

ANALYSING THE IMPLEMENTATION OF THE POCSO ACT

ASSAM, DELHI, HARYANA

CIVIC DATA LAB
HAQ: CENTRE FOR CHILD RIGHTS

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LIST OF ABBREVIATIONS

%	Percentage
&	And
&	And
Addl.	Additional
APSA	Aggravated Penetrative Sexual Assault
ASA	Aggravated Sexual Assault
C.C	Consideration of Charge
CAA-NRC	Citizenship (Amendment) Act, 2019 - National Register of Citizens
CBI	Central Board of Investigation
CCL	Child in Conflict with Law
CDL	Civic Data Lab
CHA	Challan
CHI	Challan under IPC
CIS	Case Information System
CNR	Case
Col.	Column
COVID-19	Coronavirus 2 (SARS-CoV-2)
CR	Complaint Case
Cr. Case / Cr Case	Criminal Case
CriLJ	Criminal Law Journal
CRLIT	Child Rights Law Implementation Tracker
CrPC/Cr.P.C./Cr.Pc	Criminal Procedure Code, 1973
DLSA	District Legal Services Authority
DSLISA	Delhi State Legal Services Authority
DV	Domestic Violence
FIR	First Information Report
FTC	Fast Track Courts
FTSC	Fast Track Special Courts
GR case	General Registered Case Number
HAQ	HAQ: Centre for Child Rights
ICPS	Integrated Child Protection Scheme
INR	Indian Rupees
IPC/I.P.C.	Indian Penal Code, 1860
JJB/J.J.B	Juvenile Justice Board
JMFC	Judicial Magistrate First Class
M	Matrimonial Case
M.Sc.	Master of Sciences
NA	Not Available
NCRB	National Crime Records Bureau
NCRB	National Crime Records Bureau
NCT	National Capital Territory
NLSIU	National Law School of India University
No.	Number
PIL	Public Interest Litigation

PO	Proclaimed Offender
POCSO Act	Protection of Children from Sexual Offences Act, 2012
PRC	Police Report Case
PSA	Penetrative Sexual Assault
S.D.J.M.	Sub Divisional Judicial Magistrate
SA	Sexual Assault
SC	Supreme Court
SC and ST / SC-ST/ SC/ST Act	Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989
SC/ SC/ S.C.	Sessions Case
SCC	Supreme Court Cases
SCC	Supreme Court Cases
SH	Sexual Harassment
SLSA	State Legal Services Authority
Spl./SPL	Special
Storage of CP	Storage of Child Pornography
u/s	Under Section
Use of CP	Use of Children for Pornographic Purposes
UT	Union Territory
v.	versus

CHAPTER I

INTRODUCTION AND METHODOLOGY OF SELECTION OF CASES

INTRODUCTION

CHILD RIGHTS LAW IMPLEMENTATION TRACKER

Need for the child rights law implementation tracker

Child protection in India over the last two decades, has received significant attention through new schemes, policies and legal reform. However, the vast legal framework on child rights is not backed with data which can change and monitor the implementation of these laws. The data published by the National Crime Records Bureau ('NCRB') is limited and outdated and the data from the district level is inconsistent.

Using technology to work on data from the judiciary is the need of the hour. Technology can help provide and use data tools to cull out relevant data and reduce time and manual effort.

Objective of the child rights law tracker

HAQ in collaboration with Civic Data Lab (CDL) is working on creating a Child Rights Law Implementation Tracker ('CRLIT'). The objective of the project is to generate a large scale, dynamic and systematic data through a dynamic platform that will help strengthen evidence-based advocacy efforts on access to justice for children. The project will also help in measuring progress on SDG 16 – Access to Justice, from a child rights perspective.

Scope of the research

The research aims to cover cases which have been registered and their trial has been conducted under the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') in 3 states - Assam, Delhi and Haryana.

METHODOLOGY OF SELECTION OF CASES

The primary source of the research project's data collection is from the E-Courts platform - https://services.ecourts.gov.in/ecourtindia_v6/. In order to identify cases under the POCSO Act, the filter 'Act' was used and the relevant act for the research i.e. POCSO Act was selected. All the relevant information / data available on the E-Courts platform under the filter heading 'Act' pending and disposed cases under POCSO Act were downloaded. This step and process was used to identify cases under the POCSO Act for all 3 states and their respective districts.

The raw data collected from the E-Courts platform of each of the downloaded cases was then arranged systematically into various columns. Some of the column heads are as under:

- CNR No.
- Hearing dates: Date of first listing, Date of next listing and Purpose
- Registration details: Registration no., Date of registration
- Filing details: Filing no., Date of filing
- Court name
- Designation of the Judge
- Case type
- Nature of disposal
- Petitioner details: Petitioner name, name of Petitioner's Advocate
- Respondent details: Respondent name, name of Respondent's Advocate
- Subordinate court information
- Transfer information

The initial list of total cases i.e. pending as well as disposed which were downloaded from the E-Courts portal was **36048** with the share being divided by each state as follows: **Assam – 7240, Delhi – 13207 and Haryana – 15601.**

In order to filter the cases which would truly fall within the ambit of this research, 3 broad filters were used – Case Type, Designation of the Judge and Nature of Disposal.

I. Case Type

The first question that arose was whether all case types were in fact case types wherein trials under the POCSO Act had been undertaken?

In order for a type of case to fall within the ambit of the research, the trial of the case must be conducted as per the provisions of the POCSO Act. Section 28 of the POCSO Act states 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. Thus, it is understood that a case under POCSO Act can only be tried by a court of sessions i.e. it has to be a sessions case.

From the data that is available, there were different variations of the case types both between the 3 states and within the 3 states i.e.

- SC
- PRC (Police Report Cases)
- Bail Matters
- Complaint Case (C R)
- Special Case POCSO
- POCSO Act
- Sessions Spl POCSO
- Misc. Adoption Case
- AB Anticipatory Bail

- Police Report Case JJB PRC JJB
- G R Cases J.J.B
- G R case Warrant
- Special POCSO
- Special(P and C)
- Special Case (Children)
- Special Case (POCSO)
- Special
- Special (Pocso Act)
- Special (POCSO Act)
- Sessions (Special)
- Criminal Appeal
- Juvenile Act Cases
- Title Suit F.A.
- CHI
- CHA
- DV Act
- M
- Remand Paper

In order to filter the case types applicable to this research only those case types wherein a legitimate trial under the POCSO Act by a sessions court i.e. a sessions case have been considered for this research.

- SC
- Sp Procso
- Spl. POCSO
- Special(POCSO) Case
- Cases Under POCSO Act
- Special Case POCSO
- POCSO Act
- Sessions Spl POCSO
- Special POSCO
- SC T2
- Special Case (P)
- Special (POCSO)
- Special Case
- Sessions Case T II
- Sessions Case
- Sessions (Spl.)
- Sessions Spl. (C)
- Special Sessions (POCSO)

- Sessions Special (POCSO)
- Special(Children)
- Spl. POCSO Act.
- Spl. P.O.C.S.O
- Sessions Case Type 2
- Special POCSO
- Special(P and C)
- Special Case (Children)
- Special Case (POCSO)
- Special
- Special (Pocso Act)
- Special (POCSO Act)
- Sessions (Special)
- POCSO
- SpecialPOCSO
- Special A
- Sessions Spl
- Sessions Spl.
- Spl (pocso)
- PCSO Act 2012
- Sessions Case Type-I
- SPL(Pocso)
- SPL(N)
- PcsO Act
- S C
- S.C.
- SC AND ST ACT
- SC-ST

Broad categorization of Case Types

For ease of reference, the selected category/types of cases, as mentioned above, was further consolidated under a broader heading:

- Sessions Case (SC)
- Sessions Special POCSO
- Special Case
- Sessions Special
- POCSO Act
- Special (POCSO) Case
- Special Case
- SC-ST Act

The details of categorization of the Case Types, state wise, has been mentioned in Annexure 1.1.

Variations in each case type

While filtering the case types, it was observed that each case type has variations with respect to the way and manner it is written and mentioned on the E-courts portal.

- SC, S C, S.C.
- Sp Procso, Spl. POCSO, Special(POCSO) Case, SPL(Pocso)
- PcsO Act, PCSO Act, 2012, POCSO, POCSO Act, Cases under POCSO Act

The lack of standardization in the manner in which each case type is mentioned on the E-Courts portal, put forth a challenge while consolidating and analysing the data.

At this point, after using the aforesaid filter, the count of the total cases came down to **19798** with the share being divided by each state as follows: **Assam – 5799, Delhi – 9366 and Haryana – 4633.**

II. Designation of Judges

The next filter applied was of 'Designation of Judges' and only those cases in which an appropriate designated Judge presided over the shortlisted case was taken into consideration.

As a case under POCSO Act can only be tried by a court of sessions and the appropriate designation of the judge of court of sessions shall be of a Sessions Judge.

From the data that is available, there are different variations of the types of designations both between the 3 states and within the 3 states i.e.

- Addl. Sessions Judge,(FTC)
- Addl. District & Sessions Judge
- Addl Dist. and Sessions Judge
- Chief Judicial Magistrate
- CASE IS NOT ALLOCATED TO COURT.
- District and Sessions Judge
- Distrct & Sessions Judge
- Munsiff No. 1 cum JMFC
- Addl.District and Sessions Judge,
- SDJM , Kaliabor
- Addl. Dist & Session Judge(F. T. C)
- Munsiff cum JMFC , Kaliabor
- Addl. District Judge (FTC)
- JMFC2
- Addl. District and Sessions Judge 3

- Sub-Divisional Judicial Magistrate
- NA
- Addl. District and Sessions Judge No. 1, Kamrup Metro
- District and Sessions Judge, Kamrup Metro
- S.D.J.M S 1
- Principal magistrate J.J.B
- Additional Sessions Judge - POCSO
- Additional Sessions Judge
- Special Judge (CBI)
- Additional District Judge
- Special Judge
- Judge Family Court

The list of designation of judges shows that apart from Additional Session Judge, Additional Sessions and District Judge which squarely falls under the designation of a 'Sessions Judge', the designation of some judges falls under the broad category of Judicial Magistrates Ist Class, Judicial Magistrate IInd Class, Magistrates, Sub-divisional Magistrate, Civil Judge etc. As the said designation of judges does not fall within the ambit of being a Sessions Judge, their courts are not considered as a Court of Sessions and thus, have not been taken in the count of the total list of cases for this research.

For ease of reference, the details of the Designation of Judges, state wise, has been mentioned in Annexure 1.2.

Under the Col. of Designation of Judges in the state of Assam, it was observed that some judges were designated as a Civil Judge and Assistant Sessions Judge. As their designation, Assistant Sessions Judge, grants them power to conduct a sessions trial, the cases of said designations of judges falls within the ambit of the research. However, one designation in the list of cases of Assam which stood out was Civil Judge No. 2 (1 case). Upon perusing the case on the E-Courts platform, it was observed that the it was case under Section 6 of POCSO Act which transferred to Civil Judge, who also had jurisdiction of an Assistant Sessions Judge Court, who disposed of the matter after conducting evidence. Therefore, the said case under the designation of Judge Civil Judge No. 2 was taken into consideration in the total list of cases.

Upon perusal of the 5 cases in Haryana, it was observed that under the Col. of Designation of Judges in Haryana, a judge was designated as Principal Judge, Family Court. As Principal Judge, Family Courts are Additional District and Sessions Judge rank officials, the designation of the judge is appropriate and the 5 cases in Haryana have been taken into the count of the total list of cases for this research.

While perusing a sample of cases of Delhi under the case type variations, it was found that under the case type heading of **Cr. Case** and **Cr Case**, cases wherein the designation of the Judge was Additional Sessions Judge and Special Judge, a trial as per the POCSO Act was being

undertaken. Thus, the said cases (a total of 8 cases) were also taken within the ambit of the total list of cases. However, the cases under the heading of Cr. Case and Cr Case wherein the designation of the Judge was of a Metropolitan Magistrate (MM) was not taken into consideration as the designation of the judge was not of a sessions judge and thus not taken into the final count of cases.

Further, while perusing a sample of cases in Assam under the case type variation Sessions (Spl.) and Spl (pocso) it was found that there were 3 cases wherein designation of the Judge was mentioned as Chief Judicial Magistrate. Although the case type was legitimate i.e. Sessions Case, the designation of judge for the said 3 cases was not appropriate i.e. not a Sessions Judge. Therefore, the said 3 cases have not been included in the final count of cases.

Under the Col. of Designation of Judges, it was observed that there were 2 values – ‘NA’ (Assam and Delhi) and ‘Case not allocated to court’ (Assam) with a total case of 153 and 2 under the two heads respectively. Although the designation of the judge was not known, the court complex in which the said cases were being heard was of District and Sessions Judge and all other relevant information of the case was available. Thus, the said cases (total of 155 cases) were also taken into consideration in the total count of cases.

Cases relating to a Juvenile

In Haryana and Assam, there were a few Cases Types which were relating to a juvenile i.e.

Assam:

- Juvenile Cases
- Juvenile Act Cases
- JJB Case
- Special (CCL)
- Special Juvenile
- Special Juvenile Cases

While perusing the aforesaid cases, it was found that the Designation of the Judges presiding over the said case types were Additional Sessions Judge, District and Sessions Judge, Judicial Magistrates, Principal Magistrate etc.

Haryana:

- JJB
- JJB.

While perusing the aforesaid cases, it was found that the Designation of the Judges presiding over the said case types were Judicial Magistrates, Principal Magistrate etc.

Upon a combined reading of the Col. Case Types and Designation of Judges it was decided that cases of juveniles who were tried as a juvenile would not be taken under the ambit of this research. However, cases wherein a juvenile is tried as an adult in the appropriate forum

and under the appropriate Judge i.e. in a Sessions Court presided over by a Sessions Judge would be taken into consideration for this research.

Therefore, for the state of Assam, cases under the case type Special (CCL), Special Juvenile, Special Juvenile Cases wherein the designation of the judge was of a Sessions Judge were taken into consideration for the research (a total of 12 cases). For the state of Haryana, the said case types JJB and JJB. were not taken into consideration for the research as they were cases of a juvenile tried as a juvenile i.e. presided over by Judicial Magistrates, Principal Magistrate etc.

At this point, after using the aforesaid filters, the count of the total cases came down to **19803** with the share being divided by each state as follows: **Assam – 5796, Delhi – 9374 and Haryana – 4633.**

'0' FIR Year

It was observed that certain cases registered under the POCSO Act did not have the relevant information with respect to year of FIR mentioned under the heading FIR Details on their respect E-Courts page. While downloading such cases (a total of 1309 from all three states), the value for each of these cases in the raw data sheet was captured as '0'.

Although the year of FIR is unknown for the said cases, all other relevant information relating to the case is available for our analysis. Therefore, the said 1309 cases with '0' FIR Year have been considered for the research. The breakup of the said 1309 '0' FIR Year cases between the three states is – Assam – 1250, Delhi – 36, Assam – 23.

Invalid FIR Years

The POCSO Act was enacted in and effective from November 2012 and therefore only those cases registered under the POCSO Act from 2012 to 2020 (March 31st) have been considered for this research. While perusing the columns with details of the year of FIR it was observed that there were certain cases with the year of FIR mentioned as prior to 2012 or had some absurd numbers. The said cases, a total of 20, were categorized under 2 heads:

- Invalid FIR year no. – 9, 14, 15, 17, 18, 19, 201, 506, 1913, 2081, 2106 (total of 14 cases)
- Invalid FIR year no. prior to 2012 – 2005, 2009, 2010, 2011 (total of 6 cases)

The aforesaid 20 cases, from all three states, were omitted from the total list of cases making the total come down to **19783** cases with the share being divided by each state as follows: **Assam – 5786, Delhi – 9366 and Haryana – 4631.**

III. Nature of Disposal

Of the total cases (19783), the number of disposed cases were 8097. The nature of the disposal, as downloaded from and present on the E-Courts portal, were varied i.e.

- Filed
- Acquitted
- Convicted with Fine
- Transferred
- Disposed Of
- Dismissed
- Discharged
- Transferred to CJM Court Complex, Guwahati
- Abated
- Transfer
- Quash
- Untrace
- Probation
- P.O. Consign
- Allowed
- Fine
- Sine Die
- Cancel
- Convicted
- Sent to JJB
- Declared Juvenile

Variations in each case type

It was observed that each nature of disposal had variations with respect to the way and manner it is written and mentioned on the E-courts portal. A few examples have been laid down hereunder:

- Abated – Abated, Abated., Death, Defendant / Respondent / Accused Died
- Acquitted – Accused are Acquitted., Acquited, ACQUITTED, Acquitted on benefit of doubt, Acquitted., Judgment is delivered in the open Court, The accused person is acquitted.
- Convicted – Convict is Sentenced to Fine., Convicted, Convicted and Fined, Convicted And Released On Probation, Convicted And Sentenced, Convicted With Fine, Life Imprisonment, Undergone

The lack of standardization in the manner in which each case type is mentioned on the E-Courts portal, put forth a challenge while consolidating and analysing the data.

Broad categorization of Case Types

For ease of reference, the selected category/types of cases, as mentioned above, was further consolidated under a broader heading:

- Abated

- Acquitted
- Convicted
- Discharged
- Transferred
- Quashed
- Untraced
- PO Consigned
- Others

However, regardless of the nature of disposal of the case, each of the said disposal natures have been considered for the research. For ease of reference, the details of the categorization of Nature of Disposal, state wise, has been mentioned in Annexure 1.3.

Acts and Sections / Offence related data

The field of Acts and Sections on the E-Courts platform provides the acts and sections which have been mentioned in the FIR. The said information was downloaded from the E-Courts platform for the selected cases (19783 cases) was then arranged systematically into various columns – CNR No., Acts and the rows captured the sections applicable to each CNR.

Gaps in Acts and Sections

While perusing the Acts and Sections applicable to the cases, there were a few challenges in comprehending and standardising the data.

- (i) Each Act name was mentioned and referred to on the E-Courts platform in a different manner.
 - IPC – Indian Penal Code, 1Indian Penal Code, IPC, I.P.C. (Police)
 - POCSO Act – Protection of Children from Sexual Offence Act 2012, Protection of Children from Sexual Offences Act, 2012, Protection of Children, Protection of Children from Sexual offence Act POCSO2013, Protection of Children from Sexual Offences Rules
 - Cr.P.C. - Code of Criminal Procedure, 1973, Code of Criminal Procedure, Cr. P.C., Cr. P. C., Cr.P.c

The lack of standardization in the manner in which each case type is mentioned on the E-Courts portal, put forth a challenge while consolidation and analysis of the data downloaded.

- (ii) Act names did not corroborate with the section nos. mentioned. Section nos. which were of POCSO Act were mentioned under CrPC., IPC and vice versa.

Act name	Section no.
IPC	4, 6, 8, 12, 17
POCSO Act	376, 377, 366A, 120B, 354, 323, 354, 451, 3(2)(v), 3(1)(W)

Cr.P.C.	506, 376, 376F, 34 IPC, 354D, 509, 34, 8, 363
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- (iii) Some of the Act names were not applicable to the present research i.e. Factories Act, Partition, Forward Contracts Regulation Act, Foreign Exchange Regulation Act, Indian Telegraph Act, 1855, Indian Tolls Act, Prize Chits and Money Circulation Scheme (Banning) Act, 1978, Provident Fund Insurance Act. Indian Red Cross Society Act. However, on a perusal of the corresponding Col. of the sections, it was observed that some of the Acts did not have any corresponding section mentioned and some of the section nos. for each of the aforesaid Acts were sections of POCSO Act or IPC or SC/ST Act.

Act name	Section no.
Indian Red Cross Society Act	506
Indian Red Cross Society Act	10
Foreign Exchange Regulation Act	366, 376, 384, 506
Forward Contracts Regulation Act	376, 363
Indian Telegraph Act, 1855	377
Indian Tolls Act	366
Prize Chits and Money Circulation Scheme (Banning) Act, 1978	3X
Provincial Small Cause Court Act 1887	--
Provident Fund Insurance Act	--

- (iv) Some of the section nos. were unclear and some had the Act's name written under the heading of Section no. but not the section no.

Act name	Section no.
I.P.C(Police)	3636
I.P.C(Police)	-1
Protection of Children from Sexual Offence Act 2012	Pocso

This made the process of identifying which section the said case belonged to challenging.

- (v) While working on standardizing the data it was found that there are 56 cases that are registered as Section 366 A and are under the heading of POCSO in the Acts Col. 3 cases in this set also have a judgement and upon perusal of the same it is clearly mentioned in one of the judgement that the case is registered under Section 366 IPC read with Section 5 of POCSO Act. By generally standardizing the wrongly mentioned section no. with the corresponding Act i.e. converting Section 366A POCSO Act to Section 366 of IPC because of 366A section no., we would not have any section under the Col of POCSO Act and thereby going with an incorrect data base.

While looking at more such examples, it was clear that one cannot generalise the acts/sections that are not clear and the only way to get an accurate representation is by reading the judgement. There are approximately 3000 such cases of which judgements are available only in 700 cases. However, there was no way to verify information with respect to sections and Acts applicable for the balance 2300 cases.

In order to showcase data only with respect to the cases which can be verified, it was decided that the aforesaid 3000 cases would not be taken within the ambit of the research limited to the analysis to offence wise data. Thus, the data on the offence related data is limited to a total of **16783 cases**.

- (vi) In certain cases, the main substantive section of the POCSO Act was mentioned, however, the correlating sub-section was not mentioned. This brought forth a challenge to correctly identify if it was an aggravated penetrative sexual assault or aggravated sexual assault, which category/clause of the aggravation the said case falls under. Only a few 75 cases had the relevant sub-section mentioned. Therefore, the research is limited to broad categorization of the cases into APSA or ASA.
- (vii) Section 42 of the POCSO Act provides for alternative punishment and states that - *“Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.”*

Since the POCSO Act has been effective i.e. November 2012, there have been various amendments to the POCSO Act as well as IPC, SC/ST Act. Without the information on date of incident it becomes a challenge to identify whether to apply the amended clauses of the Acts. Therefore, it was decided that for the research only the cases under the POCSO Act would be taken into consideration.

Rules followed while standardizing the Acts and Sections

- **Principal offence rule:** It was decided that cases which have combinations of 2 or more sections i.e. 4/6 or 8/10, 8/12 etc, the offence with higher punishment or the principal offence would be taken into consideration.
- **Punishment clause and not the substantive clause:** At the time of noting the sections for the data related to offences, it was decided that the punishment clause would be mentioned and not the substantive clause (where the nature of offence is described)

i.e. Section 6 (Punishment for Aggravated Penetrative Sexual Assault) would be mentioned and not the corresponding substantive clause Section 5 (Aggravated Penetrative Sexual Assault). However, wherever the relevant sub-section of the substantive clause, detailing the manner of the offence, is mentioned, both the substantive clause/sub-clause shall be mentioned along with the punishment clause i.e. Section 5(I) ; Section 6.

Purpose of Hearing

Variations in the Purpose of Hearing and Broad categorization

It was observed that the purpose of hearing for each stage had variations with respect to the way and manner it is written and mentioned on the E-courts portal. A few examples have been laid down hereunder:

- Prosecution Evidence – Plaintiff Evidence, Plaintiff Evidence, PROSECUTION EVIDENCE U/S 299 CR.P.C., Petitioner Evidence, Pws, Prosecution Witness, Cross examination of Prosecution Witness, Evidence of I.O, Evidence After Charge
- Charge – Charge, CONSIDERATION ON CHARGE, Issues, Consideration of Charge (C.C), Hearing on C. C., Charge Order, Framing of Charges, Hearing arguments on Charge
- Statement of Accused - Statement of Accused, 313 Cr.Pc, STATEMENT OF ACCUSED U/S 313 CR.P.C.

Further, there were certain purpose of hearings which did not specifically fall under any heading i.e. Written Statement, REPLY, CONSIDERATION, Notice, Dismissed under 35-B, FILING OF WRITTEN REPLY, AWAITING CHALLAN, AWAITING FURTHER ORDERS, REPLY TO OBJECTIONS, NOTICE TO RESPONDENT, Orders, Necessary Order, put up for order, For Orders, Order on Petition, Written Objection and Hearing, Production of Accused and Argument, Further argument etc. In order to standardize the varied purpose of hearing, the aforesaid were segregated and under the heading of Miscellaneous, Miscellaneous Arguments and Miscellaneous Order.

The lack of standardization in the manner in which each purpose of hearing is mentioned on the E-Courts portal, put forth a challenge while consolidation and analysis of the data downloaded. For ease of reference, the purpose of hearings, as mentioned above, was further consolidated under a broader heading:

- Miscellaneous Appearance
- Charge
- Prosecution Evidence
- Miscellaneous Order
- Judgement
- Miscellaneous Arguments
- Statement of Accused
- Final Arguments

- Bail
- Defence Evidence
- Miscellaneous
- Other Evidence
- Sentence
- Transfer

For ease of reference, details of the Purpose of Hearings, state wise, has been mentioned in Annexure 1.4.

NO. OF JUDGMENTS AVAILABLE

From a total of 19783 cases in all three states, judgments only in 3590 disposed cases were available. The disposal nature of these cases was varied i.e. acquitted, convicted, transferred, abated, discharged etc.

Judgments were not available in a total of 16193 cases. Of these 16193 cases, 11686 cases were still pending in court and thus no judgement was available. A total of 4507 cases were already disposed by the court, however, no judgment was available for them.

State	Judgements available	Judgements not available		Total cases
		Pending cases	Disposed cases	
Assam	1152	3080	1554	5786
Delhi	328	7020	2018	9366
Haryana	2110	1586	935	4631
Total cases	3590	11686	4507	19783

Of a total of 2346 cases disposed in Delhi, judgments only in 328 cases were available on the e-courts portal i.e. 14% of the disposed cases. In comparison, Haryana has a total of 3045 cases of which judgments are available for 2110 cases i.e. 69% of the disposed cases. Similarly, the state of Assam has a total of 2706 disposed cases and judgments were available for 1152 cases i.e. 42% of the disposed cases.

There is a vast difference in the percentage of disposed cases which are being uploaded on the E-Courts portal. From the table above highlights the lack of a standard practice and in comparison, to Assam and Haryana, Delhi seems to have restricted uploading of judgments in disposed cases on the e-courts portal.

CHALLENGE OF STANDARDIZATION AND LIST OF NON-NEGOTIABLES

I. E-Courts portal

The variations in the manner of presentation and representation of each Case Type, Disposal Nature, Acts and Sections (as stated above) brings forward the issue of standardization while uploading information on the E-Courts portal. As there are different variations of each variable (i.e. Act) when combined with another variable (i.e. Section etc) the problem with

respect to searching for the data becomes exponential and also possess as a challenge with respect to the reliability of the data.

Further, with respect to the details of case type, purpose of hearing, disposal nature, stage of case as mentioned in the E-Courts portal, there are numerous variations of the same which makes it difficult to standardize the data. One of the issues is with respect to the manner of entering the text - a variable might have multiple spaces, singular plural usage, space, dot in the word. For example – a Police Report Case is depicted in the following different manner - P R C CASE, PRC, PRC (Police Report Case), PRC (Police Report Cases).

The other issue is also the non-standardization in the varied manner of mentioning the same stage of the case i.e. purpose of hearing of each date. For example, for Prosecution Evidence - Plaintiff Evidence, Plaintiff Evidence, PROSECUTION EVIDENCE U/S 299 CR.P.C., Petitioner Evidence, Pws, Prosecution Witness, Cross examination of Prosecution Witness, Evidence of I.O, Evidence After Charge, Cross examination of Plaintiff/Claimant Witness, For I.O, Evidence of I/O.

This challenge of non-standardization of data also extends while analysing the said data.

The idea and objective behind creating an E-Courts platform was to digitize the district judiciary. The Case Information System (CIS) software was an initiative of the E-Committee to make the Indian Judiciary more transparent and more litigant/user friendly. However, the basic information / data is not being filled in on the E-Courts platform properly because of which the users have to then work on it manually and it defeats the purpose of automating the system. Further, with respect to the relevant information which is not available on the E-Courts platform, it will pose a challenge regardless of searching for this information through automation or manually.

In order to overcome the aforesaid challenges and to ensure that getting real time data is easy there should be a uniform way of filling in the data on the E-Courts portal.

To ensure that there is an improvement in the data and justice system with respect to the manner in which relevant data of the case is captured, a list of non-negotiables on information that must get recorded on the E-Courts portal has been prepared and annexed herewith as Annexure 1.5. The fields in the list of non-negotiables, as attached herewith, are divided by colour - the fields in black are the fields already existing on the E-Courts platform; the fields highlighted in red are the new fields and their inclusion on the E-Courts platform is what we will be advocating for with the E-Courts committee.

II. Judgements

While Section 354 of the CrPC. lays down certain mandatory requirements for what a judgement should contain, not only do different courts follow different styles of writing judgements, a lot of critical information pertaining to a case is also missing. Given that in cases

of sexual offences, daily orders are not uploaded, such critical information should not get missed out in the judgements.

A list of non-negotiables, as annexed herewith as Annexure 1.6, is prepared after a thorough analysis of judgements available in cases under the POCSO Act across three states – Assam, Delhi and Haryana.

Necessary fields that tend to get missed in the judgment or sentencing order or compensation order and new fields that must be incorporated are typed in red font. There may be different ways of ensuring that these non-negotiables fields get incorporated in the judgements/sentencing order/compensation order as the case maybe.

The said lists are suggestive formats created to improve the data system and help the E-Courts committee and judges to ensure critical information is not missed out on. This format may be digitised with drop down menus made available to make it easier for them to fill the format.

Privacy v. Confidentiality

Keeping in mind the fact that information with respect to the case is confidential and any information on the public platform revealing the identity of the victim would be detrimental, there is a need to identify a way to ensure the accountability of the courts to record the necessary information of the case.

In order to understand how different jurisdictions deal with the issue of confidentiality of information and accountability, the students of Macquarie University, Sydney prepared a report titled – *‘International Comparative Study of Child Confidentiality vis-a-vis Judicial Accountability: Defining best practices to protect children’s privacy and ensuring judicial transparency in the criminal justice system’* as annexed here as Annexure 1.7.

The report examines and evaluates the different approaches taken by the different jurisdictions to protect the confidentiality of children in the courts, particularly those who have been victims of sexual crimes, whilst maintaining judicial accountability.

The countries which were a part of the research included - Australia, Canada, Germany, Hong Kong, Malaysia, Nepal, New Zealand, Philippines, Singapore, South Africa, United Kingdom, United States.

Best Practices

Countries / States that were notable in their successful balance between anonymity and access to information were: Australia (NSW), Singapore, Hong Kong, United States, United Kingdom.

- Strong Non-Identifying Features

Best Practice: United Kingdom; Australia (NSW); Philippines

This practice ensures that there is anonymity of children involved in the case, whether as victim, witness or perpetrator. States that employed this practice used different name suppression measures, usually by utilising initials or pseudonyms. Furthermore, in those States, when the victim reaches adulthood, they can generally decide whether or not to maintain their anonymity. This empowering feature allows victims of sexual crimes to take autonomy over their own lives. Most States examined employed some form of name suppression measures to protect the children's identity.

- **Redacting Names**

Best Practice: Australia (NSW); Malaysia; Singapore

States that ensured a total redaction of children's names were identified as better than States that did not. The majority of States did have redaction mechanisms in place, at least on a formal level.

- **E-Courts**

Best Practice: Singapore, Australia (NSW), Germany

E-Courts presented the best ability to access court judgments. Whereas visiting courts can be difficult and inaccessible in certain locations, the e-Court system ensured that geographical location would not impact the ability to access court documents.

- **Accessible Court Judgments**

Best Practice: United Kingdom; Hong Kong

Whilst policies and processes are important for accessing files, if in practice files cannot be accessed, then those policies and processes are redundant. Among many of States studied by the students, the practicability of accessing court documents was difficult to ascertain, particularly when limited to internet searches. The States that provided consistently published court documents were identified as better than those that did not. Those States offered court judgments for predetermined relevant parties. Best practice was also identified where parties, when applying for court documents, could specifically request which aspects of the case they are seeking (such as submission of evidence, charge sheets, expert reports and judicial reasoning). This was permitted in Singapore through the Integrated Case Management System for certain lower courts.

- **Clear Privacy Legislation**

Best Practice: Australia (NSW); Nepal; Singapore

States that had accessible and clear legislation relating to how privacy interacts with child sex abuse cases were identified as better than States that did not. Even where the legislation offers discretion (such as magistrate's decision and the 'balance between right of information and privacy'), the legislation was considered to be sufficiently clear.

- Clear Accessibility Legislation

Best Practice: Hong Kong; Canada; United States

Determining whether or not access was to be granted regarding cases was, in some States, made clear through the relevant legislation. Where the legislation offers a process for accessing court records, those provisions were seen in a specific section of the relevant Act. This is considered a 'best practice' as it demonstrates the willingness of the court system to commit to the concept of open justice. A process to access court records substantiated in legislation is a significant step towards promoting judicial accountability.

- Clear Process to Access Court Documents

Best Practice: United States; Philippines; Germany

States that had a clear process to access court documents on their court websites were identified as stronger than those that did not. The process tends to be publicly available on a government website, which would provide the relevant forms and information required to make the request.

This chart represents an overview of the best practices which the States have in place.

	Strong Non-Identifying Features (XYZ)	Redacting Names	E-Courts	Accessible Court Judgments	Clear Privacy Legislation	Clear Accessibility Legislation	Clear Process To Access Court Documents
Australia	Green	Green	Green	Yellow	Green	Yellow	Green
Canada	Green	Green	Yellow	Red	Green	Green	Yellow
Germany	Green	Green	Green	Yellow	Green	Yellow	Green
Hong Kong	Yellow	Green	Green	Green	Yellow	Green	Green
Malaysia	Green	Green	Green	Red	Green	Green	Red
Nepal	Yellow	Yellow	Green	Yellow	Green	Yellow	Yellow
New Zealand	Green	Yellow	Green	Green	Red	Red	Green
Philippines	Green	Yellow	Green	Green	Red	Red	Green
Singapore	Green	Green	Green	Yellow	Green	Green	Green
South Africa	Yellow	Yellow	Red	Green	Green	Yellow	Green
United Kingdom	Green	Green	Yellow	Green	Yellow	Yellow	Yellow
United States	Green	Green	Green	Green	Yellow	Yellow	Yellow

Green = Strong (Practices are in Place)
 Yellow = Moderate (Improvements Required)
 Red = Weak (Non-Existant or Otherwise)

The cross-country comparison of policies and practices make clear the fact that children's confidentiality and judicial transparency is not mutually exclusive. It is possible for States to maintain the anonymity of the identity of children through simple name suppression measures which would then enable the release of court documents without endangering the child's privacy.

However, with the court system in India, there is no clarity on whether orders and/or judgements are to be made available for public viewing. The non-availability of relevant information and data can hamper bona fine research. There are countries and courts where, upon taking necessary permissions, researchers get access to the case information. No state

does this perfectly, however an in-depth appraisal of each makes it clear that it is possible to strike a balance between accessibility, transparency and protection of children.

The list of non-negotiables proposed aims to ensure that critical information related to the case is not missed out on, both on the E-courts portal as well as in the judgements. The said orders and judgments can be uploaded on the E-courts portal after taking necessary measures i.e. redaction of names, use of pseudonyms. This mechanism would ensure that court records are transparent in providing necessary data to bona fide researchers and members of the public while maintaining confidentiality over children's personal information.

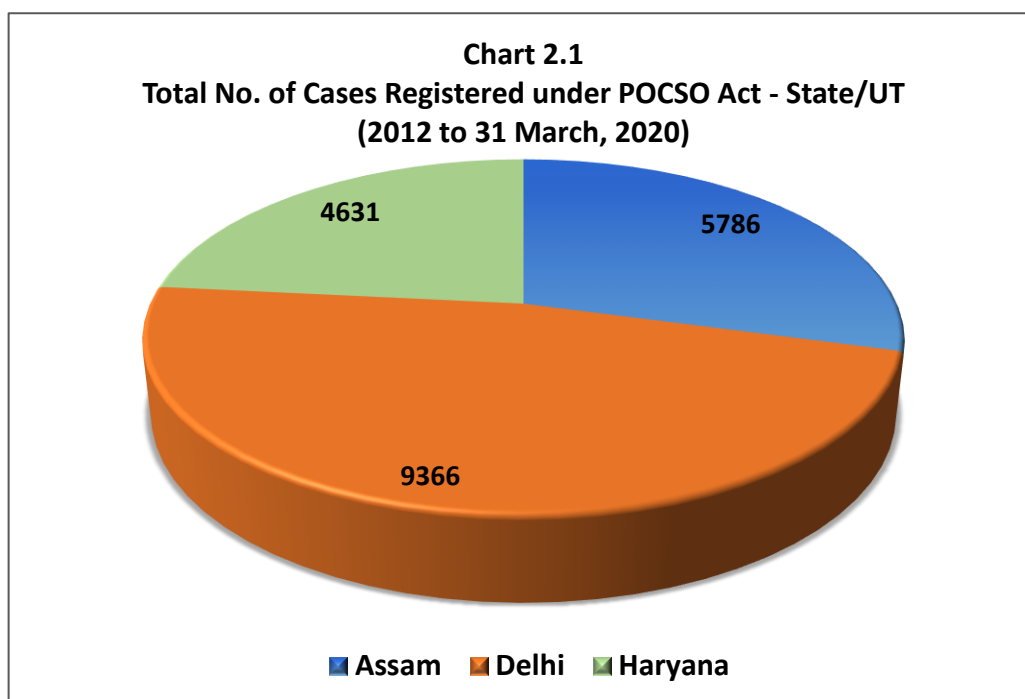
CHAPTER II

CASES AND OFFENCES REGISTERED UNDER POCSO ACT

This chapter provides a broad analysis of number of cases registered under the POCSO Act at state and districts level. This chapter also details out the patterns of nature-wise offences registered at State and District level in Assam, Delhi and Haryana. Data is computed on the basis of number of cases registered in the Sessions Courts dealing with POCSO cases and the date / year of registration of case in the court information system. The time period for data computation and analysis is 2012 up to 31 March, 2020.

BASIC DATA

A total of 19,783 cases under the POCSO Act were registered in the State of Assam and Haryana and Union Territory of Delhi between November 2012 to 31st March, 2020. Of the total 19783 case, 47.34 per cent cases were registered in the Union Territory of Delhi followed by Assam and Haryana.



While Delhi contributes to the maximum cases registered under POCSO each year, the study suggests that there is a rise in total number of cases registered since 2012 to 31st March 2020.

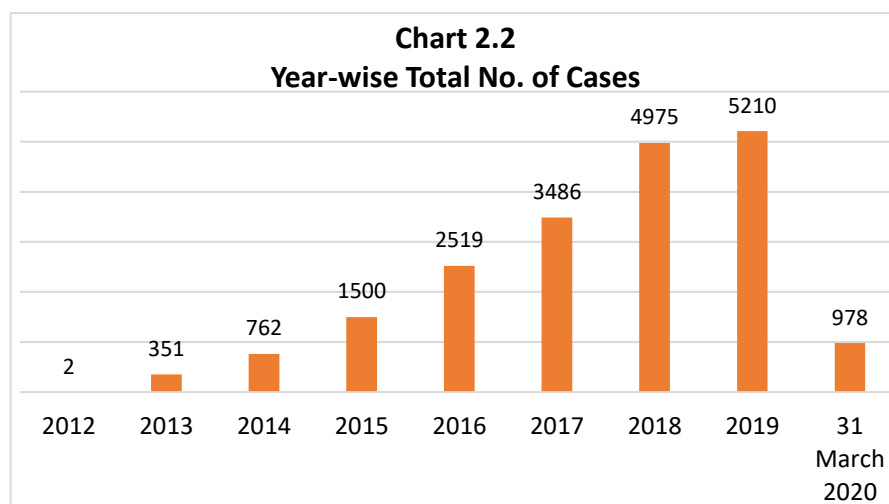


Table 2.1				
State-Wise and Year-Wise No. of Cases Registered (FIR) under POCSO Act				
Year of Registration	Assam	Delhi	Haryana	Total
2012	0	2	0	2
2013	18	331	2	351
2014	169	482	111	762
2015	353	768	379	1500
2016	632	1300	587	2519
2017	918	1700	868	3486
2018	1522	2281	1172	4975
2019	1793	2158	1259	5210
31 March 2020	381	344	253	978
Total	5786	9366	4631	19783

The National Crime Records Bureau (NCRB) is the sole government agency which tabulates crime data at National and State level. NCRB started computing data for cases registered under the POCSO Act only from the 2014 onwards and the data of POCSO cases retrieved from NCRB in Assam, Haryana and Delhi does not match with the data procured from the E-courts portal. Table 2.1. reflects the year-wise and State-wise no. of cases registered under POCSO Act, while Table 2.2 sums up the data as retrieved from the NCRB portal.

Table 2.2				
State-Wise and Year-Wise No. of Cases Registered under POCSO Act/Child Rape (S. 376)				
[As per NCRB]				
Year of Registration	Assam	Delhi	Haryana	Total
2012*	156	415	276	847
2013*	230	757	388	1375
2014	311	109	3	423

2015	731	86	440	1257
2016	821	1620	1020	3461
2017	1149	1623	1139	3911
2018**	1733	1842	1933	5508
2019**	1782	1722	2085	5589
31 March 2020	NA	NA	NA	NA
Total	6913	8174	7284	22371
<i>*For the Year 2012 and 2013; the corresponding data for Child Rape (Cases registered u/S. 376 IPC) have been considered for primarily two reasons: a) POCSO Act came into effect from November, 2012 and b) NCRB has not tabulated data for cases registered under POCSO for 2012 and 2013</i>				
<i>**For Year 2018 and 2019; incidences of "Murder with Rape/POCSO" and POCSO have been taken into account</i>				

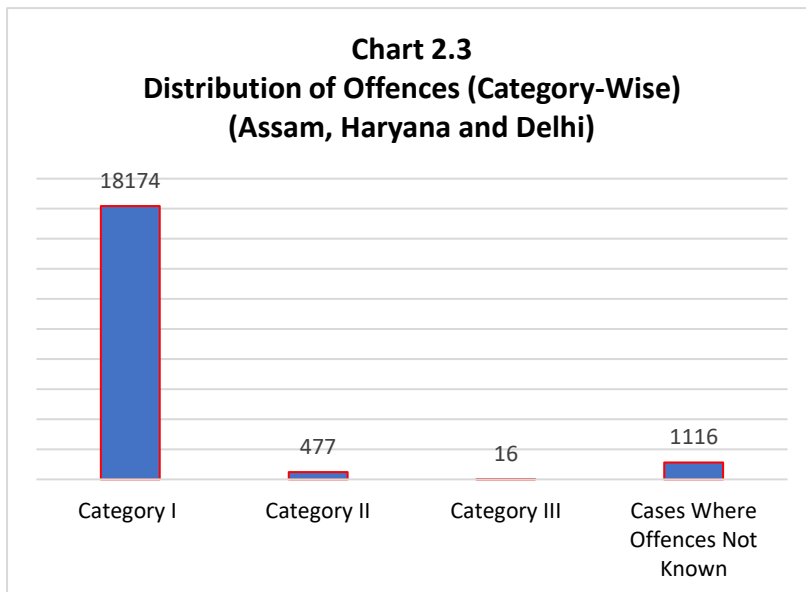
The abovementioned Table 2.1 and Table 2.2 highlight the stark differences between the cases registered under the POCSO Act at two different portals. While, one of the major reasons for such stark differences in the number of POCSO cases for the year 2012 and 2013 may be due to method of computation of data for child rape by NCRB, which must have included data for other IPC crimes as well under the Crimes Against Children category. But as we move ahead to following years, especially for the year 2017, 2018 and 2019 (when NCRB has also started maintaining POCSO cases data exclusively), the significant difference of cases registered cannot be justified and needs further probe.

NATURE OF OFFENCES REGISTERED UNDER POCSO ACT

For the purpose of analysis, all offences under the POCSO Act have been divided into three categories. Category I contains all the sexual offences and their combinations, Category II includes cases of abetment and attempt with respect to any of the sexual offences under Category I and Category III includes three offences relating to failure to report an offence under the POCSO Act, false reporting and disclosure of identity of the victims in any form of media. The list is as follows:

Table 2.3		
Categories of Offences		
Category I		
Section 3 and 4	Penetrative Sexual Assault	PSA
Section 5 and 6	Aggravated Penetrative Sexual Assault	APSA
Section 7 and 8	Sexual Assault	SA
Section 9 and 10	Aggravated Sexual Assault	ASA
Section 11 and 12	Sexual Harassment	SH
Section 13 and 14	Use of Children for Pornographic Purposes	CP

Section 15	Storage of Child Pornography	Storage of CP
Category II		
Section 16 and 17	Abetment of any offence under the POCSO Act	
Section 18	Attempt to commit any offence under the POCSO Act	
Category III		
Section 20 and 21	Failure to report an offence under the POCSO Act	
Section 22	False complaint	
Section 23	Disclosure of identity of the child by or through any form of media	



Out of the total 19783 cases registered under POCSO Act in Assam, Haryana and Delhi, 18174 cases (91.87 per cent) cases have been registered under category I offences followed by Category II offences and the least number of cases were registered under Category III offences. There were 1116 cases where the details of POCSO offences were not given on the e-Courts portal.

