



# THE MYTH OF SPEEDY AND SUBSTANTIVE JUSTICE

A Study of the Special Fast Track Courts for Sexual Assault  
and Child Sexual Abuse Cases in Karnataka



CENTRE FOR  
LAW & POLICY  
RESEARCH

Report prepared by  
Jayna Kothari and Aparna Ravi

With assistance from:  
Shruthi Chandrashekharan,  
Kruthika Ravindran, Rithika Shenoy,  
Anusri Kumar, Vaishali Movva  
and Arulpriya Manickavasakan

The authors would also like to thank the Cambridge Pro Bono Project  
for their assistance with research on the practices of  
special sexual offences courts in other jurisdictions.

## Table of Contents

<b>S No.</b>	<b>Chapters</b>	<b>Page No.</b>
	Executive Summary	3
I.	Introduction	5
II	A Brief History of Fast Track Courts in India	7
III	Special Fast Track Courts in Karnataka	10
	(i) Are there any Fast Track or Special Procedures for Sexual Assault cases?	
	(ii) Some Examples of Fast Track and Special Procedures in other Countries	
	(iii) Disposal Rates – Are these Courts “Fast”?	
IV	Have the FTCs been effective in securing justice? A closer look at the judgements	18
	(i) Hostile Witnesses	
	(ii) Consideration of Evidence	
V	Findings and Recommendations	28

## EXECUTIVE SUMMARY

In August 2013, the Karnataka state government issued a Government Order for the establishment of 10 special fast track courts in the state only for trying cases of rape and sexual assault against women under Section 376, IPC. In December 2012, the State government constituted a special court to exclusively try cases of child sexual abuse under the "Protection of Children from Sexual Offences Act, 2012 ("POCSO)". This Report is based on an in-depth analysis of the judgments delivered by these special fast track courts from the date of their establishment to December 2014 to examine how effective these courts have been in terms of both speed of disposal and in securing substantive justice.

During this period, the 10 special fast track courts for women were assigned 623 cases in aggregate (excluding cases that were transferred to other courts), out of which they disposed 107, while the special court for child sexual abuse cases disposed 51 cases. Of these judgments, we were able to procure and review 94 of the judgments delivered by the special fast track courts and all 51 of the

judgments delivered by the special court. The table below summarises the main findings from our review.

	<b>Special Fast Track Courts</b>	<b>Special Court for Children</b>
Cases Disposed	107	51
Convictions	18 (16.8%)	4 (7.2%)
Acquittals	89 (83.17%)	47 (92.8%)
<u>Reason for Acquittals (for reviewed judgments only)</u>		
Hostile Witness	65 81.25%	29 61.7%
Lack of medical/Corroborative Evidence	10 12.5%	18 38.3%
Other/Reason not provided	5 6.25%	-
<u>Consideration of Medical Evidence (for reviewed judgments only)</u>		
References to 2-finger test or prior sexual history of victim	24 25.5%	10 19.6%

Our findings and analysis of the judgments give much cause for concern on the functioning of these courts. First, despite their status as special courts, these courts do not appear to have any specific fast track or special procedures or even sufficient resources to dispose a large number of cases. Second, our review of the judgments suggests several substantive

concerns with their dispensation of justice - in particular, the very high incidence of complainants and witnesses turning hostile. These special courts have not been able to address this problem, which is particularly high in cases of sexual assault against women. There has been a failure to adhere to Supreme Court precedents on the pro-active role of the court when witnesses turn hostile, and a lack of protection provided to complainants and victims which would prevent them from turning hostile. There has also been a failure to refrain from relying upon out dated forms of medical evidence such as the two-finger test and prior sexual history of the complainant which the Supreme Court has repeatedly held to be discriminatory against women and not to be relied upon.

Finally, we make recommendations to improve the functioning of such special courts based on our review of similar courts in other jurisdictions. We argue that it is critical that such courts have a legislative foundation setting out the purpose of these courts, their mode of functioning and any special procedures to be followed. Further, special sexual offences courts should have a host of requirements, including training for judges, prosecutors and other court personnel, victim support services and victim/witness protection measures. Without these ingredients, special sexual offences courts would function like any other normal criminal courts, defeating the very purpose for which they were established.

## I. INTRODUCTION

Fast track courts have often been mooted as a solution to the extensive delays that plague the functioning of “normal” courts in India, particularly in times when there is a real or perceived escalation in crime. During the last couple of years, in the wake of a number of highly publicised cases of sexual assault against women starting with the ‘Nirbhaya’ sexual assault case in December 2012,<sup>1</sup> fast track courts have increasingly been proposed as the solution for securing justice and deterrence in cases of sexual violence against women.

In the aftermath of the ‘Nirbhaya’ case, state governments across India took the initiative to establish fast track courts to try cases of sexual violence against women.<sup>2</sup> In September 2014, the Central Government proposed to fund the establishment of about 1,800 fast track

courts across India to try cases on specific subject matters, including sexual violence.<sup>3</sup> Further, in the wake of a spate of child sexual abuse cases that hit the headlines in Bangalore late last year, the Chief Minister of Karnataka also proposed to set up more fast track courts specifically dealing with cases of child sexual abuse.<sup>4</sup> Most recently, prominent judges and lawyers used the opportunity of International Women’s Day on March 8 to reiterate calls for the establishment of additional fast track courts.<sup>5</sup>

Yet despite the widespread discussion of fast track courts and periodic initiatives to set up new ones, there have been no detailed empirical studies on the efficacy of the fast track

---

<sup>1</sup> “Delay in disposing rape cases might be responsible for rise in crimes against women: CJI”, *The Indian Express*, January 7 2013, available online at <<http://archive.indianexpress.com/news/delay-in-disposing-rape-cases-might-be-responsible-for-rise-in-crimes-against-women-cji/1055722>>.

<sup>2</sup> Pradeep Thakur, “States set up 164 fast-track courts to try sex crimes, more to follow”, *The Times of India*, December 3 2013, available online at <<http://timesofindia.indiatimes.com/india/States-set-up-164-fast-track-courts-to-try-sex-crimes-more-to-follow/articleshow/26757942.cms>>.

---

<sup>3</sup> Gangadhar S. Patil, “Law ministry proposes to set up 1800 fast-track courts for land, property, heinous crime cases”, *Economic Times*, September 26 2014, available online at <[http://articles.economictimes.indiatimes.com/2014-09-26/news/54353641\\_1\\_fast-track-courts-fast-track-courts-law-ministry](http://articles.economictimes.indiatimes.com/2014-09-26/news/54353641_1_fast-track-courts-fast-track-courts-law-ministry)>.

<sup>4</sup> “CM moots fast-track courts to try sexual assault cases”, *The Hindu*, November 1 2014, available online at <<http://www.thehindu.com/news/cities/bangalore/cm-moots-fasttrack-courts-to-try-sexual-assault-cases/article6553292.ece>>.

<sup>5</sup> See for e.g., “Set up more fast track courts for speedier justice to women,” *Times of India*, March 9, 2015, available at <<http://timesofindia.indiatimes.com/city/delhi/Set-up-more-fast-track-courts-for-speedy-justice-to-women/articleshow/46498228.cms>>.

court system in achieving speedy results and better justice. This Report examines the effectiveness of the special fast track courts that have been established in Karnataka to try cases of sexual violence against women and of the special court that has been established to try cases of child sexual abuse under the Protection of Children from Sexual Offences Act, 2012 (“POCSO”). Our findings are based on an in-depth analysis of nearly all the cases disposed by the special fast track courts and special court that have been established in Karnataka to try cases of rape and sexual assault against women and child sexual abuse.

