

# A Decade of POCSO

November 2022



*Knowledge Partner*



# A Decade of POCSO

*Developments,  
Challenges and  
Insights from  
Judicial Data*

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an independent,  
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legal research to  
help make  
better laws.**



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# List of Abbreviations

<b>APP</b>	Additional Public Prosecutor
<b>CCL-NLSIU</b>	Centre for Child and the Law, National Law School of India University, Bangalore
<b>CEDAW</b>	Convention on Elimination of All Forms of Discrimination Against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CRC-OP-SC</b>	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
<b>CrPC</b>	Code of Criminal Procedure
<b>CWC</b>	Child Welfare Committee
<b>DCPCR</b>	Delhi Commission for Protection of Child Rights
<b>DCPU</b>	District Child Protection Unit
<b>FIR</b>	First Information Report
<b>FSL</b>	Forensic Science Laboratory
<b>FTC</b>	Fast Track Court
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IPC</b>	Indian Penal Code
<b>JJB</b>	Juvenile Justice Board
<b>MHA</b>	Ministry of Home Affairs
<b>MM</b>	Metropolitan Magistrate
<b>NCPCR</b>	National Commission for Protection of Child Rights
<b>NCRB</b>	National Crime Records Bureau
<b>POCSO Act</b>	Prevention of Children from Sexual Offences Act, 2012
<b>PP</b>	Public Prosecutor
<b>SAARC</b>	South Asian Association for Regional Cooperation
<b>SCC</b>	Summary Criminal Cases
<b>SCPCR</b>	State Commission for Protection of Child Rights
<b>SPP</b>	Special Public Prosecutor
<b>UNICEF</b>	United Nations Children's Fund
<b>UoI</b>	Union of India

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Errors, if any, are the authors' alone. This report is an independent, non-commissioned study undertaken by the Vidhi Centre for Legal Policy, an independent think-tank doing legal research to make better laws and improve governance for the public good in collaboration with the DE JURE team at the World Bank.

# Executive Summary

On November 14, 2022, the POCSO Act completes a decade of being on the statute books in India. When enacted, the POCSO Act marked the culmination of years of campaigning for a dedicated domestic legislation on child sexual abuse. 10 years is a reasonable time period to analyse how this legislation has been functioning and how far it has achieved its stated objectives. This examination of POCSO is also an opportunity to reflect on what has worked and what needs to be improved in the criminal justice system's response to child sexual abuse.

To this end, the Justice, Access and Lowering Delays in India (JALDI) Initiative at Vidhi Centre for Legal Policy has collaborated with the Data Evidence for Justice Reform (DE JURE) program at the World Bank to study the role of the judiciary in the implementation of the POCSO Act in India. This study assesses the implementation of the POCSO Act in the last 10 years by analysing case laws, policy interventions and case metadata collected from eCourts. Since the Special Courts under the POCSO Act perform a critical role in the achievement of the above purpose, this study is centred around data on POCSO courts scraped from eCourts.

Further, to understand how courts, particularly the higher judiciary, have interpreted the provisions of the POCSO Act, we undertook an extensive study of judgments. We conducted interviews with multiple stakeholders in the child protection ecosystem to understand the ground realities. In order to lend support to our findings from eCourts metadata, we undertook a judgment analysis for a small sample of cases and also analysed policy interventions.

However, what sets this study apart and enables it to significantly contribute to the analysis undertaken by multiple studies that have come before it is that it examines nearly 400,000 cases (spanning 28 states and Union Territories) collected from eCourts. After cleaning this data, 230,730 cases have been analysed to understand the pendency and disposal patterns of POCSO cases. The sheer scale of this study makes it the largest ever study undertaken on POCSO courts yet.



# I

## Key Findings

### A

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#### POCSO Trials as per eCourts database

- POCSO trials on eCourts, even when adjusted for population, vary significantly across different states and districts studied. Delhi has the highest number of POCSO trials in the country with the figure reaching 13.54 cases per 100,000 population in 2018.
- Five districts with the highest number of POCSO trials (pending and disposed) are: Namchi (Sikkim), New Delhi, Central Delhi, Medak (Telangana) and West Garo Hills (Meghalaya).

### B

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#### Pendency of POCSO cases

- Uttar Pradesh has the highest pendency with more than three-fourths (77.77%) of the total POCSO cases filed between November, 2012 and February, 2021 pending. On the other hand, at 80.2%, Tamil Nadu has the highest disposal percentage (percentage of total filings since November, 2012 that were disposed as of February, 2021) of all the states and UTs studied.
- Though pendency of POCSO cases was increasing gradually over the years, there was a sharp increase of 24,863 cases in the number of pending cases between 2019 and 2020 which could be attributed to the COVID-19 pandemic.
- Five districts with the highest pendency percentages (percentage of total filings since November, 2012 that were pending as of February, 2021) are: Lucknow (Uttar Pradesh), Hardoi (Uttar Pradesh), Budaun (Uttar Pradesh), Allahabad (Uttar Pradesh) and Howrah (West Bengal).

### C

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#### Disposal of POCSO cases

- On an average, it takes 509.78 days for a POCSO case to be disposed of.
- For every one conviction in a POCSO case, there are three acquittals.
- Acquittals are significantly higher than convictions for all of the states studied. For instance, in Andhra Pradesh, acquittals are seven times more than convictions; and in West Bengal, acquittals are five times more than convictions.
- In Kerala, the gap between acquittal and conviction is not very high with acquittals constituting 20.5% of the total disposals and convictions constituting 16.49%.
- In 2020, at 1284.33 days, Delhi had the highest average case length (i.e., the number of days an average POCSO case remained pending before getting disposed of) out of the states studied.
- In most states, courts spend more time in hearing cases that ultimately end in conviction as compared to cases that end in acquittal.
- The mean case length in cases of acquittal varies between 179.62 days in Chandigarh to 1027.52 days in Himachal Pradesh.
- For cases that end in conviction, the mean case length ranges from 311.72 days in Chandigarh to 1373.2 days in Delhi.
- Chandigarh and West Bengal are the only states where the average time taken for convictions is within the statutorily prescribed period of one year.

### D

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#### Stages in a POCSO case

- Average number of days taken per POCSO case in different states varies between 877.96 days in Himachal Pradesh to 215.43 days in Chandigarh.
- Average number of hearings taken per POCSO case in different states varies between 11.12 hearings in the state of Kerala to 31.41 hearings in Gujarat.

- Over 40% of the total number of days and hearings spent on POCSO trials are being spent on the stage of evidence.
- About 10% of the number of days and hearings in a POCSO trial are spent on the stage of charge.
- On average, 183.41 days are spent on the evidence stage in a typical POCSO case. At 593.03 days, 73.89% of the total number of days spent on average on a POCSO case in Delhi are being spent on the evidence stage.
- On average, 9.21 hearings are spent on the evidence stage in a typical POCSO case.
- At 71.59%, Punjab spends the highest proportion of its total hearings on the evidence stage holding an average of 13.73 hearings for evidence per case.

## **E**

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### **Nature of POCSO cases**

- Over 56% of all the POCSO cases correspond to the offences of penetrative sexual assault (31.18%) and aggravated penetrative sexual assault (25.59%), which prescribe the most stringent punishments under the POCSO Act.
- There is no significant variation between acquittal and conviction percentages for different offences with convictions varying between 21 and 26% for cases of penetrative sexual assault and aggravated sexual assault respectively. However, convictions are lowest in cases of sexual harassment (18.16%).

# II

## Recommendations

### A

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#### Legislative and policy recommendations:

- Reduce the age of consent from 18 to 16 years with adequate safeguards.
- Hold public consultations with domain experts before making any substantive amendments to the Act.

### B

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#### Making POCSO Courts functional:

- Expedite the appointment of adequately trained Special Public Prosecutors exclusively for POCSO courts where they have not been appointed. Progress for this can be monitored by respective High Courts.
- Employ a 'hybrid' approach for recording of evidence wherein the evidence of certain witnesses like doctors, forensic experts etc. can be recorded virtually.
- Ensure the appointment and continuous presence of support persons in every pre-trial and trial stage.
- Create mechanisms to enable judges and prosecutors to have the required skill set to deal with the 'vicarious trauma' they experience when dealing with cases of heinous sexual offences committed against children.

### C

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#### Capacity building at all levels

- Conduct periodic integrated capacity building programmes for stakeholders with a focus on sensitivity training.

### D

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#### Increasing accuracy and uniformity in eCourts data

- Introduce a standardised drop-down menu for inputting information pertaining to the name of the legislation, case type, court complex, police station etc.
- Standardise Act names to make it easier to get accurate data using the Act name feature of eCourts.
- Add interpretable entries in the Hearings Table in order to make it a source of key information pertaining to cases, particularly pending cases.
- Provide clear and usable information pertaining to outcomes of cases.
- Provide information pertaining to date of filing of FIR, chargesheet, and date of cognizance by court on eCourts.

For a complete list of recommendations that various stakeholders can undertake, please see Chapter VI of this report.

An evaluation of the kind that readers will find in this report is an attempt at systematically capturing the performance of this critical legislation meant to protect one of the most vulnerable sections of society, i.e., children. It is by no means exhaustive but is aimed at inculcating the practice of regular Legislative Impact Assessment. The tenth year since the law has been in force is as good as any to make a beginning.



# Making of the POCSO Act

## *Tracing Legislative History*

Child sexual abuse has been one of the lesser talked about criminal justice issues in India. Indian society's tendency to hide this menace has resulted in sparse historical discourse around the issue.<sup>1</sup> More recently however, multiple studies have documented the incidence of sexual abuse against children and the criminal justice system's response to it,<sup>2</sup> especially after the promulgation of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The Act aims to curb child sexual abuse by increasing penalties for sexual offences against children and creating a sensitive criminal justice system to support child victims.

The POCSO Act marks the culmination of years of campaigning for dedicated domestic legislation on child sexual abuse. Several actors—national and international—have contributed to the shaping of this Act. The section below gives an overview of these actors, their discourses and their role in the development of the current framework to protect children from sexual abuse and sexual exploitation.

- 
- 1 Jyoti Belur and Brijesh Bahadur Singh, 'Child sexual abuse and the law in India – A Commentary' (2015) *Crime Sci* 4:26 <[https://www.researchgate.net/publication/283154821\\_Child\\_Sexual\\_Abuse\\_and\\_the\\_Law\\_in\\_India\\_A\\_commentary](https://www.researchgate.net/publication/283154821_Child_Sexual_Abuse_and_the_Law_in_India_A_commentary)> accessed 2 December 2021; Pallavi Nautiyal and Arun Mal, 'Towards Protection of Children against Sexual Abuse: No Child's Play' (2010) 3 *NUJS L. Rev.* 77.
  - 2 Centre for Child and the Law, National Law School of India University, *Study on the Working of Special Courts Under the POCSO Act, 2012 in Andhra Pradesh* (28 November, 2017) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022; Centre for Child and the Law, National Law School of India University, *Study on the Working of Special Courts Under the POCSO Act, 2012 in Karnataka* (8 August 2017) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022; Centre for Child and the Law, National Law School of India University, *Study on the Working of Special Courts Under the POCSO Act, 2012 in Maharashtra* (7 September 2017) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022; Centre for Child and the Law, National Law School of India University, *Report of Study on the Working of Special Courts Under the POCSO Act, 2012 in Delhi* (29 January 2016) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022; Centre for Child and the Law, National Law School of India University, *Study on the Working of Special Courts Under the POCSO Act, 2012 in Assam* (13 February 2017) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022; Dr. Loveleen Kacker and others, 'Study on Child Abuse' (Ministry of Women and Child Development, 2007); Bharti Ali, Maharukh Adenwalla and Sangeeta Puneekar, 'Implementation of POCSO Act – Goals, Gaps and Challenges' (*HAQ Centre for Child Rights and Forum Against Sexual Exploitation of Children*, 2018) <<http://haqcrc.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf>> accessed 2 December 2021; Bharti Ali and Urmi Chudgar, '#Data4Justice - Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana (2012 to April 2020)' (*HAQ: Centre for Child Rights and CivicDataLab*, 2021) <<https://www.haqcrc.org/wp-content/uploads/2021/11/unpacking-judicial-data-to-track-implementation-of-the-pocso-act-in-assam-delhi-and-haryana-full-report.pdf>> accessed 2 December 2021.

# I

## The international coalition against child sexual assault

The global coalition against sexual abuse and exploitation of children emerged out of the larger movement towards recognition of child rights.<sup>3</sup> This movement focused on eliminating all forms of abuse and exploitation of children and providing them with a healthy environment for their development. The timeline below highlights key events and conventions that have resulted in the present global coalition against child sexual abuse.

### KEY

**Date**

**Event**

Description

**1924**

#### **The Geneva Declaration of the Rights of the Child**

The Declaration of Geneva recognised that humanity 'owes to the Child the best it has to give'<sup>4</sup> and listed five principles directed toward the development of children. However, these principles considered children as an object of protection, instead of holders of rights.<sup>5</sup> Further, the Declaration was directed towards 'men and women of all nations' and did not put any obligation on the member states.<sup>6</sup> Despite these shortcomings, the Declaration of Geneva was a critical first step in furthering the cause of child rights and building a platform for its further development.

**1959**

#### **Declaration of the Rights of the Child, 1959**

The United Nations General Assembly adopted the Declaration of Rights of the Child in 1959. As a next step towards strengthening child rights, the Declaration recognised the need for the protection of children against all forms of neglect, cruelty and exploitation.<sup>7</sup>

**1966**

#### **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

Article 10 of the ICESCR recognised that children and young persons should be protected from economic and social exploitation. It further stated that their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.<sup>8</sup>

**1990**

#### **United Nations Convention on the Rights of the Child (CRC)**

After decades of discussions and deliberations,<sup>9</sup> the CRC was adopted by UNGA in 1989 and entered into force in 1990. CRC was a landmark step as it offered a legally binding instrument that recognised children's rights. The Convention also established a Committee on the Rights of the Child to monitor the progress of the member states in realising the goals envisioned by the instrument.<sup>10</sup>

Among other provisions, CRC recognised state parties' obligation to protect children from all forms of sexual abuse and sexual exploitation. To

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- 3 UNICEF, 'History of Child Rights' <<https://www.unicef.org/child-rights-convention/history-child-rights>> accessed 12 May 2022.
  - 4 Geneva Declaration of the Rights of the Child (adopted 26 September 1924) LNOJ Spec Supp 21, 43.
  - 5 United Nations, Legislative History of the Convention on the Rights of the Child (2007) 3 UN Doc HR/PUB/07/1 <<https://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf>> accessed 6 December 2021.
  - 6 Ibid.
  - 7 Declaration of Rights of the Child (adopted on 20 November 1959) UNGA Res 1386.
  - 8 International Covenant on Economic, Social and Cultural Rights, art 10 (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
  - 9 United Nations, Legislative History of the Convention on the Rights of the Child (2007) 29 UN Doc HR/PUB/07/1 <<https://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf>> accessed 6 December 2021.
  - 10 Convention on Rights of the Child, art 43 (adopted 20 November 1989, entered into force 2 September 1990) 1557 UNTS 3.

this end, Articles 19<sup>11</sup> and 34<sup>12</sup> of CRC mandated comprehensive state action and international collaboration to prevent child sexual abuse and exploitation.

The Optional Protocol<sup>13</sup> to the CRC on the sale of children, child prostitution and child pornography was adopted on 25 May 2000.

## 2000

### **United Nations Convention against Transnational Organized Crime<sup>14</sup>**

On 15 November 2000, the United Nations Convention against Transnational Organized Crime was adopted by the UNGA as the main international instrument in the fight against transnational organized crime.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,<sup>15</sup> also adopted on the same date, supplements the Convention.

## 2002

### **Convention on Prevention and Combating Trafficking in Women and Children for Prostitution**

In 2002, South Asian Association for Regional Cooperation (SAARC) adopted the Convention on Prevention and Combating Trafficking in Women and Children for Prostitution<sup>16</sup> to undertake collective measures against all forms of child and adolescent sexual violence.

## 2011

### **General Comment 13—The Right of the Child to Freedom from All Forms of Violence**

The obligation of countries under CRC, to prevent child sexual abuse, was further strengthened by the General Comment 13 published by the Committee on the Rights of the Child—the right of the child to freedom from all forms of violence. In General Comment 13, the Committee clarified the definition of sexual abuse and exploitation,<sup>17</sup> and identified the measures that shall be adopted by the governments to address this concern.<sup>18</sup>

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11 Convention on Rights of the Child, art 19 (adopted 20 November 1989, entered into force 2 September 1990) 1557 UNTS 3.

12 Convention on Rights of the Child, art 34 (adopted 20 November 1989, entered into force 2 September 1990) 1557 UNTS 3.

13 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002) UNGA Res 54/263.

14 United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) UNGA Res 55/25.

15 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) UNGA Res 55/25.

16 South Asian Association for Regional Cooperation Convention on Prevention and Combating Trafficking in Women and Children against Prostitution 2002.

17 As per ¶25 of the General Comment 13, “Sexual abuse and exploitation. Sexual abuse and exploitation includes: (a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity;\* (b) The use of children in commercial sexual exploitation; and (c) The use of children in audio or visual images of child sexual abuse; (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.”

\*“Sexual abuse comprises any sexual activities imposed by an adult on a child, against which the child is entitled to protection by criminal law. Sexual activities are also considered as abuse when committed against a child by another child, if the child offender is significantly older than the child victim or uses power, threat or other means of pressure. Sexual activities between children are not considered as sexual abuse if the children are older than the age limit defined by the State party for consensual sexual activities.”

18 UN Committee on Rights of the Child, ‘General Comment 13 – The Right of Child to Freedom from all forms of Violence’ UN Doc CRC/C/GC/13.

## II

### Development of a framework against child sexual abuse in India

Cognisant of the importance of children in our society, the Constitution of India has incorporated several provisions to further their rights and eliminate all forms of exploitation. Chapter III of the Constitution, dedicated to Fundamental Rights, includes provisions to allow special measures for children, overarching the right to equality.<sup>19</sup> A recent amendment has also included a provision for free and compulsory education to all children between 6 to 14 years under the Chapter III of the Constitution.<sup>20</sup> The Chapter also includes dedicated Articles to prohibit the trafficking of humans and the employment of children in factories.<sup>21</sup> The Constitution has further directed the government to endeavour to provide early childhood care and improve public health.<sup>22</sup>

Pursuant to this objective, India has also been a signatory to landmark international instruments on child rights and against child sexual abuse, such as the Convention on the Rights of the Child (CRC – date of accession – 11 December 1992), Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC),<sup>23</sup> and the SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution (signed by India on 5 January 2002).

However, despite these strong constitutional and international law frameworks towards strengthening child rights, India lacked any dedicated provision against child sexual abuse till 2012. Even after independence, the criminal law failed to recognise sexual assault and exploitation of children as

separate offences and continued to try these cases under the generic provisions for offences affecting the human body and sexual offences. These generic provisions were vastly ill-equipped to address all the instances of sexual exploitation against children.<sup>24</sup> While the provision against rape under the Indian Penal Code, 1860, section 375, criminalised sexual offences against women which included penile-vaginal penetration, other forms of aggravated sexual assault did not attract the provision for rape and were tried under the provisions for unnatural offences or assault to woman with intent to outrage her modesty.<sup>25</sup> Further, these provisions failed to criminalise the instances of sexual assault and molestation of boys.

The offences under IPC, intended to criminalise sexual offences against women, fell short of addressing the complexities, social impact and mental impact of sexual exploitation of children. The nature of the criminal trial under the Code for Criminal Procedure, 1973 did not account for the needs of child witnesses who were victims of sexual offences and the support they need to participate in the criminal justice process.

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<sup>19</sup> Constitution of India 1950, art 15 (3).

<sup>20</sup> Constitution of India 1950, art 21A introduced by the Constitution (Eighty-sixth Amendment) Act 2002.

<sup>21</sup> Constitution of India 1950, art 23 and 24.

<sup>22</sup> Constitution of India 1950, art 45 and 47.

<sup>23</sup> Ratified by India on 16 August 2005.

<sup>24</sup> Pallavi Nautiyal and Arun Mal, 'Towards Protection of Children against Sexual Abuse: No Child's Play' (2010) 3 NUJS L. Rev. 77.

<sup>25</sup> Ibid.



In *State of Punjab v Major Singh*, while addressing the appeal in a child sexual assault case where the accused was charged with section 354 of IPC, assault with the intent to outrage her modesty, the High Court of Punjab acquitted the accused holding that a girl of seven and a half months does not possess womanly modesty, and therefore, the provision does not apply to the case.<sup>26</sup> The Supreme Court later reversed this decision.<sup>27</sup> Over the years, several deliberations were held and recommendations were made by the Law Commission of India to overcome these shortcomings in the law to address cases related to child sexual abuse:

## KEY

### Date

### Law Commission Report

### Description

### 1971

### 42nd Law Commission Report on Indian Penal Code

The report took cognisance of the lack of any provision to address the offence of indecent assault on children and noted the compulsion on the courts to apply 'restrictive provisions' like section 354 of IPC for instances of child sexual abuse.<sup>28</sup> The report suggested the inclusion of a dedicated provision to penalise the offence of sexual abuse of children of all ages and sex.<sup>29</sup> However, the report refrained from recommending the inclusion of the offence for sexual assault on a boy and stated that 'such lascivious acts on part of women are socially not so evil as to merit a penal provision.'<sup>30</sup>

### 1997

### 156th Law Commission Report on Indian Penal Code

In the 1990s, the international law obligations under CRC catalysed the conversation for special provisions to address child sexual abuse in India. In 1997, the 156th report of the Law Commission recognised these obligations under CRC to protect children from sexual exploitation and abuse.<sup>31</sup>

However, the report opined that the existing provisions against sexual offences, i.e. offences of 'rape', 'assault against women with intent to outrage their modesty', and 'unnatural offences' were sufficient to address this issue and suggested a minor increase in the punishments under these provisions.<sup>32</sup> The report further suggested that provisions related to the offence of hurt and use of criminal force, be applied to address the instances of sexual abuse against boys.<sup>33</sup>

The recommendations by the 156th fell short of addressing the issues concerning sexual assault and exploitation of children and were criticised by civil society organisations and the judiciary.

On 9 August 1999, the Supreme Court, in its order, requested the Law Commission of India to reconsider its opinion based on the submission by a child and women rights organisation Sakshi regarding the application of existing provisions under the IPC to address the instances of child sexual abuse.<sup>34</sup>

### 2000

### 172nd Law Commission Report on Review of Rape Laws

In 2000, in the 172nd report, the Law Commission recommended a major amendment to address the

26 AIR 1963 Pun 443.

27 AIR 1967 SC 63.

28 Law Commission of India, *The Indian Penal Code* (Law Com No 42, 1971) ¶16.86.

29 Ibid.

30 Ibid.

31 Law Commission of India, *The Indian Penal Code* (Law Com No 156, 1997) ¶9.55.

32 Ibid.

33 Ibid.

34 *Sakshi v Union of India* (1999) 6 SCC 591.

offence of child sexual abuse and exploitation. Key recommendations of the report included

1. An amendment to section 375 of the IPC to include all forms of forced sexual assault under the offence and widen its scope to make the provision gender-neutral.<sup>35</sup>
2. Amendments to increase the penalty in cases where near relations and persons in positions of trust and authority commit the offence of sexual assault.<sup>36</sup>
3. The insertion of the offence of unlawful sexual contact which penalised touching any part of the body of an adolescent with sexual intent and inciting, with sexual intent, adolescent persons to touch any part of the body of any person.<sup>37</sup>
4. The report also suggested changes to evidence and procedural laws to make the court proceedings more appropriate for sexual assault victims and children.<sup>38</sup>

While the Law Commission focused on strengthening and widening the existing provisions to address the offence of child sexual abuse, parallel efforts were being made to strengthen the framework for child rights in India through a dedicated legislation to penalise such offences.

## A

### Need for dedicated legislation for offences against children

In the 1990s, the revelation of a child sexual abuse racket in a major tourist hub of India, Goa, shocked the public conscience and brought forth the concern regarding sexual abuse and exploitation of children.<sup>39</sup> Concerned with such instances, in 2003, the state government of Goa enacted Goa Children's Act to promote child rights and children's development in the state.<sup>40</sup>

Parallely, in 2000, the Special Expert Committee formed under the chairpersonship of Justice VR Krishna Iyer and facilitated by the India office of UNICEF presented a draft code for child rights in India, Children's Code Bill, 2000.<sup>41</sup> The draft aimed to incorporate the spirit of CRC into the Indian legislative framework.<sup>42</sup> These two initiatives established the basis for dedicated legislation against child sexual abuse.

In 2005, the Department of Women and Child Development, in consultation with civil society organisations, prepared the Draft Offences against Children (Protection) Bill, 2005 to address different offences targeted against children, including sexual offences.<sup>43</sup> During discussions over this Bill, while some civil society organisations suggested incorporating these provisions under IPC, the Ministry of Home Affairs suggested that there should be separate comprehensive legislation against child abuse.<sup>44</sup> This viewpoint was further

35 Law Commission of India, *Review of Rape Laws* (Law Com No 172, 2000) ¶3.1.

36 Ibid.

37 Ibid.

38 Ibid.

39 Fredrick Norouha, 'A Can of Worms' *Outlook* (10 April 1992) <<https://www.outlookindia.com/magazine/story/a-can-of-worms/201154>> accessed 7 December 2022; See *State of Goa v Freddy A. Peats* (1992) State of Goa Sessions Case No 24/1992.

40 Goa Children's Act 2003.

41 Dr. Savita Bhakhry, *Children in India and their Rights* (National Human Rights Commission, 2005) 37.

42 LS Deb, 24 July 2001, 13 series, vol XVII, p 204.

43 Oscar Fernandes and others, 'Two Hundred Fortieth Report on The Protection of Children Against Sexual Offences Bill, 2011' (Department-Related Parliamentary Standing Committee on Human Resource Development, 21 December 2011) ¶2.1.

44 Ibid.

strengthened by the Study of Child Abuse, 2007 report published by the Ministry of Women and Child Development which helped the governments in identifying the gravity of this concern.<sup>45</sup>

The Study of Child Abuse covered 13 states with a sample size of 12447 children, 2324 young adults and 2449 stakeholders. It looked at different forms of child abuse: Physical Abuse, Sexual Abuse and Emotional Abuse and Girl Child Neglect in five different evidence groups, namely, children in a family environment, children in school, children at work, children on the street and children in institutions.<sup>46</sup> The study found that 50.76 per cent of children surveyed reported having faced one or more form of sexual abuse.<sup>47</sup> Contrary to the general perception, the overall percentage of boys reporting experiencing sexual abuse was much higher<sup>48</sup> than that of girls. This study prompted the government to start taking steps toward creating a sound legal framework to address sexual abuse and sexual exploitation of children.

## **B**

### **Enactment of the Protection of Children from Sexual Offences Act, 2012**

In January 2010, during the discussions on the Offences against Children (Protection) Bill within the Union Government, an opinion emerged that instead of general legislation addressing different forms of abuse, the Bill should focus on the issue of sexual abuse and exploitation of children.<sup>49</sup> Further, it was discussed that other statutes, such as the IPC and the Indian Evidence Act, should be parallelly

amended to prevent secondary victimisation and ensure speedy justice to children.<sup>50</sup>

As a result of these discussions, in September 2010, the Ministry of Women and Child Development, along with other ministries prepared a draft Protection of Children from Sexual Offences Bill, 2010.<sup>51</sup> After several rounds of revisions and discussions, the Protection of Children from Sexual Offences Bill was presented in Rajya Sabha on 23 March 2011.

This was followed by a series of deliberations in the Parliamentary Standing Committee<sup>52</sup> and the discussions in both houses of the Parliament. Ultimately, on 22 May 2012, the POCSO Act was passed in the Parliament and came into force on Children's Day, 14 November 2012. The Act created a dedicated framework to penalise sexual harassment and sexual abuse of children and provided specific sections to guide different aspects of criminal trial including recording of statements and medical examinations in cases of child sexual abuse.

## **C**

### **The movement towards stringent punishments under the POCSO, 2012**

The POCSO Act was amended in 2013 and 2018. More recently, in 2019, concerned with rising cases of sexual offences against children and in response to coming to light of certain heinous sexual crimes committed against children, the Ministry of Women and Child Development introduced an amendment to the Act to deter offenders and ensure

<sup>45</sup> Dr. Loveleen Kacker and others, 'Study on Child Abuse' (Ministry of Women and Child Development, 2007).

<sup>46</sup> Ibid.

<sup>47</sup> Ibid (Forms of sexual abuse includes sexual assault, making the child fondle private parts, making the child exhibit or exhibiting private body parts and being photographed in the nude).

<sup>48</sup> 52.94% compared to 47.06% for girls. 75.

<sup>49</sup> Oscar Fernandes and others, 'Two Hundred Fortieth Report on The Protection of Children Against Sexual Offences Bill, 2011' (Department-Related Parliamentary Standing Committee on Human Resource Development, 21 December 2011) ¶2.3.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

safety for children. The amendment increased the minimum punishment for penetrative sexual assault from seven years imprisonment to ten years<sup>53</sup> and aggravated penetrative sexual assault from ten years imprisonment to twenty years.<sup>54</sup> It has also introduced the punishment of the death penalty for the offence of aggravated penetrative sexual assault.<sup>55</sup> In addition to these changes, the amendment Act has also introduced offences for transmitting or propagating pornographic materials involving a child and failing to destroy or report such pornographic materials.<sup>56</sup>

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53 Protection of Children against Sexual Offences (Amendment) Act 2019, s 3.

54 Ibid s 5.

55 Section 6(1) of the POCSO 2019.

56 Ibid s 8.

# Studying POCSO

## *Methodology and Challenges*

Legal data on sexual crimes against children in India is largely compiled by different actors in the Indian justice delivery system. This data however, is fragmented across a plethora of locations, management systems and record-keeping systems. As a case involving child sexual abuse moves through the system, from when it first gets reported to when it is finally disposed of by the court, multiple institutions begin recording information. These institutions range from police stations, private and government hospitals, district Child Welfare Committees, Child Care Institutions (shelter homes), and judicial institutions such as courts and Juvenile Justice Boards. Other monitoring departments and agencies such as the National and State Commissions for Protection of Child Rights, the state department and central Ministry of Women and Child Development and the National Crimes Records Bureau also record aggregate statistics at their end.

Since the exact stage at which the data is being recorded differs across these fora, aggregate statistics on filing and pendency maintained by these institutions are bound to vary. While examining how each of these institutions have dealt with POCSO cases is worthy of investigation and critical to how the Act has been implemented, availability of granular data continues to be a challenge.

# I

## Objective

In November, 2022, it will be 10 years since the POCSO Act came into force. 10 years is a reasonable time period to adjudge how a legislation has been functioning and how far it is from achieving its stated objectives. To this end, the primary objective of this study is to assess the implementation of the POCSO Act since it came into being by analysing case laws, policy interventions and case metadata collected from eCourts. This study is aimed at evaluating whether the POCSO Act has achieved the purpose for which it was enacted, i.e., expeditious disposal of cases in a child-friendly justice delivery system. Since the Special Courts set up under the POCSO Act perform a critical role in the achievement of the above purpose, this study is centred around data on POCSO courts scraped from the eCourts website.<sup>57</sup>

Some of the key questions that this study aims to answer are:

1. Has the POCSO Act achieved its goal of creating a child-friendly justice delivery system?
2. If not, what have been some of the major challenges to the effective implementation of the POCSO Act in India?
3. Since 2012, how has the higher judiciary interpreted certain key provisions of the POCSO Act and any inconsistency between the POCSO Act and other legislations?
4. Have Special POCSO Courts (courts so designated under the POCSO Act) managed to

- complete POCSO trials within the statutorily prescribed period of one year? How much time do different stages in a POCSO trial take? What percentage of POCSO cases actually end in acquittal and conviction? What are the most frequently used provisions of the POCSO Act?
5. How have different states and districts fared on different parameters to evaluate the implementation of the Act?

While it was possible to answer some of these questions by analysing landmark judgment passed by the higher judiciary, looking at policy interventions by the government and various government agencies, and interviewing stakeholders working on the ground, some of these questions could only be answered with data obtained from the courts. For this purpose, data available on eCourts was used for this study. The next section explains why specifically eCourts data was chosen for this study.

# II

## Why this study uses eCourts POCSO data

Information available on the eCourts website is expansive and allows for both granular and aggregate data analysis. However, over the years many problems in collecting and using data from eCourts have been identified.<sup>58</sup> These studies also put forth a compelling case for an increased access to information not just for research purposes but also to inform the system itself of its performance and to provide the private sector impetus to innovate

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<sup>57</sup> The eCourts Mission Mode Project, is a Pan-India Project, monitored and funded by the Department of Justice, Ministry of Law and Justice, Government of India for District Courts across the country. It was conceptualised on the basis of the “National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005” submitted by eCommittee, Supreme Court of India with a vision to transform the Indian Judiciary through Information and Communications Technology enablement of Courts.

<sup>58</sup> Bharti Ali and Urmi Chudgar, *Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana* (HAQ: Centre for Child Rights and CivicDataLab 2021) <<https://justicehub.in/dataset/5467514c-1714-483d-8b82-2fb3984a0cf9/resource/9377bdfc-b723-4617-a74c-9ae508ebe3f3/download/>> accessed 29 June 2022; Vaidehi Misra and Satishwar Kedas, ‘The Delhi Court Roster Review: A Step towards Judicial Performance Evaluations’ (2021) Vidhi Centre for Legal Policy <[https://vidhilegalpolicy.in/wp-content/uploads/2021/02/180221\\_DHC\\_upload-ready.pdf](https://vidhilegalpolicy.in/wp-content/uploads/2021/02/180221_DHC_upload-ready.pdf)> accessed 29 June 2022; DAKSH, ‘Deciphering Judicial Data: DAKSH’s Database’ (2020) <<https://www.dakshindia.org/wp-content/uploads/2020/08/Case-categorization-paper-FINAL.pdf>> accessed 29 June 2022.

solutions using detailed data.<sup>59</sup> While there have been attempts to bridge the data availability gap<sup>60</sup> and publish data sets used for empirical research<sup>61</sup> online, the efforts are few and far between. Lack of accessibility to reliable and complete judicial data continues to be a pressing problem.

For legal researchers, how courts are performing to implement a relatively new special law that directly affects the rights of one of the most vulnerable sections of society, i.e., children, is an important question that deserves answering. Though judicial data related to POCSO cases has been analysed in a number of different studies, due to the difficulties associated with collecting this data, studies have remained limited to specific cities and states only. For instance, studies have focused on Andhra Pradesh,<sup>62</sup> Maharashtra,<sup>63</sup> Delhi,<sup>64</sup> Karnataka,<sup>65</sup> Haryana<sup>66</sup> and Assam.<sup>67</sup> This study is a first of its

kind in terms of the sheer volume of eCourts data analysed and is by far the largest study of eCourts data pertaining to the POCSO Act.

## III

### Scope

For the purpose of this study, eCourts data from 486 districts spanning 28 states and Union Territories has been collected and analysed for the period 2012 to February, 2021. Secondary data in the form of judicial decisions and policy interventions from across the country has also been analysed with 30-06-2022 being the cut-off date for these two aspects.

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- 59 Prashant Reddy T and others, 'Open Courts in the Digital Age: A Prescription for an Open Data Policy' (2019) Vidhi Centre for Legal Policy <[https://vidhilegalpolicy.in/wp-content/uploads/2019/11/OpenCourts\\_digital16dec.pdf](https://vidhilegalpolicy.in/wp-content/uploads/2019/11/OpenCourts_digital16dec.pdf)> accessed 29 June 2022; Sushant Sinha, 'Indian Kanon - The Genesis and The Legal Thirst' (2011) Cornell University Law School <<https://blog.law.cornell.edu/voxpath/2011/04/22/indian-kanon-the-genesis-and-the-legal-thirst/>> accessed 29 June 2022.
- 60 Justice, Access and Lowering Delays in India, 'Judicial Vacancies in India' (JALDI data portal, Vidhi Centre for Legal Policy 2019) <[https://data.vidhilegalpolicy.in/dashboard/judicial\\_vacancy/index.html](https://data.vidhilegalpolicy.in/dashboard/judicial_vacancy/index.html)> accessed 29 June 2022.
- 61 Justice hub <[https://justicehub.in/dataset?publisher\\_name=CivicDataLab](https://justicehub.in/dataset?publisher_name=CivicDataLab)> accessed 29 June 2022.
- 62 Centre for Child and the Law, National Law School of India University, *Study on the Working of Special Courts Under the POCSO Act, 2012 in Andhra Pradesh* (28 November, 2017) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022.
- 63 Pravin Patkar and Pooja Kandula, '4 Years Since POCSO: Unfolding of the POCSO Act in the State of Maharashtra' (2016) Aarambh India <[http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh\\_4-Years-Since-POCSO.pdf](http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh_4-Years-Since-POCSO.pdf)> accessed 29 June 2022; Centre for Child and the Law, National Law School of India University, *Study on the Working of Special Courts Under the POCSO Act, 2012 in Maharashtra* (7 September 2017) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022.
- 64 Bharti Ali, Maharukh Adenwalla and Sangeeta Puneekar, *Implementation of the POCSO Act: Goals, Gaps and Challenges: Study of cases in Special Courts in Delhi & Mumbai* (2012 - 2015) (HAQ: Centre for Child Rights and FACSE 2017) <[www.haqcrc.org/publication/implementation-pocso-act/](http://www.haqcrc.org/publication/implementation-pocso-act/)> accessed 29 June 2022; Centre for Child and the Law, National Law School of India University, *Report of Study on the Working of Special Courts Under the POCSO Act, 2012 in Delhi* (29 January 2016) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022.
- 65 Centre for Child and the Law, National Law School of India University, *Study on the Working of Special Courts Under the POCSO Act, 2012 in Karnataka* (8 August 2017) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022.
- 66 Bharti Ali and Urmi Chudgar, *Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana* (HAQ: Centre for Child Rights and CivicDataLab 2021) <<https://justicehub.in/dataset/5467514c-1714-483d-8b82-2fb3984a0cf9/resource/9377bdfc-b723-4617-a74c-9ae508ebe3f3/download/>> accessed 29 June 2022.
- 67 Bharti Ali and Urmi Chudgar, *Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana* (HAQ: Centre for Child Rights and CivicDataLab 2021) <<https://justicehub.in/dataset/5467514c-1714-483d-8b82-2fb3984a0cf9/resource/9377bdfc-b723-4617-a74c-9ae508ebe3f3/download/>> accessed 29 June 2022; Centre for Child and the Law, National Law School of India University, *Study on the Working of Special Courts Under the POCSO Act, 2012 in Assam* (13 February 2017) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022.



# IV

## Methodology

### A

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#### Analysis of case law

To understand how courts, particularly the higher judiciary, have interpreted the provisions of the POCSO Act in order to improve its implementation, an extensive study of judgments has been undertaken. The literature review and interviews with stakeholders in the child protection system helped the researchers arrive at a list of important issues that have a bearing on the creation of a child-friendly justice delivery system. Thereafter, case-laws were studied to understand the judiciary's stance on the issues identified.

### B

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#### Analysis of policy interventions

While courts play a crucial role in the implementation of the POCSO Act, there are plenty of institutions in the child protection system that are required to work together to make the system work for children. In this context, Rules and guidelines framed by various government departments (especially the Central Ministry and State Departments of Women and Child Development and the State Police Departments) become important. Statutory bodies like the National and State Commission for Protection of Child Rights (NCPCR and SCPCRs) have also taken steps to make the enforcement of the POCSO Act more child-friendly. These interventions have been collated by surveying the websites of the NCPCR and SCPCRs and using keyword search on Google search to identify policy interventions for specific issues.

### C

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#### Interviews

In order to supplement the information gathered through secondary research and to understand how

the POCSO Act is being implemented on the ground, the researchers conducted structured interviews with multiple stakeholders in the child protection system. Questionnaires were prepared and circulated to the interviewees beforehand and the interviews were conducted online. Questions ranged from asking the stakeholders about their role in the child protection system, the challenges faced, the kind of training received and their suggestions for improving the system. Questions were also tailored in order to get a holistic understanding of the child protection system and understand the problems it is grappling with. Information gathered through these interviews is used at different points in the report to supplement the findings from other sources. Some of the suggestions for improvement feature in the recommendations chapter of this report.

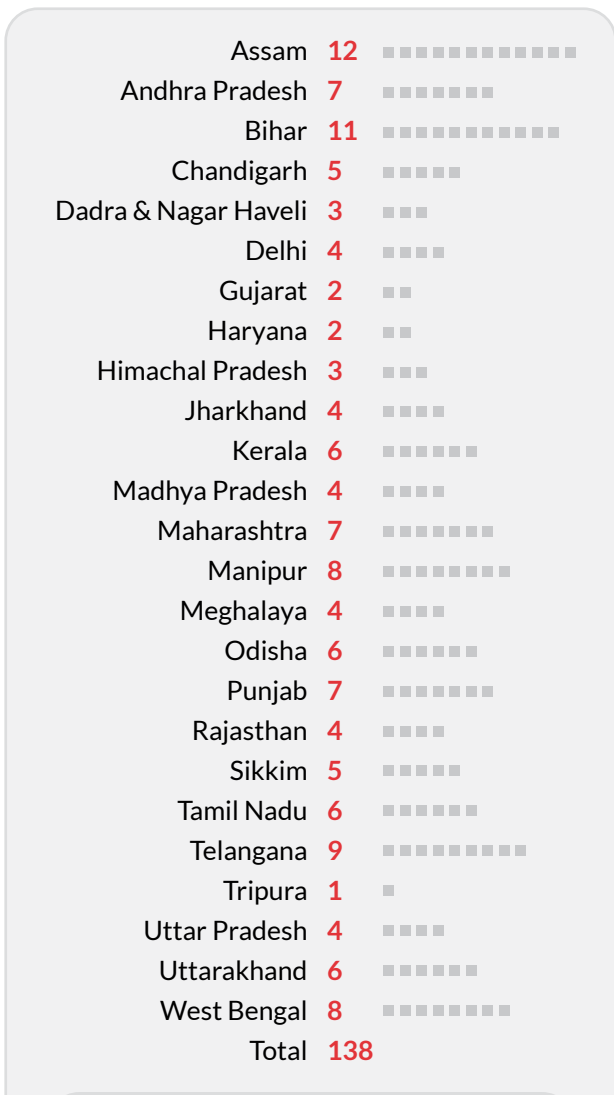
### D

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#### Judgment Analysis

The dataset for this study comprised nearly 4,00,000 cases, out of which about 1,20,000 cases were disposed of. Since it was not possible to read all the judgments, a small sample was read and analysed to obtain deeper insights into the outcomes of POCSO cases. Not all disposed cases in eCourts have PDFs of the judgments attached to them. For this analysis, 20 judgment/final order PDFs from disposed cases (for which these were available) from each state were randomly sampled. The judgments were read after dropping cases where the documents were not intelligible or where they were in languages unfamiliar to the researchers. As a result of this exercise, a total of 138 judgments that were written in English and Hindi were read and analysed. The following table shows the number of judgments analysed from each state.





**Fig. 2.1:** Number of judgments analysed per state

**E**

**Data Analysis**

**1. Data collection**

The eCourts website allows a user to search its database by identifying a specific legislation. By using this feature, data was specifically downloaded for cases where the associated legislation had been identified as POCSO. In total, 399664 cases had been tagged with POCSO as the parent legislation during the period between November, 2012 and February, 2021. This system of data collection has some limitations. Most notably, in the unfortunate event that data entry operators failed to tag a POCSO case with the legislation, such a case would

be omitted from our dataset. If, however, the tag is misspelt or mistyped, we are able to include the case.

While one would assume that the name of a legislation would be uniform throughout all district court websites, 688 variants of the legislation’s name were found. For instance, apart from the expected variants such as POCSO and Protection of Children from Sexual Offences Act, 2012, the name of the legislation had also been identified as “POSCO”, “prohibition of sexual abuse”, “protection of child rights”, etc.

A variety of methods, both manual and automatic, were used to identify the relevant variations of the Act name.

First, a keyword list including words like ‘child’, ‘sexual’, ‘POCSO’, etc was made. The first keyword - ‘child’, introduces a list of false positives since it would filter variations of other Acts like Child Labour (Prohibition and Regulation) Act, 1986.

In order to clean this list, negative keywords like ‘labour’ were introduced. Consequently, Act names which had the keywords from the initial list but did not include the word ‘labour’ were removed.

Using the positive and negative keyword lists, a collection of Act names was arrived at, which served as the basis for the data scraping.

The list was manually perused to identify other misspellings which might have been missed.

While going through the eCourts websites for different districts and manually looking into the Act names, additional variations were manually added to the final list of all versions of the POCSO Act name.

In situations where a case had been classified under multiple legislations such as the POCSO Act and the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, the case continued to be included within the present dataset. Using this method, data was collected from 486 district courts.