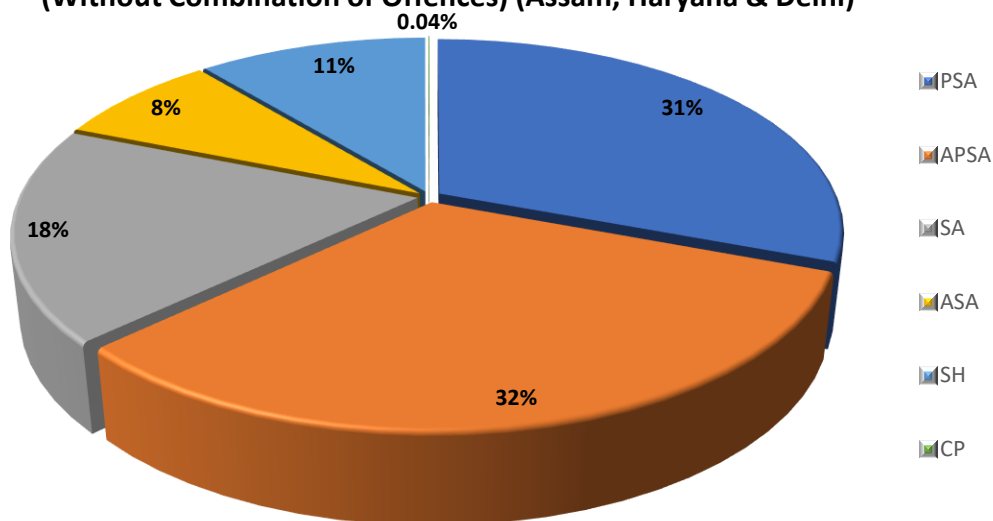
CATEGORY I OFFENCES

A closer look at the break-up of offences registered under Category I reveals that the maximum number of cases (32.18 per cent) were registered for the Aggravated Penetrative Sexual Offence (Section 6) followed by Penetrative Sexual Offence (30.62 per cent).

Table 2.4 Offence-wise Distribution of Cases Registered (Category I) [Assam, Haryana & Delhi]	
Nature of Offence	Total No. of Cases
PSA	5565
APSA	5849

SA	3289
ASA	1432
SH	1986
CP	8
PSA + CP	13
PSA + Storage of CP	2
APSA + CP	9
APSA + Storage of CP	4
APSA + CP + Storage of CP	1
SA + CP	6
ASA + CP	3
SH + CP	6
SH + CP + Storage of CP	1
Total	18174

Chart 2.4
Principle Offence Distribution under Category I Offences
(Without Combination of Offences) (Assam, Haryana & Delhi)



While the distribution of principle offences in two states of Assam and Haryana and Union Territory of Delhi pose a concerning picture of sexual offences committed against children, the situation of the same at national level is no different. As per the data submitted by the Registrar of Supreme Court of India in the case of **In Re: Alarming Rise In The Number Of Reported Child Rape Incidents**¹, almost 32 per cent cases were registered under the Penetrative Sexual Assault upon children (Section 4 of POCSO Act) followed by Aggravated Penetrative Sexual Offence (24%).

¹ Suo Motu Writ Petition (Crl.) No(s).1/2019

Table 2.5 Distribution of Offences (All India)	
Nature of Offence	Total No. of cases (%)
PSA	32.1
APSA	24
SA	31
ASA	3
SH	8
CP	1
Source: Order dt. 13.11.2019; Suo Motu Writ Petition (Crl.) No(s). 1/2019	

The different datasets at National or State level suggest that the cases of child sexual abuse are increasing every year, which further poses cause of concern and highlights the question of child protection at larger level. The Protection of Children from Sexual Offences Act (POCSO) came into effect in 2012 which was a welcome move by the Government as the legislation brought a range of sexual offences under its purview and also defined sexual offences gender neutral. Also, the punishment for offences were made stringent. But, even after eight years after the enactment of POCSO Act, its implementation at ground level raises several concerns.

In terms of any effective preventive strategy to curb child sexual abuse, the preventive structures mentioned under the Integrated Child Protection Scheme (ICPS) looked promising when the scheme was launched in year 2009. After, more than a decade, child protection committees at village level are still far away from the reality. In fact, child protection issues are one of the least prioritised subjects when it comes to financial resource allocations. Over the years, child protection has remained constantly underfunded with an average share of 0.06 per cent of the total Union Budget. Even the budget for the flagship Integrated Child Protection Scheme (ICPS) remained unchanged in the financial year 2020-2021.

At this juncture, it is also important to highlight that the Government has failed to devise any community-based intervention to address the increasing number of the child sexual abuse cases. On the contrary, whenever a gruesome incident of child sexual abuse receives media and public outcry, more and more stringent changes in legislation has been suggested. The recent Criminal Law Amendment Act, 2018 and amendments in the POCSO Act in 2019 are the most recent and classic example of skewed law-making, whereby death penalty has been introduced for the offence of child rape. Such move, despite being regressive in nature on numerous human rights violations counts, was based on no research and was completely populous in nature. Despite these tragic amendments, the investments needed to strengthen

the existing system, devising a large-scale preventive mechanism and to fill the gaps in response mechanism which work towards addressing Child Sexual Abuse.

CATEGORY II OFFENCES

For the purpose of this study and as per categorisation of offences, Category II offences mostly comprise of the following:

- Abetment of an offence and the punishment for the same [Section 16 & 17 POCSO]
- Attempt to commit an offence [Section 18 POCSO]
- Combinations of abetment of an offence and attempt to commit an offence

During the study period, a total of 477 cases and their details were extracted from e-Courts portal across the State of Assam and Haryana and Union Territory of Delhi.

Table 2.6 Offence-wise Distribution of Cases Registered (Category II) [Assam, Haryana & Delhi]	
Nature of Offence	Total No. of Cases
Abetment of PSA	7
Abetment of APSA	169
Abetment of SA	23
Abetment of ASA	10
Abetment of SH	8
Abetment of CP	75
Attempt to PSA	41
Attempt to APSA	71
Attempt to SA	37
Attempt to ASA	17
Attempt to SH	8
Abetment of PSA + CP	1
Abetment of APSA + CP	1
Abetment to SH + CP	1
Abetment of SA + Storage of CP	1
Abetment of PSA + CP + Storage of CP	1
Abetment of PSA + Attempt to PSA	1
Abetment of APSA + Attempt to APSA	4
Abetment of SA + Attempt to SA	1
Total	477

The data extracted and as reflected in the Table 2.6 reveal that almost 35.42 per cent cases were registered under the abetment to commit aggravated penetrative sexual offences. If

one looks at the year-wise registration of cases under the different offence-head, there is a gradual increase over the years in the cases getting registered under Abetment to commit APSA. This can also be attributed to increase in understanding of the provisions of the POCSO Act.

In last few years, online child safety has been one of the real concerns and the same can also be reflected in the data captured in Table 2.6. After “Abetment to APSA”, the most number of cases were registered for “Abetment to use of children for pornographic purposes”.

CATEGORY III OFFENCES

Under Category III, there were only 16 cases registered during 2012 to March, 2020. Although, there are very less number of cases registered under Category III offences, but these offences like *Failure to Report* and *False Reporting* hold a greater importance, especially in the context of “Mandatory Reporting”

Table 2.7 Offence-wise Distribution of Cases Registered (Category III) [Assam, Haryana & Delhi]	
Nature of Offence	Total No. of Cases
Failure to report	9
False reporting	6
Disclosure of Identity	1
Total	16

provision under the POCSO Act. In other words, instances have been observed where mother has been booked for not reporting the incident of abuse of her own daughter or son. It becomes even more difficult in cases where the perpetrator is known or relative. As per the Crime in India Report, 2019, almost 94.2 per cent offenders who committed offences under Section 4 and Section 6 of POCSO were known to the victims. In Assam, in 88 per cent cases, children knew their perpetrators and in Haryana the same share was 95.3 per cent. In Delhi, in 96.3 per cent cases registered for penetrative and aggravated penetrative sexual assault, abusers knew their victims.² In the backdrop of such landscape of victim-accused relationship, it will always be a difficult task for any mother or relative to report the cases. The problem only increases when the provisions like death penalty is introduced for sexual offences. The Government has never invested into creating such systems which could provide a better alternative to the victims and their families so that they find a sense of strength, solidarity and support while reporting the cases of sexual abuse.

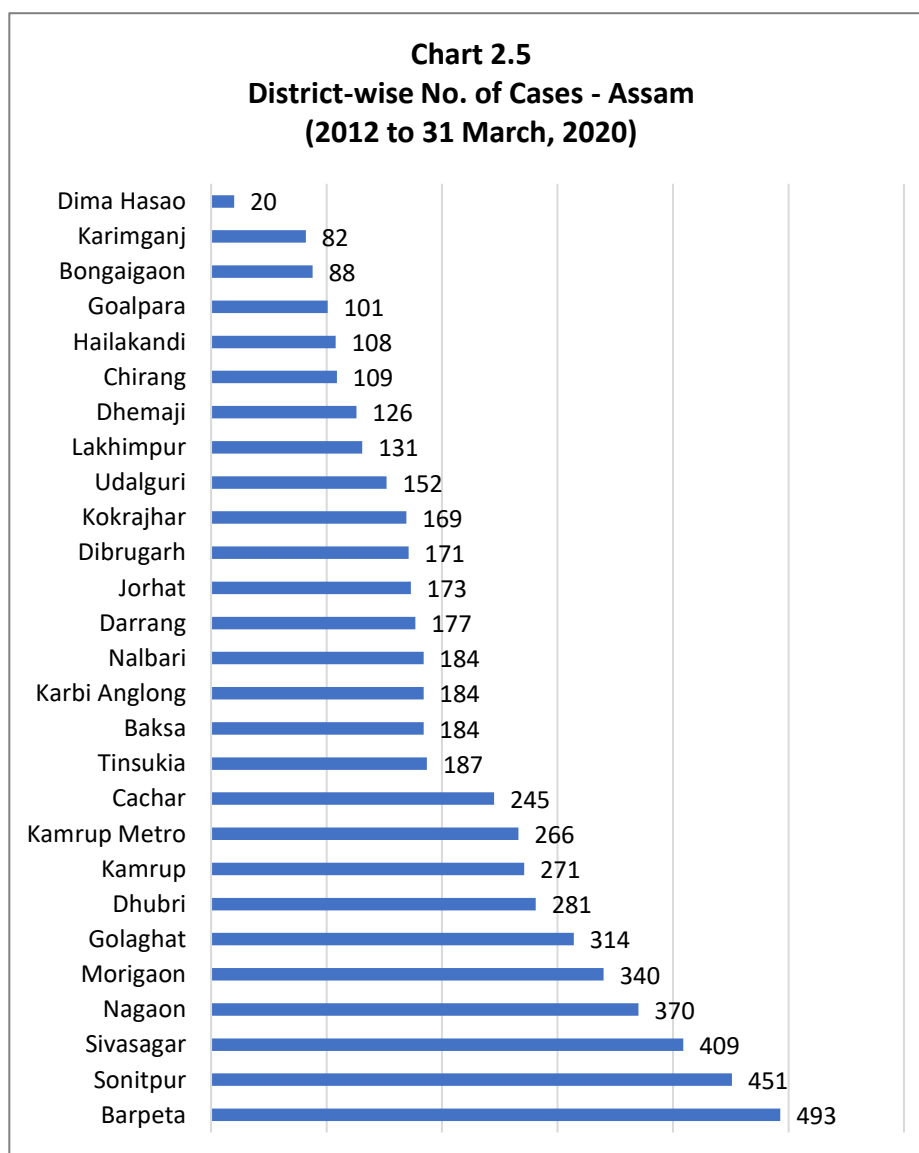
ASSAM

The State of Assam recorded a total of 5786 cases of child sexual abuse during the study period with the highest number of cases getting registered in 2019. As per the Crime In India

² Crime In India, 2019; Table 4A.10; <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>

Report, there has been an almost 37 per cent increase in Crimes Against Children in Assam between 2017 to 2019, whereas the sexual offences against children increased by almost 55 per cent during the same time period.³

Within Assam, Barpeta has observed the highest number of cases registered under POCSO Act, followed by Sonitpur. Out of 27 districts of Assam for which the data was extracted, 5 districts; namely Morigaon, Nagaon, Sivasagar, Sonitpur and Barpeta alone constitute almost 36 per cent of the total offences registered under POCSO Act across the State during 2012 to 31 March 2020.



On the other hand, Dima Hasao has observed the least number of POCSO cases over the years. During the study period and for the purpose of this study, Dima Hasao observed a mere 20 cases registered under POCSO Act. The five districts which stay at the bottom with the least number of cases, when clubbed together, contribute only 7 per cent of the total cases

³ Crime in India 2017, 2018 and 2019

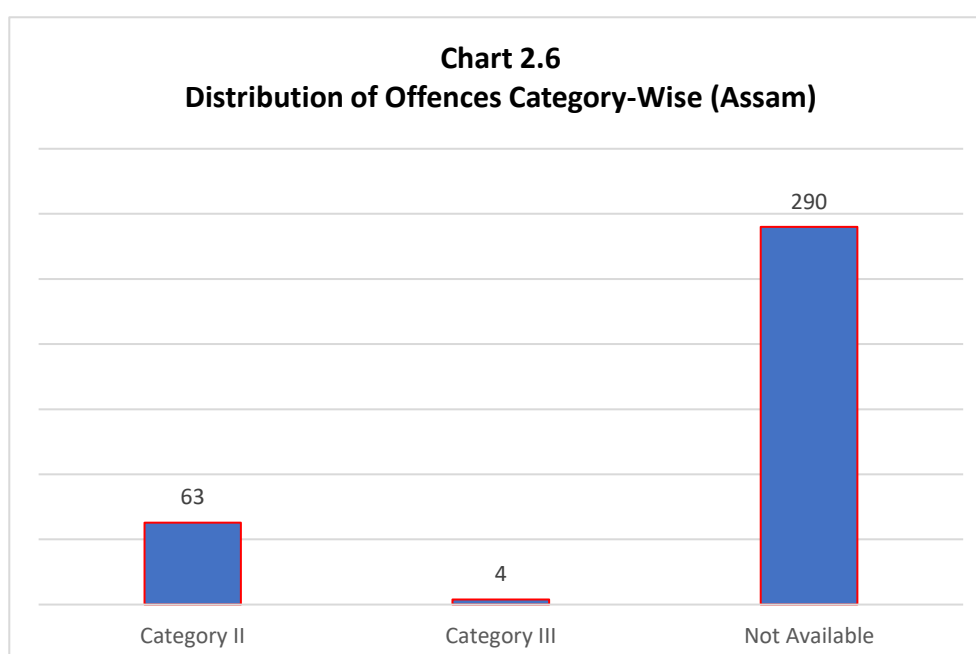
registered under the POCSO Act. The districts with lowest number of cases are: Dima Hasao, Karimganj, Bongaigaon, Goalpara and Hailakandi.

A closer look at the mapping of cases of child sexual abuse within the districts with highest number of cases would require to look at the police stations receiving the maximum number of cases of violations. For example, Barpeta constitutes of 11 police stations, but Barpeta Police Station has received the maximum of 136 cases of child sexual abuse over the years. Similarly, Table 2.8 details out the share of Police Stations receiving the maximum number of cases for districts reflecting the highest number of POCSO cases.

District	Police Station	No. of Cases
Morigaon	Mikirbgheta	70
Nagaon	Rupahihat	57
Sivasagar	Sonari	50
Sonitpur	Tezpur	29
Barpeta	Barpeta	136

NATURE OF OFFENCES REGISTERED IN ASSAM: A CLOSER LOOK

As mentioned in earlier section, for the purpose of this study, a total of 5786 cases registered under the POCSO Act in Assam have been extracted from E-courts portal. As per the classification of offences, a total of 5429 cases fall under Category I offences i.e. offences registered under Section 4/6/8/10/12/14/15 of POCSO Act. A significant 290 cases are such where the details of offences were not available on the E-courts portal.

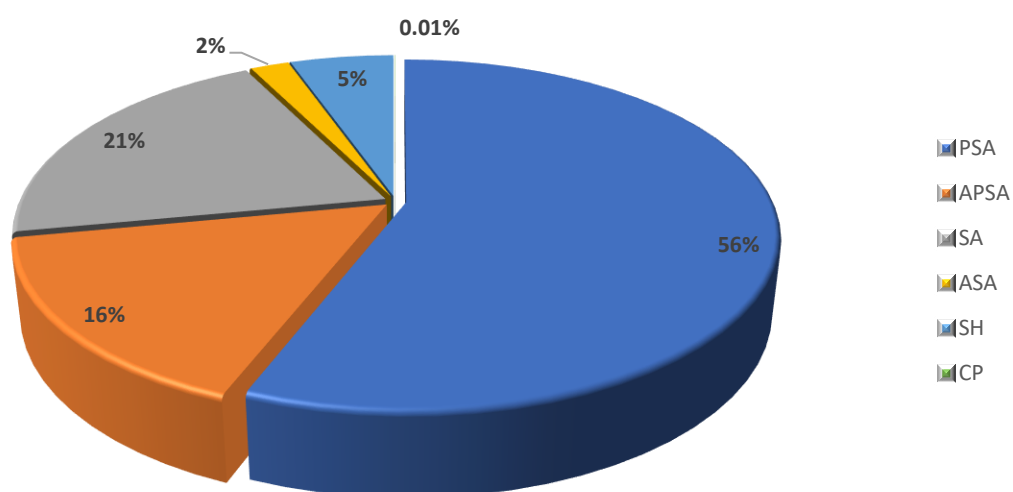


CATEGORY I OFFENCES

Further, under category I offences, maximum number of cases (55.88 per cent) were registered for the offence of Penetrative Sexual Assault (Section 4), followed by 20.51 per cent cases of Sexual Assault (Section 8) and almost 16 per cent cases were registered under the Aggravated Penetrative Sexual Assault (Section 6).

Table 2.9 Offence-wise Distribution of Cases Registered (Category I) (ASSAM)	
Nature of Offence	Total No. of Cases
PSA	3034
APSA	868
SA	1114
ASA	109
SH	293
CP	1
PSA + CP	4
PSA + Storage of CP	2
APSA + CP	1
SA + CP	3
Total	5429

Chart 2.7
Principle Offence Distribution under Category I Offences
(Without Combination of Offences) (Assam)



A closer look at the Category I offences in Assam reveal a bit different trend against the overall trend of all two States and UT Delhi for the same. In other words, Aggravated Penetrative Sexual was one of the major contributors in Category I offences at combined level, whereas at State level, Penetrative Sexual Assault (Section 4) cases were registered more as compared to the incidents of aggravated penetrative sexual assault (Section 6).

The crimes against children, especially sexual offences against children have been on rise in the State of Assam. In this context, the role of State government to introduce adequate measures to curb child sexual abuse must be a priority, but child protection has seldom become a part of political priority in any of the elections. Apart from poor implementation of POCSO Act, the Govt. of Assam does not have any specific scheme to address the increasing numbers of CSA cases in the State. On a positive note, in November 2019, the Govt. of Assam launched a new mobile App called “Sishu Suraksha” to lodge complaints of child rights violations and to take adequate action.⁴ Any user can report any cases of child rights violation, including cases of child sexual abuse through this application.

CATEGORY II OFFENCES

Assam, during the study period, recorded only 63 cases under POCSO Act which fell under Category II i.e. offences related to abetment or attempt to commit certain offences.

Table 2.10 Offence-wise Distribution of Cases Registered (Category II) [Assam]	
Nature of Offence	Total No. of Cases
Abetment of APSA	8
Abetment of SA	3
Abetment of SH	2
Abetment of CP	15
Attempt to PSA	13
Attempt to APSA	5
Attempt to SA	11
Attempt to ASA	1
Attempt to SH	4
Abetment of SA + Storage of CP	1
Total	63

⁴ Assam child protection body will launch app on 14 November to fight child trafficking; November 13, 2019; <https://theprint.in/india/assam-child-protection-body-will-launch-app-on-14-november-fight-child-trafficking/320613/>

CATEGORY III OFFENCES

Table 2.11 Offence-wise Distribution of Cases Registered (Category III) [Assam]	
Nature of Offence	Total No. of Cases
False reporting	3
Disclosure of Identity	1
Total	4

There were only 4 cases registered under Category III offences, of which 3 cases were reported for False Reporting (Section 22). There have been no cases registered for “Failure to Report” during the study period. It will be a worthwhile exercise to understand the dynamics of

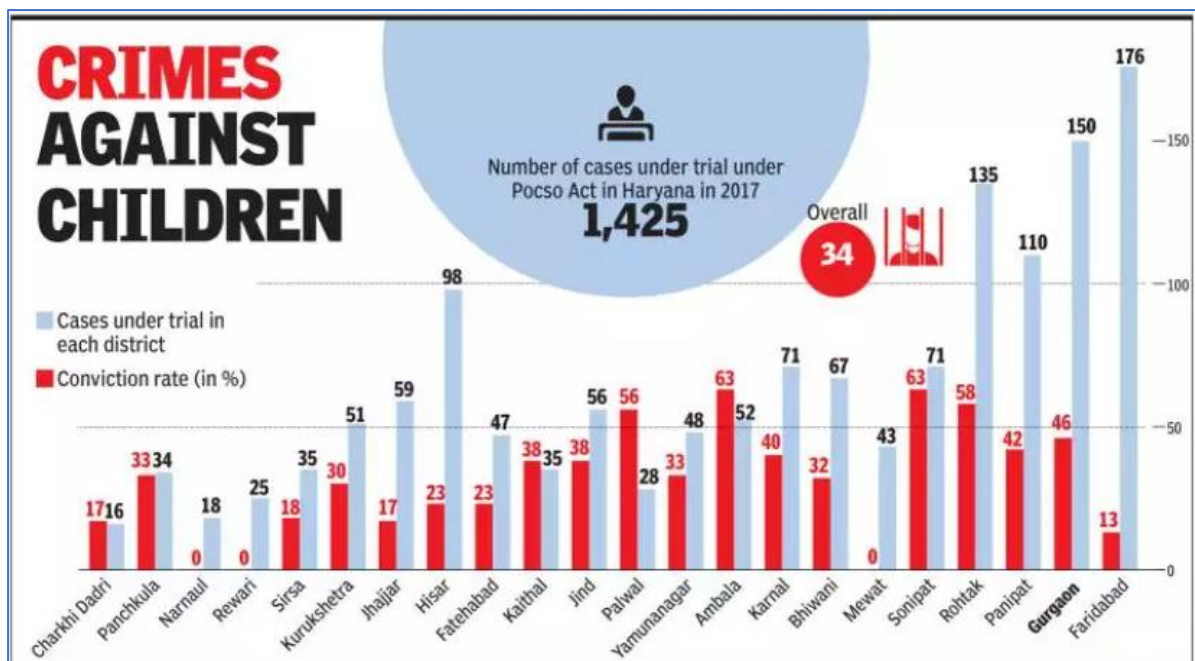
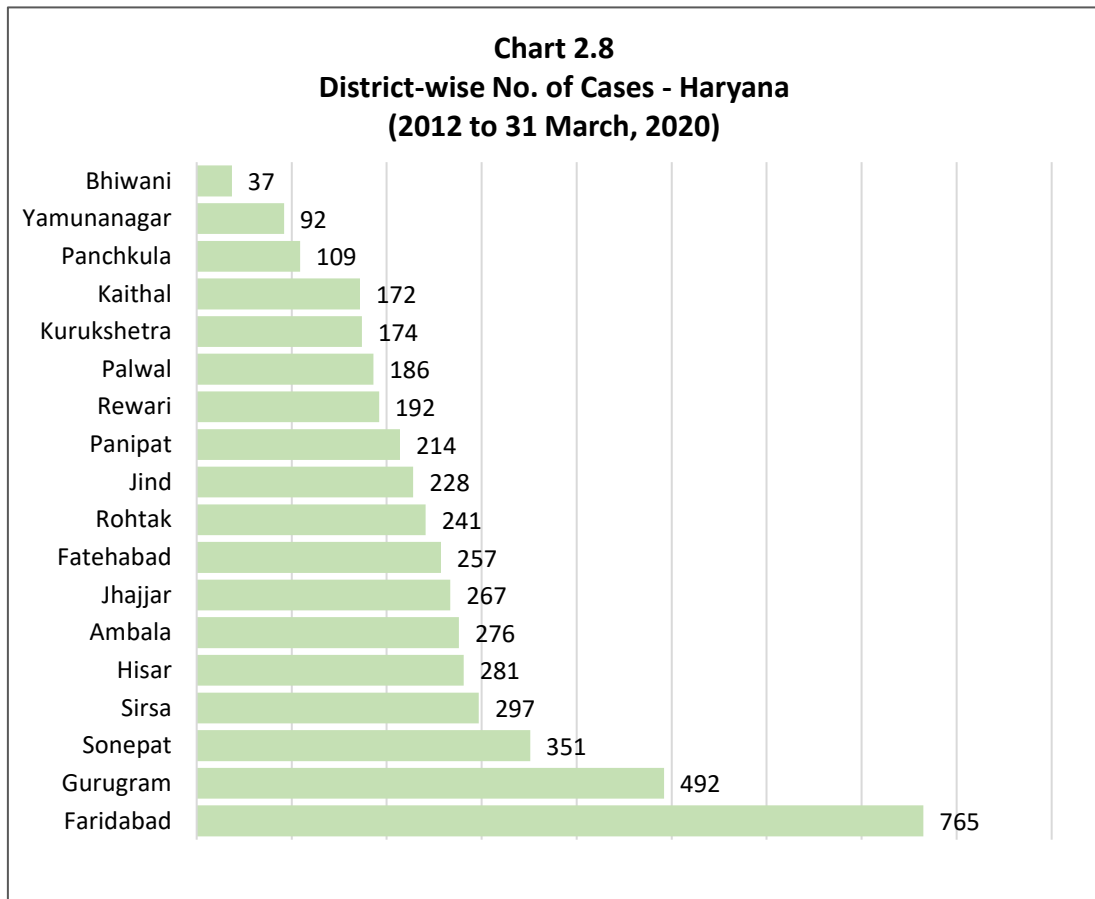
reporting of sexual offences against children in the social and local context of Assam. There has been a clear need to have an appropriate reporting mechanism in place apart from the regular law enforcement agencies. That is another reason for the launch of “Sishu Suraksha” mobile application to enable swift reporting of any of the child rights violation cases. With the use of technology and by sensitising the authorities and communities on the issue of child rights violation and child protection, children can definitely be protected in a better way.

HARYANA

In the current analysis, a total of 4631 cases under POCSO have been taken into consideration during 2012 to 31 March, 2020. While Haryana has been presented and promoted as a successful state to have benefitted from ‘Beti Bachao Beti Padhao’ scheme, the rising number of sexual offences against children is also another reality which calls for urgent attention from all the stakeholders.

As per the analysis, Faridabad has recorded the maximum (16 per cent) number of cases in the State followed by Gurugram with 492 cases. A newspaper report analysis for the period of April 1 to December 2017 revealed that Faridabad, Panipat and Gurugram are the top three districts with the maximum number of cases under POCSO Act.⁵

⁵ “Haryana Report Card: Faridabad, Gurugram, Panipat lead in child sexual abuse”; Jan 26, 2018; <https://timesofindia.indiatimes.com/city/gurgaon/haryana-report-card-faridabad-gurgaon-panipat-lead-in-child-sexual-abuse/articleshow/62531389.cms>



- Source - "Haryana Report Card: Faridabad, Gurugram, Panipat lead in child sexual abuse"; Jan 26, 2018;
<https://timesofindia.indiatimes.com/city/gurgaon/haryana-report-card-faridabad-gurgaon-panipat-lead-in-child-sexual-abuse/articleshow/62531389.cms>

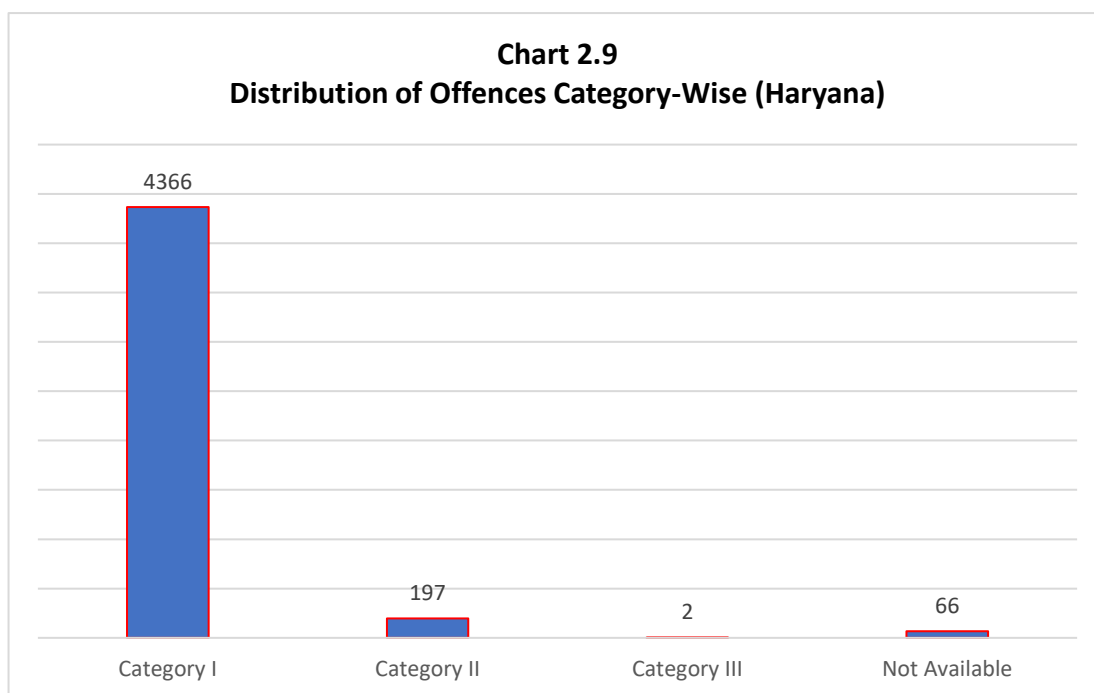
As per the data extracted from the E-courts portal, Hisar, Sirsa, Sonapat, Gurugram and Faridabad are the top five districts with maximum number of cases and altogether constituting 47.20 per cent of the total POCSO cases in Haryana.

Table 2.12		
Police Station-Wise Share of Cases for Top 5 Districts with Maximum Cases (Haryana)		
District	Police Station	No. of Cases
Hisar	Hisar Sadar	43
Sirsa	Sirsa Women	55
Sonapat	Gannaur	50
Gurugram	Women Police Station Manesar	39
Faridabad	Women Police Station Old Faridabad	163

A careful analysis of available data can enable to map out the crime patterns at police station level and as a result some preventive measures can be put into place. As shown in Table 2.12, Faridabad, which also has the highest number of POCSO cases, the Old Faridabad Police Station records the maximum number of cases. Similarly, Manesar Police Station under the jurisdiction of Gurugram, has observed most number of POCSO cases within Gurgaon. Such data can be helpful in designing any prevention strategy in the specific jurisdiction in order to curb the menace of child sexual abuse.

NATURE OF OFFENCES REGISTERED IN HARYANA: A CLOSER LOOK

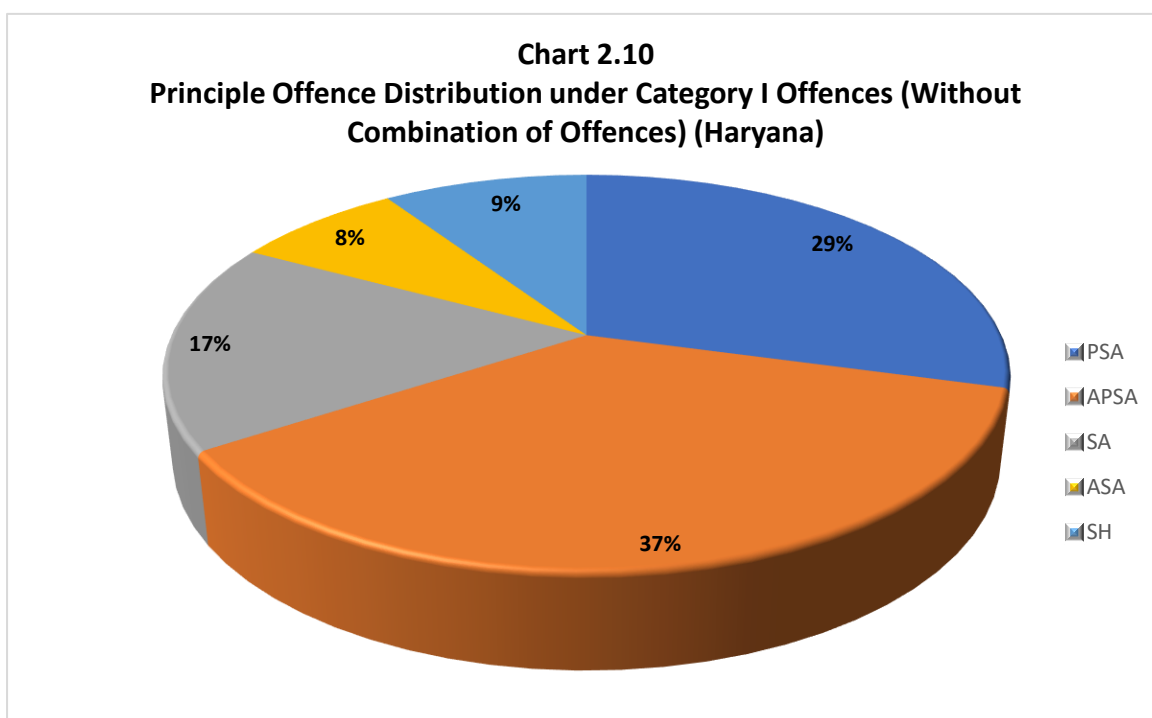
As per the classification of offences for the purpose of this study, there were 66 such cases whose details were not available, which means the E-courts portal mentioned only that these many cases are of POCSO, but the POCSO offence was not mentioned. Only two cases fall under Category III with the specific offence of False Reporting, punishable under Section 21 of POCSO Act.



CATEGORY I OFFENCES

Under Category I offences, Haryana has recorded maximum number of cases under Aggravated Penetrative Sexual Assault (36.42 per cent) followed by Penetrative Sexual Assault (29.13 per cent). During the study period, Haryana recorded no cases of use of children for child pornographic purposes (Section 15) solely. However, there have been cases where Section 15 have been used along with either Section 4 or Section 6 cases. The table below (Table 2.13) below lists down cases where cases have been registered under various provisions of POCSO Act.

Table 2.13 Offence-wise Distribution of Cases Registered (Category I) (Haryana)	
Nature of Offence	Total No. of Cases
PSA	1272
APSA	1590
SA	743
ASA	337
SH	409
PSA + CP	6
APSA + CP	4
APSA + Storage of CP	1
APSA + CP + Storage of CP	1
SA + CP	1
ASA + CP	1
SH + CP + Storage of CP	1
Total	4366



Haryana has always been one of the lowest performing states when it comes to providing gender oriented social security. A strong patriarchal social and family structure intrigued with caste and religious complexities, have also been one of the reasons for gender-based violence. Children, in this case, have always been marginalised and been on periphery in terms of receiving adequate child protection services. The rising numbers of Aggravated Penetrative Sexual Assault cases are one of the serious concerns and it is high time that the government must start investing into creating protection bodies right from the beginning of the governance structure. The idea of village level child protection committees must be actualised on the ground and the role of the government in this process is of utmost significance.

Category II Offence

Under category II offences, the highest share (52.40 per cent) of offences belong to abetment of aggravated penetrative sexual offences followed by 23.35 per cent cases of attempt to commit aggravated penetrative sexual assault. The year-wise break-up of these offences reveal that use of abetment and attempt to commit POCSO offences started to come into use only from 2015-2016 onwards which is indicative of the fact that the implementation of POCSO provisions, other than the use of main offence provisions, came much after the enactment of POCSO Act.

Table 2.14 Offence-wise Distribution of Cases Registered (Category II) (Haryana)	
Nature of Offence	Total No. of Cases
Abetment of PSA	1
Abetment of APSA	52

Abetment of SA	12
Abetment of ASA	1
Abetment of SH	4
Abetment of CP	27
Attempt to PSA	21
Attempt to APSA	46
Attempt to SA	20
Attempt to ASA	8
Abetment of PSA + CP	1
Abetment of APSA + CP	1
Abetment of PSA + Attempt to PSA	1
Abetment of APSA + Attempt to APSA	2
Total	197

DELHI

Delhi is one of the highest contributors in terms of number of cases under POCSO Act registered during 2012 to 31 March 2020. During the study period, a total of 9366 cases of child sexual abuse from Delhi have been extracted from E-courts portal. Out of 11 districts in Delhi, West Delhi has recorded the maximum number of POCSO cases (17 per cent) followed by North-West Delhi (12.17 per cent). The top five districts having the maximum share in the overall case pool are Central, South West, North, North West and West districts with a total of 5878 cases (62.76 per cent)

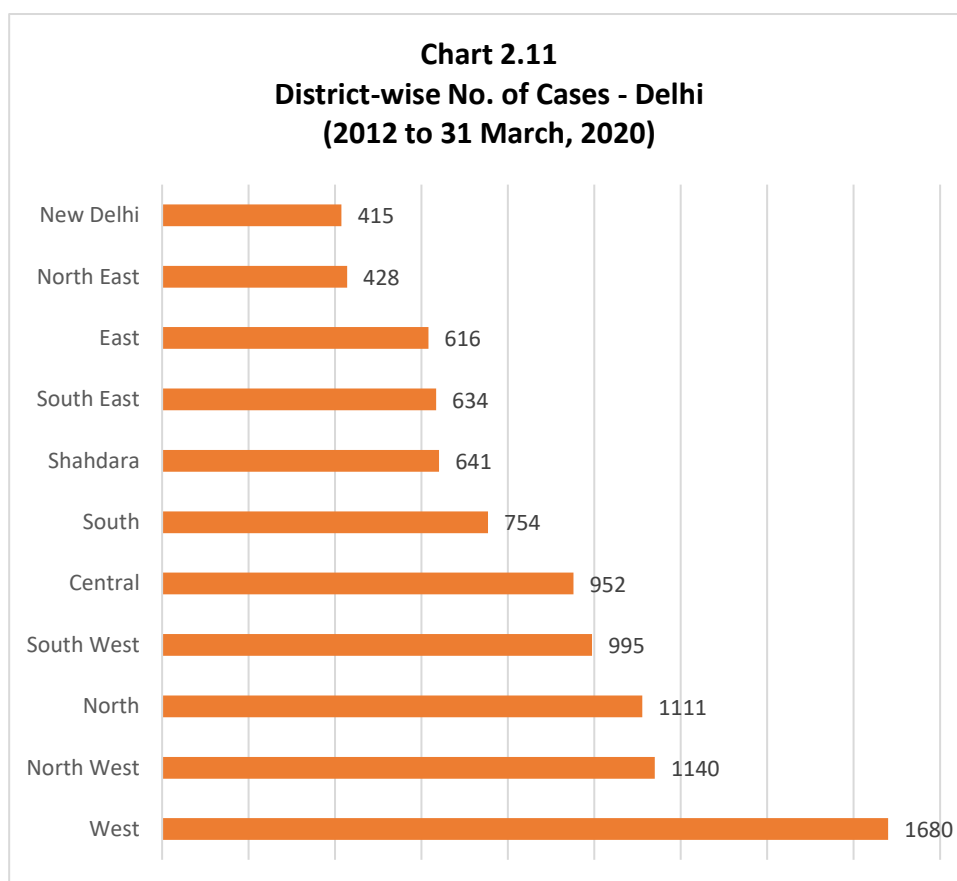
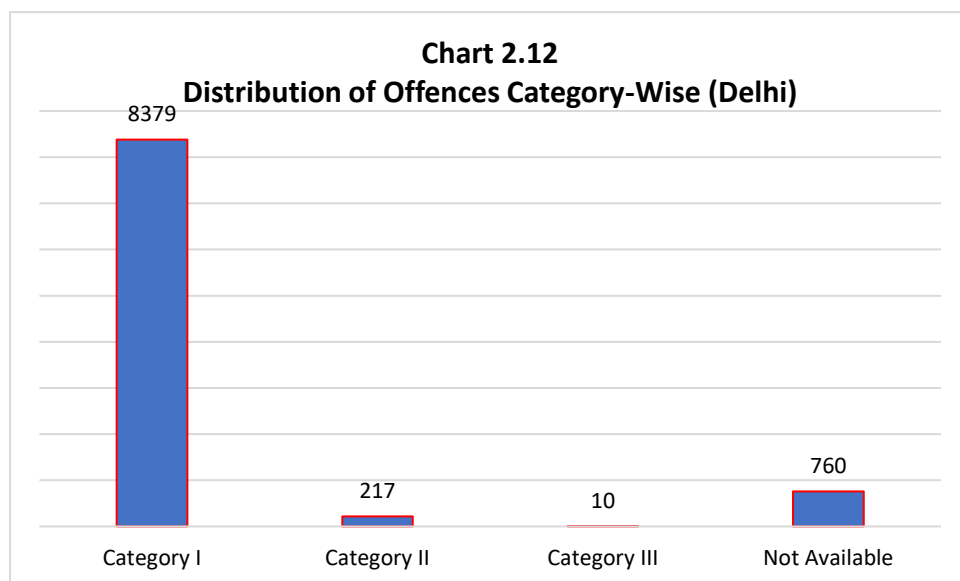


Table 2.15 below provides an insight into the police stations which received the maximum number of POCSO cases in the top five districts having maximum number of cases.

Table 2.15		
Police Station-Wise Share of Cases for Top 5 Districts with Maximum Cases (Delhi)		
District	Police Station	No. of Cases
Central	Burari	91
South West	Binda Pur	158
North	Narela	138
North West	Aman Vihar	202
West	Nihal Vihar	197

NATURE OF OFFENCES REGISTERED IN DELHI: A CLOSER LOOK



While extracting the data of POCSO cases, 760 cases were such where the details of cases are not available at E-courts portal. The E-courts portal for these 760 cases do not give any kind of offence-

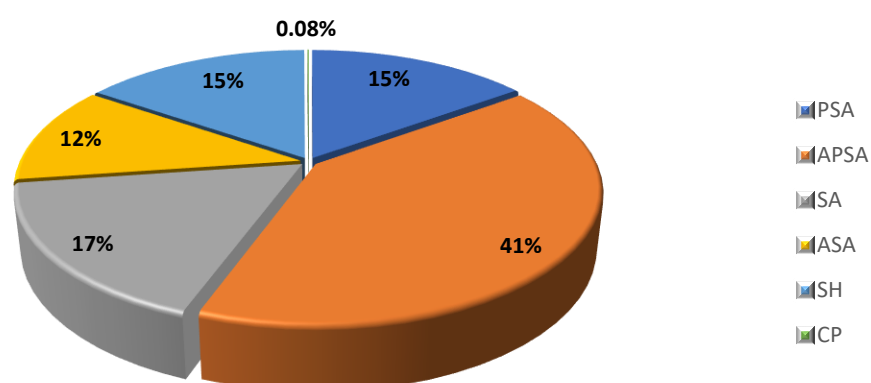
wise details and poses a larger question of data management on a centralised case information system. Out of the total 9366 cases, only 10 cases fall under Category III offences, of which 9 cases were registered for “Failure to Report” (Section 21).

CATEGORY I OFFENCES

The maximum number of cases were registered for Category I offences, out of which, aggravated penetrative sexual assault (Section 6) has the maximum share of 40.47 per cent offences of Section 6. Thereafter, the incidents of sexual assault (Section 8) has had the second highest share (17.09 per cent).

Table 2.16 Offence-wise Distribution of Cases Registered (Category I) [Delhi]	
Nature of Offence	Total No. of Cases
PSA	1259
APSA	3391
SA	1432
ASA	986
SH	1284
CP	7
PSA + CP	3
APSA + CP	4
APSA + Storage of CP	3
SA + CP	2
ASA + CP	2
SH + CP	6
Total	8379

Chart 2.13: Principle Offence Distribution under Category I Offences (Without Combination of Offences) (Delhi)



CATEGORY II OFFENCE

Under Category II offences, half of the offences were registered for Abetment of Aggravated Penetrative Sexual Assault (50.23 per cent) followed by Abetment for use of children for pornographic purposes.

Table 2.17
Offence-wise Distribution of Cases Registered (Category II) [Delhi]

Nature of Offence	Total No. of Cases
Abetment of PSA	6
Abetment of APSA	109
Abetment of SA	8
Abetment of ASA	9
Abetment of SH	2
Abetment of CP	33
Attempt to PSA	7
Attempt to APSA	20
Attempt to SA	6
Attempt to ASA	8
Attempt to SH	4
Abetment to SH + CP	1
Abetment of PSA + CP + Storage of CP	1
Abetment of APSA + Attempt to APSA	2
Abetment of SA + Attempt to SA	1
Total	217

CONCLUSION

The rising number of cases of sexual abuse has been one of the major concerns around child protection in last few decades. The findings from E-court portal and National Crime Records Bureau (NCRB) resonate the magnitude of increasing number of cases of child sexual abuse. The Supreme Court of India has also taken suo motto cognizance of the same and gave directions to all the State Governments to establish dedicated POCSO Courts in all the districts having more than 100 pending cases of child sexual abuse. Although POCSO has undergone amendments recently in 2019, but the implementation of the Act yet remains poor and systems need to be strengthened. An informed policy decision for planning and amendment can bring major changes and help implement the laws and policy on the ground.