While fast track courts are often mooted as the solution in response to escalation in crime, it is also important to acknowledge that they have had a chequered history in India. Both Central and state governments have been sporadic in their support of these initiatives and there is often debate over whether resources should be devoted to fast track courts or if the focus should instead be on reforming and improving the criminal justice system as a whole. On March 26, 2015, for example, the Karnataka government issued an order closing down 39 fast track courts in the state

and establishing 60 new courts.<sup>6</sup> While the courts that are the subject of our study are still in existence (they are technically special courts rather than fast track courts), the current thinking is that the State Government is unlikely to continue with fast track court initiatives in the state. We believe that the findings from our study are applicable not just to fast track courts but to all special courts trying cases of sexual violence as well as to the criminal justice system in general in the context of cases of rape, sexual assault and child sexual abuse.

Part II of this Report provides a brief history of the development of fast track courts in India. In Part III, we take a look at the special fast track courts that have been established in Karnataka to try cases of rape and sexual assault as well as the special court that has been established in Bangalore to try cases of child sexual violence. In this section, we consider the procedures (or the absence thereof) employed by the special fast track courts and the speed with which they have disposed cases. We also draw on insights from fast track procedures and special courts trying cases of sexual violence in other

---

<sup>6</sup> Karnataka Government Order No. Law 137 LCE 2014, Bengaluru, dated March 26, 2015.

jurisdictions to inform our study of the special fast track courts in Karnataka. Part IV examines how effective the special fast track courts and the special court have been on issues of substantive justice through a close analysis of the judgments delivered by these courts since their establishment. We conclude with a summary of our findings and recommendations to improve the functioning of these courts.

## **II. A BRIEF HISTORY OF FAST TRACK COURTS IN INDIA**

Fast track courts were initially established by the Central Government to dispose off long pending cases, especially sessions court cases, across a variety of subject matters using a grant from the 11<sup>th</sup> Finance Commission (2000-2005). Pursuant to the scheme for which the grant was sanctioned, a total of 1,734 such fast track courts were established across the country.<sup>7</sup> The term of this grant came to an end in 2005, and was renewed by the 12<sup>th</sup> Finance Commission for the maintenance of

---

<sup>7</sup> "Brief note on the scheme of 'Fast Track Courts'", Department of Justice, Ministry of Law and Justice, <<http://doj.gov.in/?q=node/108>>.

1,562 existing fast track courts for another 5 years, up to 2010.<sup>8</sup>

During the 2000s, the idea of fast track courts enjoyed much popularity, with the Law Commission of India making recommendations for the establishment of different kinds of fast track mechanisms. For example, the 188<sup>th</sup> report of the Law Commission issued in 2003, recommended setting up a fast-track commercial division at every High Court as a permanent fast track mechanism to deal with high value commercial disputes.<sup>9</sup> In 2008, the Law Commission again wholeheartedly recommended the setting up of fast track courts, which it saw as the only way to address the backlog of cheque bouncing cases – this time, though, they were recommended as an *ad hoc* measure only for the clearance of backlogs and not as a permanent feature.<sup>10</sup>

---

<sup>8</sup> "Particulars of Organisation, Functions and Duties of the Department of Justice", Department of Justice, Ministry of Law and Justice, July, 2011, <<http://doj.gov.in/?q=node/141&page=show>>.

<sup>9</sup> "Proposals for Constitution of Hi-Tech Fast – Track Commercial Divisions in High Courts", Law Commission of India, December 2003, <http://lawcommissionofindia.nic.in/reports/188th%20report.pdf>

<sup>10</sup> "Fast Track Magisterial Courts for Dishonoured Cheque Cases", Law Commission of India, November 2008, P. 39 <http://lawcommissionofindia.nic.in/reports/report213.pdf>

The end of that decade saw a shift in the perception of fast track courts, which began to be seen as purely *ad hoc* mechanisms for dealing with case pendency. In April 2011, the Central Government stopped funding fast track courts, after which most of them were wound up.<sup>11</sup> It is important to note here that the fast track courts that were established with funding from the central government, were set up in a wholly ad-hoc manner without any legislative backing to lay down what the purpose of these courts would be or if they would follow any special procedures.

When the Central Government took a policy decision to stop its funding for fast track courts, the same was challenged in the Supreme Court in early 2012 in the case of *Brij Mohan Lal v. Union Of India & Ors.*<sup>12</sup> In this decision, the Supreme Court declined to strike down the policy decision of the Union of India not to finance the FTC scheme beyond 31 March 2011. However, the Supreme Court passed a number of other directions aimed at improving the justice delivery system such as expediting the trial process in regular courts and fortifying the independence of the judiciary. The

---

<sup>11</sup>*Brij Mohan Lal v. Union Of India & Ors.*[2012] 5 S.C.R. 305.

<sup>12</sup> [2012] 5 S.C.R. 305

Court, noting the “constitutional mandate to provide for fair and expeditious trial to all litigants and citizens of the country,” directed the States and Central Government to create additional judicial posts (equal to 10% of the existing regular cadre of the state judiciary) within three months from the date of the judgment. With respect to fast track courts, the Court held that States were at liberty to either discontinue the fast track courts scheme or to continue the fast track courts scheme as a permanent feature, but that States may not choose to continue the scheme on an *ad hoc* and temporary basis. The position of the Central Government at the time was that States were free to continue with the fast track courts scheme as long as they were able to fully fund such courts themselves.<sup>13</sup> Despite the cessation of Central Government funding, some of the fast track courts that had been set up to try sessions court cases continued to function in several states, including Karnataka.

Over a year later, the December 2012 ‘Nirbhaya’ sexual assault case led to nationwide introspection on the question of the normalisation of violence against women and the

---

<sup>13</sup>Lok Sabha Unstarred Question No. 1837, answered on 01.12.2011.



problems that survivors of sexual assault experienced when traversing the criminal justice system. One such exercise was the scrutiny of our legal system carried out under the leadership of (Retd.) Justice J.S.Verma. The Verma Committee published its 'Report on Amendments to Criminal Law' on January 23, 2013, which noted that speedy justice was essential to securing the legitimacy and efficacy of the legal framework, as well as to serve as an effective deterrent to crime.<sup>14</sup> It also noted that integral to this dispensation of justice was how the courts treated complainants and evidence, including medical findings, and stressed the importance of having judges and prosecutors who were sensitised to the issues involved. Following the recommendations of the Verma Committee Report and public sentiment favouring speedy justice, states were requested to set up fast track courts for trying cases of sexual assault, by utilising the additional judges appointed pursuant to the Supreme Court decision on fast track courts in *Brij Mohan Lal's* case.<sup>15</sup>

---

<sup>14</sup> Report available here:

[http://www.thehindu.com/multimedia/archive/01340/Justice\\_Verma\\_Comm\\_1340438a.pdf](http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf)

<sup>15</sup>Lok Sabha Unstarred Question No. 572, answered on 07.08.2013.

### III. SPECIAL FAST TRACK COURTS IN KARNATAKA

Special fast track courts to try cases of sexual assault against women were sought to be established in Karnataka in 2013, following a similar pattern of setting up such special or fast track courts in other parts of the country. Again, no legislation was passed for setting up these courts and they were set up merely by way of an order passed by the Government of Karnataka, being GO No.74 LCE 2013, dated 13<sup>th</sup> August 2013. The Government Order called for the establishment of 10 fast track courts in the State specifically for the trial of cases under Section 376 of the Indian Penal Code, 1860, i.e. rape / sexual assault.