## 2. Data cleaning

The extracted data was not immediately usable because a preliminary glance at the data revealed several concerning irregularities. A significant number of cases (on the basis of their case type) seemed completely unrelated to the POCSO Act. To determine if the cases extracted were in fact cases related to the POCSO Act, verification based on case categorisation was done. The verification was aimed at determining if the 'case type' did indeed pertain to the POCSO Act. The following process was followed in order to clean the data:

Different Excel sheets were created for all the states with the district names, the case type name and the count for how frequently a particular case type occurred in that district.

From these, only 'case types' explicitly pertaining to cases under the POCSO Act were retained. Therefore, where the case type mentioned some variation of the POCSO Act or was a Sessions Case,<sup>68</sup> the decision to include them in the dataset was fairly obvious.

Since the case types used across the country are very diverse, when there was confusion about whether a particular case type corresponds to a POCSO case or not, the researchers spoke with advocates from the respective jurisdictions to identify what a particular case type meant and used that information in order to include or exclude certain case types. For instance, it was found that the case type 'Spl Case' in Maharashtra would refer to a special legislation like the POCSO Act and was thus included. Similarly, 'S.C.C.' refers to Summary Criminal Cases and since POCSO cases cannot be summarily tried, these entries were excluded.

For jurisdictions that the researchers could not identify practising lawyers for, a sampling exercise was undertaken for a set of 10 random cases corresponding to a particular case type and district. The researchers looked at the designation of the

judges in these cases as well as perused the orders passed in order to determine if the case type was indeed one related to the POCSO Act. For example, 'Misc Case' and 'Police Case PS' were categories of cases before the Chief Metropolitan Magistrate and the orders showed that the cases did not relate to the POCSO Act. Therefore, these cases were excluded from the dataset.

Despite following this approach, there were some case types (such as 'Review Case', 'Complaint Case (summon Trial)', 'U.i - U.I CASES', '3CCC' etc.) that could not be categorised. These cases did not have an identifiable case category (either because the case type column was blank or because it could not be categorised by the researchers due to lack of information (such as many categories in Odisha<sup>69</sup>)). These rows were put in Category II and excluded from the dataset.

Further, case types such as 'Negotiable Instruments Act', 'Civil Suit', 'Public Premises Case', 'Traffic Cases' (that were clearly not related to the POCSO Act) were removed from the dataset. These cases were identified as Category I. While it is possible that a data entry operator might have misclassified a POCSO case as a Negotiable Instruments case, a case-by-case assessment of all the possibly misclassified cases was not feasible given the large volume of the dataset. Therefore, it was assumed that these cases were not POCSO cases.

The results of this exercise found that around 12.7% of cases (i.e., 50737 cases) extracted from the eCourts website (with POCSO as the corollary legislation) could not, with certainty, be classified as cases filed under the POCSO Act.

While the rest of the cases were related to the POCSO Act, they included within their ambit all kinds of cases (such as those concerning bail proceedings (Category III), other miscellaneous proceedings (Category IV) and cases that have gone through or are going through trial). While disposing

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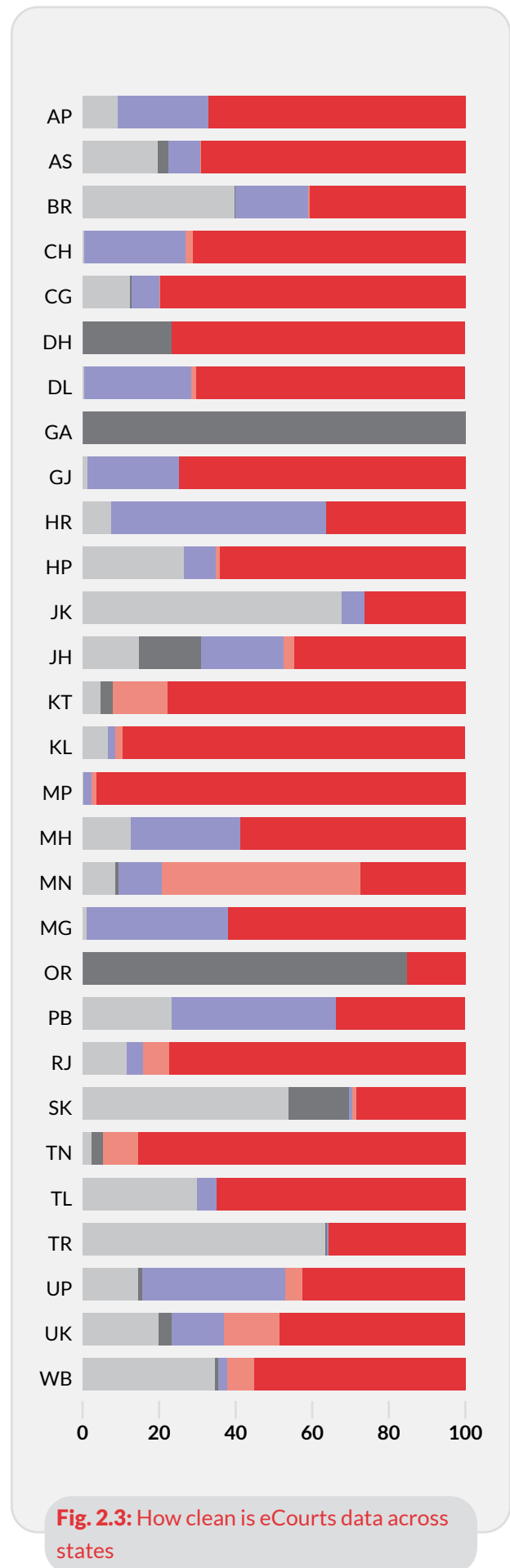
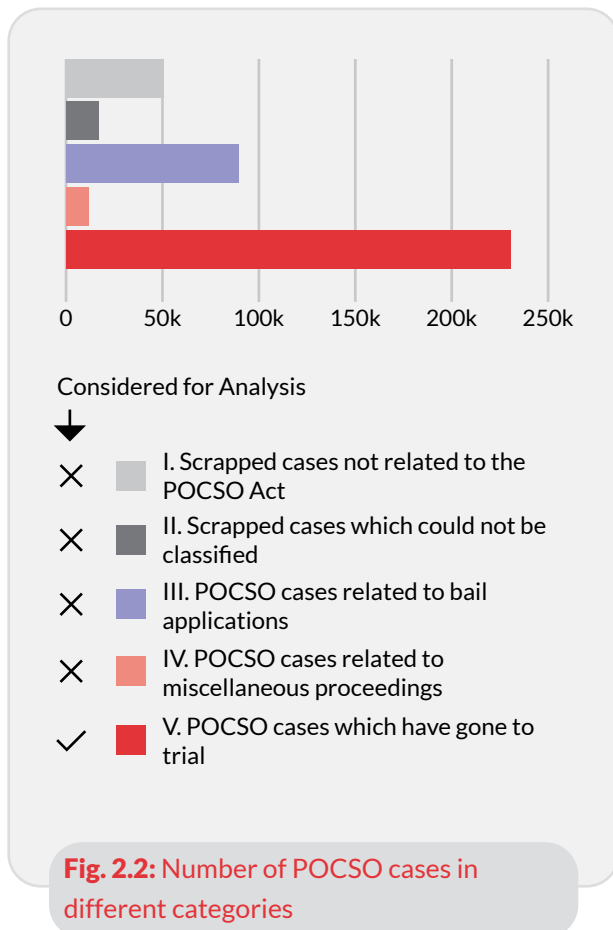
<sup>68</sup> The Protection of Children from Sexual Offences Act 2012, s 28. A Court of Session is designated as a Special Court to try the offences under the Act.

<sup>69</sup> Some examples of such case types are: CMC, U.i. Case, Vio.Misc.case, J.g.r, and 1 C.c.

all these categories is a critical role that courts have to perform, disposal of these usually shorter proceedings can suggest better disposal figures than if only cases for trial were to be assessed. Therefore, Categories III and IV were not considered while analysing data for this report.

Therefore, for the final analysis, only Category V cases were used. Figure 2.2 below shows the final numbers of cases arrived at after cleaning the data:

Category I in this Fig. 2.3 highlights the difference in the quality of data entry across various states. While it is understandable that Category II and IV will be tagged as POCSO cases, there is a large number of cases that are simply not POCSO cases even though they are tagged as such. Further, Category II cases signify lack of uniform case type categorisation across states. A large number of cases in this category means that the case types could not be deciphered. As this Figure shows, the percentage of Category II cases in certain states is much higher than others. For instance, in Odisha, more than 80% of the cases are Category II cases.



## IV

### Challenges of dealing with data

#### A

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##### Missing districts

Out of 688<sup>70</sup> district courts in India, 202 district courts do not form a part of the dataset for this study. This is because the data was collected from eCourts using the 'Act name' option and certain variations of the POCSO Act (found in some districts) might have been missed. Since there were many ways the Act name of POCSO is recorded, a list of possible variations was created (explained in detail in the Data Collection section of this Chapter) in order to identify the relevant variations of the Act name. Using the list of possible variations, a list of districts and courts where the case data was scraped from was arrived at. It is important to note that if a variation of the Act name that was being used in a particular district was not identified by the above-mentioned exercise, the consequence would be missing all the cases from that particular district. For instance, if the Act name was mis-recorded as something other than the list of variations used by the researchers, that would lead to the researchers missing all the cases from that district.

Apart from the above, another reason for missing districts is that sometimes, due to an error, the API (Application Programming Interface) returned 'null'. In order to not miss cases due to this error, the same URL was scraped three times at irregular intervals. If it returned 'null' in all three instances, it was assumed that we had no data from there. However, this is a potential step where some cases (and potentially districts) would have been missed out.

Fig. 2.4 shows the districts that have been considered for analysis for this study. The districts in red have been covered for the purpose of this

study while the ones in grey are districts that the researchers do not have data for.

#### B

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##### Missing states in interstate comparisons

The availability of district-level identifiers for the cases enabled the research team to make comparisons for different parts of India. The lack of coverage for all districts and all years however, required the research team to draw inferences cautiously. To ensure that the data was representative at the level of states, it was decided that when making interstate comparisons, only states for which data was available for at least 70% of the districts would be included. Consequently, visualisations with interstate comparisons contain data for 21 states and Union Territories. States and Union Territories that were excluded are: Dadra and Nagar Haveli at Silvassa, Jammu and Kashmir, Madhya Pradesh, Manipur, Meghalaya, Orissa, and Telangana. For the bulk of the analysis however, the full sample of 486 districts is retained.

The researchers recognise that the challenges that different states face are bound to vary and variations in population, both quantitatively and qualitatively, can be a contributing factor to making these challenges more complex. Therefore, for the purpose of analysis, states have been clubbed into three categories: large and mid-sized states (with a population greater than 10 million); small states (with a population less than 10 million); and Union Territories.<sup>71</sup>

#### C

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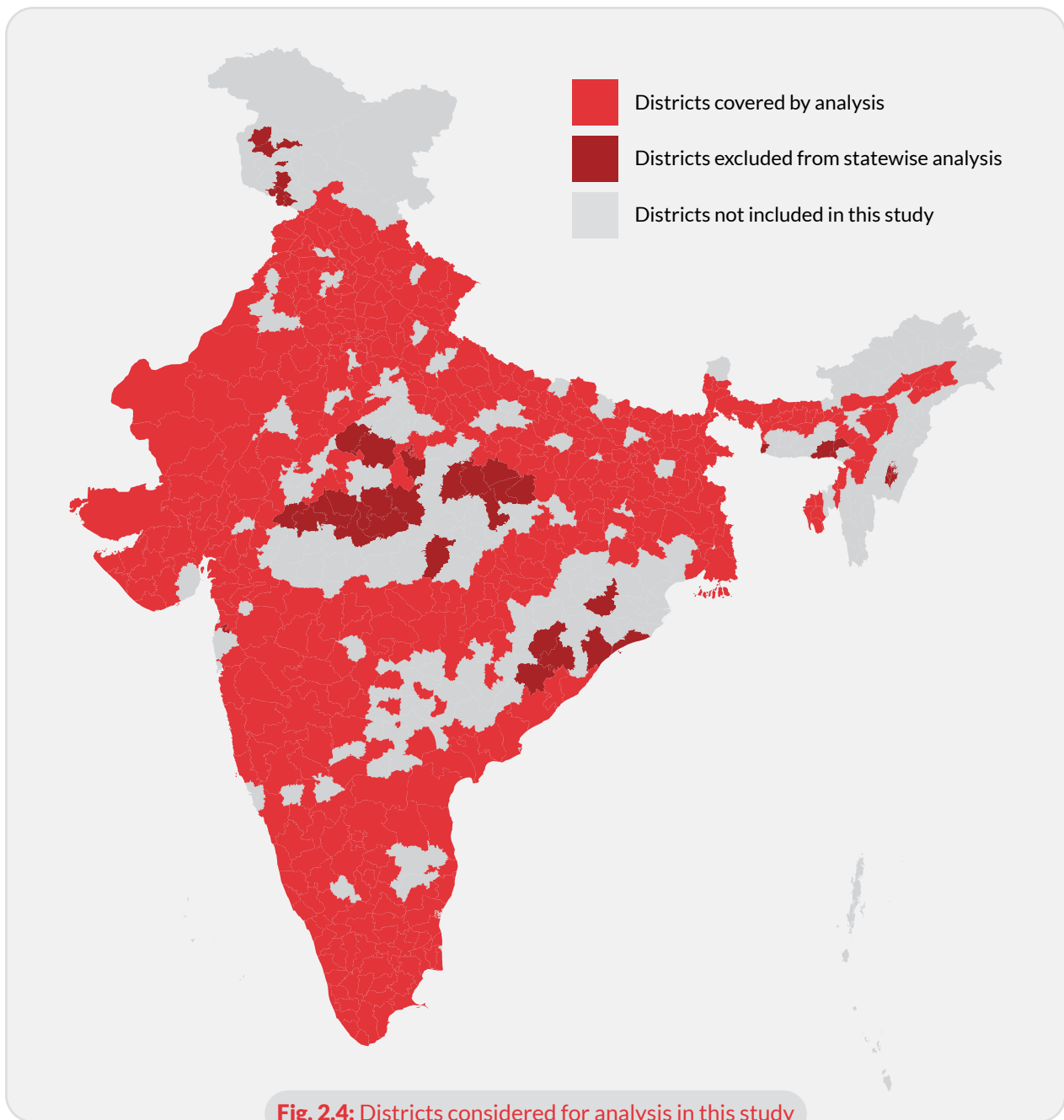
##### Minor mismatches in the case numbers

The case data has some mistakes in different columns (attributes) due to which they might not have been considered for certain computations

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<sup>70</sup> District Courts Portal (e-Committee, Supreme Court of India) <<https://ecommitteesci.gov.in/service/district-courts-portal/#:-:text=Information%20pertaining%20to%20each%20District,to%20688%20District%20Court%20websites>> accessed 29 June 2022.

<sup>71</sup> In India, Union Territories are areas administered by the President through an Administrator appointed by her.



**Fig. 2.4:** Districts considered for analysis in this study

and graphs. Some of the issues which have led the researchers to drop a given case are as follows:

**Null data or errors in the date format for the date of filing or date of decision:** When considering cases and grouping them by filing date or date of disposal, for instance, such cases would be dropped. However, these cases would not be dropped when counting the total number of POCSO cases in a given district, for instance.

**Pre 2012 filing dates:** Some cases categorised as POCSO have filing dates before 2012 i.e., before the enactment of the POCSO legislation. These cases have therefore been dropped from the analysis.

**Date of decision is prior to date of filing:** Consequently, when computing the case length, these cases have a negative length. Since these are only a handful of cases and do not change the mean values of the statistics of interest, these have been deleted from the computations regarding case length.

For the purpose of this study, here are some key figures to take note of:

**399664**

Total number of cases scraped

**486**

Total number of district courts covered

**28**

Total number of states and Union Territories covered

**230730**

Total number of cases considered for metadata analysis

# Interpretation of POCSO

## *Developments and Issues*

In the Chapter on legislative history, the researchers have tracked how the POCSO Act came into being and how the legislation itself has evolved with amendments. Before looking at the findings from data, it is important to understand the context that the Act is working in. An important part of understanding this context is to see how legal issues arising from different provisions of the Act have been adjudicated. It is the judiciary that ultimately interprets a law and this role it performs assumes critical importance when a new law is enacted.

Often, the enactment of a new legislation brings to fore certain questions that need to be judicially determined to provide greater clarity to the meaning. The objective of this Chapter is to examine how courts (particularly the higher judiciary) have interpreted the legislation while deciding some difficult legal and factual questions. The purpose of this Chapter is not to exhaustively trace the development of jurisprudence pertaining to the POCSO Act but to shed light on the approach adopted by the judiciary with regard to some key issues that have arisen since the Act came into force.

# I

## Definition of a “child” under section 2(1)(d) of the POCSO Act

### Context

In the year 2000, the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted. This Act defined a ‘juvenile’ or ‘child’ as ‘a person who has not completed eighteenth year of age.’<sup>72</sup> Section 2(1)(d) of the POCSO Act, 2012 adopted the same approach while defining a child as ‘any person below the age of eighteen years.’ However, an important issue that arose soon after the implementation of the POCSO Act concerned the scope of this definition. Did age as referred to in this provision mean biological age or mental age?

This issue becomes important because there are several cases where even though the victims are biologically above the age of 18 years, their mental age<sup>73</sup> is below 18. Since the POCSO Act provides greater safeguards for children by prescribing a child-friendly procedure for trial, it can offer greater protection to persons who are mentally challenged or suffer from severe intellectual disability. Thus, it fell to the courts to decide whether a person who has crossed the biological (and not mental) age of 18 years could also be included within the holistic conception of the term ‘child’ under the POCSO Act.

### Important Judgments

In a crucial case<sup>74</sup> at the Supreme Court, it was argued by the appellants that the definition of a child should be interpreted to include within its scope the mental age of any person below the age of 18 years or the age determined by the prevalent science pertaining to psychiatry. The case concerned a sexual

assault victim whose biological age was 38 years but whose mental age was six because she had been suffering from cerebral palsy since her birth.

A division bench of Justice Dipak Misra and Justice Rohinton Fali Nariman held that it would be doing violence both to the intent and language of the Parliament if the word ‘mental’ is read within the definition of a child under the POCSO Act. According to the Apex Court, the legislature never intended to include the concept of mental age while determining the age of a child for the purpose of the POCSO Act and doing so would amount to encroaching upon the function of the legislature. The court observed that judges could not assume a ‘creative constructionist personality’ when the provision in question was clear and unambiguous.

### Present Position of Law

Therefore, the current position of law is to consider merely the biological age of the victim to determine whether they fall within the definition of a child under section 2(1)(d) of the POCSO Act.

# II

## Placing reliance on the sole testimony of the victim to convict

### Context

Like other sexual crimes, in POCSO cases too, the possibility of having eyewitnesses is extremely rare. Usually, the child victim is also the sole witness to the crime. In such cases, an important issue that arises is whether courts can rely on the sole testimony of the child victim in order to convict the accused. Since victims in POCSO cases can be very young children, and since evidence is often recorded after

72 Juvenile Justice (Care and Protection of Children) Act 2000, s 2(k).

73 ‘Mental Age’, *APA Dictionary of Psychology* (APA) <<https://dictionary.apa.org/mental-age>> accessed 16 June 2022.

74 *Eera v State (NCT of Delhi)* (2017) 15 SCC 133.



a considerable lapse of time,<sup>75</sup> there can be minor inconsistencies in the statement of the victims. Therefore, courts have to carefully balance the victim's right to justice with the accused's right to a fair trial.

The law in India does not debar the testimony of any witness on account of age. According to Section 118 of the Indian Evidence Act, 1872 all persons shall be competent to testify unless the court considers that they cannot understand the questions put to them, or give rational answers to those questions, by reason of tender age, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Thus, the qualifying criteria is not the age of the child but rather his abilities to understand questions and form rational answers.

However, every testimony has two facets—admissibility and credibility, and while child witnesses are competent witnesses, their evidence has historically been taken with a pinch of salt by the judiciary. The Privy Council in *Mohamed Sugal Esa v The King*<sup>76</sup> opined that it is “a sound rule in practice not to act on the uncorroborated evidence of a child. But this is a rule of prudence and not of law.” Over the years, courts have moved away from this understanding and have accepted that the testimony of a child witness is not inherently untrustworthy. A catena of judgments has held that if the testimony of the child is consistent and inspires confidence, then a conviction can be based on it without the need for corroboration.<sup>77</sup> However, a question arose as to

whether conviction under the POCSO Act can be based on the sole testimony of a child victim.

### Important Judgments

When the question of whether reliance can be placed on the sole testimony of a child victim came before the Apex Court, it held<sup>78</sup> that considering the object and purpose of the POCSO Act, when the evidence of the prosecutrix is reliable and trustworthy, conviction will stand, even though another prosecution witness has turned hostile.

In this case, the accused had been sentenced to rigorous imprisonment of three years and fined Rs. 1 lakh under section 8<sup>79</sup> of the POCSO Act by the trial court. The High Court upheld the conviction but modified the order of compensation. The accused appealed to the Supreme Court and one of the grounds of appeal was that the mother of the victim (a prosecution witness) had turned hostile and the conviction was based on the sole testimony of the victim. The Supreme Court rejected the appeal.

Despite the Supreme Court's decision, in cases where the child victim is extremely young, courts have displayed more caution while relying on their testimony. In a case<sup>80</sup> involving a child victim aged five years, the Bombay High Court remarked that a child witness is amenable to tutoring and inducement and is often prone to telling imaginative and exaggerated stories. According to the court, child witnesses, by reason of their tender age, are pliable witnesses and hence their evidence needs to be scrutinised with extreme care and caution.

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75 Bharti Ali, Maharukh Adenwalla and Sangeeta Punekar, *Implementation of the POCSO Act: Goals, Gaps and Challenges: Study of cases in Special Courts in Delhi & Mumbai (2012 - 2015)* (HAQ: Centre for Child Rights and FACSE 2017) 95 <[www.haqcsrc.org/publication/implementation-pocso-act/](http://www.haqcsrc.org/publication/implementation-pocso-act/)> accessed 17 June 2022.

A study of the Special Court orders in Delhi showed that in only about 11% of the cases is the child's evidence recorded within the period of 30 days from the date of cognizance. The courts also do not record the reason for delay in recording the child's testimony as mandated under Section 35(1) of the POCSO Act

76 AIR 1946 PC 3.

77 *Dattu Ramrao Sakhare and Others v. State of Maharashtra* (1997) 5 SCC 341; *In State of U.P. v. Krishna Master & Ors.*, AIR 2010 SC 3071. *State of Madhya Pradesh v. Ramesh & Anr.*, 2011 (3) Scale 619; *Tahal Singh v. Punjab* AIR 1979 SC 1347.

78 *Ganesan v State* (2020) 10 SCC 573.

79 The Protection of Children from Sexual Offences Act 2012, s 8.

80 *Janardan Pandurang Kapse v State of Maharashtra*, Criminal Appeal No. 838 of 2019 (Bom H.C.) (unreported).

A different approach was adopted by the Madras High Court in a case<sup>81</sup> involving an 11-year-old child victim. The defence had argued that no independent witness had been examined by the trial court to corroborate the evidence of the child victim. However, the High Court acknowledged that the nature of the case was such that one could not expect an eye witness or independent witness. The court found no reason to disbelieve the cogent, consistent and trustworthy evidence of the sole witness.

In another case where there were some inconsistencies in the statements made by the victim, the Calcutta High Court held that the victim is the best judge of the incident and even if there are minor discrepancies in the evidence of the victim, such discrepancies cannot be held to be material contradictions that affect the credibility of the witness.<sup>82</sup>

### **Present Position of Law**

Therefore, as the law currently stands, conviction in POCSO cases can be based upon the sole testimony of the child victim as long as the victim's evidence is reliable.

## **III**

### **Marital rape of a minor wife and the conflict between IPC and POCSO Act**

#### **Context**

Since the introduction of the POCSO Act, an inconsistency emerged between the provisions of the POCSO Act and the Indian Penal Code, 1860 (the IPC). While the POCSO Act criminalised sexual intercourse with a woman less than 18 years of age,

Exception 2 to Section 375 of the IPC carved out an exception in cases where the 'wife' was more than 15 years of age. Consequently, sexual intercourse by a man with his wife who was more than 15 years of age, was not rape. This was problematic because the acts falling in this exempted category would still fall within the scope of the POCSO Act. The question therefore was whether the 'husband' in such cases could be tried under the provisions of the POCSO Act.

A 2018 report by Aarambh India Initiative<sup>83</sup> on the implementation of POCSO in Maharashtra shows that when there are conflicting provisions in different laws, the police are often confused about the procedures to be followed. With the police being more familiar with the IPC than POCSO, this anomaly, even if an academic one, could have been potentially dangerous.

Though Section 42A of the POCSO Act was very clear regarding the fact that the Act had an overriding effect in case of inconsistency with other laws, the anomaly, albeit an academic one, was disconcerting enough to merit an authoritative pronouncement by the Supreme Court of India.

#### **Important Judgments**

This controversy was settled by the Supreme Court in a landmark judgment in 2017.<sup>84</sup> The issue before the apex court in this case was whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape. The court read down Exception 2 to Section 375 of the IPC which carved out an exception for such cases. To harmonise the system of laws relating to children, the court required Exception 2 to Section 375 to be meaningfully read as: 'Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.'

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81 *K. Ruban v State*, Criminal Appeal No. 253 of 2021 (Mad H.C.) (22 October 2021) (unreported).

82 *Prabir Bhuiyan v State of West Bengal*, 2021 SCC OnLine Cal 3063.

83 Pravin Patkar and Pooja Kandula, '4 Years Since POCSO: Unfolding of the POCSO Act in the State of Maharashtra' (2016) Aarambh India <[http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh\\_4-Years-Since-POCSO.pdf](http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh_4-Years-Since-POCSO.pdf)> accessed 29 June 2022.

84 *Independent Thought v Union of India* (2017) 10 SCC 800.

The court held that the Exception carved out in the IPC creates an unnecessary and artificial distinction between a married girl child and an unmarried girl child. This artificial distinction, it held, is arbitrary and discriminatory and is definitely not in the best interest of the girl child. The court found that the Exception was directly in conflict with the Preamble of the POCSO Act. Referring to Section 42A<sup>85</sup> of the POCSO Act, the court held that the provisions of the POCSO Act will override the provisions of any other law (including the IPC) to the extent of any inconsistency.

Referring to the age of consent, the court observed that the age of consent for sexual intercourse is definitively 18 years and under no circumstance can a child below 18 years of age give consent, express or implied, for sexual intercourse.<sup>86</sup> It recognised that statutes concerning the rights of children are special laws concerning a special subject of legislation and the provisions of such subject-specific legislations must prevail and take precedence over the provisions of a general law such as the IPC.<sup>87</sup>

This position of law, as laid down by the Supreme Court, was applied by Madhya Pradesh High Court in *Ajay Jatav v State of Madhya Pradesh*<sup>88</sup> wherein it held that physical relationship with a minor is rape since age of the minor 'wife' under Exception 2 of Section 375 has to be read as 18 years.

### Present Position of Law

Therefore, as the law currently stands, sexual intercourse by a man with his 'wife' who is below 18

years of age would amount to an offence under the POCSO Act as well as rape under the IPC.

## IV

### Disclosure of identity of child in POCSO cases

#### Context

Section 23(2) of the POCSO Act prescribes the procedure to be followed by the media while reporting cases falling within the ambit of the Act. It provides that no reports in any media shall disclose the identity of a child including the name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child. Further, Section 24(5) of the Act makes it the duty of the concerned police officer to ensure that the identity of the child is protected from the public media. Additionally, section 33(7) provides that the Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial. Finally, section 37 makes a provision for in camera trials in POCSO cases though the presence of the parents of the child or any other person in whom the child has trust or confidence is permitted.

The purpose of these provisions is to prevent further traumatising of the child victim. Despite this provision, there have been numerous instances when the identity of child victims has been revealed by the media<sup>89</sup> or public figures.<sup>90</sup> Further, sometimes courts themselves disclose the identity of a child

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85 The Protection of Children from Sexual Offences Act 2012, s 42A: The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

86 *Independent Thought v Union of India* (2017) 10 SCC 800, ¶77.

87 *Ibid.*

88 2021 SCC OnLine MP 1776.

89 Laasya Shekhar, 'Naming and shaming victims for ratings: What ails the Tamil media in reporting on rape and crime?' *Newslaundry* (1 October 2021) <[www.newslaundry.com/2021/10/01/naming-and-shaming-victims-for-ratings-what-ails-the-tamil-media-in-reporting-on-rape-and-crime](http://www.newslaundry.com/2021/10/01/naming-and-shaming-victims-for-ratings-what-ails-the-tamil-media-in-reporting-on-rape-and-crime)> accessed 17 June 22.

90 Varsha Rani, 'Disclosing the Identity of Rape Victims & Survivors: What Does Indian Law Say?' *The Quint* (16 September 2021) <<https://www.thequint.com/neon/gender/indian-laws-on-disclosing-rape-survivors-victims-identity#read-more>> accessed 17 June 2022.

by revealing the names of the victims or their relatives in their judgments.<sup>91</sup> Studies by CCL-NLSIU in five States of India have revealed that, in an overwhelming number of cases, Special Courts have disclosed the identity of the victims in their judgments. In Assam,<sup>92</sup> the identity of the victim was disclosed by either naming her or her family members in 77.32% cases. In Maharashtra,<sup>93</sup> 86% judgments revealed the identity of the victim and in Andhra Pradesh, an alarming 96% of judgments compromised the identity of the victim.

In small villages and tightly knit communities, where everyone tends to know everyone else, even the disclosure of the name of the relatives is sufficient to identify the victim.

### Important Judgments

Soon after the POCSO Act came into force in 2012, the Delhi High Court passed an order<sup>94</sup> approving guidelines for media reporting on children framed by a Committee<sup>95</sup> constituted by it. However, these guidelines were not followed (as can be seen from the instances mentioned above). To protect the interests of child victims, the Supreme Court stepped in and pronounced a landmark ruling on the issue. In its judgment in the case of *Nipun Saxena v Union of India*,<sup>96</sup> among other things, the Apex Court dealt with the issue of protection of the identity of child victims of sexual abuse.

Taking note of the provisions in Sections 24(5), 33(7) and 37 of the POCSO Act, the apex court held that the disclosure of the identity of a child can only be permitted by the Special Court if it is in the best interest of the child and for no other reason. The

court also held that disclosure of a child's name to make the child a symbol of protest would not ordinarily be considered to be in the best interest of the child. However, the court made it clear that it was neither feasible, nor desirable to define what could be considered in the "interest of the child".

Noting that it was the intention of the legislature that the identity of the victim child should not be directly or indirectly disclosed, the court also elaborated on how the media should report on cases pertaining to child sexual abuse.<sup>97</sup> The court issued instructions to be followed by the media and the authorities while dealing with such cases.

### Nipun Saxena v Union of India Guidelines

For the Media—The media should:

1. not sensationalise the case;
2. refrain from talking to the victim to prevent further trauma to the child;
3. not disclose any material that might lead to disclosure of the child's identity

For the Police—The police should:

1. not put FIRs relating to offences under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of IPC and offences under the POCSO Act in the public domain.
2. keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents after removing the name of the victim in

91 'Madras HC asks POCSO courts not to reveal identity of victims' *The New Indian Express* (16 April 2022) <<https://www.newindianexpress.com/states/tamil-nadu/2022/apr/16/madras-hcasks-pocso-courts-not-to-reveal-identity-of-victims-2442536.html>> accessed 17 June 2022.

92 Centre for Child and the Law, National Law School of India University, *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (National Printing Press, Bengaluru, February 2018).

93 Ibid.

94 *AK Asthana v Union of India*, W.P.(C) No. 7871 of 2012 (Del H.C.) (unreported).

95 Comprising of Juvenile Justice Board, Union of India, Government of NCT of Delhi, NGOs working for the welfare of children, media, Press Council of India, child rights activists, and the National Commission for Protection of Child Rights.

96 *Nipun Saxena v Union of India* (2019) 2 SCC 703.

97 Ibid.

all records likely to be scrutinised in the public domain.

For other authorities—all the authorities to which the name of the victim is disclosed by the investigating agency or the court shall:

1. keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

For the general public—No person shall:

1. print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

In a recent judgment,<sup>98</sup> the Bombay High Court remarked that despite issuance of these guidelines, the print and electronic media continue to report on these offences in such a manner that the identity of the victim is established directly or indirectly. It also issued additional directions for protecting the identity of the victim during trial, including while framing of charge, recording evidence, and recording the statement of the accused under Section 313 of the CrPC.<sup>99</sup> The Calcutta High Court has also issued detailed instructions for the protection of victims' identity in two significant cases. In *Bijoy @ Guddu Das v State of West Bengal*,<sup>100</sup> it directed that any particulars that may reveal such identity shall not be disclosed in the judgment delivered by the Special

Court unless such disclosure of identity was in the interest of the child. Recently, in *Prafulla Mura v State of West Bengal*,<sup>101</sup> the court directed that pleadings and affidavits containing the victim's name must be kept in sealed covers and only redacted copies would be released in the public domain.

However, an important question concerning the interpretation of Section 23 of POCSO Act is pending before the Supreme Court. In *Gangadhar Narayan Nayak v State of Karnataka*,<sup>102</sup> the issue before the Apex Court was whether Section 155(2)<sup>103</sup> of the CrPC applies to the investigation of an offence under Section 23. The case resulted in a split verdict with Justice Indira Banerjee holding that disclosure of identity of the victim under the POCSO Act is a cognizable offence and Justice J.K. Maheshwari concluding that it is not. The matter has been placed before the Chief Justice in order to be placed before an appropriate bench.

### **Present Position of Law**

Strict guidelines have been put in place by the Apex Court to ensure that the identity of a victim child is not disclosed to the public. However, the question of whether the offence under Section 23 is cognisable or not remains to be answered.

<sup>98</sup> *Sangita w/o Yeshwant Tanpure v State of Maharashtra*, Criminal PIL No. 1 of 2016 (Bom H.C.) (unreported).

<sup>99</sup> Criminal PIL No. 1 of 2016 (Bom H.C.) (unreported), ¶16.

<sup>100</sup> CRA 663 of 2016.

<sup>101</sup> CRA (DB) 29 of 2022.

<sup>102</sup> 2022 SCC OnLine SC 337.

<sup>103</sup> No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

# V

## Applicability of the mandatory reporting provision

### Context

Section 19<sup>104</sup> of the POCSO Act makes a provision for mandatory reporting of acts that are crimes under the POCSO Act. The provision makes it mandatory for any person who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed to report the offence to the local police or the Special Juvenile Police Unit. This provision has been the subject of much criticism with studies finding that it makes it difficult for children to seek support for fear of registration of a police case.<sup>105</sup>

Victims of sexual abuse or their families may hesitate to approach medical professionals, including gynaecologists and psychiatrists, for fear of being drawn into a criminal case, thereby negatively impacting their right to health and medical care.<sup>106</sup> Apart from this, mandatory reporting also has serious implications for individuals under 18 who are involved in consensual sexual relationships.<sup>107</sup>

Medical professionals and child rights activists have often raised the concern that it hinders adolescents' access to safe and legal sexual and reproductive services, including legal abortions and contraceptives.<sup>108</sup> Further, in cases where a case is mandatorily reported against the wish of the victim, there is a greater chance of the unwilling victim turning hostile during prosecution.<sup>109</sup>

Apart from the issues indicated above, some concerns have arisen about the applicability of the mandatory reporting provision. For instance, does 'knowledge' under this provision require a person to actively gain that knowledge or does the obligation to mandatorily report an offence under the Act only mean that if something comes to one's knowledge, they are supposed to report it? Another issue is whether persons charged with failure to mandatorily report a case can be tried jointly with the person accused of actually committing the sexual offence in that case.

### Important Judgments

Some clarity was provided on the scope of Section 19 by the Supreme Court in a case<sup>110</sup> which dealt with the interpretation of Section 19(1) of the POCSO Act. In this case, the Supreme Court quashed the proceedings against a gynaecologist, a

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**104** S 19(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to—  
(a) the Special Juvenile Police Unit; or  
(b) the local police.

**105** Bharti Ali, Maharukh Adenwalla and Sangeeta Punekar, *Implementation of the POCSO Act: Goals, Gaps and Challenges: Study of cases in Special Courts in Delhi & Mumbai (2012 - 2015)* (HAQ: Centre for Child Rights and FACSE 2017) 39 <<https://www.haqcrc.org/publication/implementation-pocso-act/>> accessed 17 June 2022.

**106** Centre for Reproductive Rights, *Legal Barriers to Accessing Safe Abortion Services in India: A Fact Finding Study* (National Law School of India University, Bangalore, 2021) <[https://reproductiverights.org/wp-content/uploads/2021/08/Legal-Barriers-to-Accessing-Safe-Abortion-Services-in-India\\_Final-for-upload.pdf](https://reproductiverights.org/wp-content/uploads/2021/08/Legal-Barriers-to-Accessing-Safe-Abortion-Services-in-India_Final-for-upload.pdf)> accessed on 30 September 2022; Alok Prasanna Kumar, 'Mandatory Reporting under POCSO' *Economic and Political Weekly* (17 September 2022) <<https://www.epw.in/journal/2022/38/law-and-society/mandatory-reporting-under-pocso.html>> accessed on 30 September 2022.

**107** Centre for Reproductive Rights, *Legal Barriers to Accessing Safe Abortion Services in India: A Fact Finding Study* (National Law School of India University, Bangalore, 2021) <[https://reproductiverights.org/wp-content/uploads/2021/08/Legal-Barriers-to-Accessing-Safe-Abortion-Services-in-India\\_Final-for-upload.pdf](https://reproductiverights.org/wp-content/uploads/2021/08/Legal-Barriers-to-Accessing-Safe-Abortion-Services-in-India_Final-for-upload.pdf)> accessed on 30 September 2022.

**108** *Ibid.*

**109** Bharti Ali, Maharukh Adenwalla and Sangeeta Punekar, *Implementation of the POCSO Act: Goals, Gaps and Challenges: Study of cases in Special Courts in Delhi & Mumbai (2012 - 2015)* (HAQ: Centre for Child Rights and FACSE 2017) 77 <<https://www.haqcrc.org/publication/implementation-pocso-act/>> accessed 17 June 2022.

**110** *Tessy Joseph v State of Kerala* (2018) 18 SCC 292.



paediatrician and a hospital administrator for failing to mandatorily report rape of a victim child who gave birth in the hospital that they worked in. The victim child was brought to the hospital and immediately went into labour. The child's age as per the hospital records was entered as 18 years even though she was a minor.

The entire case set up against the appellants was on the basis that when the victim was brought to the hospital her age was recorded as 18 years. On that basis, the appellants could have gathered that at the time of conception she was less than 18 years and was, thus, a minor. Therefore, the argument was that the appellants ought to have taken due care to find how the victim became pregnant.

The court held that fastening criminal liability on the basis of the aforesaid allegation was too far-fetched.<sup>111</sup> It went on to add that the expression used in the POCSO Act is "knowledge" which means that some information received by such a person gives him/her knowledge about the commission of the crime. There is no obligation on this person to investigate and gather knowledge.<sup>112</sup> Thus, the court clarified the scope of the mandatory reporting requirement under the Act.

Another important question that arises when it comes to mandatory reporting is the stage at which a person should be tried for failure to report. The question whether a person should be tried for failure to report only after the main offence has been proved has seen a divergence of views from different High Courts. The Chhattisgarh High Court has held<sup>113</sup> that in order to sustain a prosecution for mandatory reporting, it must first be proved beyond reasonable doubt that the primary offence of sexual assault was committed, and thus a simultaneous prosecution with the abuser would be a violation of the due process of law. It went on to say that the prosecuting agency should be circumspect in initiating prosecution under Section 21(2) of the

POCSO Act against the head of an institution who is entitled to a reasonable time to find out the correct facts through an enquiry at the institutional level before reporting the case to the police.

However, the Bombay High Court in *Balasaheb Suryakant Yashwantrao Mane v State of Maharashtra*<sup>114</sup> rejected this reasoning and held that such an interpretation would defeat the object of enactment of these provisions and that the person failing to report should be tried jointly with the abuser as they were different offences committed in the course of the same transaction. A judicial determination of this issue is required by the Supreme Court to ensure some consistency in the interpretation of Section 19 by the High Courts.

### **Present Position of Law**

Therefore, the current position of law on the issue of mandatory reporting is that there is no obligation on a person to investigate and gather knowledge with respect to the commission of an offence under the POCSO Act. However, with respect to whether the primary accused (accused of committing the sexual offence) and a person accused of flouting the mandatory reporting requirement can be tried together, there is a divergence in the views of different High Courts. This uncertainty needs to be addressed through a judicial pronouncement from the Supreme Court.

## **VI**

### **Interpretation of 'sexual assault' under the POCSO Act**

#### **Context**

The provisions of the POCSO Act as to what constitutes sexual assault under Section 7 have been the subject of much deliberation. This is because there is some uncertainty as to the specificity

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<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> *Kamal Prasad Patade v State of Chhattisgarh* 2016 SCC OnLine Chh 719.

<sup>114</sup> *Balasaheb v State of Maharashtra* 2017 SCC OnLine Bom 1772.

of provisions applicable to different facts and circumstances in certain cases.

The Kerala<sup>115</sup> and Himachal Pradesh<sup>116</sup> High Courts have held that 'touch' or 'physical contact' through the clothes of the victim would still amount to 'sexual assault' under Section 7 of the POCSO Act and does not, in any way, reduce the gravity of the nature of offence. However, the Bombay High Court took a diametrically opposite view in a controversial decision. In *Satish Ragde v. State of Maharashtra*,<sup>117</sup> the Bombay High Court held that the act of pressing the breast of a child aged 12 years without removing her top will not fall within the definition of sexual assault under Section 7<sup>118</sup> of the POCSO Act and instead upheld his conviction under Section 354 of the IPC, 1860. The court reasoned that Section 7 requires direct physical contact (skin to skin contact with sexual intent) and since that was absent in the present case, the accused could not be convicted under POCSO. In a similar case,<sup>119</sup> the Bombay High Court held that acts of holding the hands of the prosecutrix or unzipping the pant of a child did not fit the definition of sexual assault under Section 7. This started a debate on whether skin to skin contact between the victim and the accused was necessary in order to constitute the offence.

### Important Judgments

These judgments created a furore and were set aside<sup>120</sup> by the Supreme Court on the ground that the main ingredient of the offence of sexual assault under Section 7 was 'sexual intent' and not 'skin to skin' contact. The court observed, 'The very object of enacting the POCSO Act is to protect the children from sexual abuse, and if such a narrow

interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act'.

Different High Courts have had differing interpretations on the scope of Section 7 when it involved instances where the accused had held the victim's hand. The Delhi High Court held<sup>121</sup> that the accused holding the hand of the victim with sexual intent and involving physical contact would fall within the scope of Section 7. However, the Calcutta High Court has concluded<sup>122</sup> that an act of dragging a minor girl's scarf, pulling her hand and proposing marriage does not come within the purview of sexual assault or sexual harassment under the POCSO Act. Further, the Tripura High Court has gone on to hold<sup>123</sup> that touching the hands of a minor without any intention to molest will not attract charges of sexual assault under the POCSO Act. The High Court allowed the appeal of the accused against the order of the trial court on the ground that prosecution witnesses, including the victim, had not 'specifically stated' that there was any intention of the accused to molest the victim.

### Present Position of Law

Therefore, as the law currently stands, 'sexual intent' and not 'skin to skin contact' constitutes the 'touch' required for conviction under Section 7 of the POCSO Act. The outcome of cases under Section 7 now hinges on whether sexual intent while touching is proved or not.

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<sup>115</sup> *Geetha v State of Kerala*, Criminal MC No. 1237 of 2020 (Ker H.C.) (4 May 2020) (unreported).

<sup>116</sup> *Jagar Singh v State of Himachal Pradesh*, Criminal Miscellaneous Petition No. 1112 of 2014 (H.P. H.C.) (24 September 2014) (unreported).

<sup>117</sup> *Satish v State of Maharashtra*, 2021 SCC OnLine Bom 72.

<sup>118</sup> Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

<sup>119</sup> *Libnus v State of Maharashtra*, Criminal Appeal No. 445 of 2020 (Bom H.C.) (15 January 2021) (unreported).

<sup>120</sup> *Attorney General for India v Satish* (2021) 4 SCC 712.

<sup>121</sup> *Ravi v State*, Criminal Appeal No. 657 of 2017 (SC) (3 October 2019) (unreported).

<sup>122</sup> *Nurai Sk. @ Nurul Sk. v State of West Bengal*, Criminal Appeal No. 45 of 2019 (Cal H.C.) (unreported).

<sup>123</sup> *Sri Sanju Tanti v State of Tripura*, Criminal Appeal No. 19 of 2020 (Tri H.C.) (unreported).