CHAPTER III

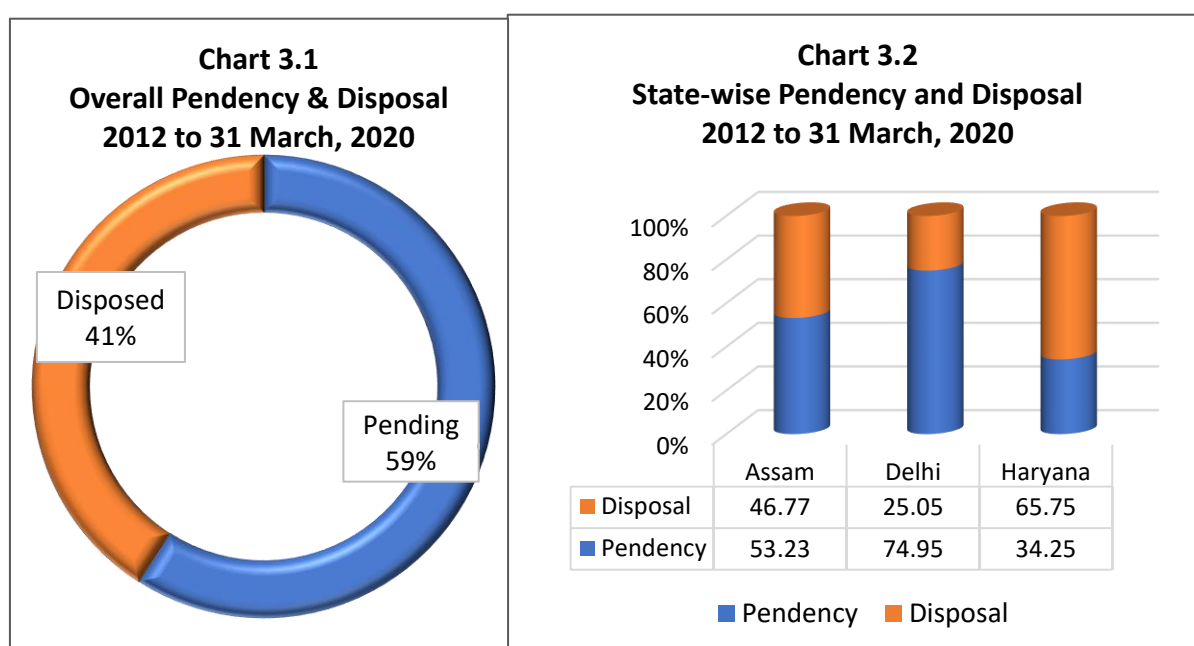
PENDENCY AND DISPOSAL

This chapter provides a broad analysis of number of cases pending and disposed at different levels – overall, state and districts. An attempt is also made to assess the POCSO caseload of trial courts in a given year and understand the patterns, if any, for pendency and disposal of different types of offences.

Data is computed on the basis of number of cases registered in the Sessions Courts dealing with POCSO cases and the date / year of registration of case in the court information system. The time period for data computation and analysis is 2012 up to 31 March, 2020.

BASIC DATA

A total of 19,783 cases were registered in the two States of Assam and Haryana and the Union Territory of Delhi between 2012 and up to 31 March, 2020. Of these, 11,686 or 59 per cent remained pending as on 31 March, 2020 and 8097 or 41 per cent were disposed.



The number of cases registered in courts in the eight years under study is the lowest in Haryana and so is the pendency, with disposal rate being the best among the three states/UT at 65.75 per cent. Delhi on the hand is the worst on all parameters with the lowest rate of disposal at 25.05 per cent as seen in Chart 3.2. Inevitably, the single year caseload in Delhi is far greater than in Assam and Haryana, which is reflected in Table 3.1 that follows.

COURT CASELOAD

Table 3.1 Court Caseload per year (New cases registered in a year + Pending cases from previous year)						Combined share of Assam, Delhi and Haryana in All India Court Caseload (%)
Year	NCRB	E-Courts Portal				
	All India	Overall	Assam	Delhi	Haryana	
2012	NA	2	0	2	0	
2013	NA	353	18	333	2	
2014	8379	1111	187	811	113	13.26
2015	20935	2464	524	1478	462	11.77
2016	101326	4642	1053	2743	846	4.58
2017	93423	7507	1802	4340	1365	8.04
2018	119710	11373	2973	6348	2052	9.50
2019	NA	14486	4035	7865	2586	
2020 (up to 31 March, 2020)	NA	12465	3372	7283	1810	
*Note: NA – Not Available						
** Other related tables are Table 3.10, which provides insights on the year-wise combined caseload of courts for Assam, Delhi and Haryana along with pendency and disposal at the end of each year. Tables 3.10A, 3.10B and 3.10C in Annexure 3.1 give the same information for each state respectively)						

NCRB presents data on All-India court caseload of POCSO cases, pendency and disposal in its Crime in India Publications. An attempt has been made to compare the three sets of data available from the NCRB with the combined court caseload, pendency and disposal data for Assam, Delhi and Haryana from the E-Courts portal for the years 2014 to 2018. The NCRB started compiling data for cases under the POCSO Act 2014 onwards and its Crime in India Reports post 2018 are yet to be published.

The All India court caseload witnessed a huge surge of 384 per cent in the year 2016 (from 20,935 cases for trial in 2015 to 1,01,326 cases for trial in 2016). However, the combined court caseload in Assam, Delhi and Haryana was the lowest in 2016, contributing only 4.58 per cent to the All India court caseload in 2016. This could possibly be due to change in methodology of data computation by the NCRB. Until 2015, cases of child rape were being computed separately by the NCRB in addition to cases under the POCSO Act, which changed 2016 onwards. The sudden fall in the combined share of Assam, Delhi and Haryana in All India court caseload in 2016 requires explanation because the court caseload in the three States/UT otherwise shows an increase in absolute numbers in each year.

Given the court caseload derived from the data retrieved from the E-courts portal, an attempt was made to understand the burden of the courts hearing POCSO cases in Delhi as the number of such courts is readily available for Delhi.

Table 3.2 District-wise Caseload, Pendency and Disposal in Delhi (as on 31 March, 2020)					
Delhi Districts	Caseload	Cases Pending	Cases Disposed	Number of Courts hearing POCSO Cases	Caseload per court
South East	571	545	26	3	190
South	661	630	31	3	220
South West	719	687	32	3	240
North	866	842	24	3	289
Shahdara	582	564	18	2	291
North West	879	860	19	3	293
East	592	574	18	2	296
Central	614	592	22	2	307
North East	355	348	7	1	355
West	1079	1018	61	3	360
New Delhi	365	360	5	1	365
Delhi Total Cases for Trial as on 31 March, 2020	7283	7020	263	26	280
Source: E-Courts Web Portal					

In 2019, the Department of Justice launched its “Scheme on Fast Track Special Courts (FTSCS) for Expeditious Disposal of Cases of Rape and Protection of Children Against Sexual Offences (POCSO) Act.”⁶ The scheme envisages creation of 1023 FTSCs in 30 States and UTs (389 exclusively to handle POCSO Act cases and 634 to deal with either rape cases or both rape and POCSO Act cases, depending on the pendency and requirement). While the scheme will support funds for only 16 courts in Delhi (11 exclusively to handle POCSO Act cases and 5 to deal with either rape cases or both rape and POCSO Act cases), Delhi already has 26 courts conducting trials in POCSO Act cases. While the court caseload varies from district to district, the lowest caseload per court is 190 cases in the South East District as shown in Table 3.2. Clearly, even with the best of intentions, the expected goal of the Scheme to dispose of “41-42 cases in each quarter and at least 165 cases in a year,”⁷ is elusive.

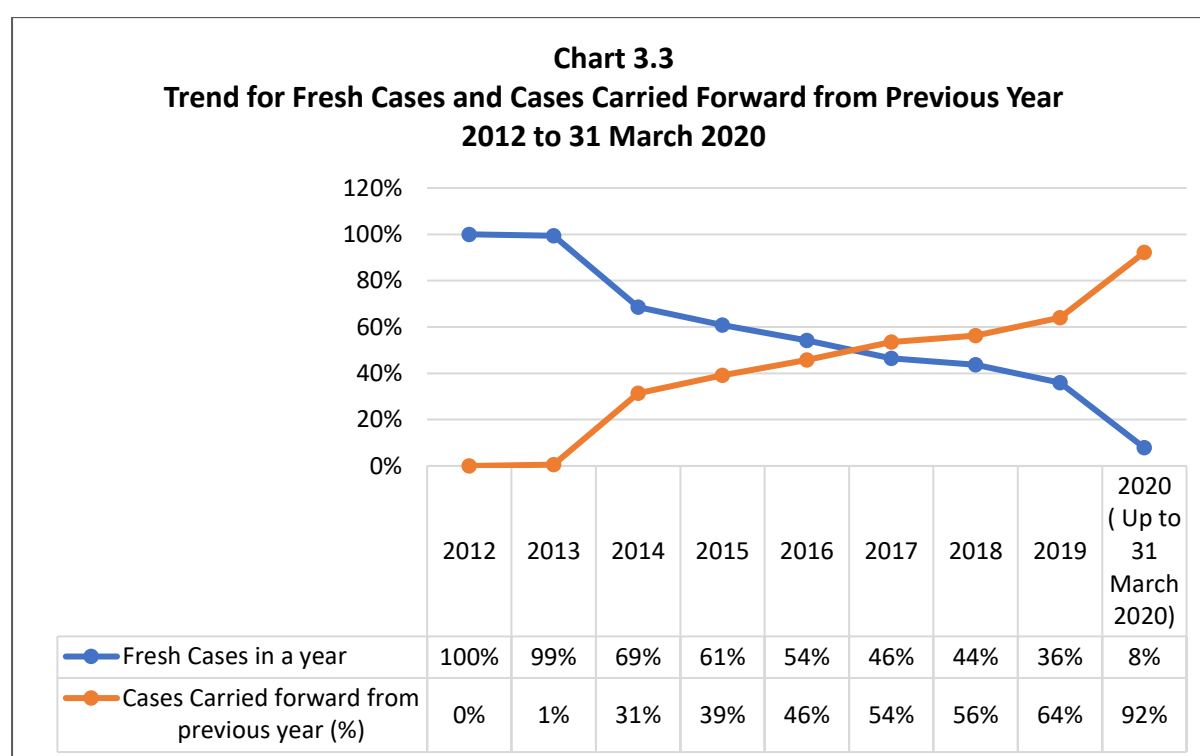
⁶ Department of Justice, Ministry of Law and Justice (2019): *Scheme on Fast Track Special Courts (FTSCS) for Expeditious Disposal of Cases of Rape and Protection of Children Against Sexual Offences (POCSO) Act*, Annexure 2.1. Government of India. Retrieved from https://doj.gov.in/sites/default/files/Fast%20Track%20Special%20Courts%20Scheme%20guidelines%202019_0.pdf

⁷ Ibid.

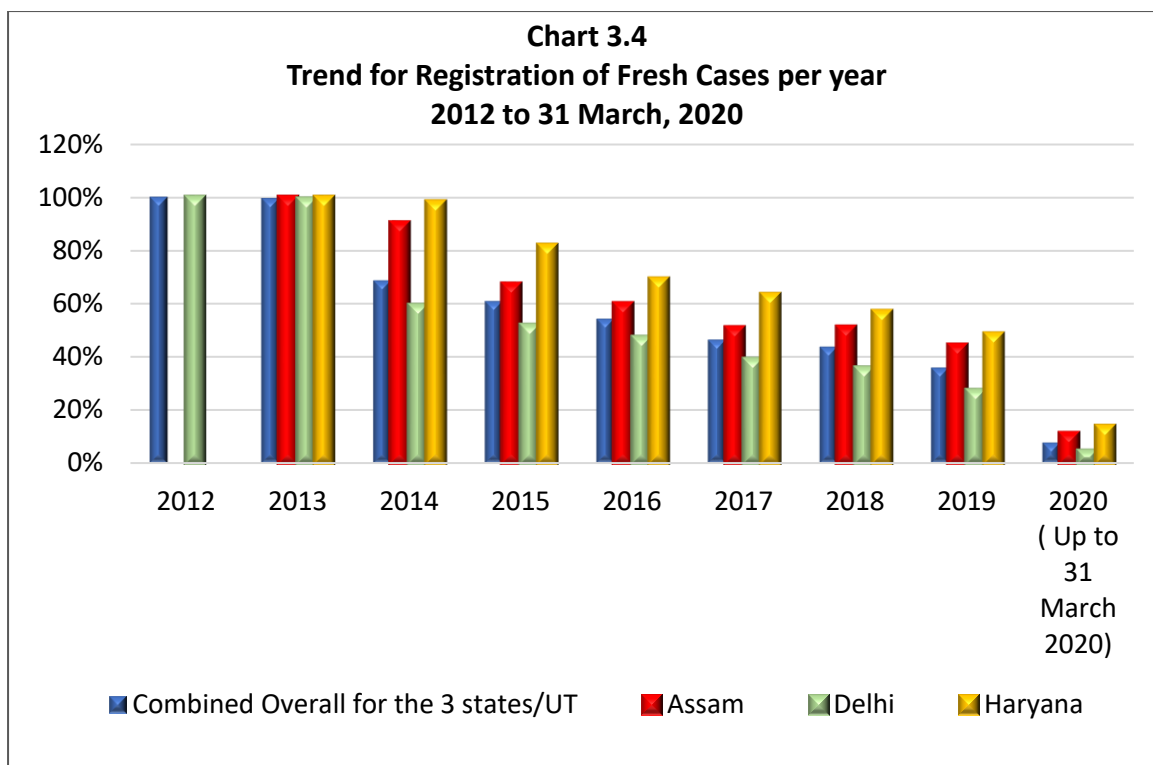
While developing this scheme, the Department of Justice relied on pendency data collected from all Special Courts under POCSO Act through the respective High Courts. However, it appears that a more nuanced assessment is required to understand the court caseload and allow flexibility in the scheme for states and districts with higher caseload. Delhi definitely is a case in point requiring flexibility in the scheme to have more courts and greater funds as reflected through Table 3.2. A similar exercise can be carried out for every State/UT.

At the same time if the E-Courts Portal provides updated data on number of courts dealing with POCSO Act cases and overcomes the challenges in data entry and enumeration, real time data analytics can be made available for needs assessment and evidence-based policy planning.

The next section makes a district-wise assessment of the court caseload in each state/UT as on 31 March, 2020. Before proceeding with any analysis on caseload, it is important to state that over the years the share of fresh cases in the total court caseload has shown a decline. Whether this is a positive trend or not requires further investigation as much would depend on the actual incidence and rate of charge sheeting. Nonetheless, increased pendency being carried forward from the previous year remains a cause for concern.



Even when looked at separately, Assam, Delhi and Haryana show a similar trend, with some variance in between the years.



As is Evident from Chart 3.4, Delhi has shown a greater decline in registration of fresh cases in the courts compared to Assam and Haryana. Tables on police disposal of cases in the Crime in India reports of the NCRB suggest that in Delhi, the chargesheeting rate was 28.8 per cent in 2016, going up to 35.2 per cent in 2018, which is still far lower than Haryana and Assam and this could be a reason for low registration of cases in Delhi courts. It will be important to know at what stage a case is registered in the courts to arrive at a final conclusion. Whether court registration of a case under the POCSO Act happens after the filing of the charge sheet or final report by the police or as soon as an FIR is registered and a copy of the FIR is sent to the Special Courts, is the question to ask. The law requires Special Courts to take suo moto cognizance of cases under the POCSO Act. These courts are meant to have a special status and also have to monitor the police investigation. Therefore, ideally there should be no wait for the police charge sheet for a case under the POCSO Act to be registered in the court information system. However, this requires further probe.

If we look at the actual incidence recorded by the NCRB for the years 2016 to 2018, Delhi has the highest incidence except in the year 2018, when Haryana outnumbered Delhi with 1924 cases as against 1839 in Delhi, while Assam recorded 1721 cases under the POCSO Act. More cases invariably implies more burden on the system and delays in court registration of cases.

DISTRICT-WISE CONTRIBUTION TO THE TOTAL COURT CASELOAD IN EACH STATE/UT

Court caseload is calculated on the basis of fresh cases registered in the courts in a given year and pending cases carried forward from the previous year.

Assam

The six districts in Assam that make up for the top 20 per cent in terms of their contribution to the court caseload in the state are:

Table 3.3 Court Caseload - Top 20 per cent Districts in Assam (as on 31 March, 2020)	
District	Court Caseload
Golaghat	178
Sonitpur	185
Kamrup Metro	219
Barpeta	248
Morigaon	257
Nagaon	266
Total for top 20 per cent districts	1353
Total for State/UT	3372

These six districts contribute 40.12 per cent to the total court caseload in the state. The next 20 per cent districts contribute 27.11 per cent (914 cases) to the total court caseload. Altogether 12 out of the 27 districts in Assam contribute 67.23 per cent to the total court caseload in the state. The bottom 20 per cent districts making up for only 5.13 per cent of the total court caseload in the state are:

Table 3.4 Court Caseload - Bottom 20 per cent Districts in Assam (as on 31 March, 2020)	
District	Court Caseload
Dima Hasao	18
Dibrugarh	25
Dhemaji	38
Chirang	43
Karimganj	49
Total for bottom 20 per cent districts	173
Total for State/UT	3372

Delhi

In Delhi three districts make up for the top 20 per cent districts contributing to the total court caseload in the National Capital Territory, with a share of 38.78 per cent. The next 20 per cent

districts are South and South West districts, with a share of 18.95 per cent. The combined share of these five out of eleven districts in Delhi is 57.72 per cent. Two districts each, falling in the 2nd and 3rd quintile make up for a combined share of 32.39 per cent.

Table 3.5 Court Caseload - Top 20 per cent Districts in Delhi (as on 31 March, 2020)	
District	Court Caseload
North	866
North West	879
West	1079
Total for top 20 per cent districts	2824
Total for State/UT	7283

The bottom 20 per cent districts or the 1st quintile contribute 9.89 per cent to the total court caseload in Delhi. These are:

Table 3.6 Court Caseload - Bottom 20 per cent Districts in Delhi (as on 31 March, 2020)	
District	Court Caseload
North East	355
New Delhi	365
Total for bottom 20 per cent districts	720
Total for State/UT	7283

Haryana

The top 20 per cent districts in Haryana contributing 43.81 per cent to the total court caseload in the state are:

Table 3.7 Court Caseload - Top 20 per cent Districts in Haryana (as on 31 March, 2020)	
District	Court Caseload
Sirsa	114
Palwal	125
Gurugram	249
Faridabad	305
Total for top 20 per cent districts	793
Total for State/UT	1810

Eight districts in the 3rd and the 4th quintile make up for 41.22 per cent of total court caseload in Haryana. These are Hisar, Sonapat, Jind and Ambala in the 4th quintile with a share of 23.76

per cent and Fatehabad, Rohtak, Rewari, Panipat in the 3rd quintile with a share of 17.46 per cent.

In the bottom 20 percent category are three districts, contributing 5.3 per cent to the Haryana court caseload of POCSO Act cases. These are:

Table 3.8 Court Caseload - Bottom 20 per cent Districts in Haryana (as on 31 March, 2020)	
District	Court Caseload
Yamunanagar	7
Bhiwani	37
Jhajjar	52
Total for bottom 20 per cent districts	96
Total for State/UT	1810

The remaining three districts in the 2nd quintile, viz., Kaithal, Panchkula and Kurukshetra, make a contribution of 9.67 per cent to the total court caseload in the state.

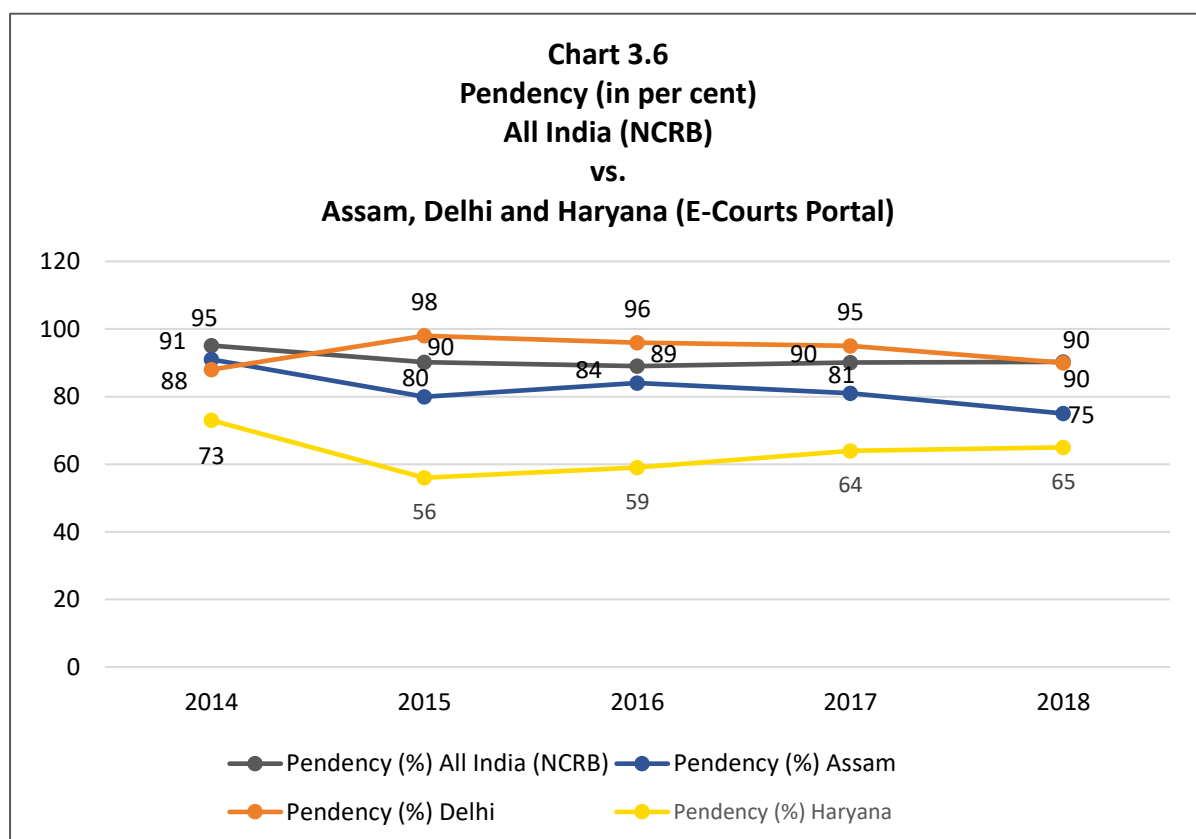
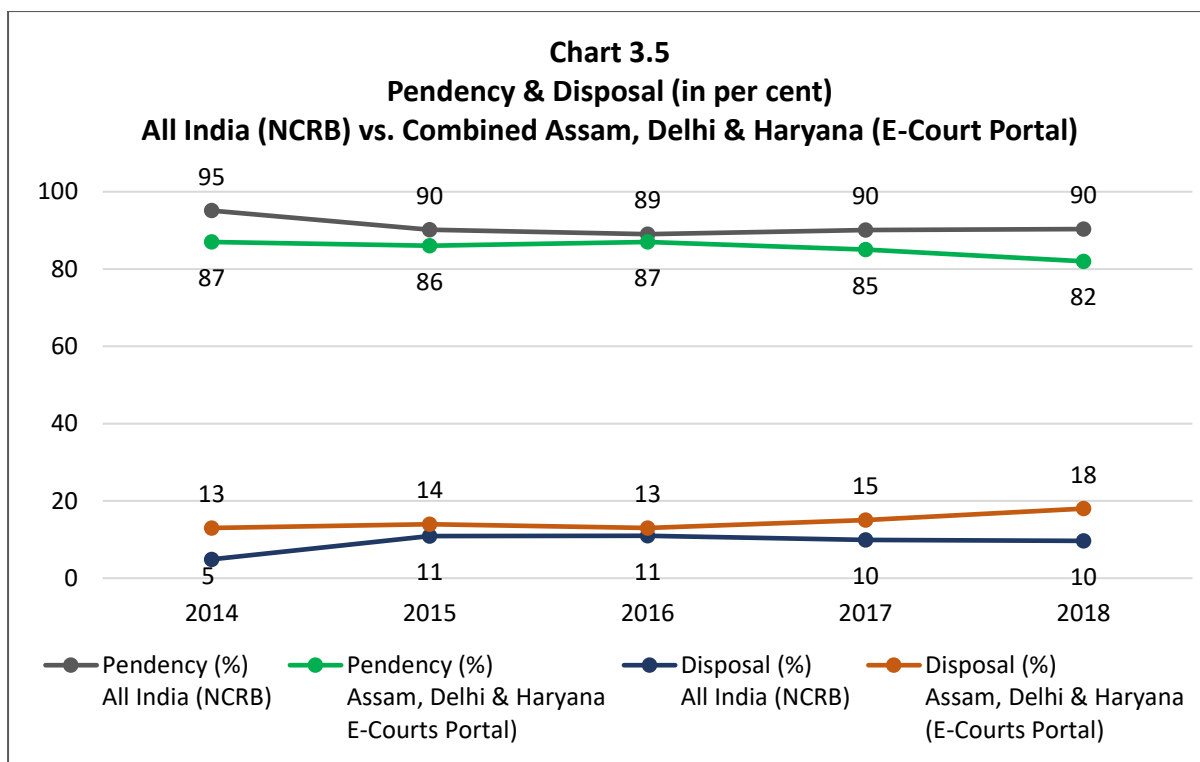
The caseload at the district level must decide the number of courts required in a district and the entire state/UT for trying cases under the POCSO Act and working towards the goal of improved access to justice. In other words, assessment and planning must be carried out at the district level for each district court as a unit. Data on pendency and disposal may also be looked at to make such planning more evidence based and rational.

PENDENCY & DISPOSAL

The NCRB data and E-courts data comparison of pendency and disposal of POCSO Act cases shows that the All India pendency percentage is greater than the combined pendency percentage for Assam, Delhi and Haryana in all the five years (2014 to 2018) for which comparative data is available.

As mentioned earlier, the state of Haryana is responsible for reflecting better data for the combined pendency and disposal in the three states/UT under study.

When looked at separately, Assam and Haryana have lower pendency percentage compared to the All India figures for 2014 to 2018. In Delhi, pendency percentage was lower than the corresponding All India figure in the year 2014, but higher between 2015 and 2017, only to reach the same levels in 2018.



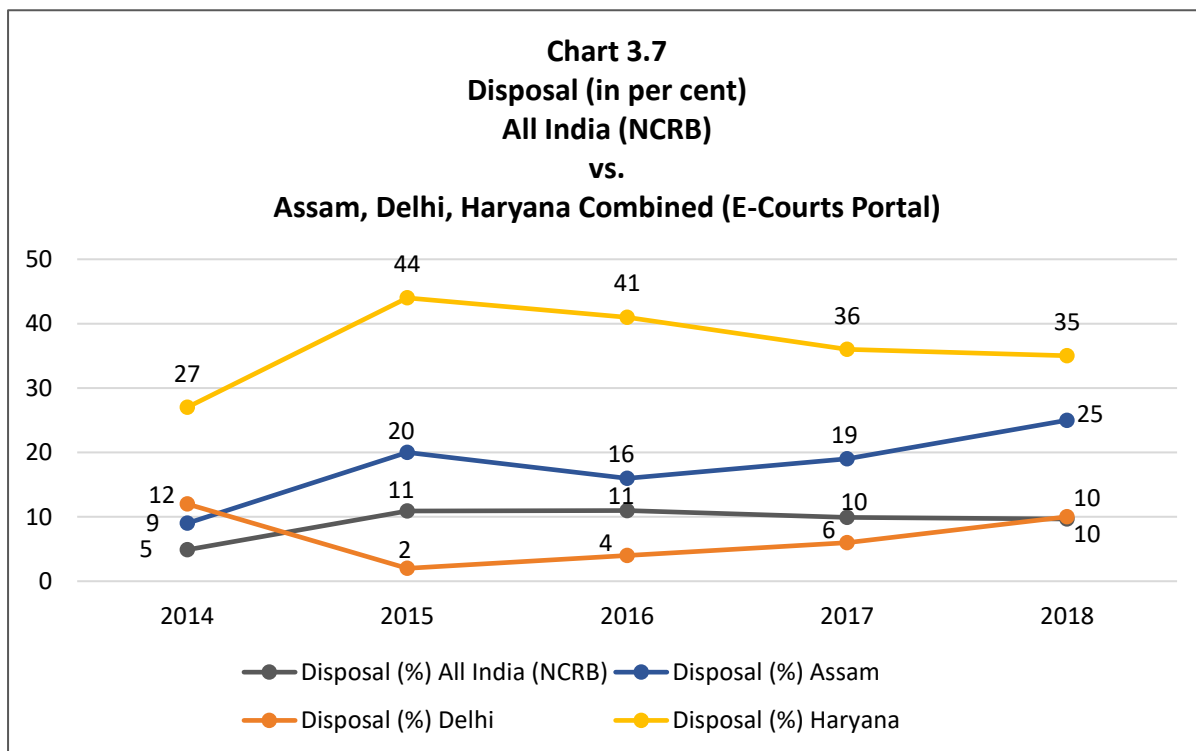
In Re: Alarming Rise in the Number of Reported Child Rape Incidents⁸, the Supreme Court had sought replies from various High Courts on the issue of pendency, number of courts and such other data that could help assess the situation vis-à-vis implementation of the POCSO

⁸ Suo Motu Writ Petition (CrI.) No(s).1/2019

Act. Looking at the high pendency of cases, the Apex Court had asked the central government to support creation of more courts to deal with the pendency. In response, the Department of Justice evolved a Scheme for setting up 1023 Fast Track Special Courts mentioned earlier. Data provided in the scheme document suggests a higher number of cases pending in Assam, Delhi and Haryana compared to the data retrieved from the E-courts portal, once again pointing out to the need for a uniform system of data collection and computation. In addition, it is important that data presented on the E-Courts portal is standardised as different courts enter data differently. In order to avoid data discrepancy, largely caused by the manner in which data entries are made, this report is suggesting certain non-negotiable parameters with drop down menus that can ensure uniformity and standardisation in the manner in which different courts enter data on the E-Courts Portal.

Table 3.9 Pendency as per Different Data Sources and on Different Dates				
Pendency	As on 30.06.2019		As on 31 December, 2019	As on 31 March, 2020
	FTSC Scheme of DoJ	E-Courts Portal	E-Courts Portal	E-Courts Portal
Assam	3201	2586	2991	3080
Delhi	7277	6379	6939	7020
Haryana	2256	1394	1557	1586
Combined Total	12734	10359	11487	11686
*FTSC - Fast Track Special Courts				

Difference in data entries starts with the manner in which the Act and the Sections are mentioned in the portal, making it difficult to assess if a case falls under the POCSO Act at all. Given that for many years in most states/UTs cases under the POCSO Act were being committed to the Sessions Courts by a committal court, each committal case was assigned a different CNR Number. There is every likelihood of double count as the same case would have two different CNR Numbers being dealt with by two different courts at different points of time, both maintaining a track of their cases in terms of pendency and disposal. The other most important problem stems from the fact that there is no clarity as to whether all courts in the country are uploading all cases under the POCSO Act. Some courts are not uploading at all, while some others are uploading without giving complete details and orders so as to protect the privacy and confidentiality of the victims.



The All India rate of disposal between 2014 and 2018 has been quite low, ranging from 5 per cent in 2014 to 11 per cent in 2015 and 2016. Delhi has been worse than that. The year 2015 witnessed a huge drop in the rate of disposal in Delhi, from 12 per cent (in 2014) to 2 per cent (in 2015). Increase in the subsequent years has been minimalistic and it took five years for the rate of disposal in Delhi to get back to the 2014 mark.

While the caseload of courts has increased every year due to pendency carried forward from the previous year and addition of new cases, in the overall analysis, rate of disposal has improved with time. In 2012, of the two cases that were registered in the three States/UT combined, none could be disposed the same year as the law was new and trial takes time. In 2013, only 4 cases were disposed, but 2014 onwards disposal picked up some pace. There is an increase in the combined rate of disposal for Assam, Delhi and Haryana from 13 per cent at the end of 2014 to 21 per cent at the end of 2019 (Of all 14,486 that were up for trial in 2019, 21 per cent stood disposed at the end of the year).

It will not be prudent to assess the situation for the year 2020. The cut-off date for this study was 31 March, 2020, which is too soon to be used for much of the analysis in order to draw any meaningful conclusions. From what seems apparent, pendency will witness a huge rise in 2020 due to a slowdown that has set in since the beginning of the year for various reasons. January has lesser number of working days due to winter break. Court functioning in many parts of the country, particularly Delhi and Assam were affected by the CAA-NRC protests that continued until February-early March 2020, only to be followed by the COVID-19 lockdown in the last week of March 2020.

Table 3.10 Pendency and Disposal at the end of each year (Overall)							
Year of Registration	Total cases Registered each year	Pending cases carried forward from previous year	Court Caseload in a year	No. of cases Pending at year end	No. of cases Disposed at year end	Pendency at the end of each year (%)	Disposal at the end of each year (%)
Col. A	Col. B	Col. C	Col. D = (Col. B + Col. C)	Col. E	Col. F = (Col. D - Col. E)	Col. G = (Col. E / Col. D*100)	Col. H = (Col. F / Col. D*100)
2012	2	0	2	2	0	100%	0%
2013	351	2	353	349	4	99%	1%
2014	762	349	1111	964	147	87%	13%
2015	1500	964	2464	2123	341	86%	14%
2016	2519	2123	4642	4021	621	87%	13%
2017	3486	4021	7507	6398	1109	85%	15%
2018	4975	6398	11373	9276	2097	82%	18%
2019	5210	9276	14486	11487	2999	79%	21%
2020 (Up to 31 March, 2020)	978	11487	12465	11686	779	94%	6%

A state-wise analysis provides details regarding variance in different years in each state/UT, which can be seen in Tables 3.10A, 3.10B and 3.10C in Annexure 3.1.

As on 31 March, 2020, Delhi had a pendency of 96 per cent and the year 2020 is only going to add to the stress due to the COVID-19 pandemic. The pendency to disposal ratio in Assam and Haryana as on 31 March, 2020 was 91:09 and 88:12 respectively. At the end of 2019, the Pendency : Disposal ratio in the states states/UT was 74:26 in Assam, 88:12 in Delhi and 60:40 in Haryana.

A District-wise analysis helps assess how districts are faring and which districts require more attention considering the caseload, pendency percentage and rate of disposal. This analysis is undertaken on the basis of data available for the year 2019, since 2020 data is limited to the first three months, which can be used to assess the districts on court caseload but not on pendency and disposal, which may change over the course of the year.

Even while making an attempt to assess the districts on the three indicators of caseload, pendency percentage and rate of disposal it must be reiterated that the assessment will require further corroboration using more indicators to draw any conclusive findings on the performance of the districts and identify the challenges for a planned intervention. These

indicators could be disposal of cases in terms of nature of offence as well as nature of disposal over a period of time and time taken for disposal, which will be examined in subsequent chapters.

The colour index used for the district-wise assessments is as follows:

	Good
	Better
	Satisfactory
	Bad
	Worst

Assam

Among the top 20 per cent districts in Assam with highest court caseload, Morigaon and Nagaon require utmost attention as all parameters in these districts are adverse. The caseload is high and so is pendency due to poor disposal.

Among the bottom 20 per cent districts in the state, Dima Hasao needs attention as reasons for high pendency and low disposal need to be assessed, given that the district has the lowest court caseload in the entire state. The others to follow are Bongaigaon and Karimganj, also with high pendency and low disposal despite a caseload on the lower side.

Other districts requiring attention are Tinsukia and Kamrup Metro in the 4th quintile, Nalbari in the 3rd quintile and Goalpara in the 2nd quintile.

Districts that seem to be doing better than the rest on all three counts, viz. court caseload, pendency and disposal are Dibrugarh, Chirang, Dhemaji, Lakhimpur and Udalguri.

Chart 3.8 Court Caseload, Pendency and Disposal District Report Card Assam			
Districts	Total Caseload (2019)	Pendency Percentage at the end of 2019	Rate of Disposal at the end of 2019
Dima Hasao	14	86%	14%
Bongaigaon	43	81%	19%
Dibrugarh	45	56%	44%
Karimganj	52	81%	19%
Chirang	60	53%	47%
Dhemaji	68	56%	44%

Hailakandi	78	74%	26%
Goalpara	90	83%	17%
Lakhimpur	90	68%	32%
Udalguri	112	53%	47%
Jorhat	116	71%	29%
Nalbari	135	81%	19%
Kokrajhar	142	73%	27%
Darrang	146	77%	23%
Karbi Anglong	146	72%	28%
Tinsukia	154	81%	19%
Cachar	156	84%	16%
Baksa	167	83%	17%
Dhubri	190	65%	35%
Kamrup	209	73%	27%
Kamrup Metro	215	95%	5%
Sivasagar	219	71%	29%
Golaghat	237	68%	32%
Morigaon	250	91%	9%
Sonitpur	263	63%	37%
Nagaon	285	88%	12%
Barpeta	353	58%	42%

Delhi

In Delhi, pendency percentage is on a very high side staring at 82 per cent in West district, going up to 96 per cent in East district. Although West district falls in the red zone with the highest caseload, management of caseload appears to be better. However, this needs to be corroborated with more evidence as mentioned earlier. It could well be sheer coincidence or the manner in which particular judges conduct trials.

<p>Chart 3.9</p> <p>Court Caseload, Pendency and Disposal</p> <p>District Report Card</p>
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Delhi			
District	Total Caseload (2019)	Pendency Percentage at the end of 2019	Rate of Disposal at the end of 2019
New Delhi	365	95%	5%
North East	401	84%	16%
East	591	96%	4%
South East	591	93%	7%
Shahdara	612	91%	9%
Central	677	86%	14%
South	687	93%	7%
South West	809	86%	14%
North	932	89%	11%
North West	954	85%	15%
West	1246	82%	18%

All the three top 20 percent districts in terms of caseload fare between good and satisfactory performance on pendency percentage and rate of disposal. The rate of disposal in these districts is higher than the All India rate of 10 per cent available for 2018 through the corresponding Crime in India Report of the NCRB.

New Delhi district in the 1st quintile, or the bottom 20 per cent districts with lowest court caseload in the National Capital Territory has very high pendency and low disposal rate, calling for attention. The next to follow this list is East district in the 2nd quintile.

The 4th quintile is also a category of concern as the caseload is on the higher side and South district stands out in this quintile with a significantly high pendency percentage of 93 per cent and a disposal rate of only 7 per cent.

In the 3rd quintile, Shahdara district needs to be assessed further as pendency is on the higher side and disposal is only satisfactory.

Haryana

Of the 18 districts in Haryana, Yamunanagar has the lowest caseload of only 6 cases at the end of 2019. The district is bound to fall off the radar with such low caseload, but the high pendency and low disposal should not be ignored if child justice is the goal to be achieved through the Special Courts created for the implementation of the POCSO Act. In fact, all the three districts in the bottom 20 per cent category in terms of caseload require attention as they account for the worst rates of pendency and disposal in the state.

Chart 3.10 Court Caseload, Pendency and Disposal District Report Card Haryana			
District	Total Caseload (2019)	Pendency Percentage at the end of 2019	Rate of Disposal at the end of 2019
Yamunanagar	6	67%	33%
Bhiwani	19	100%	0%
Kurukshetra	64	86%	14%
Panchkula	77	73%	27%
Rohtak	90	69%	31%
Rewari	97	66%	34%
Kaithal	102	43%	57%
Fatehabad	115	54%	46%
Panipat	121	62%	38%
Jhajjar	125	36%	64%
Palwal	137	77%	23%
Sirsa	138	68%	32%
Sonepat	155	60%	40%
Jind	157	64%	36%
Hisar	162	47%	53%
Ambala	164	62%	38%
Gurugram	348	67%	33%
Faridabad	509	52%	48%

Panchkula in the 2nd quintile also deserves attention given that the caseload is on the lower side and yet the pendency percentage is relatively high and rate of disposal relatively low.

In the 3rd quintile Panipat needs some attention even though all indicators appear satisfactory. The other three districts in this quintile are doing comparatively better on pendency and disposal.

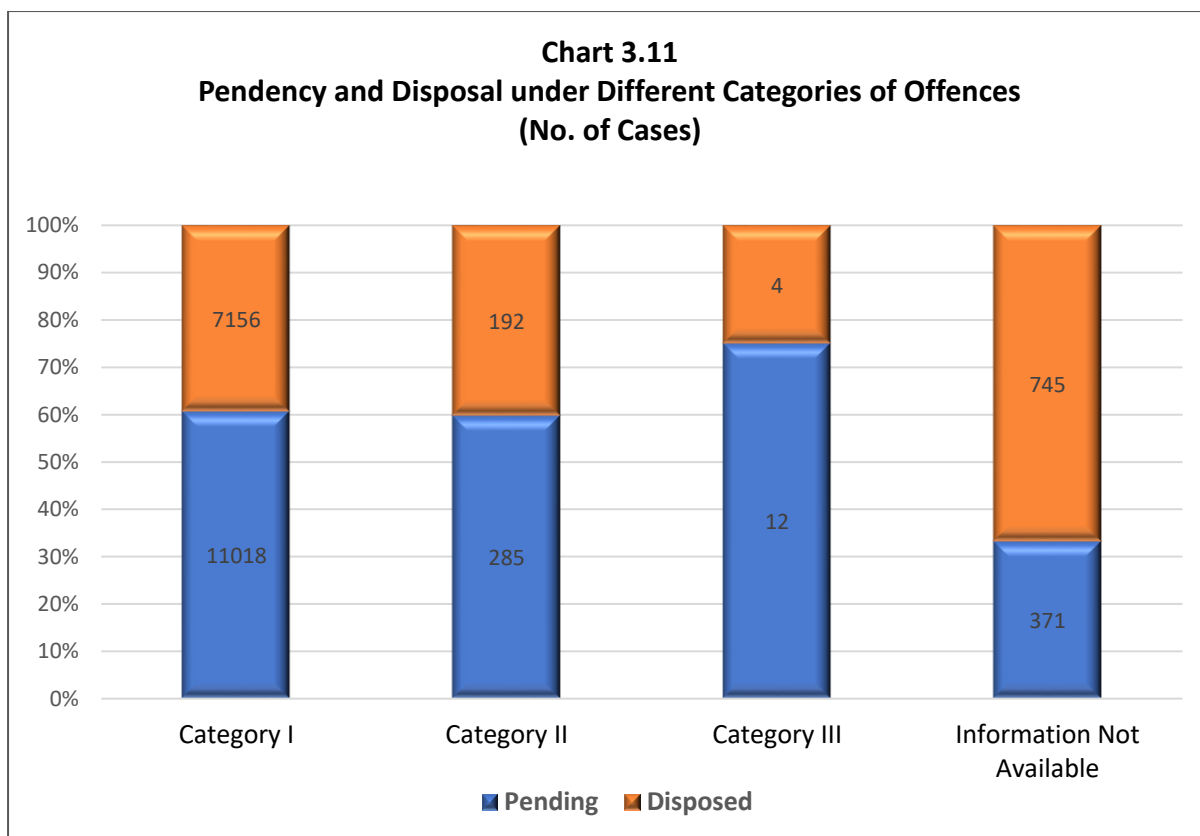
In the 4th quintile, Palwal evidently requires utmost attention. It accounts for the lowest caseload among the four districts in this quintile but has a significantly high pendency percentage and low rate of disposal. Sirsa follows the same pattern.

In the top 20 per cent districts, Gurugram provides sufficient cause for concern. Faridabad has the highest caseload in the state, but pendency percentage and rate of disposal are better than many of the other districts in the state.

PENDENCY & DISPOSAL BY TYPE OF OFFENCE

For the purpose of analysis, all offences under the POCSO Act have been divided into three categories. Category I contains all the sexual offences and their combinations, Category II includes cases of abetment and attempt with respect to any of the sexual offences under Category I and Category III includes three offences relating to failure to report an offence under the POCSO Act, false reporting and disclosure of identity of the victims in any form of media. The list is as follows:

Category I		
Section 3 and 4	Penetrative Sexual Assault	PSA
Section 5 and 6	Aggravated Penetrative Sexual Assault	APSA
Section 7 and 8	Sexual Assault	SA
Section 9 and 10	Aggravated Sexual Assault	ASA
Section 11 and 12	Sexual Harassment	SH
Section 13 and 14	Use of Children for Pornographic Purposes	CP
Section 15	Storage of Child Pornography	Storage of CP
Category II		
Section 16 and 17	Abetment of any offence under the POCSO Act	
Section 18	Attempt to commit any offence under the POCSO Act	
Category III		
Section 20 and 21	Failure to report an offence under the POCSO Act	
Section 22	False complaint	
Section 23	Disclosure of identity of the child by or through any form of media	



18,174 out of 19,783 cases under consideration in this study (91.87 per cent) fall under Category I. Of these, 60.63 per cent (11,018 cases) are pending disposal as on 31 March, 2020.

There are 477 cases of abetment and attempt to commit an offence (Section 17 and 18 of POCSO Act) that fall under Category II. A further division of offences under this category shows that 297 cases (62.26 per cent of the 477 cases in Category II) are cases of abetment of an offence, 174 cases (36.48 per cent) are cases of attempt to commit an offence and 6 cases (1.26 per cent) involve both abetment and attempt to commit an offence. Of all 477 cases in Category II, 59.75 per cent (285 cases) are pending disposal.

Category III consists of only 16 cases, comprising only 0.08 per cent of total cases under study. However, pendency in this category is as high as 75 per cent. Until 2015, no cases were registered in the court information system under any of the offences falling in this category. However, 2016 onwards there is at least one case of failure to report registered every year, including within the first three months of 2020. Fifty-six per cent cases in this category (9 out of 16) are of failure to report (Section 21), 38 per cent (6 out of 16) are of false reporting (Section 22) and 6 per cent cases are of disclosure of victim's identity by media (Section 23).

There are 1116 cases (5.64 per cent of all 19783 cases under study) that cannot be classified under any type of offence due to lack of information on the E-courts portal. However, 33.24 per cent of these (371 cases) are still pending disposal.