While the Government Order provides for the setting up of fast track courts, in practice, these courts are termed as “special courts”. In this Report, we refer to them as “special fast track courts”.

Pursuant to the terms of the Government Order, these 10 special fast track courts were to be distributed across the districts of Karnataka in the following manner: 3 in Bangalore, and 1 each in Belgaum, Mangalore, Gulbarga, Madikeri, Mandya, Mysore

and Ramanagara. Each of these courts was to be staffed by 1 district judge, and 37 support staff.<sup>16</sup>

#### **Details of Special Fast Track Courts Set up in Karnataka**

Sl. No.	Court, District	No. of courts
1.	53 <sup>rd</sup> & 54 <sup>th</sup> CCSJ, Bangalore, Urban	2
2.	6 <sup>th</sup> ADSJ, B'lore Rural	1
3.	8 <sup>th</sup> ADSJ, Belgaum	1
4.	6 <sup>th</sup> ADSJ, Mangalore	1
5.	5 <sup>th</sup> ADSJ, Gulbarga	1
6.	3 <sup>rd</sup> ADSJ, Madikeri	1
7.	4 <sup>th</sup> ADSJ, Mandya	1
8.	7 <sup>th</sup> ADSJ, Mysore	1
9.	3 <sup>rd</sup> ADSJ, Ramnagaram	1
	Total	10

#### **(i) Are there any Fast Track or Special Procedures for Sexual Assault cases?**

Our study of these special fast track courts in Karnataka shows that though

<sup>16</sup> Each court was to have the following support staff: 1 District Judge, 2 Shirestedars, 5 Group 1 Officers, 1 Typist, 5 Group 2 Officers, 3 Analysts, 2 Persons to take thumb impressions, 4 Bailiffs, 2 Auditors, 8 process servers and 4 peons.

they have been set up only to deal with cases of sexual assault against women under section 376 of the IPC and child sexual abuse under the POCSO Act, there are no fast track procedures laid down, nor are there any special procedures such as safety mechanisms and protection for victims or witnesses or other procedures to deal with the special nature of these crimes.

None of the courts listed in the table above have any special procedures to ensure speedy trials and thus distinguish them from regular courts. We also learnt that no training has been provided to the judges and prosecutors trying cases of sexual assault before these courts. Further, many of these special fast track courts do not have separate court rooms. Instead, judges from other existing courts (for example, two existing Additional City Civil and Sessions Judges at the Bangalore City Civil Court in the case of Bangalore Urban) have been appointed as Presiding Officers for the special fast track courts. As a consequence, the matters entrusted to the fast track courts are taken up by judges in addition to their regular case load. Thus, not only are there no guidelines in place to ensure speedy and just disposal of cases, but the judges trying these cases are doing

so by taking on an additional case load with no training in dealing with the matters therein.

The current lacuna in the guidelines to be followed by the special fast track courts in Karnataka for speedy disposal of cases suggests that no thought has been given to the question of how these courts may function effectively. There has been no evolution in the conception of fast track courts since they were first established more than a decade ago. In fact, there may have even been a regression, given that the initial establishment of fast track courts in the early 2000's at least involved minimal considerations as to how they may achieve their purpose of disposing of cases in a speedy fashion. At that time, fast track courts were set up with the appointment of judges specifically for such courts, even if it was on an *ad hoc* basis, from among retired sessions / additional sessions judges, judges promoted on an *ad hoc* basis and posted in these courts, or from among members of the Bar. While the action plan put in place at the time by the Central Government did not envisage a special procedure to be followed by fast track courts in their functioning, the fast track courts were given a target of disposing of 14 sessions trial

cases and/or 20 to 25 criminal/civil cases each month.<sup>17</sup> These courts were thus initially set up with an estimation of the number of cases that they would have to clear within a period of time, and were required to ensure that they adopted appropriate procedures to meet this requirement. Similarly, the fast track courts that were later established, independent of the centrally funded scheme, to pursue specific cases (such as those against corruption) were required to ensure that, at any given point of time, not more than 50 cases were pending before them, in order to ensure a quick trial process.<sup>18</sup>

Thus, even in comparison to fast track courts instituted in earlier periods in India, the special fast track courts established in Karnataka to try sexual assault cases appear to have been instituted with no thought as to how they would, in practice, ensure speedy trials and justice for survivors of sexual assault. In the following subsection we consider examples from other jurisdictions of (a) fast track procedures for various kinds of cases and (b) special measures in courts

---

<sup>17</sup>Dinkar Shukla, 'Fast Track Courts', *Press Information Bureau*, <<http://pib.nic.in/feature/feyr2001/fmay2001/f010520012.html>>.

<sup>18</sup>Lok Sabha Starred Question No. 252, answered on 18.08.2011.

specifically established to try cases of sexual violence.

## **(ii) A Comparative Study of Fast Track Courts and Special Procedures for Sexual Assault Cases in Other Jurisdictions**

### **(a) Fast Track Courts**

Fast track courts were established in the High Court of Ghana pursuant to Article 139(3) of the Constitution of Ghana, which empowers the Chief Justice to determine the number of divisions and judges of the High Court. The power of the Chief Justice to create the fast track courts was upheld in the case of *Attorney-General v. Tsatsu Tsikata*<sup>19</sup>, where the constitutionality of the fast track court was in question. In deciding this case, the Court noted that the operation of a fast track court was distinct from that of a regular court as the fast track courts had introduced a qualitative standard for speed in the legal system, through the use of computers for efficient case management and speedy disposal of cases. The fast track court system in Ghana was established to decide cases directly involving investors and investments, banks,

---

<sup>19</sup>[2001-2002] SCGLR 620.

specified commercial and industrial disputes, election petitions, human rights, prerogative writs and National Revenue (of substantial value) matters brought by or against governmental departments or agents. A time period requirement was placed on the disposal of these cases by specifying that they would have to be disposed of within 6 months. The fast track court system in Ghana also distinguishes itself by employing the use of automation to enable speedy disposal of cases and by the adherence to a time limit.

Australia has had a fast track court system in place from 2006 for deciding commercial and intellectual property disputes.<sup>20</sup> The fast track courts aim for the delivery of judgment within 6 weeks of trial through the abolition of pleadings, determination of interlocutory applications on the papers, and restricted discovery.<sup>21</sup> The fast track court system that was recently put in place in South Australia contemplates fast tracking single-issue commercial cases where smaller claims are involved.<sup>22</sup> They also seek

---

<sup>20</sup> Natalie Hickey, "Fast Track Federal Court", available online at <<http://www.ipwhiteboard.com.au/fast-track-federal-court/>>.

<sup>21</sup> *Ibid.*

<sup>22</sup> Brenton James, "SA: Green light for fast track litigation and other recent Court changes",

to limit the time spent in deciding these cases by doing away with procedural steps that are not essential to the quick disposal of the case. It is important to note, however, that only commercial disputes, and not criminal matters, are fast tracked in the Australian framework.

The United Kingdom, in Part 28 of its Code of Civil Procedure, outlines a fast track process that can be followed by the regular Courts. The procedure to be followed here emphasises the arrangements to be made prior to the trial itself, such as setting a time table and listing out the evidence that will be submitted. The time table is to ensure that the case is disposed of in a timely and efficient manner.