## VII

### Applicability of the POCSO Act to 'consensual' relationships between minors

#### Context

The age of consent in India is intertwined with the law surrounding child marriages. Until 2012, the age of consent as per Section 375 of the IPC was 16 years.<sup>124</sup> By defining a child as 'any person below the age of eighteen years',<sup>125</sup> the POCSO Act made any sexual activity involving a child an offence under the Act. However, this provision was inconsistent with the IPC, 1860 which pegged the age of consent at 16 years.

This inconsistency was resolved with the enactment of the Criminal Law Amendment Act, 2013,<sup>126</sup> which raised the age of consent from 16 to 18 years.<sup>127</sup> This meant that any sexual activity involving individuals who were below the age of 18 years, irrespective of their consent, would amount to 'statutory rape' as per section 375 of the Indian Penal Code, 1860.<sup>128</sup>

This has resulted in one of the most controversial aspects of the POCSO Act. By rendering teenagers incapable of giving consent to sexual relationships, consensual 'romantic relationships' between teenagers often get criminalised. The seriousness of this issue has not escaped judicial attention. In *Arhant Janardan Sunatkari v State of Maharashtra*,<sup>129</sup> the Bombay High Court observed that incidents of

consensual sex between minors have been a grey area under the law as a minor's consent is not valid in the eyes of law.

Various studies suggest that many cases filed under the Act pertain to consenting minors. For instance, a study conducted in Delhi found that 28% of the complaints reported between January, 2013 and September, 2015 were between individuals between the age group of 16-18 years.<sup>130</sup> 90% of these cases resulted in acquittal because the adolescent girl failed to testify against her sexual partner. A report by CCL-NLSIU consolidating findings regarding the implementation of the POCSO Act in five states found that the percentages of POCSO cases involving consensual relationships were 5% in the case of Karnataka, 15% in Assam, 20% in Maharashtra and approximately 21% in Andhra Pradesh.<sup>131</sup>

While the numbers may seem small, there is no denying the fact that this prevents minors from safely exhibiting and exploring their sexuality.<sup>132</sup> The report also notes that most of the 'romantic cases' were filed by the family of the victim and not the victim herself, thus giving rise to the assumption that these provisions were being misused by families of adolescents to thwart relationships that they did not approve of.<sup>133</sup> A study of rape trials in a Fast Track Court (FTC) in Lucknow found that 50% of the rape trials observed for a period of eight weeks between April, 2015 and May, 2015 were related to consensual relationships where parents opposing

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<sup>124</sup> Amita Pitre & Lakshmi Lingam, 'Age of consent: challenges and contradictions of sexual violence laws in India' (2020) 29 *Sexual and Reproductive Health Matters*.

<sup>125</sup> The Protection of Children from Sexual Offences Act 2012, s 2(d).

<sup>126</sup> The Criminal Law (Amendment) Act 2013.

<sup>127</sup> When this Bill was first introduced in the Lok Sabha, the age of consent was stated to be 16, but due to protests from certain campaign groups, it was changed to 18 at the time of introducing it in the Rajya Sabha.

<sup>128</sup> Indian Penal Code 1860, s 375.

<sup>129</sup> *Arhant Janardan Sunatkari v State of Maharashtra*, 2021 SCC OnLine Bom 136.

<sup>130</sup> Swagata Raha, 'Report of Study on the working of Special Courts under the POCSO Act, 2012 in Delhi' (2016) Centre for Child and the Law <<https://ccl.nls.ac.in/wp-content/uploads/2017/01/specialcourtPOSCOAct2012.pdf>> accessed 17 June 2022.

<sup>131</sup> Centre for Child and the Law, National Law School of India University, *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (National Printing Press, Bengaluru, February 2018).

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*

the relationship had filed cases for their adolescent daughter.<sup>134</sup>

### Important Judgments

Courts have often strictly interpreted<sup>135</sup> the POCSO Act by holding that the consent of a minor has no value in the eyes of the law. However, over the years, they are beginning to recognise the draconian interpretations of the POCSO Act and tracing back its intent to protect innocent children from sexual offenses as opposed to a tool of abuse of the process of law to compel a person to get out of a consensual relationship or get into a 'compromise marriage'. For instance, the Calcutta High Court<sup>136</sup> while recognising that the consent of a minor is not a good consent in law, interpreted the term 'penetration' in the POCSO Act to mean a positive, unilateral act on the part of the accused and not sexual unions between two persons out of their own volition.

Courts have also recognised the problems of imposing rigorous punishments prescribed under the POCSO Act<sup>137</sup> and the need for creating legal awareness given the grey area pertaining to consensual relationships.<sup>138</sup> The Madras High Court has provided the most definitive to what the position of law on the subject should be. In 2019,<sup>139</sup> it recommended that the definition of 'child' under Section 2(d) of the POCSO Act should be 16 and not 18 years and consensual relationships after the age of 16 years should be excluded from rigorous punishments under the Act. Drawing from the

rationale of a Canadian law<sup>140</sup> it recommended a suitable amendment to the effect that the age of the offender ought not to be more than five years or so than the age of the victim girl (who should be 16 years or older).

In another case, a petition was filed by the alleged victim under Section 482 of the Code of Criminal Procedure, 1973, to quash the proceedings in a POCSO case pending before the trial court. The minor victim and the accused had eloped leading to a registration of the case against the boy. While quashing the criminal proceedings, the court recognised that a law to protect and render justice to victims and survivors of child abuse can also become a tool in the hands of certain sections of the society to abuse the process of law.

The Madras High Court furthered its views in 2021,<sup>141</sup> where it held that consensual teenage relationships are a part of biosocial dynamics and therefore 'painting a criminal colour to this aspect would only serve counter-productively' and also that 'punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act.'<sup>142</sup> The Court thereby quashed proceedings under Section 482 of the CrPC, 1973, Section 366 of the IPC, 1860 and Section 6 of the POCSO Act, 2012.

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<sup>134</sup> Neetika Vishwanath, 'The Shifting Shape of the Rape Discourse' (2018) 25(1) *Indian Journal of Gender Studies* <<https://doi.org/10.1177%2F0971521517738447>> accessed on 17 June 2022.

<sup>135</sup> *Peer Mohammad Ghotu Mohd. Ismail v State of Maharashtra*, Criminal Appeal No. 491 of 2021 (Bom H.C.) (unreported); *Rahul P.R. v State of Kerala*, Criminal Miscellaneous No. 5890 of 2020 (Ker H. C.)

<sup>136</sup> *Ranjit Rajbanshi v State of W.B.*, 2021 SCC OnLine Cal 2470.

<sup>137</sup> *Vikramsinh Champaksinh Parmar v State of Gujarat*, R/Special Criminal Application Number 765 of 2020 (Guj H.C.) (unreported).

<sup>138</sup> *Arhant Janardan Sunatkari v State of Maharashtra*, 2021 SCC OnLine Bom 136; Flavia Agnes, 'Controversy over Age of Consent' (2013) 48 EPW 10.

<sup>139</sup> *Sabari v Inspector of Police*, 2019 (3) MLJ CrI 110.

<sup>140</sup> Criminal Code of Canada 1985, s 150.1(2.1)

<sup>141</sup> *Vijayalakshmi v State*, 2021 SCC OnLine Mad 317.

<sup>142</sup> Meera Emanuel, 'POCSO Act not intended to penalise adolescents or teenagers in romantic relationships: Madras High Court' *Bar and Bench* (29 January 2021) <<https://www.barandbench.com/news/litigation/pocso-act-not-intended-cover-adolescents-teenagers-romantic-relationships-madras-high-court>> accessed 20 July 2021; Mahak Tanwar and Rohan Wadhwa, 'Revisiting The Age Of Consent In India' *Live Law* (30 May 2021) <<https://www.livelaw.in/columns/article-21-indian-constitution-pocso-act-2012-section-375-indian-penal-code-174909?infinitemscroll=1>> accessed 20 July 2021.

When dealing with bail applications of accused persons, High Courts have considered the aspect of consent. In *Smti. Ephina Khonglah v State of Meghalaya*,<sup>143</sup> the Meghalaya High Court held that even though the consent of a minor has no legal validity, one cannot lose sight of the matter while a plea for bail is being considered by the court.<sup>144</sup>

While dealing with a case involving a 'consensual' relationship, the Delhi High Court remarked that the police's filing of cases under the POCSO Act at the behest of the girl's family who opposed the relationship is an unfortunate practice.<sup>145</sup>

### **Present position of law**

Even as one bench of the Madras High Court was hailed for its progressive implementation of POCSO, another Bench of the same court, in *Maruthupandi v State*,<sup>146</sup> favoured a more literal interpretation of the Act and held that penalty under POCSO will be attracted irrespective of whether the relationship was consensual or not. This uncertainty can only be resolved if the Supreme Court gives a ruling on the matter or if the Parliament introduces an appropriate amendment. Till then sexual acts between minors will continue to be criminalised and any decision given will be contingent on the how a particular bench decides to interpret the law.

The above discussion shows that while some controversies surrounding the interpretation of various provisions of the POCSO Act that have arisen since 2012 have been settled by judicial pronouncements, many others remain. Even within each individual issue, while certain elements have acquired some form of legal certainty, there are certain questions that still need to be settled. It is possible that some of these questions will eventually be answered by the courts. However, for a few others, legislative intervention, in the form of amendments to the law, is necessary. The last

chapter of this report lists some recommendations in this regard.

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<sup>143</sup> B.A. No. 14 of 2021 (Meg H.C.) (unreported).

<sup>144</sup> In *Dharmander Singh v State*, B.A. No. 1559 of 2020 (Del H.C.) (unreported).

The Delhi High Court granted bail to the accused while taking into consideration the possibility of a reciprocal physical relationship between the accused and the minor victim.

<sup>145</sup> *Pradhuman v State*, B.A. No. 2380 of 2021 (Del H.C.) (unreported).

<sup>146</sup> CRL.A [MD] No. 209 of 2017.

# Examining POCSO in Action

## *Actors, Processes and Challenges*

The previous chapters map the legislative history of the POCSO Act and some of the jurisprudential questions that have arisen so far. The goal of this chapter is to understand the process that a POCSO case goes through in the criminal justice system and what are some of the challenges that arise in these different stages. While this report is primarily aimed at understanding how the judiciary has implemented the POCSO Act, it is important to remember that there are a multitude of actors who influence implementation and hence, the responsibility for success or failure of POCSO is not to be placed solely at the judiciary's doorstep.

The child protection system in India is a complex one. While the Indian Constitution,<sup>147</sup> the Indian Penal Code (IPC), 1860, and the Code of Criminal Procedure (CrPC), 1973, the Commissions for Protection of Child Rights Act, 2005, all contain provisions that affect the rights of children, the system primarily lies at the cross-section of two key legislations—the Juvenile Justice (Care and Protection of Children) Act, 2015<sup>148</sup> and the POCSO Act, 2012. The year 2022 marks ten years since the POCSO Act came into effect in India.

However, the implementation of the Act has faced several challenges along the way, some of which have worsened over the years. The need for better implementation of the POCSO Act has been voiced by several High Courts<sup>149</sup> as well as the Supreme Court.

This chapter examines some of the key challenges to the implementation of the POCSO Act that the researchers identified through stakeholder interviews and secondary research. It is divided into three parts, each corresponding to the three major stages in a POCSO case identified by the researchers: pre-trial, trial and post-trial. Each part contains an overview of the processes and challenges specific to each stage. Two challenges, however, have been dealt with separately since they pertain to all the three stages: inadequate awareness about the POCSO Act (within the general public as well as actors within the criminal justice system) and the lack of training for various stakeholders involved in the implementation of the POCSO Act.

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<sup>147</sup> Constitution of India 1950, arts 15(3), 21A, 24, 39(e), 39(f) and 45.

<sup>148</sup> Juvenile Justice (Care and Protection of Children) Act, 2015.

The Juvenile Justice Act lays down the framework for how the system should deal with children in need of care and protection as well as children who come into conflict with the law. It deals with offences committed by minors, care and protection of vulnerable children by providing for their basic needs, and rehabilitation in the best interests of children.

<sup>149</sup> *Hanif Ur Rahman v State of Bihar*, Criminal Writ Jurisdiction Case No. 160 of 2021 (Pat H.C.) (unreported).

## Overview of Stages and Challenges

### Pre trial

- Delay in investigation and filing of chargesheet
- Non-appointment of Support Persons for victims

### Trial

- Lack of Special Courts in all districts
- Lack of Special Public Prosecutors for Special Courts
- Non-compliance with the timelines prescribed by the Act

### Post trial

- Inadequate provision of compensation to the victims

### Across Stages

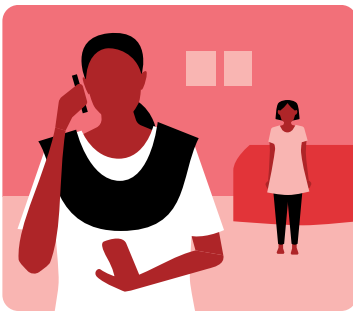
- Inadequate awareness about the POCSO Act
- Inadequate training of various stakeholders

# I

## Pre Trial

### A

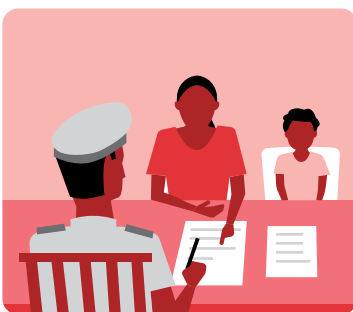
#### What happens during this stage



**Reporting:** offence under POCSO Act may be reported to

- SJPU or local police (s. 19 POCSO Act and s.154 CrPC);
- or child helplines (Rule 4(2) POCSO Rules);

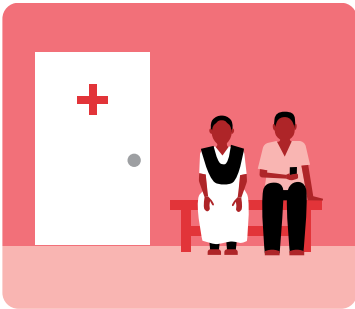
by any person (including the child).



**Filing of First Information Report (FIR):** Report is written down, read over to the informant and entered in a book by the police unit (s. 19 POCSO Act). FIR is filed and a copy is given to the informant (s. 154 CrPC).



**Recording of victim's statement:** Ideally recorded by a woman police officer, not below the rank of sub-inspector and without uniform, in presence of a person the child trusts at the residence of the child or at a place where he usually resides or at the place of his choice (s. 24 POCSO Act and s. 161 CrPC). Statement under s. 164 of the CrPC shall be recorded by a Magistrate (s. 25 POCSO Act and s. 164 CrPC). Translators, interpreters and special educators are employed as and when required (s. 26 POCSO Act).



**Medical examination of the victim:** The child must be taken to the nearest hospital or shelter home within 24 hours (s. 19(5) POCSO Act and Rule 4(3) (b) POCSO Rules). Victim is examined by a registered medical practitioner (woman doctor in case of girl victim) (s. 27 POCSO Act and s. 164-A CrPC), who should send a report to the police within 24 hours (Rule 6(5) POCSO Rules). Forensic samples collected must be forwarded to FSL at the earliest (Rule 4(3)(d) POCSO Rules).



**Production of victim before CWC:** Police to report matter to CWC and Special Court within 24 hours (Section 19(6) POCSO Act).



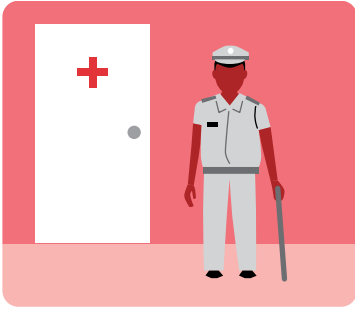
**Assignment of Support Person to victim by CWC:** On its assessment, CWC may assign a support person to assist the victim throughout all stages of investigation and trial (Rule 4(8) POCSO Rules).



**Investigation and collection of evidence:** Investigation is conducted by the police to collect evidence which includes spot investigation (s. 157 CrPC), search and seizure (ss. 165 and 102 CrPC), and examination of accused and witnesses (s. 161 CrPC).



**Arrest of accused:** Accused is arrested and produced before the Magistrate without unnecessary delay and within a maximum period of 24 hours from arrest (ss. 41 and 76 CrPC).

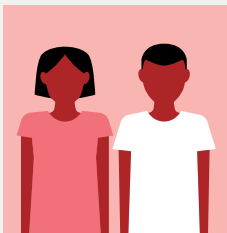


**Medical examination of accused:** Medical examination of accused is conducted and forensic samples received therein sent to FSL (s. 53-A CrPC).

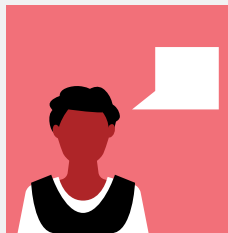


**Filing of chargesheet:** On completion of investigation, a chargesheet is filed before Special Court within 90 days (s. 173 CrPC).

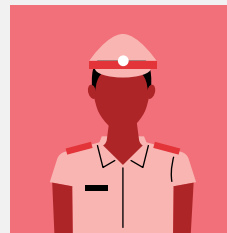
### Stakeholders involved at this stage



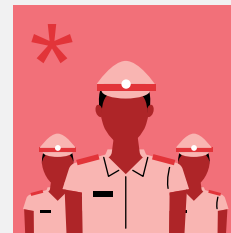
Victim



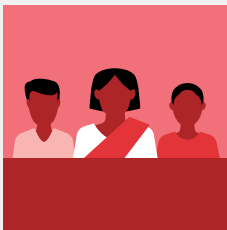
Informant



Police



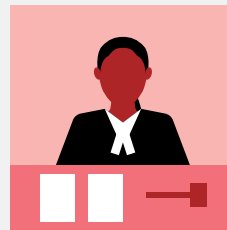
Special Juvenile Police Units



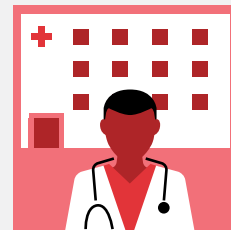
Child Welfare Committees



Child Care Institutions



Magistrates



Hospitals/Doctors



**B**  
**Challenges at the Pre Trial Stage**

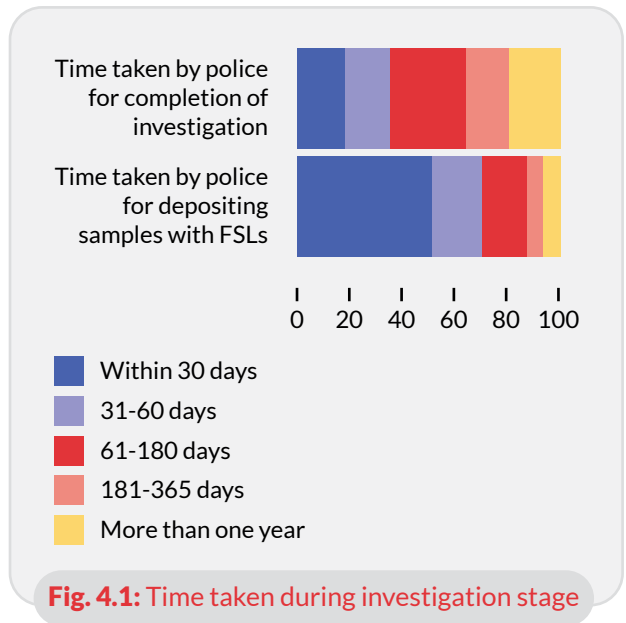
**a. Delay in investigation and filing of chargesheet**

**Context**

As readers will see in Chapter V, the pendency of POCSO cases is very high. One of the primary reasons for this high pendency<sup>150</sup> is the slow pace of investigation by the police and the delay in depositing samples with the Forensic Science Laboratories. The tables below show the time taken by the police for completion of investigation and for depositing samples with Forensic Science Laboratories (FSLs) as per data recorded in a Supreme Court order.<sup>151</sup>

It is evident from Fig 4.1 that investigation is completed in less than 60 days only in 35% of

POCSO cases. For 36% of the cases, it takes more than six months just to complete the investigation. If investigation itself takes as long, the possibility



**Fig. 4.1: Time taken during investigation stage**

<sup>150</sup> Ramya Kannan, 'Activists press for speedy resolution of POCSO cases' *The Hindu* (20 August 2021) <<https://www.thehindu.com/news/national/tamil-nadu/activists-press-for-speedy-resolution-of-pocso-cases/article36009297.ece>> accessed 20 June 2022.

<sup>151</sup> *In Re, Alarming Rise in the Number of Reported Child Rape Incidents* (2020) 7 SCC 108. Report submitted by Surinder S. Rathi, Registrar, Supreme Court of India. The report was filed in compliance to the order of the Supreme Court dated 01-10-2019 <[https://main.sci.gov.in/supremecourt/2019/24308/24308\\_2019\\_14\\_1\\_17281\\_Order\\_01-Oct-2019.pdf](https://main.sci.gov.in/supremecourt/2019/24308/24308_2019_14_1_17281_Order_01-Oct-2019.pdf)> accessed on 30 September 2022.



of the trial concluding within one year of the date when cognizance is taken<sup>152</sup> becomes extremely low. Further, it is concerning that in 49% of the cases, it has taken the police anywhere between 31 days to greater than one year to deposit samples with FSLs.

Delay can also be attributed to the time taken by FSLs to prepare reports. There is often acute delay in submitting of reports by FSLs and courts have frequently taken them to task for its negative impact on the proceedings. An examination of 100 district court orders by Times of India revealed that some of the proceedings had been held up for more than five years solely on account of the unavailability of FSL reports.<sup>153</sup> Officials have often cited the reason of lack of manpower for this, resulting in a prioritisation of newer cases over older ones.<sup>154</sup>

NCRB data from 2020 shows that out of the 137552 cases of crimes against children, investigation was completed for only 79297 cases, while 58186 (42%) cases were still pending investigation by the end of the year.<sup>155</sup> A report on the state of policing and law and order in Delhi by Praja found that a total of 14378 cases of crime against children were to be investigated in Delhi as of December, 2020 out of which 56% cases were pending for investigation at

the end of the year. Out of the cases investigated, chargesheet was filed in only 2284 cases.<sup>156</sup> It must be noted that the figure of 14378 cases includes all crimes against children and not just offences under the POCSO Act. Therefore, delay in investigation is a trend not just in POCSO cases but across all crimes against children.

The Delhi Commission for Protection of Child Rights (DCPCR) closely monitored the stages of investigation where delays occur and sought quarterly reports from the FSL, Government of Delhi to monitor if forensic examinations were being completed on time. The DCPCR observed that while investigation was completed within three months in nearly 50% of POCSO cases, the delay occurred on part of the police in collecting these reports and filing chargesheets.<sup>157</sup> This showcases the lack of priority accorded to POCSO cases by the police.

A study in Maharashtra found that because the DNA and forensic labs are located only in some of the metropolises like Mumbai, samples under POCSO Act from across the state are sent there causing serious delay in receiving reports, leading to delay in filing of the chargesheet.<sup>158</sup> In addition to these problems, there is a lack of adequate experts,<sup>159</sup>

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<sup>152</sup> The Protection of Children from Sexual Offences Act 2012, s 35(2).

<sup>153</sup> Usha Das, 'Courting trouble...how endless wait for forensic reports is delaying justice,' *Times of India* (13 December, 2021) <<https://timesofindia.indiatimes.com/city/delhi/courting-trouble-how-endless-wait-for-forensic-reports-is-delaying-justice/articleshow/88244533.cms>> last accessed 30 September 2022.

<sup>154</sup> Ibid.

<sup>155</sup> National Crime Records Bureau, 'Crime in India 2020: Statistics,' Vol. 1, Pg. 325 (Ministry of Home Affairs, 2020) <<https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>> accessed 30 September 2022.

<sup>156</sup> Praja, 'State of Policing and Law & Order in Delhi November 2021' (2021) Praja and IC Centre for Governance <<https://justicehub.in/dataset/ddae969e-4278-4383-8c0f-f21b2eb29007/resource/3da4a36d-9c68-45c7-a5e1-3d91597a1dea/download/report-on-state-of-policing-and-law-and-order-in-delhi-2021.pdf>> accessed 20 June 2022.

<sup>157</sup> Delhi Commission for Protection of Child Rights, 'Intervention Undertaken by the POCSO Division recently' DCPCR (29 May 2021) <<https://dcpcr.delhi.gov.in/interventions-undertaken-pocso-division-recently>> accessed 20 June 2022.

<sup>158</sup> Pravin Patkar and Pooja Kandula, '4 Years Since POCSO: Unfolding of the POCSO Act in the State of Maharashtra' (2016) *Aarambh India* 231 <[http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh\\_4-Years-Since-POCSO.pdf](http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh_4-Years-Since-POCSO.pdf)> accessed 23 June 2022.

<sup>159</sup> Amit Anand Choudhary, 'SC Concerned over 46% Vacancies in Forensic Labs, Seeks Explanation from Centre, States' *Times of India* (New Delhi, 24 November 2018) <<https://timesofindia.indiatimes.com/india/sc-concerned-over-46-vacancies-in-fsl-seeks-explanation-from-centre-states/articleshow/66774857.cms>> accessed 23 June 2022; Team Herald, 'HC pulls up director for failing to make FSL fully operational' *Herald* (Panjim, 25 September 2021) <<https://www.heraldgoa.in/Goa/HC-pulls-up-director-for-failing-to-make-FSL-fully-operational/180456>> accessed 23 June 2022.

expertise<sup>160</sup> and infrastructure<sup>161</sup> in FSLs and in some cases, there is a lack of FSLs altogether. Therefore, apart from addressing the issue of delays<sup>162</sup> where FSLs exist, there is a more urgent need to increase the number of and capacity at FSLs to ensure proper investigation.

### Interventions

Seeing the dismal state of affairs, the Supreme Court directed the Chief Secretaries of all states to ensure that in all POCSO cases, the forensic science laboratories in their states send back reports promptly and without any delay.<sup>163</sup> Further, the order directed the Director General of Police or the officer of equivalent rank of the States to constitute a Special Task Force to ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts.<sup>164</sup>

In a judgment passed in September 2020, the Kerala High Court, among other things, directed the state government to take immediate steps to fill vacancies

in the FSLs in the state of Kerala to ensure that shortage of manpower in these laboratories does not hamper investigations and trials of POCSO cases.<sup>165</sup> In accordance with the directions given by courts, Delhi and Trichy police have established Special Task Forces to ensure timely and proper investigation of POCSO cases.<sup>166</sup> The Delhi Police have also taken further steps like designating Assistant Commissioner of Police or Sub-Divisional Police Officer as nodal officers for monitoring investigations and alerting the Joint Commissioner of Police (Range) and Special Commissioner of Police (Law and Order) in case investigation is not completed within 20 days.<sup>167</sup> More recently, the Chennai Police, in collaboration with the Tamil Nadu Judicial Academy, have devised a Standard Operating Procedure for expeditious investigation of cases under POCSO.<sup>168</sup>

In December 2021, the Police Chief of the state of Kerala directed that investigating officers in the state will have the absolute right in filing the

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**160** Sohini Chowdhary, 'Forensic Science Labs need more personnel, more expertise: Supreme Court expresses concerns about delays in FSL reports' *Live Law* (24 March 2022) <<https://www.livelaw.in/top-stories/supreme-court-forensic-science-laboratories-personnels-expertise-heera-gold-exim-scam-194931?infinitemscroll=1>> accessed 23 June 2022.

**161** The New Indian Express, 'Delay by FSL affecting justice, says HC' *The New Indian Express* (Bengaluru 11 February 2021) <<https://www.newindianexpress.com/states/karnataka/2021/feb/11/delay-by-fsl-affecting-justice-says-hc-2262430.html>> accessed 23 June 2022.

The Karnataka High Court observed that the sorry state of the State FSL and the state government's failure to provide proper facility for the FSL is affecting the criminal justice system and fundamental rights of the accused. The court directed the Home Secretary to file an affidavit detailing the filling of vacant posts in the FSL, making them operative, timeline for analysis of samples/articles sent to FSL, providing modern equipment to FSL and establishing modern regional labs or mobile labs for analysis of blood samples, etc.

**162** Usha Das, 'Delhi: Courting trouble... how endless wait for forensic reports is delaying justice' *The Times of India* (New Delhi 13 December 2021) <<https://timesofindia.indiatimes.com/city/delhi/courting-trouble-how-endless-wait-for-forensic-reports-is-delaying-justice/articleshow/88244533.cms>> accessed 23 June 2022.

**163** *In Re: Alarming Rise in the Number of Reported Child Rape Incidents*, (2020) 7 SCC 87.

**164** *Alakh Alok Srivastava v Union of India*, (2018) 17 SCC 291.

**165** *Abhishek K.A @ Bhanu v. State of Kerala*, Criminal Appeal No. 1087 of 2019 (Ker H.C.) (Unreported).

**166** TNN, 'Special police task force to speed up action in POCSO cases' *Times of India* (23 March 2019) <<https://timesofindia.indiatimes.com/city/trichy/special-police-task-forces-to-speed-up-action-in-pocso-cases/articleshow/68530111.cms>> accessed 30 September and Mohit Kumar Gupta, 'Is it alive only on paper – Special Task Force/Committee (POCSO) of Delhi Police Constituted as per Alakh Alok Srivastava Judgement' *Live law* (1 April 2021) <<https://www.livelaw.in/law-firms/articles/special-task-forcecommittee-pocso-delhi-police-alkh-alk-srivastava-judgement-172007>> accessed on 30 September 2022.

**167** Team MP, 'LG directs cops to expedite investigation of POCSO cases,' *Millennium Post* (31 may 2018) <<http://www.millenniumpost.in/delhi/lg-directs-cops-to-expedite-investigation-of-pocso-cases-302337?infinitemscroll=1>> accessed on 30 September 2022.

**168** S. Vijay Kumar, 'Police adapt SOP to expedite probe in POCSO cases,' *The Hindu* (7 December 2021) <<https://www.thehindu.com/news/national/tamil-nadu/police-adopt-sop-to-expedite-probe-in-pocso-cases/article37875874.ece>> accessed on 30 September 2022.

chargesheet, without waiting for approval from their senior officers.<sup>169</sup> Senior officers were directed to ensure the charge-sheets in POCSO cases are filed within 60 days.<sup>170</sup> Directions were also issued to all district police chiefs to hold special monthly meetings to evaluate the progress in POCSO cases.<sup>171</sup>

An online analytic tool for police called 'Investigation Tracking System for Sexual Offences' was launched by the Ministry of Home Affairs in 2019 to monitor and track time-bound investigation on sexual assault cases.<sup>172</sup>

### Present scenario

In its judgment in *Abhishek. K.A. @ Bhanu* (mentioned above), the Kerala High Court lamented the poor implementation of the POCSO Act and issued detailed guidelines to protect the children involved in POCSO cases from the risk of secondary victimisation and to make justice delivery under the statute effective and meaningful.<sup>173</sup>

Despite these interventions by the higher judiciary, there continue to be instances<sup>174</sup> where the accused are released on bail due to the failure of the police to file chargesheets in time.

## b. Non-appointment of Support Persons for victims

### Context

A support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the District Child Protection Unit (DCPU).<sup>175</sup> They can play a crucial role in handholding the victim through interactions with the legal system.

Support persons liaise with various agencies and update families with important information in addition to responsibilities listed under the law.<sup>176</sup>

These include providing information relating to available services, compensation, judicial procedures, and potential outcomes. In addition, they also help with school admissions, moving houses etc. which are not strictly their responsibility under the Act.<sup>177</sup>

However, a study conducted in Maharashtra after four years of the implementation of the POCSO Act found that 94% of Child Welfare Committees were unaware of the provision of appointing a support person as per the POCSO Rules.<sup>178</sup> It further found that not a single DCPU that was a part of the study

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<sup>169</sup> G Sajith Kumar, 'No need to wait for nod from higher-ups to file chargesheets in POCSO cases' *Mathrubhumi* (11 December 2021) <<https://english.mathrubhumi.com/news/kerala/pocso-cases-kerala-1.6260201>> accessed 20 June 2022.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> Press Information Bureau, 'Sexual Cases under POCSO' *Press Information Bureau* (06 December 2020) <<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1595252>> accessed 20 June 2022.

<sup>173</sup> *Abhishek K.A @ Bhanu v State of Kerala*, Criminal Appeal No. 1087 of 2019 (Ker H.C.) (Unreported).

<sup>174</sup> The Arunachal Times, 'Police's failure to file chargesheets under POCSO Act leads to release of several accused' *The Arunachal Times* (23 November 2021) <<https://arunachaltimes.in/index.php/2021/11/23/polices-failure-to-file-chargesheets-under-pocso-act-leads-to-release-of-several-accused/>> accessed 20 June 2022.

<sup>175</sup> Protection of Children from Sexual Offences Rules, 2020, r 5(6).

Provided that nothing in these rules shall prevent the child and child's parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

<sup>176</sup> For details about the legal responsibilities of a support person, see Protection of Children from Sexual Offences Rules, 2020, r 4(15).

<sup>177</sup> Anuroopa Giliyal, Anjali Shivanand and Aneasha Johny, 'Study on the Working of Special Courts under the POCSO Act, 2012 in Karnataka' (2017) Centre For Child And The Law, National Law School Of India University <<https://ccl.nls.ac.in/wp-content/uploads/2017/01/posco2012karnataka.pdf>> accessed 17 June 2022.

<sup>178</sup> Pravin Patkar and Pooja Kandula, '4 Years Since POCSO: Unfolding of the POCSO Act in the State of Maharashtra' (2016) *Aarambh India* 20 <[http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh\\_4-Years-Since-POCSO.pdf](http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh_4-Years-Since-POCSO.pdf)> accessed 20 June 2022.

was aware of the provisions under which they could be appointed as support persons under the POCSO Rules.<sup>179</sup>

A study examining the implementation of the POCSO Act in Delhi and Mumbai found that though the numbers regarding awarding of compensation under the POCSO Act were very low, these numbers increased when a support person /organisation was involved in the cases.<sup>180</sup> However, support persons are not being appointed in most POCSO cases. The Supreme Court has noted that in 96% of POCSO cases, a support person was not provided to the victim.<sup>181</sup>

### Interventions

Despite the crucial role that support persons play in ensuring that the child protection system actually helps the child, targeted interventions to increase the quantity and quality of support provided have been limited. In a 2020 judgment, the Supreme Court has ruled that while drawing up the panel of support persons for a district, care should be taken to appoint persons who are dedicated to the cause of child rights and apart from academic qualifications, are oriented towards child rights and sensitive to the needs of children.<sup>182</sup> To what extent this judgment is being followed by CWCs is difficult to ascertain in the absence of an empirical study.

### Present scenario

In March 2022, “The Handbook for Support Persons 2021 – Assisting Child Victims of Sexual Violence”<sup>183</sup> was released by UNICEF, and child rights NGOs Enfold Proactive Health Trust and Prerna, to help support persons understand their

roles and responsibilities with respect to the POCSO Act, the child victim, the authorities, agencies, and other stakeholders.<sup>184</sup> Such initiatives that will build capacity of support persons and enable them to provide effective support to victims in POCSO cases are the need of the hour. The Rajasthan government has introduced a scheme with respect to support persons, called the Bal Mitra Yojana. The scheme delineates the role of the support persons, the procedures for their appointment and removal, their remuneration, and the process of filing complaints against them.<sup>185</sup> Schemes like this can go a long way in ensuring that support persons are appointed in POCSO cases.

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<sup>179</sup> Ibid.

<sup>180</sup> Bharti Ali, Maharukh Adenwalla and Sangeeta Punekar, *Implementation of the POCSO Act: Goals, Gaps and Challenges: Study of cases in Special Courts in Delhi & Mumbai (2012 - 2015)* (HAQ: Centre for Child Rights and FACSE 2017) 123 <[www.haqcsrc.org/publication/implementation-pocso-act/](http://www.haqcsrc.org/publication/implementation-pocso-act/)> accessed 17 June 2022.

<sup>181</sup> *In Re, Alarming Rise in the Number of Reported Child Rape Incidents* (2020) 7 SCC 108.

<sup>182</sup> *In Re, Alarming Rise in the Number of Reported Child Rape Incidents* (2020) 7 SCC 87.

<sup>183</sup> Enfold Trust, ‘Handbook for Support Persons’ (2021) Enfold Trust and Prerna <[http://enfoldindia.org/wp-content/uploads/2022/03/Handbook-for-Support-Persons-2021-Released-on-10\\_3\\_2022.pdf](http://enfoldindia.org/wp-content/uploads/2022/03/Handbook-for-Support-Persons-2021-Released-on-10_3_2022.pdf)> accessed 20 June 2022.

<sup>184</sup> The News Minute, ‘Handbook on support persons’ role in child sexual abuse cases released’ *The News Minute* (11 March 2022) <<https://www.thenewsminute.com/article/handbook-support-persons-role-child-sexual-abuse-cases-released-161827>> accessed 20 June 2022.

<sup>185</sup> Government of Rajasthan, ‘Notification 28.01.2021’ <[http://www.crc-hcmripa.in/wp-content/uploads/knowledge\\_hub/Bal-Mitre-Yojna-2020.pdf](http://www.crc-hcmripa.in/wp-content/uploads/knowledge_hub/Bal-Mitre-Yojna-2020.pdf)> accessed on 30 September 2022.

# II

## Trial

### A

#### What happens during this stage<sup>186</sup>

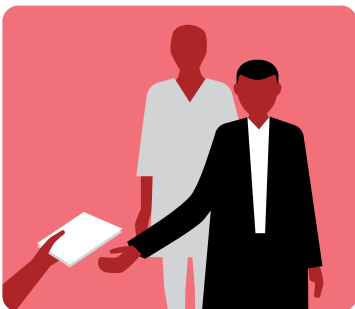
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**Cognizance by Special Court:** The Special Court takes cognizance of the offence (s.33(1) POCSO Act and s. 193 CrPC)

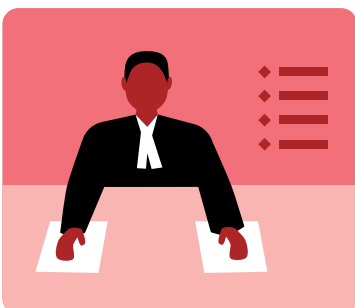


**Issuance of warrants:** Special Court issues a warrant for the appearance of the accused (s. 204 CrPC).



**Supply of documents to the accused:** The following documents are supplied (s. 207 CrPC):

- a. Police report;
- b. Copy of FIR;
- c. Record of statements of victim and witnesses; and
- d. Other relevant documents.

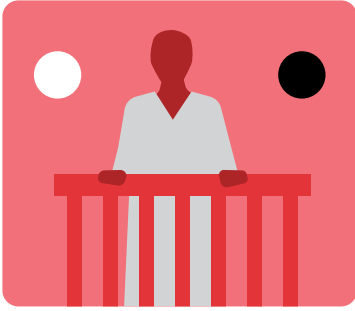


**Framing of charges/Discharge:** After hearing submissions from both prosecution and defence, if the Special Court finds sufficient grounds to prosecute, charges are framed (s. 228 CrPC), otherwise the accused is discharged (s. 227 CrPC).

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<sup>186</sup> The Protection of Children from Sexual Offences Act 2012, ss 35 and 35(2).

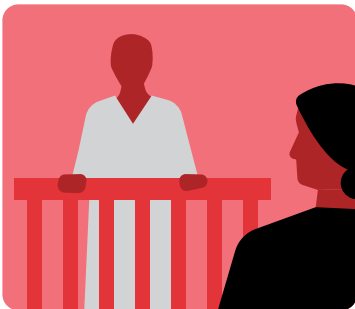
A trial in a POCSO case is conducted *in camera* (s. 37 POCSO Act) and should, as far as possible, be disposed of by the Special Court within a period of one year from the date of taking cognizance of the offence (s. 35(2) POCSO Act).



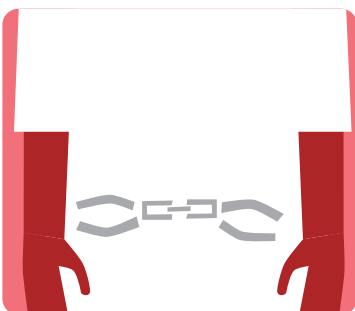
**Plea by the accused:** If accused pleads 'guilty' to the charges, the accused gets convicted (s. 229 CrPC). If the accused pleads 'not guilty', the Special Court proceeds with evidence for prosecution.



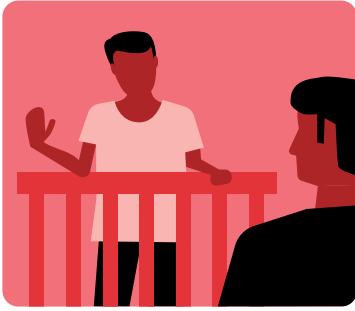
**Prosecution evidence including victim's testimony:** Testimony of the victim (s. 231 CrPC) is recorded. During examination-in-chief, Special Public Prosecutor and the defence counsel are required to communicate questions to be put to the child to the Special Court which shall in turn put those questions to the child (s. 33(2) POCSO Act). Evidence of the child shall be recorded within 30 days of Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court (s. 35(1) POCSO Act). During examination, the court must ensure a child-friendly atmosphere. No direct, aggressive, or defamatory questions can be put to the child (s. 33 POCSO Act). Child should not be exposed to the accused in any manner (s. 36 POCSO Act). Special educators, translators, and legal aid services are provided wherever required (ss. 38, 39, and 40 of POCSO Act). Victim can be examined at a place other than the court as well (s. 37 POCSO Act and s. 284 CrPC).



**Examination of accused:** Special Court examines the accused (s. 313 CrPC).



**Acquittal:** at this stage, if the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal (s. 232 CrPC).



**Defence evidence:** If the accused is not acquitted under s. 232 CrPC, he is called upon to enter on his defence and adduce any evidence in support thereof (s. 233 CrPC).



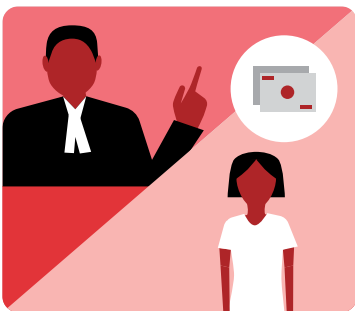
**Arguments:** The Prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply (s. 234 CrPC).



**Pronouncement of judgment:** Judgment of conviction or acquittal is pronounced after oral submissions from both sides (s. 235 CrPC).



**Hearing on sentence (if convicted):** If an accused is convicted, a sentence of imprisonment and/or fine is passed by Special Court after giving accused an opportunity to be heard (s. 235(2) CrPC).

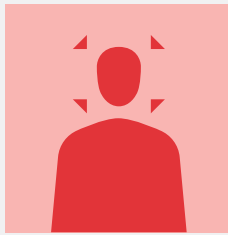


**Order on compensation:** Compensation, both final and interim, may be awarded to the victim irrespective of whether the trial results in conviction, acquittal, or discharge (s. 33 POCSO Act, Rules 9 and 10 of POCSO Rules and 357-A of CrPC).

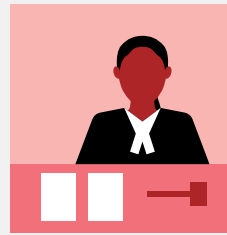
## Stakeholders involved at this stage



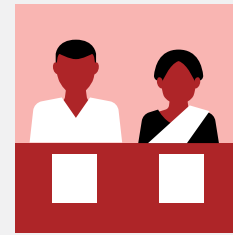
Victim



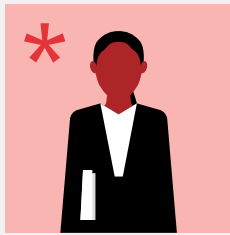
Accused



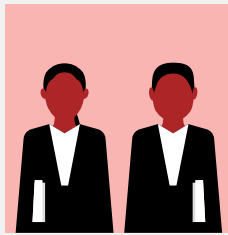
POCSO Special  
Court Judge



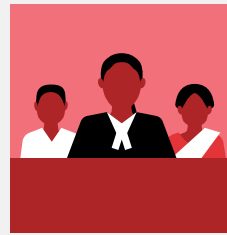
Court Staff



Special Public  
Prosecutors



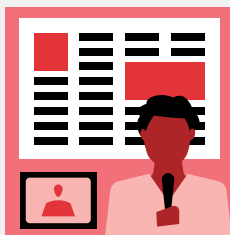
Lawyers  
(Victim, Defence)



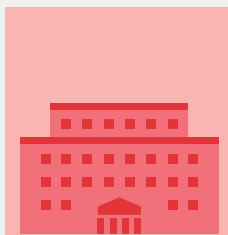
Juvenile Justice  
Boards



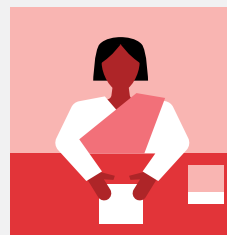
Support Person



Media



High Courts



District Legal Service  
Authorities



Child Care  
Institutions

## B

### Challenges at the Trial Stage

#### a. Lack of Special Courts in all districts

##### Context

Section 28 of the POCSO Act provides that for the purposes of providing a speedy trial, the State Government shall, in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the POCSO Act.