On the basis of a closer assessment of pendency by type of assessment that follows, one may conclude that pendency is greater for offences that may qualify as graver in nature, involving

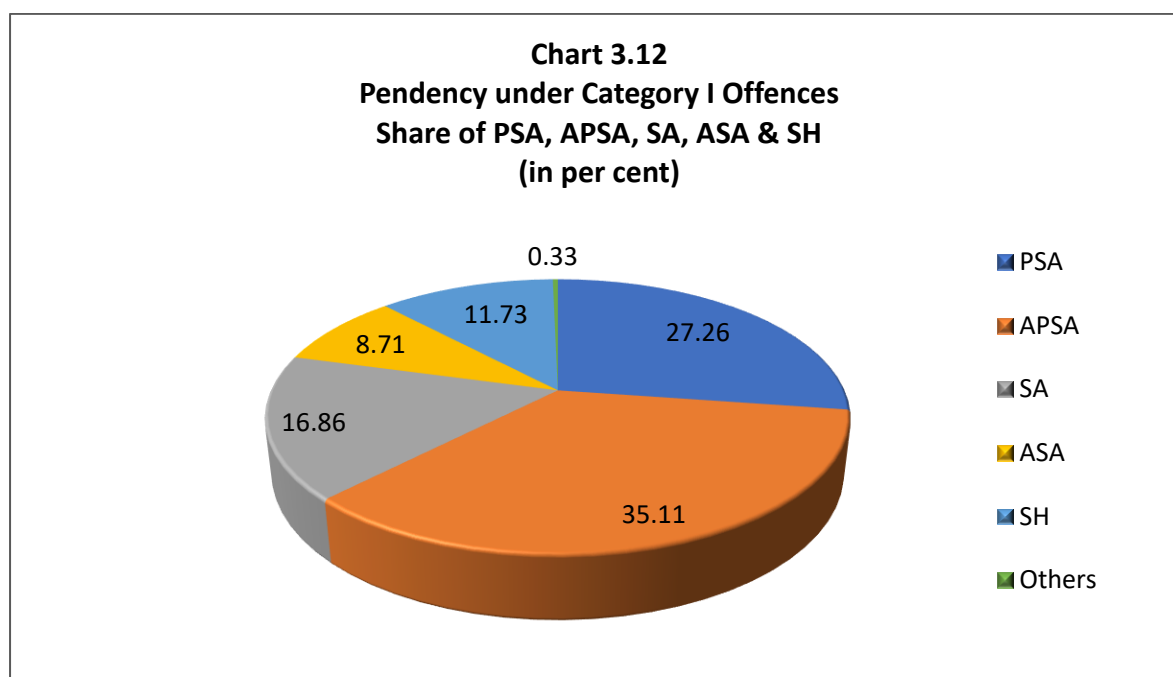
stricter sentences. Delhi, having more cases than Assam and Haryana, also has higher pendency for most offences.

Pendency by Type of Offence

Out of the total 11,686 pending cases between 2012 and 31 March, 2020, information regarding type of offence is not available for 3.17 per cent cases. Maximum number of pending cases, i.e. 94.28 per cent pertain to Category I offences, 2.44 per cent to offences under Category II, and 0.10 per cent pertain to offences under Category III.

Pendency under Category I Offences

Of the 11,018 cases pending disposal under Category I, 99.67 per cent are cases under Sections 4, 6, 8, 10 and 12 of POCSO Act, with cases of aggravated penetrative sexual assault accounting for highest pendency.



A state-wise break-up in Table 3.11 shows that in Delhi and Haryana too aggravated penetrative sexual assault accounts for highest share in pendency under Category I offences, while in Assam it is cases of penetrative sexual assault.

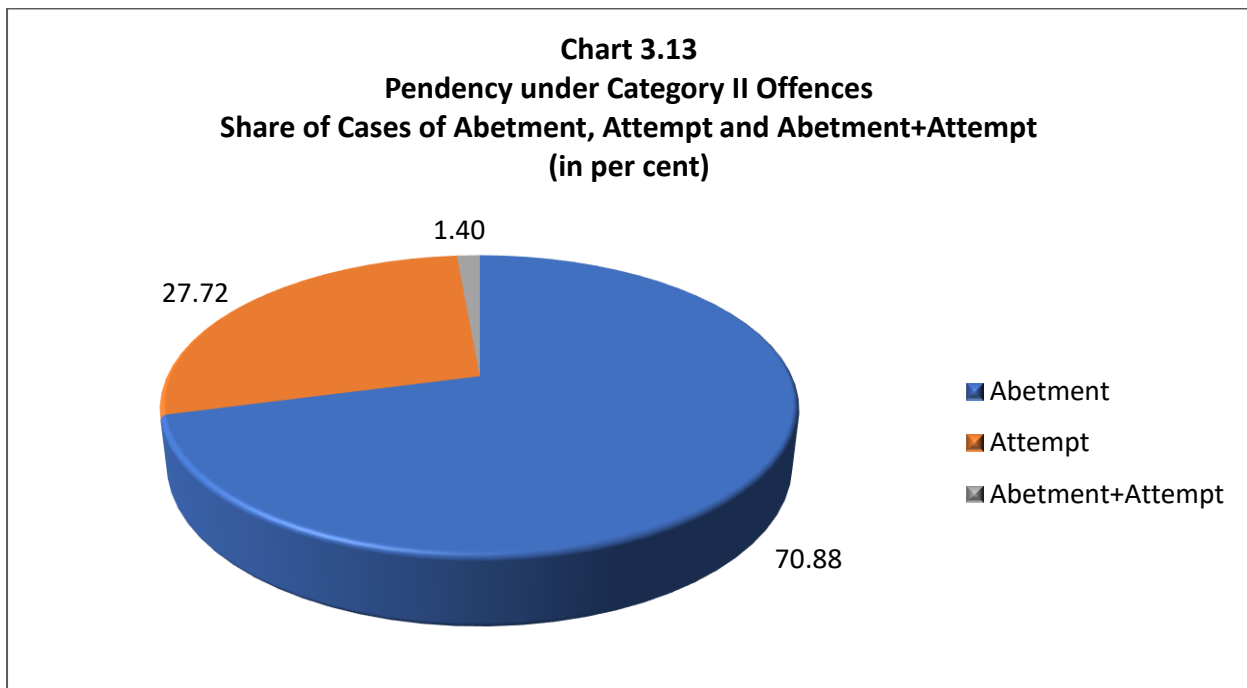
Table 3.11				
Pendency under Category I – Percentage Share of Different Types of Offences				
Offences	3 States/UT Combined	Assam	Delhi	Haryana
PSA	27.26	56.27	14.48	27.58
APSA	35.11	17.18	41.09	43.42
SA	16.86	18.60	16.98	12.95
ASA	8.71	2.24	11.82	7.52
SH	11.73	5.54	15.26	8.05
CP	0.05	0.03	0.08	0.00

PSA + CP	0.05	0.07	0.03	0.13
APSA + CP	0.08	0.03	0.06	0.27
APSA + Storage of CP	0.03	0.00	0.05	0.00
SA + CP	0.04	0.03	0.03	0.07
ASA + CP	0.02	0.00	0.03	0.00
SH + CP	0.05	0.00	0.09	0.00
Total	100.00	100.00	100.00	100.00

For absolute number of pending and disposed cases under Category I, refer to Tables 3.11A, 3.11B, 3.11C, 3.11D in Annexure 3.1.

Pendency under Category II Offences

Of all 285 cases pending under Category II, 70.88 per cent pertain to abetment of an offence under the POCSO Act, 27.72 per cent pertain to attempt of an offence under the POCSO Act and 1.40 per cent cases attract both abetment and attempt provisions.



For absolute number of pending and disposed cases under Category I, refer to Tables 3.12A, 3.12B, 3.12C, 3.12D in Annexure 3.1.

Of the 202 pending cases of abetment of an offence, maximum cases (63.37 per cent) are of abetting aggravated penetrative sexual assault followed by abetment of use of children for pornographic purposes (23.27 per cent). The trend is similar for Delhi and Haryana, while in Assam it's the opposite with pendency percentage for abetment of use of children for pornographic purposes being the highest (50 per cent) followed by abetment of aggravated penetrative sexual assault (35.71 per cent).

Table 3.12 Pendency for Abetment of Different Types of Offences (Percentage Share in Total Pending cases of Abetment)				
Different Types of Cases of Abetment	3 States/UT Combined	Assam	Delhi	Haryana
Abetment of PSA	2.48	0.00	3.62	0.00
Abetment of APSA	63.37	35.71	68.12	58.00
Abetment of SA	3.47	0.00	2.90	6.00
Abetment of ASA	2.97	0.00	4.35	0.00
Abetment of SH	2.48	7.14	1.45	4.00
Abetment of CP	23.27	50.00	18.12	30.00
Abetment of APSA + CP	0.50	0.00	0.00	2.00
Abetment to SH + CP	0.50	0.00	0.72	0.00
Abetment of SA + Storage of CP	0.50	7.14	0.00	0.00
Abetment of PSA + CP + Storage of CP	0.50	0.00	0.72	0.00

Among the 79 pending cases of attempt to commit an offence, attempt to commit aggravated penetrative sexual assault has the highest share (43.04 per cent), followed by attempt to commit sexual assault (20.25 per cent), attempt to commit penetrative sexual assault (17.72 per cent), attempt to commit aggravated sexual assault (11.39 per cent), and attempt to commit sexual harassment (7.59 per cent). In Assam, attempt to commit aggravated penetrative sexual assault and attempt to commit penetrative sexual assault have the highest share in all pending cases of attempt to commit an offence in the state (29.41 per cent each), followed by attempt to commit sexual assault and attempt to commit sexual harassment (17.65 per cent each). In Delhi and Haryana too, cases of attempt to commit aggravated penetrative sexual assault have the highest share in all pending cases of attempt to commit an offence in the respective UT/state (41.38 per cent in Delhi and 51.52 per cent in Haryana), followed by attempt to commit sexual assault (20.69 per cent in Delhi and 21.21 per cent in Haryana). While cases of attempt to commit aggravated sexual assault are next in line of pendency in Delhi (17.24 per cent), in Haryana, the next in line of pendency among cases of attempt to commit an offence are cases of attempt to commit penetrative sexual assault (18.18 per cent).

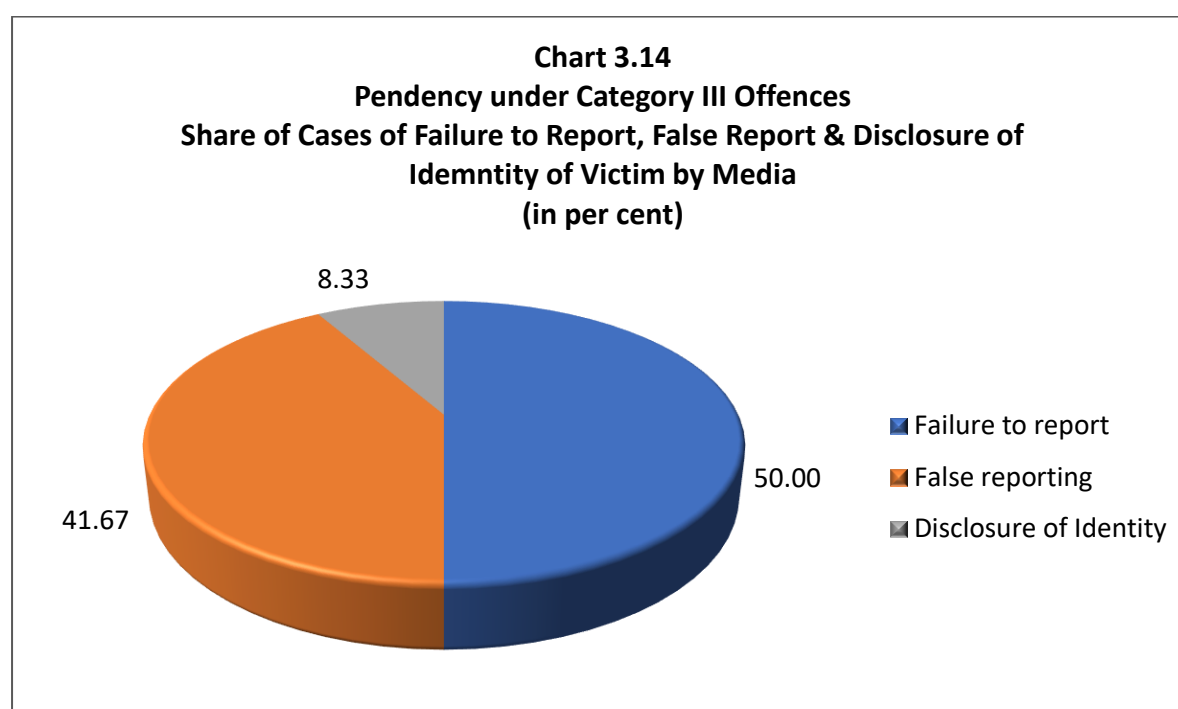
Table 3.13 Pendency for Attempt to Commit Different Types of Offences (Percentage Share in Total Pending cases of Attempt)				
Different Types of Cases of Attempt	3 States/UT Combined	Assam	Delhi	Haryana
Attempt to PSA	17.72	29.41	10.34	18.18
Attempt to APSA	43.04	29.41	41.38	51.52
Attempt to SA	20.25	17.65	20.69	21.21
Attempt to ASA	11.39	5.88	17.24	9.09
Attempt to SH	7.59	17.65	10.34	0.00

Three out of the 4 pending cases of both abetment and attempt relate to abetment of and attempt to commit aggravated penetrative sexual assault (2 from Delhi and one from Haryana) and one is a case of abetment of and attempt to commit penetrative sexual assault, from Haryana.

Table 3.14 Pendency for Abetment and Attempt to Commit Different Types of Offences (Percentage Share in Total Pending cases of Abetment + Attempt)				
Different Types of Cases of Abetment + Attempt	3 States/UT Combined	Assam	Delhi	Haryana
Abetment of PSA + Attempt to PSA	25.00	0.00	0.00	50.00
Abetment of APSA + Attempt to APSA	75.00	0.00	100.00	50.00
Abetment of SA + Attempt to SA	0.00	0.00	0.00	0.00

Pendency under Category III Offences

There are a total of 16 cases in Category III, of which 12 are pending disposal. Out of the 12 pending cases in this category, 6 cases (50 per cent) are of non-reporting or failure to report an offence and all of them are from Delhi. Another 5 cases (41.67 per cent) are of false complaint - 3 from Assam and one each from Delhi and Haryana. There is only one case of disclosure of identity of the child by media, which is from Assam, and has been pending since 2019.



CONCLUSION

Increasing number of cases with high pendency should certainly be a cause for worry. Creation of new courts is often offered as a solution to deal with this. However, detailed analysis shows that the nature of offence too adds to the pendency as courts take longer to dispose offences of serious nature. A significant number of cases that are up for trial are of aggravated penetrative sexual assault, including those of abetment and attempt to commit such an offence, and pendency is also highest for these cases. Delhi is a case in point with highest caseload and pendency despite 27 courts spread over 11 districts. Disposal of cases of aggravated penetrative sexual assault in Delhi is the poorest, though maximum cases that go to trial are of this nature. Absence of critical data on the E-courts portal and in the available judgements makes it difficult to attempt any correlation between the nature of offence, age of victim, proximity between victim and accused and pendency and disposal.

CHAPTER IV

NATURE OF DISPOSAL

A common understanding of disposal of a case revolves around conviction and acquittal. In this chapter, an attempt is made to present and analyse data with respect to many more forms of disposal as retrieved from the E-courts portal. The chapter presents an analysis of nature of disposal in general as well as in terms of the nature of offence. At the same time, attention is paid to the rate of conviction given that an environment that ensures certainty of conviction is a greater deterrent than stricter punishment.

Although the nature of disposal depends on the facts of each case and the courts decide accordingly, not all courts maintain data in similar fashion, leading to confusion and delay in data computation and analysis. Lack of standardisation in the manner in which the courts in Assam, Delhi and Haryana upload disposal data (see Annexure 1.3 in Chapter 1) made it necessary to club the information under a few categories and keep the rest under a general category termed as “other disposal”.

Categories of disposal available in the Crime in India reports of the NCRB were also looked at in order to remove the confusion and bring parity. However, the NCRB too has been inconsistent in its methodology, adding new parameters over the years for data presentation on various aspects, including nature of disposal. For details, see Annexure 4.1 Interestingly, despite addition of different and new forms of disposal in the crimes against children data, the NCRB till date continues to treat only cases that ended in conviction, acquittal or discharge as cases where trial stands completed at the end of the year.

A list of forms of disposal used for analysis of E-courts data in this chapter and those clubbed under the category of “other disposal” is presented below.

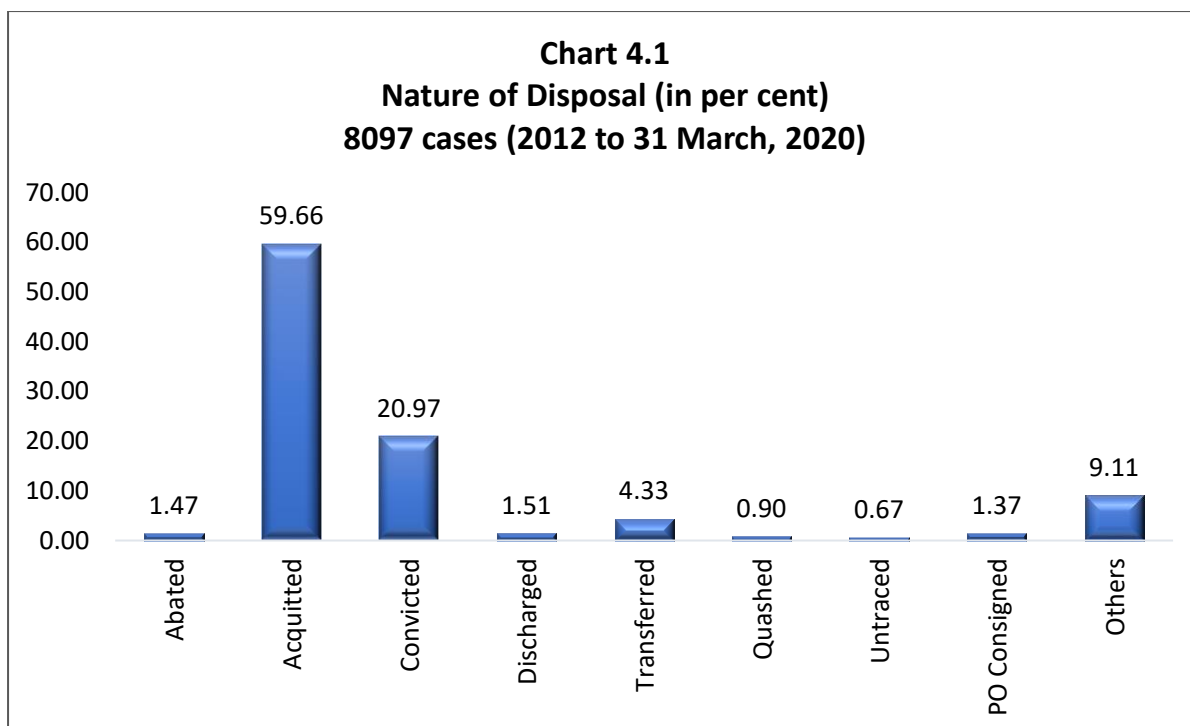
Nature of Disposal
(1) Abated
(2) Acquitted
(3) Convicted
(4) Discharged
(5) Transferred
(6) Quashed
(7) Untraced
(8) PO Consigned
(9) Other Disposal
• Adjourned Sine die
• Allowed
• Cancelled
• Case is filed

• Clubbed in FIR
• Compromised
• Conciliation
• Consigned
• Contested
• Converted
• Declared Juvenile
• Decreed with costs
• Dismissed
• Disposed
• Disposed of as withdrawn with permission to file fresh
• Disposed of with directions
• Disposed off on contest
• Disposed otherwise
• Disposed uncontest
• Further investigation ordered
• Judgement delivered
• Plaintiff suit is dismissed counter claims decreed
• Proceeding dropped
• Proceeding stopped
• Rejected
• Remand back
• Some Convicted, some Acquitted
• Stayed

This study does have a limitation in as much as it depends on data that was readily available from the E-courts portal and could also be verified. Maintaining online data requires investment in technology and consistent efforts at improving information management systems as well as ensuring better accessibility. Often the E-courts portal becomes inactive and it is difficult to cross check information as and when required.

DATA ANALYSIS W.R.T. DIFFERENT FORMS OF DISPOSAL

Number of cases disposed in the three states/UT under study since the POCSO Act came into force until 31 March, 2020 is 8097, of which 59.66 per cent ended in acquittal and 20.97 per cent in conviction. Chart 4.1 gives an overall assessment of the different forms of disposal.



Nature of Disposal	No. of Cases
Abated	119
Acquitted	4831
Convicted	1698
Discharged	122
Transferred	351
Quashed	73
Untraced	54
PO Consigned	111
Others	738
Total	8097

There are three cases disposed by way of a compromise or conciliation, one each from Assam, Delhi and Haryana. These form part of the “other disposal” category, but do raise a concern if Special Courts under the POCSO Act are reaching a compromise between the victim and the accused at any stage of the proceedings. The NCRB data for the years 2017, 2018 and 2019, which is comparable, also indicates that cases under the POCSO Act are being compounded or compromised. It needs to be ascertained whether the search option for disposed cases on the E-courts portal includes orders and judgement for cases compounded and if all courts in

all states are following the same rule for uploading data and court records when it comes to such cases.

There are 2 cases in Haryana and 12 in Delhi, where the accused are released on probation. These are largely cases under Section 12 of the POCSO Act (sexual harassment), where, considering mitigating circumstances and the nature of offence, the court chose to release the accused on probation over imprisonment, or cases where the accused is acquitted of charges under the POCSO Act but convicted under an IPC offence such as wrongful restraint or causing hurt. The NCRB does not provide any data on disposal by way of a probation sentence.

Table 4.1 All India Data on Disposal by Courts – Cases Compounded or Compromised & Cases Stayed or sent to record Room National Crime Records Bureau (2017 - 2019)						
Offences under the POCSO Act	Cases Compounded or Compromised			Cases Stayed or Sent to Record Room		
	2017	2018	2019	2017	2018	2019
Section 4 & 6 of POCSO Act) r/w Section 376 IPC	39	53	79	4	1	10
Section 8 & 10 of POCSO Act r/w Section 354 IPC	58	91	249	2	7	10
Section 12 of POCSO Act r/w Section 509 IPC	3	12	11	1	0	2
Section 14 & 15 of POCSO Act	0	0	6	0	0	1
POCSO Act r/w Section 377 IPC	0	1	23	0	1	0
Sections 17 to 22 of POCSO Act	2	0	3	0	0	0
Total	102	157	371	7	9	23
Source: NCRB. Crime in India Reports for 2017, 2018, 2019. Table 4A.5 Court Disposal of Crime against Children (Crime head-wise)						

Cases have been disposed as “stayed”, “consigned”, PO consigned”, “Consigned After Proceeding u/s 299 CrPC”. A file may be consigned to the record when the accused is absconding and cannot be traced and there is no immediate prospect of arresting the accused as under section 299 CrPC “PO consigned” implies the accused was declared a “Proclaimed Offender” under section 82 CrPC because he was absconding and the file is consigned to record room as he remains absconding. The courts have also used terms like “untraced” and “PO” or “Proclaimed Offender” under disposal. Table 4.2 shows that while the courts in Assam have stuck to the usage of “stayed”, Delhi courts have used both “PO Consigned” and “Untraced” and Haryana courts have used “Consigned After Proceeding u/s 299 Cr.P.C” or

just “consigned”. In the absence of an explanation or clarification, it is difficult to infer if these terms have the same import.

Since 2017, the NCRB has been providing data for “Cases Stayed or Sent to Record Room” (see Table 4.1), but again no conclusion can be drawn on what all is included in this category.

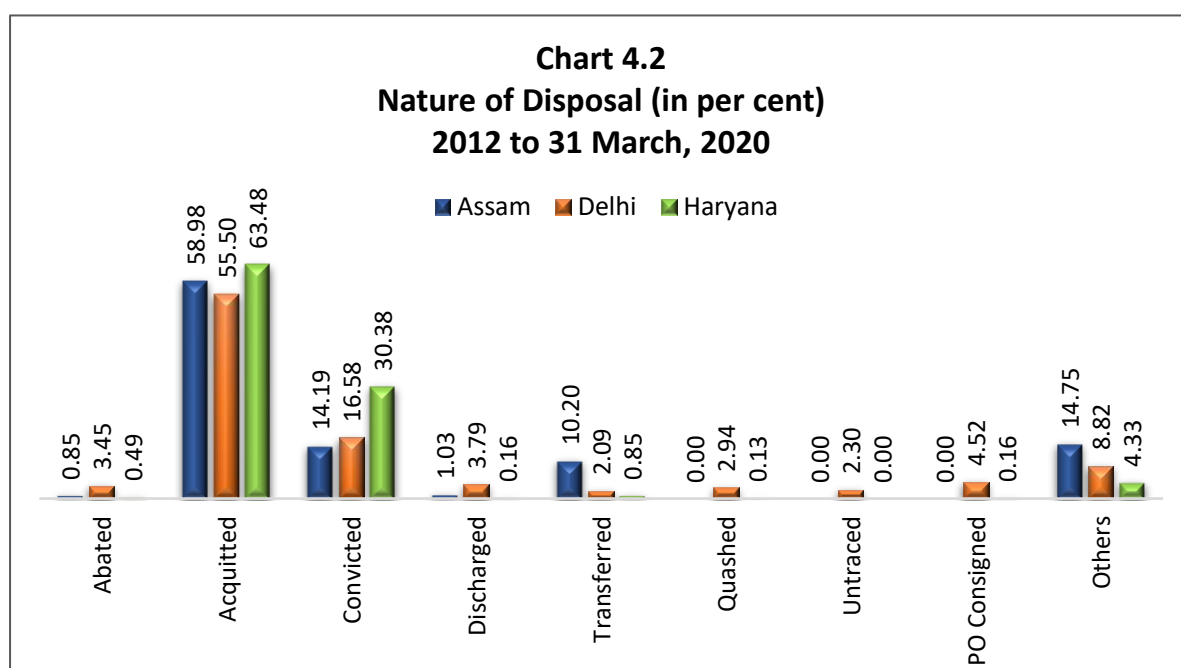
Some of the other terms used for disposal that do not fit with the letter and spirit of the law and the criminal jurisdiction of the Special Courts under the POCSO Act are - “Allowed”, “Plaintiff suit is dismissed counter claims decreed”, “decreed with costs”, which are used in civil matters.

Differences in the dispositions and the range of dispositions call for investing in training of judges before they assume office as well as refresher courses at least once every year.

For the purpose of analysis, “PO Consigned” and “Untraced” are reflected as distinct categories, while cases disposed of as “Consigned” or “Consigned after Proceeding u/s 299 Cr.P.C.” are clubbed in the “Other disposal” category dues to fewer number of such cases and unavailability of relevant orders on the E-courts portal that could provide some clarity.

Table 4.2						
Use of Different terms for Disposal in Different States – An Example						
State/UT	Stayed	Proclaimed Offender or PO	PO Consigned	Consigned After Proceeding u/s 299 Cr.P.C	Consigned	Untraced
Assam	10					
Delhi			106			54
Haryana		5		15	3	

Chart 4.2 further explains the nature of disposal by courts in Assam, Delhi and Haryana. Most cases have ended in acquittal in all the three states/UT under study. Courts in Haryana show a greater rate of acquittal at 63.48 per cent compared to Delhi (55.5 per cent) and Assam (58.98 per cent). Rate of conviction on the other hand is lowest in Assam at 14.19 per cent, followed by Delhi at 16.58 per cent and Haryana at 30.38 per cent. A significant 14.74 per cent of the disposed cases in Assam fall in the category of “other disposal” as against only 4.33 percent in Haryana and 8.82 per cent in Delhi. Rate of cases being transferred to another court is higher in Assam, which calls for further exploration to understand if the cases are being wrongly marked to the Special Courts or wrongly registered by police under the POCSO Act.



A District-wise break-up for nature of disposal in Assam, Delhi and Haryana is provided in Tables 4.2A, 4.2B and 4.2C.

Assam

Table 4.2 A District-wise Nature of Disposal Assam (14.11.2012 to 31.03.2012)									
District	Abated	Acquitted	Convicted	Discharged	Transferred	Others	Acquittal (%)	Conviction (%)	Transfer (%)
Baksa	0	15	1	0	0	28	34.09	2.27	0.00
Barpeta	0	199	26	3	30	10	74.25	9.70	11.19
Bongaigaon	0	32	5	0	0	4	78.05	12.20	0.00
Cachar	2	73	24	0	2	14	63.48	20.87	1.74

Chirang	2	37	13	0	13	7	51.39	18.06	18.06
Darrang	0	40	3	0	0	13	71.43	5.36	0.00
Dhemaji	1	51	17	0	7	12	57.95	19.32	7.95
Dhubri	0	137	25	1	7	3	79.19	14.45	4.05
Dibrugarh	1	76	41	6	2	22	51.35	27.70	1.35
Dima Hasao	0	2	0	0	0	0	100.00	0.00	0.00
Goalpara	0	14	0	0	3	4	66.67	0.00	14.29
Golaghat	2	110	16	0	4	32	67.07	9.76	2.44
Hailakandi	0	37	5	0	0	1	86.05	11.63	0.00
Jorhat	0	51	16	2	1	11	62.96	19.75	1.23
Kamrup	2	63	27	0	14	10	54.31	23.28	12.07
Kamrup Metro	2	31	9	2	1	6	60.78	17.65	1.96
Karbi Anglong	0	15	29	1	7	11	23.81	46.03	11.11
Karimganj	0	23	2	6	1	2	67.65	5.88	2.94
Kokrajhar	1	48	15	0	4	1	69.57	21.74	5.80
Lakhimpur	0	31	7	0	0	37	41.33	9.33	0.00
Morigaon	1	69	8	4	14	15	62.16	7.21	12.61
Nagaon	4	33	11	2	48	13	29.73	9.91	43.24
Nalbari	0	40	6	0	26	4	52.63	7.89	34.21
Sivasagar	1	125	26	0	63	26	51.87	10.79	26.14
Sonitpur	4	131	41	1	22	103	43.38	13.58	7.28
Tinsukia	0	33	6	0	7	4	66.00	12.00	14.00
Udalguri	0	80	5	0	0	6	87.91	5.49	0.00
Total	23	1596	384	28	276	399	58.98	14.19	10.20

In Table 4.2A, a percentage calculation is presented only with respect to cases that ended in acquittal, conviction and transfer as these account for the maximum number of disposals.

No case in Assam was disposed as quashed, untraced or PO consigned. Dima Hasao has only 2 cases disposed, showing 100 per cent acquittal, followed by Barpeta with 268 disposed cases, of which 74.25 per cent ended in acquittal, 9.70 per cent in conviction and 11.19 per cent in transfer. Goalpara stands out as the only district with zero conviction rate in nearly seven and half years of period under study. District with highest rate of conviction is Karbi Anglong (46.03 per cent) followed by Dibrugarh (27.7 per cent). As regards disposal by way of transfer, Nagaon has the highest rate of 43.24 per cent followed by Nalbari at 34.21 per cent and Sivasagar 26.14 per cent.

Delhi

<p align="center">Table 4.2 B</p> <p align="center">District-wise Nature of Disposal</p> <p align="center">Delhi</p> <p align="center">(14.11.2012 to 31.03.2012)</p>

District	Abated	Acquitted	Convicted	Discharged	Transferred	Quashed	Untraced	PO Consigned	Others	Acquittal (%)	Conviction (%)	PO Consigned (%)
Central	13	185	119	2	2	5	10	8	16	51.39	33.06	2.22
East	1	26	10	0	0	2	1	0	2	61.90	23.81	0.00
New Delhi	4	13	2	10	2	14	4	1	5	23.64	3.64	1.82
North	10	173	32	2	7	6	11	17	11	64.31	11.90	6.32
North East	4	35	6	1	0	0	0	3	31	43.75	7.50	3.75
North West	11	111	38	52	14	5	6	24	19	39.64	13.57	8.57
Shahdara	2	34	8	2	1	3	1	7	19	44.16	10.39	9.09
South	4	68	26	1	2	1	3	5	14	54.84	20.97	4.03
South East	5	48	13	0	2	3	2	1	15	53.93	14.61	1.12
South West	8	190	34	11	7	2	3	7	46	61.69	11.04	2.27
West	19	419	101	8	12	28	13	33	29	63.29	15.26	4.98
Total	81	1302	389	89	49	69	54	106	207	55.50	16.58	4.52

In Table 4.2B, percentage is calculated for “PO Consigned” instead of “transferred” since it has the third highest number of cases after acquittal and conviction. West district has the highest number of disposed cases (602) and the second highest rate of acquittal at 63.29 per cent, highest acquittals being 64.31 per cent in North district. The lowest rate of conviction over a period of seven and half years is 3.64 per cent in New Delhi district, which has only 55 cases disposed out of a total of 1263 cases that went to the Special Courts for POCSO Act trials between 14.11.2012 and 31.03.2020. Maximum rate of conviction is 33.06 per cent in the Central district, with 119 convictions out of 360 disposed cases during the same period. The total number of cases registered in the CIS for Central district is 3287. Shahdara district has the highest percentage of 9.09 per cent cases disposed as “PO Consigned” out of a total disposal of 77 cases, followed by the North West district with 8.57 per cent disposed as “PO Consigned”, although the number of disposed cases in the North West district is much higher at 280 cases. North district has 17 cases disposed of as “PO Consigned” and 11 as “Untraced”, the two categories together accounting for 10.41 per cent of the 269 disposed cases. However, highest percentage of cases disposed as “Untraced” is 7.27 per cent in New Delhi district, with 4 out of 55 cases disposed in this category.

Haryana

Table 4.2 C District-wise Nature of Disposal Haryana (14.11.2012 to 31.03.2012)											
District	Abated	Acquitted	Convicted	Discharged	Transferred	Quashed	Untraced	PO Consigned	Others	Acquittal (%)	Conviction (%)
Ambala	2	124	46	0	1	0	0	0	3	70.45	26.14
Bhiwani	0	3	2	0	0	0	0	0	0	60.00	40.00
Faridabad	0	293	176	1	3	4	0	3	20	58.60	35.20
Fatehabad	0	146	32	1	0	0	0	0	10	77.25	16.93
Gurugram	0	176	67	1	6	0	0	0	20	65.19	24.81
Hisar	2	122	59	0	4	0	0	1	7	62.56	30.26
Jhajjar	0	183	43	0	2	0	0	1	4	78.54	18.45
Jind	0	80	42	0	0	0	0	0	8	61.54	32.31
Kaithal	0	88	34	0	0	0	0	0	5	69.29	26.77
Kurukshetra	2	66	38	0	0	0	0	0	4	60.00	34.55
Palwal	1	40	23	0	2	0	0	0	8	54.05	31.08
Panchkula	1	24	26	1	0	0	0	0	6	41.38	44.83
Panipat	0	82	46	1	3	0	0	0	2	61.19	34.33
Rewari	3	62	48	0	1	0	0	0	7	51.24	39.67
Rohtak	0	117	53	0	1	0	0	0	3	67.24	30.46
Sirsa	2	139	42	0	0	0	0	0	13	70.92	21.43
Sonepat	0	131	123	0	3	0	0	0	11	48.88	45.90
Yamunanagar	2	57	25	0	0	0	0	0	1	67.06	29.41
Total	15	1933	925	5	26	4	0	5	132	63.48	30.38

No case in Haryana has been disposed as “Untraced”. Most disposals in Haryana are in the form of acquittal, followed by conviction. In Panchkula and Sonapat there is very little difference between the rate of acquittal and conviction. In fact, out of the 58 cases disposed in Panchkula, the rate of conviction is higher at 44.83 per cent than the rate of acquittal at

41.38 per cent, with one case disposed as “Abated” and 6 cases disposed with directions that cannot be ascertained from the E-Courts portal and are therefore categorised under “Other Disposal”. Sonapat on the other hand has 269 disposed cases. Jhajjar has the highest acquittal rate of 78.54 per cent, followed by Fatehabad at 77.25 per cent, Sirsa at 70.92 per cent and Ambala at 70.45 per cent. Faridabad and Gurgaon have been in the news for recording highest number of cases in the state under the POCSO Act. Faridabad has a better rate of disposal and conviction compared to Gurgaon.

ANNUAL RATE OF CONVICTION

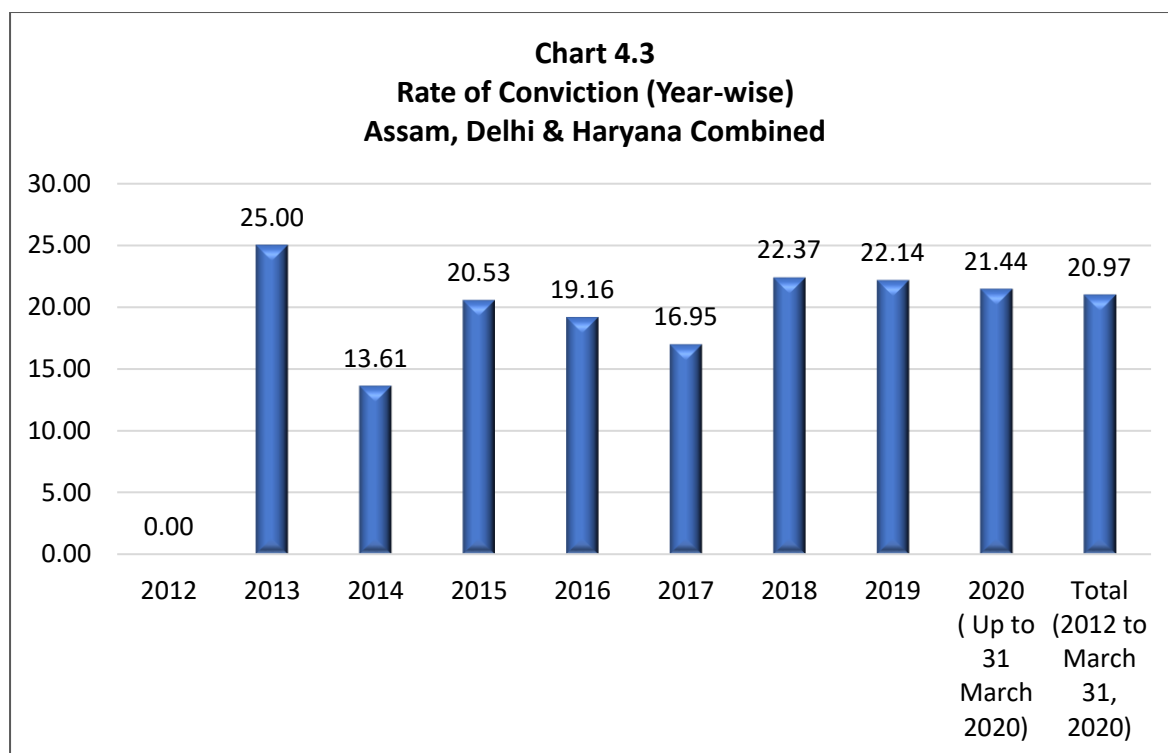
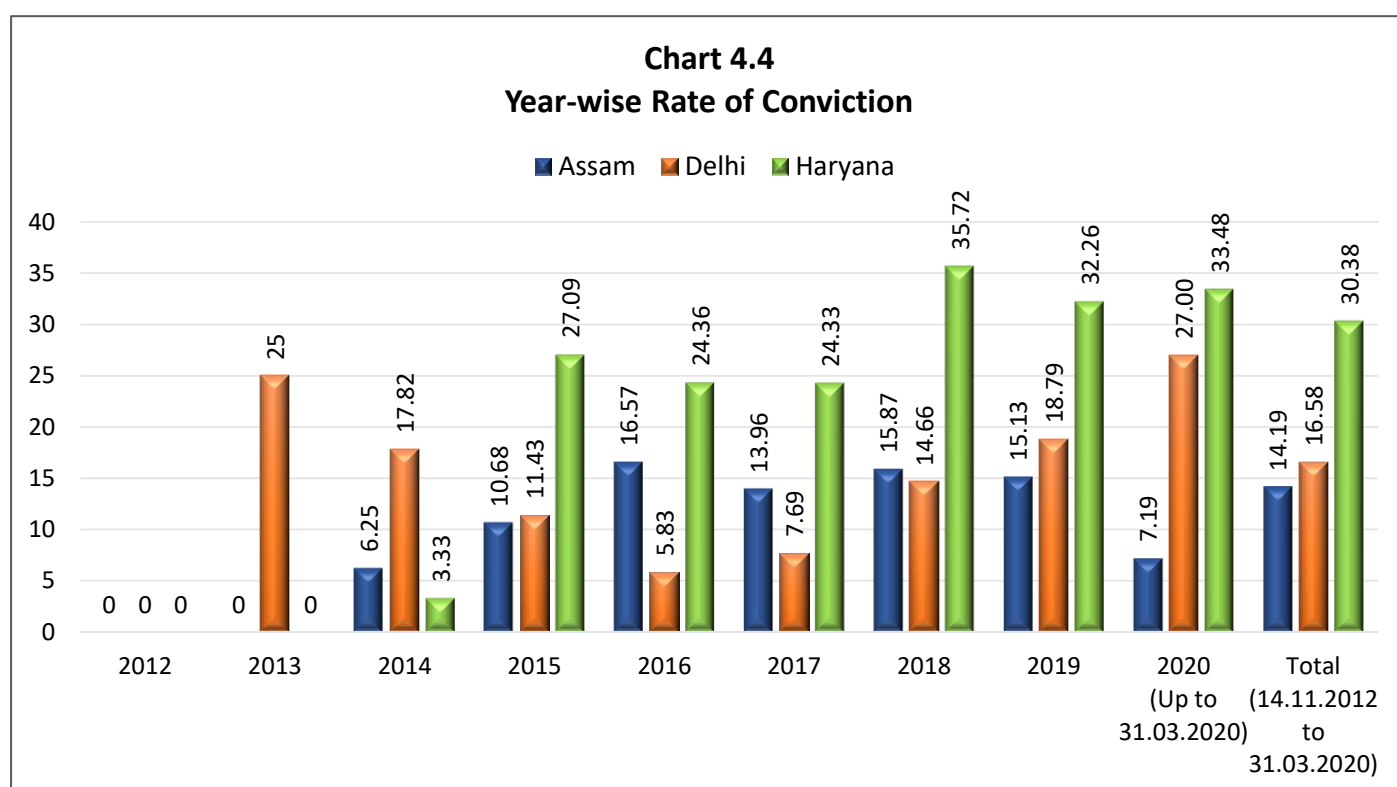


Table 4.3 Rate of Conviction as per the NCRB and under the Present Study		
Protection of Children from Sexual Offences Act - Conviction Rate	NCRB All India	Present Study Assam, Delhi & Haryana Combined
2012	28.2	0.0
2013	31.5	25.0
2014	30.6	13.6
2015	41.9	20.5
2016	29.6	19.2
2017	33.2	17.0
2018	34.2	22.4
2019	34.9	22.1
Source: NCRB, Table 6.6 and 6.8 in Crime in India Reports for 2012 and 2013; Table 6.4 Crime in India Reports for 2014 and 2015; Tables 4A.5 Crime in India Reports for 2016, 2017, 2018 and 2019.		

In 2012 and 2013, the NCRB did not provide data for offences under the POCSO Act. Cases were computed under the category of “Rape”. In 2014, the NCRB provided separate data for both “Child Rape” and offences under the POCSO Act. However, the combined conviction rate for Assam, Delhi and Haryana falls short of the national rate of conviction in all the years and worsened between the years 2015 and 2017. Even after changes in the criminal law and the POCSO Act introducing stricter sentences like death penalty and more victim centric measures, the rate of conviction has fallen from 22.4 per cent in 2018 to 22.1 per cent in 2019. This calls for further exploration as research and experience indicate a higher tendency of courts towards acquittal when sentences become harsher as well as an increase in victims and witnesses turning hostile in cases where the accused and the victim have shared close proximity.

Data collected from the E-courts portal for the present study suggests that no case was disposed under the POCSO Act in 2012. This is probably because the law came into effect only on 14 November, 2012. In 2013 too, no case was disposed in Assam and Haryana, while in Delhi only 4 cases were disposed out of the 333 that were up for trial that year, and only one of these ended in a conviction.



It is high time the NCRB presented state-wise data with respect to disposal of all crimes against children by police and courts. In the absence of state level disposal data for the POCSO Act from the NCRB, other sources of information were studied to conclude that different sources provide different data sets with respect to rate of conviction, which can be corrected by investing in competent data system and establishing linkages between the police and court records. Several questions have been raised in the Parliament of India on the subject,

presenting state-wise data, which is very different from the corresponding data computed under this study as also other reports and various news stories.

Table 4.4 State-wise Rate of Conviction (Retrieved from Response to Parliament Questions)			
Protection of Children from Sexual Offences Act - Conviction Rate	Assam	Delhi	Haryana
2014	40.0	35.3	19.3
2015	37.5	42.8	30.4
2016	35.2	41.9	20.8
2017	31.1	46.2	31.3
2018	21.6	59.1	35.7
Sources: Government of India, Ministry of Women and Child Development, Lok Sabha, Unstarred Question No. 2958, To be Answered on 28.12.2018. Sexual Abuse Against Children. 2958. Shri Rajesh Pandey, Shri R. Dhruva Narayana, Shri Nishikant Dubey, Shri Ravindra Kumar Pandey. Annexure 1. Government of India, Ministry of Women and Child Development, Lok Sabha, Unstarred Question No.2627, To be Answered on 06.03.2020. Convictions Under POCSO Act. 2627. Shri Balubhau Alias Suresh Narayan Dhanorkar			

A report filed by the DSLSA in a PIL being heard by the Delhi High Court in 2016 said that “conviction rates in Protection of Children from Sexual Offences (POCSO) matters for 2014 was 16.33 per cent, 19.65 per cent for 2015 and 18.49 per cent till July 31, 2016.”⁹ A study by the Centre for Child and the Law, NLSIU Bangalore of 667 judgements from Delhi passed between 1 January 2013 till 30 September 2015 revealed a conviction rate of 16.8 per cent.¹⁰ In a similar study of 172 judgements from Assam in the same period, reported the conviction rate to 24.41% - 20.93 per cent in 2015 and 25.60% between January-August 2016.¹¹

A District-wise break-up of the annual rate of conviction in Assam, Delhi and Haryana is presented at Tables 4.5, 4.6 and 4.7. The first conviction in Assam and Haryana came in the year 2014 from Cachar and Sonapat respectively, picking up slow and gradual pace in the following years in other districts. Similarly, among the cases studied from Delhi, the first conviction under the POCSO Act came from the Central district in 2013. In East, North East,

⁹ Press Trust of India. Conviction rate in POCSO cases alarmingly low: DSLSA to HC. October 24, 2016. Business Standard. Available at: https://www.business-standard.com/article/pti-stories/conviction-rate-in-pocso-cases-alarmingly-low-dlsa-to-hc-116102400909_1.html

¹⁰ Centre for Child and the Law, National Law School of India, University, Bangalore. Report of Study on the working of Special Courts under the POCSO Act, 2012 in Delhi. Page 53. 29 January 2016. Available at: <https://ccl.nls.ac.in/wp-content/uploads/2017/01/specialcourtPOSCOAct2012.pdf>

¹¹ Centre for Child and the Law, National Law School of India, University, Bangalore. Report of Study on the working of Special Courts under the POCSO Act, 2012 in Assam. Page 44. 15 February 2017. Available at: <https://ccl.nls.ac.in/wp-content/uploads/2017/01/studyspecialcourtassamPOSCOAct2012.pdf>

Shahdara, South and South East districts the first conviction in cases under study was recorded in 2019.