Each of the jurisdictions discussed above has adopted slightly different fast track procedures and some of these, such as the system in Australia, would not be appropriate for a fast track court that deals with criminal cases. However, it goes to show that there has at least been some thought given to how these courts would function more efficiently in practice.

---

available online at <<http://www.hunthunt.com.au/news-and-publications/litigation/sa-court-rules>>.

By contrast, the fast track courts in Karnataka are characterised by a total absence of any procedures to govern their functioning. If we were to follow the earlier system of fast track courts in India setting targets for fast track courts in terms of the number of cases to be disposed of within a certain time period, the fast track courts may be successful in decreasing case pendency. However, such a measure may compromise on basic rights of the accused, such as due process,<sup>23</sup> in the absence of specific guidelines setting out how the fast track courts should operate. For the establishment of fast track courts to be meaningful by any measure, the need of the hour is to have procedures in place to ensure that evidence is carefully considered while following strict timelines for the various steps involved in the cases before such courts.

(b) Special Procedures in Sexual Assault Cases

One major defect in the setting up of the special fast track courts in Karnataka is that these courts were not set up under any statute or legislation, which would outline their scope and

---

<sup>23</sup> Rukmini S., “Courts should be dealing with serious criminal offences, not with petty cases”: Interview with Justice A.P.Shah, *The Hindu*, August 23, 2014.

manner of functioning. If there was a legislation dealing with special courts for sexual assault cases, such legislation would address how these cases should be handled, their disposal time, matters of evidence and any special procedures or mechanisms that might be needed. We studied some jurisdictions where special courts were set up for sexual assault cases, and in such jurisdictions the special courts are usually set up under a special legislation.<sup>24</sup>

***Spain:***

In Spain, there are special fast track procedures for speedy trial of cases and special protection measures for cases of gender based violence. Under the *Criminal Procedure Law, Article 795*, when the act of gender-violence is punishable by a maximum of five years imprisonment, or by any other penalty (as long as penalties with a continuing effect such as community service, etc. do not exceed ten years in length), the “speedy trial procedure” can apply. In that case, once the complaint has been registered, the hearing has to take place within 72 hours. The aggressor

---

<sup>24</sup> The discussion of the special courts in Spain and Liberia that follows is based on a report prepared for CLPR by the Cambridge Pro Bono Project entitled, “Fast Track and Specialised Courts for Sexual Violence,” dated March 22, 2015.

can be detained for no more than 72 hours, should the judge deem it necessary for the victim's protection. The court that hears the complaint decides, at its own initiative or at the request of the victim, her family or the prosecutor, whether to adopt a provisional protection order and which precautionary measures are necessary.

Spain has special "Violence against Women Courts" that are competent to investigate and hear matters of violence in domestic settings. Under this procedure, the judges tend to use the speedy trial procedure in order to prevent the victim from withdrawing her complaint. The General Judicial Council believes, however, that in cases of psychological or habitual violence, the abbreviated procedure is more suitable. Violence against Women Courts are competent to make a wide range of protection and social assistance measures as described above including measures such as anonymity or judicial protection. The Act No 1/2004 also allows the victims of gender-based violence to change their name easily without having to observe all the usual compulsory requirements. The Government, the General Council of the Judiciary and the Autonomous Communities, within

the scope of their respective powers, have to ensure that tailored training courses are available for judges and magistrates, prosecutors, court clerks, national law enforcement and security agents and coroners. Those training courses have to include specific modules on sexual equality, non-discrimination for reasons of sex, and issues of gender violence. They focus on the special needs of the victims. The data published on these courts show that from 2005-2012, the conviction rate of these courts was 78.7%.

### ***Liberia:***

In Liberia, special courts for sexual offences were set up under a Special Act passed in 2008 to amend the Judiciary Law 1972. The Act established two sets of courts with exclusive jurisdiction over sexual offences in Liberia: a specialised Court E within the First Judicial Circuit Court, which is housed in the Temple of Justice in Monrovia, and a sexual offences division in other Circuit Courts in each county of Liberia. Circuit Courts have original jurisdiction over the most serious crimes; previously, sexual assault was tried within Magistrate's courts, which have original jurisdiction in civil cases

and for most other crimes. Appeal to the Supreme Court is available from both Court E and the Circuit Court sexual offences divisions. The procedure of both Court E and the sexual offences divisions is the same as that of the Circuit Courts in other criminal cases, but with additional powers to:

- (i) prohibit the exercise of jurisdiction over sexual offences by Magistrates;
- (ii) compel the transfer of cases to Circuit Courts or Court E within 72 hours;
- (iii) prohibit the publication of victims' names and expunge names from the public record;
- (iv) issue interim relief to minimise further risk to victims, including orders to place children in protective homes or custody;
- (v) order trials in camera where the victim is under 18 or where needed to protect the victim In-camera trials are also mandatory for the crime of rape.
- (vi) Bail is not granted as of right but must be specifically provided for by law.

In contrast to Liberia and Spain, there are no guidelines for the special fast track courts in Karnataka to function

under. There is no legislation governing the setting up of these special fast track courts, no amendments made to the Code of Criminal procedure, nor are there any rules framed to have some guidelines for the functioning of these courts. If these courts were set up pursuant to a legislation, they would be permanent, have guidelines on their powers and functioning, would also make training of judges and prosecutors mandatory, and provide special procedures for speedy trials and witness protection. Without such ingredients, these courts are reduced to being special courts in that they take up all Section 376 cases, but without any special procedures and protection measures, or special training for judges or prosecutors, they function like any other criminal court in the State.

### **(iii) Disposal Rates – Are these Courts “Fast” ?**

The table below summarises the responses we received to our queries on the disposal rates of the cases that were transferred to the special fast track courts.<sup>25</sup> As of December 31,

---

<sup>25</sup>The information in this table is based on RTI applications to the district courts and, with respect to the number of cases disposed and the number of convictions and acquittals, based on



2014, a total of 107 cases were disposed by the 10 special fast track courts in Karnataka:

District	No. of Cases	Disposals	Convictions	Acquittals
B'lore	182	19	2	17
Urban (2 courts)	(88 later moved to children's court)			
B'lore Rural	85	1	1	-
Belgaum	82	19 <sup>26</sup>	2	16
Gulbarga	54	36	4	32
Madikeri <sup>27</sup>	47	7	1	6
Mandya	63	10 <sup>28</sup>	2	6
M'lore	65	3	3	0
Mysore	88	7	2	5
Ramnagm	45	5	1	4
<b>Total</b>	<b>623</b>	<b>107</b>	<b>18</b>	<b>89</b>

The table above shows that the special fact track courts have been established (with perhaps the exception of Gulbarga) had only disposed a handful of cases as of December 31, 2014. In addition to the above special fast track courts, an additional special court has been set up in Bangalore Urban (again not as a separate court room) with effect from December 10, 2012 to try

information obtained from the Office of the Registrar, High Court of Karnataka as of December 29, 2014.

<sup>26</sup>One of the disposed cases resulted in a transfer.

<sup>27</sup>We were told that the reason for the delay in disposal of cases by the fast track court in Madikeri was because no special public prosecutor had been appointed to try cases under Section 376.

<sup>28</sup>Two of the cases were abated.

cases involving crimes against children. As of December 31, 2014, this court had disposed of 51 cases since its establishment, 47 of which resulted in acquittals and 4 in convictions.