Since POCSO cases involving child victims are highly sensitive, it was hoped that Special Courts would not only provide a speedy trial, but a child-friendly atmosphere for the victims. However, even after the enactment of the POCSO Act and its coming into force in 2012, designation of Special Courts (as mandated by the Act) did not happen at the expected pace. States were lagging behind in designating these courts causing the Supreme Court to intervene.

##### Interventions

In 2018, *Alakh Alok Srivastava v Union of India*,<sup>187</sup> the Supreme Court issued certain directions so that the legislative intent and the purpose of the POCSO Act are actually fructified at the ground level. It directed

<sup>187</sup> *Alakh Alok Srivastava v Union of India* (2018) 17 SCC 291.



that Special Courts, as conceived under the POCSO Act, be established, if not already done. Further, High Courts were ordered to ensure that cases registered under the POCSO Act are tried and disposed of by Special Courts and the presiding officers of these courts are sensitised in the matters of child protection and psychological response. Despite this judgment, Special Courts were not designated in all districts.

Expressing shock at the existing state of affairs, in 2019, the Supreme Court directed the Central and State governments to take steps for creation or assignment of dedicated courts to try POCSO cases on top priority.<sup>188</sup> Taking note of the various issues with the implementation of the POCSO Act, the Supreme Court directed that within 60 days of its order, the Central and State governments should set up exclusive/designated POCSO courts in all districts if there were more than a 100 POCSO cases in the concerned district.<sup>189</sup> This deadline for setting up these exclusive courts was later extended to March 1, 2020.<sup>190</sup>

Further, the Apex Court also ordered<sup>191</sup> that in districts having more than 300 POCSO cases pending, at least two exclusive POCSO Courts shall be set up. The Apex Court directed that these courts would not try any other offence except those under the POCSO Act.<sup>192</sup> It said that such courts would be set up under a Central scheme and be funded by the Central government.<sup>193</sup> This fund would not only take

care of the appointment of the Presiding Officer, but also the appointments of support persons, Special Public Prosecutors, court staff and infrastructure (including creation of child-friendly environment and vulnerable witnesses' deposition rooms).<sup>194</sup>

Annexure 1<sup>195</sup> is based on this order<sup>196</sup> and shows for each state, the number of total districts in that state, the number of districts with greater than 100 POCSO cases and the number of Special Courts sanctioned by the Central Government. It is clear from this Figure that there is a huge disparity between different states as far as the sanctioning of Special POCSO Courts is concerned. For instance, while the required number of courts has been sanctioned for Andhra Pradesh, states like Madhya Pradesh are grossly underserved. This is when some states like Rajasthan have sanctioned Special Courts in excess of the required number. It must be noted that this is only the sanctioned strength and the researchers cannot be certain about how many Special Courts may have actually been set up with the required judges, personnel and infrastructure.

#### Present scenario

Despite these orders, POCSO courts have not been designated in all districts in the country. As of 2022, 408 POCSO courts have been set up in 28 States as part of the Government's Fast Track Special Court's Scheme.<sup>197</sup> Though Section 28 of the Act merely provides for the designation of Special Courts and not setting up, the government has set up exclusive

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<sup>188</sup> *In Re: Alarming Rise in the Number of Reported Child Rape Incidents (2020)* 7 SCC 87, at 108.

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

<sup>192</sup> *Ibid.*

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> Add as a footnote in the Annexure: The Supreme Court issued special instructions for the states of Uttar Pradesh and West Bengal, the state of affairs in which the court termed "deplorable". The court laid down the following criteria for these two states: One exclusive POCSO Court in districts with upto 300 POCSO cases pending; two exclusive POCSO Courts in districts with 301 to 600 POCSO cases pending; three exclusive POCSO Courts in districts with 601 to 1000 POCSO cases pending; and four exclusive POCSO Courts in districts with 1000 or more POCSO cases pending.

<sup>196</sup> *In Re: Alarming Rise in the Number of Reported Child Rape Incidents (2020)* 7 SCC 112.

<sup>197</sup> Department of Justice, 'Fast track Special Courts (FTSCs)' <<https://doj.gov.in/fast-track-special-court-ftscs/#:~:text=1572.86%20Cr.,with%20Rs.,than%201%2C02%2C000%20pending%20cases>> accessed on 30 September 2022.

courts for POCSO cases in view of the high pendency figures.

## **b. Lack of Special Public Prosecutors for Special Courts**

### **Context**

Setting up Special Courts and appointing trained judges by themselves cannot ensure effective implementation of the Act. Ultimately judges depend on the capability of the Special Public Prosecutors ('SPP's) who have to assist the court by presenting the State's case and evidence before it.

Section 32(1) of the POCSO Act provides that the State Government shall, by notification in the Official Gazette, appoint an SPP for every Special Court for conducting cases only under the provisions of this Act.<sup>198</sup> However, according to a study of POCSO courts in Maharashtra, only 42% courts had a designated SPP assigned to attend to cases under the POCSO Act.<sup>199</sup> A study by CCL-NLSIU found that even when SPPs were designated, they were not working exclusively on POCSO cases, thus compromising the quality of assistance rendered to victims.<sup>200</sup> In the four States of Andhra Pradesh,

Assam, Delhi, and Maharashtra, existing PPs and Additional PPs were simply designated as SPPs through a notification.<sup>201</sup> The issue however is not just the lack of dedicated SPPs. The quality of assistance from the prosecutors has also come under severe criticism.<sup>202</sup>

### **Interventions**

Even when Special Public Prosecutors were being appointed, it was noticed that they were also required to handle non-POCSO cases. It took the Supreme Court to reiterate that the language of Section 32 of the POCSO Act leaves no doubt that a Special Public Prosecutor under the Act should not deal with other cases.<sup>203</sup> Last year, taking note of the 'abject incompetence' displayed by the prosecution in a POCSO case, the Kerala High Court initiated a suo moto case to address the issue of appointment of public prosecutors.<sup>204</sup>

Owing to the sensitive nature of POCSO cases, the Supreme Court has said that while appointing Special Public Prosecutors for a district, care should be taken to appoint persons who are dedicated to the cause of child rights and apart from academic qualifications, are oriented towards child rights and sensitive to the needs of children.<sup>205</sup>

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**198** The Protection of Children from Sexual Offences Act 2012, ss 32(2), 32(1) and 32 (3); Criminal Procedure Code, 1973 s 2(u).

Section 32(2) provides that a person shall be eligible to be appointed as a Special Public Prosecutor under section 32(1) only if he had been in practice for not less than seven years as an advocate. Section 32(3) lays down that every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of section 2(u) of the CrPC, 1973 and provisions of the CrPC shall have effect accordingly.

**199** Pravin Patkar and Pooja Kandula, '4 Years Since POCSO: Unfolding of the POCSO Act in the State of Maharashtra' (2016) Aarambh India 85 <[http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh\\_4-Years-Since-POCSO.pdf](http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh_4-Years-Since-POCSO.pdf)> accessed 20 June 2022.

**200** CCL-NLSIU's Studies revealed that existing PPs or Additional PPs were specified as PPs in Andhra Pradesh, Assam, Delhi, and Maharashtra (pg. 3) In Maharashtra, by a notification dated 22 March 2013, all Public Prosecutors/ Additional Public Prosecutors appointed under Section 24(3), Code of Criminal Procedure (Cr.PC), were specified as Special Public Prosecutors for conducting cases in the Special Court designated under the POCSO Act (Karnataka report, Pg. 15)

**201** Ibid.

**202** Hannah M Varghese, 'Abject Incompetence of Prosecution: Kerala High Court initiates Suo Moto Case to probe appointment of Prosecutors' *Live Law* (23 September 2021) <<https://www.livelaw.in/news-updates/kerala-high-suo-motu-cognizance-on-incompetence-of-prosecutors-182322>> accessed 23 June 2022.

**203** *In Re: Alarming Rise in the Number of Reported Child Rape Incidents* (2020) 7 SCC 130.

**204** Giti Pratap, 'Abject incompetence of prosecution: Kerala High Court initiates suo motu case to deal with appointment of Public Prosecutors' *Bar and Bench* (27 September 2021) <<https://www.barandbench.com/news/litigation/abject-incompetence-of-prosecution-kerala-high-court-initiates-suo-motu-case-to-deal-with-appointment-of-public-prosecutors>> accessed 20 June 2022.

**205** *In Re: Alarming Rise in the Number of Reported Child Rape Incidents* (2020) 7 SCC 87.

### Present scenario

In February, 2020, the Prosecution Department in the state of Tamil Nadu announced the appointment of 16 Special Public Prosecutors to handle offences relating to the POCSO Act in 16 special courts across the State.<sup>206</sup> A writ petition<sup>207</sup> seeking appointment of Additional Public Prosecutors (APPs) for Fast Track Special Courts (including POCSO courts) is currently pending before the Delhi High Court. Noting that the 'laudable' objective of creating fast track courts was being hampered due to inaction by the state government in creating the requisite number of posts of APPs, the High Court observed that expeditious disposal of rape and POCSO cases was the need of the hour.<sup>208</sup> Therefore, states are at different levels in terms of ensuring adequacy in terms of number and quality of prosecutors dealing with POCSO cases. Intervention by the Supreme Court to direct all state governments to do the needful in a time bound manner may be necessary.

### c. Non-compliance with the timelines prescribed by the Act

#### Context

According to Section 35 of the POCSO Act, the evidence of a child shall be recorded within a period of 30 days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court. This provision further states that the Special Court shall complete the trial,

as far as possible, within a period of one year from the date of taking cognizance of the offence.

However, this provision is followed in its breach in a large majority of POCSO cases. A study of Special Court orders in Delhi showed that in only about 11% of the cases is the child's evidence recorded within the period of 30 days from the date of cognizance.<sup>209</sup> The courts also do not record the reason for delay in recording the child's testimony as mandated under Section 35(1) of the POCSO Act.<sup>210</sup> Further, out of 946 cases for which delay in completion of trial was computed, delay was observed in 682 cases from Delhi and Mumbai (72%).<sup>211</sup>

Another study found that except for two (4%) out of 55 cases, the time gap between the FIR and date of evidence of the child was above six months. In 33 cases (60%), the time gap was between one year and two years and 17(31%) cases within 7- 12 months.<sup>212</sup> The study also found that a majority of cases (45 out of 62) were disposed of after completion of one year but within two years.<sup>213</sup>

As per a CCL-NLSIU study, in Maharashtra and Assam only 37% and 29% of POCSO cases respectively were disposed of within a year, while in Karnataka as many as 72% cases took more than one year to be disposed of.<sup>214</sup> One of the repercussions of delay in disposal could be that, as years go on, the victims, who are often young children, might forget key details of the case. Long drawn proceedings may

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<sup>206</sup> The Hindu, 'Special public prosecutors appointed for POCSO cases' *The Hindu* (20 February 2020) <<https://www.thehindu.com/news/cities/chennai/special-public-prosecutors-appointed-for-pocso-cases/article30865287.ece>> accessed 20 June 2022.

<sup>207</sup> *Delhi Prosecutors Welfare Association v Government of NCT of Delhi*, W.P.(C) no. 2181 of 2021 (Del H.C.) (Unreported).

<sup>208</sup> Ibid.

<sup>209</sup> Bharti Ali, Maharukh Adenwalla and Sangeeta Punekar, *Implementation of the POCSO Act: Goals, Gaps and Challenges: Study of cases in Special Courts in Delhi & Mumbai (2012 - 2015)* (HAQ: Centre for Child Rights and FACSE 2017) 95 <[www.haqcrc.org/publication/implementation-pocso-act/](http://www.haqcrc.org/publication/implementation-pocso-act/)> accessed 17 June 2022.

<sup>210</sup> Ibid.

<sup>211</sup> Ibid.

<sup>212</sup> Centre for Child and the Law, National Law School of India University, 'Study on the Working of Special Courts under the POCSO Act, 2012 in Karnataka' (2017) Centre for Child and the Law, National Law School of India University, 29 <<https://ccl.nls.ac.in/wp-content/uploads/2017/01/posco2012karnataka.pdf>> accessed 17 June 2022.

<sup>213</sup> Ibid.

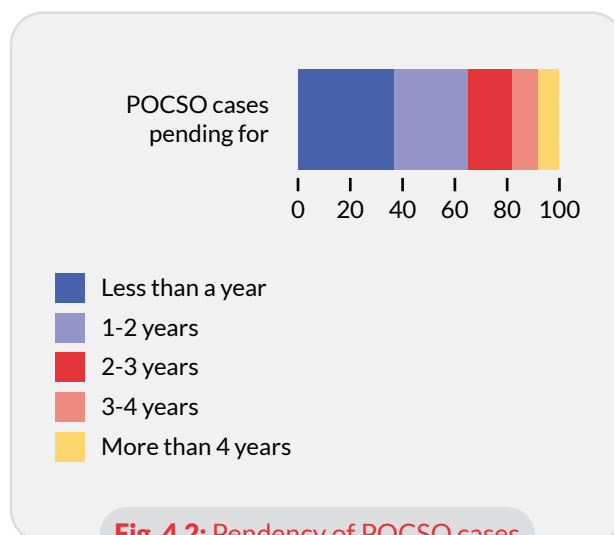
<sup>214</sup> Centre for Child and the Law, National Law School of India University, *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (National Printing Press, Bengaluru, February 2018).

also require the victim to give testimony years after the occurrence which can result in re-traumatization of the victim and disrupt their healing process. As a result, children and their families may prefer to not pursue the case. For instance, the CCL study found that in Assam, the rate of children turning hostile rose with the increasing gap between the lodging of the FIR and the recording of the evidence.<sup>215</sup>

A more recent study<sup>216</sup> of POCSO cases in Delhi, Assam and Haryana calculated the case age data for all pending and disposed cases in the period 2012 to 23 April, 2020. It showed that 19.86% of disposed cases and 33.39% of pending cases were more than two years old (from the date of registration at CIS).<sup>217</sup> It found that out of the cases registered in a particular year, only 15% to 25% are being disposed of in the same year as the year of registration.<sup>218</sup>

The Supreme Court's order in *In Re, Alarming Rise in the Number of Reported Child Rape Incidents*<sup>219</sup> records that 63% of POCSO cases remain pending for more than one year. Fig 4.2 shows pendency how long POCSO cases have remained pending for across the country.

According to NCRB data however, 94.7% cases from the total POCSO cases pending trial at the beginning of 2020 still remained pending at the end of the year.<sup>220</sup> Chapter V of this report shows how long it takes courts to dispose of POCSO cases. By looking at the age of cases, it proves that disposal of a large proportion of POCSO cases takes much longer than a year.



**Fig. 4.2: Pendency of POCSO cases**

### Interventions

*In Alakh Alok Srivastava v Union of India*,<sup>221</sup> the Supreme Court ordered that instructions be issued to the Special Courts to fast track POCSO cases by not granting unnecessary adjournments and thus completing the trial in a time bound manner or within the specific time frame prescribed under the POCSO Act. It also requested the Chief Justices of the High Courts to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the POCSO Act.<sup>222</sup>

Early this year, the Bombay High Court reiterated that the Special Courts should complete the examination of minor victims as expeditiously as possible, so that the victims do not forget the incident due to passage of time, giving advantage to the accused.<sup>223</sup> In view of the fact that there had been no progress in the trial, the High Court ordered

<sup>215</sup> Ibid.

<sup>216</sup> Bharti Ali and Urmi Chudgar, *Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana* (HAQ: Centre for Child Rights and CivicDataLab 2021) <<https://justicehub.in/dataset/5467514c-1714-483d-8b82-2fb3984a0cf9/resource/9377bdfc-b723-4617-a74c-9ae508ebe3f3/download/>> accessed 17 June 2022.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid.

<sup>219</sup> *In Re: Alarming Rise in the Number of Reported Child Rape Incidents* (2020) 7 SCC 108.

<sup>220</sup> National Crime Records Bureau, 'Crime in India 2020: Statistics,' Vol. 1, Pg. 341 (Ministry of Home Affairs, 2020) <<https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>> accessed 30 September 2022.

<sup>221</sup> *Alakh Alok Srivastava v Union of India* (2018) 17 SCC 291.

<sup>222</sup> Ibid.

<sup>223</sup> Omkar Gokhale, 'POCSO courts should examine victims in expeditious manner: HC' *The Indian Express* (8 February 2022) <<https://indianexpress.com/article/cities/mumbai/pocso-courts-should-examine-victims-in-expeditious-manner-hc-7763133/>> accessed 20 June 2022.

the sessions judge to file a report within two weeks to explain the delay in the conclusion of the trial and why the victim had not been examined till date.<sup>224</sup>

#### Present scenario

As Chapter V will show, the situation has not changed much since the Supreme Court orders and POCSO cases still take a long time to be disposed of.

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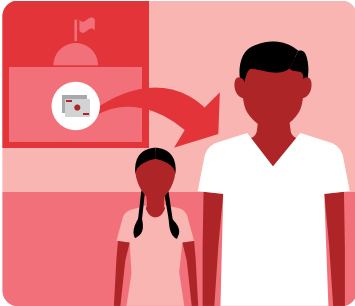
<sup>224</sup> *Atul Gorekhnath Ambale v State of Maharashtra*, Criminal Bail Application No. 3242 of 2019 (Bom H.C.) (Unreported).

# III

## Post Trial

### A

#### What happens during this stage

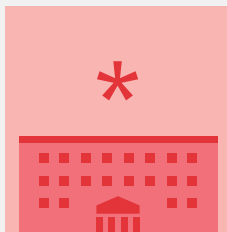


**Sanctioning of compensation to victim:** Compensation awarded to victim is to be paid by the State government, from the Victim Compensation Fund or any other such fund, within a period of 30 days from the receipt of order (Rule 9 POCSO Rules and s. 357-A CrPC). Special Courts are also empowered to order compensation.

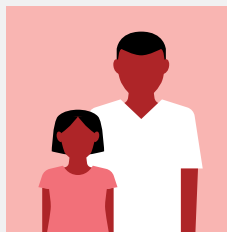


**Disbursement of compensation to victim:** If a portion of the fine is directed to be paid to the victim, then after the lapse of period of appeal, the CWC coordinates with DLSA to ensure its receipt by the victim (s. 357 CrPC and Rule 10 POCSO Rules). CWC is also responsible to take steps, such as opening of bank accounts, to ensure that the compensation amount is received by the child (Rule 10 POCSO Rules).

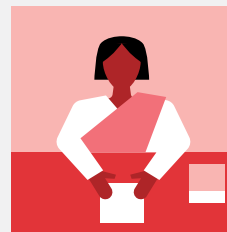
#### Stakeholders involved at this stage



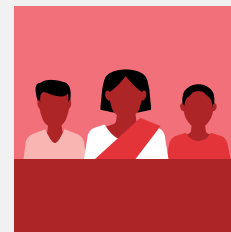
Special Court



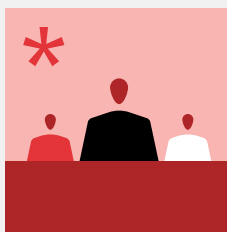
Victim & Guardian



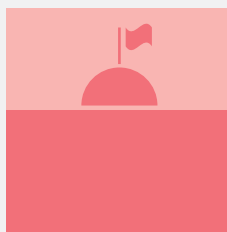
District Legal Service Authorities



Child Welfare Committees



National/State Commission for Protection of Child Rights



State/Central Governments

## B

### Challenges at the Post Trial Stage

#### a. Inadequate compensation to the victims

##### Context

The payment of compensation to victims under the POCSO Act is a complex issue because there is often a lack of clarity on procedures for disbursing the compensation, especially in cases where the child has no family support, or resides in a childcare institution without parental support, or there is apprehension that the compensation so awarded may be misused.<sup>225</sup> Powers to direct payment of compensation to victims arise from various provisions under the POCSO Act, 2012 and the POCSO Rules, 2020 as well as the CrPC. In the POCSO Act, Section 33(8) empowers the Special Courts to direct payment of compensation in addition to punishment, for physical or mental trauma caused to the child, or for immediate rehabilitation.

Rule 9 of the POCSO Rules, 2020 details out the mechanism of when and how compensation can be granted in POCSO cases and the relevant factors that can be taken into consideration while determining the amount of compensation to be paid. Under the CrPC, the powers arise from Sections 357 and 357A. Under Section 357(1)(b), a court can direct that the whole or part of the fine imposed as part of a sentence, if recovered, be paid towards compensation for any loss or injury caused by the

offence, if such compensation could be recoverable in a Civil Court. Therefore, this section can be attracted only in the cases where the accused was convicted. Rule 9(4), POCSO Rules, 2020 states that the compensation awarded should be paid from the Victim Compensation Fund or any other government scheme for compensating and rehabilitating victims under section 357A of the CrPC or any other law for the time being in force, or, where such fund or scheme does not exist, by the State Government.

Another important issue that arises when dealing with compensation is that the Victim Compensation Schemes of several States and Union Territories (like Assam<sup>226</sup> and Andhra Pradesh<sup>227</sup>) require the victim to cooperate with the police and the prosecution during investigation and trial to be eligible for grant of compensation. Even though the POCSO Act and Rules do not link the payment of compensation to the child's testimony in court, there are instances<sup>228</sup> where return of compensation (if paid) is ordered by the trial court because the victim turned hostile mid-trial.<sup>229</sup> No specific judicial ruling from the higher judiciary has so far resolved this conflict. A judicial determination on this issue is crucial because there can be various reasons for a victim turning hostile, including but not limited to threats and social pressure.

A study analysing POCSO cases in Delhi found that information regarding victim compensation was not a part of most judgments or sentencing orders or daily orders. Further, none of the daily orders mentioned award of interim compensation.<sup>230</sup> Another study in Karnataka found that

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<sup>225</sup> Bharti Ali and Urmi Chudgar, *Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana* (HAQ: Centre for Child Rights and CivicDataLab 2021) 122 <<https://justicehub.in/dataset/5467514c-1714-483d-8b82-2fb3984a0cf9/resource/9377bdfc-b723-4617-a74c-9ae508ebe3f3/download/>> accessed 17 June 2022.

<sup>226</sup> Assam Victim Compensation Scheme 2012, cl 4(3).

<sup>227</sup> Andhra Pradesh Victim Compensation Scheme 2015, cl 5(d).

<sup>228</sup> Neha Joshi, 'POCSO case: Mumbai Court directs return of compensation after victim turns hostile mid-trial' *Bar and Bench* (18 October 2021) <<https://www.barandbench.com/news/litigation/pocso-case-mumbai-court-directs-return-of-compensation-after-victim-turns-hostile-mid-trial>> accessed 20 June 2022.

<sup>229</sup> *State of Maharashtra v Vicky Vinod Gajabe & Others*, Special Case Child Protection No. 258 of 2016 (City Civil & Sessions Court, Borivali Div).

<sup>230</sup> Bharti Ali, Maharukh Adenwalla and Sangeeta Punekar, *Implementation of the POCSO Act: Goals, Gaps and Challenges: Study of cases in Special Courts in Delhi & Mumbai (2012 - 2015)* (HAQ: Centre for Child Rights and FACSE 2017) 129 <[www.haqcrc.org/publication/implementation-pocso-act/](http://www.haqcrc.org/publication/implementation-pocso-act/)> accessed 17 June 2022.



compensation orders have not been passed in Karnataka under the POCSO Act.<sup>231</sup>

A report by CCL-NLSIU that analysed POCSO judgments from five states found that compensation was generally awarded in only 5 to 10% of cases. In both Andhra Pradesh and Karnataka compensation was given<sup>232</sup> in just approximately 3% of cases, and in Delhi and Maharashtra it was given in 5% and 9% cases respectively.<sup>233</sup> Assam was the only exception with about 22% judgments directing compensation to the victims.<sup>234</sup> In none of the judgments, except one judgment from Assam Special Court, was there a reference to interim compensation.<sup>235</sup>

### Interventions

In *Nipun Saxena v Union of India*,<sup>236</sup> the Supreme Court directed that the Special Court, upon receipt of information as to commission of any offence under the Act by registration of FIR, shall on his own or on the application of the victim make an enquiry as to the immediate needs of the child for relief or rehabilitation and pass appropriate order for interim compensation. It was further held that if the court declines to grant interim or final compensation it shall record its reasons for not doing so. Finally, the Apex Court made it abundantly clear that the Special Court must mandatorily take up and consider each POCSO case for the aspect of compensation. This does not mean that compensation must be granted in every case, but the adjudication on compensation

must be there in every case. Further, the court said that the NALSA's Compensation Scheme<sup>237</sup> should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 until the Rules were finalised by the Central Government.

In addition to the Central Victim Compensation Fund Scheme,<sup>238</sup> most states and union territories have framed their Victim Compensation Schemes for POCSO victims.

In March, 2020, the Supreme Court had observed that on the next date of hearing, it will consider the issue of framing a national scheme for payment of compensation to victims of offences under the POCSO Act. For this purpose, it had requested the Joint Secretary of the Ministry of Women and Child Development, Government of India to remain present in Court to assist it with regard to the formulation of scheme for payment of compensation to the victims.<sup>239</sup> However, the matter has not been heard on merits since then.<sup>240</sup>

### Present scenario

A more recent study of POCSO cases in Delhi, Assam and Haryana found that while final compensation may still find a mention in the sentence order, interim compensation finds no mention in any orders of the Special Courts.<sup>241</sup> CCL-NLSIU's study of Special Courts in Delhi found that the courts often deferred

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<sup>231</sup> Anuroopa Giliyal, Anjali Shivanand and Aneasha Johny, 'Study on the Working of Special Courts under the POCSO Act, 2012 in Karnataka' (2017) Centre for Child and the Law, National Law School of India University 25 <<https://ccl.nls.ac.in/wp-content/uploads/2017/01/posco2012karnataka.pdf>> accessed 17 June 2022.

<sup>232</sup> Centre for Child and the Law, National Law School of India University, *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (National Printing Press, Bengaluru, February 2018).

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

<sup>236</sup> *Nipun Saxena v Union of India* (2019) 2 SCC 703, ¶137.

<sup>237</sup> National Legal Services Authority 'NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes - 2018' NALSA (2018) <<https://nalsa.gov.in/services/victim-compensation/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018>> accessed 20 June 2022.

<sup>238</sup> Central Victim Compensation Fund Guidelines 2016.

<sup>239</sup> *In Re, Alarming Rise in the number of reported child rape incidents*, Suo Moto (Criminal) No. 1 of 2019 (SC) (Unreported).

<sup>240</sup> As of 22 June 2022.

<sup>241</sup> Bharti Ali and Urmi Chudgar, *Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana* (HAQ: Centre for Child Rights and CivicDataLab 2021) 201 <<https://justicehub.in/dataset/5467514c-1714-483d-8b82-2fb3984a0cf9/resource/9377bdfc-b723-4617-a74c-9ae508ebe3f3/download/>> accessed 17 June 2022.



the decision to determine interim compensation until after the victim's testimony to deter the victims from turning hostile.<sup>242</sup>

In some cases, the amount of compensation to be provided under the state scheme was left to be determined by the DLSA, although the POCSO Act and Rules require the Special Courts to determine the quantum, while the role of the DLSA is limited to disbursement.<sup>243</sup> In one case, the Special Court had explicitly limited the right of the victim to apply for further compensation in direct contravention of Rule 7(6) of the POCSO Rules.<sup>244</sup>

According to the figure available in a Supreme Court order, both final and interim compensation are only provided in 1% of cases.<sup>245</sup> This figure is abysmal given the physical and mental trauma that victims of child sexual abuse go through and the resources that may be required for their treatment and rehabilitation.

## IV

### Inadequate awareness about the POCSO Act

#### Context

For any new law, awareness about its existence and its content, specifically amongst the target audience, are basic requirements to ensure that the law actually achieves its objectives. In recognition of this, Section 43 in the Act provides that the Central Government and every State Government, shall take all measures to ensure that the provisions of the POCSO Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians, aware of the provisions of this Act.

#### Interventions

In order to promote awareness on child sexual abuse among children, the National Institute of Public Cooperation and Child Development<sup>246</sup> has prepared a set of booklets.<sup>247</sup> Awareness programmes have been undertaken by state governments<sup>248</sup> in collaboration with the local police<sup>249</sup> and NGOs.<sup>250</sup> Additionally, several Information Education

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<sup>242</sup> Centre for Child and the Law, National Law School of India University, *Report of Study on the Working of Special Courts Under the POCSO Act, 2012 in Delhi* (29 January 2016) <<https://ccl.nls.ac.in/publications/reports/>> accessed 12 September 2022.

<sup>243</sup> Bharti Ali and Urmi Chudgar, *Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana* (HAQ: Centre for Child Rights and CivicDataLab 2021) 200 <<https://justicehub.in/dataset/5467514c-1714-483d-8b82-2fb3984a0cf9/resource/9377bdfc-b723-4617-a74c-9ae508ebe3f3/download/>> accessed 17 June 2022.

<sup>244</sup> *Ibid.*

<sup>245</sup> *In Re: Alarming Rise in the Number of Reported Child Rape Incidents* (2020) 7 SCC 108.

<sup>246</sup> A body under the Union Ministry of Women and Children Development.

<sup>247</sup> National Institute of Public Cooperation and Child Development, 'Booklets for School Children to Generate Awareness on Child Sexual Abuse (CSA)' NIPCCD <Booklets for School Children to Generate Awareness on Child Sexual Abuse (CSA)> accessed 20 June 2022.

<sup>248</sup> The Times of India, 'Bhadram to spread awareness on child rights' *The Times of India* (Thiruvananthapuram, 30 December 2018) <<https://timesofindia.indiatimes.com/city/thiruvananthapuram/bhadram-to-spread-awareness-on-child-rights/articleshow/67305226.cms>> accessed 20 June 2022.

<sup>249</sup> The Times of India, 'Campaign to create awareness on child sexual abuse catches the bus' *The Times of India* (20 August, 2014) <<https://timesofindia.indiatimes.com/city/trichy/campaign-to-create-awareness-on-child-sexual-abuse-catches-the-bus/articleshow/40438086.cms>> accessed 20 June 2022.

<sup>250</sup> The Hindu, 'Awareness campaign on POCSO Act launched' *The Hindu* (16 November 2016) <<https://www.thehindu.com/news/national/andhra-pradesh/Awareness-campaign-on-POCSO-Act-launched/article16643405.ece>> accessed 20 June 2022.

Communication (IEC) materials on POCSO have been designed and published by various Civil Society Organizations like Arpan, Tulir, Antakshari Foundation and Kailash Satyarthi Foundation.<sup>251</sup>

In order to push the government to perform its duty under the POCSO Act, the Supreme Court specifically directed the Ministry of Women and Child Development to screen a short clip for spreading awareness on child sexual abuse in movie halls and broadcast it on television channels at regular intervals.<sup>252</sup> The court also asked the Department to prominently display child helpline numbers to increase awareness about these helplines.<sup>253</sup>

### Present scenario

Despite these efforts, a 2020 study on Child Sexual Abuse Awareness and Attitudes by World Vision India found that only 35% children and 32.13% caregivers were aware about the POCSO Act. The awareness varied across urban, rural and tribal areas with tribal areas being the least aware.<sup>254</sup>

In an order passed in June 2022, the Kerala High Court remarked that the educational machinery of the state had fallen woefully short in imparting the required awareness to young children about the heinous crimes covered under the POCSO Act.<sup>255</sup> Even though the court was dealing with a bail application, it used its powers under Article 226 of the Constitution to suo moto implead the state

government, Central Board of Secondary Education and, the Kerala State Legal Services Authority as parties with the aim of paving the way for better awareness on the POCSO Act in schools in Kerala.<sup>256</sup> It noted that punishing the offender was only one of the purposes of the POCSO Act, prevention being the other and in order to prevent offences under the POCSO Act, awareness amongst children was essential.

It becomes evident from this discussion that while attempts at spreading awareness about the POCSO Act have been made, there is still a long way to go.

## V

### Inadequate training of various stakeholders

#### Context

An examination of the roles played by the plethora of actors in the child protection system reveals the complexities involved in effectively addressing child sexual abuse in the country. Figure 4.3 maps some of the key interactions between stakeholders in a typical POCSO case. While this diagram is not comprehensive, it does show the complexity of the processes involved in a POCSO case and some of the major points of interaction between various stakeholders.

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<sup>251</sup> By the Women and Child Development Department <<https://wcdhry.gov.in/iec-material-pocso-jj-act/>> - interactive, engaging materials like games and colourful booklets. One of the few child-centric materials; Antakshari Foundation <<https://www.antaksharifoundation.org/knowledge-hub/iec-material/>>; Kailash Satyarthi Children's Foundation <<https://satyarthi.org.in/brochures/>>; Arpan <<https://www.arpan.org.in/children-and-adolescents/>> IEC materials for both adults and children; Tulir - Centre for the Prevention and Healing of Child Sexual Abuse (CPHCSA) <<https://www.tulir.org/downloads.htm>> also has audiobooks.

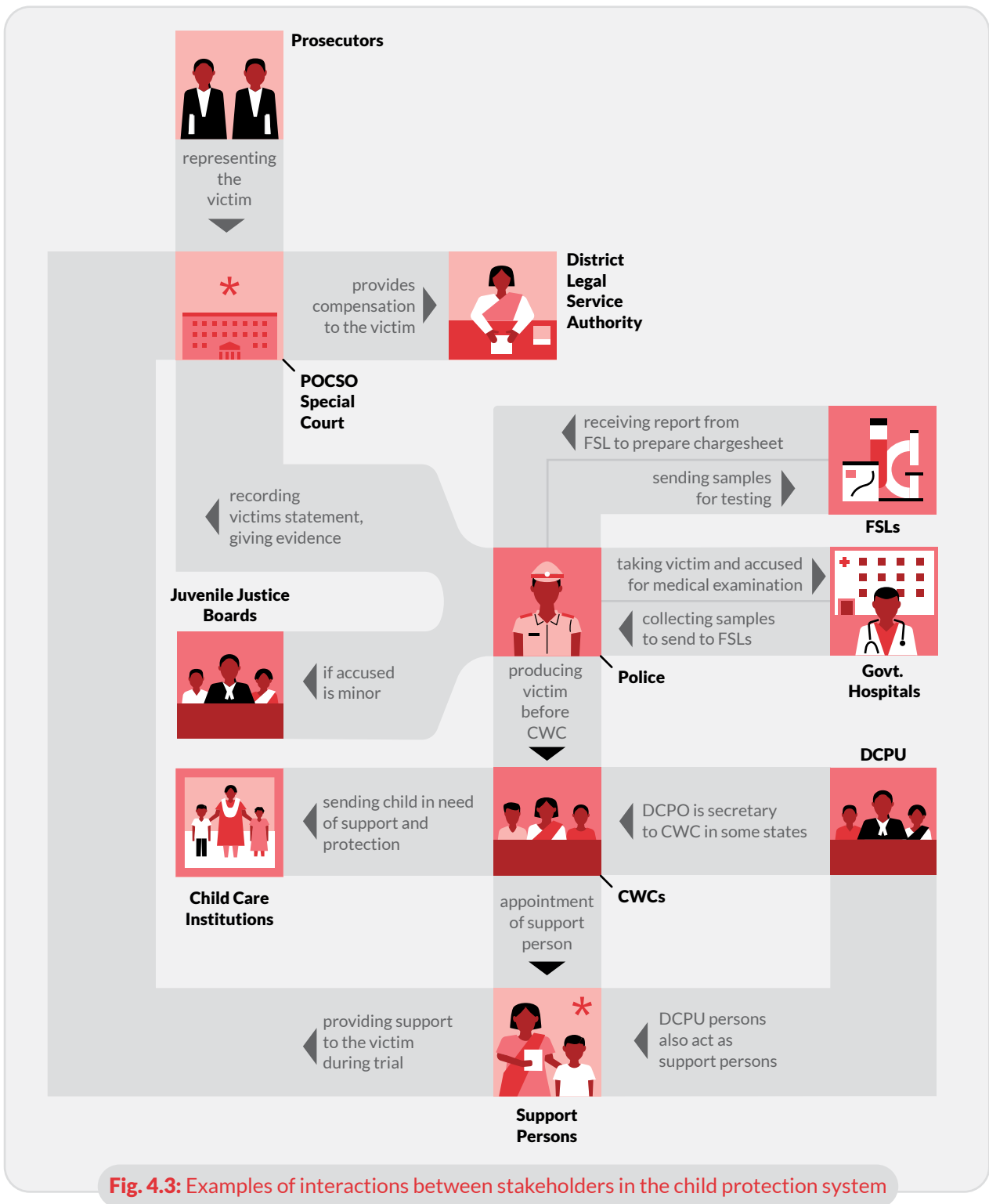
<sup>252</sup> *In Re: Alarming Rise in the Number of Reported Child Rape Incidents* (2020) 7 SCC 87.

<sup>253</sup> *Ibid.*

<sup>254</sup> World Vision India, 'A Study on Child Sexual Abuse Awareness and Attitudes' WVI, <<https://www.lifenews.co.in/assets/front/pdf/CSA%20Launch%20PPT%20Final%20Updated%20-wsj%20today.pdf>> accessed 20 June 2022; The News Minute, 'POCSO Act: Only 13.7% TN children aware, Bihar has almost nil awareness' *The News Minute* (15 September 2020) <<https://www.thenewsminute.com/article/pocso-act-only-137-tn-children-aware-bihar-has-almost-nil-awareness-133077>> accessed 20 June 2022.

<sup>255</sup> Hannah M Varghese, 'Teens Engage In Sex Unmindful Of Drastic Consequences Under POCSO Act: Kerala High Court Calls For Awareness In School' *LiveLaw* (9 June 2022) <<https://www.livelaw.in/news-updates/teenage-sex-consensual-pocso-act-rape-kerala-high-court-201240>> accessed 20 June 2022.

<sup>256</sup> *Anoop v State*, Bail Application No. 3273 of 2022 (Ker H.C.) (unreported).



The purpose of this chart is to show the myriad ways in which stakeholders interact with each other. Since the child protection system involves stakeholders interacting with each other fairly frequently, in addition to understanding their own roles and responsibilities within the system, they also need to appreciate the roles performed by the

others. Training is crucial to ensure that the system functions smoothly and ensures justice for the child victims.

Section 43 of the POCSO Act says that the officers of the Central Government and the State Governments and other concerned persons (including police

officers) shall be imparted periodic training on the matters relating to the implementation of the provisions of the Act. Though training is currently taking place, it is deemed inadequate by those receiving it. Different stakeholders interviewed by us highlighted the issues with the current system of training. It might be useful to first take note of these problems before trying to come up with any solutions to the issues. The table below shows the various stakeholders interviewed and the shortcomings in the training they received (as identified by them).

## KEY

### Stakeholder

- Training provided by
1. Lacunae

### Private medical practitioners (usually the first point of contact for child victims)

- No structured training provided.
1. No mandatory training provided to enable them to handle cases of child sexual abuse effectively.

### Government doctors

- No structured training provided.
1. Not comprehensive—only very basic instructions are given about sample collection.
  2. No specific training for dealing with child sexual abuse cases.
  3. Absence of sensitivity training.
  4. No continuing training at regular intervals to keep them updated with the latest developments.

### Juvenile Justice Board (JJB) members

- State Department of Women and Child Development
- State Police Department

- State Judicial Academy
1. Not of practical use to address day to day challenges faced.

### Judges

- State Judicial Academy
1. Time given for training is very short.
  2. Legalistic approach with little focus on sensitisation training.

### Special Public Prosecutors

- Institute of Correctional Administration
  - State Judicial Academy
1. Not held at periodic intervals to enable them to stay abreast of the latest developments in law.

### Interventions

Courts have taken note of this lack of training for key stakeholders like courts and public prosecutors. The Madras High Court in *Venkatachalam v. Inspector of Police*<sup>257</sup> observed that in many cases, the Special Judges who deal with cases under POCSO Act, do not properly understand the scope and object of the POCSO Act. It ordered that before posting any Sessions Judge to the Special Court which deals with the cases under POCSO Act, they have to necessarily be sensitised and trained through the Tamil Nadu State Judicial Academy. In a subsequent judgment,<sup>258</sup> the Madras High Court directed the State Judicial Academy to impart training to stakeholders (specifically, the Investigating Officers, Special Public Prosecutors and, Special Judges) dealing with cases under the POCSO Act.

Interviews with POCSO judges have thrown light on the mental health issues that judges face due to lack of special training to deal with POCSO cases which often expose them to gruesome details. There is now serious thinking about 'vicarious trauma'<sup>259</sup> affecting

<sup>257</sup> *Venkatachalam v Inspector of Police*, Crimnal Appeal No. 113 of 2021 (Mad H.C.) (Unreported); *Venkatachalam v Inspector of Police*, Criminal Miscellaneous Petition No.r 2925 of 2021 (Mad H.C.) (Unreported).

<sup>258</sup> *Renold Mike Tyson v State*, Criminal Appeal No. 93 of 2020 (Mad H.C.) (Unreported); Nupur Thapliyal, 'Madras Hihg Court directs judicial academy to impart training to special judge, IO, prosecutors dealing with POCSO cases' *Live Law* (3 July 2021) <<https://www.livelaw.in/news-updates/madras-high-court-judicial-academy-training-to-special-judge-prosecutor-pocso-cases-176787>> accessed 23 June 2022.

<sup>259</sup> American Counseling Association, 'Vicarious Trauma' (Fact Sheet #9) <<https://www.counseling.org/docs/trauma-disaster/fact-sheet-9---vicarious-trauma.pdf?sfvrsn=2>> accessed 20 June 2022.

judges<sup>260</sup> and prosecutors<sup>261</sup> involved in heinous crimes such as rape and child sexual abuse.<sup>262</sup> Judicial academies must be adequately equipped to impart suitable training<sup>263</sup> for judges and prosecutors to have the skills to handle these cases.

The Supreme Court has also emphasised that Special Public Prosecutors need to understand the psychology of children and empathise with them. Explaining the role of Special Public Prosecutors in POCSO cases, the Apex Court said that they need to know how to bring out the truth from children who are victims of sexual abuse and have to undergo the trauma again while recounting the traumatic experience. The court acknowledged that the job assigned to the Public Prosecutor for POCSO cases is a very onerous one which must be carried out with great care and sensitivity.<sup>264</sup>

Therefore, the court recognised not only the need to have exclusive Public Prosecutors but the need to develop a training programme where these Special Public Prosecutors are trained to deal with issues which will arise in their courts, including legal, psychological, health and other related issues. Keeping in view these factors, the Supreme Court directed all the States to take steps to appoint exclusive Public Prosecutors in all POCSO courts and requested the Chief Justices of all High Courts to ensure that in the Judicial Academy of the State, special programmes are developed so that these Special Public Prosecutors attached to POCSO Courts are imparted training not only in law but also in child psychology, child behaviour, health issues etc. The Supreme Court also requested the Director of the National Judicial Academy to ensure that a

training programme is developed in the National Judicial Academy to train master trainers who can then work in the Judicial Academies in each State.<sup>265</sup>

### Present scenario

Despite these interventions, not a lot has changed on the ground. In most of the stakeholder consultations undertaken for the purpose of this study, the lack of proper training for different stakeholders in the child protection system was emphasised. How this lack of proper training can be dealt with is discussed in Chapter VI of this report.

The objective of this Chapter was to shed light on some of the challenges that have hindered the effective implementation of the POCSO Act across the country. What is evident from the above discussion is that there is no one single challenge impeding the realisation of the goals of the POCSO Act. There is a need for holistic reform in order to build a system that actually works for child victims of sexual abuse.

The next Chapter contains the analysis of POCSO case data collected from eCourts. Based on the implementation challenges identified above and the findings in Chapter V, recommendations on what needs to be done to ensure that the POCSO Act achieves its aim of providing victims a child-friendly justice delivery system can be found in Chapter VI.

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**260** Debora Wood Smith, 'Secondary and Vicarious Trauma Among Judges and Court Personnel' (National Center for State Courts 2017) <[https://ncsc.contentdm.oclc.org/digital/api/collection/hr/id/171/page/0/inline/hr\\_171\\_0](https://ncsc.contentdm.oclc.org/digital/api/collection/hr/id/171/page/0/inline/hr_171_0)> accessed 20 June 2022.

**261** Amy Russel, 'Vicarious Trauma in Child Sexual Abuse Prosecutors' (2010) 2(6) Center Piece <<https://www.zeroabuseproject.org/wp-content/uploads/2019/02/39255836-centerpiece-vol-2-issue-6.pdf>> accessed 20 June 2022.

**262** Peter G Jaffe and others, 'Vicarious Trauma in Judges: the Personal Challenge of Dispensing Justice' (2009) 54(4) *Juvenile and Family Court Journal* <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1755-6988.2003.tb00083.x>> accessed 20 June 2022.

**263** Office for Victims of Crime, 'The Vicarious Trauma Toolkit' (OVC, U.S. Department of Justice) <<https://ovc.ojp.gov/program/vtt/introduction>> accessed 20 June 2022.

