy in the post of Counselor, social worker & outreach worker which are essential elements of DCPU for efficient working.

While studying the working of Police/SJPU it was observed that in majority cases the informant is not provided with the name, designation, address and phone number of the police officer recording information although it is mandatory to be provided under the law. The police generally produce the child in need of care and protection before the CWC within 24 hours of reporting but sometimes they fail due to reasons like; lack of manpower in Police Department, non-availability of vehicles for police to bring the child for production, unawareness and so on. Again, it is found that the IO rarely complied with the provisions of section 24(2) of POCSO Act which states that the police shall not

wear uniform while interacting with the child or recording statement. Although as per section 24(1) of the POCSO Act the child statement shall be recorded in such a place where the child feels comfort but it is observed that in almost all cases the police is in a habit to record the statement of the child in police station itself which is a clear violation of the provision. The police also do not give information regarding right to free legal aid to the child family or any other person whom the child trusts. Although the child have the right under section 26(1) to be accompanied by his parents or any person whom the child trust during recording of statement, it was observed that the police in maximum cases exercise discretion regarding allowing or non-allowing the parents or any other person during the entire process of recording statement. Further, the police in none of the district of study had the facility of audio-visual means to record the statement of the child, which is failure in the part of Home department of the Government of Assam. It was also observed that police had no idea about the Model Guidelines framed by the Ministry of Women and Child Development of Government of India under section 39 of the POCSO Act, which indicate lack of training to the police, that is violation of Section 107 of the Juvenile Justice Act 2015. A few problems faced by police while enforcing these laws are identified as; lack of sufficient number of manpower specially in the rank of Sub- Inspector for conducting investigation as per the POCSO Act; insufficient number of women police officer to handle such sensitive cases relating to child; lack of sufficient training in procedural compliance; delay in lodging FIR regarding such offence resulting in insufficient evidence; overburden with multiple duty including maintenance of law and order, VIP duty etc; insufficient number of Forensic laboratory and so on.

While studying the structural compliance of Special Court and Special Public Prosecutor and their challenges it was found that in none of the district of study there is a full fledged Special Court instead, the Govt. of Assam had designated the Session Judge court as the special court for to look after the cases of POCSO. There is no arrangement

for waiting room for the children in the court premises due to lack of infrastructure and the child have to wait for hours in the corridor of the courts or inside the courtroom. Similarly, the design of the court room are not found to be suitable for a child as there is no separate building for the sitting of special court while conducting trial of POCSO cases. Further, there is no scope for Video-Conferencing in these courts, which could be used for recording the statement without calling him to court. The Assam Govt. has appointed Special Public Prosecutor only for Tinsukia that too in 2018 whereas; in Dibrugarh and Dhemaji the Public Prosecutor is designated as Special Public Prosecutor for POCSO cases.

In procedural compliance the researcher found that the special court take direct cognizance of the cases under POCSO Act which is in compliance to section 33(1) of the POCSO Act. The courts in all three districts of study also allowed the parents or any other person of child choice to be present with hi/her during his examination in the court but in Tinsukia it was revealed that if initially the child is found to confident the parents orany other person are not allowed. As per Sect. 33(2) of the POCSO Act the court shall not allow direct questioning of the child during examination but it was found that in few cases the defense are allowed to question directly the child which is not a healthy practice. Moreover, frequent break is not given to the child during examination which is permitted by law in order to finish up the procedure quickly so that the child need not be come to court repeatedly, however, if the SPP requested the court for such break the courts permits the same. Although, it is directed to the Special Court to complete the trial within a period of one year under section 35(2) of POCSO Act but; it was observed that in maximum cases the trial did not get completed with this prescribed period rather it takes longer period due to reason like; non appearance of the victim on date, overburden of court and frequent adjournment by defense counsel. When comparatively studied the conviction rate it was revealed that the maximum conviction rate among the

three district is Dhemaji with 50 to 60 percent conviction and the lowest is Tinsukia with just 20 to 30 percent conviction.