The time taken for a court to dispose a judgment was calculated based on the time period between the filing of the FIR and the date of the judgment. We were able to obtain and review 94 of the 107 judgments disposed by the special fast track courts, out of which the date of filing of the FIR was available for 89 of the judgments. The table below provides the number of cases disposed by the special fast track courts and the special court in the time periods indicated below.

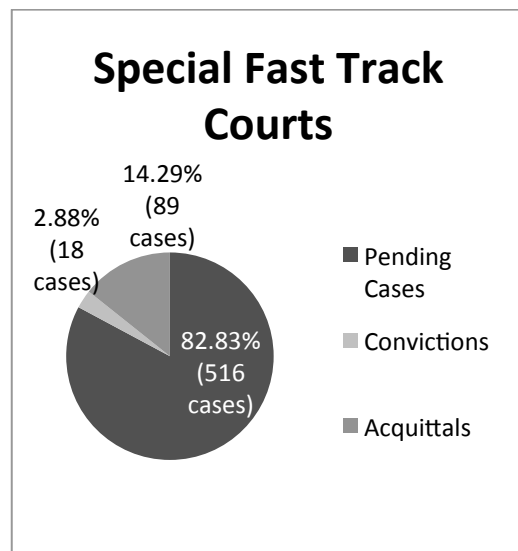
Place	0- 2 yrs	2-3 yrs	3-5 yrs	5+ yrs	Total
B'lore Urban	9	6	2	2	19
M'lore	2	1			3
Ramnagm	1	1		2	4
B'lore Rural	1				1
Belgaum	8	5	3		16
Madikeri	1	1	3		5
Mysore		1	4		5
Mandya			2		2
Gulbarga	14	9	9	2	34
<b>Total</b>	<b>36</b>	<b>24</b>	<b>23</b>	<b>6</b>	<b>89</b>
<u>Disposal Periods for the POCSO Court</u>					
	45	3	3		51

The above table shows that the special fast track courts were relatively fast in disposing off cases with approximately 45% of the cases being disposed within 2 years and approximately 67% of the cases being disposed within 3 years. These results, however, need to be read in conjunction with the preceding table which also shows the total number of cases assigned to these courts. Reading the two together reveals that while these special fast track courts have been relatively quick in disposing the cases that they have taken up for trial, they have been less successful in disposing cases in greater numbers. One of the reasons for this might be that these courts do not have sufficient resources to hear and dispose a large number of cases relating to rape and sexual assault. Further, as noted above, most of the special fast track courts do not have a dedicated court room, which limits the amount of time that judges can spend on the cases assigned to these courts.

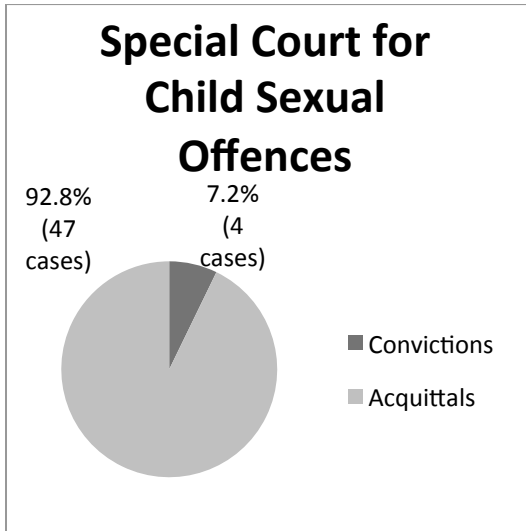
The special court established to try cases under POCSO appears to have been more successful at least in so far as speedy disposal of cases is concerned. Almost all the cases disposed by this court were disposed in under two years, including a large number disposed in under a year.

#### **IV. HAVE THESE COURTS BEEN EFFECTIVE IN SECURING JUSTICE?: A CLOSER LOOK AT THE JUDGMENTS**

The effectiveness of both the special fast track courts and the special court in securing justice for the victims of rape and sexual assault is debatable even from the statistics. Out of the 623 cases that have been assigned to the special fast track courts since their establishment, 107 cases have been disposed of which only 18 resulted in convictions. A similar story applies to the special court with only 4 of the 51 cases disposed resulting in convictions.<sup>29</sup>



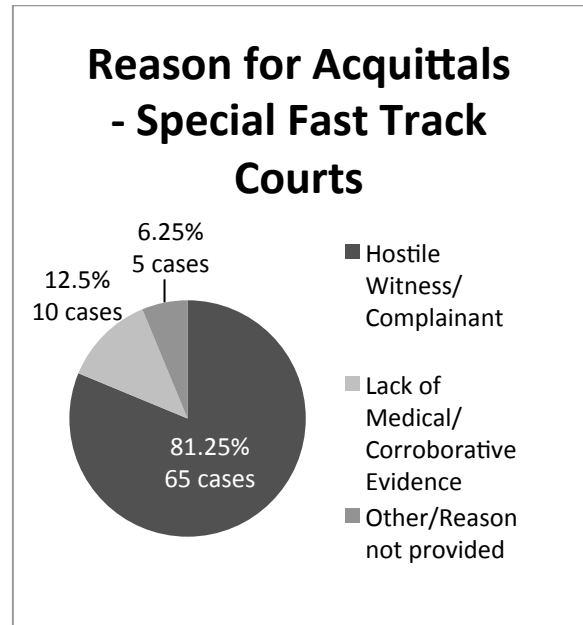
<sup>29</sup> Data on the total number of pending cases was not available for the special court.



As it is difficult to assess the effectiveness of these courts from the statistics alone, we also conducted a review of the judgments disposed by these courts between the time of their establishment and December 31, 2014. We sought to obtain copies of these judgments from online sources and through requests to the court registrars of the respective courts. We were able to procure and review 94 of the 107 judgments disposed by the special fast track courts and all of the 51 judgments disposed by the special court. For all the cases we analyzed, we considered the following parameters:

- (a) Use of medical evidence by the courts
- (b) Whether the case resulted in a conviction or acquittal
- (c) Reasons for the result and any specific factors about the reasoning provided in the judgment

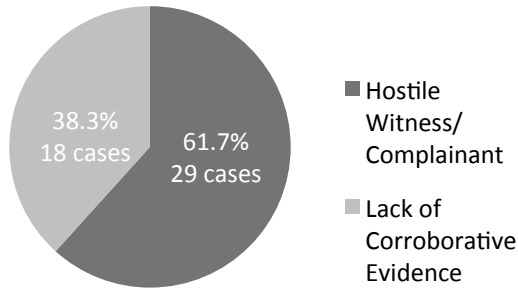
In this section, we describe our findings based on this in-depth review of the judgments. Two themes that consistently emerged from the judgments were the significant majority of cases that involved hostile witnesses and the perfunctory consideration of evidence, in particular medical evidence, by the special fast track courts and the special court. We consider each of these themes below.



*24 of the cases reviewed from the Special Fast Track Courts referred to the two-finger test or to the victim being habituated to sexual intercourse.*

*10 of the judgments from the POCSO courts referred to the victim being habituated to sexual intercourse.*

## Reasons for Acquittals - POCSO Court



### (i) Hostile Witnesses

The primary reason for a large majority of the disposed cases resulting in acquittals was the complainants, victims or other witnesses turning hostile. Out of the 94 judgments reviewed from special fast track courts in Karnataka, only 14 resulted in convictions. Of the 80 cases that ended up with acquittals, 65 involved the complainant and other witnesses turning hostile. A similar pattern was noticed with respect to the POSCO cases. Of the 47 judgments that resulted in acquittals, 29 involved the complainants and other witnesses turning hostile. The prevalence of witnesses turning hostile is a cause for much concern as it suggests that the reason for the large number of

acquittals may not be the innocence of the accused but a reflection of the failure of the trial process itself. In this sub-section we consider the implications of witnesses turning hostile and the possible steps the prosecution and judges could take to reduce the incidence of hostile witnesses.