**264** *In Re: Alarming Rise in the Number of Reported Child Rape Incidents* (2020) 7 SCC 130.

**265** *Ibid.*

# Data Analysis

While the previous chapters have dealt with the legislative history of the POCSO Act, some important jurisprudential questions that have emerged in the last 10 years and the implementation of the Act (gleaned through judgments and policy interventions), the focus of this chapter is data collected through eCourts. The challenges pertaining to eCourts data have been discussed in detail in the chapter on methodology. This chapter is the heart of this report as it analyses eCourts related data from 486 districts and 230730 cases across the country. The analysis ranges from looking at the overall reporting of POCSO cases on eCourts to examining disposal data. This chapter also studies the time spent in different stages of a POCSO trial based on data available in the hearings table on eCourts. An attempt has also been made to understand how frequently different provisions of the POCSO Act have been used over the years. Each of these analysis posed a different set of challenges that have been mentioned along with the findings.

# I

## Overview

### A

---

#### Reporting of POCSO cases on eCourts

##### 1

The heat map in Fig. 5.1 shows the reporting of POCSO cases in different states (representing 437 districts) between 2013 and 2020. It is important to bear in mind that reporting of cases on eCourts is different from incidence of these cases in the country (data on which is extremely difficult to capture since child sexual abuse cases often go unreported) and reporting of POCSO cases to the police (data that is captured by the NCRB in its Crime in India report). Further, not all districts might upload data regularly and in a timely manner. Therefore, this analysis only reflects the number of POCSO cases reported on eCourts and may not necessarily reflect the exact situation on the ground. However, to answer the question of how courts are implementing the POCSO Act throughout the country, reliance on eCourts data (despite its many limitations) becomes necessary. For the purpose of this section, reporting should be understood to mean reporting of cases on eCourts.

Reporting on eCourts is calculated by dividing the total number of POCSO cases available on eCourts for a particular state by the population of that state. The figures thus arrived at provide insights about the number of cases per 100,000 population in a given state as reported on eCourts.

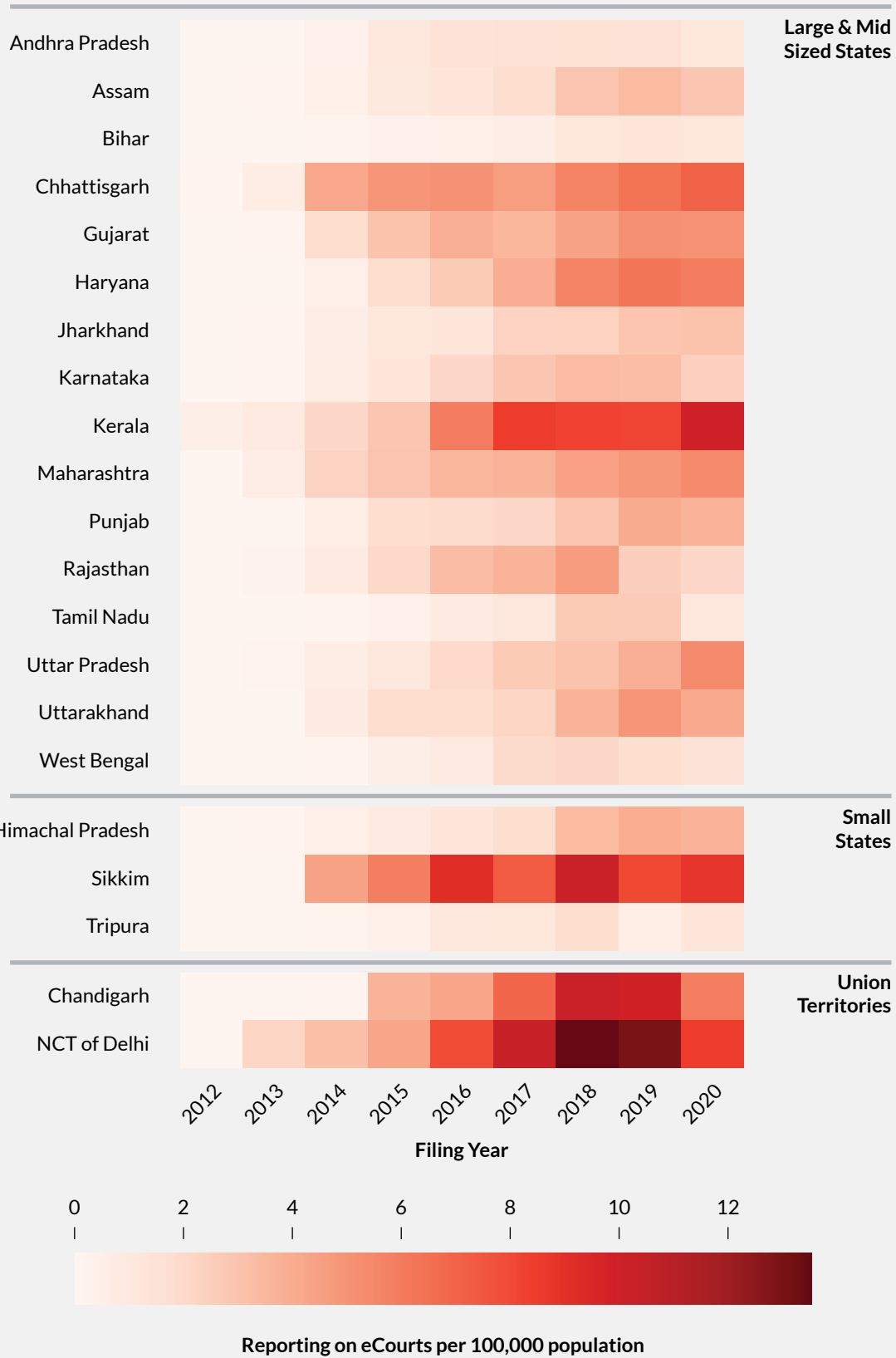
Population data for districts has been obtained from the 2011 Census.<sup>266</sup> States have been divided into three categories—large and mid-sized states (that have a population greater than 10 million); small sized states (that have a population less than 10 million); and union territories.

In Fig. 5.1, the darker the colour of each rectangle corresponding to a year, the higher is the reporting of POCSO cases on eCourts in that state. It is clear from this Figure that the reporting of POCSO cases on eCourts has varied starkly across states and between years. States like Chhattisgarh, Haryana, Kerala, Sikkim, Chandigarh and the NCT of Delhi seem to have a much higher reporting of POCSO cases when compared to the other states that form part of the analysis. Delhi has the highest reporting in the country with the figure reaching 13.539 per 100,000 population in 2018.

Higher reporting on eCourts means that cases of sexual offences against children in such states are higher than the rest. This can be driven by a variety of factors. For instance, greater awareness of the law could lead to greater reporting in some states, which can lead to a higher number of cases observed. However, this Figure can be used as an indicator of the varying burden of POCSO cases on law enforcement agencies and courts. Therefore, policy interventions to improve the functioning of the Act have to be tailored to meet the specific capacity constraints faced by a state and a one size fits all approach is best avoided.

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<sup>266</sup> For districts that came into existence after the 2011 Census, data has been taken from official websites of the districts.



**Fig. 5.1:** Reporting of POCSO cases on eCourts by state and filing year



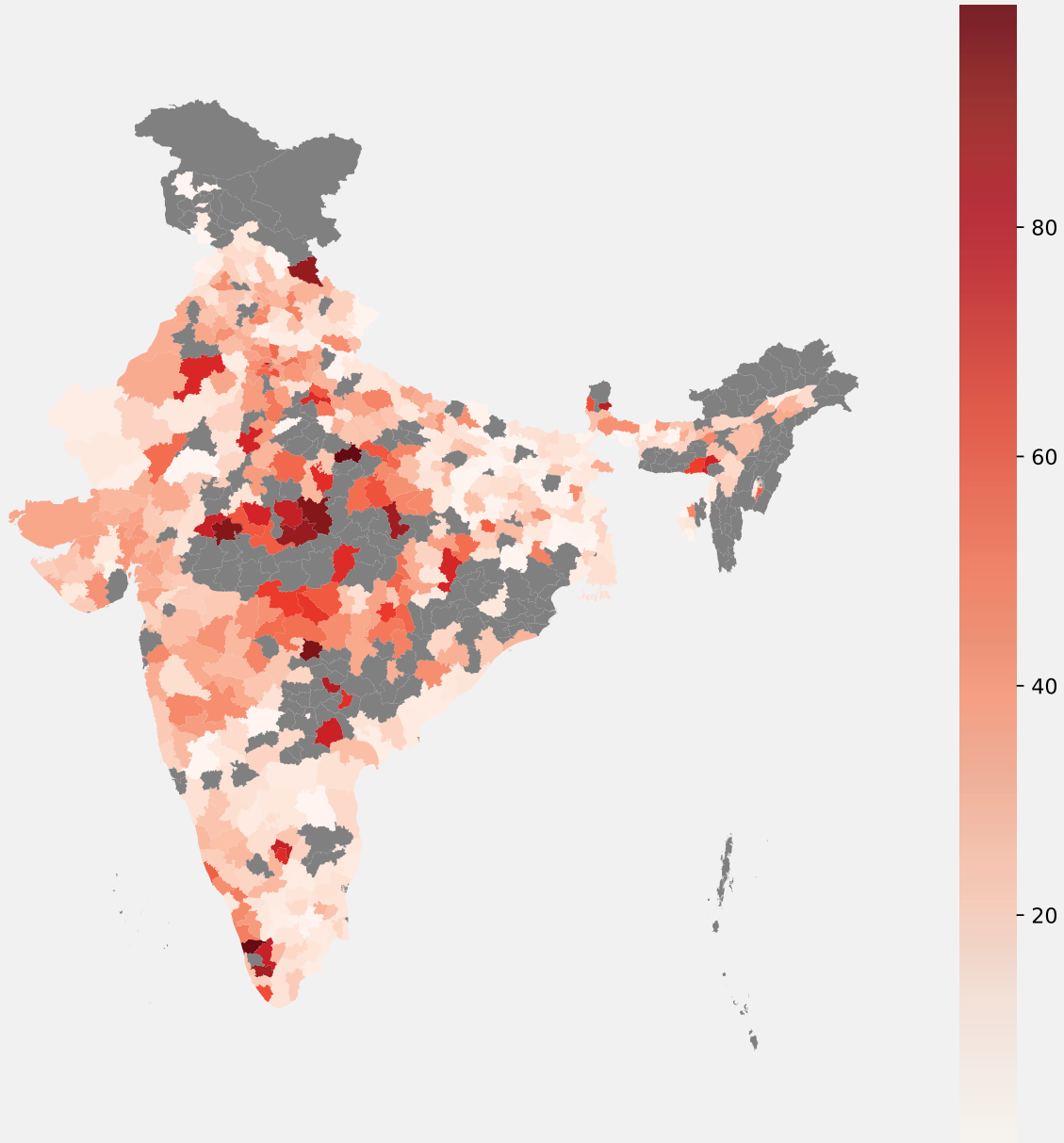
## 2

While Fig. 5.1 presents a comparison of the reporting of POCSO cases on eCourts across the states over a period of time, Fig. 5.2 provides more granular information about overall reporting of POCSO cases at the district level. It also takes into account an additional 49 districts that could not be included in the previous analysis.<sup>267</sup> In order to ensure that 8 districts with extremely high reporting (greater than 100 per 100,000 population) do not overshadow the remaining districts, these have been highlighted below. Therefore, 472 out of the 486 districts studied are represented in the choropleth.

The choropleth map in Fig. 5.2 thus shows the number of cases filed per district for the period between November, 2012 (when the POCSO Act came into force) and February, 2021 (the cut-off point for data collection). This map depicts the district level variation in the reporting of POCSO cases on eCourts. Thus, reporting varies greatly from one district to another even within a state. For instance, in Assam, reporting of POCSO cases ranges from 0.53 cases per 100,000 population in Barpeta to 40.73 cases per 100,000 population in Morigaon. In Himachal Pradesh, the range is even starker with 0.91 cases per 100,000 population in Kullu and 90.35 cases per 100,000 population in Kinnaur. Annexure 2 shows the exact number of cases and the reporting for each of the districts studied. Given the huge variation even within states, it becomes clear that certain districts require greater attention from policymakers.

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<sup>267</sup> 49 districts were excluded from the previous analysis because the researchers did not have data for more than 70% of the districts in those states and comparing those states (in the absence of most of the districts) would not have painted an accurate picture.



**Fig. 5.2:** District-wise reporting of POCSO cases on eCourts

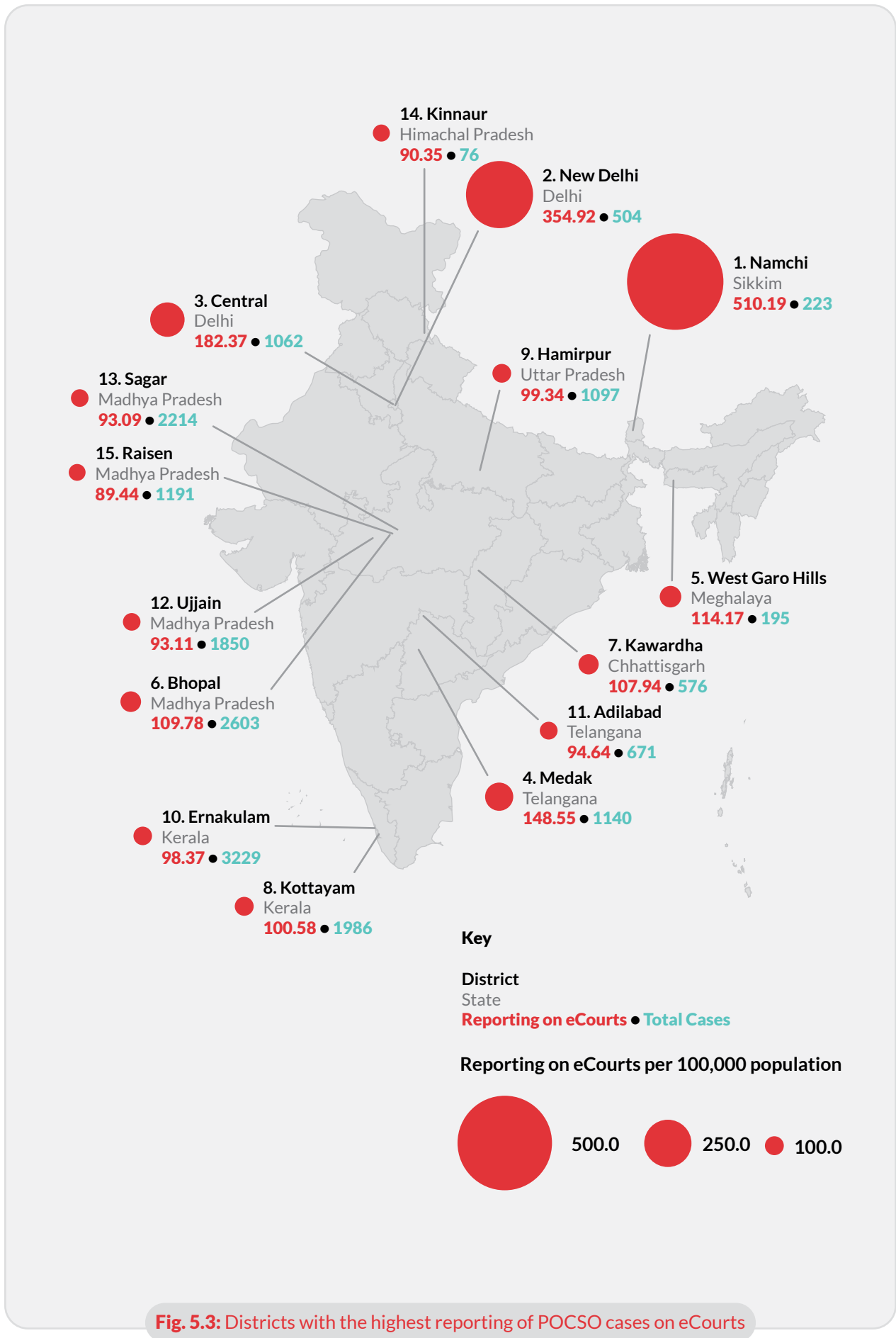
### 3

While Fig. 5.2 provides an overall picture of the reporting of POCSO cases on eCourts in 472 districts, Fig. 5.3 shows the 15 districts that have the highest reporting of POCSO cases.

Districts have been ranked based on the total number of POCSO cases reported on eCourts in a district between November, 2012 and February, 2021, when adjusted for the population of that district. In this Figure, the size of the red dot depicts the magnitude of reporting of POCSO cases, the red number shows the reporting of POCSO cases on eCourts per 100,000 population and the number in blue shows the total number of cases reported from that district during the period of this study.

As this Figure shows, with 510.19 cases per 100,000 population, Namchi (Sikkim) has the highest reporting of POCSO cases out of the 486 districts studied. Though the overall number of cases in Namchi is relatively low (223 cases), since it also has a very small population, when adjusted for population, the number becomes extremely high. New Delhi (Delhi) is ranked second with a reporting of 354.92 POCSO cases per 100,000 population.

14 out of 15 districts in this Figure all have reported greater than 90 cases per 100,000 population. Raisen (Madhya Pradesh) is quite close though, with 89.44 reported cases per 100,000 population.



**Fig. 5.3:** Districts with the highest reporting of POCSO cases on eCourts

## B

### Pendency and disposal analysis

1

Fig. 5.4 shows the total case numbers across all the districts studied between 2013 and 2020. In this Figure, the y axis represents the total number of cases while the x axis represents the year at the end of which these figures were obtained. The line graph above the bar graph shows the percentage of pending cases out of the total cases year on year. The pending cases for a given year are POCSO cases that were pending as of 31 December of that year while the disposed cases are cases that were disposed between 1 January and 31 December of that year. Since the dataset for this research only had data for two months for both 2012 and 2021, those two years have been removed from this Figure.

Figure 5.4 provides insights into the total number of POCSO cases between 2013 and 2020, and also the breakdown of these cases between pendency and disposal. As far as the total number of cases is

concerned, the cases rose steadily between 2013 and 2020.

Breaking down the total number of cases in terms of pending and disposed cases shows that the number of pending cases has consistently increased since 2013. The sharp increase (24863 cases) in the number of pending cases in 2020 could be attributed to the fact that the district judiciary did not function at its usual capacity during the COVID-19 induced lockdowns, leading to poor disposal.

An analysis of the number of disposed cases also illustrates the impact of the COVID-19 pandemic. While the number of cases disposed was on the increase between 2013 and 2019, between 2019 and 2020, the number of cases disposed fell sharply from 28471 in 2019 to 19658 in 2020. To the extent that the pandemic's impact is dampening as the courts begin functioning at their usual capacity, the number of disposals can be expected to rise.

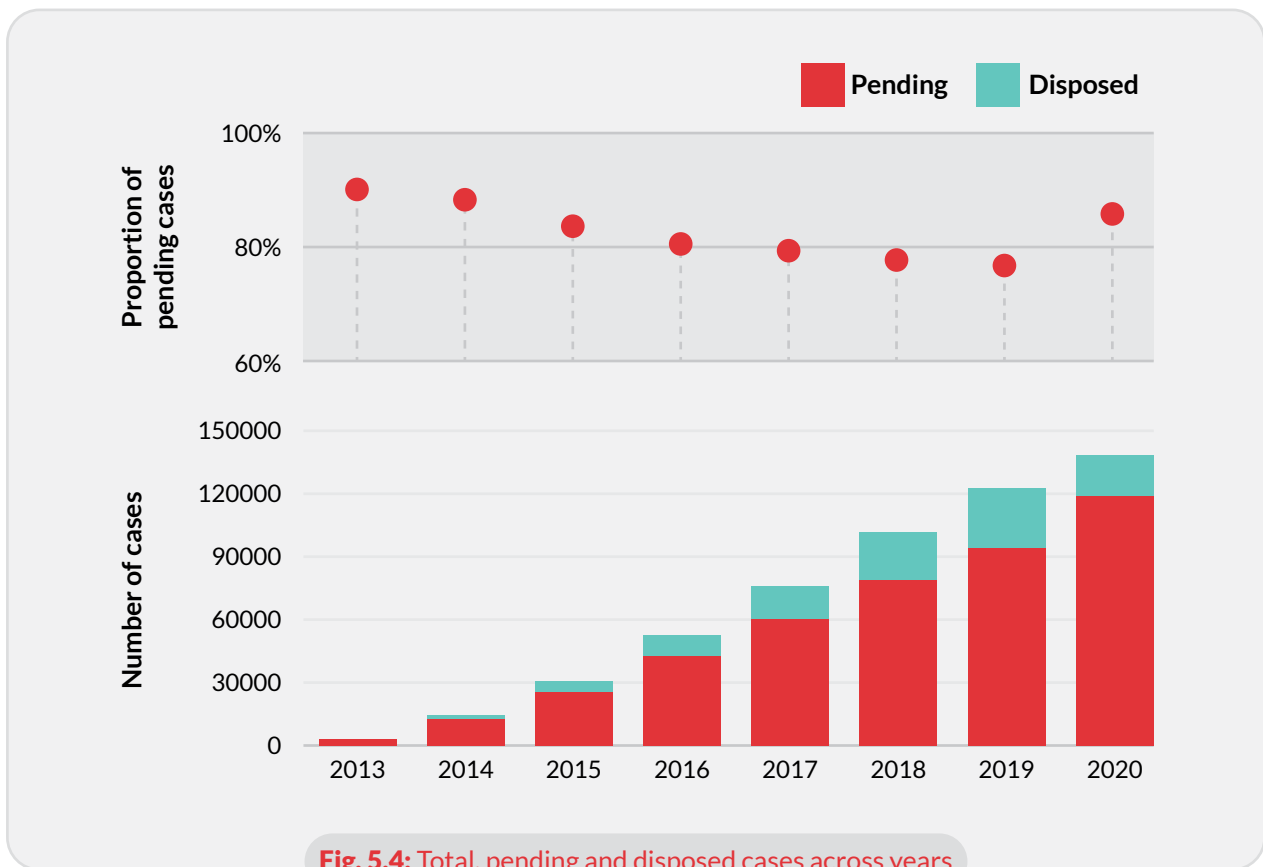


Fig. 5.4: Total, pending and disposed cases across years

## 2

Fig. 5.5 throws light on the total number of reported POCSO cases across states for the period of study (November, 2012 - February, 2021) and also shows how many of these are pending and disposed. Percentage of cases pending is also shown in the Figure.

Fig. 5.5 clearly shows the wide variation in the total number of POCSO cases reported on eCourts across states. The total number of such cases varies between 39635 in Uttar Pradesh to 249 cases in Tripura. With a little over 32000 cases, Maharashtra reports the second highest number of POCSO cases on eCourts. Further, even though Delhi is relatively much smaller in size and population than the other states that report more cases than it, it has the sixth highest reporting of POCSO cases out of the states and Union Territories studied.

As far as pending and disposed cases are concerned, a case in the dataset was considered pending if there was a null entry in the date of decision column as on 24 February, 2021. Cases were then grouped by the state where they originated and the number of pending and disposed cases was counted.

The percentage of cases disposed of varies from 20.58% in Himachal Pradesh to 80.2% in Tamil Nadu. Uttar Pradesh has the highest pendency with more than three-fourths (77.77%) of the total cases pending. This means that in Uttar Pradesh, of all the cases that were filed between 2012 and 2021, as of 24 February, 2021, less than one-fourth were actually disposed of. Delhi is also similarly placed with 2821 out of 10838 cases disposed of. In Maharashtra (the only other state with a comparable reporting of POCSO cases as that of Uttar Pradesh), the percentage of disposed cases is significantly higher (at 39.77%).

However, these few states do not represent the bulk of the states studied. The picture in other states is quite different. At 80.2%, Tamil Nadu has the highest disposal percentage out of the states studied. Kerala, Rajasthan, and Sikkim have all disposed of more than 70% of the cases filed since the POCSO Act came

into force. States like Chandigarh, Andhra Pradesh, Tripura, Chhattisgarh, Punjab, Uttarakhand and Jharkhand have all disposed of more than 60% of the cases filed till the cut-off date for data collection. The data thus highlights the variation between how POCSO cases are handled across different states and helps us identify states that are most in need of policy interventions.

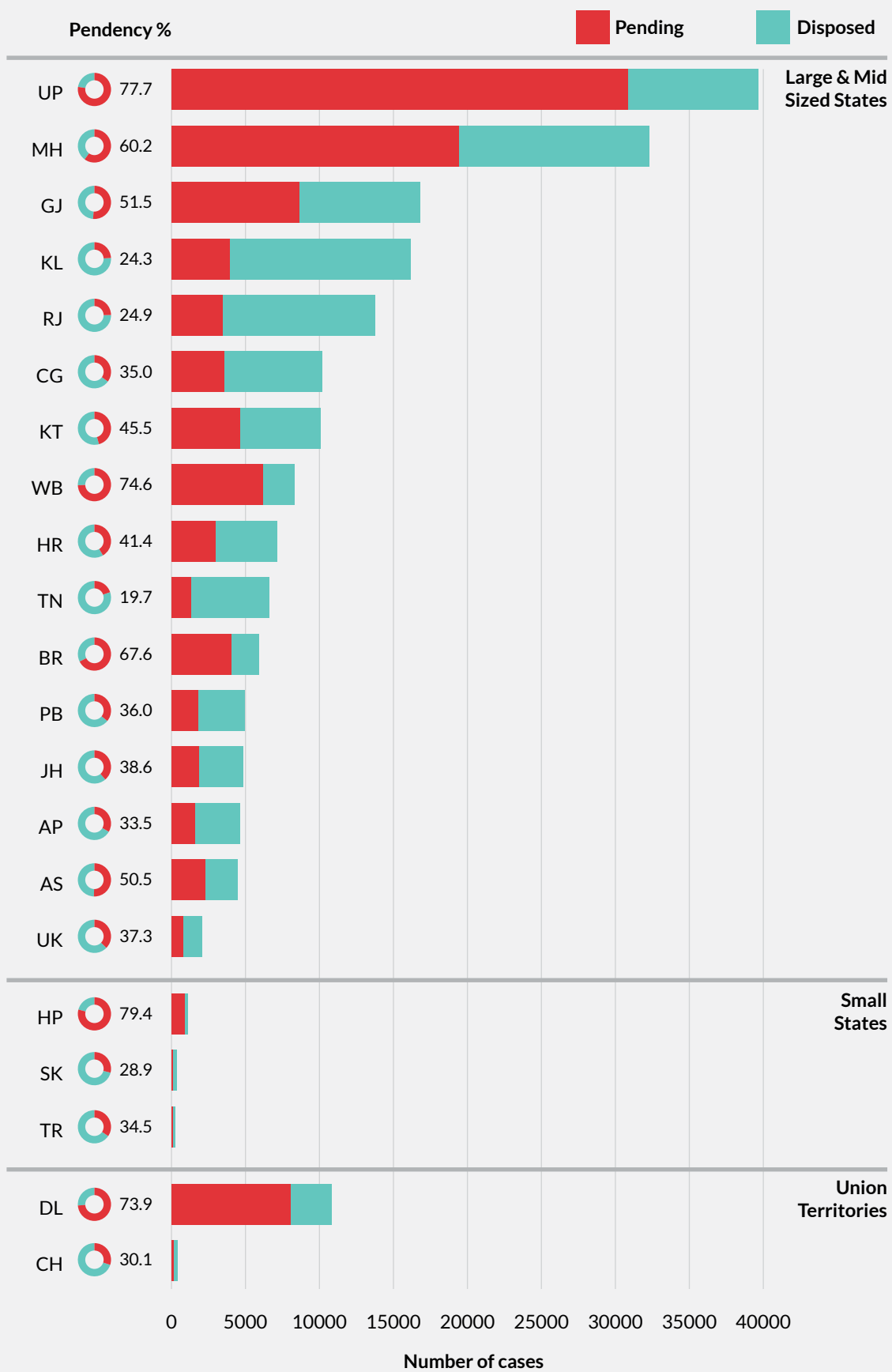


Fig. 5.5: Total, pending and disposed cases across states

### 3

The previous two figures provide insights about pending and disposed cases across states and across years. Fig. 5.6 shows 15 districts with the lowest disposal rates out of the 486 districts studied.

It is important to note that the disposal percentage in this Figure is calculated based on the data available on eCourts. Apart from a slow rate of disposal, an important factor that could be responsible for a lower disposal percentage for a district is a lack of regular updated information about cases from certain districts on eCourts. However, even if that is the case and the updated status of cases is not being regularly updated on eCourts, it is a serious issue that needs to be addressed.

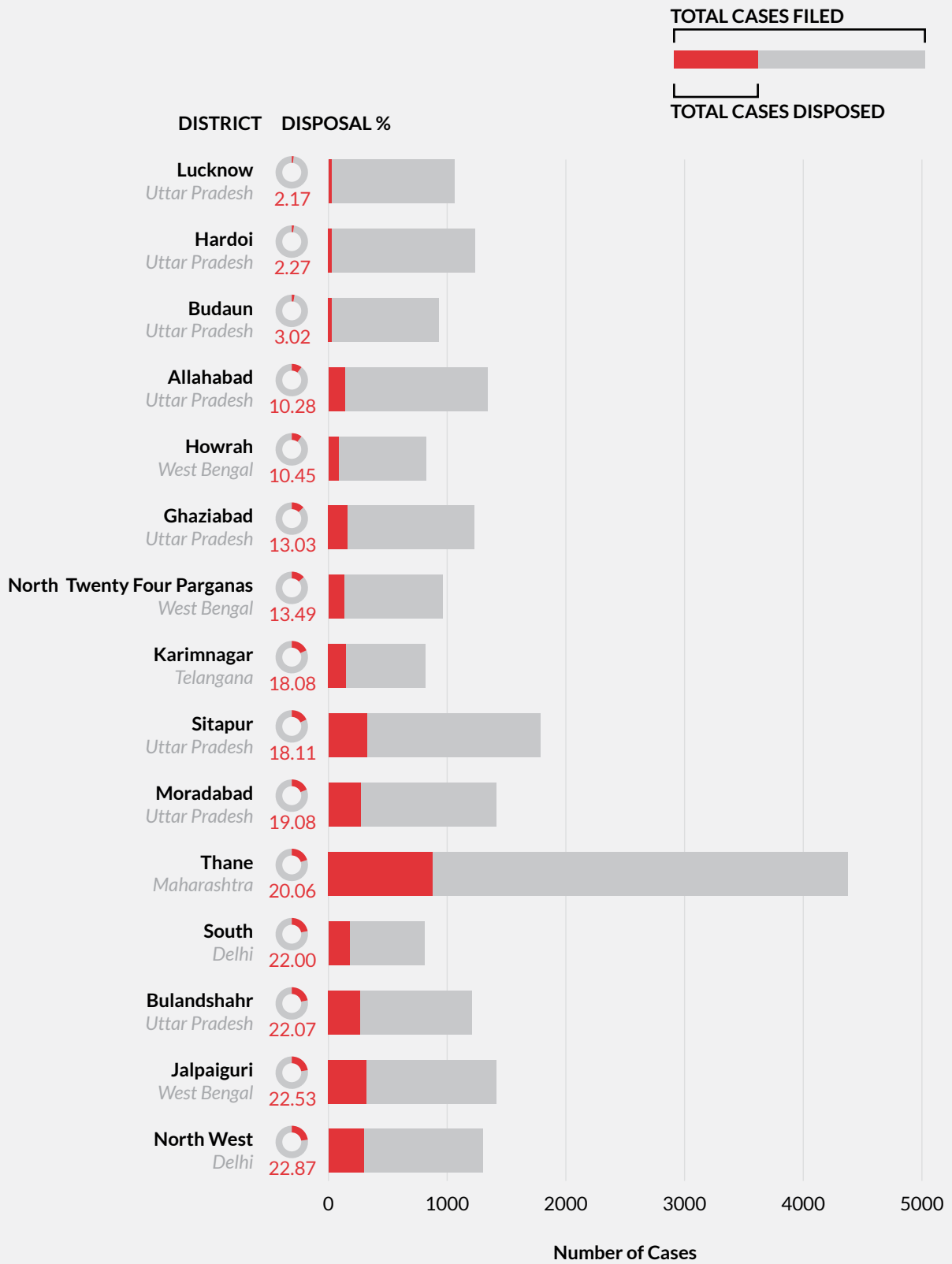
For Fig. 5.6, the disposal percentage has been arrived at by dividing the total number of disposed cases by the total number of cases filed during the time period ranging from 2013 to 2020 for each district. To avoid bias arising from districts with very low annual filing (which could have less caseload and therefore higher disposals), only districts with greater than 100 average annual filings were considered for this analysis.

Figure 5.6 shows that with a disposal percentage of 2.17%, Lucknow (Uttar Pradesh) is the poorest performing district in the country as far as disposals are concerned. Hardoi (Uttar Pradesh) is a close second with disposal percentage of 2.27%. While districts from Uttar Pradesh and West Bengal dominate this list, districts from NCT of Delhi, Maharashtra and Telangana are also part of this ranking.

Slow disposals impact the accused who might be incarcerated. They also have a negative impact on the child victim who might be forced to relive the details of a traumatic incident of sexual violence years after the abuse. Further, slow disposals also have a bearing on the outcome of the trial. According to the experts consulted for this report, as more time passes, witnesses might start to forget important details pertaining to the case, particularly Investigating Officers, who might be transferred

to another posting during the intervening period. Further, the main purpose of the POCSO Act was creation of a child friendly justice delivery system that provides faster adjudication for offences of child sexual abuse. Such low disposal percentages only go on to show that this goal is far from being realised.





**Fig. 5.6:** Districts with lowest disposal rates

# II

## Analysis of Disposed Cases

### A

#### Outcomes of disposed cases

##### 1

One would assume that a “disposal” in a POCSO case would either mean an acquittal or a conviction. However, this presumption is far from the reality. When a case is disposed of, its outcome can be recorded in various ways on eCourts. In this section, disposed POCSO cases have been analysed based on their nature of disposal. The purpose of this analysis is to arrive at a more nuanced understanding of disposals in POCSO cases.

In our dataset of roughly 112000 disposed cases, there were 717 unique types of case outcomes ranging from “otherwise” to “FRT Accepted” to “Settled by ADR”. To make sense of this data-set of “disposed” cases, as a starting point, it was necessary to club various terms that could be considered to fall under the same outcome category.

A total of 137 outcomes corresponding to 96.7% of cases were categorised into seven categories. These seven categories comprise acquittal (43.44%), conviction (14.03%), transfer (22.76%), disposed (9.84%), allowed (2.48%), dismissal (1.06%) and miscellaneous (3.11%). The remaining 3.28% (corresponding to 580 outcomes) were termed “unclassified” and added as a separate category. The table below provides information on what each of these categories refers to and gives some examples of the outcomes that were clubbed in these categories.

#### KEY

##### | Final outcome category (post cleaning)

What this category includes

Examples of Outcomes clubbed in this category

##### | Acquittal

Cases where the final outcome of the disposed case is acquittal.

discharge; acquittal by compromise; acquitted

##### | Conviction

Cases where the final outcome of the disposed case is conviction.

plead guilty; convicted and fined; judgment by conviction

##### | Transfer

Cases where the case is transferred from one court to another, mostly to the Special POCSO Court.

case committed; made over; transfer cases to other court

##### | Disposed

Outcomes that do not provide any information about the nature of disposal. This category could include convictions, acquittals and all other categories of outcomes and it does not provide information about what the actual outcome of the case was.

judgment; decided; disposed of

##### | Allowed

Most likely related to bail applications and other miscellaneous applications.

allowed; order passed, allowed; allowed otherwise

##### | Dismissal

Most likely related to bail applications and other miscellaneous applications.

reject; dismissed as withdrawn; dismissed

##### | Miscellaneous

Outcomes that could not be classified due to lack of information.

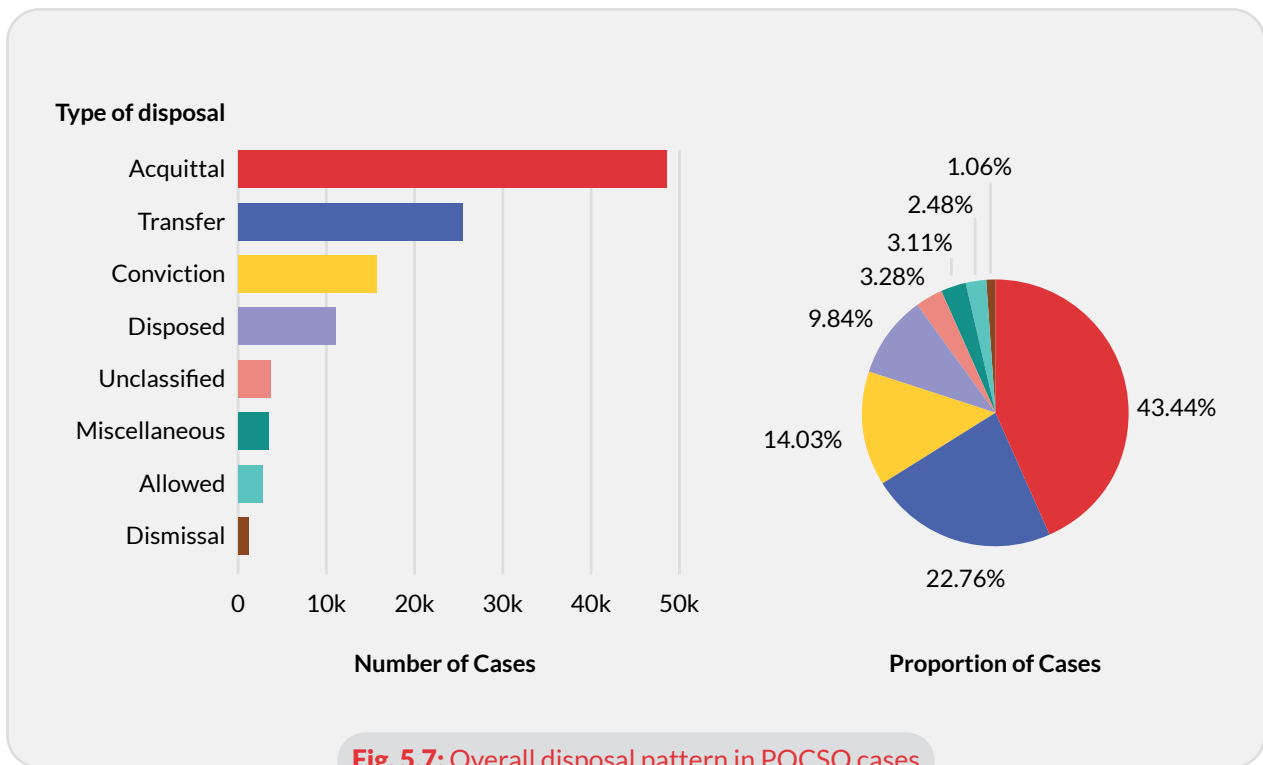
untrace; accused absconded; admission of claim

##### | Unclassified

Outcomes that corresponded to a small number of cases and were not classified.

accepted; filed forever; reinvestigation

Fig. 5.7 shows the percentage and actual numbers of disposals of different types.



**Fig. 5.7: Overall disposal pattern in POCSO cases**

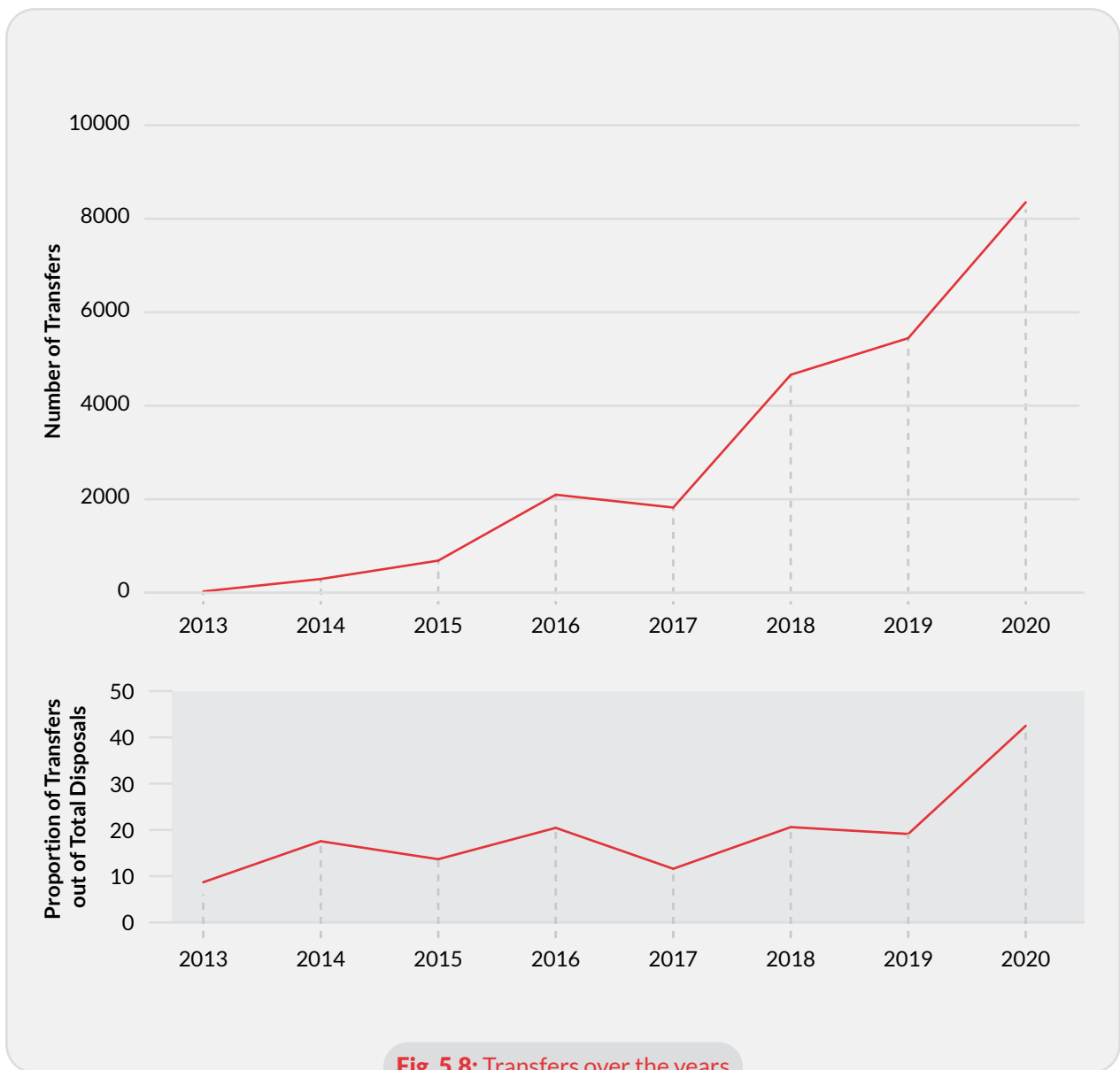
If one only focuses on the categories of “acquittal” and “conviction”, Fig. 5.7 shows us that in the POCSO cases disposed of between 2012 and February, 2021, convictions comprised just about 14% of the cases while acquittals form over 43% of the disposals. This means that for every one conviction, there were three acquittals.

More than one-fifth of the cases in this dataset ended in transfers. Since POCSO cases are supposed to be tried by the Special Court set up under Section 28 of the POCSO Act, 2012, a POCSO case that comes before any other court has to be transferred to the Special POCSO Court. Fig. 5.8 shows how the number of transfers has varied over the years. Apart from a small dip between 2016 and 2017, the overall number of transfers has been on an increase. This increase, however, could be attributed to rising number of POCSO cases in general. However, when one looks at how the percentage of transfers as a component of all disposals has varied, a different trend is visible. While the percentage of transfers out of total disposals was only around 8% in 2013, it rose to a little over 19% in 2019 and a startling 42% in 2020. The huge jump in 2020 might be explained as an impact of the COVID-19 pandemic during

which Special POCSO Courts may not have been functioning and cases came before other courts which then transferred them to the Special POCSO Courts. Even if one excludes 2020, transfers still comprised more than 15% of the total disposals between 2013 and 2019. This is concerning because precious time is being wasted if the matter has to be transferred from one court to another and unnecessary delay is being caused in the trial process.

Transfers are indicative of either administrative mismanagement or wrongful appreciation of facts by the police. Regarding the former, it is concerning that even after a decade of the POCSO Act being in force, cases are being allowed to be filed in the wrong courts. Clear guidelines to enable the police and prosecution to bring POCSO cases directly to the Special Courts could solve this issue. For the latter, there seems to be a legitimate concern regarding identifying the age of the victim. The investigating authorities along with medical experts need to expedite this process, so that precious trial time is not spent in the wrong court.