Table 4.5										
Assam - District-wise Rate of Conviction (2012 to 31.03.2020)										
Year → District ↓	2012	2013	2014	2015	2016	2017	2018	2019	2020 (Up to 31.03.2020)	Total (14.11.2012 to 31.03.2020)
Dima Hasao	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Goalpara	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Baksa	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.57	0.00	2.27
Darrang	0.00	0.00	0.00	0.00	0.00	0.00	33.33	2.94	11.11	5.36
Udalguri	0.00	0.00	0.00	0.00	0.00	0.00	0.00	7.55	10.00	5.49
Karimganj	0.00	0.00	0.00	0.00	0.00	0.00	11.11	10.00	0.00	5.88
Morigaon	0.00	0.00	0.00	12.50	0.00	4.76	16.67	9.09	0.00	7.21
Nalbari	0.00	0.00	0.00	0.00	50.00	0.00	5.56	8.00	9.09	7.89
Lakhimpur	0.00	0.00	0.00	0.00	66.67	50.00	10.00	0.00	5.56	9.33
Barpeta	0.00	0.00	0.00	14.29	0.00	4.35	3.57	14.86	0.00	9.70
Golaghat	0.00	0.00	0.00	0.00	27.27	18.18	7.41	6.58	7.14	9.76
Nagaon	0.00	0.00	0.00	0.00	12.50	0.00	20.00	20.59	0.00	9.91
Sivasagar	0.00	0.00	0.00	0.00	5.56	5.56	10.78	19.05	0.00	10.79
Hailakandi	0.00	0.00	0.00	0.00	0.00	0.00	17.65	10.00	0.00	11.63
Tinsukia	0.00	0.00	0.00	33.33	0.00	0.00	0.00	16.67	0.00	12.00
Bongaigaon	0.00	0.00	0.00	0.00	0.00	20.00	16.67	0.00	0.00	12.20
Sonitpur	0.00	0.00	0.00	11.11	19.05	11.63	17.02	13.40	5.56	13.58
Dhubri	0.00	0.00	0.00	0.00	33.33	14.29	13.64	18.18	3.33	14.45
Kamrup Metro	0.00	0.00	0.00	50.00	0.00	0.00	23.53	27.27	25.00	17.65
Chirang	0.00	0.00	0.00	0.00	0.00	0.00	21.05	14.29	16.67	18.06
Dhemaji	0.00	0.00	0.00	0.00	33.33	23.53	19.35	16.67	0.00	19.32
Jorhat	0.00	0.00	0.00	0.00	50.00	33.33	17.86	14.71	28.57	19.75
Cachar	0.00	0.00	50.00	66.67	35.29	24.14	20.00	8.00	4.76	20.87
Kokrajhar	0.00	0.00	0.00	0.00	0.00	0.00	20.00	23.68	30.77	21.74
Kamrup	0.00	0.00	0.00	0.00	0.00	16.67	15.79	29.82	30.00	23.28
Dibrugarh	0.00	0.00	0.00	9.09	10.81	35.90	40.74	50.00	0.00	27.70
Karbi Anglong	0.00	0.00	0.00	0.00	0.00	0.00	75.00	34.15	0.00	46.03

Table 4.6										
Delhi - District-wise Rate of Conviction (2012 to 31.03.2020)										
Year → District ↓	2012	2013	2014	2015	2016	2017	2018	2019	2020 (Up to 31.03.2020)	Total (14.11.2012 to 31.03.2020)
New Delhi	0.00	0.00	0.00	0.00	0.00	8.33	0.00	5.00	0.00	3.64
North East	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4.62	42.86	7.50
Shahdara	0.00	0.00	0.00	0.00	0.00	0.00	0.00	12.73	5.56	10.39
South West	0.00	0.00	0.00	0.00	0.00	0.00	10.62	10.26	31.25	11.04
North	0.00	0.00	0.00	0.00	0.00	9.62	8.24	16.00	16.67	11.90
North West	0.00	0.00	0.00	0.00	0.00	4.17	9.76	17.61	21.05	13.57
South East	0.00	0.00	0.00	0.00	0.00	0.00	0.00	14.29	26.92	14.61
West	0.00	0.00	10.91	0.00	2.38	3.45	17.65	20.55	21.31	15.26
South	0.00	0.00	0.00	0.00	0.00	0.00	0.00	31.91	35.48	20.97
East	0.00	0.00	0.00	0.00	0.00	0.00	0.00	29.17	16.67	23.81
Central	0.00	33.33	26.09	16.00	17.24	26.83	34.34	38.95	68.18	33.06

Table 4.7										
Haryana - District-wise Rate of Conviction (2012 to 31.03.2020)										
Year → District ↓	2012	2013	2014	2015	2016	2017	2018	2019	2020 (Up to 31.03.2020)	Total (14.11.2012 to 31.03.2020)
Fatehabad	0.00	0.00	0.00	20.00	0.00	13.16	17.24	20.75	100.00	16.93
Jhajjar	0.00	0.00	0.00	13.33	29.17	12.90	28.89	17.50	5.56	18.45
Sirsa	0.00	0.00	0.00	30.77	25.93	8.33	23.08	29.55	15.38	21.43
Gurugram	0.00	0.00	0.00	16.67	31.58	33.33	11.54	26.32	25.93	24.81
Ambala	0.00	0.00	0.00	16.67	13.79	28.57	45.45	25.40	28.57	26.14
Kaithal	0.00	0.00	0.00	0.00	20.00	19.05	30.56	29.31	14.29	26.77
Yamunanagar	0.00	0.00	0.00	54.17	12.82	23.53	33.33	100.00	0.00	29.41
Hisar	0.00	0.00	0.00	50.00	16.67	18.92	41.18	32.56	7.69	30.26
Rohtak	0.00	0.00	0.00	7.14	4.35	23.33	48.84	50.00	33.33	30.46
Palwal	0.00	0.00	0.00	0.00	0.00	0.00	16.67	35.48	53.85	31.08
Jind	0.00	0.00	0.00	33.33	33.33	35.29	37.50	22.81	60.00	32.31
Panipat	0.00	0.00	0.00	66.67	36.36	21.05	41.67	34.78	12.50	34.33

Kurukshetra	0.00	0.00	0.00	40.00	57.14	25.00	34.15	33.33	33.33	34.55
Faridabad	0.00	0.00	0.00	0.00	22.22	20.34	40.15	36.78	40.00	35.20
Rewari	0.00	0.00	0.00	0.00	50.00	34.62	51.28	42.42	15.38	39.67
Bhiwani	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	40.00	40.00
Panchkula	0.00	0.00	0.00	40.00	40.00	20.00	41.67	57.14	40.00	44.83
Sonepat	0.00	0.00	20.00	27.50	30.61	55.00	60.78	46.77	66.67	45.90

TRENDS IN CONVICTION BY TYPE OF OFFENCE

Table 4.8 presents the share of each offence in the total convictions in descending order. Aggravated penetrative sexual assault has the highest share, accounting for 30.15 per cent of all convictions, followed by penetrative sexual assault at 26.97 per cent and sexual assault at 16.49 per cent. All other offences have a share of less than 10 per cent in the total convictions. However, a look at offence-wise conviction rates suggests a better rate of conviction in some of the offences that make up for less than 10 per cent of all convictions. For example, rate of conviction under false reporting and aggravated penetrative sexual assault combined with storage of child pornography is 100 per cent. Both these offences have one disposed case each that ended in conviction, but their share in total convictions is only 0.06 per cent.

Table 4.8 Percentage Share of Offences in Total Convictions & Offence-wise Rate of Conviction (Overall – Assam, Delhi & Haryana Combined) (14.11.2012 to 31.03.2020)				
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction under each offence	Share in Total Convictions (%)
APSA	1981	512	25.85	30.15
PSA	2561	458	17.88	26.97
SA	1431	280	19.57	16.49
Type of Offence Not Known	745	145	19.46	8.54
SH	694	133	19.16	7.83
ASA	472	127	26.91	7.48
Attempt to APSA	37	10	27.03	0.59
Abetment of APSA	41	8	19.51	0.47
Attempt to PSA	27	7	25.93	0.41
Abetment of CP	28	5	17.86	0.29
Attempt to SA	21	3	14.29	0.18

Attempt to ASA	8	3	37.50	0.18
PSA + CP	7	2	28.57	0.12
CP	2	1	50.00	0.06
APSA + Storage of CP	1	1	100.00	0.06
Abetment of SA	16	1	6.25	0.06
Attempt to SH	2	1	50.00	0.06
False reporting	1	1	100.00	0.06
PSA + Storage of CP	2	0	0.00	0.00
APSA + CP + Storage of CP	1	0	0.00	0.00
SA + CP	2	0	0.00	0.00
ASA + CP	1	0	0.00	0.00
SH + CP + Storage of CP	1	0	0.00	0.00
Abetment of PSA	2	0	0.00	0.00
Abetment of ASA	4	0	0.00	0.00
Abetment of SH	3	0	0.00	0.00
Abetment of PSA + CP	1	0	0.00	0.00
Abetment of APSA + Attempt to APSA	1	0	0.00	0.00
Abetment of SA + Attempt to SA	1	0	0.00	0.00
Disclosure of Identity	0	0	0.00	0.00
Failure to report	3	0	0.00	0.00
Total (All Offences)	8097	1698	20.97	100.00

Similarly, Category I is bound to have a higher share in all convictions as it is comprised of all the major offences under the POCSO Act. However, rate of conviction is best for Category III, though it makes up for only 0.06 per cent of all convictions.

Table 4.9
Conviction by Category of Offence
(Overall – Assam, Delhi & Haryana Combined)
(14.11.2012 to 31.03.2020)

Category of Offences	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction for Each Category of Offence	Percentage Share of Each Category of Offence in Total Convictions
Category I	7156	1514	21.00	89.16
Category II	192	38	19.79	2.24
Category III	4	1	25.00	0.06
Type of Offence Not Known	745	145	19.46	8.54
Total (All Offences)	8097	1698	20.97	100.00

Within each category of offences, aggravated penetrative sexual assault (offences under section 6 of the POCSO Act) has the highest share in total Category I convictions and a comparatively high rate of conviction too. While penetrative sexual assault has the second highest share in Category I convictions, the rate of conviction for penetrative sexual assault is lower compared to the rate of conviction for some of the other offences in this category.

Table 4.9 A Rate of Conviction by Type of Offence in Category I (Overall – Assam, Delhi & Haryana Combined) (14.11.2012 to 31.03.2020)				
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction	Percentage Share of Type of Offence in Total Category I Convictions
APSA	1981	512	25.85	33.82
PSA	2561	458	17.88	30.25
SA	1431	280	19.57	18.49
SH	694	133	19.16	8.78
ASA	472	127	26.91	8.39
PSA + CP	7	2	28.57	0.13
APSA + Storage of CP	1	1	100.00	0.07
CP	2	1	50.00	0.07
PSA + Storage of CP	2	0	0.00	0.00
APSA + CP + Storage of CP	1	0	0.00	0.00
SA + CP	2	0	0.00	0.00
ASA + CP	1	0	0.00	0.00
SH + CP + Storage of CP	1	0	0.00	0.00
Total Category I Offences	7156	1514	21.00	100.00

Among the Category II offences, attempt to commit aggravated penetrative sexual assault (Section 6 read with Section 18 of POCSO Act) has the highest share of 26.32 per cent of all Category II convictions and a comparatively high rate of conviction too at 27.03 per cent.

Table 4.9 B Rate of Conviction by Type of Offence in Category II (Overall – Assam, Delhi & Haryana Combined) (14.11.2012 to 31.03.2020)				
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction	Percentage Share of Type of Offence in Total Category II Convictions
Attempt to APSA	37	10	27.03	26.32
Abetment of APSA	41	8	19.51	21.05
Attempt to PSA	27	7	25.93	18.42
Abetment of CP	28	5	17.86	13.16
Attempt to ASA	8	3	37.50	7.89
Attempt to SA	21	3	14.29	7.89
Attempt to SH	2	1	50.00	2.63
Abetment of SA	16	1	6.25	2.63
Abetment of PSA	2	0	0.00	0.00
Abetment of ASA	4	0	0.00	0.00
Abetment of SH	3	0	0.00	0.00
Abetment of PSA + CP	1	0	0.00	0.00
Abetment of APSA + Attempt to APSA	1	0	0.00	0.00
Abetment of SA + Attempt to SA	1	0	0.00	0.00
Total Category II Offences	192	38	19.79	100.00

In Category III, there is no conviction in the 3 cases of failure to report that stand disposed, while false reporting shows 100 per cent conviction with one disposed case that ended in conviction.

Table 4.9 C Rate of Conviction by Type of Offence in Category III (Overall – Assam, Delhi & Haryana Combined) (14.11.2012 to 31.03.2020)			
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction
False reporting	1	1	100.00
Failure to report	3	0	0.00
Total Category III Offences	4	1	25.00

Table 4.9 D Rate of Conviction where Type of Offence is Not Known (Overall – Assam, Delhi & Haryana Combined) (14.11.2012 to 31.03.2020)			
Type of Offence Not Known	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction
	745	145	19.46

ASSAM

A state-wise analysis shows that in Assam penetrative sexual assault (offences under Section 4 of the POCSO Act) has the highest share in Category I convictions. This is also because the state has more cases of penetrative sexual assault - both registered and disposed cases. However, the rate of conviction for penetrative sexual assault is comparatively low. In Category II, attempt to commit penetrative sexual assault make up for 50 per cent of all convictions and also have the highest rate of conviction as compared to rate of conviction for other offences.

4.10 A Rate of Conviction by Type of Offence in Category I - Assam (14.11.2012 to 31.03.2020)				
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction	Percentage Share of Type of Offence in Total Category I Convictions
PSA	1400	161	11.50	44.48
SA	574	107	18.64	29.56
APSA	369	61	16.53	16.85
SH	132	22	16.67	6.08
ASA	44	10	22.73	2.76
PSA + CP	2	1	50.00	0.28
PSA + Storage of CP	2	0	0.00	0.00
SA + CP	2	0	0.00	0.00
Total Category I Offences	2525	362	14.00	100.00

Table 4.10 B Rate of Conviction by Type of Offence in Category II - Assam (14.11.2012 to 31.03.2020)				
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction	Percentage Share of Type of Offence in Total Category II Convictions
Attempt to PSA	8	3	37.50	50.00
Attempt to SA	8	2	25.00	33.33
Abetment of CP	8	1	12.50	16.67
Abetment of APSA	3	0	0.00	0.00
Abetment of SA	3	0	0.00	0.00

Abetment of SH	1	0	0.00	0.00
Attempt to SH	1	0	0.00	0.00
Total Category II Offences	32	6	18.75	100.00

In Category III, 3 cases of false reporting and one of disclosure of identity were registered in the CIS and all four are pending. No case of failure to report was registered for trial in Assam.

Table 4.10 C Rate of Conviction where Type of Offence is Not Known - Assam (14.11.2012 to 31.03.2020)			
Type of Offence Not Known	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction
	149	16	10.74

DELHI

In Delhi, aggravated penetrative sexual assault has the highest number of cases and also the highest share in total Category I convictions, whereas the rate of conviction is the highest for use of children for pornographic purposes followed by aggravated sexual assault. Abetting use of children for pornographic purposes accounts for the highest share in all Category II convictions as well as all cases of abetment and the comparative rate of conviction is also the highest. Among cases of attempt to commit an offence, the share of all in Category II convictions is the same, though the rate of conviction is 100 per cent for attempt to commit sexual harassment with one disposed case that ended in conviction, followed by attempt to commit aggravated sexual assault and attempt to commit penetrative sexual assault. Attempt to commit aggravated penetrative sexual has the second lower rate of conviction among Category II offence.

Table 4.11 A Rate of Conviction by Type of Offence in Category I - Delhi (14.11.2012 to 31.03.2020)				
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction	Percentage Share of Type of Offence in Total Category I Convictions
APSA	669	114	17.04	41.76
ASA	203	45	22.17	16.48
SA	307	42	13.68	15.38
SH	273	37	13.55	13.55
PSA	300	34	11.33	12.45
CP	2	1	50.00	0.37
PSA + CP	1	0	0.00	0.00
Total Category I Offences	1755	273	15.56	100.00

Table 4.11 B Rate of Conviction by Type of Offence in Category II - Delhi (14.11.2012 to 31.03.2020)				
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction	Percentage Share of Type of Offence in Total Category II Convictions
Abetment of CP	8	2	25.00	28.57
Abetment of APSA	15	1	6.67	14.29
Attempt to PSA	4	1	25.00	14.29
Attempt to APSA	8	1	12.50	14.29
Attempt to ASA	3	1	33.33	14.29
Attempt to SH	1	1	100.00	14.29
Abetment of PSA	1	0	0.00	0.00
Abetment of SA	4	0	0.00	0.00
Abetment of ASA	3	0	0.00	0.00
Abetment of SA + Attempt to SA	1	0	0.00	0.00
Total Category II Offences	48	7	14.58	100.00

Table 4.11 C Rate of Conviction by Type of Offence in Category III - Delhi (14.11.2012 to 31.03.2020)			
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction
Failure to report	3	0	0.00
Total Category III Offences	3	0	0.00

Table 4.11 D Rate of Conviction where Type of Offence is Not Known - Delhi (14.11.2012 to 31.03.2020)			
Type of Offence Not Known	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction
	540	109	20.19

HARYANA

The state of Haryana contributes significantly to the overall rate of conviction for cases under study and also to higher convictions under certain type of offences such as aggravated penetrative sexual assault, as can be seen in Table 4.12A. Penetrative sexual assault has second highest share in total Category I convictions and a comparatively higher rate of conviction too. Attempt to commit aggravated penetrative sexual assault and abetment of aggravated penetrative sexual assault together comprise a share of 64 per cent in total Category II convictions and also show a comparative high rate of conviction.

While the share of aggravated sexual assault and attempt to commit aggravated sexual assault in Category I and Category II convictions is low, both have a comparatively higher rate of conviction.

Table 4.12 A Rate of Conviction by Type of Offence in Category I - Haryana (14.11.2012 to 31.03.2020)				
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction	Percentage Share of Type of Offence in Total Category I Convictions
APSA	943	337	35.74	38.34
PSA	861	263	30.55	29.92
SA	550	131	23.82	14.90
SH	289	74	25.61	8.42
ASA	225	72	32.00	8.19
APSA + Storage of CP	1	1	100.00	0.11
PSA + CP	4	1	25.00	0.11
APSA + CP + Storage of CP	1	0	0.00	0.00
ASA + CP	1	0	0.00	0.00
SH + CP + Storage of CP	1	0	0.00	0.00
Total Category I Offences	2876	879	30.56	100.00

Table 4.12 B Rate of Conviction by Type of Offence in Category II - Haryana (14.11.2012 to 31.03.2020)				
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction	Percentage Share of Type of Offence in Total Category II Convictions
Attempt to APSA	29	9	31.03	36.00
Abetment of APSA	23	7	30.43	28.00
Attempt to PSA	15	3	20.00	12.00
Attempt to ASA	5	2	40.00	8.00
Abetment of CP	12	2	16.67	8.00
Abetment of SA	9	1	11.11	4.00
Attempt to SA	13	1	7.69	4.00
Abetment of PSA	1	0	0.00	0.00
Abetment of ASA	1	0	0.00	0.00
Abetment of SH	2	0	0.00	0.00
Abetment of PSA + CP	1	0	0.00	0.00
Abetment of APSA + Attempt to APSA	1	0	0.00	0.00
Total Category II Offences	112	25	22.32	100.00

Table 4.12 C Rate of Conviction by Type of Offence in Category III - Haryana (14.11.2012 to 31.03.2020)			
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction
False reporting	1	1	100.00
Total Category III Offences	1	1	100.00

Table 4.12 D Rate of Conviction where Type of Offence is Not Known - Haryana (14.11.2012 to 31.03.2020)			
Type of Offence Not Known	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction
	56	20	35.71

Tables 4.13A to 4.15I of Annexure 4.2 provide year-wise district level data for each of the different forms of disposal assessed in this study.

CONCLUSION

Introduction of a pre-set drop-down menu with standardised forms of disposal based on this study could help in reducing data confusion and enhance both quality of data as well as data analysis. Drawing any conclusion about any court of district or state with respect to nature of disposal and rate of conviction will not be fair as there are many factors that decide the outcome of a case. Yet, it is important to get a sense of trends with respect to the nature of disposal and rate of conviction, which is not possible if data input is not standardised. At the same time, the need for training of Special Court judges also comes out very strongly to ensure standardisation in the manner in which data regarding disposal is uploaded on the E-courts portal.

There is a clear need for further investigation into nature of disposal and nature of offence in terms of age of the victim, proximity between the victim and the accused as well as the time taken for disposal. Without orders and judgements being uploaded in all cases under the POCSO Act, it is difficult to carry out any such research.

Since the POCSO Act is silent with respect to compounding of offences, judicial intervention is required to seek clarity and a systematic assessment of what type of offences are being compounded needs to be undertaken. A similar assessment with respect to transfer of cases will also add to existing knowledge regarding trends in disposal and reasons for transfer. It will also help streamline data regarding transfers on the E-court portal. A significant number of “Other Disposals” include cases where the type of disposal is not disclosed. Such anomalies can be corrected to get more accurate data.

CHAPTER V

CASE AGE & TIME TAKEN FOR DISPOSAL

Justice Delayed is Justice Denied! The need to expedite trials in order to reduce a victim's trauma and restore faith in the justice system led to setting timeframes for recording the testimony of the victim and completion of trials in the POCSO Act.

Section 35 (1) of the POCSO Act states, *"The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court."*

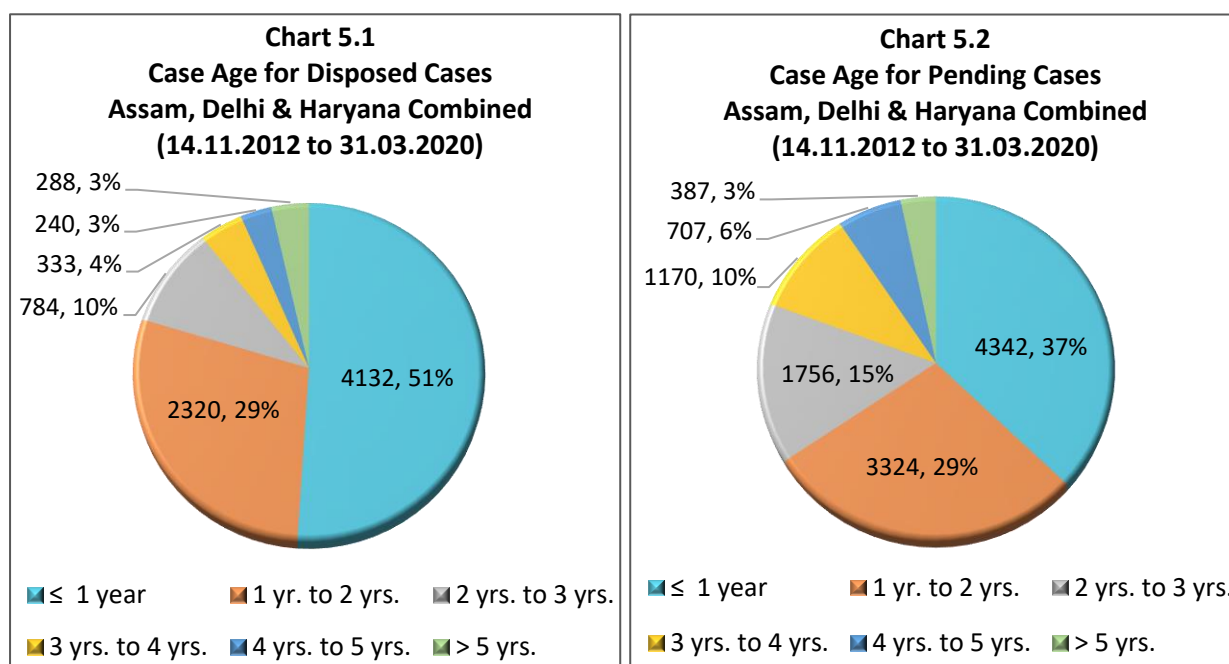
Section 35 (2) lays down the timeframe for completion of trials stating that *"The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence."*

An analysis with respect to implementation of Section 35 (1) of the POCSO Act will require access to certain information that can make it possible. All daily orders passed by the courts in cases under the POCSO Act are not available on the E-Courts portal. While the "statement of the accused" finds space on the portal because it is recognised as a distinct stage in a criminal justice proceeding, the same is not the case with recording of the victim's testimony. It is subsumed under the category of "Prosecution Evidence". As a result, despite inclusion of provisions like Section 35 (1) and Section 40 in the POCSO Act that allow child victims to be represented by a lawyer of their choice, victim's rights remain an illusion. Ironically, there has neither been a public demand for ensuring timely recording of the child's evidence nor any official attempt to translate the provisions of the law into a reality. A step in this direction would be to include it as a distinct stage in the judicial proceedings that needs to be recorded in the CIS. Accordingly, the daily orders should also reflect orders passed on the recording of child's evidence in keeping with the provisions of respecting the child's privacy and confidentiality. Judgements too should record the date on which the child's testimony was listed, when did it actually start and when was it completed along with the reasons for delay as mandated in Section 35 (1).

The focus of this chapter is on time taken for completion of trial, though this too has its limitation in the absence of data regarding the date on which the court took cognizance of a case. While the date of judgement and sentence can be accessed from the available court records and case information uploaded on the E-courts portal, date of cognizance is neither mentioned in the daily orders nor in the judgements and there is no requirement for uploading such information on the portal. For the purpose of analysis, the time taken for completion of trial is calculated on the basis of registration of a case in the CIS up to the date of judgement.

CASE AGE

As a prelude, the age of a case for both pending and disposed cases is presented in Charts 5.1 and 5.2 respectively.



3.40 per cent of pending cases have an age of more than two years compared to 20.32 per cent disposed cases. The average age for a disposed case is 1.3 years, while for pending cases it is 1.8 years.

The average age for disposed cases from Assam is 1.2 years and for pending cases it is 1.4 years. In Delhi the average age is 2.1 years for disposed cases and 2.2 years for pending cases. The average age for both disposed and pending cases from Haryana is 0.9 years. Delhi also has the highest number of cases going to trial.

The maximum age of a disposed case is 2482 days or 6.8 years and that of a case pending up to 31 March, 2020 is 2703 days or 7.4 years. The corresponding figures for Assam, Delhi and Haryana are as follows:

Table 5.1 Maximum Case Age			
Maximum Case Age for Disposed and Pending cases	Assam	Delhi	Haryana
Maximum age of a disposed case	2119 days or 5.8 years	2482 days or 6.8 years	1461 days or 4 years
Maximum age of a pending case	2407 days or 6.8 years	2703 or 7.4 years	1698 days or 4.7 years

As on 31 March, 2020, of all pending cases in the respective states/UT, 21.98 per cent cases from Assam have been pending for two and more years while in Delhi it is 46.24 percent and in Haryana it is only 6.12 per cent. Percentage of pending cases that have a pendency age of less than two years is 78.02 per cent in Assam, 53.76 per cent in Delhi and 93.9 per cent in Haryana.

TIME TAKEN FOR DISPOSAL

A little more than half the disposed cases (4132 out of 8097) stand disposed within one year from the date of registration in the court system and 4/5ths or nearly 80 per cent (6452 cases) stand disposed within two years. 20 per cent of the disposed cases (1645) have taken more than two years for disposal, of which 9.68 per cent (784) were disposed within 2 to 3 years, 4.11 per cent (333) took 3 to 4 years, 2.96 per cent (240) took 4 to 5 years and another 3.56 percent (288) took more than 5 years.

Maximum time taken for disposal is 6.8 years in a case of sexual assault from Delhi that ended in conviction.

As per data collected from the E-courts portal, there are 148 cases that were disposed the same day as the date of registration, 2 cases that were disposed five days before the date of registration and one case disposed two days before the date of registration. Details of these cases are provided in Table 5.2.

Table 5.2 Cases Disposed the same day as the Date of Registration Nature of Disposal and Nature of Offence									
Nature of Offence	PSA	APSA	SA	ASA	SH	CP	Abetment of SA	Offence Not Available	Total
Abated	1	1	1	1	1	0	0	0	5
Acquitted	2	0	0	0	0	0	0	0	2
Allowed	0	1	0	1	1	1	0	0	4
Cancelled	0	0	0	0	1	0	0	4	5
Case is filed	26	2	9	0	1	0	0	1	39
Clubbed in FIR	0	0	1	0	0	0	0	0	1
Consigned	0	0	0	0	1	0	0	0	1
Discharged	1	0	0	0	0	0	0	0	1
Dismissed	1	0	0	0	1	0	0	0	2

Disposed	3	2	0	1	2	0	0	0	8
Disposed of with directions	1	5	0	0	2	0	0	0	8
Disposed otherwise	5	4	4	0	0	0	1	0	14
PO Consigned	1	0	1	1	0	0	0	0	3
Quashed	0	0	2	0	2	0	0	0	4
Rejected	0	1	0	0	0	0	0	0	1
Stayed	0	0	0	1	0	0	0	0	1
Transferred	20	2	9	0	6	0	0	3	40
Transferred - Attached with main case	1	0	0	0	0	0	0	0	1
Untraced	2	0	4	0	2	0	0	0	8
Total	64	18	31	5	20	1	1	8	148
Cases Disposed 2 days before the Date of Registration									
Nature of Disposal and Nature of Offence									
Acquitted		1							1
Cases Disposed 5 days before the Date of Registration									
Nature of Disposal and Nature of Offence									
Transfer to Outside Complex			1		1				2

To get more understanding, a check was carried out on the 3 cases that appeared as being disposed prior to the date of registration. Of these 3 cases, judgement is available for one case, which is a case of aggravated penetrative sexual assault disposed two days prior to the date of registration. The date of judgement retrieved from the E-courts portal is 19.07.2014 and the date of registration on the portal is recorded as 21.07.2014, while the nature of disposal is recorded as “stayed”. A perusal of the judgement on the other hand reveals that the case is “disposed on contest”, implying that a proper trial was conducted, which resulted in “acquittal” and the judgement is dated 28.03.2017. This clearly indicates callousness on the part of the courts in recording, maintaining and/or uploading case related information on the E-courts portal.

TRACKING DISPOSAL

Annual rate of disposal is inversely related to the number of cases registered in a year. The higher the number of cases registered, the lower the rate of disposal as the burden of courts increases. The year 2012 is an exception, probably because the POCSO Act came into force later that year. Of the 2 cases registered in the year 2012, only one has been disposed during the seven and half year period under study and the disposal took more than six years. While the time taken for disposal has reduced over the years, the annual rate of disposal has been on a decline as can be seen in Table 5.3. Many cases from each of the nine years remain pending. While it is understandable to find cases registered in the years 2018 and 2019 to be pending as on 31 March, 2020, the cut-off date for this study, cases from other years that remain pending call for an explanation.

Among the cases registered in 2013, a significant 28.49 per cent were disposed after a long wait of more than six years, while 11.58 per cent are still pending as on 31 March, 2020. Almost 72 per cent cases registered in the year 2014 stand disposed with 33.60 percent disposed almost equally in the two extreme timeframes of 1 to 2 years and 6 to 7 years. A significant change is visible 2015 onwards, when maximum disposal is within three years of registration of a case. A trend in disposal of 10 - 12 per cent cases in the same year as the year of registration found 2015 onwards is indeed intriguing, given that in many of the cases the sexual offence committed is of a grave nature.

Table 5.3 Percentage of Cases Disposed & Time Taken From Year of Registration to Year of Disposal Assam, Delhi & Haryana Combined											
Year of Registration	No. of Cases Registered in the CIS	No. of Disposed Cases	Time Taken for Disposal								Disposal (%)
			Same Year	1-2 yrs.	2-3 yrs.	3-4 yrs.	4-5 yrs.	5-6 yrs.	6-7 yrs.	7-8 yrs.	
2012	2	1	0.00	0.00	0.00	0.00	0.00	0.00	50.00	0.00	50.00
2013	351	310	1.14	21.65	6.55	4.56	6.84	13.39	28.49	5.70	88.32
2014	762	547	9.32	16.67	8.40	6.30	9.84	16.93	4.33	0.00	71.78
2015	1500	895	12.73	17.93	9.73	8.07	7.80	3.40	0.00	0.00	59.67
2016	2519	1488	10.80	21.40	15.60	9.25	2.02	0.00	0.00	0.00	59.07
2017	3486	1892	10.10	25.79	16.12	2.27	0.00	0.00	0.00	0.00	54.27
2018	4975	2023	11.28	25.19	4.20	0.00	0.00	0.00	0.00	0.00	40.66

2019	5210	910	11.61	5.85	0.00	0.00	0.00	0.00	0.00	0.00	17.47
2020	978	31	3.17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.17
Total	19783	8097	25.77	42.83	17.25	6.14	3.30	2.80	1.65	0.25	40.93

Situation in the States/UT under study

Out of the cases disposed in Assam, Delhi and Haryana, as shown in chart 5.3, the state of Haryana has 58.88 per cent cases (1793 out of 3045) disposed within one year from date of registration in the CIS, followed by Assam with 52.03 per cent cases (1408 out of 2706). Delhi is way behind with 39.69 per cent cases (931 out of 2346) disposed within a year. Tables 5.4, 5.5 and 5.6 provide state-wise details regarding time taken for disposal.

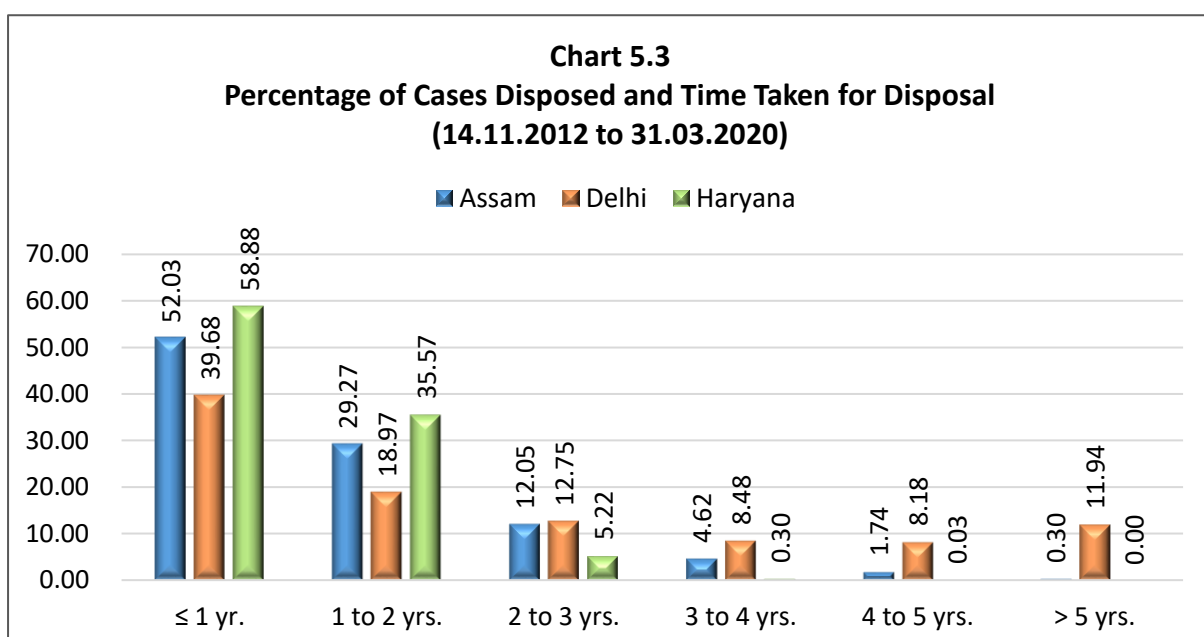


Table 5.4						
Time Taken for Disposal						
Duration	Assam		Delhi		Haryana	
	No. of Disposed cases	Percentage	No. of Disposed cases	Percentage	No. of Disposed cases	Percentage
≤ 1 year	1408	52.03	931	39.68	1793	58.88
1 yr. to 2 yrs.	792	29.27	445	18.97	1083	35.57
2 yrs. to 3 yrs.	326	12.05	299	12.75	159	5.22
3 yrs. to 4 yrs.	125	4.62	199	8.48	9	0.30

4 yrs. to 5 yrs.	47	1.74	192	8.18	1	0.03
> 5 yrs.	8	0.30	280	11.94	0	0.00
Total	2706	100.00	2346	100.00	3045	100.00

Tracking annual disposal in the three states/UT indicates lower disposal of cases in the same year as the year of registration in Delhi and higher disposal of cases within first two years of registration in the CIS in Haryana. Maximum cases are getting disposed within three years of registration, although Delhi shows a troubling percentage of 29.91 per cent cases registered in 2013 taking 6 - 7 years for disposal and 24.69 per cent cases registered in 2014 taking 5 - 6 years. There is no disposed case in Haryana in any of the years under study that has taken more than five years for disposal.

Table 5.4 Percentage of Cases Disposed & Time Taken From Year of Registration to Year of Disposal Assam											
Year of Registration	No. of Cases Registered in the CIS	No. of Disposed Cases	Time Taken for Disposal								Disposal (%)
			Same Year	1-2 yrs.	2-3 yrs.	3-4 yrs.	4-5 yrs.	5-6 yrs.	6-7 yrs.	7-8 yrs.	
2012	0	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2013	18	13	0.00	22.22	22.22	5.56	16.67	0.00	5.56	0.00	72.22
2014	169	144	7.10	31.95	15.98	10.65	11.83	5.92	1.78	0.00	85.21
2015	353	291	12.75	21.81	18.13	16.43	11.61	1.70	0.00	0.00	82.44
2016	632	470	10.13	23.26	25.16	13.61	2.22	0.00	0.00	0.00	74.37
2017	918	631	12.96	30.39	21.68	3.70	0.00	0.00	0.00	0.00	68.74
2018	1522	722	14.13	28.71	4.60	0.00	0.00	0.00	0.00	0.00	47.44
2019	1793	411	15.06	7.86	0.00	0.00	0.00	0.00	0.00	0.00	22.92
2020	381	24	6.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.30
Total	5786	2706	12.95	19.69	9.04	3.40	1.35	0.28	0.07	0.00	46.77

Table 5.5 Percentage of Cases Disposed & Time Taken From Year of Registration to Year of Disposal Delhi											
Year of Registration	No. of Cases Registered in the CIS	No. of Disposed Cases	Time Taken for Disposal								Disposal (%)
			Same Year	1-2 yrs.	2-3 yrs.	3-4 yrs.	4-5 yrs.	5-6 yrs.	6-7 yrs.	7-8 yrs.	
2012	2	1	0.00	0.00	0.00	0.00	0.00	0.00	50.00	0.00	50.00
2013	331	295	1.21	21.75	5.44	4.23	6.34	14.20	29.91	6.04	89.12
2014	482	292	6.02	2.28	4.36	5.60	11.41	24.69	6.22	0.00	60.58
2015	768	226	0.78	2.99	3.39	6.77	9.64	5.86	0.00	0.00	29.43
2016	1300	445	3.46	9.00	9.69	9.46	2.62	0.00	0.00	0.00	34.23
2017	1700	450	4.82	11.94	7.88	1.82	0.00	0.00	0.00	0.00	26.47
2018	2281	411	6.88	9.21	1.93	0.00	0.00	0.00	0.00	0.00	18.02
2019	2158	222	7.74	2.55	0.00	0.00	0.00	0.00	0.00	0.00	10.29
2020	344	4	1.16	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.16
Total	9366	2346	5.27	7.38	3.94	2.64	1.96	2.25	1.39	0.21	25.05

Table 5.6 Percentage of Cases Disposed & Time Taken From Year of Registration to Year of Disposal Haryana											
Year of Registration	No. of Cases Registered in the CIS	No. of Disposed Cases	Time Taken for Disposal								Disposal (%)
			Same Year	1-2 yrs.	2-3 yrs.	3-4 yrs.	4-5 yrs.	5-6 yrs.	6-7 yrs.	7-8 yrs.	
2012	0	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2013	2	2	0.00	0.00	50.00	50.00	0.00	0.00	0.00	0.00	100.00
2014	111	111	27.03	55.86	14.41	2.70	0.00	0.00	0.00	0.00	100.00

2015	379	378	36.94	44.59	14.78	2.90	0.53	0.00	0.00	0.00	99.74
2016	587	573	27.77	46.85	18.40	4.09	0.51	0.00	0.00	0.00	97.61
2017	868	811	17.40	48.04	26.38	1.61	0.00	0.00	0.00	0.00	93.43
2018	1172	890	16.13	51.71	8.11	0.00	0.00	0.00	0.00	0.00	75.94
2019	1259	277	13.34	8.66	0.00	0.00	0.00	0.00	0.00	0.00	22.00
2020	253	3	1.19	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.19
Total	4631	3045	18.23	35.37	10.90	1.14	0.11	0.00	0.00	0.00	65.75

NATURE OF DISPOSAL AND TIME TAKEN

The law requires a trial to be completed within one year of cognizance, but the date of cognizance is not available. Given that it would take a few months for the police to file a charge sheet and the court to subsequently take cognizance of a case, it may be safe to assume that disposal can take up to two years from the date of registration of a case in the CIS. In this backdrop, courts taking two years or more for disposal should be a cause for concern.

Table 5.7 looks at the time taken for different forms of disposal analysed in Chapter IV, establishing that a higher percentage of cases ending in conviction (29.73 per cent) take two years or more for disposal compared to those ending in acquittal (19.41 per cent). While longer duration for cases disposed as abated can be explained, quashing of a case also spills over to the different time ranges, with 32.88 per cent of such cases taking two and more years for disposal. The fate of cases disposed as PO consigned is similar with 33.34 per cent of such cases taking two or more years for disposal.

Table 5.7 Nature of Disposal and Time Taken for Disposal (in percent) Assam, Delhi & Haryana Combined (14.11.2012 to 31.03.2020)							
Nature of Disposal	≤ 1 yr.	1 to 2 yrs.	2 to 3 yrs.	3 to 4 yrs.	4 to 5 yrs.	≥ 5 yrs.	≥ 2 years
Abated	44.54	25.21	18.49	6.72	3.36	1.68	30.25
Acquitted	52.47	28.13	9.34	3.81	2.55	3.71	19.41
Convicted	30.62	39.63	13.13	6.12	4.89	5.59	29.73
Discharged	78.69	17.21	2.46	1.64	0.00	0.00	4.1
Transferred	74.36	16.81	4.56	2.56	1.42	0.28	8.82

Quashed	42.47	24.66	17.81	5.48	6.85	2.74	32.88
Untraced	87.04	9.26	3.70	0.00	0.00	0.00	3.7
PO Consigned	40.54	26.13	11.71	7.21	9.01	5.41	33.34
Other Disposal	73.71	17.07	5.56	1.90	1.36	0.41	9.23
Total	51.03	28.65	9.68	4.11	2.96	3.56	20.31

A similar trend can be observed for the states/UT under study in Tables 5.7A, 5.7B and 5.7C. Although a combined analysis of the three states/UT in Table 5.7 shows that 91.17 per cent of the cases ending in transfer are disposed within two years, data from Delhi with respect to such cases calls for attention.

Table 5.7 A Nature of Disposal and Time Taken for Disposal (in percent) Assam (14.11.2012 to 31.03.2020)							
Nature of Disposal	≤ 1 yr.	1 to 2 yrs.	2 to 3 yrs.	3 to 4 yrs.	4 to 5 yrs.	≥ 5 yrs.	≥ 2 years
Abated	43.48	21.74	30.43	4.35	NA	NA	34.78
Acquitted	49.12	31.52	12.78	4.45	1.82	0.31	19.36
Convicted	31.51	39.06	18.75	8.33	2.08	0.26	29.42
Discharged	82.14	14.29	NA	3.57	NA	NA	3.57
Transferred	72.83	18.48	5.43	2.54	0.72	0.00	8.69
Quashed	NA	NA	NA	NA	NA	NA	NA
Untraced	NA	NA	NA	NA	NA	NA	NA
PO Consigned	NA	NA	NA	NA	NA	NA	NA
Other	67.42	19.80	7.02	3.26	2.01	0.50	12.79
Total	52.03	29.27	12.05	4.62	1.74	0.30	18.71
*NA - Not Applicable as there is no such disposal							

Assam has a comparatively high number of 276 cases disposed as transferred, of which 8.69 per cent took two or more years as against 14.28 per cent in Delhi, which has only 49 such cases. In Haryana, all 26 cases transferred are disposed in the same year as the year of registration of the case in the CIS. A significant 77.63 per cent of cases ending in conviction in Delhi took two or more years for disposal, 24.16 per cent taking more than five years and

19.02 per cent taking four to five years, which is an equally pressing concern considering that only 389 of all 2346 disposed cases in Delhi ended in a conviction. With the lowest share of cases that ended in acquittal compared to Assam and Haryana, Delhi shows a comparatively higher percentage of acquittal cases taking two or more years for disposal - 42.55 per cent as against 19.36 per cent in Assam and 3.83 per cent in Haryana.