The reasoning in most of the judgments reviewed followed similar lines. The judgment records that the prosecution has produced a list of witnesses, and then goes on to state that each of these witnesses has turned hostile and is not willing to support the case. In a large number of cases, the court recorded that the victim and her family turned hostile as well and denied the incident ever taking place. There were also a smaller number of cases where the victim and one or two other witnesses were willing to testify and did not turn hostile, but the judgment noted that there were contradictions in the statements of these witnesses and, therefore, insufficient evidence in light of other witnesses turning hostile.<sup>30</sup>

<sup>30</sup> See, for e.g., S.C. 1378/2012 decided by the FTC in Bangalore Urban on 6/8/2014; S.C. 438/2011, decided by FCT in Belgaum on 26/03/2014 and S.C. 253/2013, decided by FTC in Gulbarga on 30/08/2014.

The cases tried before the special court pursuant to POCSO followed a similar pattern of witnesses turning hostile and of complainants and victims often denying that the incident ever took place. In almost all of the POCSO cases, the accused was a relative or a person known to the victim or her family and many of these cases involved a combination of offenses of sexual assault as well as of kidnapping with the intention to marry.

The incidence of victims turning hostile is not new or unique to fast track courts or special courts. There are numerous studies and news reports that cite the high incidence of hostile witnesses to be one of the greatest challenges to India's criminal justice system.<sup>31</sup> However, it raises some important questions on what the role of the prosecution and judges should be when faced with a slew of hostile witnesses in case after case. First, our close reading of the judgments suggest that in many instances the prosecution did not try

---

<sup>31</sup> See, for .e.g., *The Hindu*, "The Problem of Hostile Witnesses," dated September 2, 2003; *First Post*, "When witnesses go hostile: From Jessica Lal to the Present," dated May 23, 2013; P.Ghsh, "Hostile Witnesses in India – A Menace to the Criminal Justice System", January 14, 2013, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2283861](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2283861)

particularly hard to ensure that witnesses did not turn hostile or to look for evidence from alternate sources when faced with hostile witnesses. For example, there were a number of cases where the prosecution did not insist on a medical test being conducted or failed to produce medical evidence to the court, on the grounds that this was unnecessary and unlikely to make a difference to the outcome of the case in light of the large number of hostile witnesses.<sup>32</sup> There were also situations where certain witnesses who were not hostile were not given sufficient opportunity to testify and the proceedings were taken over by hostile witnesses. In one such situation, the sister of the victim who was hearing impaired was willing to testify on the incident. However, the prosecution and the judge decided that it would not be worth the costs and time of engaging an interpreter to enable her to testify given the large number of witnesses who had already turned hostile.<sup>33</sup>

Second, the high incidence of hostile witnesses raises questions on

---

<sup>32</sup> See, for e.g., S.C. 1378/2012, decided by the FTC in Bangalore Urban on 6/8/2014; S.C. 124/2012, decided by the FTC in Bangalore Urban on 20/82/2014 and S.C. 988/2012, decided by the FTC in Bangalore Urban on 13/10/2014.

<sup>33</sup> S.C. 126/2012, decided by FTC in Ramnagara on 31/07/2014.

what the role of the court and judges should be when faced with this issue. None of the judgments reviewed show any indications that the court tried to delve into the suspicious circumstances that might have caused almost every complainant in a sexual assault case to recant their testimony or made any attempts to ensure that complainants and witnesses could testify in safety. This pattern of complainants turning hostile and the fast track courts playing a passive observer role in this process are causes for much concern. One of the early rationales for the establishment of fast track courts for trying criminal cases was that cases would be tried and decided before witnesses could turn hostile. This has obviously not held true, as was exemplified in the Best Bakery case decided by a fast track court in Gujarat.<sup>34</sup>

The decision of the fast track court in the Best Bakery case was severely criticised by the Supreme Court in 2004 in *Zahira Habibullah Sheikh v. State of Gujarat*<sup>35</sup>, which stated that a Court must play a participatory role in a trial and not just parrot out the narratives that have

---

<sup>34</sup>Asghar Ali Engineer, "Lessons of Best Bakery Case", *Economic and Political Weekly*, July 19, 2003, 3046-47.

<sup>35</sup>2004(4) SCC 158.

been placed before it. The Supreme Court recognised that there were numerous instances of witnesses turning hostile due to threats, coercion, lures and monetary considerations, and that this posed a huge and tangible threat to the rule of law if it were allowed to continue. The faith of the public in the administration of justice itself would be weakened in the absence of a witness protection program. This also weakens the argument of higher deterrence offered in favour of the establishment of fast track courts.<sup>36</sup> The Supreme Court observed in 2006<sup>37</sup> that the State has a very definite role to play in the protection of witnesses and that legislative measures for the same were the need of the hour.

The Law Commission has added its voice to this dialogue by recognising the need for the State to provide protection to victims of crimes, including rape<sup>38</sup>, by enacting legislation for witness protection and

---

<sup>36</sup>Anil Kumar M, "10 fast-track courts to try atrocities against women in Karnataka", *Times of India*, September 9, 2013, available online at <<http://timesofindia.indiatimes.com/city/bangalore/10-fast-track-courts-to-try-atrocities-against-women-in-Karnataka/articleshow/22428639.cms>>.

<sup>37</sup>*ZahiraHabibullah Sheikh v. State of Gujarat*, 2006 (3) SCALE 104.

<sup>38</sup> Law Commission of India, 198<sup>th</sup> Report on Witness Identity Protection and Witness Protection Programmes, August 2006, p. 75.

by providing measures such as transportation, police protection, and the means for transportation and maintenance when under protection.<sup>39</sup> Yet, few, if any, of these measures have been implemented to date.

Third, in addition to ensuring protection of witnesses to enable them to testify in safety, there is much case law to support the proposition that courts are to consider the evidence in totality and may make convictions even when witnesses have turned hostile. In a recent case, the Supreme Court in *Vinod Kumar v. State of Punjab*<sup>40</sup> came down heavily on the conduct of trials and the numerous adjournments granted by the court that was one of the causes of witnesses turning hostile. The Court further pointed out that there is case law to support the proposition that a conviction can be based on a hostile witness's testimony: *"In Bhagwan Singh vs. State of Haryana, it has been laid down that even if a witness is characterised as a hostile witness, his evidence is not completely effaced. The said evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable*

*evidence.*"<sup>41</sup> In this case, the Court upheld the trial court's conviction which took place despite the complainant turning hostile.