Further, for the categories “allowed” and “dismissal”, a study of a randomised sample of cases indicated that a majority of them are related to applications filed under the main POCSO case either being allowed or dismissed by the court. Though every effort was made to exclude bail and other miscellaneous applications from the dataset, the researchers are cognisant that some such cases might have crept into the cleaned dataset as well. Given that “allowed” and “dismissed” relate to applications and not the main case, this might be reflective of a deeper problem of inflated disposals. There is a need to have uniform terminologies for disposal types for it to lend itself to any scientific analysis.



**Fig. 5.8:** Transfers over the years

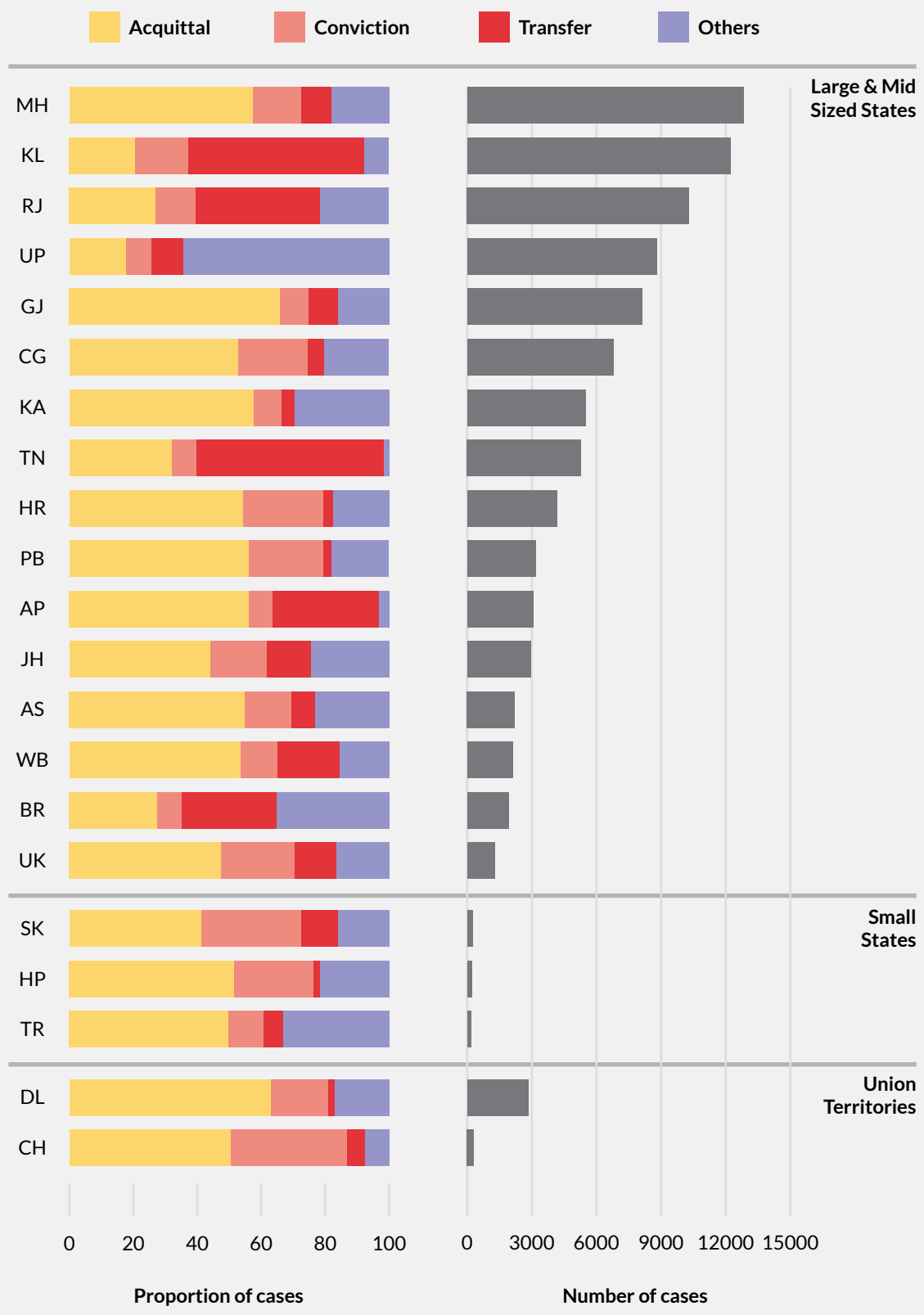
## 2. State-wise disposal patterns

According to our study of POCSO case disposal data from 2012 to February, 2021, on an average, it takes 509.78 days for a POCSO case to be disposed of. Fig. 5.9 depicts how this figure has varied across states by throwing light on the disposal patterns in different states.

Disposal types have been divided into four categories: conviction, acquittal, transfer and others (comprising disposed, allowed, dismissal, miscellaneous and unclassified categories). The scale on the right side of Fig. 5.9 shows the total number of disposed cases in a particular state while the bars on the left show the proportion constituted by each of the identified categories.

This figure suggests that transfers account for a significant proportion of the total cases disposed of by courts, particularly in states like Tamil Nadu (58.64%), Rajasthan (38.99%), Andhra Pradesh (33.51%) and Bihar (29.51%).

Fig. 5.9 further shows that acquittals are significantly higher than convictions for all of the states studied. Andhra Pradesh shows a huge disparity between acquittal and conviction figures with 56.15% of the total disposed cases ending in acquittals and only 7.25% convictions. In West Bengal too, acquittals (53.38%) are nearly five times the conviction figures (11.56%). The situation is different in Kerala where the gap between acquittal and conviction is not very high with acquittals constituting 20.5% of the total cases and convictions constituting 16.49%.



**Fig. 5.9: State-wise disposal patterns in POCSO cases**

## B

### Average case length by state and year

1

Fig. 5.10 represents the average case length (i.e., the number of days it took to dispose of POCSO cases in a given year) for different states for different years. It shows the average case length of all the POCSO cases that were disposed of in a year. This graph seeks to indicate the average time the case has spent in the court before getting disposed.

The colour of the dots connotes a specific year and their size connotes the number of cases disposed of in that year. For states with less than 100 cases in a particular year, the dot has been changed to a symbol to ensure that it is visible in the graph. In 2020, at 1284.33 days, Delhi had the highest average case length out of the states studied. Himachal Pradesh came a close second with average case length in 2020 being 1093.48 days.

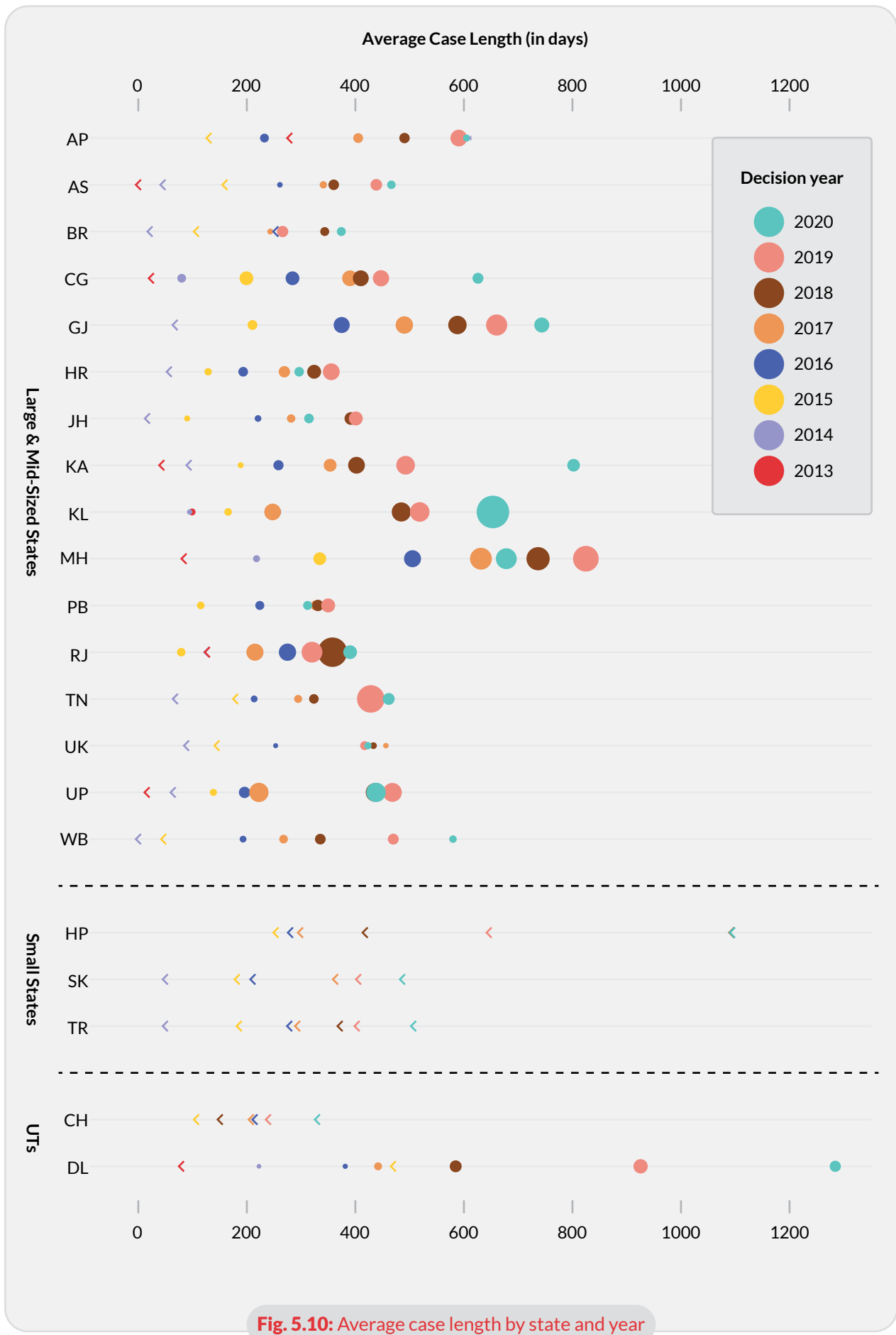
It is natural that cases disposed in 2013 would have smaller average pendency days as opposed to cases disposed in 2020, given that the Act came into effect only in 2012. However, what is concerning is that the average pendency days of disposed cases is increasing year on year which indicates that the pendency case-load is preventing the court from taking up and disposing newer POCSO cases. This systemic issue extremely delayed cases in POCSO courts should be tackled strategically in order to create capacity for new POCSO cases.

It is immediately clear from this graph that the average case length has increased from year to year in many of the states studied (Assam, Chhattisgarh, Gujarat, Karnataka, Tamil Nadu, West Bengal, and Himachal Pradesh). This indicates that most of the cases being disposed are the ones which have been pending in the system for multiple years. The pressure of pending case-load therefore leaves very little time for judges to concentrate on new POCSO cases.

In other states, the average case length has fallen in one or two years and then again risen in the subsequent years (Haryana, Maharashtra, Punjab, Rajasthan, Uttarakhand, Uttar Pradesh, Sikkim, Chandigarh, and Delhi). In Kerala, case length has been on an increasing trend since 2017.

Andhra Pradesh presents an interesting case study. While the average case length increased from 2012 (122 days) to 2014 (611.2 days), there was a sharp fall in 2015 (130.01 days). From 2016, the average case length continued to steadily increase (reaching 604.99 days in 2020). Bihar has also followed a haphazard pattern with average case length varying from 21.33 days in 2014 to 374.11 days in 2020. In Jharkhand, the average case length rose from 16.51 days in 2014 to 400.77 days in 2019 before declining to 314.49 days in 2020. This is interesting given that 2020 was a pandemic hit year.

While average case length provides important insights into the pipeline of justice, an important caveat of this indicator is that it aggregates disposals for all kinds of cases, including transfer cases that might take less time to be disposed of relative to other cases, thereby skewing the dataset in favour of faster disposals.



**Fig. 5.10:** Average case length by state and year



## C

### Time taken for disposal

#### 1. Overall time taken for disposal (based on decision year)

Fig. 5.11 presents the age composition of disposals based on their decision year (i.e., the year in which a POCSO case was disposed of). It has three parts. The pie chart shows the age of disposed POCSO cases when aggregated. The bar graph shows the year-on-year age of disposed cases while the line graph shows the age of disposed cases in terms of proportion of the total disposal in a particular year.

Each stacked bar above a decision year shows how many cases were disposed in that year and what the age of these disposed cases was at the time of disposal. The age is represented by four different colours corresponding to four age categories: yellow for cases that were disposed of in less than one year, pink for cases that were disposed of in one to two years, red for cases that took two to three years to be disposed of, and purple for cases that were disposed of in greater than three years.

This Figure only studies cases that were decided between 2016 and 2020. This is because in this analysis, the cases are grouped by the date of decision. If the graph was started from, for instance, 2013, then the cohort of cases in consideration would be the cases filed in 2012 (since the Act came into force in November, 2012) and disposed till 31 December 2013. All these cases would fall into the 'less than one year' category and the graph would be misleading if it were to be interpreted as the courts becoming very efficient. For this reason, this analysis only considers cases which have had at least three years' time to be disposed of.

While the bars above the decision year show the actual number of cases disposed of in a particular year, the line graph below the decision year shows what proportion of cases disposed in a particular year were disposed of between the different time periods represented by the different colours.

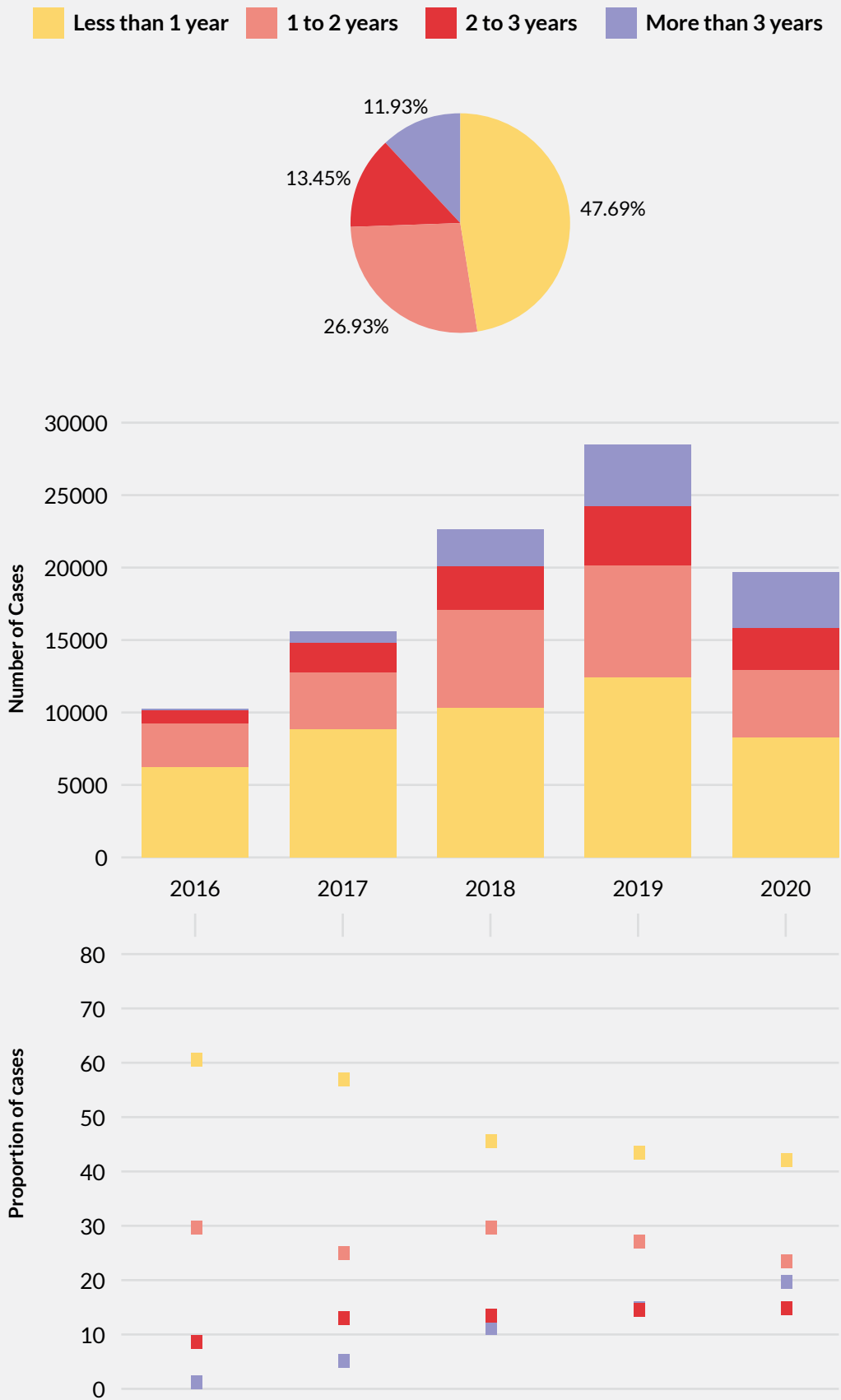
The pie chart in the above Figure shows that nearly 90% of POCSO cases are disposed of in less than three years, with over 47% of these being disposed of in less than one year.

Of the 22625 cases that were disposed of in the year 2018, 45.63% of the cases were disposed of in less than one year, 29.67% took one to two years, 13.54% took two to three years and 11.16% took more than three years to be disposed of.

It is evident from this Figure that the proportion of cases disposed of in less than one year has gradually decreased. Thus, while over 60% of the cases disposed of in 2016 were disposed of in less than a year, this figure decreased to 42.07% for cases disposed of in 2018. Further, the share of cases disposed of in greater than three years seems to have increased overtime. Of the cases disposed in 2016, only 1.2% were disposed of in more than three years. However, for cases disposed of in 2020 this figure was at 19.66%.

One of the explanations for such a small percentage of cases taking more than three years to be disposed of in 2016 could be that a lot of cases filed till 31 December, 2016 might not have been disposed of till 31 December, 2021. This becomes evident in a comparison of the filing and disposal data. Out of the 59742 cases filed till 31 December, 2016, only 28.96% had been disposed of till 31 December, 2016. Thus, over 70% of the cases filed till 2016 (i.e., between 2012 and 2016) had not been disposed of till the end of 2016.

This seems to suggest that over the years, courts have become more inefficient in disposal of POCSO cases. Since this Figure includes all kinds of disposals, in order to understand how long courts take to dispose of POCSO cases that end in acquittal or conviction, the researchers have further analysed the age composition of these two categories of cases in the next section.



**Fig. 5.11:** Overall time taken for disposal in POCSCO cases (based on decision year)

## 2. Time taken for disposal in acquittal and conviction cases by year (based on decision year)

Fig. 5.11 shows the overall age profile of disposed POCSO cases for cases disposed of between 2016 and 2020. Figs. 5.12 and 5.13 do a similar analysis for cases that ended in acquittal and conviction. These figures have three parts. The pie chart shows the age of acquittal or conviction cases (as the case may be) when aggregated. The bar graph shows the year-on-year age of acquittal or conviction cases while the line graph shows the age of acquittal or conviction cases in terms of proportion of the total acquittal or conviction cases in a particular year.

Different colours in the bars represent different age categories for disposed cases. The reason for choosing 2016 as the first year for analysis has been discussed in the previous section. Since the researchers only had data for two months of 2021, it has not been included in this Figure.

In order to arrive at the number of acquittal and conviction cases for each year, the disposed cases where the disposal type corresponded to acquittal or conviction respectively were grouped by disposal year and the difference between the date of filing (as available on eCourts) and the date of disposal was calculated and the cases were then classified into different age brackets.

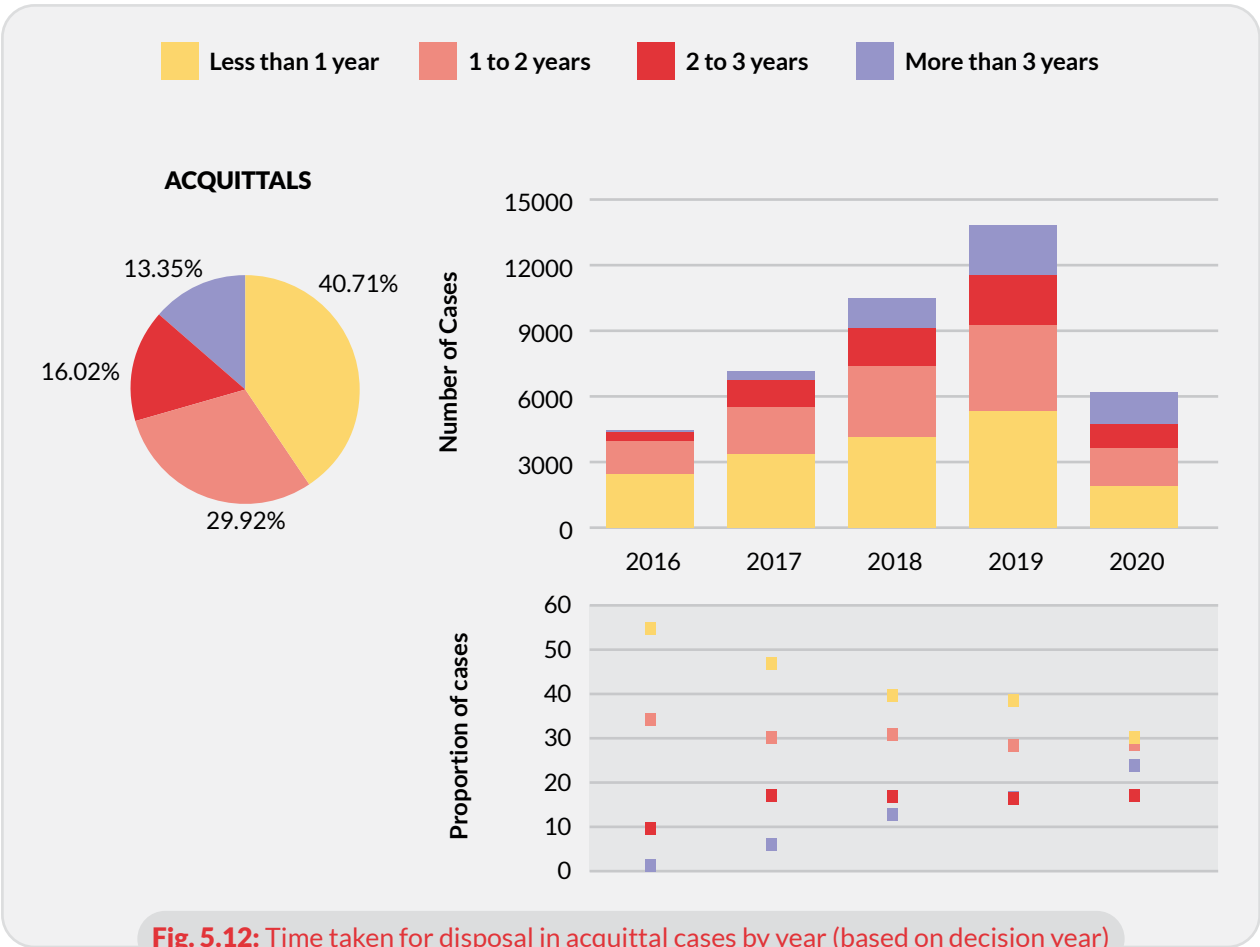
A comparison of the pie charts in Figs. 5.12 and 5.13 shows that the outcome of the case (in the form of acquittal or conviction) does not have a significant relationship with how long it takes to dispose of POCSO cases. For example, for cases ending both in acquittal and conviction, the percentage of cases disposed in less than three years is similar (around 85%). Similarly, around 14% of the cases ending in acquittal and conviction take more than three years to be disposed of. Thus, this study does not find any significant impact of the outcome of a case on its length (calculated in terms of date of filing and date of disposal).

This finding is different from previous studies on the POCSO Act and from what experts opined during the stakeholder interviews. Studies undertaken by the CCL-NLSIU in different states found that acquittals were higher in cases disposed within a year as compared to convictions and that the time taken to dispose a case was higher when it resulted in a conviction. Further, according to these studies, disposal time is lower in cases that end in acquittals because the court dispenses with the examination of formal witnesses when the victim turns hostile or does not support the prosecution.<sup>268</sup> Experts interviewed also suggested that cases which end in conviction take longer than cases where there is acquittal.

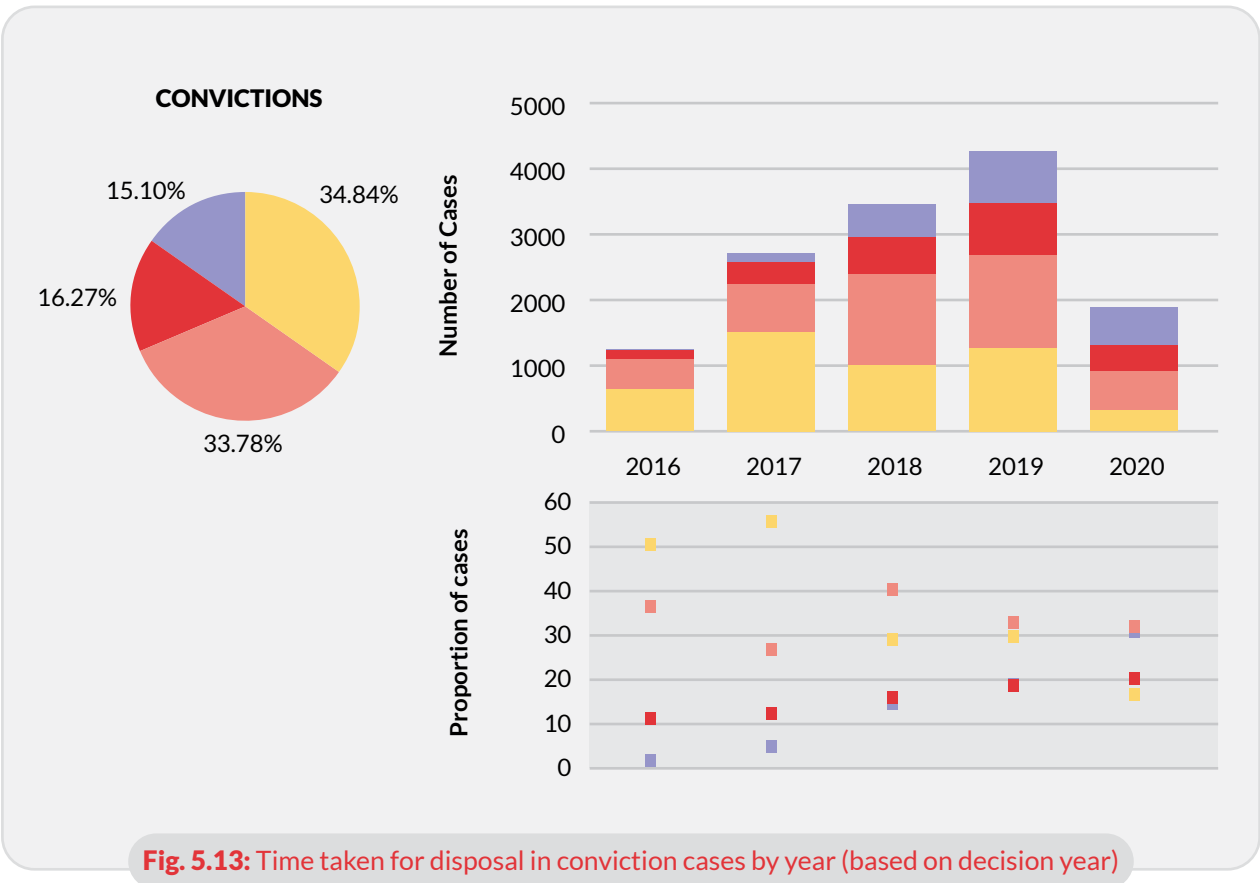
Further, these Figures suggest that over the years, there has been a rise in the proportion of cases ending in conviction that take more than three years to be disposed of. For instance, while only 1.75% of the cases (that ended in conviction) disposed of in 2016 were aged more than three years at the time of disposal, the percentage of such cases in 2020 was 30.92%. This suggests that the courts are taking more time to dispose of POCSO cases with every passing year.

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<sup>268</sup> Centre for Child and the Law, National Law School of India University, Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues (National Printing Press, Bengaluru, February 2018).



**Fig. 5.12:** Time taken for disposal in acquittal cases by year (based on decision year)



**Fig. 5.13:** Time taken for disposal in conviction cases by year (based on decision year)

### 3. Time taken for disposal in conviction and acquittal cases in different states

Another way of looking at data pertaining to acquittal and conviction is to study how the mean length of these cases varies across states.

As Fig. 5.14 shows, the mean case length in cases of acquittal varies between 179.62 days in Chandigarh to 1027.52 days in Himachal Pradesh. For cases that end in conviction, the mean case length ranges from 311.72 days in Chandigarh to 1373.2 days in Delhi. Further, apart from Sikkim, Kerala and West Bengal, for all the states studied, the time taken for conviction is longer than the time taken for acquittal. This means that courts spend more time in hearing cases that ultimately end in conviction as compared to cases that end in acquittal.

Additionally, data shows that Chandigarh and West Bengal are the only states where convictions are taking place (on average) within the statutorily prescribed period of one year with states like Karnataka, Uttar Pradesh, Maharashtra, Gujarat, Bihar, Himachal Pradesh and Delhi, all taking over two years for disposing of cases that end in conviction.



**Fig. 5.14:** Time taken for disposal in conviction and acquittal cases in different states

### III

#### Analysis of stages in a POCSO case

A case goes through many stages during the process of trial before the courts. For instance, a case can be listed for framing of the charge, for charge, for prosecution evidence, or for arguments. Fig. 4. in Chapter IV discusses the stages in a POCSO trial in detail. Ideally, a uniform and well-organised dataset would be able to classify all cases for the above categories based on the information provided in the hearings table<sup>269</sup> for each case (available on eCourts). However, that is far from reality. Since the terms used for the purpose of hearing are discretionary, with no pan-India uniform key or standardised nomenclature, the terminology used for the purpose of hearing across courts, districts and states varies greatly.

As a result, for the dataset of almost 230000 total cases (out of which about 112000 are disposed cases), about 2729 (2340 for disposed cases) unique names have been provided for purposes of hearing. The high number only reflects that the names used differ significantly. The procedure continues to be regulated by the CrPC and the POCSO Act and, barring a few minor administrative practices, will be uniform throughout the country.

The 2729 unique names of purposes are repeated multiple times in the hearings table for different cases. There was a total of 5245484 hearings corresponding to the over 112000 cases. Since it was not feasible to study the entire dataset, nearly 84.5% of the total hearings and about 87% of the total hearings for disposed cases were categorised. The details of the process adopted for classification of the purposes of hearing into various categories can be found in Annexure 3. After the process of standardisation, purpose of hearing was divided into 11 categories: Evidence; Charge; Service/ Appearance; Arguments; Hearing; Disposal/ Judgment; Adjourned; For trial; Preliminary Hearing; Miscellaneous and Other.

For this section, only disposed cases have been analysed. This is because only disposed cases would have gone through the entire process of trial before being disposed of and would be capable of providing information on all the intervening stages between cognizance and disposal of a case and the average case length.

#### A

#### Average number of days and hearings a POCSO case takes for disposal across states

Fig. 5.15 shows the average number of days (average case length) and the average number of hearings it takes for a POCSO case to be disposed of in different states.

The average case length in POCSO cases in a particular state is computed by dividing the sum total of the case lengths of all the disposed cases by the total number of disposed cases. The average number of hearings is arrived at by computing the total number of hearings of disposed cases in the state and dividing that by the total number of disposed cases in that state. The average number of hearings is depicted on the x axis whereas the average case length is depicted on the y axis.

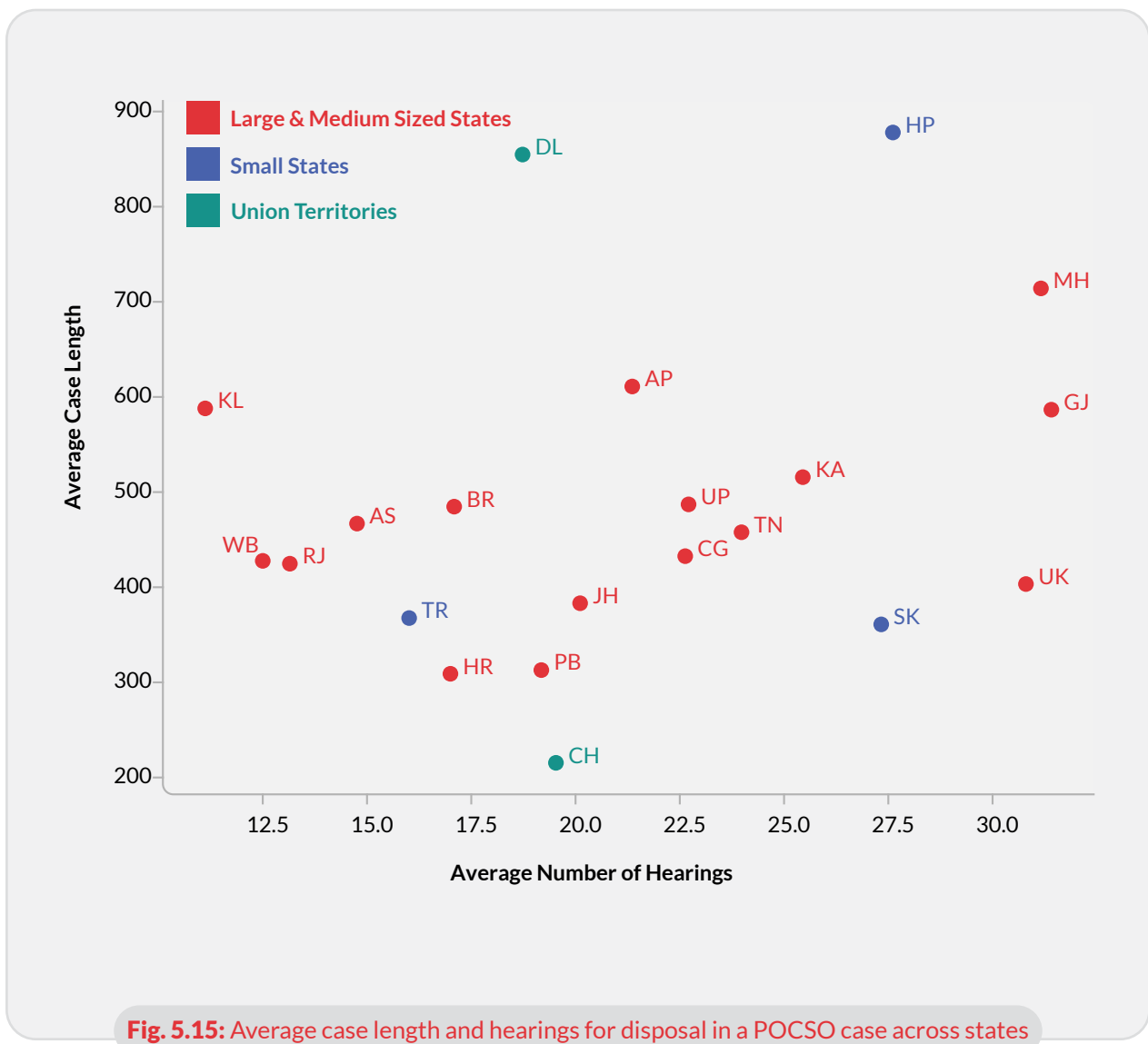
As this Figure shows, the average case length varies between 877.96 days in Himachal Pradesh to 215.43 days in Chandigarh. Sikkim (360.95 days), Punjab (312.91 days) and Haryana (309.03 days) also have average case lengths less than 365 days (the period prescribed under the POCSO Act for completion of trial).

Further, the average number of hearings till disposal varies between 11.12 hearings in the state of Kerala to 31.41 hearings in Gujarat. Greater number of hearings means that the court is spending more resources on a case. Further, a smaller number of hearings does not automatically mean that cases are being disposed of faster. As is visible in the case of Kerala, where the average number of hearings is 11.12 hearings, the average case length is 587.97

<sup>269</sup> The hearings table provides the purpose of hearing for every hearing for each individual case.

days. This indicates that the time period between consecutive hearings might be really long in the state, which itself is a cause of concern, especially for victims.

States which have a shorter case length take an average number of hearings (16-20 hearings) for disposal. For instance, Chandigarh, which has the shortest case length among the states studied, takes 19.53 hearings for disposal of POCSO cases. Similarly, Tripura (with an average case length of 367.6 days) takes an average of 16.01 hearings to dispose of a POCSO case.



**Fig. 5.15:** Average case length and hearings for disposal in a POCSO case across states

## B

### Time taken by different stages in a POCSO trial

number of days (3.11 days on average) are spent on judgment/disposal. On average, over 40% of the total number of days in a POCSO case are spent just on the evidence stage of evidence.

#### 1. Average number of days taken by each stage

Fig. 5.16 shows the average number of days each stage in a POCSO trial takes. In order to arrive at the average for each stage, the total number of days spent on each stage was divided by the total number of disposed cases. The average number of days for each stage is depicted on the y axis and the proportion of the total number of days taken by each stage is represented on the x axis.

It is clearly visible from this Figure that a large proportion of the total number of days spent in disposed POCSO cases are spent on the stage of evidence. On an average, 183.41 days are spent on the evidence stage in a typical POCSO case. The second largest number of days (68.21 days) is spent on the charge stage, which takes about 10% of the number of days spent in a POCSO trial. The least

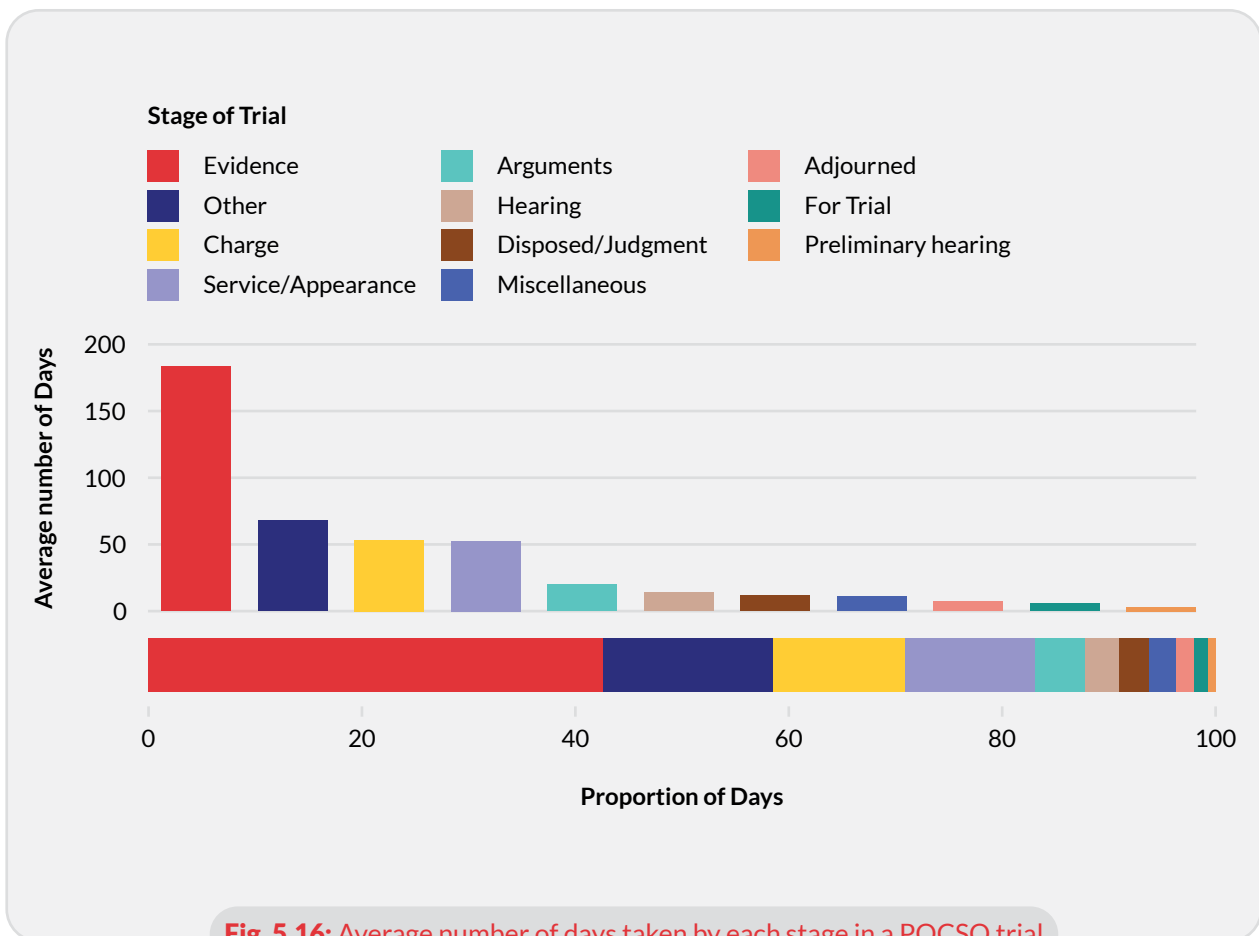


Fig. 5.16: Average number of days taken by each stage in a POCSO trial

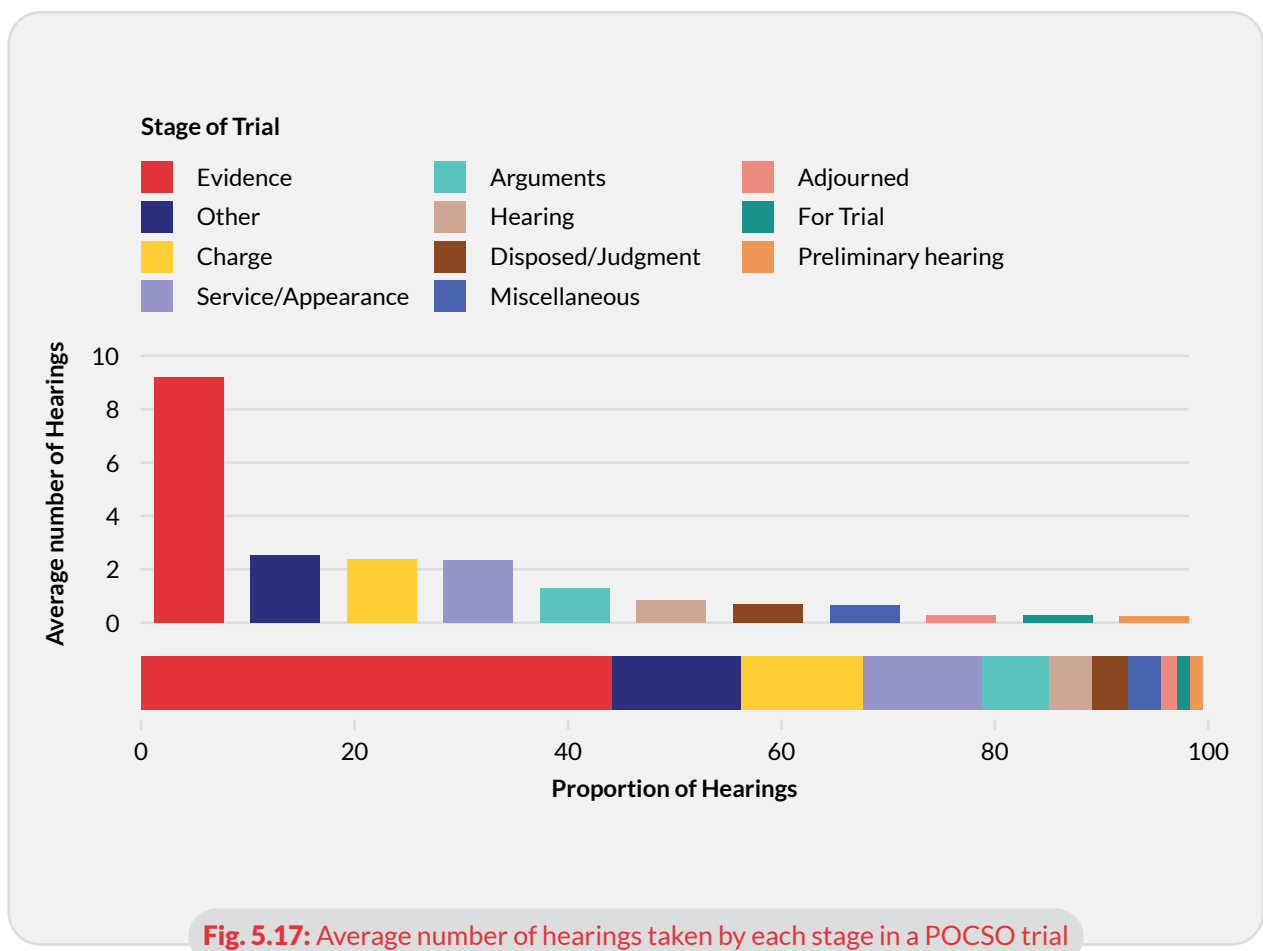


## 2. Average number of hearings taken by each stage

Fig. 5.17 shows the average number of hearings each stage in a POCSO trial takes. In order to arrive at the average for each stage, the total number of hearings spent on each stage was divided by the total number of disposed cases. The average number of hearings for each stage is depicted on the y axis and the proportion of the total number of hearings taken by each stage is represented on the x axis.