Table 5.7 B Nature of Disposal and Time Taken for Disposal (in percent) Delhi (14.112012 to 31.03.2020)							
Nature of Disposal	≤ 1 yr.	1 to 2 yrs.	2 to 3 yrs.	3 to 4 yrs.	4 to 5 yrs.	≥ 5 yrs.	≥ 2 years
Abated	43.21	23.46	17.28	8.64	4.94	2.47	33.33
Acquitted	35.02	22.43	13.52	8.45	7.22	13.36	42.55
Convicted	11.05	11.31	17.48	16.97	19.02	24.16	77.63
Discharged	77.53	17.98	3.37	1.12	NA	NA	4.49
Transferred	69.39	16.33	2.04	4.08	6.12	2.04	14.28
Quashed	40.58	24.64	18.84	5.80	7.25	2.90	34.79
Untraced	87.04	9.26	3.70	NA	NA	NA	3.7
PO Consigned	40.57	25.47	11.32	7.55	9.43	5.66	33.96
Other	85.02	8.21	4.83	0.48	0.97	0.48	6.76
Total	39.68	18.97	12.75	8.48	8.18	11.94	41.35
*NA - Not Applicable as there is no such disposal							

Table 5.7 C Nature of Disposal and Time Taken for Disposal (in percent) Haryana (14.112012 to 31.03.2020)							
Nature of Disposal	≤ 1 yr.	1 to 2 yrs.	2 to 3 yrs.	3 to 4 yrs.	4 to 5 yrs.	≥ 5 yrs.	≥ 2 years
Abated	53.33	40.00	6.67	NA	NA	NA	6.67
Acquitted	66.99	29.18	3.67	0.16	NA	NA	3.83

Convicted	38.49	51.78	8.97	0.65	0.11	NA	9.73
Discharged	80.00	20.00	NA	NA	NA	NA	NA
Transferred	100.00	NA	NA	NA	NA	NA	NA
Quashed	75.00	25.00	NA	NA	NA	NA	NA
Untraced	NA	NA	NA	NA	NA	NA	NA
PO Consigned	40.00	40.00	20.00	NA	NA	NA	20.00
Other	75.00	22.73	2.27	NA	NA	NA	2.27
Total	58.88	35.57	5.22	0.30	0.03	0.00	5.55
*NA - Not Applicable as there is no such disposal							

An attempt is made in Table 5.8 to understand the relation between nature of offence and time taken for disposal, if any. In every range of case age, except cases disposed in five or more years, the share of penetrative sexual assault is the highest, followed by aggravated penetrative sexual assault, sexual assault, sexual harassment and aggravated sexual assault. Where disposal has taken five or more years, the share of aggravated penetrative sexual assault is the highest. A greater number of cases is certainly one of the reasons for such offences taking longer time for disposal than others. However, no direct relationship can be established between the nature of offence and time taken for disposal.

Table 5.8 Type of Offence and Time Taken for Disposal Assam, Delhi & Haryana Combined (14.11.2012 to 31.03.2020)						
Type of Offence	≤ 1 year	1 to 2 yrs.	2 to 3 yrs.	3 to 4 yrs.	4 to 5 yrs.	≥ 5 yrs.
PSA	32.43	34.91	31.63	22.22	17.92	15.97
APSA	24.93	25.73	22.58	21.02	17.50	22.57
SA	19.17	17.07	14.80	15.02	17.92	11.81
ASA	6.20	5.13	5.74	6.91	4.58	6.25
SH	9.46	7.54	8.42	8.11	6.67	6.60
CP	0.02	0.00	0.00	0.00	0.00	0.35
PSA + CP	0.05	0.17	0.13	0.00	0.00	0.00
PSA + Storage of CP	0.02	0.04	0.00	0.00	0.00	0.00
APSA + Storage of CP	0.02	0.00	0.00	0.00	0.00	0.00
APSA + CP + Storage of CP	0.00	0.04	0.00	0.00	0.00	0.00
SA + CP	0.02	0.04	0.00	0.00	0.00	0.00
ASA + CP	0.02	0.00	0.00	0.00	0.00	0.00
SH + CP	0.00	0.00	0.00	0.00	0.00	0.00
SH + CP + Storage of CP	0.02	0.00	0.00	0.00	0.00	0.00
Abetment of PSA	0.02	0.00	0.13	0.00	0.00	0.00

Abetment of APSA	0.39	0.52	0.77	0.00	0.83	1.74
Abetment of SA	0.19	0.26	0.13	0.30	0.00	0.00
Abetment of ASA	0.05	0.04	0.00	0.30	0.00	0.00
Abetment of SH	0.02	0.04	0.13	0.00	0.00	0.00
Abetment of CP	0.29	0.47	0.26	0.00	0.42	0.69
Attempt to PSA	0.41	0.30	0.13	0.30	0.00	0.35
Attempt to APSA	0.51	0.47	0.26	0.30	0.83	0.00
Attempt to SA	0.39	0.13	0.26	0.00	0.00	0.00
Attempt to ASA	0.10	0.09	0.00	0.30	0.00	0.35
Attempt to SH	0.00	0.04	0.00	0.00	0.42	0.00
Abetment of PSA + CP	0.02	0.00	0.00	0.00	0.00	0.00
Abetment of APSA + Attempt to APSA	0.02	0.00	0.00	0.00	0.00	0.00
Abetment of SA + Attempt to SA	0.00	0.00	0.00	0.00	0.00	0.35
Failure to report	0.05	0.04	0.00	0.00	0.00	0.00
False reporting	0.02	0.00	0.00	0.00	0.00	0.00
Not Available	5.13	6.90	14.67	25.23	32.92	32.99
Total	100.00	100.00	100.00	100.00	100.00	100.00

Since conviction and acquittal form a significant portion of all disposed cases, a further assessment is carried out in Table 5.9 to see if the type of offence has relationship with time taken for disposal in cases that ended in conviction and acquittal. Table 5.9 also does not suggest any clear relationship between the two, though some trends may be elaborated.

Table 5.9 Percentage Share of Different Types of Offences in Cases that ended in Conviction and Acquittal in Two or More Years Assam, Delhi and Haryana Combined (14.11.2012 to 31.03.2020)		
Type of Offence	Conviction	Acquittal
APSA	28.32	19.10
PSA	21.39	27.75
SA	13.86	14.09
ASA	8.32	4.70
SH	7.33	8.00
Abetment of APSA	0.59	0.96
Abetment of CP	0.40	0.32
Attempt to APSA	0.40	0.21
CP	0.20	0.00
Attempt to PSA	0.20	0.21
Attempt to SA	0.20	0.11
Attempt to ASA	0.20	0.11
Attempt to SH	0.20	0.00
PSA + CP	0.00	0.11
Abetment of PSA	0.00	0.11

Abetment of SA	0.00	0.21
Abetment of SH	0.00	0.11
Abetment of SA + Attempt to SA	0.00	0.11
Not Available	18.42	23.80
Total	100.00	100.00

Of all cases disposed as convicted in two or more years, share of aggravated penetrative sexual assault is the highest at 28.22 per cent, followed by penetrative sexual assault at 21.39 per cent and sexual assault at 13.86 per cent, aggravated sexual assault at 8.32 per cent and sexual harassment at 7.33 per cent.

When it comes to acquittals reached in two or more years, penetrative sexual assault has the highest share of 27.75 per cent, followed by aggravated penetrative sexual assault at 19.10 per cent, sexual assault at 14.09 per cent, sexual harassment at 8 per cent and aggravated sexual assault at 4.7 per cent.

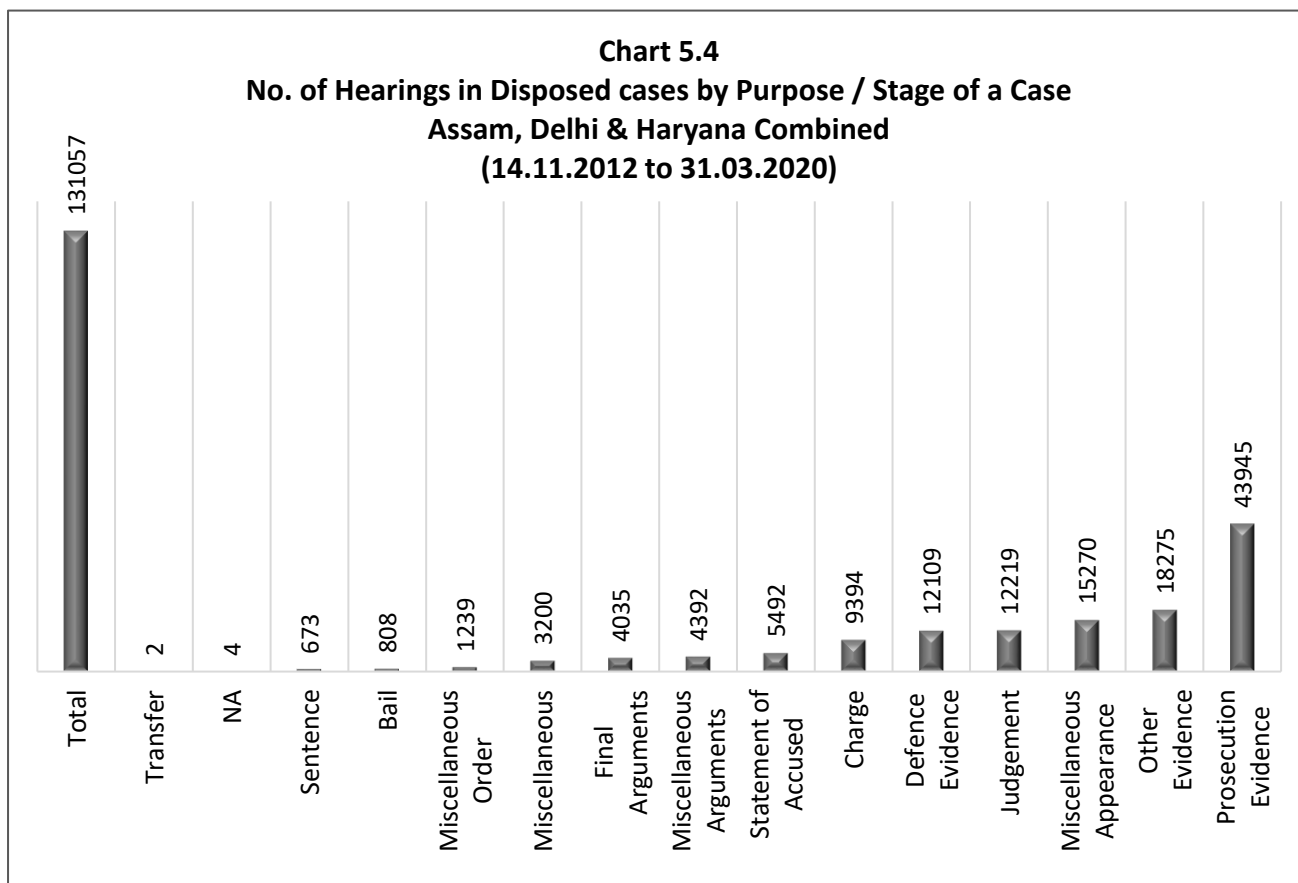
All other offences ending in conviction or acquittal after two or more years comprised less than one per cent of total convictions or acquittals reached in two or more years.

NUMBER OF HEARINGS HELD IN DISPOSED CASES

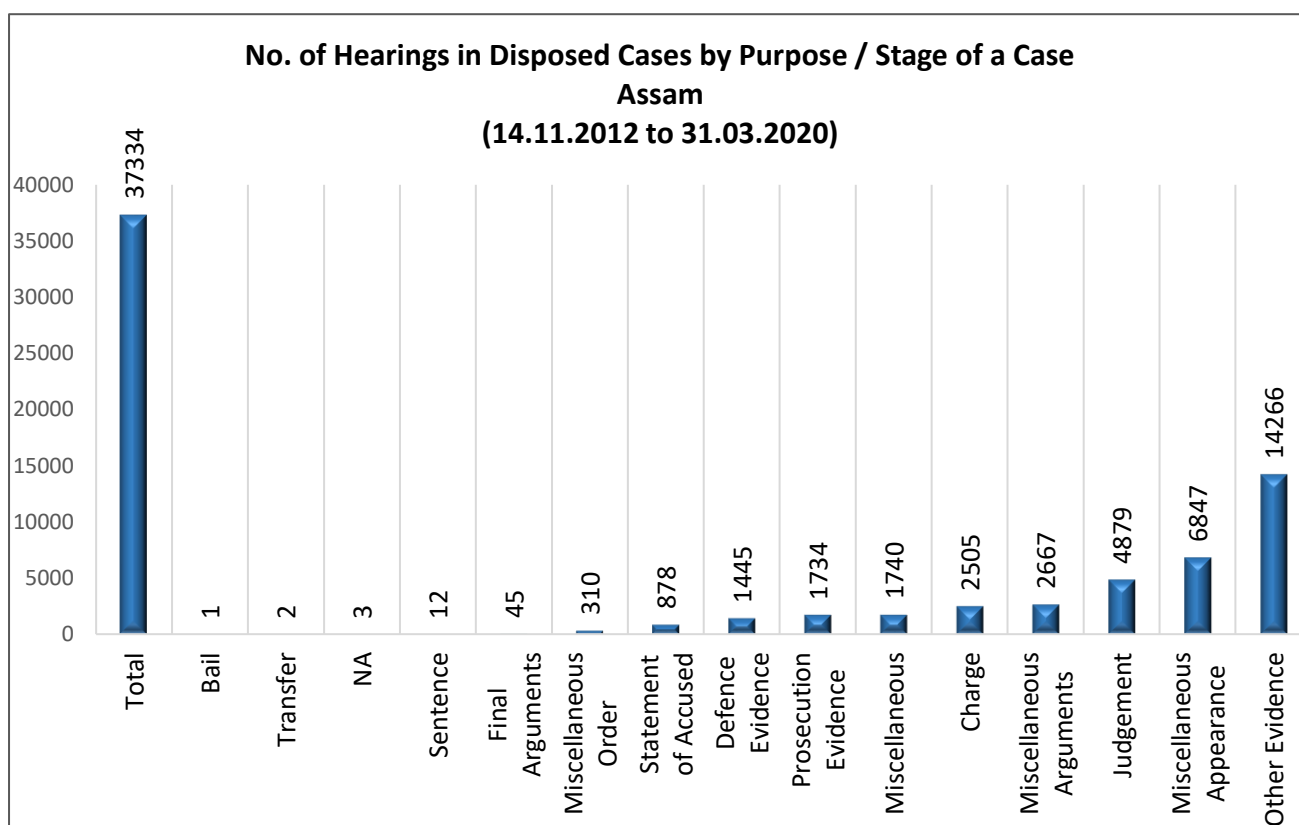
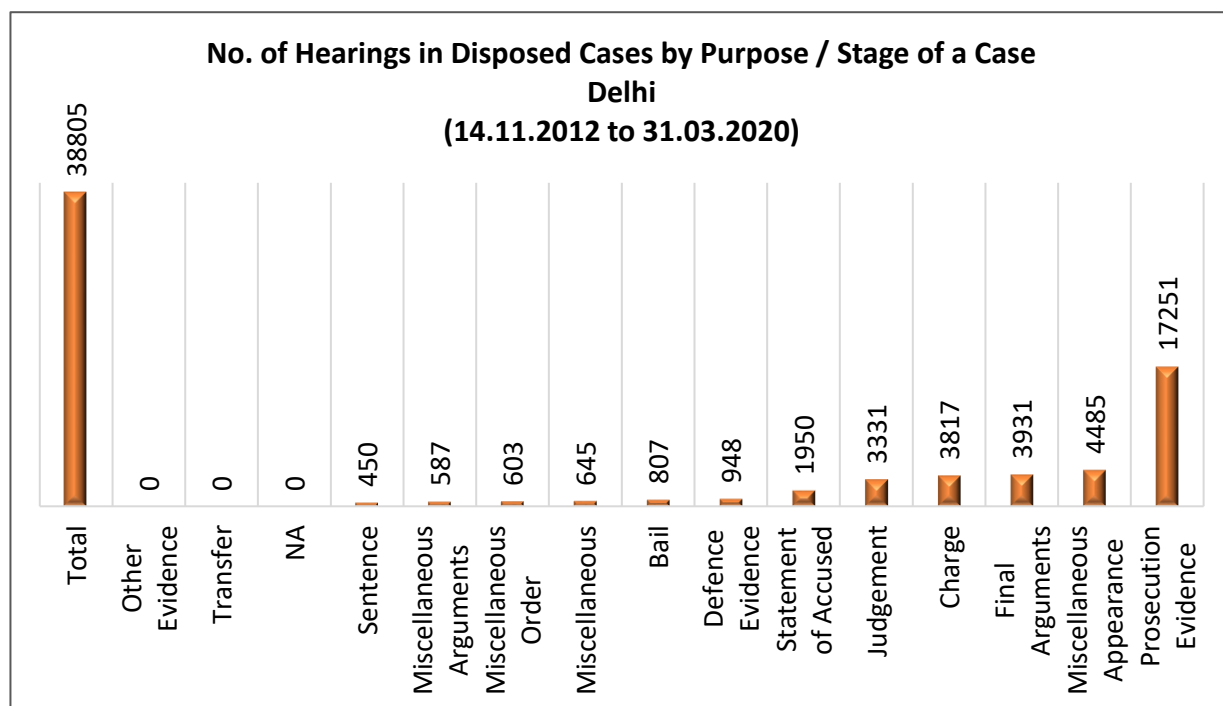
On the basis of available data, on an average 36 hearings are held per case for disposed cases. The stage of "Prosecution Evidence" has the largest share of 38.27 per cent in total hearings followed by "Miscellaneous Appearance", "Other evidence" and the stage of "Charge". All other stages together constitute 21.89 per cent of all hearings.

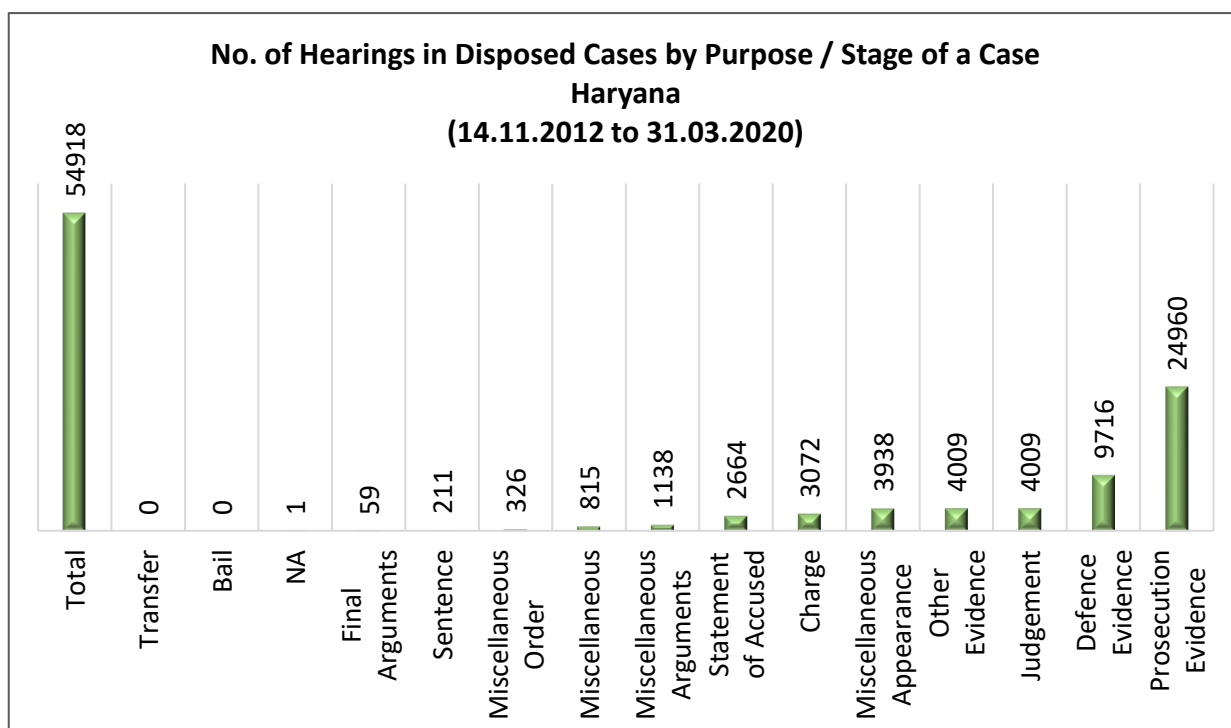
Table 5.10 No. of Hearings by Purpose / Stage of Criminal Justice Proceedings Assam, Delhi & Haryana Combined (14.12.2012 to 31.03.2020)				
Purpose of Hearing	No. of Hearings	No. of Cases Disposed	Average No. of Hearings per Disposed Case	Percentage share of Different Purposes of Hearing in Total No. of Hearings
Charge	33862	4625	7	11.48
Prosecution Evidence	112923	4982	23	38.27
Statement of Accused	8402	3309	3	2.85
Defence Evidence	14718	2934	5	4.99
Other Evidence	39150	2497	16	13.27
Final Arguments	6845	918	7	2.32
Judgement	12935	8086	2	4.38
Sentence	709	479	1	0.24
Bail	3459	249	14	1.17
Transfer	4	2	2	0.00
Miscellaneous	8273	1308	6	2.80

Miscellaneous Appearance	44528	4782	9	15.09
Miscellaneous Arguments	6572	1681	4	2.23
Miscellaneous Order	2600	714	4	0.88
NA	86	4	22	0.03
Total	295066	8097	36	100.00
*NA – Purpose / Stage of Case Not Available				



While data presented in charts 5.4A, 5.4B and 5.4C suggests that Delhi and Haryana spend more time on “Prosecution Evidence” compared to Assam, it would be incorrect to draw any conclusions as availability of court orders and data varies from state to state.





CONCLUSION

Even as increased demand for reducing the timeframe for completion of trial has been met through the Criminal Law Amendment Act of 2018 with respect to sexual offences under the Indian Penal Code, there is no basis for deciding on an ideal timeframe. More research is required to build evidence that can guide law and policy change. This study only one such attempt. More research will require availability of better data as well as data accessibility.

Analysis of time taken by Special Courts at various stages of a criminal justice proceeding and for different purposes can be a useful tool for ensuring better management of cases and enhancing court performance. If all daily orders are uploaded and certain parameters are added to the court information system, useful data can be generated in the number of effective and non-effective hearings and reasons for adjournment. Unfortunately, inadequacy of information, lack of court records and poor manner in which records are maintained and uploaded remain a challenge.

CHAPTER VI

SENTENCE

IMPRISONMENT AND FINE IMPOSED FOR OFFENCES UNDER THE POCSO ACT

METHODOLOGY OF SELECTION OF CASES

Scope of research

For this chapter, the scope of analysis is limited to **imprisonment** and **fine imposed** in a sample set of 205 judgments from the state of Haryana. This analysis is based on data fetched through annotation of judgements and scaling up and verifying the information thus generated.

Lack of uniformity in the manner in which judgements are written, absence of use of standard terminology and absence of certain critical facts pertaining to a case make judgement annotation a challenging and limiting exercise. Nonetheless, since information pertaining to imprisonment and fine imposed could be extracted more easily and was also verifiable to a significant extent, the chapter concentrates only on these two aspects.

This too was a challenging exercise. In order to identify the sentence given to the accused in each of the said cases, the imprisonment context provided in the sheet had to be looked at and where data fetched through judgement annotation was incomplete or unclear, judgements had to be searched manually for extracting necessary information.

In some of the cases, the imprisonment context picked up from the judgement was accurate and it was possible to mention the years of imprisonment and amount of fine imposed on the convict. In some others, the judgement annotation process fetched information about the maximum and minimum imprisonment prescribed for a specific offence instead of the actual sentence imposed on the convict. This can happen in technology-based processes that depend on searching for patterns or establishing patterns on the basis of use of certain words and terms. It takes long to refine the search and arrive at more accurate information and CDL and HAQ are committed to continue with the experiment, while advocating for some degree of uniformity and standardisation in the manner in which judgements are written.

Further, while annotating the sample judgments, it was difficult to get accurate information on the acts and sections under which a person is convicted. This was because of the manner in which the acts and sections are mentioned in the judgements. At times, there is a mismatch between the two, especially when sections appear without mentioning the act or different acts and sections appear together causing confusion for a technology-based application. Judges too make mistakes and do not check if the acts and sections appear correctly. For example, there were a few judgements where the accused was stated to have been convicted

under Section 9 of the Prohibition of Child Marriage Act, whereas it should have been Section 9 of the POCSO Act.

With respect to the information on the fine amount imposed, the challenge was the table format in which the sentence is mentioned in the judgement. –As the relevant context of the sentence order is spread over more than 2 lines and there is more than one section under which the accused is sentenced, it was difficult to pin point the fine amount with the section under which it was imposed. Often the information about fine imposed had to be verified manually from the judgments in many cases.

The process of judgement annotation is time taking and HAQ and CDL will continue to work further to extract and analyse similar information for Assam and Delhi in the near future. In addition, attempts are being made to use judgement annotation for extracting information on other variables for which clear language patterns are visible and which can easily be verified. These include victim compensation, information pertaining to victim's age, gender, disability, pregnancy, etc.

Final selection of cases and focus for analysis

Considering all the challenges faced with finding patterns and also in scaling up the process of judgment annotation and data verification, a decision was taken to look at only the cases where imprisonment and fine was imposed under the POCSO Act and verifiable data was readily available.

This brought the final sample size to a total of 197 judgements out of total of 2120 judgements that were annotated from Haryana.

Initially a sample of 205 cases was selected, but further screening using manual verification brought the number down.

Judgement not available and accused acquitted of charges

Of the said 205 cases, there was one case wherein the judgment itself was not available on the E-Courts portal. After going through the sentence orders in 3 cases, it was found that in 2 cases the accused was acquitted under sections of the POCSO Act and in one case the accused was acquitted of all charges. It was decided that these 4 cases will not be taken into consideration for the purpose of analysis.

Cases where sentence order was not available

Of the remaining 201 cases, there were a total of 4 cases for which the judgement convicting the accused under the relevant sections of POCSO Act was present, but the order on sentence was not accessible. Thus, the term of imprisonment and fine levied could not be ascertained, further reducing the number of cases for analysis to 197.

SENTENCING

Passing of a sentence is the ultimate goal of any justice delivery system. Sentencing, usually, is understood as one of the most vital aspects of the penal laws, which is believed to be a powerful tool of crime deterrence.

Sentencing is more of an 'art' than science. The Courts have to consider a variety of factors before coming to a conclusion on the final sentence to be given to a convict. The Law Commission of India in its 47th Report attempted to answer the question on how sentences ought to be determined. In a paragraph often cited by the Supreme Court, the Commission said¹²:

"A proper sentence is a composite of many factors, including the nature of the offense, the circumstances - extenuating or aggravating – of the offence, prior criminal record, if any, of the offender the background of the offender with reference to education home life sobriety and social adjustment the emotional and mental condition of the offender the prospect for the rehabilitation of the offender the possibility of a return of the offender to normal life in the community, the possibility of treatment or training of the offender the possibility that the sentence may serve as a deterrent to crime by this offender or by others and the present community need if any of such a deterrent in respect to particular the type of offense in involved."

'In *Modi Ram v. State of Madhya Pradesh*, the Supreme Court held that factors pertaining to both the offence and offender need to be taken into account while sentencing. The magnitude of the offence and circumstances in which it was committed, the motivation of the offender, his age, character, antecedent, and social status should be considered and it further noted that the sentence should neither be too lenient nor too severe'.¹³ 'In *Jagmohan Singh v. State of Uttar Pradesh*, the Supreme Court listed various aggravating and mitigating factors that could be considered while sentencing'.¹⁴ The aggravating factors relate to the manner in which the offence was perpetrated, while some of the factors that might be considered in mitigating the sentence are: age of the offender - minority of the offender, old age of the offender; condition of the offender – health, sex, marital status, financial position; provocation; absence of bad intention; self-defence etc.

'Though the courts have some cases to refer to for guidance while considering the aggravating and mitigating factors, the Supreme Court has not been consistent in advising the courts on which theories (or justification) of punishment should be applied while sentencing the convict'.¹⁵ The Supreme Court's own philosophy has changed from decade to decade and

¹² Mrinal Satish, *Discretion, Discrimination and the Rule of Law, Reforming Rape sentencing in India*, Cambridge University Press, 2017

¹³ *ibid*

¹⁴ *ibid*

¹⁵ *ibid*

from judge to judge. This has resulted in widespread arbitrariness while sentencing the convict.

‘In the case of *Dhananjay Chatterjee v. State of West Bengal*, the Courts held that sentencing must respond to society’s cry for justice against criminals. This theory has now been used widely by the trial courts to justify the sentences given.’¹⁶

“It is to be borne in mind that a Judge does not preside over a criminal trial merely to see that no innocent man is punished but a Judge also presides to see that a guilty man does not escape. One is as important as the other. Both the public duties which the Judge has to perform.”

‘Some of the courts have observed that the type of punishment must be proportional to the crime committed, and it should take into consideration the rights of the offender and the society at large.’¹⁷

In case of **Rajbala v. State of Haryana**, (2016) 1 SCC 463, the Hon'ble Supreme Court held that a judge has to keep in mind the paramount concept of the rule of law and the conscience of the collective and balance it with the principle of proportionality while exercising discretion.

However, over the years, there has been a huge inconsistency and disparity while courts decide the punishment and award a sentence for a particular offence. By not having a guideline on sentencing, each court uses the unrestrained discretion, which creates unwarranted disparity in the sentence orders.

The POCSO Act as well as the IPC has had a string of amendments over the years and it has made the law stricter i.e. increasing the minimum and maximum punishment for each of the offences. Further, the addition of sentences such as death and imprisonment for life i.e. remainder of natural life has made the law more punitive. By fixing a mandatory minimum sentence for offences under the POCSO Act, the judges have lost the discretion of giving a sentence below the minimum, citing special reasons. The said amendments have increased the range between the minimum and maximum, which gives the judges an even wider discretion at the time of sentencing the convict.

MINIMUM AND MAXIMUM PUNISHMENT UNDER POCSO ACT AND IPC

Once the court passes a judgement with respect to the conviction of an accused, the said convict shall then be heard on quantum of sentence and fine. The clause dealing with the punishment of committing the offence, is the guiding factor while the court decides the quantum of sentence (imprisonment years and fine amount). The no. of years for which the convict can be sentenced to is provided in the corresponding section for punishment i.e. range of minimum to the maximum punishment.

¹⁶ *ibid*

¹⁷ Sentencing policy in India; July 05, 2019; <https://blog.ipleaders.in/criminal-justice-sentencing-policy-india/>

Alternative Punishment

At the time of sentencing of the accused who is convicted under the sections of the POCSO Act, it is pertinent for the court to delve upon the role of Section 42 of the POCSO Act. Section 42 of the POCSO Act provides for '**alternative punishment**' and states that:

*'Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, **the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.***

In other words, the court must consider the sections under the POCSO Act or its corresponding provisions under the IPC while considering the question of sentence and prescribe the punishment that is greater in degree.

The POCSO Act was enacted on 14 November, 2012 and thereafter a major amendment came into effect from 26 August, 2019, affecting the substantive provisions in the law, including punishment. The Criminal Law (Amendment) Act, 2013 and thereafter the Criminal Law Amendment, Act 2018 which came into effect from 02 April, 2013 and 11 August, 2018 respectively, also amended various provisions in the IPC, directly impacting punishment for offences under the POCSO Act by virtue of Section 42 of the Act.

Punishment under Section 4 & 6 of the POCSO Act

Section no.	Prior to Protection of Children from Sexual Offences (Amendment) Act, 2019	Post Protection of Children from Sexual Offences (Amendment) Act, 2019
Section 4 (PSA)	Minimum imprisonment of 7 years, which could extend up to imprisonment for life and shall also be liable to fine.	Minimum imprisonment of 10 years. The maximum punishment remained the same i.e. imprisonment for life and shall also be liable to fine. In case of penetrative sexual assault on a child under of age of 16 years, the minimum imprisonment would be of 20 years which may extend to imprisonment for life – which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.

		Further, the amendment inserted sub-section (3) to Section 4 of POCSO Act which stated that the fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.
Section 6 (APSA)	Minimum punishment prescribed is 10 years which could extend up to imprisonment for life and shall also be liable to fine.	<p>Minimum punishment was increased from 10 years to 20 years and imprisonment for life meant imprisonment for the remainder of that person's natural life or with death and shall also be liable to fine.</p> <p>Further, the amendment inserted sub-section (2) to Section 6 of POCSO Act which stated that the fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.</p>

Corresponding sections under IPC

Section 376 and Section 377

Prior to Criminal Law (Amendment), 2013

Under Section 376(1) of IPC, for cases, except the ones provided under Section 376(2), the minimum punishment prescribed is 7 years which could extend up to imprisonment for life or for a term up to 10 years and shall also be liable to fine. *While sentencing the accused, judges had the power to impose sentence below the minimum i.e. 7 years with adequate and special reasons mentioned in the judgment.*

Under Section 376(2) of IPC, the minimum punishment prescribed is of 10 years but which may extend to life and shall also be liable to fine. *While sentencing the accused, the judge had the power to impose sentence below the minimum i.e. 10 years with adequate and special reasons mentioned in the judgment.*

Post Criminal Law (Amendment), 2013

The punishment for rape under Section 376(1) of IPC was amended to state that except in cases provided under Section 376(2) the accused shall be punished with RI of either term which shall not be less than 7 years but which may extend to imprisonment for life.

Punishment under Section 376(2) was amended to minimum of 10 years but which may extend to imprisonment for life – *which shall mean imprisonment for the remainder of that person's natural life.*

Post Criminal Law (Amendment), 2018

Section 376 (1) of IPC was amended by the Criminal law (Amendment), 2018 to increase the minimum punishment of rape from 7 years to 10 years.

Additionally, Section 376 (3) of IPC was added which provides punishment for rape of a women under of age of 16 years of age, and the minimum imprisonment under Section 376 (3) is a minimum of 20 years but which may extend to imprisonment for life – which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.

New Clauses add by the Criminal Law (Amendment), 2013

Section 376 A (Punishment for causing death or resulting in persistent vegetative state)

The punishment for causing death or resulting in persistent vegetative state is a minimum of 20 years but which may extend to imprisonment for life – which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.

Section 376 C (Sexual intercourse by person in authority)

The punishment for sexual intercourse by a person of authority is a minimum of 5 years but which may extend to 10 years and shall also be liable to fine.

Section 376 D (Gang Rape)

The punishment for gang rape is a minimum of 20 years but which may extend to imprisonment for life – which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.

Section 376 E (Punishment for repeat offenders)

The punishment for repeat offenders shall be imprisonment for life – which shall mean imprisonment for the remainder of that person's natural life or death.

New Clauses add by the Criminal Law (Amendment), 2018

Section 376 AB (Punishment for rape on woman under 12 years of age)

The punishment for rape of a woman under 12 years is a minimum of 20 years but which may extend to imprisonment for life – which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.

Section 376 DA (Punishment for gang rape on woman under 16 years of age)

The punishment for gang rape on a woman under 16 years shall be imprisonment for life – which shall mean imprisonment for the remainder of that person's natural life and with fine.

Section 376 DB (Punishment for gang rape on woman under 12 years of age)

The punishment for gang rape on a woman under 12 years shall be imprisonment for life – which shall mean imprisonment for the remainder of that person's natural life or death and with fine.

Section 377 Unnatural offences

The punishment for unnatural offence shall be imprisonment for life or with imprisonment which may extend to 10 years. The said clause was not subjected to any change over the years.

In light of Section 42 of the POCSO Act, prior to August 26, 2019 the punishment under Section 376 of IPC was greater in degree than the punishment provided under Section 4 and 6 of the POCSO Act. Therefore, cases in which the date of incident is between the period April 21, 2018 and August 26, 2019, an accused who has been convicted under Section 4/6 of the POCSO Act read with Section 376 (1)/(2)/(3) or Section 376 A/AB/C/D/DA/DB shall be sentenced under the corresponding sections of the IPC.

As there is no minimum sentence prescribed under Section 377 of the IPC, the punishment prescribed under Section 377 is considered to be lower than that prescribed under Section 4 and 6 of the POCSO Act.

After the Criminal Law (Amendment) Act, 2013, Section 376(2) specifically mentioned its maximum punishment to be remainder of natural life, whereas Section 6 of the POCSO Act continued to keep it at imprisonment for life until the 2019 amendment. In the case of **Mohammed Munna v. UOI**, 2005(7) SCC 417, the Hon'ble Supreme Court in the year 2005, referring to the case of **Gopal Vinayak Godse v. The State of Maharashtra and Others**, 1961 SCR (3) 440, stated that imprisonment for life is not a definite period of imprisonment i.e. 14 years or 20 years but for the whole of the remaining period of the convict person's natural life. Though the case at hand, referred to Section 302 of IPC, the case is being referred to gauge the thought process of the Supreme Court. In some cases, analysed for this study, the courts have considered Section 376(2) of IPC greater in degree of punishment than Section 6 of the POCSO Act and have sentenced the convict under the provisions of IPC.

Punishment under Section 8 and 10 of the POCSO Act

Section no.	Punishment details
Section 8 (SA)	Minimum punishment of 3 years but which may be extend to 5 years and shall also be liable to fine.
Section 10 (ASA)	Minimum punishment of 5 years but which may be extend to 7 years and shall also be liable to fine.

Corresponding sections under IPC

The corresponding sections under IPC would be Section 354 '*Assault of criminal force to woman with intent to outrage her modesty*' and/or Section 354 B which states '*Assault or use of criminal force to woman with intent to disrobe*', depending on the facts of the case. Criminal Law (Amendment), 2013 amended the period of punishment prescribed under Section 354 which now shall not be less than 1 year and may extend up to 5 years. Section 354B was inserted vide the Criminal Law (Amendment), 2013 and the punishment prescribed under this section is imprisonment of either description for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine.

In this regard, the punishment under Section 8 & 10 of POCSO Act and its corresponding sections under IPC prescribe the same punishment thus the question of alternative punishment under the section of greater punishment does not come into the picture.

Punishment under Section 12 of POCSO Act

Section no.	Punishment details
Section 12 (SH)	Minimum punishment of 3 years but which may be extend to 5 years and shall also be liable to fine.

Corresponding sections under IPC

The corresponding sections under IPC would be Section 354 A and 354 D which states '*Sexual Harassment and punishment for sexual harassment*' '*Stalking*' respectively. This section was inserted vide the Criminal Law Amendment 2013 and the punishment prescribed under Section 354 A and 354 D is imprisonment of a term which may extend to 3 years or with fine or both and imprisonment of a term which may extend to 3 years and shall also be liable to fine respectively.

In this regard, the punishment prescribed under Section 12 and its corresponding sections under IPC prescribe the same punishment thus the question of alternative punishment under the section of greater punishment does not come into the picture.

TYPE OF OFFENCE AND SENTENCE

Rules and Assumptions

Rule of Principal Offence - Cases wherein the accused has been convicted under more than one sections of POCSO Act, only the offence with higher punishment or the principal offence has been taken into consideration.

The chapter analysis the sentence given to the accused in each of the 197 cases. However, some of the cases have more than one accused. There are 3 cases with three accused each and 2 cases with two accused each. Thus, in the 197 cases, there are total of 205 accused who have been convicted and sentenced. For the sake of analysis, the no. of cases has been used as reference and not no. of accused.

Cases wherein the sentence to the convict is given by the court under both the Acts i.e. sections of IPC and POCSO Act, the case has been categorized under POCSO Act to calculate the type of punishment granted.

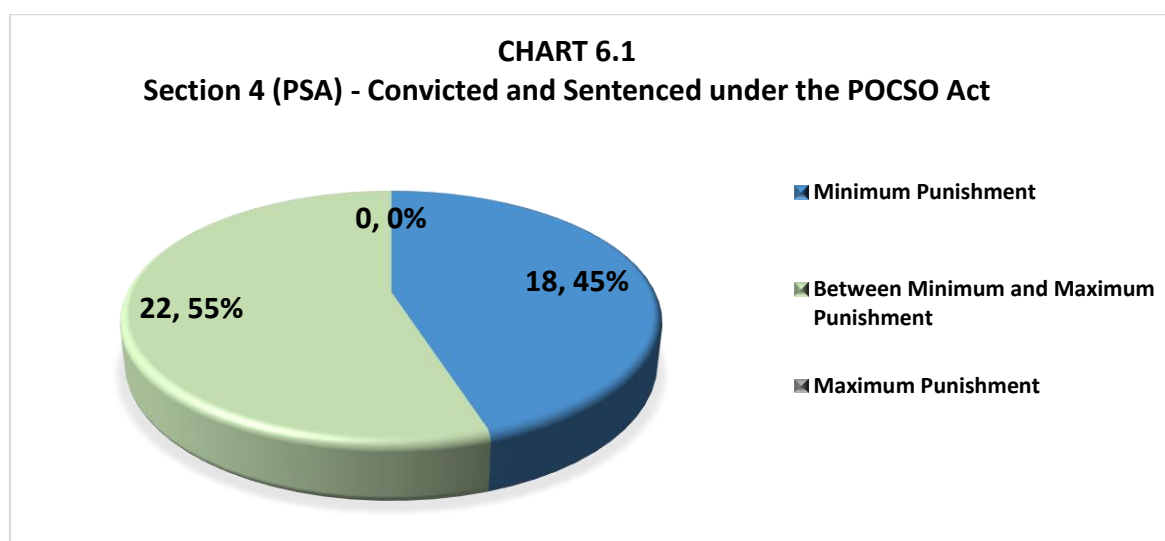
In some of the cases, by way of Section 42 i.e. alternate punishment, the accused have been sentenced under the corresponding provision of IPC. In order to segregate these cases, the cases have been categorized into 2 heads based on the acts under which the sentences were given to the convict:

- (i) Convicted and sentenced under POCSO Act
- (ii) Convicted under POCSO and sentenced under IPC

Penetrative Sexual Assault (PSA) - Section 4 of the POCSO Act

In 48 out of the total 197 cases analysed, conviction was under Section 4 of the POCSO or it's corresponding provision under the IPC. Of these 48 cases, there is one case wherein the offence of Section 4 was in combination with Section 18 (Attempt to ASA).

Convicted and Sentenced under the POCSO Act



In 40 cases the convict has been sentenced under Section 4 of the POCSO Act to imprisonment of a minimum of 7 years extending to imprisonment for 10 years.

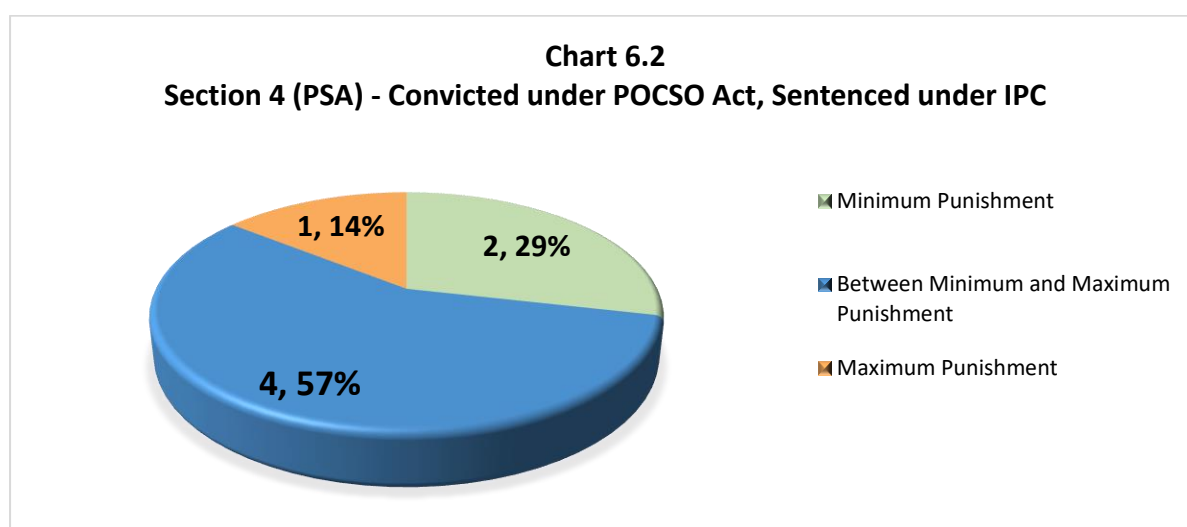
Minimum Punishment

- 7 years - 18 cases

Between minimum imprisonment and maximum Punishment

- 8 years and 10 years - 2 cases and 20 cases respectively

Convicted under the POCSO Act, but sentenced under the IPC



Of the 48 cases, in 7 cases the accused was convicted under sections of the POCSO Act and their corresponding sections under IPC. However, at the time of sentencing, following the principle of Section 42 of POCSO Act, the accused were sentenced under provisions of the IPC, carrying the greater punishment.