The kind of participatory role that could be expected from a court considering a case where a witness has turned hostile would be to analyse in depth the totality of the evidence that has been submitted before the court, and to disregard inconsistent statements. This was spelt out in *State of U.P. v. Ramesh Prasad Mishra and Anr.*,<sup>42</sup> where the Supreme Court stated that: *"it is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted"*. Thus, in cases of sexual assault complaints, where medical examination does show forceful entry and the presence of the accused, the evidence of the hostile witnesses, even if they are the complainant, can easily be discarded by conscientious courts. Unfortunately, this is not the proactive stand we saw the special fast track

---

<sup>39</sup>*Ibid.*, pp. 179-182.  
<sup>40</sup> (2015) 3 SCC 220

---

<sup>41</sup> *Ibid.*, para 29.  
<sup>42</sup> 1996 Supp(4) SCR 631.

courts in Karnataka taking, with a number of judgments resulting in acquittals despite there being medical evidence of forcible sexual intercourse. In these cases, the courts often held that the medical evidence was not sufficient for a conviction as the other key witnesses had turned hostile.<sup>43</sup>

While much has clearly been said on the need for protecting witnesses so that they feel secure enough to testify without being subjected to fear, coercion or bribery, the implementation of any measures to this end remain to be seen. The situation is no different in the special fast track courts and special court in Karnataka, which show courts willingly accepting the idea that, in an overwhelming majority of cases, the complainant has suddenly recanted. Further, when faced with hostile witnesses, the judgments of the special fast track courts in Karnataka suggest that the courts have done little to consider the evidence in totality even if some witnesses have turned hostile. On the contrary, the courts tended to use the presence of hostile witnesses as a reason not to consider other evidence on the grounds that it was unlikely to make a difference to the

---

<sup>43</sup> See, for e.g., S.C. 64/2012, decided by the FTC in Belgaum on 18/06/2014; SC 247/2012 decided by the FTC in Gulbarga on 17/05/2014.

outcome of the case. Karnataka has seen conviction rates of 11.6% in 2010, 9.3% in 2011 and 6.5% in 2012.<sup>44</sup> Given the number of witnesses that turn hostile and the kind of adjudication that is happening in the courts, it is no wonder that Karnataka sees some of the lowest conviction rates for crimes against women in the country.

## **(ii) Consideration of Evidence**

Our review of the judgments also revealed a lack of training on the part of the judges in dealing with cases of sexual assault, particularly in considering the evidence. For example, one of the judgments reviewed referred to evidence collected, by way of medical examination and reports on the scene of the crime, in the course of investigation carried out two years after the crime itself is alleged to have occurred.<sup>45</sup> In yet another judgment, the judge refused to consider the medical evidence that pointed to forcible sexual intercourse on the basis that the victim had had sexual

---

<sup>44</sup> Arun Dev, "Crime Against Women: Karnataka sees 90% accused walk free", January 30, 2014, Times of India, available online at <<http://timesofindia.indiatimes.com/city/bengaluru/Crime-against-women-Karnataka-sees-90-accused-walk-free/articleshow/29613439.cms>>.

<sup>45</sup> S.C. 335/2013, decided by the FTC in Bangalore Urban dated 24/7/2014.



intercourse with her husband the day before the alleged incident.<sup>46</sup> In still another bizarre judgment, the judge considered the “meek” protest by the victim and the lack of torn clothes as evidence that she had in fact consented to sexual intercourse with the accused.<sup>47</sup> Such absurd and perfunctory consideration of evidence suggests that the special fast track courts are currently far from effective in achieving their stated goals of securing speedy justice to the victims of rape and sexual assault. Further, as noted by the Supreme Court, this type of consideration of evidence would also damage the faith of the public in law enforcing agencies and the judicial body that is considering such evidence.<sup>48</sup>

In addition to the special fast track courts’ generally lax attitude towards the consideration of evidence, the judgments reveal two disturbing trends followed by these courts in the context of considering medical evidence. First, in several instances the Court concluded that forcible sexual intercourse had not occurred based on the fact that the medical evidence

showed no signs of external injury to the victim.<sup>49</sup> Such a finding based purely on the absence of physical injuries goes against Supreme Court precedent. In *Krishan v. State of Haryana*, the Supreme Court held that the presence of injuries on a rape victim’s body was not a necessary factor for proving rape.<sup>50</sup> The judgments of the special fast track courts in Karnataka show that the courts have failed to take into account guidelines laid down by the Supreme Court in trying cases of rape and sexual assault and points to a need for the judges to be made aware of important Supreme Court decisions related to violent crimes against women.

Second, a number of the judgments referred to the victim being ‘habituated to sexual intercourse.’ This observation was often based on the medical examination of the victim, which features the ‘two-finger test’ to make this determination. The two-finger test is explicitly referred to in at least 20 of the judgments of the 94 judgments we reviewed with an even larger number stating that the medical

---

<sup>46</sup> S.C. 162/2013, decided by the FTC in Belgaum on 17/05/2014.

<sup>47</sup> S.C. 52/2012, decided by the FTC in Belgaum on 16/10/2014.

<sup>48</sup> *Ram BihariYadav v. State of Bihar and Ors*, 1998 (4) SCC 517.

---

<sup>49</sup> See, for e.g., S.C. 355/2012, decided by the FTC in Belgaum on 7/8/2014 and S.C. 249/2013, decided by the FTC in Belgaum on 1/7/2014.

<sup>50</sup> Criminal Appeal No. 1342 of 2012, decided on May 16, 2014.

evidence showed the victim to be habituated to sexual intercourse. This is an extremely disturbing finding as it shows that the judges in the special fast track courts have failed to follow recent Supreme Court precedents that explicitly prohibit the two-finger test from being used and also make clear that the prior sexual conduct of the victim is irrelevant for determining consent.

Historically, the two-finger test has been conducted during the medical examination of a rape victim to check two factors: to decide whether the hymen is torn and to determine the laxity of the vagina. The reason for conducting the two-finger test was to answer the question of whether the victim was habituated to sexual intercourse. When introduced as evidence in a rape trial, the opinion of the medical officer on the result of the two-finger test has often been used to the detriment of the victim of sexual assault, despite the fact that the victim's sexual history is irrelevant in determining whether rape has been committed in the particular instance complained of. There is an abundance of case law to support the proposition that, the fact of whether the victim was habituated to sexual intercourse is

totally irrelevant<sup>51</sup> and that evidence of the Medical Examiner of the victim being habituated to sexual intercourse does not discard the Prosecution's case.<sup>52</sup>

The Supreme Court in the case of *Lillu v. State of Haryana*<sup>53</sup> relied upon the International Convention on Economic, Social, and Cultural Rights 1966 and United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 to affirm the view that legal recourse made available to the rape survivors must not be designed in a way to retraumatize them or violate their physical or mental dignity. Most importantly the Court stated that the two finger test “*violates the right of rape survivors to privacy, physical and mental integrity and dignity*”. This decision is irrefutably most welcoming and serves as an affirmation of rights of rape survivors.

The Department of Health Research (DHR) has recently issued guidelines on Forensic Medical Care for Victims of Sexual Assault.<sup>54</sup> Based

---

<sup>51</sup> See, for e.g., *State of Punjab v. Ramdev Singh*: AIR 2004 SC 1290; *State of Uttar Pradesh Vs. Pappu alias Yunus and Anr*: AIR 2005 SC 1248; *Narendra Kumar v. State*: AIR 2012 SC 2281.

<sup>52</sup> *State of Punjab v. Ramdev Singh*: AIR 2004 SC 1290, ¶7.