It is evident from this figure that even when looked at through the lens of the number of hearings, it is the evidence stage that the greatest number of hearings in a POCSO case are spent on. On an average, 9.21 hearings are spent on the evidence stage with over 40% of the total number of hearings in disposed cases being taken up by this stage. The least number of hearings are spent on the stage of preliminary hearing (0.25 hearings). The stages of Charge and Service/Appearance take about 11% of the total hearings in a POCSO case.

This data reveals that if POCSO trials are to be completed expeditiously (one of the primary purposes of the POCSO Act), the evidence stage needs to be expedited. It is the most crucial stage in a trial and it is understandable that it would take more time than the other stages. With over 40% of the total number of days and hearings spent on POCSO trials being spent on this stage, it becomes crucial to find ways in which processes can be more streamlined to reduce the time taken to complete this stage. One possible solution could be to record certain expert testimonies through video conferencing. A hybrid approach with some parts of the evidence being recorded through the use of technology could help in reducing the time spent at this stage. There is a need for better training for the deposition of Investigating Officers and examination and cross examination by Special Public Prosecutors. Other actors in the trial process need better training to expedite the evidence stage. For instance, the support person needs to be adequately trained to support the child witness/victim during examination.



**Fig. 5.17:** Average number of hearings taken by each stage in a POCSO trial

## C

### Comparison of time spent for evidence stage across states

The above analysis makes it abundantly clear that a large part of the time spent (both in the number of days and the number of hearings) in a POCSO trial is spent at the stage of evidence. The following analysis is aimed at understanding what proportion of time is spent on the evidence stage across different states.

#### 1. Days spent for evidence stage

Fig. 5.18 throws light on the number of days spent on the stage of evidence across different states.

The average number of days was calculated by dividing the total number of days spent in evidence hearings in disposed cases in a given state by the total number of disposed cases in that state. The proportion of days spent at the evidence stage was calculated by dividing the total number of days spent

in the evidence stage by the sum of case lengths of all disposed cases in that state. The x axis represents the proportion of total days spent on the evidence stage while the y axis shows the average number of days spent on this stage.

Delhi spends an extremely high amount of time on the evidence stage with 593.03 days on average being spent on evidence. This constitutes 73.89% of the total number of days spent on average on a POCSO case in Delhi. In Haryana, which spends relatively lesser number of days in the evidence stage (254.29 days), the proportion of time spent on the evidence stage is quite high (82.97%). Then there are states like Chandigarh, Tripura, Andhra Pradesh and Kerala which seem to spend a negligible amount of time (less than 10%) on the evidence stage. However, more than reflecting the ground reality, this seems to be an anomaly that has arisen because of the way the purpose of hearing appears in eCourts for these states.

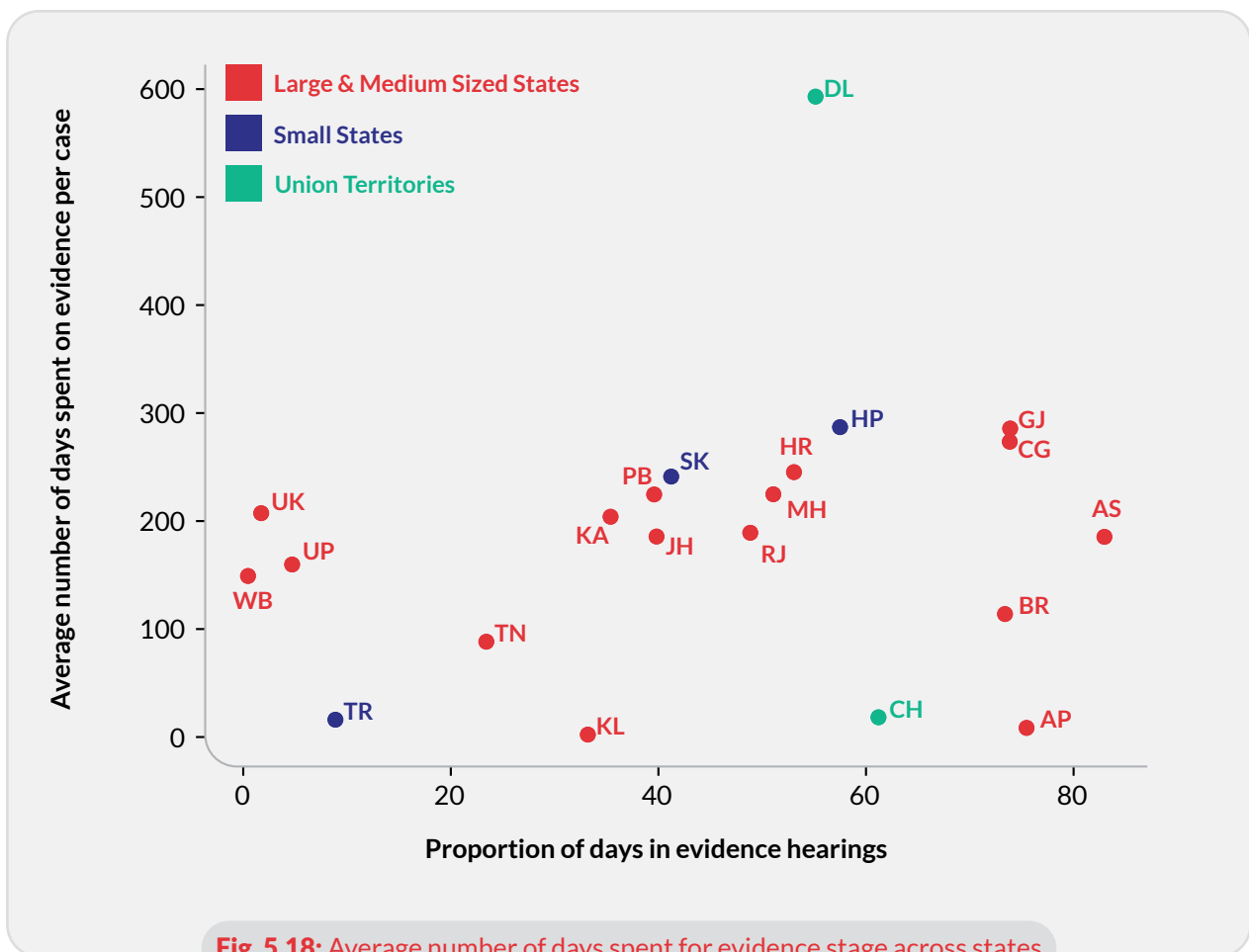


Fig. 5.18: Average number of days spent for evidence stage across states

## 2. Hearings spent for evidence stage

Fig. 5.19 shows the number of hearings spent on the stage of evidence as well as the proportion of total hearings these constitute across different states.

The average number of hearings per case was computed by dividing the sum of the number of evidence hearings in disposed cases in a state by the total number of disposed cases in that state. The proportion of evidence hearings was computed by dividing the total number of evidence hearings in all disposed cases in the state by the total number of hearings for disposed cases in that state. The x axis represents the proportion of total hearings spent on the evidence stage while the y axis shows the average number of hearings out of the total days spent on this stage.

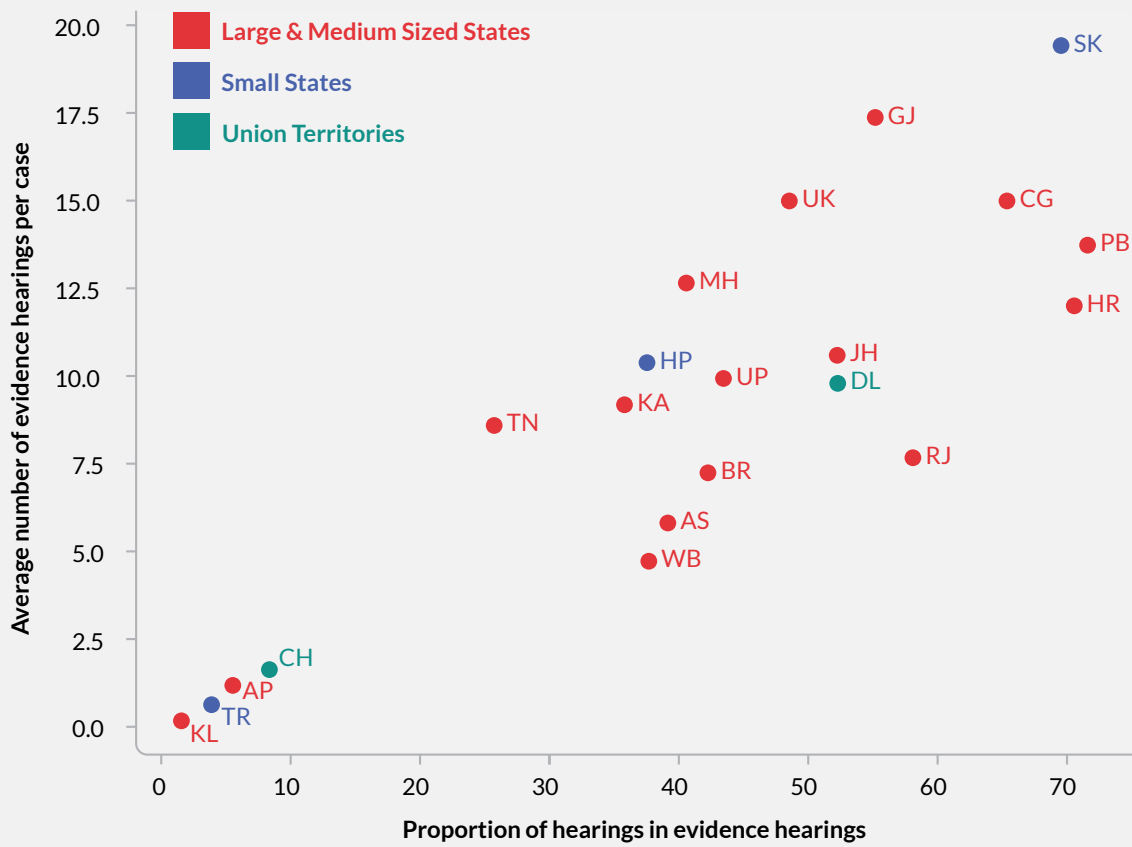
Sikkim holds the greatest number of hearings (19.42 hearings) for evidence in all the states studied with evidence hearings constituting 69.54% of the total proportion of all the hearings. Thus, in Sikkim, nearly 70% of the time spent in a POCSO case is spent on the evidence stage. Chandigarh, Tripura, Andhra Pradesh and Kerala also stand out as anomalies with less than two evidence hearings per case. As discussed above, this could be due to the manner in which the purpose of hearing is entered on eCourts and not because these states actually spend less than two hearings on evidence.

At 71.59%, Punjab spends the highest proportion of its total hearings on the evidence stage holding an average of 13.73 hearings for evidence per case. Haryana is a close second spending 70.56% of its total hearings on the stage of evidence while holding an average of 12 evidence hearings per case.

One would assume that the proportion of days and the proportion of hearings spent on the evidence stage should be somewhat similar, if not exactly the same because if a court is spending a large number of days listening to evidence, the number of hearings would also increase. While this holds true for a large number of states like Punjab, Sikkim, Gujarat and Rajasthan, looking at the two figures together shows that a large amount of time (denoted by the number

of days) spent on evidence does not automatically mean a greater number of evidence hearings in all states.

For instance, though Delhi spends 593.03 days on the evidence stages, the average number of evidence hearings in Delhi is just 9.79 per case. This implies that there are long gaps between consecutive evidence hearings. This becomes clearer when we look at the proportion of days and hearings spent on evidence. Even though Delhi spends 73.89% of the days spent on a POCSO case on just the evidence stage, in terms of hearings, it only spends 52.28% of the total hearings on evidence. This means that there are fewer evidence hearings even though a large number of days are being spent on the evidence stage in Delhi. This can have an adverse impact on the child victims who have to wait for long periods of time between hearings for their case to be heard by the court. The child victim might be re-traumatized by the process of the trial by having to recount the details of the sexual offence committed while giving evidence to the court. They are also prevented from moving on with their lives when trials are delayed for years.



**Fig. 5.19:** Average number of hearings spent for evidence stage across states

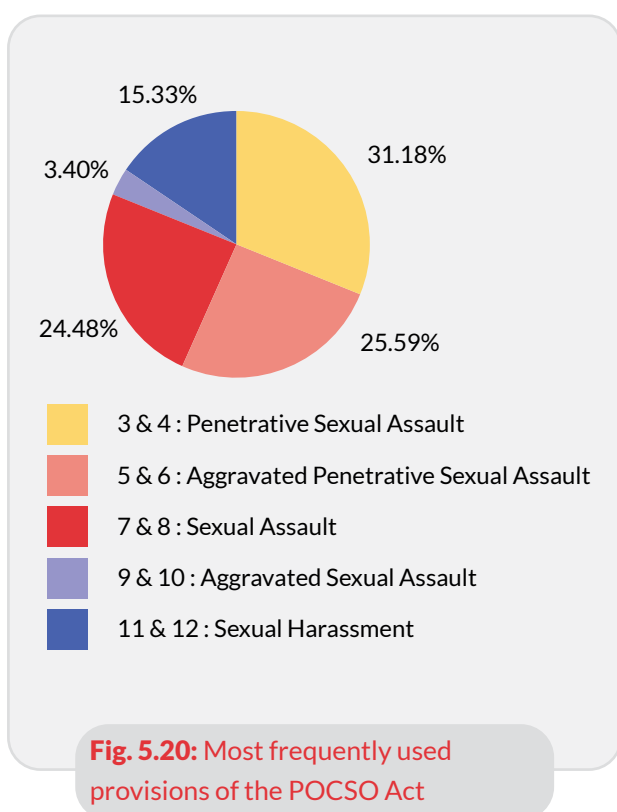
## IV

### Analysis of the use of various provisions of the POCSO Act and the IPC

#### A

##### Most frequently used provisions of the POCSO Act

Fig. 5.20 shows the aggregate usage of different sets of POCSO provisions over the time period of the study. While this Figure can give us an idea about what provisions of the POCSO Act are more frequently used than the others, it does not represent all the cases that form a part of the dataset for this study. This is because not all cases on eCourts have proper and complete information about the Sections of the Acts applied. In order to arrive at the aggregate percentages, the main sections defining offences under the Act were grouped together such that the substantive provision defining an offence and the provision providing for punishment for the same offence would form one category. Thus, Section 3 (which defines penetrative sexual assault) and Section 4 (which provides the punishment for penetrative sexual assault) form one pie in the chart.

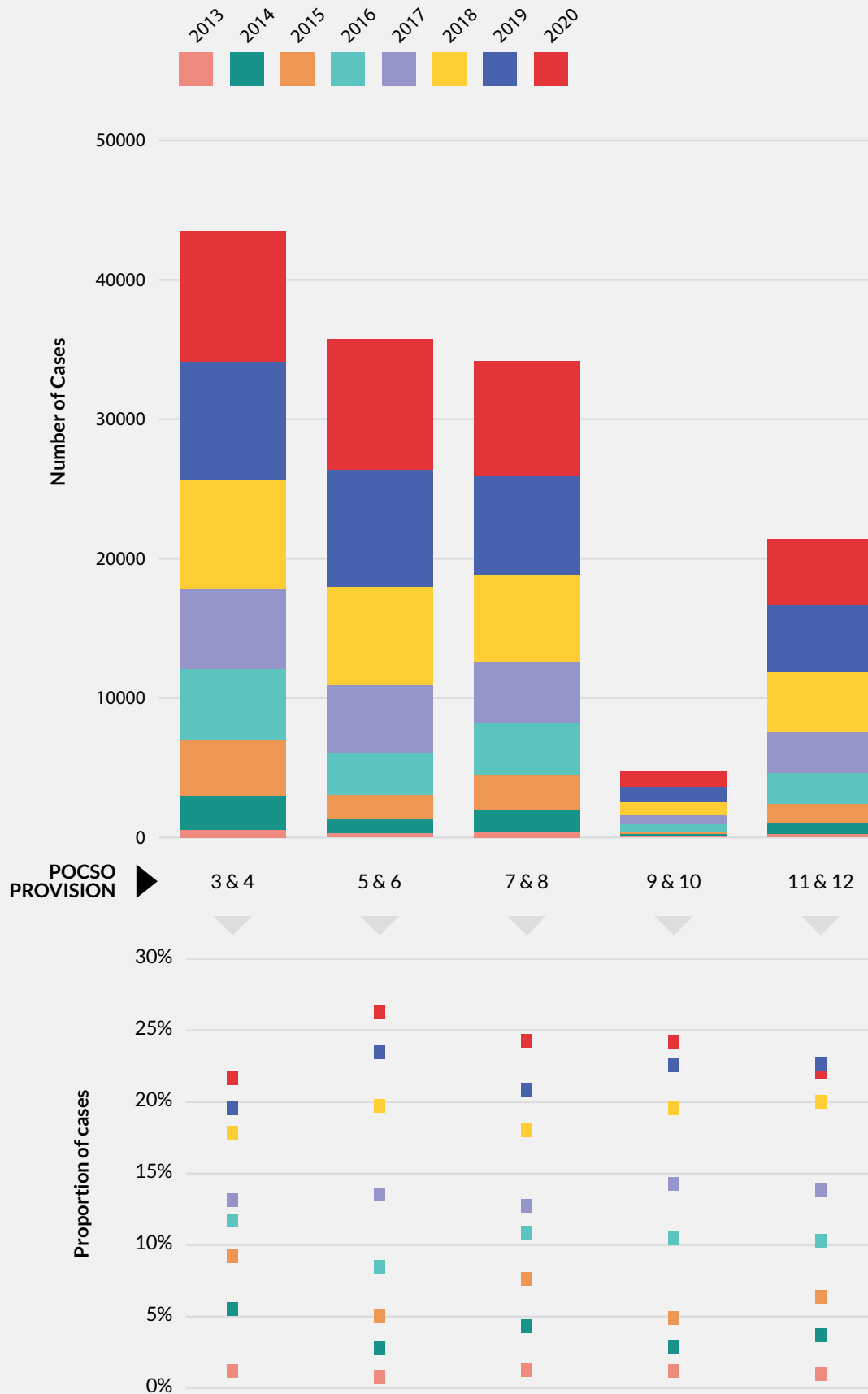


From this Figure, it is evident that over 56% of all the POCSO cases that we were able to analyse to arrive at this Figure correspond to the offences of penetrative sexual assault (31.18%) and aggravated penetrative sexual assault (25.59%), which have the most stringent punishments under the Act. Though these are not conviction figures, it is concerning that a majority of cases under the POCSO Act are being filed for such serious acts of sexual violence against children. While this aggregate data gives a bird's eye view of the use of different provisions of the POCSO Act, it is also useful to see how these provisions have been applied over the years.

Fig. 5.21 shows the frequency of occurrence of certain provisions of the POCSO Act in different years. This Figure has been arrived at by disaggregating the data in Fig. 5.20 according to different years. The x axis contains the Section numbers corresponding to the POCSO Act and while there are two y axes. The y axis above the x axis shows the total number of cases filed in a particular year while the y axis below the x axis shows the proportion of cases constituted by a specific year. The years are represented by different colours. 2012 has been excluded since the Act came into force in November 2012 and very few cases were filed in 2012 and 2021 has been excluded since the researchers only had data for two months of this year.

The Figure shows that offences falling under the five categories identified are increasing year on year. However, this does not necessarily lead to the conclusion that more sexual crimes against children are occurring. Since sexual offences involving children are generally underreported, this increase in the number of cases could be due to increased reporting as awareness about the POCSO Act is increasing.

It is important to note that even though 2020 was a pandemic affected year where a large part of the year was spent in lockdowns, the number of POCSO cases entering the court system continued to increase for all identified categories except sexual



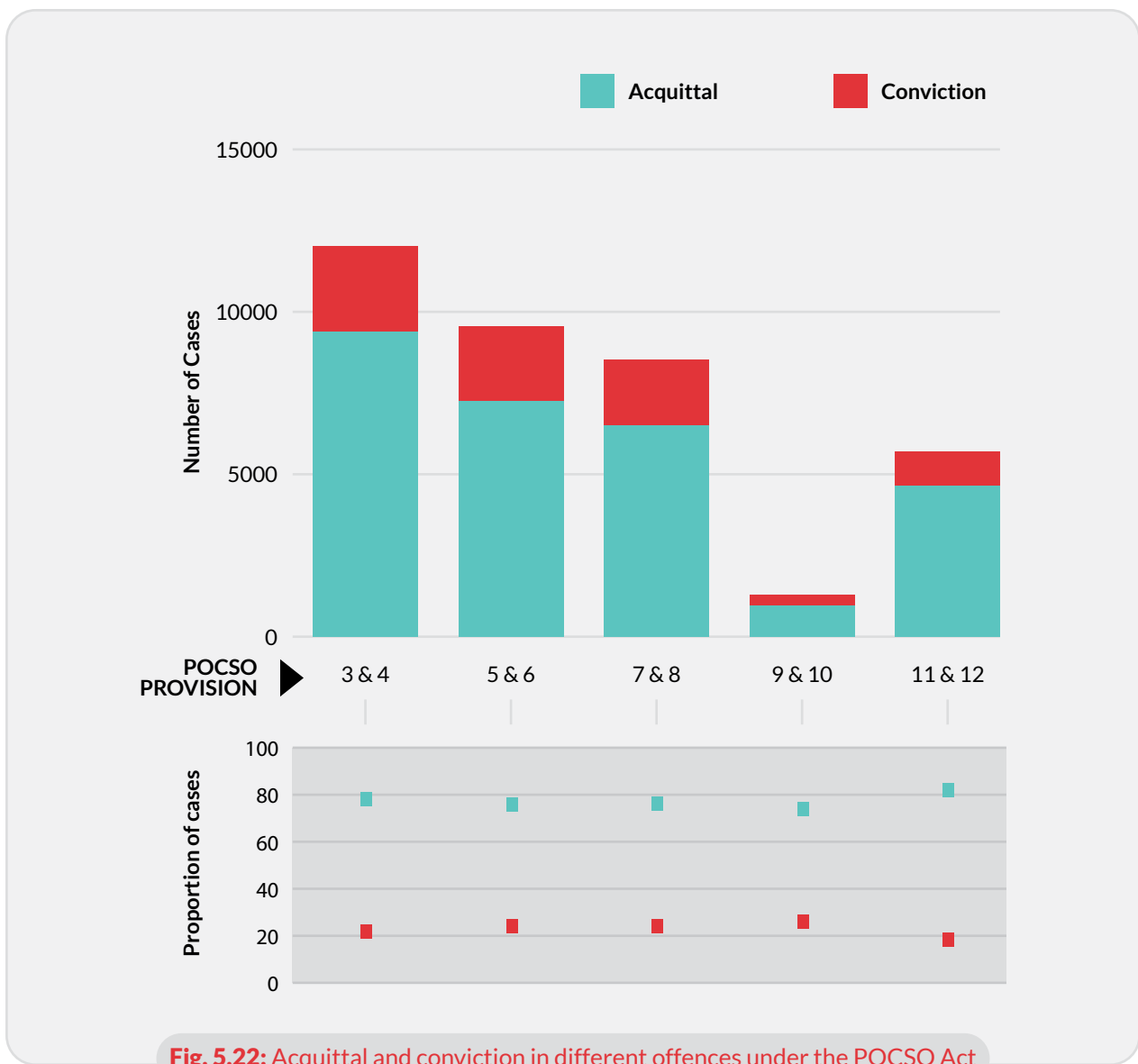
**Fig 5.21:** Frequency of use of POCSO Act provisions over the years

harassment (which saw a small dip from 4839 cases in 2019 to 4732 cases in 2020).

Fig. 5.22 sheds light on the percentage of acquittals and convictions across the five offences identified. The purpose of this analysis was to understand if and how acquittal and conviction percentages vary across offences. The x axis in this Figure contains the Section numbers and there are two y axes. The y axis in the upper half of this Figure shows the total number of cases for a particular offence and the y axis in the lower half of this Figure represents the percentage constituted by acquittal and conviction

(represented by two different colours). Since the purpose of Fig. 5.22 was to understand the percentage of acquittals and convictions, this Figure does not include other<sup>270</sup> types of disposals that form a substantial portion of total disposals.

Fig. 5.22 shows that there is no significant variation between acquittal and conviction percentages for different offences with convictions varying between 21 and 26% for cases of penetrative sexual assault and aggravated sexual assault respectively. However, convictions are lowest in cases of sexual harassment (18.16%).



**Fig. 5.22:** Acquittal and conviction in different offences under the POCSO Act

<sup>270</sup> Others includes all disposal types except the ones that have been categorised by the researchers as corresponding to acquittal and conviction.

## B

### Usage of IPC and POCSO provisions with each other

Fig. 5.23 depicts how IPC and POCSO provisions are used with each other. Each square in the Figure represents information about a collection of cases citing the Act and Sections represented as labels on the respective column and row. For instance, the square on the lower left corner represents the collection of cases citing both the IPC 506 and POCSO Sections 3, 4. The larger dotted squares indicate whether the Acts considered are only POCSO or POCSO and IPC or only IPC. The colour of each of the small squares is proportional to the number of such selected cases, so it is darker if the caseload is larger. Further, the squares on the diagonal indicate the volume of cases corresponding to a specific set of provisions. For instance, the first square at the top of the diagonal indicates the volume of cases corresponding to Sections 3, 4 of the POCSO Act. Similarly, the last square at the bottom of the diagonal represents the total volume of cases that mention Section 506 of the IPC (that are categorised as POCSO cases on eCourts). Only the lower half of the figure is filled out since the upper half would represent the same data and would be redundant.

The set of cases represented by the square need not exclusively cite the Acts and Sections in the row and column labels. For instance, if a case is counted as falling under Sections 3, 4 of the POCSO Act in this Figure, it should not be taken to mean that no other provision of the POCSO Act or the IPC was applied to it. There might be cases where multiple sets of provisions mentioned in this Figure might have been applied to a single case, leading to some overcounting.

The five<sup>271</sup> IPC provisions used in this Figure were chosen because they were the most frequently applied IPC provisions in POCSO cases.

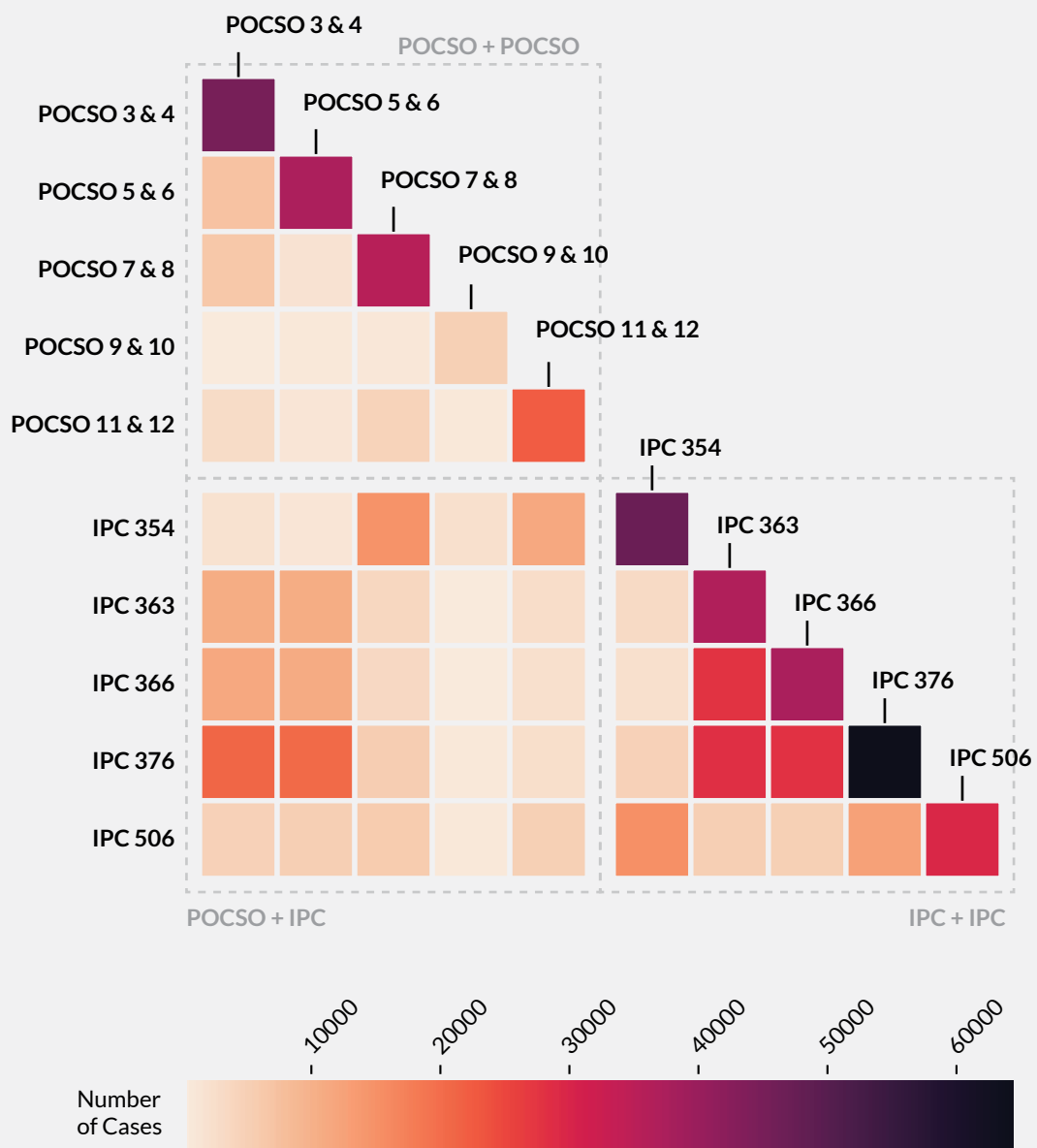
It is evident from Fig. 5.23 that Section 376 of the IPC frequently co-occurs with Sections 3, 4 of the POCSO Act and almost as frequently with POCSO Sections 5, 6 but far less frequently with Sections 9, 10 of the POCSO Act. Further, Section 376 of the IPC also co-occurs frequently with Sections 363 and 366 of the IPC (in POCSO cases). The exact numbers of these co-occurrences can be found in Annexure 4 of this report.

The use of Sections 376 and 366 together in such a large number of cases could point to their use to deal with cases of 'romantic relationships' where parents file cases when their daughter elopes with someone of her choice. An analysis by Enfold Proactive Health Trust of 1,715 'romantic' cases under the POCSO Act decided between 2016-2020 by Special Courts in Assam, Maharashtra, and West Bengal revealed that such cases constituted 24.3% of the total cases decided by the courts.<sup>272</sup> Analysis of 138 judgments undertaken for this study also deals with the issue of 'romantic' relationships and has been discussed in the next section.

<sup>271</sup> Section 354 - Assault or criminal force to woman with intent to outrage her modesty; Section 363 - Punishment for kidnapping.; Section 366 - Kidnapping, abducting or inducing woman to compel her marriage, etc.; Section 376 - Punishment for rape.; and Section 506 - Punishment for criminal intimidation.

<sup>272</sup> Shruthi Ramakrishnan, 'Changing the age of consent,' *The Hindu* (5 September 2022) <<https://www.thehindu.com/opinion/op-ed/changing-the-age-of-consent/article65849243.ece>> accessed 30 September 2022.





**Fig. 5.23:** Usage of IPC and POCSO provisions with each other

# V

## Analysis of POCSO judgments from eCourts

While the above analyses provide a broad overview of the conduct of cases concerning sexual assault against children, this section deep dives into the judgments delivered by the courts in POCSO cases in order to identify trends concerning the implementation of the Act. For the purpose of this analysis, 138 judgments concerning sexual assault against children were studied and analysed. Based on this analysis, the section offers insights into the cases filed under the POCSO Act.

### A

#### Age of the victim and the accused

The age of the victim and the accused is crucial to understanding the nature of the underlying crime and the policy interventions required to address the same. An analysis of the random sample of 138 judgments offered insights for this data point. Though 10 judgments per state were collated, judgments in languages unfamiliar to the researchers were not analysed. Fig. 5.24 shows the age profile of the victims and accused in POCSO cases as obtained from the judgments in individual cases. Age in this Figure corresponds to the age of the victim and the accused at the time of the commission of the offence.

While the judgments did not identify the age for 70 victims, among others, 41 victims were between 15 and 18 years of age. Whereas 26 victims were between 10 and 15 years old. As highlighted in the Figure above, most of the cases reported under the POCSO Act refer to sexual offences against adolescent children.

Fig. 5.25 provides the analysis of the age of the accused as identified in the judgments studied.

Fig. 5.25 highlights that the age of the accused in POCSO cases is often between 19 to 35 years. While most of the judgments were silent in reference to the age of the accused, among the rest, 33 (22%)

of the accused were between 19 to 35 years of age. As per the analysis, 9 of the accused persons studied were between 35 to 45 years of age while the other 10 were more than 45 years old. While this analysis provides an overview of the profiles of the victims and the accused, a deeper victimological and criminological analysis of these crimes is required to identify key policy interventions.

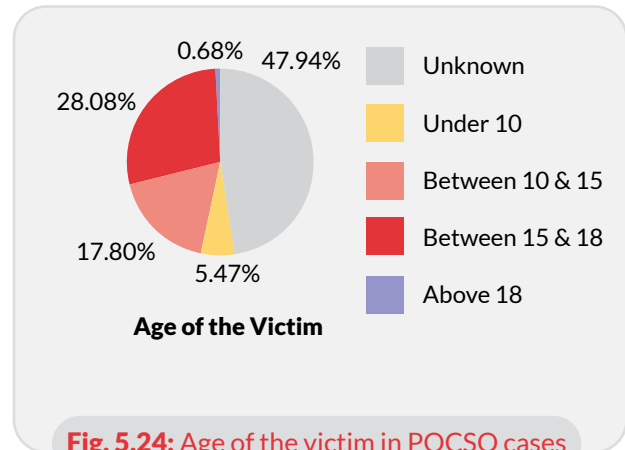


Fig. 5.24: Age of the victim in POCSO cases

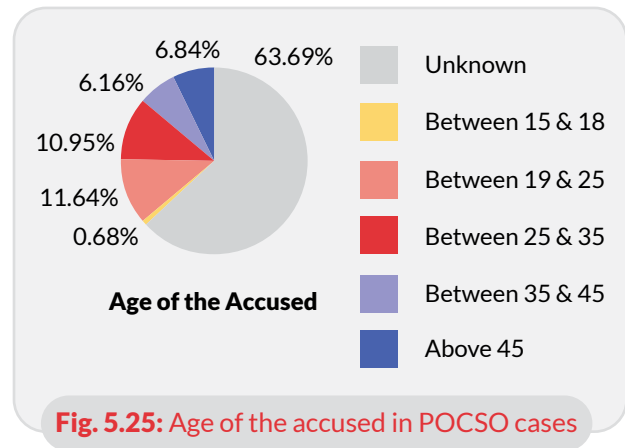


Fig. 5.25: Age of the accused in POCSO cases

## B

### Relationship between the victim and the accused

The relationship between the victim and the accused was another key statistic explored under the analysis of judgments concerning the POCSO Act, 2012. As per the data published by the NCRB, in 96% of the cases filed under the POCSO Act, 2012, the accused was a person known to the child victim.<sup>273</sup> The analysis of judgments for this study offers a similar result. Fig. 5.26 shows the relationship between the accused and the victim, as gleaned from the judgments analysed.

Fig. 5.26 shows that while in 44 per cent of the cases, the judgments did not identify the relationship between the victim and the accused, only in about 6% of the cases, the accused was unknown to the victim. Further, in 18% of the cases, the judgment identified a prior romantic relationship between the victim and the accused. As per the data published by NCRB in 2021, in 48.66% of cases concerning the sexual assault of a child, the accused is either a friend or a romantic partner of the victim.<sup>274</sup>

Though any form of sexual relationship with a person below 18 years is a crime, courts have considered the romantic relationship between the victim and the accused to quash the FIR or to reduce the punishment.<sup>275</sup> The analysis of the judgments highlights a similar trend. The study of 19 judgments where there was a prior romantic relationship between the accused and the victim highlights that in 17 of such cases, the accused was acquitted by the court. Fig. 5.27 presents this analysis.

One of the reasons for such a high acquittal rate can be the lack of judicial discretion under the POCSO

Act, 2012. Numerous studies have found that mandatory minimum sentences often result in a drop in conviction rates.<sup>276</sup> In cases where the judges and the prosecution think that the mandatory minimum sentence is unduly harsh, they tend to divert the cases from such provisions.<sup>277</sup> While this analysis provides a window into the nature of judgments in the cases concerning the sexual abuse of a child, there is a need to analyse such data for a bigger database and understand the effect of mandatory minimum provisions and the relationship between the victim and the accused on the outcome of the case.

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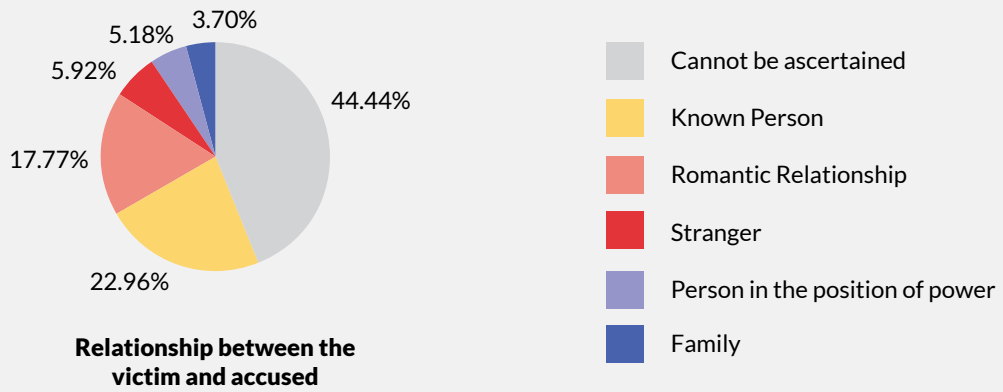
<sup>273</sup> National Crimes Records Bureau, 'Crime in India 2020' (2021) 354 <<https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>> accessed 26 July 2022.

<sup>274</sup> Ibid.

<sup>275</sup> Express News Service, 'Bombay HC quashes POCSO case as victim, now above 18, and accused decide to marry each other' (*Indian Express*, 6 June 2022) <<https://indianexpress.com/article/cities/mumbai/bombay-hc-quashes-pocso-case-as-victim-now-above-18-and-accused-decide-to-marry-each-other-7956076/>> accessed 26 July 2022.

<sup>276</sup> Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press 2012), See Preeti Pratishruti Dash, 'Rape adjudication in India in the aftermath of Criminal Law Amendment Act, 2013: findings from trial courts of Delhi' *Indian Law Review*.

<sup>277</sup> Ibid.



**Fig. 5.26:** Relationship between the victim and the accused



**Fig. 5.27:** Decision in cases of 'romantic' relationships

# Recommendations

The primary goal of any child protection system should be to create a just system that meets the specific needs of the children that come in contact with it. Such a system would not only prevent violence against children but ensure when violence does occur, children get effective redressal. However, as the previous Chapters show, that there is a long way to go in order to make this goal a reality.

The purpose of this study is not to point fingers at stakeholders, administrators or the judiciary but to understand the problems that afflict the child protection system and identify ways in which the system can be further improved. The following sections list some reform ideas. The researchers have identified the steps that need to be taken, why such reforms are necessary and which stakeholders are best positioned to execute and implement these recommendations. Recommendations have been divided into separate sections based on the underlying issues.

These recommendations are borne out of data analysis and inputs from experts in the field and are based on the researchers' understanding and inputs gathered from experts over the course of the last year. Therefore, the recommendations are much wider in scope than the issues highlighted in the previous sections. Wherever possible, linkages have been drawn between the previous sections and the recommendations.

## Key

### I What needs to be done

- Why it should be done

#### 1. Who needs to act

## I

### Increasing awareness about the POCSO Act

**Include age-appropriate information about POCSO in school curriculum, including information on helplines like Childline.<sup>278</sup>**

- To ensure that a comprehensive and holistic approach to sexuality education (including information about sexual offences) is introduced for young children in a suitable manner.
- To inform children about the mechanisms available to them for reporting sexual offences committed against them or their peers.

1. Department of School Education & Literacy, Union Ministry of Education
2. State Education Departments
3. School Education Boards like CBSE, State Education Boards etc.

**Impart POCSO awareness training to school staff.**

**Include POCSO in the curriculum of students undergoing teaching courses like B.Ed, M.Ed etc.<sup>279</sup>**

- Educators are often the first point of contact for a child victim and should be able to respond according to the law, in the child's best interest.
- To ensure that educators are aware of their duties under the POCSO Act.

1. State Education Departments
2. School Education Boards

<sup>278</sup> See Chapter IV.

<sup>279</sup> Ibid.

<sup>280</sup> See Chapter III.

<sup>281</sup> See Chapter IV.

## II

### Legislative changes to make the Act more effective

**Reduce the age of consent from 18 to 16 years with adequate safeguards.<sup>280</sup>**

- To prevent the criminalisation of 'romantic' consensual relationships between adolescents.
- To ensure that the Act achieves its intended objective of protecting children who are actually victims of sexual offences.

#### 1. Parliament

## III

### Policy recommendations

**Hold public consultations with domain experts before making any substantive amendments to the Act.**

- To ensure that the law reflects social realities and is representative of expert opinion on important issues and is not amended to only assuage public opinion.

#### 1. Parliament

**Stipulate a time limit for consideration of disbursement of interim compensation to the victim.<sup>281</sup>**

- To ensure that victims receive immediate relief in emergency situations.

1. Parliament
2. State Governments
3. Supreme Court

## IV

### Making POCSO Courts functional

**Establish Vulnerable Witness Deposition Centres, with appropriate infrastructure, in all POCSO courts in accordance with the Supreme Court judgment in *State of Maharashtra v Bandu @ Daulat*<sup>282</sup> and *Smruti Tukaram Badade v State of Maharashtra*.<sup>283</sup>**

- To provide a safe environment for recording the testimony of child victims of sexual abuse and other 'vulnerable' witnesses.
  - To prevent re-traumatisation of victims.
1. Supreme Court
  2. High Courts
  3. Ministry of Law and Justice

**Appoint adequately trained Special Public Prosecutors exclusively for POCSO courts where they have not been appointed. Progress for this can be monitored by respective High Courts.**<sup>284</sup>

- To reduce delay in POCSO trials resulting from over-burdened public prosecutors.
  - To ensure proper representation of victims of child sexual abuse.
1. State Governments
  2. High Courts

**Employ a 'hybrid' approach for recording of evidence wherein the evidence of certain witnesses like doctors, forensic experts etc. can be recorded virtually.**

- To prevent delay in POCSO trials, particularly during the evidence stage, caused by unavailability of expert witnesses.
1. High Courts
  2. POCSO Courts

**Ensure the appointment and continuous presence of support persons in every pre-trial and trial stage.**<sup>285</sup>

- To ensure that they can act as the conduit of information between the criminal justice system and the victim and provide much needed support to child victims.
1. Child Welfare Committees
  2. State Women and Child Welfare Departments
  3. Special POCSO Courts, Magistrates and JJBs.

**Create mechanisms to enable judges and prosecutors to have the required skill set to deal with the 'vicarious trauma' they experience when dealing with cases of heinous sexual offences committed against children.**

**Provide counselling support to judges and prosecutors showing symptoms of 'secondary traumatisation'.**<sup>286</sup>

- To allow judges and prosecutors to cope better with the specific nature of the cases they deal with.
  - To enable judges to perform their duties efficiently without the nature of their work affecting their mental health.
1. Supreme Court

<sup>282</sup> *State of Maharashtra v Bandu @ Daulat*, SLP(CRL.) No. 2172 of 2014.

<sup>283</sup> Miscellaneous Application No 1852 of 2019 in Criminal Appeal No 1101 of 2019.

<sup>284</sup> See Chapter IV.

<sup>285</sup> See Chapter IV.

<sup>286</sup> See Chapter IV.