Minimum Punishment

- 10 years under Section 376(2) – 1 case
- 20 years under Section 376 D – 1 case

Sentenced under Section 376 D of IPC

In one of the cases, there were three accused who were convicted under Section 4 of the POCSO Act and Section 376D of the IPC. As per the facts of the case, the victim was 16 years old and about five months prior to filing the complaint, the victim along with her younger brother were alone at home when the three accused took undue advantage of the situation and criminally trespassed into her house. They threatened her and then gang raped her. The accused had also taken indecent photographs with which they threatened her to not tell anybody and that they would kill her whole family. Consequently, she kept silent due to fear. Again, one of the accused had criminally trespassed into her house at night and knocked on the door of her room. She saw the accused from the window, but didn't open the door. The

accused started knocking on the door and shouting. On hearing the noise, the family members of the complainant woke up, and they tried to apprehend him, but the accused fled away after jumping over the wall. Her mother asked the victim about what had happened but she did not disclose the incident due to fear, and remained in shock/ depression. A few days later, she fell on the pedestal fan and sustained injuries on her both hands, and then she narrated the whole incident to her parents. The court noted that in the present case, the fact that the two co-accused entered into the house of the complainant along with the main accused to help him in the commission of rape, all of them were held liable and convicted for the commission of offence under Section 376 D IPC read with Section 34 of the IPC, though, the main offence was committed only by one of the accused. The main accused was also convicted for commission of offence under Section 4 of the POCSO Act. The other two co-accused were held guilty for commission of offence under Section 17 read with Section 4 of the POCSO Act for abetting the crime.

At the time of sentencing, the three accused prayed for a lenient view stating that they were from poor families and were a victim of circumstances. The minimum imprisonment for gang rape under Section 376 D is 20 years and so the court sentenced all the three accused to minimum imprisonment of 20 years.

As the said case pertains to the year 2014, during that time the punishment provided under Section 4 was a minimum of 7 years which could extend up to imprisonment for life. In addition to the offence, the main accused was sentenced to 7 years (minimum imprisonment) under Section 4 of the POCSO Act and the two co-accused were also sentenced to 7 years each under Section 17 read with Section 4 of the POCSO Act. The court noted that the sentence given to the accused shall be concurrent.

Between Minimum and Maximum Punishment

- 20 years – 4 cases

Sentenced under Section 376 (3)

In 4 cases, of district Palwal (3) and Rewari (1), bearing registration date between July and October, 2018, the accused were convicted under Section 4 of the POCSO Act and Section 376(3) of the IPC. However, the sentence was given under Section 376 (3) of the IPC as the punishment under the said section at that time was greater than under Section 4 of the POCSO Act. In the said 4 cases, the accused committed penetrative sexual assault on a victim under the age of 16 years and were sentenced to imprisonment for a period of 20 years under Section 376(3) of IPC. This quantum of punishment falls between the minimum and maximum punishment prescribed under Section 376(3) of the IPC.

Maximum Punishment

- Life Imprisonment – 1 case

Sentenced under Section 377 – Imprisonment for Life

In one case registered in May 2018, the accused was convicted under Section 4 of the POCSO Act and Section 377 of the IPC, although, following the rule prescribed in Section 42 of the POCSO Act, the accused was sentenced to life imprisonment under Section 377 of the IPC. This quantum of punishment falls under the maximum punishment prescribed under Section 377 of the IPC.

In the said case, the male victim, aged 13 years, was from a scheduled caste / scheduled tribe background. He had gone to a nearby school to catch butterflies, where the accused caught him, took him to a damaged quarter of water works and had unnatural sex with the victim, despite his resistance. When the victim tried to raise alarm, accused gagged his mouth and threatened to kill him. The victim had complained to his father who then immediately filed a complaint with the police. The medical reports suggested injury in and around the victim's rectal. As per the FSL report, no semen was detected. Not taking away from the case of the prosecution, the court stated that no human semen was detected on the clothes of child victim is not a ground to discard the testimony of the victim. Further, it was noted that the victim was subjected to lengthy cross-examination, but nothing came out from his cross-examination, which could shake the victim's credibility.

Basis the evidence put forth by both sides, the court convicted the accused under Section 4 of the POCSO Act and Section 377 of the IPC read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. While sentencing, the prosecution emphasized on the gravity and seriousness of the offence. The convict prayed to the court to take a lenient view while awarding punishment and stated that he is a poor person, has one daughter and two sons, is sole bread earner in the family, and parents are in their old age and have been suffering from ailments. The convict also mentioned that neither is he a previous convict nor is he involved in any other case.

Considering the entire facts and circumstances, particularly the seriousness and gravity of the offence and also giving due weightage to the fact that such incidents are on the rise, the court sentenced the convict to undergo rigorous imprisonment for life under Section 377 of the Indian Penal Code read with Section 3(2)(v) of the SC/ST Act, 1989. However, it is to be noted that as Section 377 of the IPC does not have a minimum punishment prescribed, the provisions of Section 4 are greater in punishment the Court wrongly relied on Section 42 of the POCSO Act in the said case and sentenced the convict under Section 377 of the IPC.

Attempt to commit PSA – Section 18 read with section 4 of the POCSO Act (Minimum Punishment)

The punishment prescribed for Attempt to PSA (a combination of Section 18 read with Section 4 of the POCSO Act) is imprisonment for a term which may extend to one half of imprisonment of life or one half of the longest term of imprisonment provided for that offence.

In the case of Attempt to PSA, the victim was 16 years old and at night she had gone outside her house to relieve herself. The accused, who was the victim's neighbour, was in a drunken

condition and forcibly took her into his house. He tried to remove her lower portion clothes and attempted to forcibly rape her. The act of rape could not take place as the victim and accused's family members intervened. The court noted that the victim does not have a strong motive to falsely involve the accused and there are no plausible and justifiable reasons to disbelieve and discard the testimonies of the prosecution witnesses. The court convicted the accused under Section 18 read with Section 4 of the POCSO Act.

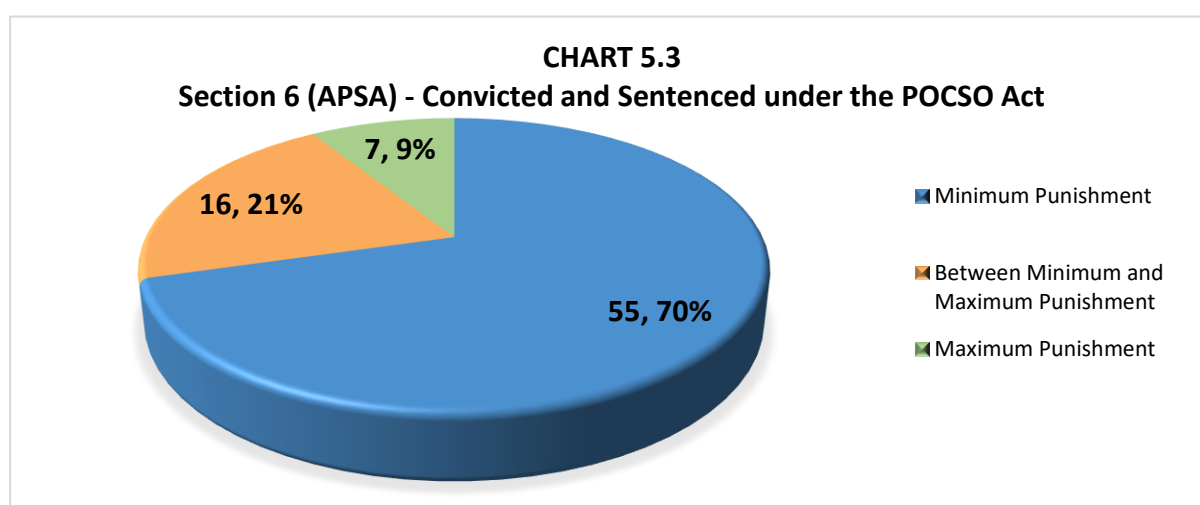
At the time of sentencing, the court quoting the Hon'ble Supreme Court's judgement in **Dhananjay Chatterjee v. State of West Bengal**, 1994 (2) SCC 220, stated that the court would be failing in its duty, if appropriate punishment is not awarded for a particular crime. *"Large number of criminals go un-punished thereby encouraging the criminals and in the ultimate making justice suffer by weakening the system's credibility."* Further, the court stated that the imposition of appropriate punishment is the courts respond to the society's cry for justice against the criminals and the justice demands that the court should impose punishment befitting the crime.

As the said case of Attempt to PSA pertained to October 2018, at that time the longest term provided under Section 4 of the POCSO Act was imprisonment for life and the minimum imprisonment was 7 years. In the said case the accused was sentenced to imprisonment for a period of 3.5 years i.e. half of the minimum imprisonment sentence prescribed under Section 4 of the POCSO Act.

Aggravated Penetrative Sexual Assault (APSA) - Section 6 of the POCSO Act

Out of the total number of cases (197), the number of cases wherein the accused was convicted under Section 6 for committing aggravated penetrative sexual assault, i.e. APSA, is 95 cases. Of the 95 cases, 2 cases were such wherein offence of Section 6 was in combination with Section 18 (Attempt to APSA).

Convicted and Sentenced under the POCSO Act



Minimum Punishment

In 55 cases the accused has been sentenced to imprisonment for 10 years, which falls under the minimum imprisonment prescribed under Section 6 of the POCSO Act. In 2 of the said cases, there were more than one accused, three and two accused respectively, and they were all sentenced to imprisonment of 10 years each.

Between Minimum and Maximum Punishment

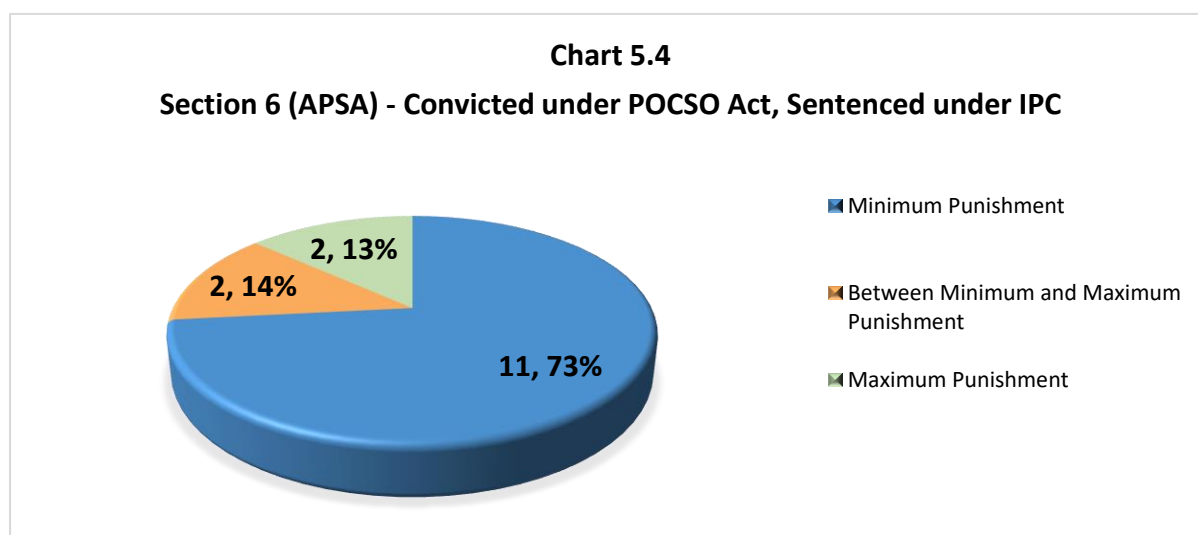
In 16 cases the accused has been sentenced between the minimum and maximum imprisonment prescribed under Section 6 of the POCSO Act (between 10 years and Life Imprisonment)

- Imprisonment for 12 years - 1 case
- Imprisonment for 14 years - 2 cases
- Imprisonment for 20 years - 13 cases (*Period of the cases ranging from years 2016-2019*)

Maximum Punishment

In 4 cases, the accused were awarded maximum sentence under Section 6 of the POCSO Act, i.e. imprisonment for life, and in 3 cases the accused were awarded life imprisonment under both Acts – Section 6 of the POCSO Act and Sections 376(2)(i), 377 and 302 of the IPC.

Convicted under the POCSO Act and sentenced under the IPC



Out of the 95 cases under APSA, there are 15 cases wherein the sentence given to the convict is under Section 376 (2), Section 376 (3), Section 376 A read with Section 302 and Section 376 D of the IPC.

Minimum Punishment

- 20 years under Section 376(3) – 1 case

- 20 years under Section 376 D – 3 cases with 4 accused
- 10 years under Section 376(2) – 7 cases

Between Minimum and Maximum Punishment

- Imprisonment of 12 years - 1 case
- Imprisonment of 14 years under Section 376 (2)(i) - 1 case

Maximum Punishment

- Imprisonment for natural life under Section 376(2)(i) – 1 case
- Death under Section 376 A & Section 302 – 1 case

Sentenced under Section 376(2)(i) - Imprisonment for Natural Life

In a case registered in 2017, one accused was convicted for the rape of a victim under 16 years of age and following the rule under Section 42 of the POCSO Act was sentenced to imprisonment for the remainder of his natural life under Section 376(2)(i) of IPC i.e. at that time the punishment under the said section of IPC was greater than the punishment prescribed under Section 6 POCSO Act.

In the said case, the victim was in her house on the top floor and the accused who was their neighbour / tenant resided on the ground floor of the same building. When the victim's parents were out for work, the accused forcibly took the victim to the upper floor and raped her. He also threatened to kill her with a knife if she told anyone about the incident. When her mother came back from work and saw the victim crying, she enquired as to what had happened. Due to the fear of the accused the victim hesitated at the beginning in telling her mother about the incident but then told her mother about the abuse. She took the victim to the police station next morning and reported the matter.

At the time of the prosecution evidence, the victim and her mother's testimony were consistent with the facts and did not raise any concern for disbelief. Further, the medical evidence was also in favour of the prosecution – *"hymen of prosecutrix was torn and slight redness was present"*. In order to determine the age of the victim, there were 2 documents submitted (i) Aadhar card (ii) date of birth certificate and there was a discrepancy in age – one document stated her year of birth to be 2006 and the other as 2008. As the year of incident was 2017 and it was decided that if either of the documents are relied upon, the victim's age would still be under 12 years.

After considering all the relevant evidences, the court convicted the accused on the basis that the case was proven by the prosecution – testimonies of the witness and medical evidence corroborated the prosecution case, nothing to prove that the victim/family had enmity with the accused and filed a false complaint against the accused. The court laid emphasis on the fact that a family would not put the honour of their family / daughter at risk to falsely implicate an accused - *"the contention of false implication of the defence counsel is not*

tenable as any family could not have put the honour of the daughter at stake and that too for false implication of the accused."

At the time of arguments on sentencing, the lawyer for the convict mentioned that the convict is a poor, not a previous convict, has 5 brothers and sisters and there is no one else to take care of his mother (father had already expired). He requested for the application of reformatory theory of sentencing and to take a lenient view. However, the prosecution vehemently opposed the plea for leniency and reiterated that the crime was heinous and should be dealt with a heavy hand.

The court observed that it is a basic principle that crime and punishment are two sides of same coin and punishment must fit the crime and that as per criminal jurisprudence, the sentence must be proportionate to culpability.

*"In case of Rajbala versus State of Haryana (2016) 1 SCC 463, it has been held by Hon'ble Supreme Court that a judge has to keep in mind paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality while exercising discretion. Further, in case of State of Madhya Pradesh versus Udaybhan (2016) 4 SCC 116, it has been held by Hon'ble Supreme Court that undue leniency in awarding sentence needs to be avoided because it does not have the necessary effect of being deterrent for the accused and fails to reassure the society that offender has been properly dealt with. In case of Shanti Lal Meena versus NCT of Delhi, CBI (2015) 6 SCC 185, it has been held by Hon'ble Supreme Court that there is no significance to the theory of reformation of the conduct of public servant. The only relevant object of punishment in such cases is denunciation and deterrence. **It is also basic principle that crime and punishment are two sides of same coin and punishment must fit the crime. As per criminal jurisprudence, the awarding of sentence must be proportionate to culpability. Giving punishment to the wrongdoer is at the heart of criminal justice delivery system.**"*

Keeping in mind the aforesaid principles, the court was of the considered view that in such type of cases no leniency can be taken. Further, it stated that in such type of cases the deterrent theory of punishment is appropriate and that the ends of justice would be fully met if the convict is sentenced to imprisonment for life (which is the remainder of his natural life).

- Sentenced under Section 376 A & Section 302 - Death

In one case, following the rule prescribed in Section 42 of the POCSO Act, the convict was sentenced to death under Section 376 A (section inserted after the Criminal Law (Amendment), 2013) read with Section 302 of the IPC and sentenced to life imprisonment (for the remainder of his natural life) under Section 6 of the POCSO Act.

According to the court, the said case falls within the category of 'rarest of the rare' and for this reason the court was inclined to award the punishment of death to the convict. The facts of the case and the reasoning provided by the court are interesting to understand and note.

The victim since deceased was 8 years of age, and her younger brother was aged 5 years. On 08.06.2018, at 10 am the parents of the victim had taken their son to the hospital and left their daughter alone at home. When the parents came back at around 12pm, they noticed that the victim was nowhere to be seen. The accused, their neighbour, was in the area alone and when he was asked where the victim was, he mentioned that some girl had come to call the victim and she took her. The accused seemed perplexed when he was asked questions about the victim. Not paying too much attention to his behaviour, the parents started looking for the victim frantically. The accused, after locking his room, also helped them to look for the victim. Their search went in vain and at 1:30 pm the police was informed. The police and the family questioned the accused as he was alone in the area at that time – he got perplexed upon being asked so many questions, the family got suspicious and asked him to open his room. When the police and the family entered the room, the accused begged for forgiveness and confessed his guilt and disclosed that in the absence of the victim's parents, he had taken the victim in his room. At first, he showed a blue film to the victim and then had forceful sexual intercourse with her. On her resistance tied her hands and mouth and then committed rape with her and then murdered her. The dead body of the victim was concealed in the almirah of the room.

The post mortem report suggested that the cause of death in this case was asphyxia as a result of antemortem smothering and neck compression by a ligature. There were signs of forceful entry of blunt object in the vagina (suggestive of sexual assault). The forensic evidence also pointed the guilt of the accused i.e. DNA of the accused taken from his blood sample matched with the DNA found on the clothes which was tied around the hands of the victim since deceased and on the underwear of victim since deceased and opined it established that accused had forceful sexual intercourse with victim since deceased before her murder.

Relying on the evidences of the family members, the fact that there was no proven enmity between the accused and the victim's family, circumstantial evidence, DNA report and last seen theory (on questioning the accused had stated that he saw some girl call the victim and take her, making him the last person to see her alive), the court convicted the accused for commission of offence under Section 376 A, Section 201 IPC and Section 6 of the POSCO Act, 2012.

At the time of sentencing the convict, the prosecution argued vehemently that the victim was innocent, had a bright future and her life was appallingly cut short by the heinous acts of the accused. *"...with respect to sentencing policy wherein it is observed that "when the victim is an innocent child or a helpless woman, the murderer is in dominating position then the Court cannot grant lessor sentence."* On the other hand, the counsel for the convict prayed for a lenient view as he had an ailing father, no one to look after him, he was the only earning member of the family and the fact that he was not a previous convict.

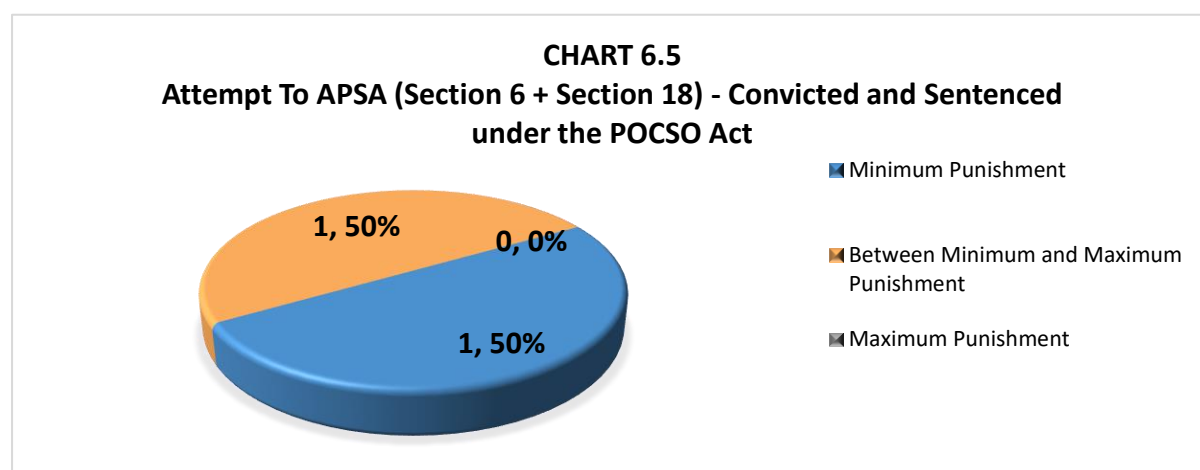
Keeping in mind the arguments put forth, the court stated that the convict was a co-tenant in the same house as the victim and he brutally raped and murdered the 8 year of deceased

victim in the broad day light. Further, the court stated that a heinous act like this threatens the safety and security of the victim child is at stake and this type of incident if allowed to occur which will create havoc in the society. The court considered it to be a case under the category of the rarest of rare case and a lessor punishment could not be given because if let out, the convict would be a danger to the society. The punishment given should be a lesson for the others before thinking of committing such an act.

The court further stated that the act was as heinous as in the Nirbhaya case and the court cannot ignore the pain and suffering of that particular innocent child – *“The convict is not authorized to take away the life of other person at his convenience or wants.”*

Taking into account the aggravating and mitigating circumstances, the court found no reason as to why lessor punishment should be given to convict and therefore, capital punishment is the only punishment for this type of criminal and hence the convict was sentenced to death under Section 376 A and Section 302 of the IPC and rigorous imprisonment for life under Section 6 of the POCSO Act.

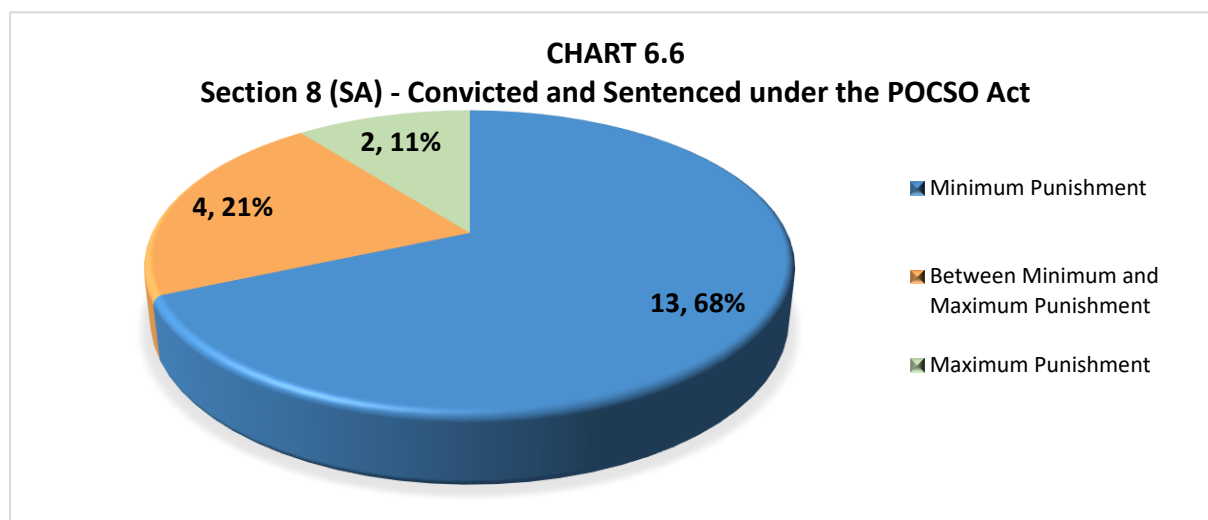
Attempt to commit APSA - Section 18 read with Section 6 of the POCSO Act



With respect to cases with a combination of Section 18 read with Section 6 (Attempt to commit APSA), the punishment prescribed in Section 18 is an imprisonment for a term which may extend to one half of imprisonment of life or one half of the longest term of imprisonment provided for that offence.

The present two cases pertain to the year 2017 and 2018 respectively, and during that time the longest term provided under Section 6 is imprisonment for life and the minimum imprisonment sentence was 10 years. In the one of the cases the accused was sentenced to imprisonment for a period of 5 years i.e. half of the minimum imprisonment sentence and in one of the cases the accused was awarded imprisonment of 10 years which falls between the minimum and maximum sentence under Section 6 read with Section 18.

Sexual Assault (SA) - Section 8 of the POCSO Act



Out of the total no. of cases (197), the total no. of cases wherein the accused was convicted under Section 8 i.e. SA is 19 cases.

- **Minimum Punishment** (3 years) – 13 cases (1 case specifically mentioned that the accused shall undergo simple imprisonment of 3 years *and 3 cases did not specifically mention rigorous or simple*)
- **Between Minimum and Maximum Punishment** (4 years) – 4 cases
- **Maximum Punishment** (5 years) – 2 cases

In one case, wherein the convict was sentenced to 4 years i.e. punishment between the minimum and maximum, it was observed that the convict was a child-in-conflict with law who was being tried as an adult in the sessions court. The victim in the said case was below 16 years and was enticed by the child-in-conflict with law from the lawful guardianship of her parents. He had kidnapped to Goverdhan where he had tried to outrage her modesty. He threatened to put her mother in jail if she disclosed the incident to anyone.

While sentencing the child-in-conflict with law, the child-in-conflict with law prayed for a lenient view on the ground that he was a student of 12th class, not a previous convict and is a poor person with old ailing parents. The court was of the opinion that the child-in-conflict with law had an understanding that not only what he did was unappealing to the conscience of any human being, but also the manner of doing the act and the facts suggested that he committed the offence with pre determination. In this backdrop coupled with the social background report submitted by legal cum probation officer, the court decided to deal with the child-in-conflict with law with some severity and sentenced him to imprisonment above the minimum sentence prescribed under Section 8 of the POCSO Act.

In one of the cases the minor victim was 12 years of age and the accused was about 60 years of age. The accused called the victim behind the statue of Shiv Ji, removed her salwar and tried to rape her. That's when a few men from the surrounding area came at the spot and

rescued the victim from the clutches of the accused. At the time of arguments on sentencing, the accused prayed for a reformatory approach considering his age and the fact that he had a wife and 9 children. However, following the principle of deterrence and the ideology set out by the Hon'ble Supreme Court in **Shanti Lal Meena v. NCT of Delhi**, CBI (2015) 6 SCC 185 '*crime and punishment are two sides of the same coin and awarding of sentence must be proportional to the culpability*', the Court sentenced the convict to the maximum imprisonment under Section 8 of POCSO Act i.e.5 years.

In another case, the victim was sexually assaulted by the accused on her way back from school. The victim's testimony was consistent, reliable and her testimony was well corroborated by the other witness and on the said basis the accused was convicted under Section 8 of the POCSO Act. At the time of sentencing the Court was of the opinion that *"... the concept of punishment originates from the facts that whenever a person commits an offence forbidden by law, the said offence ceases to be an offence in personam and is considered as an offence against the State. Thus, **a balance has to be maintained between two conflicting interests; one of the victim and the society at large and another of the convict keeping in mind his antecedents, circumstances in which he might had committed that crime and his inclination towards such activities.**"* While sentencing the convict to maximum imprisonment under Section 8 of the POCSO Act, the court further stated that *"**the interest of justice would be met if, the convict is dealt sternly, so that the message goes quite loud, clear and vivid in society that the law breachers would not be dealt with casual approach especially in cases touching the dignity of the women.**"*

Abetment to commit SA – Section 17 read with Section 8 of the POCSO Act (Minimum Punishment)

In one case the main accused (one) was convicted under Section 8 of the POCSO Act and two of the other co-accused were convicted under Section 8 read with Section 17 of the POCSO Act (Abetment to SA) of abetting the offence of sexual assault committed by the main accused. Although the main accused was convicted under Section 8 of the POCSO Act, for the purpose of analysis of the sentence given, this case has been considered under Section 17 read with Section 8 of the POCSO Act (Abetment of SA).

In the said case, the victim, 15 years of age, was on her way back from the tuition and was waiting at the bus stop. One of the accused came to the flyover on his motorcycle and insisted that the victim sits with him on his motorcycle. Upon her refusal, he called his 2 of his friends (the co-accused) and gave his motorcycle to them and boarded in the same bus as the victim. He harassed her and acted in an obscene manner with her. His friends (co-accused) also followed the bus thereby abetting the offence being committed by the main accused. Upon reaching her residence, the victim disclosed the incident to her mother.

The court noted that the prosecution was successful in establishing the guilt of the main accused under Section 8 of the POCSO Act for having sexually assaulted the prosecutrix by forcibly holding her hand with sexual intent, pursuing her by insisting she sits on the bike and

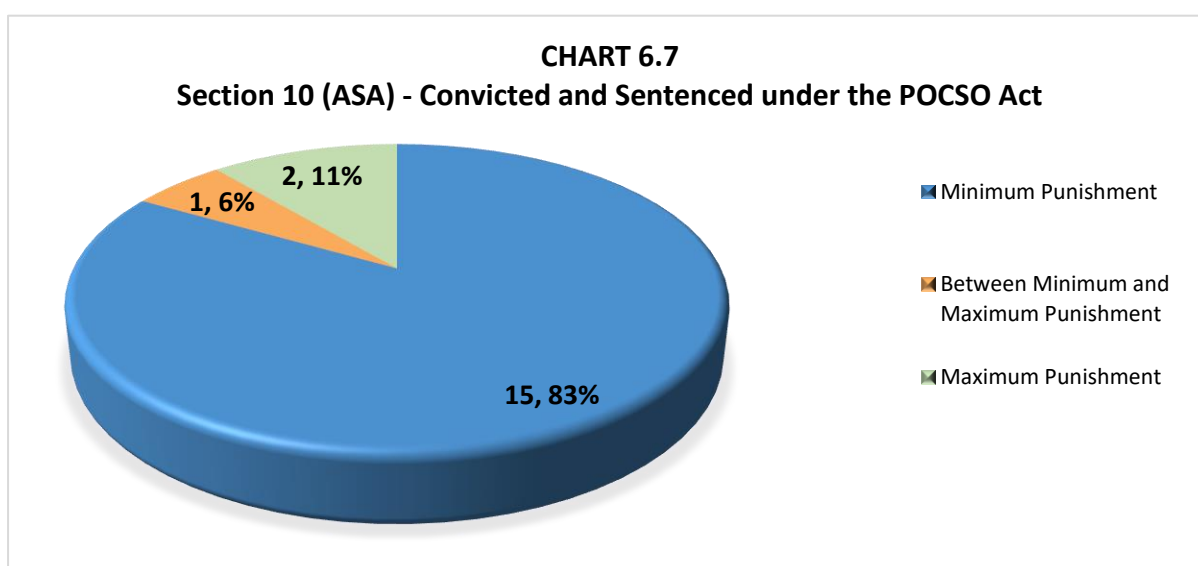
also harassing her in the bus. Further, the commission of the acts by the other two co-accused i.e. taking his motorcycle and also of following the bus in which main accused was sexually harassing the prosecutrix thereby also establishes their guilt of the abetment of the offence under Section 8 read with Section 17 of the POCSO Act.

Of the three accused in the said case, one of them was convicted under Section 8 of the POCSO Act and the other two (2) co-accused, were convicted under Section 8 of the POCSO Act read with Section 17 i.e. abetting the offence of sexual assault committed by the main accused

The punishment prescribed in Section 17 of the POCSO Act is imprisonment for a term provided for that offence i.e. the same term as provided for the actual commission of the offence. The said case pertains to the year 2017, and at that time the punishment provided under Section 8 was a minimum of 3 years which could extend up to 5 years. In the said case all the three accused were sentenced to imprisonment for a period of 3 years i.e. the minimum imprisonment sentence prescribed under Section 8 of the POCSO Act.

Aggravated Sexual Assault (ASA) - Section 10 of the POCSO Act

Out of the total no. of cases (197), the total no. of cases wherein the accused was convicted under Section 10 i.e. ASA is 18 cases.



- **Minimum Punishment** (5 years) - 15 cases
- **Between Minimum and Maximum Punishment** (6 years) - 1 case
- **Maximum Punishment** (7 years) – 2 cases

In one of the cases wherein the sentence was of maximum imprisonment, the accused was the headmaster of the educational institution i.e. the school, wherein, the victim was studying. He was the guardian of the students and was duty bound to protect the children but he himself committed the offence. The court felt that taking a lenient view in favour of

convict is an inadequate sentence and would be equally harmful to the criminal justice system, as wrongly convicting an accused.

To instil public confidence in the efficacy of law and to provide sufficient deterrence, the court noted that it was its duty to award proper sentence having regard to the nature of offence and other attending circumstances and factors. *"The principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct is to be adhered to. The aggravating and mitigating factors and circumstances, in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in dispassionate manner by the Court of law. **The object is to protect the society and to deter the criminals, so that avowed object of law is achieved by imposing appropriate sentence.**"*

Therefore, keeping in view the antecedent of the convict, his social background, the fact that convict was the headmaster of the school and committed aggravated sexual assault which has caused the victim immense physical and mental trauma leaving an everlasting scourge on her soul, the court felt that a lenient view in favour of convict was not warranted at all.

In one of the cases, the accused had forcibly taken the victim, aged 6 years old, to his house with the intent to commit rape upon her. Just when he took her to his house, he removed her clothes and tried to commit rape upon the victim, some women of the area, who had seen him forcibly take the child, came to his house and rescued the victim from the clutches of the accused. During the trial, the accused had taken the defence that the parents had fabricated the case against him. In this regard, the court observed that - *"... It is well settled proposition of law that no parent would involve his or her daughter in the case of sexual assault by raising false allegations and by putting honour of the daughter as well as of the family at stake. There is no reason as to why victim faced ignominy by fabricating a false case. Hence, the arguments regarding false implication of accused raised by learned defence counsel are not sustainable."* The prosecution was successful to prove the case beyond reasonable doubt and the accused was convicted under Section 10 of the POCSO Act.

At the time of sentencing, the convict prayed for a lenient view on the grounds that he is an old man above 80 years, is handicapped from his left hand, has a large family to support, his health is also not good and he does not have any previous criminal record. Public Prosecutor on the other hand relying on the deterrence theory of punishment prayed for imposing maximum punishment on the convict as he committed a serious crime against the victim so as to set an example before the society and to deter the other similarly minded persons from committing similar offence.

Therefore, keeping in view the social background and the fact that convict committed sexual assault which has caused the victim immense physical and mental trauma leaving an everlasting scourge on her soul, the court was not in favour of taking a lenient view in favour of convict. *"... **The aggravating and mitigating factors and circumstances, in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court of law.**"*

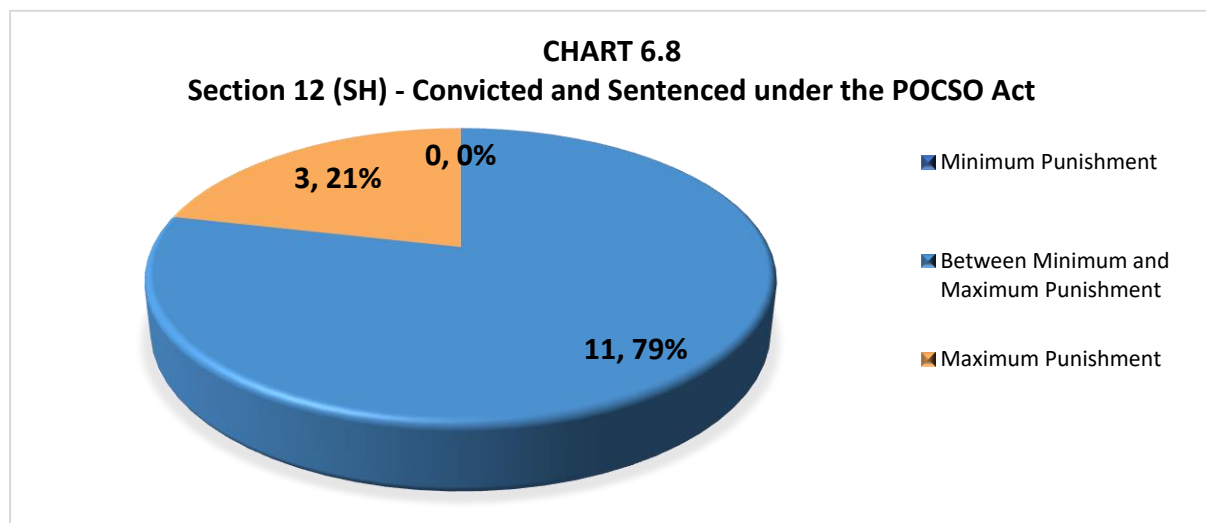
Therefore, keeping in view the character and antecedents of convict as well as circumstances of the present case and to meet the ends of justice, convict was sentenced to rigorous imprisonment for 5 years i.e. minimum punishment prescribed for the offence.

On the other hand, in one case, the court while sentencing the convict to the minimum sentence for an offence under Section 10 of the POCSO Act, stated that it has to weigh in and balance several relevant factors i.e. in the event that the punishment is too lenient the sentence loses its efficacy and one does not deter and if the punishment is too harsh it may frustrate the intent of the punishment thereby making the offender a hardened criminal.

Additionally, in one of the cases, the court considered the conduct of the convict during the trial as a relevant factor, amongst other factors such as he is sole care taker of his old mother and widow sister, sentenced him to minimum punishment prescribed under Section 10 of the POCSO Act i.e. 5 years

Sexual Harassment (SH) - Section 12 of the POCSO Act

Out of the total no. of cases (197), the total no. of cases wherein the accused was convicted under Section 12 i.e. SH is 16 cases.



Between Minimum and Maximum Punishment

- Imprisonment for 10 months – 1 case
- Imprisonment for 1 year – 2 cases
- Imprisonment for 15 months – 1 case
- Imprisonment for 2 years - 7 cases

Sentence Undergone (Between Minimum and Maximum Punishment)

In one case under Section 12 of the POCSO Act, the accused used to be the victim's ex-landlord and used to constantly stare at the victim (aged 13 years). This escalated when he started leaving obscene notes outside her gate. The victim's current landlord informed the victim's

father about the notes. On 28.12.2017 the accused was caught red handed by the parents of the victim and some other neighbours and a police complaint was filed against the accused. After weighing the evidences and arguments from both sides, the court convicted him under Section 12 of the POCSO Act on 29.01.2020. At the time of passing the order on sentencing, the counsel of the convict stated that a lenient view be taken as the convict is not a previous convict, he is living the life of a destitute, wife is old, nobody to look after his old wife and daughters have been married off and he is dependent on them.

The Court sentenced the convict to the sentence already undergone - *“The convict in the present case is first offender. Therefore, keeping in view the facts and circumstances of the case, nature of allegations especially including medical record, it is just and appropriate in case, **the convict is sentenced to the imprisonment already undergone by him...**”*. At the time of pronouncing the judgment the convict was on bail. However, in the said judgment there is no information with respect to when the accused was granted bail or for how many months/years the accused was in judicial custody.

The date of FIR/arrest was 28.12.2017 and the date of pronouncement of decision was 29.01.2020 (and on the said date the accused was on bail) it can be concluded that the convict might have been in judicial custody for a maximum period of 2 years. Thus, the punishment so prescribed to the convict can be categorized as between minimum and maximum.

In another case of SH, considering the fact that the convict was 19 years old with an ailing old mother, the convict was able to make out good mitigating circumstances in his favour and the court sentenced him to 10 months of imprisonment for the offence under Section 12 of the POCSO Act.

Maximum imprisonment

- Imprisonment of 3 years (3 cases)

Attempt to commit SH – Section 18 read with section 12 of the POCSO Act (Maximum Punishment)

In one case, the accused was attempting to sexually harass the victim (by unzipping his pants) when the father of the victim reached the scene of crime and stopped him. The court analysed the stages of crime to determine if the crime was in fact committed or it was an attempt to commission of the crime – *“...There are three stages in the commission of the crime. First intention to commit, Secondary preparation to commit and thirdly attempt to commit. If the third stage i.e. attempt is successful then the crime is complete. If the attempt fails the crime is not complete. **An attempt is may punishable because every attempt although it fails of success must create alarm which of itself is an injury, and the moral guilt of the offender is the same, as if he had succeeded.**”* The prosecution witness' evidence was uncontroverted, unchallenged and unrebutted which guided the court to convict the accused of the offence under Section 12 read with Section 18 of the POCSO Act

At the time of sentencing the court took into consideration the Hon'ble Supreme Court's observation in **Dhananjay Chatterjee v. State of West Bengal**, 1994 (2) SCC 220, wherein, it has been held that *shockingly large number of criminals go unpunished thereby encouraging the criminals and in the ultimate making justice suffer by weakening the system's credibility*. Noting that the present case does not fall under the rarest of the rare, the court sentenced the accused to imprisonment of 18 months under Section 12 read with Section 18 of POCSO Act (Attempt to SH) i.e. half of the maximum punishment prescribed under Section 12 of POCSO Act.

In another case, the accused used to repeatedly call the victim, studying in 12th standard, on her phone. At the time of sentencing, the convict took a plea that he has parents who are old and he is a student of M.Sc Mathematics. Taking into consideration his future, the convict prayed that a lenient view be taken. The prosecution argued that no leniency be given as the main object of the POCSO Act was that offences against the children should be countered by imposing penalties as an effective 'deterrence'. The court sentenced the convict to imprisonment of 3 years i.e. maximum imprisonment under Section 12 of the POCSO Act.

ANALYSIS OF THE SENTENCE GIVEN

It is observed that the offences under POCSO Act and IPC, as mentioned hereinabove, have a certain range of minimum and maximum punishment prescribed and there is no fixed penalty for a particular kind of offence. The Courts have the discretion to consider the facts and circumstances of the case, including the aggravating and/or mitigating facts while passing an order of. The wide gap between the maximum and the minimum punishments affects the sentencing system.

At the time of sentencing the common plea taken by most of the convicts is that they are poor, have parents who are old and/or have ailments, they are the sole bread earner of the family, are married have young children, they are young/old and that they are not a previous convict/do not have any case registered against them earlier. Whereas the argument taken by the prosecution is that the offence is heinous, emphasis on the seriousness of the crime and that incidents like these are on the rise.

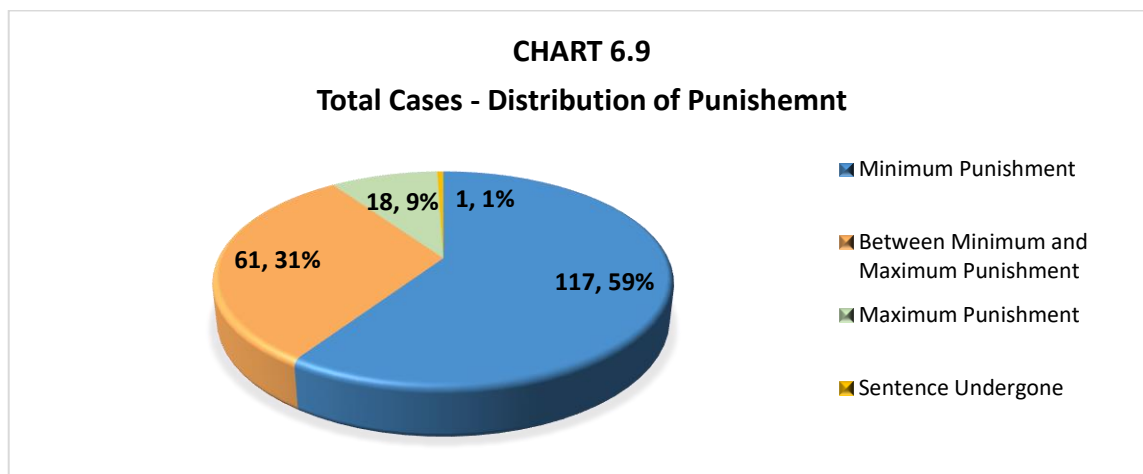
Amendments in the IPC and POCSO Act have increased the minimum as well as maximum punishment and for certain categories of offences has provided for death sentence as well. These amendments are tough on crime and recognize the fact that courts are bent towards using deterrence as a purpose of punishment.¹⁸ The Hon'ble Supreme Court in the case of **State of Karnataka v. Krishnappa**, (2000) 4 SCC 75 stated that sentences imposed on rape offenders should be deterrent in nature.

Following suit, the courts, in majority of the cases, have followed 'deterrence' as their primary theory of punishment. While sentencing the convict, the courts have kept in consideration

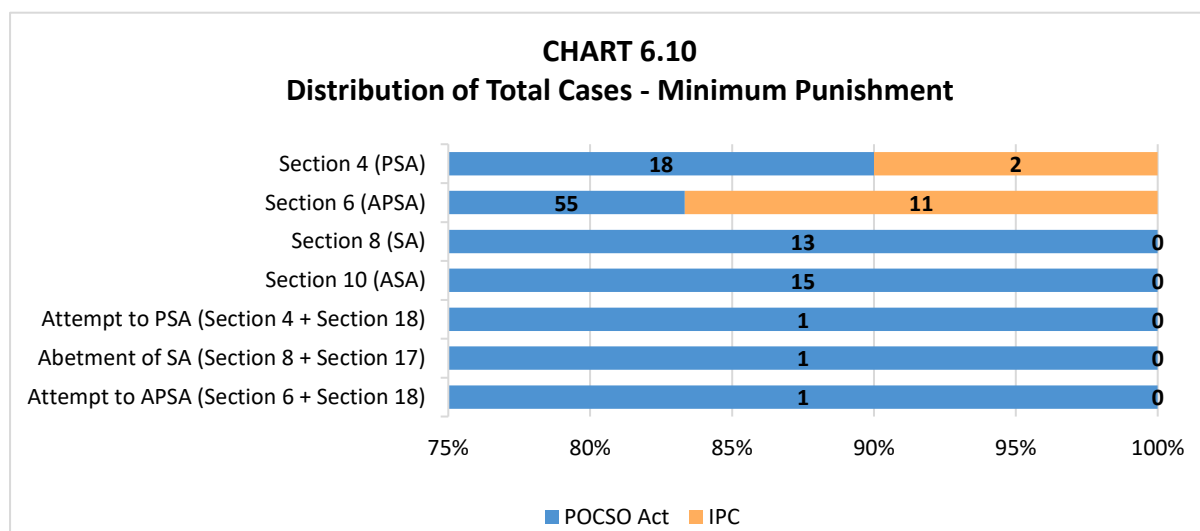
¹⁸ Mrinal Satish, *Discretion, Discrimination and the Rule of Law, Reforming Rape sentencing in India*, Cambridge University Press, 2017

the fact that the punishment must be appropriate and in response to the society's cry for justice against the criminals. Courts have also mentioned the basic principle that crime and punishment are 2 sides of the same coin, thus, it must impose punishment which is befitting the crime and that the sentence must be proportionate to the culpability.