<sup>53</sup> AIR 2013 SC 1784

<sup>54</sup> DHR Guidelines, Forensic Medical Care for Victims of Sexual Assault, available @

on various Supreme Court judgments which have held information regarding the past sexual conduct of the victim to be wholly irrelevant, these guidelines specifically state, with respect to the two finger test, that “*the procedure is degrading and medically and scientifically irrelevant*”.<sup>55</sup> The guidelines prohibit the conduct of the test and also prohibit the identification of the victim as being habituated to sexual intercourse either on the basis of this test or any other method.

The Verma Committee Report also stated that the issue of whether rape had occurred was a legal question and not a medical diagnosis. As a result, doctors should not, on the basis of the medical examination, come to any conclusions as to whether or not the sexual intercourse amounted to rape. The report also states that the two-finger test, to ascertain the laxity of the vaginal muscles, must not be conducted, and that conclusions/observations such as “habituated to sexual intercourse” should not be made and that this practice be forbidden by law.

---

<http://www.icmr.nic.in/dhr/pdf/1%20DHR%20For%20ensic%20Medical%20Manual%20Sexual%20Assault.pdf>

<sup>55</sup> DHR Guidelines, Forensic Medical Care for Victims of Sexual Assault, Page 19.

The Supreme Court’s decisions and the DHR guidelines read together as well as the recommendations in the Verma Committee Report are all steps in the right direction to put an end to this inhumane practice of the two-finger test and to ensure that the sexual history of the victim is not part of the evidence for determining whether forcible sexual intercourse occurred on a particular occasion. What is critical though is that courts, prosecutors and medical examiners actually follow Supreme Court precedent and the DHR guidelines when dealing with cases of rape and sexual assault. Our review of the judgments from the special fast track courts and special court in Karnataka suggests that this is not yet the case. The language used in the judgments of the special fast track courts and the special court, the description of the medical tests and how the courts have interpreted the medical evidence all point to a urgent need for providing specialized training to the judges of the special fast track courts and special court to ensure that they deal with cases of rape and sexual assault sensitively and in a manner that is consistent with the guidelines laid down by the Supreme Court.

## V. FINDINGS AND RECOMMENDATIONS

### *Summary of Findings*

Our study of the special fast track courts in Karnataka raises a number of concerns on their effectiveness at both the substantive and procedural levels. Our principal findings can be summarized as follows:

- (i) When compared with the rest of the criminal justice system, the special fast track courts appear to be relatively quicker in disposing cases. However, they do not appear to facilitate the disposal of a large number of cases and, as a consequence, case pendency in these courts remains high.
- (ii) The special court established to try cases under POCSO appears to be efficient at the timely disposal of cases, but the substantive concerns discussed below apply to the special court as well.
- (iii) The conviction rate of these courts is extremely low at 16.8% for the special fast track courts and 7.8% for the special court for child sexual abuse.
- (iv) The primary reason for the large number of acquittals is the incidence of witnesses turning

hostile. The judgments reviewed revealed a disturbing trend of the prosecution making little effort to present alternative evidence or conduct a fuller investigation when faced with hostile witnesses and of courts not taking a proactive role in questioning the suspicious circumstances that caused witnesses in almost all of the cases to turn hostile. Given that 65 of the 80 judgments we analysed involved the complainants turning hostile, taking measures for the protection of complainants and witnesses to enable them to testify in safety is particularly critical.

- (v) A close reading of these judgments reveals significant substantive concerns with the manner in which the courts considered the evidence, and in particular medical evidence, placed before them. The reliance upon out-dated tests such as the two-finger test and references to the prior sexual history of the victim point to an urgent need for providing training to the judges of the special fast track courts and special court on

the Supreme Court's guidelines in trying cases of rape, sexual assault and child sexual abuse.

- (vi) At a procedural level, these special fast track courts do not have any fast track procedures and the majority do not even have dedicated court-rooms and judges. Further, these judges and prosecutors are not given any specialised training in how to deal with these cases. It is clear from their functioning that the mere establishment of special fast track courts without procedures or training is insufficient to ensure speedy justice to the victims.

### ***Recommendations***

- (i) *Need for Special Legislation*: One of the critical needs that emerges from this study is that they need to have a legislative foundation. The absence of legislative backing results in two problematic issues. First, as is seen from the case of the special fast track courts in Karnataka as well as other fast track courts set up elsewhere in the country – that these courts tend to be set up on an ad-hoc basis in response to political compulsions and are often closed down in an equally ad-hoc manner. Second,

there is no framework setting out the purpose of these courts, their mode of functioning or any special procedures to be followed, which has resulted in these special courts functioning like any other courts. In order to ensure that such special courts are set up as permanent institutions and serve the purpose for which they are established, there should either be a separate law establishing these courts or amendments to the Criminal Procedure Code, mandating how the special fast track courts should function. The legislation should also lay down procedures for speedy disposal of cases and for special measures to be taken for the protection of victims and witnesses.

- (ii) *Training*: Our analysis of the judgments revealed a critical need for training on dealing with sexual assault cases for prosecutors, judges and other participants in the criminal justice system. Specialized and ongoing training on violence against women should at a minimum be provided to the following key participants: judicial officers, prosecutors, lawyers and registrars. Further, the legislation establishing these courts should also include a requirement for

periodic studies of the functioning of the courts and training of court staff, including judges and prosecutors.

(iii) Provision of Support Services:

The legislation should provide for victim support services, including interpreters, social workers and other services to protect victims, enable them to testify in safety and reduce the trauma they might experience.

(iv) Periodic Monitoring and

Evaluation: Once established, special courts should be subject to periodic monitoring to assess their effectiveness. The legislation should provide for this, by allowing for a data collection method to monitor and evaluate the performance of these courts.

(v) Requirements of Special Sexual

Offences Courts: Finally, special courts established for sexual violence cases should have the following requirements to ensure

that there is both speedy and substantive justice:

- a. Specially selected judicial officers, particularly for their attitude, knowledge and skills;
- b. Specialized prosecutors;
- c. Provision of specialized, free and timely legal advice and representation;
- d. Victim support workers;
- e. Special arrangements for victim safety at court, such as separate waiting rooms for victims, separate entrances and exits, remote witness facilities and appropriately trained security staff. The provision of interpreters is also essential;
- f. Mechanisms for collaboration with other court agencies and non-government organizations.

*cover page design : Riddhi Modi*

## Jayna Kothari



Jayna is one of the founder members of CLPR. She graduated from University Law College with a B.A.L LL.B degree in 1999. She thereafter completed her BCL at the University of Oxford. She has also taught in University Law College, Bangalore as well as National Law School of India University, Bangalore. In 2008, Jayna was awarded the Wrangler D.C. Pavate Fellowship in the University of Cambridge. She is also a recipient of the National Child Rights Fellowship, 2010 awarded by Child Rights and You (CRY).

Jayna has a litigation practice of 15 years and appears in the Supreme Court, the Karnataka High Court and other High Courts in the country. Her focus areas of interest and expertise include constitutional law and social rights, disability law, gender and public interest lawyering.

Her book, "The Future of Disability Law in India" was published by OUP in 2012.

## Aparna Ravi



Aparna is a Senior Researcher at CLPR. Aparna graduated with an A.B. in Government from Harvard University in 2000 and a J.D. from New York University School of Law in 2003. Prior to joining CLPR, Aparna worked as a corporate and capital markets lawyer in London and New York for over 10 years, initially at a law firm and subsequently as in-house counsel at Credit Suisse in London. Her main areas of interest include human rights, education and public policy and governance.

At CLPR, her work has included the implementation of socio-economic rights, primarily education and public health, and empirical research on the functioning of various dispute resolution systems in India.