2. High Courts
3. State Judicial Academies
4. State Law/Prosecution Departments

**Specifically train judges to write operational compensation orders.<sup>287</sup>**

- To allow for timely and effective disbursement of compensation to victims.
1. State Judicial Academies

## V

### Capacity building at all levels

**Conduct periodic integrated capacity building programmes for stakeholders with a focus on sensitivity training.<sup>288</sup>**

- To enhance coordination between different stakeholders.
  - To impart practical skills that address real-life, on-ground problems.
  - To ensure that the stakeholders stay abreast of the latest developments in the law.
1. State Women and Child Development Departments
  2. State Judicial Academies
  3. State Institutes of Public Administration
  4. State Police Training Academies

## VI

### Increasing accuracy and uniformity in eCourts data

**Introduce a standardised drop-down menu for inputting information pertaining to the name of the legislation, case type,<sup>289</sup> court complex, police station etc.**

- To allow for data to be easily transferred between courts and interoperable between platforms and applications and reduce errors at the time of data entry.
1. Ministry of Home Affairs (for Crime and Criminal Tracking Network and Systems)
  2. eCommittee of the Supreme Court
  3. National Informatics Centre (MeitY)

**Standardise Act names to make it easier to get accurate data using the Act name feature of eCourts.<sup>290</sup>**

**There could potentially be a database of Act names and Sections of the Acts which populate a dropdown list which is accessible to data entry operators.**

- To help identify best practices for the purpose of introducing standard operating procedures (SOPs) for streamlining<sup>291</sup> the data entry process for e-courts data. These best practices and SOPs can then be included in the training curriculum for data entry operators.
- To put an end to the current practice of manual entry of Acts applicable to a case by data entry operators because it leads to far too many

<sup>287</sup> See Chapter IV. Order must specify the quantum of compensation along with the specific sections of CrPC or POCSO Act under which it is granted. It should also lay down guidelines for the process of compensation disbursement. Every order, whether granting or rejecting applications, must mention reasons for the same.

<sup>288</sup> See Chapter IV.

<sup>289</sup> See Chapter II.

<sup>290</sup> See Chapter II.

<sup>291</sup> Deepika Kinhal and others, 'National Judicial Policy: A Concept Note' (2022) JALDI, Vidhi Centre for Legal Policy 16 <<https://vidhilegalpolicy.in/wp-content/uploads/2022/02/National-Judicial-Policy-Report-by-Vidhi-Centre-for-Legal-Policy.pdf>> accessed 5 July 2022.



variations in how the applicable Act is recorded and makes any kind of exact analysis using Act name virtually impossible. For instance, Section numbers are sometimes added to the Act name leading to a proliferation of entries for the same Act.

1. [eCommittee of the Supreme Court](#)
2. [National Informatics Centre \(MeitY\)](#)
3. [Computer Committees of different High Courts](#)

#### **Add interpretable entries in the Hearings Table.**

**If not for all cases, a large majority have pre-defined stages of the case which are applicable to the hearings and hence can be easily recorded.**

**The purpose and outcome of the hearing must be mentioned. For instance, if the hearing was held to hear the evidence of the victim, then whether it was an effective hearing or whether it was adjourned.**

- To make the Hearings Table a source of key information pertaining to cases, particularly pending cases. Currently, the hearing table includes purpose and dates but, in practice, the purpose recorded is non-informative.
1. [eCommittee of the Supreme Court](#)
  2. [National Informatics Centre \(MeitY\)](#)

#### **Provide clear and usable information pertaining to outcomes of cases.**

**In relevant cases, it would be ideal to have more detailed information about the outcomes compensation, sentence etc.**

- To ensure that outcomes are recorded through a well-defined schema and provide useful information to litigants and researchers.
1. [eCommittee of the Supreme Court](#)
  2. [National Informatics Centre \(MeitY\)](#)

#### **Add information regarding appeals (where applicable).**

**One potential addition is a simple marker (Boolean to suggest a Yes or a No) to existing district cases to indicate appeals.**

- To allow litigants a mechanism to track the appeal from a district court judgment to the higher courts.
1. [eCommittee of the Supreme Court](#)
  2. [National Informatics Centre \(MeitY\)](#)

#### **Provide information pertaining to date of filing of FIR, chargesheet, date of cognizance by court and date of disposal (if disposed) on eCourts.**

- To make key case information accessible to litigants.
1. [eCommittee of the Supreme Court](#)
  2. [National Informatics Centre \(MeitY\)](#)

#### **Provide information pertaining to names of judges in addition to the designation of judges (the current practice).**

#### **Provide unique IDs to judges.**

- To increase transparency and increase access to key information.
  - To incentivise all the district courts to clearly list the sitting judges so researchers can study their workloads, how many judges a case gets transferred to before disposal and such other trends.
  - To avoid ambiguity resulting in cases of common names.
1. [eCommittee of the Supreme Court](#)
  2. [National Informatics Centre \(MeitY\)](#)

# VII

## Miscellaneous

### **Set up more FSLs while improving the capacity and infrastructure of existing ones.<sup>292</sup>**

- To reduce delay in preparation of reports which leads to delay in investigation, filing of chargesheet and ultimately trial.
- To improve the accuracy and quality of reports received.

1. Union and State Governments

2. Directorate of Forensic Science Services

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It is important to bear in mind that these recommendations are only a starting point in thinking about systemic reform in the child protection ecosystem. Any hope for large scale reform hinges on concerted push by an array of actors that have been identified above. Further, it is important to adopt an evidence-based approach to reforming the system. The various studies cited in this report all present cogent evidence of what is and what is not working within the system.

The goal of the present study is to add to this discourse and emphasise the urgency with which reform needs to be undertaken. By identifying the challenges to the effective implementation of the POCSO Act and providing these recommendations to address them, this study hopes to contribute towards the development of a system that works for one the most vulnerable sections of our society— children who have been sexually abused.

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<sup>292</sup> See Chapter IV.



## Annexure 1: Number of District Courts in States

State	Number of Districts	Number of Districts with >100 cases	Number of Special Courts sanctioned by the Central Government
Andhra Pradesh	13	8	8
Arunachal Pradesh	Very few POCSO cases in the state so no specific directions required.		
Assam	27	12	Courts of District and Sessions Judges have been declared to be POCSO Courts. There are no exclusive POCSO Courts.
Bihar	38	34	30
Delhi	No information in the order.	No information in the order.	8
Chhattisgarh	23	14	11
Goa	No orders are required at this stage.		
Gujarat	32	23	24
Haryana	22	14	12
Himachal Pradesh	No information in the order.	No information in the order.	3
Union Territory of Jammu and Kashmir	No information in the order.		
Jharkhand	24	6	8
Karnataka	30	17 (as per the state's affidavit) and 18 (as per the state High Court's affidavit)	17
Kerala	14	14	14
Madhya Pradesh	50	38	26
Maharashtra	33	30	30
Manipur	No further orders are required at this stage.		
Meghalaya	11	2	5
Nagaland	No further orders are required at this stage.		
Odisha	30	24	22
Punjab	22	2	2
Rajasthan	35	26	26
Sikkim	No orders need be passed at this stage.		

State	Number of Districts	Number of Districts with >100 cases	Number of Special Courts sanctioned by the Central Government
Tamil Nadu	32	24	According to the status report filed by the Union of India, the State has set up 16 exclusive POCSO Courts but have received no communication from the Government for release of funds in terms of the orders passed by this Court.
Telangana	10	10	10
Tripura	No information in the order.	1	1
Uttarakhand	No information in the order.	4	4
Mizoram	11	1	1
Uttar Pradesh	74	74	74
West Bengal	20	19	No information in the order.
Union Territories of Chandigarhh, Dadra & Nagar Haveli, Daman & Diu and Puducherry	No directions are required to be passed for these union territories at this stage.		
Union Territory of Andaman & Nicobar	No information in the order.	226 pending cases in the entire Union Territory of Andaman & Nicobar	No information in the order.

## Annexure 2: Number and reporting of POCSO cases on eCourts for all districts studied

State	District	Number of cases	Filtered reporting on eCourts per 100k population
Uttar Pradesh	Hamirpur	1097	99.34
Kerala	Ernakulam	3229	98.37
Telangana	Adilabad	671	94.64
Madhya Pradesh	Ujjain	1850	93.11
Madhya Pradesh	Sagar	2214	93.09
Himachal Pradesh	Kinnaur	76	90.35
Madhya Pradesh	Raisen	1191	89.44
Madhya Pradesh	Shahdol	938	87.99
Kerala	Pathanamthitta	1035	86.44
Telangana	Karimnagar	829	82.43
NCT of Delhi	West	1888	82.34
Sikkim	East District	35	80.08
Madhya Pradesh	Vidisha	1127	77.25
Karnataka	Bangalore Rural	757	76.39
Madhya Pradesh	Ratlam	1106	76.01
Kerala	Idukki	840	75.75
Telangana	Nalgonda	1200	74.15
Meghalaya	West Jaintia Hills	195	72.13
Madhya Pradesh	Rajgarh	1109	71.74
Rajasthan	Sawai Madhopur	956	71.58
Chhatisgarh	Raigarh	1058	70.82
Rajasthan	Churu	1421	69.67
Uttar Pradesh	Etah	1221	68.81
Karnataka	Bangalore	3262	68.25
Madhya Pradesh	Seoni	941	68.23
Madhya Pradesh	Tikamgarh	975	67.47
Telangana	Warangal (R)	480	66.8
Maharashtra	Wardha	840	64.58
Chhatisgarh	Balod	824	63.13
Maharashtra	Amravati	1810	62.66
Meghalaya	East Khasi Hills	512	61.99
Kerala	Thiruvananthapuram	1916	58.04
Sikkim	West District	84	57.2
Madhya Pradesh	Satna	1269	56.93
Haryana	Faridabad	1029	56.86
NCT of Delhi	North	1261	56.25

State	District	Number of cases	Filtered reporting on eCourts per 100k population
Uttar Pradesh	Fatehpur	1460	55.46
Madhya Pradesh	Shajapur	830	54.87
Uttar Pradesh	Kanshiram Nagar	784	54.57
Maharashtra	Nagpur	2532	54.41
Madhya Pradesh	Sehore	697	53.15
NCT of Delhi	South West	1212	52.86
Jharkhand	Lohardaga	244	52.84
Manipur	Thoubal	222	52.59
Kerala	Kasaragod	685	52.4
Chhatisgarh	Bemetra	410	51.52
Chhatisgarh	Dhamtari	406	50.76
Madhya Pradesh	Shivpuri	870	50.4
Uttar Pradesh	Kaushambi	802	50.14
Uttar Pradesh	Baghpat	653	50.11
Haryana	Gurgaon	756	49.92
Maharashtra	Washim	590	49.28
Chhatisgarh	Jashpur	416	48.85
Madhya Pradesh	Panna	494	48.6
Rajasthan	Pali	985	48.34
Maharashtra	Yavatmal	1321	47.65
Chhatisgarh	Mungeli	334	47.6
Uttar Pradesh	Hapur	634	47.38
Uttar Pradesh	Mainpuri	851	45.54
Rajasthan	Bharatpur	1145	44.93
Chhatisgarh	Uttar Bastar Kanker	336	44.86
Kerala	Wayanad	356	43.55
Kerala	Thrissur	1354	43.38
Chhatisgarh	Raipur	1715	42.2
Jharkhand	Purbi Singhbhum	379	42.09
Chhatisgarh	Kondagaon	243	42.02
Chandigarh	Chandigarh	441	41.78
Uttarakhand	Dehradun	707	41.67
Uttar Pradesh	Sitapur	1850	41.26
Maharashtra	Parbhani	757	41.23
NCT of Delhi	East	704	41.19
Madhya Pradesh	Sidhi	460	40.82
Assam	Morigaon	390	40.73
Haryana	Kurukshetra	392	40.64
Uttar Pradesh	Pratapgarh	1300	40.51
Maharashtra	Thane	4464	40.36
Maharashtra	Satara	1206	40.15
Madhya Pradesh	Singrauli	472	40.06

State	District	Number of cases	Filtered reporting on eCourts per 100k population
Tripura	Khowai	131	39.99
Kerala	Malappuram	1623	39.46
Uttar Pradesh	Chitrakoot	391	39.43
Maharashtra	Chandrapur	863	39.15
Jharkhand	Pakur	351	38.98
Haryana	Ambala	437	38.73
Haryana	Jhajjar	371	38.71
Maharashtra	Solapur	1671	38.7
Uttarakhand	Nainital	369	38.65
Orissa	Koraput	529	38.34
Punjab	Jalandhar	838	38.2
Kerala	Kannur	963	38.17
Madhya Pradesh	Rewa	898	37.97
Uttar Pradesh	Kushinagar	1343	37.68
Haryana	Sonapat	545	37.59
Maharashtra	Akola	681	37.54
Haryana	Fatehabad	352	37.37
West Bengal	Jalpaiguri	1445	37.31
NCT of Delhi	North West	1353	37
Gujarat	Amreli	559	36.92
Jharkhand	Dhanbad	989	36.84
Maharashtra	Aurangabad	1357	36.66
Uttar Pradesh	Jyotiba Phule Nagar	674	36.63
Maharashtra	Buldana	940	36.35
Uttar Pradesh	Sant Kabir Nagar	623	36.32
Uttar Pradesh	Bulandshahr	1251	35.75
NCT of Delhi	South	819	35.72
Gujarat	Gandhinagar	496	35.64
Gujarat	Ahmadabad	2561	35.5
Kerala	Palakkad	976	34.73
Rajasthan	Karauli	503	34.49
Rajasthan	Alwar	1267	34.48
Assam	Chirang	166	34.43
Rajasthan	Baran	419	34.27
Haryana	Rewari	307	34.1
Maharashtra	Sangli	956	33.87
Chhatisgarh	Surguja	780	33.05
Uttar Pradesh	Mathura	836	32.82
Gujarat	Morbi	312	32.49
Uttar Pradesh	Farrukhabad	608	32.25
Uttar Pradesh	Gautam Buddha Nagar	529	32.1
Chhatisgarh	Rajnandgaon	493	32.07



State	District	Number of cases	Filtered reporting on eCourts per 100k population
Gujarat	Mahesana	652	32.04
Gujarat	Vadodara	1334	32.02
Haryana	Rohtak	339	31.94
Uttar Pradesh	Shrawasti	356	31.86
Gujarat	Surat	1935	31.82
Gujarat	Anand	665	31.78
Chhatisgarh	Baloda Bazar	411	31.49
Uttar Pradesh	Hardoi	1285	31.4
Haryana	Sirsa	402	31.04
Rajasthan	Jhunjhunun	658	30.79
Gujarat	Kachchh	644	30.78
Uttar Pradesh	Moradabad	1467	30.74
NCT of Delhi	North East	522	30.54
Assam	Sivasagar	351	30.49
Maharashtra	Osmanabad	505	30.47
Punjab	Fazilka	355	30.07
Maharashtra	Ahmadnagar	1365	30.05
Maharashtra	Gadchiroli	322	30.01
Rajasthan	Bikaner	704	29.78
Uttar Pradesh	Sambhal	652	29.73
Rajasthan	Udaipur	906	29.53
Punjab	Mansa	227	29.49
Assam	Nalbari	225	29.16
Uttar Pradesh	Auraiya	401	29.07
Maharashtra	Raigarh	764	29
West Bengal	Dakshin Dinajpur	486	28.99
Uttar Pradesh	Balrampur	623	28.99
Gujarat	Bharuch	448	28.88
Haryana	Panchkula	162	28.86
Rajasthan	Ganganagar	568	28.84
Himachal Pradesh	Solan	167	28.78
Chhatisgarh	Bilaspur	766	28.76
Gujarat	Panch Mahals	677	28.32
Gujarat	Patan	379	28.2
Haryana	Jind	376	28.18
Chhatisgarh	Dakshin Bastar Dantewada	150	28.11
Rajasthan	Sirohi	288	27.79
Orissa	Rayagada	268	27.69
Uttar Pradesh	Basti	682	27.67
Uttar Pradesh	Ghaziabad	1290	27.55
Gujarat	Porbandar	160	27.33
Punjab	Faridkot	168	27.21

State	District	Number of cases	Filtered reporting on eCourts per 100k population
Dadra & Nagar Haveli	Dadra & Nagar Haveli	93	27.06
Uttarakhand	Uttarkashi	89	26.96
Haryana	Palwal	277	26.57
Orissa	Puri	451	26.55
Tamil Nadu	Perambalur	150	26.54
Karnataka	Ramanagara	287	26.51
Punjab	Sahibzada Ajit Singh Nagar	264	26.51
Uttar Pradesh	Budaun	969	26.32
Himachal Pradesh	Sirmaur	139	26.23
Madhya Pradesh	Sheopur	180	26.17
Assam	Dibrugarh	346	26.09
Gujarat	Chhota Udaipur	277	25.89
Gujarat	Kheda	588	25.57
Uttar Pradesh	Lalitpur	312	25.54
Tamil Nadu	Theni	318	25.52
Maharashtra	Jalna	500	25.52
Uttar Pradesh	Chandauli	497	25.45
Karnataka	Hassan	452	25.44
Gujarat	Banas Kantha	793	25.41
Karnataka	Chamarajanagar	259	25.37
Karnataka	Udupi	298	25.31
Assam	Lakhimpur	262	25.14
Maharashtra	Kolhapur	973	25.1
Punjab	Kapurthala	202	24.78
Jharkhand	Ranchi	718	24.64
Maharashtra	Bid	910	24.59
Assam	Golaghat	260	24.37
Haryana	Hisar	422	24.2
Uttar Pradesh	Lucknow	1103	24.03
Uttarakhand	Champawat	62	23.88
Uttarakhand	Hardwar	448	23.7
Assam	Darrang	220	23.69
West Bengal	Darjiling	436	23.61
Maharashtra	Nashik	1439	23.56
Uttar Pradesh	Allahabad	1402	23.55
Assam	Karbi Anglong	224	23.42
Uttar Pradesh	Ballia	758	23.4
Haryana	Kaithal	251	23.36
Andhra Pradesh	Guntur	1140	23.32
Jharkhand	Palamu	267	23.21
Maharashtra	Bhandara	277	23.08
Karnataka	Chikmagalur	261	22.94

State	District	Number of cases	Filtered reporting on eCourts per 100k population
Punjab	Sangrur	377	22.78
Uttar Pradesh	Kanpur Nagar	1038	22.66
Himachal Pradesh	Mandi	225	22.51
Jharkhand	Kodarma	161	22.48
Kerala	Alappuzha	478	22.46
Punjab	Ludhiana	782	22.35
Jharkhand	Bokaro	458	22.21
Punjab	Bathinda	308	22.18
Tamil Nadu	Ariyalur	167	22.12
Karnataka	Shimoga	385	21.97
Assam	Baksa	207	21.79
Gujarat	Jamnagar	470	21.76
Uttar Pradesh	Bara Banki	709	21.74
Maharashtra	Latur	533	21.72
Uttar Pradesh	Unnao	674	21.68
Uttar Pradesh	Mau	476	21.58
Haryana	Panipat	259	21.49
Uttar Pradesh	Kanpur Dehat	384	21.38
Karnataka	Chikkaballapura	268	21.35
Gujarat	Narmada	126	21.35
Karnataka	Haveri	340	21.28
Maharashtra	Nanded	715	21.27
Uttar Pradesh	Jhansi	421	21.06
Chhatisgarh	Durg	693	20.72
Gujarat	Sabar Kantha	497	20.46
Maharashtra	Jalgaon	863	20.4
Gujarat	Aravali	208	20.32
Orissa	Ganjam	716	20.29
Bihar	Bhagalpur	616	20.28
Uttar Pradesh	Siddharthnagar	517	20.2
Maharashtra	Ratnagiri	325	20.12
Maharashtra	Nandurbar	323	19.6
Gujarat	Gir Somnath	185	19.54
Tamil Nadu	Thoothukkudi	341	19.48
Rajasthan	Chittaurgarh	298	19.3
Uttar Pradesh	Meerut	652	18.93
Manipur	Imphal East	86	18.85
Maharashtra	Dhule	384	18.72
Gujarat	Rajkot	711	18.69
Uttar Pradesh	Varanasi	685	18.63
Karnataka	Dakshina Kannada	389	18.62
Assam	Cachar	322	18.54

State	District	Number of cases	Filtered reporting on eCourts per 100k population
Gujarat	Devbhumi Dwarka	139	18.47
Punjab	Hoshiarpur	293	18.47
Punjab	Rupnagar	125	18.26
Kerala	Kollam	480	18.21
Gujarat	Navsari	239	17.97
Jharkhand	Gumla	184	17.95
Karnataka	Kodagu	99	17.85
Punjab	Barnala	106	17.8
West Bengal	Haora	855	17.63
Jharkhand	Giridih	431	17.62
Uttarakhand	Chamoli	69	17.62
Gujarat	Valsad	300	17.59
Himachal Pradesh	Shimla	143	17.57
Maharashtra	Sindhudurg	148	17.42
Assam	Kamrup	259	17.07
Chhatisgarh	Korba	205	16.99
Rajasthan	Jaipur	1117	16.86
Rajasthan	Jodhpur	621	16.84
Karnataka	Kolar	257	16.73
Karnataka	Raichur	319	16.54
Andhra Pradesh	West Godavari	645	16.38
Rajasthan	Dungarpur	226	16.28
Rajasthan	Bundi	180	16.2
Assam	Dhubri	314	16.11
Telangana	Nizamabad	253	16.1
Karnataka	Mysore	483	16.09
West Bengal	Nadia	828	16.02
Tamil Nadu	Thiruvarur	200	15.82
Assam	Sonitpur	300	15.59
Uttarakhand	Tehri Garhwal	95	15.35
Tamil Nadu	Madurai	466	15.34
Orissa	Kalahandi	239	15.16
West Bengal	Birbhum	531	15.16
Telangana	Mahabubnagar	224	15.07
Punjab	Pathankot	94	15.01
Assam	Dima Hasao	32	14.95
Andhra Pradesh	Sri Potti Sriramulu Nellore	443	14.95
Haryana	Yamunanagar	180	14.82
Tamil Nadu	Namakkal	253	14.65
Punjab	Fatehgarh Sahib	86	14.33
Chhatisgarh	Surajpur	113	14.32
Bihar	Saharsa	268	14.1

State	District	Number of cases	Filtered reporting on eCourts per 100k population
Assam	Tinsukia	187	14.08
Bihar	Supaul	309	13.86
Himachal Pradesh	Kangra	208	13.77
Karnataka	Bijapur	297	13.64
Karnataka	Tumkur	364	13.59
Bihar	Gaya	595	13.55
Uttar Pradesh	Gorakhpur	600	13.51
Punjab	Ferozpur	270	13.31
Assam	Goalpara	134	13.29
Karnataka	Davanagere	257	13.21
Rajasthan	Pratapgarh	113	13.02
Maharashtra	Pune	1225	12.99
Gujarat	Tapi	104	12.89
Bihar	Nawada	284	12.8
Uttar Pradesh	Bahraich	443	12.7
West Bengal	South Twenty Four Parganas	1035	12.68
Maharashtra	Gondiya	167	12.63
Rajasthan	Banswara	227	12.63
Uttar Pradesh	Aligarh	463	12.6
Jharkhand	Jamtara	98	12.39
Uttarakhand	Almora	77	12.37
Tamil Nadu	Viluppuram	427	12.35
Bihar	Madhubani	550	12.26
Andhra Pradesh	Prakasam	412	12.13
Karnataka	Uttara Kannada	173	12.04
Karnataka	Bidar	205	12.04
Himachal Pradesh	Una	62	11.9
Karnataka	Bellary	289	11.78
Jharkhand	Simdega	70	11.67
Karnataka	Gadag	123	11.55
Jharkhand	Hazaribagh	199	11.47
Assam	Bongaigaon	84	11.37
Uttarakhand	Garhwal	78	11.35
Tamil Nadu	Tirunelveli	349	11.34
Bihar	Aurangabad	287	11.3
Tamil Nadu	Kanniyakumari	211	11.28
Rajasthan	Jhalawar	158	11.2
Tamil Nadu	Virudhunagar	217	11.17
Bihar	Purnia	361	11.06
Bihar	Siwan	367	11.02
Uttar Pradesh	Kannauj	181	10.93
Telangana	Khammam	153	10.92

State	District	Number of cases	Filtered reporting on eCourts per 100k population
Uttar Pradesh	Mirzapur	271	10.85
Rajasthan	Tonk	153	10.76
Tamil Nadu	The Nilgiris	79	10.74
Bihar	Madhepura	213	10.64
Uttar Pradesh	Deoria	330	10.64
Bihar	Sitamarhi	360	10.52
Tripura	Gomati	46	10.42
Gujarat	Dohad	746	10.34
Bihar	Vaishali	361	10.33
Tamil Nadu	Cuddalore	269	10.32
Bihar	Araria	288	10.24
Punjab	Moga	101	10.14
Andhra Pradesh	Srikakulam	274	10.14
Manipur	Bishnupur	24	10.11
West Bengal	North Twenty Four Parganas	997	9.96
Tamil Nadu	Sivaganga	132	9.86
Uttar Pradesh	Azamgarh	455	9.86
Rajasthan	Sikar	261	9.75
Tamil Nadu	Nagapattinam	156	9.65
Tamil Nadu	Dindigul	208	9.63
Haryana	Mahendragarh	144	9.57
Tamil Nadu	Salem	329	9.45
Chhatisgarh	Janjgir-Champa	153	9.45
Uttar Pradesh	Saharanpur	305	8.8
Uttar Pradesh	Pilibhit	178	8.76
West Bengal	Maldah	349	8.75
Tamil Nadu	Thiruvallur	325	8.72
Uttar Pradesh	Kheri	386	8.69
Tamil Nadu	Tiruvannamalai	211	8.56
Andhra Pradesh	Anantapur	349	8.55
Andhra Pradesh	Vizianagaram	200	8.53
Uttarakhand	Bageshwar	22	8.46
Chhatisgarh	Mahasamund	86	8.33
Himachal Pradesh	Chamba	43	8.28
Assam	Karimganj	101	8.22
Gujarat	Junagadh	224	8.17
Uttar Pradesh	Gonda	280	8.15
Uttar Pradesh	Sonbhadra	151	8.11
Bihar	Nalanda	232	8.06
Gujarat	Surendranagar	141	8.03
Kerala	Kozhikode	247	8
Orissa	Anugul	101	7.93

State	District	Number of cases	Filtered reporting on eCourts per 100k population
Tamil Nadu	Coimbatore	273	7.89
Uttar Pradesh	Sant Ravidas Nagar (Bhadohi)	318	7.77
Tamil Nadu	Thanjavur	185	7.69
Karnataka	Bagalkot	142	7.51
Rajasthan	Nagaur	248	7.5
West Bengal	Puruliya	217	7.41
Rajasthan	Barmer	191	7.34
Jharkhand	Sahibganj	84	7.3
Tripura	Sipahijula	39	7.19
Tamil Nadu	Chennai	332	7.14
Andhra Pradesh	Kurnool	283	6.98
Tamil Nadu	Pudukkottai	113	6.98
Tamil Nadu	Krishnagiri	130	6.92
Karnataka	Chitradurga	112	6.75
Andhra Pradesh	East Godavari	348	6.75
Jammu & Kashmir	Reasi	21	6.67
Uttar Pradesh	Ambedkar Nagar	158	6.59
Tamil Nadu	Erode	148	6.57
Punjab	Tarn Taran	73	6.52
West Bengal	Uttar Dinajpur	196	6.52
Uttar Pradesh	Jaunpur	289	6.43
Tamil Nadu	Kancheepuram	249	6.23
Andhra Pradesh	Visakhapatnam	267	6.22
West Bengal	Purba Medinipur	304	5.97
Tamil Nadu	Dharmapuri	90	5.97
Haryana	Bhiwani	97	5.93
Tamil Nadu	Ramanathapuram	79	5.84
Tamil Nadu	Tiruppur	142	5.73
Uttar Pradesh	Muzaffarnagar	233	5.62
Assam	Dhemaji	38	5.54
West Bengal	Murshidabad	390	5.49
Bihar	Lakhisarai	55	5.49
Andhra Pradesh	Krishna	245	5.42
Bihar	Khagaria	87	5.22
Rajasthan	Jaisalmer	35	5.22
Punjab	Gurdaspur	117	5.09
Uttar Pradesh	Bijnor	184	5
Uttar Pradesh	Samli	79	4.94
Manipur	Imphal West	24	4.63
Himachal Pradesh	Bilaspur	17	4.45
Himachal Pradesh	Hamirpur	19	4.18
Jammu & Kashmir	Shupiyan	11	4.13

State	District	Number of cases	Filtered reporting on eCourts per 100k population
Jharkhand	Saraikela-Kharsawan	43	4.04
Rajasthan	Jalor	72	3.94
Bihar	Buxar	66	3.87
Bihar	Saran	146	3.69
Bihar	Katihar	105	3.42
Uttar Pradesh	Etawah	48	3.03
Tamil Nadu	Karur	32	3.01
Telangana	Hydrabad	110	2.79
Gujarat	Batod	197	2.73
Bihar	Begusarai	75	2.52
Bihar	Sheikhpura	16	2.51
Jharkhand	Godda	33	2.51
Bihar	Pashchim Champaran	73	2.19
Haryana	Karnal	33	2.19
Bihar	Jehanabad	24	2.13
Jharkhand	Dumka	28	2.12
Tripura	South Tripura	18	2.05
Punjab	Amritsar	51	2.05
Bihar	Munger	27	1.97
Jharkhand	Deoghar	28	1.88
Tripura	North Tripura	12	1.73
Uttarakhand	Udham Singh Nagar	28	1.7
West Bengal	Barddhaman	128	1.66
Jharkhand	Latehar	12	1.65
Bihar	Darbhangha	60	1.52
Bihar	Bhojpur	40	1.47
Jharkhand	Chatra	15	1.44
Bihar	Kaimur (Bhabua)	21	1.29
Bihar	Kishanganj	21	1.24
Uttarakhand	Pithoragarh	6	1.24
West Bengal	Bankura	42	1.17
Assam	Kokrajhar	10	1.13
Jharkhand	Garhwa	15	1.13
West Bengal	Hugli	54	1.11
Jammu & Kashmir	Kupwara	8	0.92
Himachal Pradesh	Kullu	4	0.91
Karnataka	Gulbarga	10	0.8
Rajasthan	Rajsamand	9	0.78
Andhra Pradesh	Kadapa(YSR)	22	0.76
Jharkhand	Pashchimi Singhbhum	15	0.65
Tamil Nadu	Tiruchirappalli	15	0.55
Assam	Barpeta	9	0.53



State	District	Number of cases	Filtered reporting on eCourts per 100k population
Uttar Pradesh	Bareilly	23	0.52
Bihar	Sheohar	3	0.46
Karnataka	Belgaum	19	0.4
Jammu & Kashmir	Ganderbal	1	0.34
Jammu & Kashmir	Samba	1	0.31
Bihar	Muzaffarpur	15	0.31
Bihar	Rohtas	6	0.2
Rajasthan	Bhilwara	4	0.17
Tripura	West Tripura	3	0.17
Bihar	Gopalganj	3	0.12
Jammu & Kashmir	Baramula	1	0.1
Jammu & Kashmir	Jammu	1	0.07
Rajasthan	Dhaulpur	1	0.07
Bihar	Jamui	1	0.06
Bihar	Patna	2	0.03
West bengal	Koch Bihar	1	0.02

### Annexure 3: How purposes of hearing were classified into various categories

Name of the purpose of hearing	Count	Percentage	Cumulative Percentage	Total number of purposes	Revised name of the purpose
Evidence	711797	13.57	13.57	5245463	Evidence
Charge	407785	7.77	21.34	5245463	Charge
Prosecution Evidence	388065	7.4	28.74	5245463	Evidence
Appearance	342733	6.53	35.28	5245463	Service/ appearance
EVIDENCE OF PROSECUTION	232309	4.43	39.7	5245463	Evidence
Matter Relating to Recording of Evidence in Criminal Matter	227968	4.35	44.05	5245463	Evidence
EVIDENCE	212254	4.05	48.1	5245463	Evidence
Hearing	185199	3.53	51.63	5245463	Hearing (ambiguous)
Evidence Part Heard	112538	2.15	53.77	5245463	Evidence
Procecuton Evidence	71569	1.36	55.14	5245463	Evidence
Arguments	67772	1.29	56.43	5245463	Arguments
Rest Evidence	60246	1.15	57.58	5245463	Evidence
Miscellaneous matters not defined otherwise	54970	1.05	58.63	5245463	Miscellaneous
Defence Evidence	46207	0.88	59.51	5245463	Evidence
FRAMING OF CHARGE/PLEA	44997	0.86	60.36	5245463	Charge
HEARING	44966	0.86	61.22	5245463	Hearing (ambiguous)
Disposed	42416	0.81	62.03	5245463	Disposed/ judgment
Appereance	40797	0.78	62.81	5245463	Service/ appearance
PROCESS TO ACCUSED	40523	0.77	63.58	5245463	Service/ appearance
Argument before Charge / Charge	37531	0.72	64.3	5245463	Charge
For recording pre-trial statements/ evidence	32894	0.63	64.92	5245463	Evidence
Production of Accused	31987	0.61	65.53	5245463	Service/ appearance
CONSIDERATION OF CHARGES	26883	0.51	66.05	5245463	Charge

<b>Name of the purpose of hearing</b>	<b>Count</b>	<b>Percentage</b>	<b>Cumulative Percentage</b>	<b>Total number of purposes</b>	<b>Revised name of the purpose</b>
FOR TRIAL	25503	0.49	66.53	5245463	For Trial (ambiguous)
Misc./ Appearance	25138	0.48	67.01	5245463	Service/ appearance
FRAMING OF CHARGE OR PLEA	24351	0.46	67.48	5245463	Charge
Hearing on Charge	23229	0.44	67.92	5245463	Charge
FINAL ARGUMENTS	21872	0.42	68.34	5245463	Arguments
Appearance	21148	0.4	68.74	5245463	Service/ appearance
Order	21056	0.4	69.14	5245463	Miscellaneous
For examination of witnesses	21049	0.4	69.54	5245463	Evidence
ARGUMENTS	20885	0.4	69.94	5245463	Arguments
OPENING UP OF CASE BY PROSECUTION	20692	0.39	70.33	5245463	Evidence
Statement U/ sec.313 Cr.PC.	20075	0.38	70.72	5245463	Evidence
SUMMONS	19741	0.38	71.09	5245463	Service/ appearance
FRAMING OF CHARGE	19375	0.37	71.46	5245463	Charge
DOCUMENTARY EVIDENCE	18907	0.36	71.82	5245463	Evidence
Service Pending	18446	0.35	72.17	5245463	Service/ appearance
Production	18258	0.35	72.52	5245463	Service/ appearance
Prosecution/ Complainant Evidence	17961	0.34	72.86	5245463	Evidence
Awaiting Muddemal	16414	0.31	73.18	5245463	Evidence
Trial	15900	0.3	73.48	5245463	For Trial (ambiguous)
CHARGE	15738	0.3	73.78	5245463	Charge
Hearing arguments on Charge	15138	0.29	74.07	5245463	Charge
Argument on Exh.___Unready	15128	0.29	74.36	5245463	Arguments
Appearance of accused	14998	0.29	74.64	5245463	Service/ appearance
JUDGEMENT	14878	0.28	74.93	5245463	Disposed/ judgment
SUMMONS - NOTICE	14726	0.28	75.21	5245463	Service/ appearance
SCHEDULE	14266	0.27	75.48	5245463	Miscellaneous
APPEARANCE OF ACCUSED	14227	0.27	75.75	5245463	Service/ appearance
Charge / Plea Hearing	14198	0.27	76.02	5245463	Charge

<b>Name of the purpose of hearing</b>	<b>Count</b>	<b>Percentage</b>	<b>Cumulative Percentage</b>	<b>Total number of purposes</b>	<b>Revised name of the purpose</b>
Awated for final form / Chargesheet	14013	0.27	76.29	5245463	Charge
N.B.W._Unready	13892	0.26	76.55	5245463	Service/ appearance
Framing of Charges	13596	0.26	76.81	5245463	Charge
Call on	13441	0.26	77.07	5245463	Adjourned
Adjourned	13170	0.25	77.32	5245463	Adjourned
Awaiting Warrant	13073	0.25	77.57	5245463	Service/ appearance
FOR APPEARANCE OF ACCUSED	12492	0.24	77.81	5245463	Service/ appearance
Issue Summons	12438	0.24	78.04	5245463	Service/ appearance
List of Witness	12239	0.23	78.28	5245463	Evidence
Formal Hearing	12082	0.23	78.51	5245463	Preliminary hearing
Say / Hearing on Exh___Ready	12004	0.23	78.74	5245463	Preliminary hearing
SUMMON	11994	0.23	78.97	5245463	Service/ appearance
Evidnce	11981	0.23	79.19	5245463	Evidence
Final Hearing / Final Argument Matters	11685	0.22	79.42	5245463	Arguments
FURTHER STATEMENT	11633	0.22	79.64	5245463	Evidence
Judgement	11433	0.22	79.86	5245463	Disposed/ judgment
Final Arguments	11417	0.22	80.07	5245463	Arguments
FOR HEARING	11312	0.22	80.29	5245463	Hearing (ambiguous)
evidence	11232	0.21	80.5	5245463	Evidence
PART HEARD TRIAL	11214	0.21	80.72	5245463	Arguments
Judgment	11171	0.21	80.93	5245463	Disposed/ judgment
Fixing date of Hearing	10739	0.2	81.14	5245463	Evidence
PROCESS TO DELINQUENT	10656	0.2	81.34	5245463	Service/ appearance
Issue of Service	10650	0.2	81.54	5245463	Service/ appearance
Final Form	10255	0.2	81.74	5245463	Charge
FIRST HEARING	10235	0.2	81.93	5245463	Preliminary hearing
Framing of Charge/ Plea	10210	0.19	82.13	5245463	Charge
N.B.W._Ready	9934	0.19	82.32	5245463	Service/ appearance
For framing charge	9546	0.18	82.5	5245463	Charge
Summon	9357	0.18	82.68	5245463	Service/ appearance
Final arguments	9293	0.18	82.85	5245463	Arguments
COPIES TO ACCUSED	9175	0.17	83.03	5245463	Adjourned
FOR ARGUMENTS	8902	0.17	83.2	5245463	Arguments
FOR ENGAGING ADVOCATE	8713	0.17	83.36	5245463	Adjourned
Police Paper	8565	0.16	83.53	5245463	Charge

<b>Name of the purpose of hearing</b>	<b>Count</b>	<b>Percentage</b>	<b>Cumulative Percentage</b>	<b>Total number of purposes</b>	<b>Revised name of the purpose</b>
PROSECUTION EVIDENCE	8241	0.16	83.69	5245463	Evidence
Awaiting Summons	8141	0.16	83.84	5245463	Service/ appearance
EXAMINATION	8009	0.15	83.99	5245463	Evidence
Matter Relaing to Accused Statment	7878	0.15	84.14	5245463	Evidence
Statement of Accused	7744	0.15	84.29	5245463	Evidence
Framing of Charge/ Plea	7736	0.15	84.44	5245463	Charge
Part Heard	7725	0.15	84.59	5245463	Arguments
EVIDENCE.	7445	0.14	84.73	5245463	Evidence
Argument on Charge	7387	0.14	84.87	5245463	Charge
Appearance of Accused	7121	0.14	85	5245463	Service/ appearance
Report	7106	0.14	85.14	5245463	Miscellaneous
APPEARANCE	7094	0.14	85.28	5245463	Service/ appearance
313 Cr.Pc	7030	0.13	85.41	5245463	Evidence
EVIDENCE FOR CHARGE	7005	0.13	85.54	5245463	Charge
HBC	6693	0.13	85.67	5245463	Charge
Unready Board	6554	0.12	85.8	5245463	Adjourned
For Evidence	6522	0.12	85.92	5245463	Evidence
Order on Exh	6476	0.12	86.04	5245463	Evidence
APPEARANCE OF ACCUSED	6331	0.12	86.16	5245463	Service/ appearance
DEFENCE EVIDENCE	6325	0.12	86.28	5245463	Evidence
ISSUE BW/NBW	6166	0.12	86.4	5245463	Service/ appearance
Further Order	6094	0.12	86.52	5245463	Miscellaneous
Plaintiff/Petitioner Evidence	6054	0.12	86.63	5245463	Evidence
Further Evidence	6015	0.11	86.75	5245463	Evidence
CALL ON	6004	0.11	86.86	5245463	Adjourned
Objection/Disposal	6003	0.11	86.98	5245463	Disposed/ judgment
Filing of Say on Exh__Unready	5991	0.11	87.09	5245463	Preliminary hearing
Cross-examination	5870	0.11	87.2	5245463	Evidence
Revoked	5695	0.11	87.31	5245463	Miscellaneous
Matter Relating to Recording of Evidence in Civil	5670	0.11	87.42	5245463	Evidence
Cross Examination PW	5658	0.11	87.53	5245463	Evidence
Remand Extended	5556	0.11	87.63	5245463	Service/ appearance

<b>Name of the purpose of hearing</b>	<b>Count</b>	<b>Percentage</b>	<b>Cumulative Percentage</b>	<b>Total number of purposes</b>	<b>Revised name of the purpose</b>
Hearing Before Charge	5525	0.11	87.74	5245463	Charge
F. O.	5510	0.11	87.84	5245463	Preliminary hearing
ORDERS	5506	0.1	87.95	5245463	Miscellaneous
For further Proceedings	5404	0.1	88.05	5245463	Miscellaneous
No sitting notified	5348	0.1	88.15	5245463	Should not be a part of the dataset
Copies	5336	0.1	88.26	5245463	Preliminary hearing
Argument On Charge	5291	0.1	88.36	5245463	Charge
for arguement before charge	5284	0.1	88.46	5245463	Charge
FURTHER EVIDENCE	5165	0.1	88.56	5245463	Evidence
ACCUSED STATEMENT u/s 313 CrPC	4998	0.1	88.65	5245463	Evidence
Final Argument	4992	0.1	88.75	5245463	Arguments
Reply/Say	4930	0.09	88.84	5245463	Arguments
First Order	4890	0.09	88.93	5245463	Preliminary hearing
RPE	4724	0.09	89.02	5245463	Hearing (ambiguous)
IA / EA Pending / CMP Pending / CRP Pending / CMA Pending	4713	0.09	89.11	5245463	Miscellaneous
Awating final form / Chargesheet	4668	0.09	89.2	5245463	Charge
Examination of accused u/s. 313 Cr.PC.	4609	0.09	89.29	5245463	Evidence
hearing	4476	0.09	89.38	5245463	Hearing (ambiguous)
NOTICE	4454	0.08	89.46	5245463	Service/ appearance
Prl.Hearing	4423	0.08	89.54	5245463	Preliminary hearing
Argument	4356	0.08	89.63	5245463	Arguments
Remand	4284	0.08	89.71	5245463	Service/ appearance
Awaiting Report	4246	0.08	89.79	5245463	Preliminary hearing
HEARING BEFORE CHARGE	4163	0.08	89.87	5245463	Preliminary hearing
ARGUMENT	3968	0.08	89.95	5245463	Arguments
Compliance	3963	0.08	90.02	5245463	Miscellaneous

**Annexure 4: Numbers of co-occurrences of certain IPC and POCSO provisions**

	<b>POCSO 3&amp;4</b>	<b>POCSO 5&amp;6</b>	<b>POCSO 7&amp;8</b>	<b>POCSO 9&amp;10</b>	<b>POCSO 11&amp;12</b>	<b>IPC 354</b>	<b>IPC 363</b>	<b>IPC 366</b>	<b>IPC 376</b>	<b>IPC 506</b>
<b>POCSO 3&amp;4</b>	45046	7142	6540	509	3075	1851	10729	11434	21045	4724
<b>POCSO 5&amp;6</b>	7142	37343	1628	648	1156	1179	10666	11043	20573	5103
<b>POCSO 7&amp;8</b>	6540	1628	35464	946	4430	14703	3656	3427	5419	5798
<b>POCSO 9&amp;10</b>	509	648	946	4938	773	2116	395	334	700	764
<b>POCSO 11&amp;12</b>	3075	1156	4430	773	22209	11482	2714	2299	2483	5027
<b>IPC 354</b>	1851	1179	14703	2116	11482	47058	3248	2130	4759	15347
<b>IPC 363</b>	10729	10666	3656	395	2714	3248	36806	27666	28160	5286
<b>IPC 366</b>	11434	11043	3427	334	2299	2130	27666	37446	27934	4905
<b>IPC 376</b>	21045	20573	5419	700	2483	4759	28160	27934	64432	12753
<b>IPC 506</b>	4724	5103	5798	764	5027	15347	5286	4905	12753	29540

## Annexure 5: Abbreviations of States & Union Territories

Abbreviation	State
AP	Andhra Pradesh
AR	Arunachal Pradesh
AS	Assam
BR	Bihar
CG	Chhattisgarh
GA	Goa
GJ	Gujarat
HR	Haryana
HP	Himachal Pradesh
JK	Jammu and Kashmir
JH	Jharkhand
KA	Karnataka
KL	Kerala
MP	Madhya Pradesh
MH	Maharashtra
MN	Manipur
ML	Meghalaya
MZ	Mizoram
NL	Nagaland
OR	Orissa
PB	Punjab
RJ	Rajasthan
SK	Sikkim
TN	Tamil Nadu
TG	Telangana
TR	Tripura
UK	Uttarakhand
UP	Uttar Pradesh
WB	West Bengal
TN	Tamil Nadu
TR	Tripura
AN	Andaman and Nicobar Islands
CH	Chandigarh
DH	Dadra and Nagar Haveli
DD	Daman and Diu
DL	Delhi
LD	Lakshadweep
PY	Puducherry



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