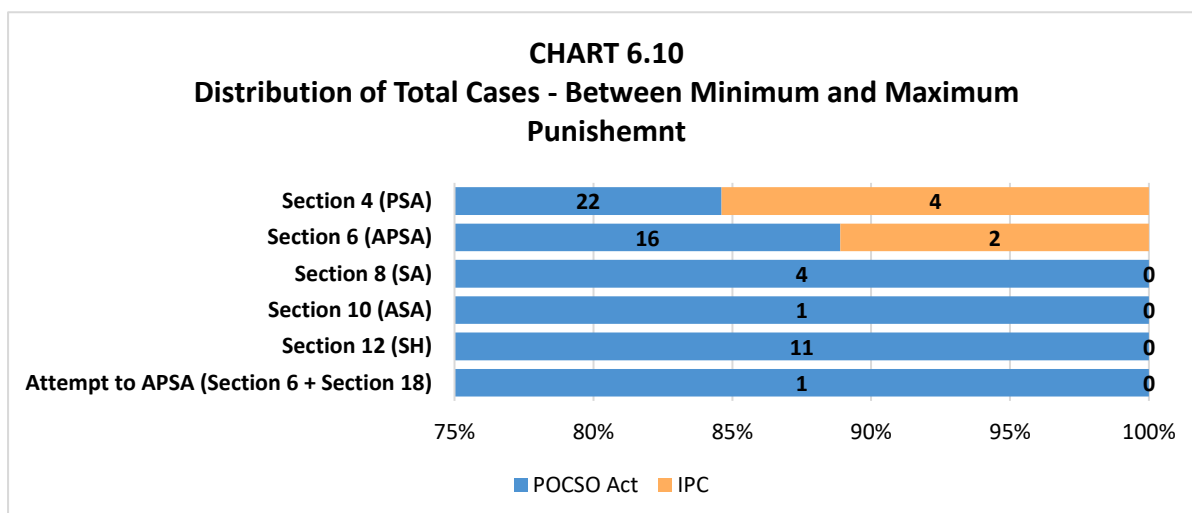
The overall distribution of cases in which the punishment was given is as follows:



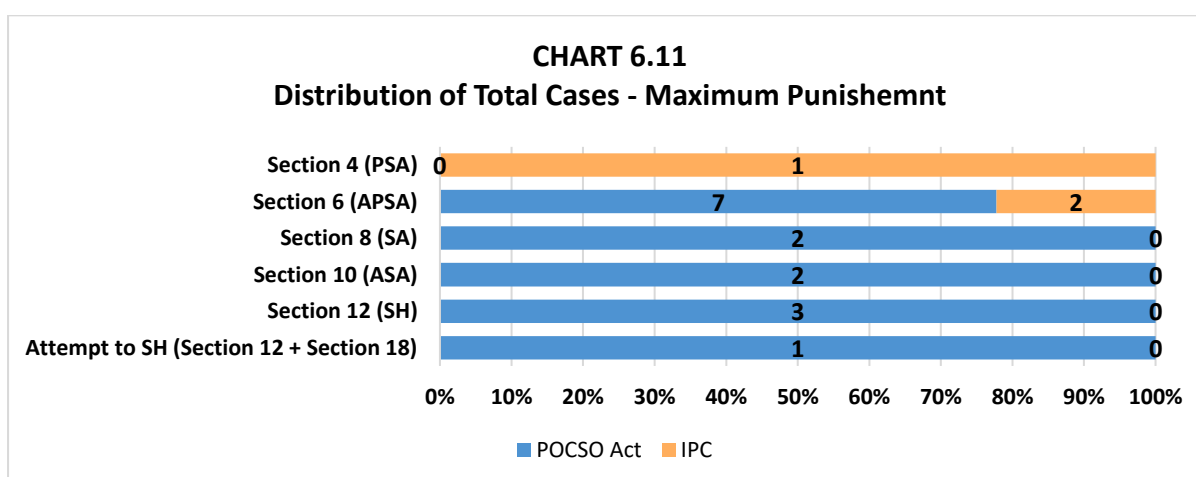
Of the total 197 cases, in 59% of the cases i.e. 117 cases, the Courts have sentenced the convict to the minimum sentence as provided in the Section. Of the 117 cases, the break-up of the sentence given, offence wise is given hereunder:



In 31 % of the cases i.e. 61 cases, the sentence given to the convict is between the minimum and maximum punishment prescribed in the Section at that time. Of the 61 cases, the break-up of the sentence given, offence wise is given hereunder:



In 9% of the cases i.e. 18 cases, the sentence given to the convict was the maximum punishment as provided in the Section at that time. Of the 18 cases, the break-up of the sentence given, offence wise is given hereunder:



Of the 197 cases, there was one case wherein the sentence given by the Court was the term of imprisonment which was already undergone by the convict i.e. between minimum and maximum punishment prescribed. This was a case of sexual harassment under Section 12 of POCSO Act.

In the aforesaid cases, courts have awarded a sentence above the minimum punishment prescribed when it has observed that the offence committed by the convict is very serious and far reaching implications on the social fabric of the society. Of the 197 cases, there are no cases where the Courts have not gone below the minimum and sentenced the convict. The discretion of the courts in such cases to go below the minimum punishment prescribed in the Section was taken away by the Criminal Law Amendment, 2013 which introduced for 'mandatory minimum sentence'.

In the case under Section 376 A, Section 302 of the IPC read with Section 6 of the POCSO Act wherein the court used the rarest of the rare principle and awarded death sentence to the

convict, it stated that acts like these i.e. brutal rape and murder of the young victim, creates havoc in the society. Relating it to the Nirbhaya case the Court stated that giving a lessor punishment to the convict would be dangerous to the society. The courts found no reason to impose a lessor punishment and thus sentenced the convict to death under Section 376 A and Section 302 of the IPC and imprisonment for life under Section 6 of the POCSO Act. In cases where there is an offence of rape as well as murder, the focus of the court moved towards murder and the sentencing was based on the said offence.

In one case, under Section 8 of the POCSO Act, the convict was a child-in-conflict with law who was being tried as an adult. During the arguments on sentencing the convict prayed for a lenient view as he was a young boy and had a chance for reformation. However, the court considered cases like these on the rise and the fact that he had acted with predetermination, the Court relied on the deterrence theory and sentenced him to imprisonment above the minimum prescribed under Section 8 of POCSO Act.

Further, by stating in the sentence orders *“convict has caused her immense physical and mental trauma and left an everlasting scourge on her soul”* and relating it to the usage of deterrence as the main justification given for a rape sentence, the courts have indicated that it cannot stand any attack on the dignity and sexual autonomy of children and seeks to deter criminals from committing such offences. Reiterating the same sentiment, in one of the cases, the court stated that:

“Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim.

Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.”

In case of **Shyam Norain v. State (NCT of Delhi)**, 2013 (3) RCR (Criminal) 102, the Hon'ble Supreme Court held that the sentence for any offence has a social goal. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity. It was further observed that though on certain occasions, the opportunity may be granted to the convict for reforming himself but it is also obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim. It has been time and again held that the Court has to exercise the discretion according to well established judicial principles, according to reason fair play and not according to whim and caprice.

The Gujarat High Court in the case of **State of Gujarat v. Pandya Premashanker**, 1999 CriLJ 1841 summarised the role of the courts at the time of sentencing. It stated that it is the duty of the Courts to throw into focus all the relevant facts and circumstances to impose sentence not only with a view to keep in mind the deterrent or retributive factors but rehabilitative and reformatory factors too. In short, the duty of the court during the process of sentencing is equally important and has to be exercised bearing in mind all the peculiar facts and circumstances of each case, the proposition of law and existing prevailing policy and philosophy of criminology and penology without being oblivious to the vitality and has to strike the balance.

In March, 2003 the Malimath Committee (the Committee on Criminal Justice and Reform) had issued a report that emphasized the need for sentencing guidelines to minimize the uncertainty in awarding sentences stating:

“The IPC prescribes only the minimum and maximum punishments for offences without laying down any guideline for infliction of punishment in proportion to the crime. Therefore, each judge exercises its own discretion resulting in a sentencing system which lacks uniformity. This requires a thorough examination by an expert statutory body.”¹⁹

Thus, doing away with the discretionary powers of the courts or having a strait jacket approach in such an ever-changing field of law is also not feasible. However, a guiding principle of sentencing policy could assist the courts to pass sentence orders by which the unwarranted disparity is reduced to a great extent. Thus, sentencing discretion is an unavoidable evil, it can only be structured, regulated and disciplined.²⁰

FINE IMPOSED

Fine is money that must be paid by the convict as part of his/her punishment for being convicted of committing an offence under the law. Unlike no. of years of imprisonment, the sections under the POCSO Act or IPC do not provide for a range/bracket within which the courts can impose fine on the convict. It gives the Court discretion to impose any amount of fine on the convict while sentencing him/her.

In the event the fine amount is not paid by the convict, the court in the sentence order may impose an additional jail term (simple/rigorous imprisonment) for a specified period i.e. for a period of 1 month / 6 months/ 1 year etc. In the case of **Paras Nath and Ors. v. State**, 1969 CriLJ 350 the Hon’ble Supreme Court stated that the sentence of imprisonment in default of payment of the fine is not punishment for the offence for which the offender has been convicted but is punishment for his failure to pay the fine imposed upon him by way of punishment for the offence. The relevant paragraph of the said case is reproduced hereunder:

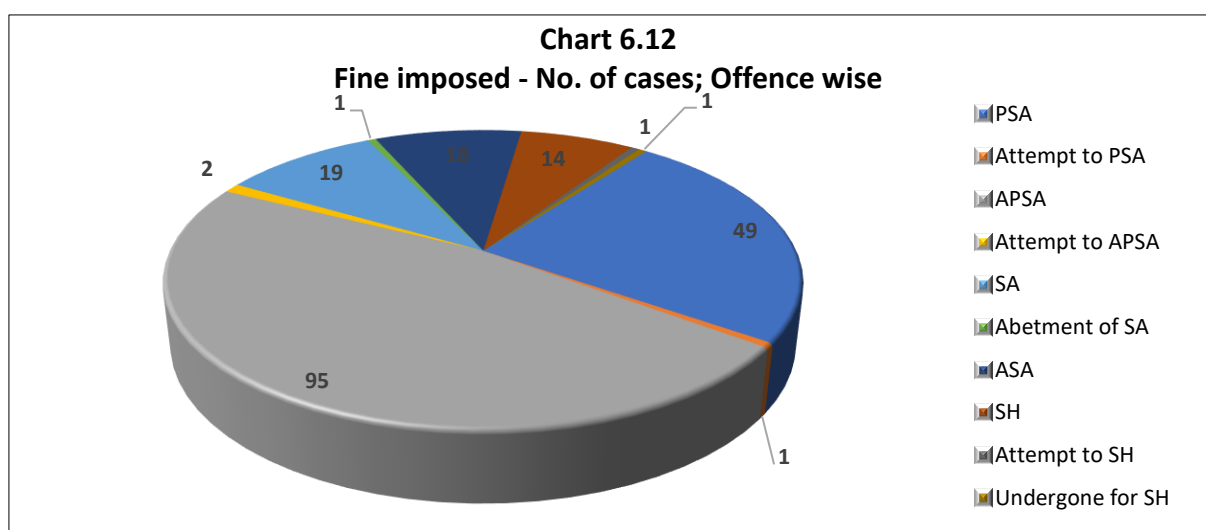
¹⁹ SENTENCING POLICY IN INDIA – AN OVERVIEW; April 07, 2020; http://racolblegal.com/sentencing-policy-in-india-an-overview/#_ftn1

²⁰ *ibid*

“Imprisonment in default of payment of fine is suffered by a person not because he committed an offence but because he has failed to pay the fine inflicted on him for the offence. There is thus, in our opinion, a distinction between the sentence of imprisonment awarded to a person for committing an offence and the sentence of imprisonment ordered to be undergone by such person in default of payment of fine.”

SCOPE OF THE RESEARCH

For the analysis of the quantum of fine imposed, the scope of this research has been limited to the fine imposed under the relevant sections of the POCSO Act or IPC under which the convict is sentenced to and wherein the punishment prescribed is greater in degree.



Additionally, the convict may also be imposed with fine under the other sections of POCSO Act, IPC or any other act under which the convict has also convicted. The said additional fine amounts has not been considered for this research study. For the sake of convenience in analysis, the cases wherein the fine amount has been imposed on convict under the corresponding provisions of IPC, have been categorized under their respective provisions of POCSO Act.

The range of fine imposed by the court in the said 197 cases has been analysed as under:

Sections under POCSO	Range of the quantum of fine imposed
PSA	In all the 47 cases there was some amount of fine levied on the convict and the quantum of fine imposed was between INR 500 to INR 1,00,000.
Attempt to PSA	In 1 case the quantum of fine imposed was INR 3000.
APSA	In all the 93 cases there was some amount of fine levied on the convict and the fine

	amount was between INR 2000 to INR 5,10,000.
Attempt to APSA	In 2 cases the quantum of fine imposed was INR 5,000 and INR 10,000.
SA	Out of the total 19 cases, 18 cases imposed fine on the accused and 1 case there was no fine imposed. The fine amount imposed for offence under Section 8 of POCSO Act ranges from 500 to 25,000.
Abetment of SA	In 1 case the quantum of fine imposed was INR 25,000 (3 accused).
ASA	In all 18 cases, 17 cases there was some amount of fine imposed on the accused and the fine amount imposed was between 2000 to 50,000.
SH	All 14 cases had some amount of fine imposed on the accused which was between 500 to 10,000.
Attempt to SH	In 1 case the quantum of fine imposed was INR 2,000.
Undergone	In 1 case the quantum of fine imposed was INR 500.

HIGHEST AND LOWEST QUANTUM OF FINE IMPOSED

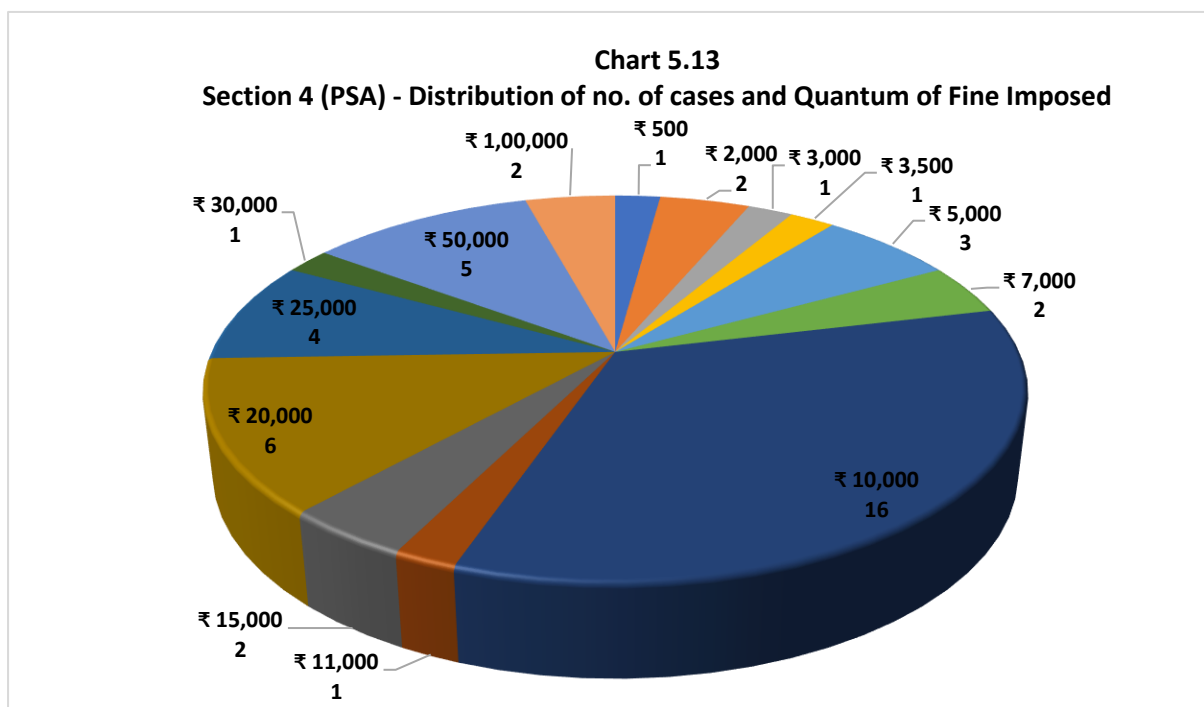
The highest amount of fine imposed by the Court in the said 197 cases is INR 5,10,000 (1 case) and INR 10,000 was the most used by the Courts as fine amount i.e. 70 cases - 35.5 per cent of the total cases. There was 1 case wherein there was no fine levied on the convict. The lowest amount of fine imposed was INR 500 in 5 cases – 2.5 per cent of the total cases.

Table 5.1 Offence wise Distribution of Fine Imposed											
Fine Amount	PSA	Attempt to PSA	APSA	Attempt to APSA	SA	Abetment of SA	ASA	SH	Attempt to SH	UG for SH	Total
₹ 0	0	0	0	0	1	0	0	0	0	0	1
₹ 500	1	0	0	0	2	0	0	1	0	1	5
₹ 1,000	0	0	0	0	3	0	0	3	0	0	6
₹ 2,000	2	0	2	0	4	0	1	4	1	0	14
₹ 3,000	1	1	0	0	0	0	1	1	0	0	4
₹ 3,500	1	0	0	0	0	0	0	0	0	0	1
₹ 4,000	0	0	0	0	0	0	0	1	0	0	1
₹ 5,000	3	0	5	1	6	0	4	3	0	0	22

₹ 7,000	2	0	0	0	0	0	0	0	0	0	2
₹ 10,000	16	0	46	1	2	0	4	1	0	0	70
₹ 11,000	1	0	0	0	0	0	0	0	0	0	1
₹ 15,000	2	0	1	0	1	0	0	0	0	0	4
₹ 20,000	6	0	8	0	0	0	2	0	0	0	16
₹ 21,000	0	0	1	0	0	0	0	0	0	0	1
₹ 23,000	0	0	1	0	0	0	0	0	0	0	1
₹ 25,000	4	0	9	0	0	1	1	0	0	0	15
₹ 30,000	1	0	3	0	0	0	3	0	0	0	7
₹ 40,000	0	0	1	0	0	0	0	0	0	0	1
₹ 50,000	5	0	13	0	0	0	2	0	0	0	20
₹ 1,00,000	2	0	2	0	0	0	0	0	0	0	4
₹ 5,10,000	0	0	1	0	0	0	0	0	0	0	1
Grand Total	47	1	93	2	19	1	18	14	1	1	197

FINE IMPOSED – OFFENCE WISE

Fine imposed for offence under Section 4 of the POCSO Act (PSA)



In 16 of the 47 cases of SA i.e. 34 per cent of the cases, the court imposed a fine of INR 10,000 and in 6 cases i.e. 12 per cent of the cases the fine imposed was INR 20,000.

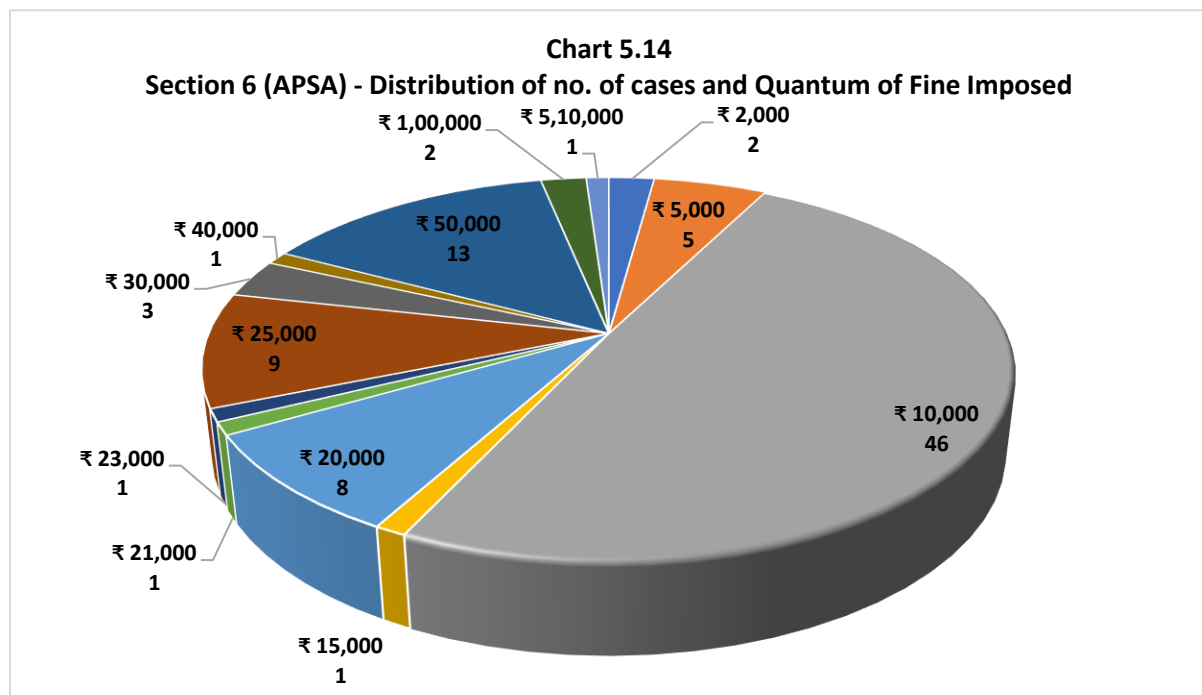
Of the total 47 cases, the lowest share of the no. of cases in fine amount imposed was INR 11,000, INR 3,500 and INR 500, one case each which amounts to 6 per cent of the total cases.

Of the 47 cases of PSA wherein fine was imposed, there were 5 cases wherein the amount was INR 50,000 and 2 cases (1 of the said case has 3 accused) wherein the amount went up to INR 1,00,000. In the aforesaid cases the imprisonment awarded to the accused was minimum punishment and between minimum and maximum punishment. The amount of fine, in comparison to the rest of the cases seems on the higher side in the said cases. In all the cases the victim was between 14 to 17 years and accused was known to the victim / family i.e. neighbour, family friend etc.

Fine imposed for offence under Section 18 read with Section 4 of the POCSO Act (Attempt to commit PSA)

Apart from the 47 cases of PSA, there is 1 case under Attempt to commit PSA wherein the fine amount imposed was INR 3,000.

Fine imposed for offence under Section 6 of the POCSO Act (APSA)



In 13 cases the fine amount was INR 50,000, 2 cases with INR 1,00,000 and 1 case with INR 5,10,000.

Of the total 93 cases, the lowest share of the no. of cases in fine amount imposed was INR 15,000, INR 21,000, INR 23,000, INR 40,000 and INR 5,10,00 with 1 case each.

In the case with the highest amount of fine imposed i.e. INR 5,10,000 the victim was 15 years of age and the accused was her grandfather. The victim and her sisters started staying with him after their mother passed away. The incident happened when the victim was alone at home watching TV. The accused, her grandfather, came in locked the door and forcibly raped her. The child told her elder sister who then took the victim to their neighbour (who was a reporter) and filed a complaint with the police. During investigation, it was found that in order

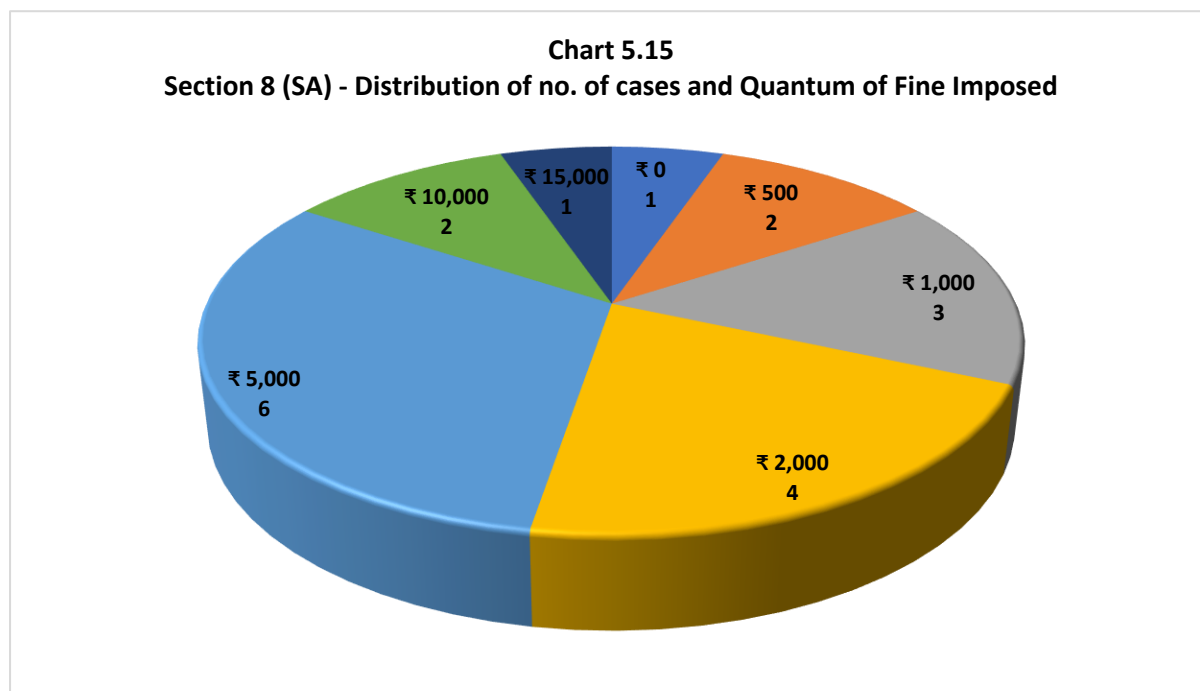
conceal the evidence against him, the accused had burnt the clothes of the victim. Relying on the victim's consistent and unswerving testimony, the court convicted the accused.

At the time of sentencing the convict, the court gave a reason for imposing such a high amount of fine. The court took note of the number of properties which the grandfather owns and stated that because of this incident the child had become shelter less and being his own granddaughter, the convict must support her financially. Of the INR 5,10,000 fine imposed, the court directed the convict to pay INR 5,00,000 as compensation for the victim to assist her in her rehabilitation and future.

Fine imposed for offence under Section 18 read with Section 6 of the POCSO Act (Attempt to commit APSA)

Apart from the 93 cases under APSA, there are 2 cases of Attempt to commit APSA wherein the fine amount imposed was INR 5,000 and INR 10,000 each.

Fine imposed for offence under Section 8 of the POCSO Act (SA)



In 30 per cent of the cases i.e. 6 cases, the courts imposed a fine amount of INR 5,000 and INR 2,000 in 20 per cent of the total cases i.e. 4 cases.

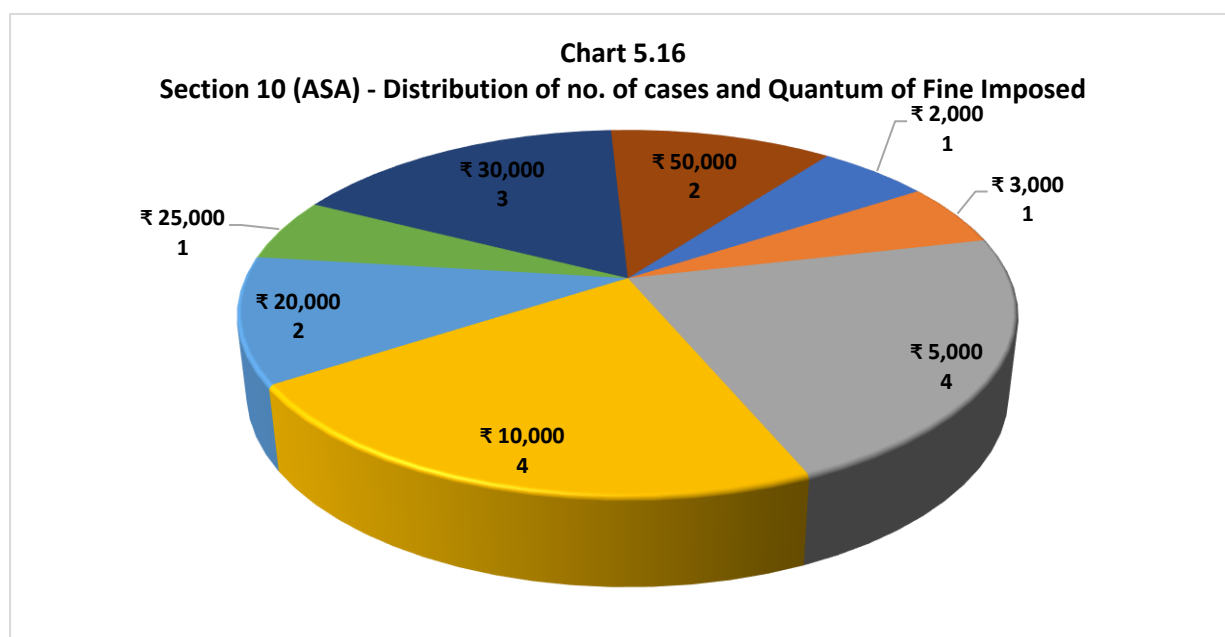
In one case, the court sentenced the convict to imprisonment for 4 years, however, did not impose any fine on the convict. This was a case of a child-in-conflict with law (CICL) who was being tried as an adult in the session's court. The victim in the present case was under 16 years of age and was enticed by the child-in-conflict with law from the lawful guardianship of her parents, taken to Goverdhan where he had tried to outrage her modesty. The accused CICL was convicted under Section 8 of the POCSO Act and was thereunder sentenced to

imprisonment for 4 years i.e. above minimum imprisonment. Keeping in mind that the child-in-conflict with law was a 12th standard student and that he had no independent source of income the court was not predisposed to impose any fine amount on him. Further, it was noted that nobody from his home had come to court at the time of sentencing, thus, no direction to impose fine in addition to the abovesaid substantive sentence.

Fine imposed for offence under Section 17 read with Section 8 of the POCSO Act (Abetment of SA)

In one case the Court directed the convicts (three in this case) to pay INR 25,000 each for the offence under Section 8 - SA (offence of the main accused) and abetment to SA (other 2 co-accused). Keeping in mind the tender age of the victim, the sexual intent of the accused's acts, gravity of offence and the statements of the convicts, the court sentenced the 3 convicts to the minimum imprisonment under Section 8 and Section 17 however, in comparison to the other cases under Section 8, the fine imposed on the said convicts was on the higher side.

Fine imposed for offence under Section 10 of the POCSO Act (ASA)



In eight cases the courts imposed a fine of INR 10,000 and INR 5,000 (4 cases each) which accounts to 36 per cent of the total cases.

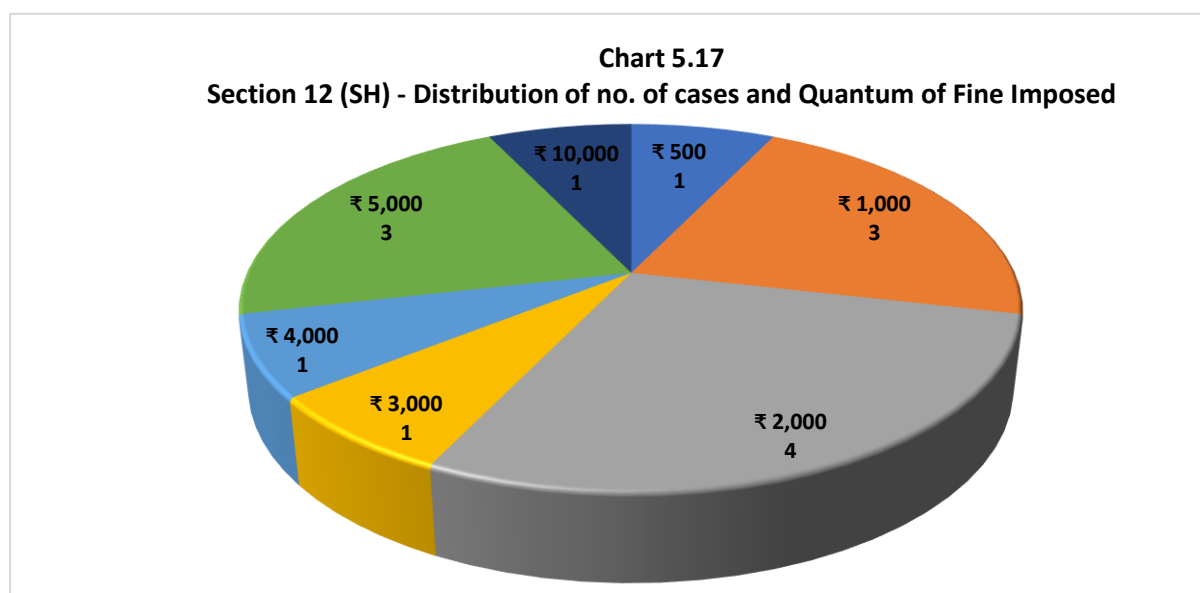
In two cases the fine imposed was INR 50,000 – in both these cases the offence of sexual assault was aggravated but for different reasons. In one case, the victim was five years of age and in the other, the accused was the headmaster of the school where the victim studied i.e. on the management or staff of an educational institution.

In the case wherein the accused was the Headmaster of the school in which the victim (aged seven years) studied, the Court was not inclined to give a lenient sentence as instead of

guarding and protecting his students, he committed assaulted one of his students which left the victim with an everlasting trauma both physically and mentally.

The lowest fine amount imposed in this category was INR 2,000. In the said case, the prosecution giving the aggravating circumstances argued that the offence of the convict under Section 10 of the POCSO Act has been proved beyond any doubt – the convict had repeatedly and constantly followed, watched and contacted the minor victim (aged 15/16 years), slapped her and in order to intimidate her threatened her with death. The prosecution also emphasised as to how such type of offences are at rise in the society and pressed for the highest punishment as provided by law. On the other hand, the convict giving the mitigating circumstances pressed for a liberal view. He stated that he was a student, had old parents to take care of and that being a young boy (aged 23 years) he may be given an opportunity to improve himself. Considering the aggravating and mitigating circumstances while passing the sentence, the Court decided to sentence him to the minimum imprisonment period i.e. 5 years and imposed a fine of INR 2000.

Fine imposed for offence under Section 12 of the POCSO Act (SH)



In four cases i.e. 26 % of the cases the courts imposed a fine of INR 2,000 and in 40 per cent of the total cases the courts imposed a fine amount of INR 1,000 and INR 5,000 (three cases each).

In one case, the court while sentencing the accused took into consideration the facts and circumstances of the case, stated that it cannot lose sight of the fact that the convict aged about 19 years, his mother is old aged and remains ill. In the interest of justice, the mitigating factors were in favour of the convict and he was sentenced to imprisonment for a period of 10 months and imposed a fine amount of INR 1,000.

In another case, the convict had stated that he is a poor person with three minor children and being a first-time offender prayed for a lenient view to be taken at the time of sentencing.

Considering the mitigating circumstances of the convict, the court sentenced him to imprisonment for a period of fifteen months and imposed a fine of INR 500.

The highest amount of fine imposed by the court under Section 12 is INR 10,000. In this case, the convict by making separate statement pleaded for mercy on the ground that he is of young age, has parents to look after and has no criminal background. However, the prosecution stated that the convict sexually harassed the minor victim in broad daylight, stalked her regularly thus does not deserve any mercy. The court stated that the convict must not been shown mercy at the time of sentencing as the convict has committed a *“dare devil act of sexually harassing minor girl by taking benefit of her loneliness, if such person is shown mercy, it would make the life and safety of girls insecure”*. Further, the Courts observed that act of stalking is an offence which makes the life of the girl students miserable, who are teased or subjected to obscene words by road side romeo like the accused and because of such regular harassment, either girls drop out from the school or elect to adopt other means to study than to attend the school regularly. However, the court also stated that it cannot lose sight of the fact that in the given circumstances, where the convict is aged around 22 years with clear antecedents, too harsh a punishment would not be justified. Thus, keeping in mind the young age of the convict and the fact that he is first offender, the Court sentenced him to imprisonment for a period of 2 years and imposed a fine of INR 10,000.

Fine imposed on Sentence Undergone under Section 12 (SH)

The court noted that at the time of sentencing the convict, the courts must focus on all the relevant facts and circumstances and not to keep in mind the deterrent or retributive factors but also the rehabilitative and reformatory factors. Further, the court observed that while sentencing, Courts should bear in mind all the peculiar facts and circumstances of each case, and strike the balance so that the sentence does not become disproportionate to the harm caused in the offence and at the same time, too lenient or inadequate that it may be affect to an extent, social good.

In the said case, the convict stated that he was a poor old man who has been taking treatment for depression from psychiatric. He also stated that his wife is also old aged and she has been suffering from some ailments, daughters are married and live with their families. The convict also stated that he does not have a source of income to sustain on a daily basis or for his or his wife’s treatment and have been living in an ashram for the last leg of their lives.

Keeping in view the facts and circumstances of the case, nature of allegations, offence under Section 12 of the POCSO Act, and especially including medical record, the court thought of it a just and appropriate to sentence the convict to the imprisonment already undergone by him and imposed a fine of INR 500.

Fine imposed for offence under Section 18 read with Section 12 of the POCSO Act (Attempt to commit SH)

Apart from the 14 cases under SH, there is one case of Attempt to commit SH wherein the fine amount imposed was INR 2,000.

ANALYSIS OF THE QUANTUM OF FINE IMPOSED

At the time of sentencing, the courts take into consideration the aggravating and mitigating circumstances of the case. The mitigating factor may be the age of the accused, economic/financial condition of the accused and his family, family condition, criminal antecedents etc.

In many cases, while arguing on sentencing, the accused took a plea that they are poor, sole bread earner of their family, have a wife and minor children, no one to look after parents, have parents who are old and suffering from ailments. In addition, some convicts took a plea that it is their first offence and prayed for a lenient view on sentencing.

Despite the plea taken by the convict of being poor or being the only earning member of the family, the courts felt that the offence committed was heinous and went on to penalize the convicts. In cases where the convict is poor, there was no valid justification given by the courts on imposing such high fine amounts i.e. INR 50,000, INR 1,00,000 etc. If the intent of the courts is to send a message to the society, by imposing such hefty fine amounts, the intent may be defeated as it is highly unlikely and impractical that the convicts would be able to pay such hefty fine amounts.

CHAPTER VII

VICTIM COMPENSATION

PROVISIONS UNDER IPC AND POCSO ACT W.R.T. TO IMPOSING OF COMPENSATION OUT OF FINE AND VICTIM COMPENSATION

Section 33 of the POCSO Act read with Rule 7 of the POCSO Rules provides that the Special Courts may on their own or on receiving an application, *“recommend the award of compensation”*, determine the quantum of compensation and *“make a direction for the award of compensation”*.

Further, a provision for payment of compensation to the victim is also contained under the Section 357 (3) of the CrPC, which is laid down hereunder: *“When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”*

Compensation, under Section 357 of the CrPC is payable by the accused, and the court while calculating it, considers the financial capacity of the accused. Hence, the compensation awarded may not always be commensurate with the loss or injury suffered.

Keeping in view the rehabilitation needs of a victim and the limitations of Section 357 of CrPC, Section 357 A, Victim Compensation Scheme, has been inserted in the CrPC. It is for the State Governments to make funds available for payment of compensation upon recommendation of the court to a victim of crime. Under Section 357 A of CrP., every State Government shall *“prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.”*

Compensation may be awarded when, in the court’s opinion, *“compensation under Section 357 of CrPC is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated”, or “where the offender is not traced or identified”*. The quantum of compensation is to be determined by the State (SLSA) or District Legal Services Authority (DLSA), who in certain circumstances may also grant interim relief.

The provisions regarding compensation under the POCSO Act and Rules are based on Section 357 A of CrPC, with suitable changes, to ensure immediate and speedy relief to the child. Under the POCSO Act and Rules, the special courts can decide the question of victim compensation and also determine the quantum of compensation and accordingly make a direction for award of compensation. The said compensation shall be payable by the State Government through schemes or funds established for such purpose.

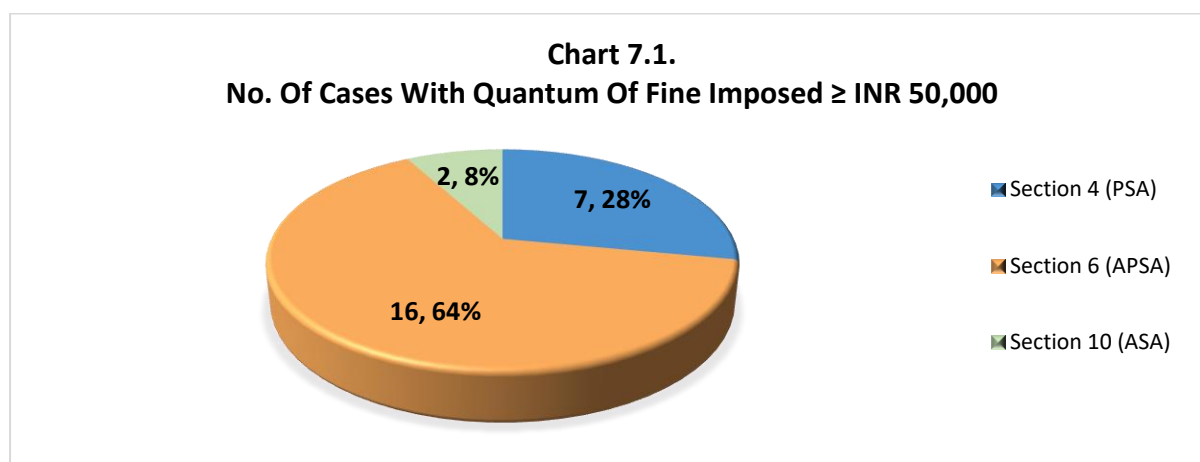
AMENDMENTS TO IPC AND POCSO ACT W.R.T. FINE IMPOSED

The Criminal Law Amendment, 2018, inserted an additional clause with respect to the imposing of fine to Section 376(3), Section 376 AB, Section 376 DA, Section 376 DB. *“Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim. Provided further that any fine imposed under this section shall be paid to the victim.”*

Further, the POCSO Amendment, 2019 inserted the following clause in Section 4 and Section 6: *“The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”*

QUANTUM OF FINE IMPOSED \geq INR 50,000

Of the total 197 cases, there were 25 cases wherein the quantum of fine imposed on the convict was equal to or more than INR 50,000. The break-up of the said 25 cases was as follows:



ANALYSIS OF VICTIM COMPENSATION

In the 25 cases analysed for this chapter, the victim compensation which was granted by the courts were two-fold – victim compensation through the fine imposed on the convict and compensation granted to the victim out of the victim compensation scheme.

Table 7.1. Details of Victim Compensation							
Victim Compensation through Fine Imposed + State Victim Compensation Scheme					Victim Compensation only through Fine Imposed		
u/s 357 CrPC (Out of Fine) + 357 A CrPC	u/s 357 CrPC + 357A CrPC+u/s 33 (8) and Rule 7 POCSO Act	u/s 357 CrPC + No section mentioned for VC out of State Scheme	No section mentioned for VC out of Fine + u/s 357A CrPC	No section mentioned at all	u/s 33(8) POCSO Act and Rule 7 POCSO Rules	u/s 357 CrPC + Liberty granted to apply to DLSA	No section mentioned for VC out of Fine Imposed
2	1	1	8	8	1	1	1
<i>Victim Compensation on out of Fine Imposed -</i> - 30,000/- in one case - 5,00,000/- in another case (to be deposited in FD until the child attains the age of 18 years with permission to use interest on the FD through her guardian) <i>Victim Compensation on under State Scheme -</i> - Amount left to be determined by DLSA	<i>Victim Compensation on out of Fine Imposed -</i> - 40,000 (FD and payable at 18) <i>Victim Compensation on under State Scheme -</i> - Rs. 4,000/- per month to the victim for her survival till she attains the age of 9 years, and thereafter, Rs. 5,000/- per month till she attains the age of 12 years and thereafter, Rs. 6,000/- per month till attaining the age of 15 years and Rs. 7,000/- per month till attaining the age of 18 years.	<i>Victim Compensation on out of Fine Imposed -</i> - 45,000/- <i>Victim Compensation on under State Scheme -</i> - Amount left to be determined by DLSA	<i>Victim Compensation on out of Fine Imposed -</i> - 40,000 /- in 5 cases - 50,000/- in 2 cases - 1,00,000/- in one case <i>Victim Compensation on under State Scheme -</i> - 5,00,000/- in 2 cases - 1,00,000/ in one case (to be deposited in FD until the child attains the age of 18 years) - Amount left to be determined by DLSA in 5 cases	<i>Victim Compensation on out of Fine Imposed -</i> - 40,000 /- in 5 cases - 50,000/- in 3 cases <i>Victim Compensation on under State Scheme -</i> - 5 Lakh in all 8 cases	<i>Victim Compensation on out of Fine Imposed -</i> - 40,000/-	<i>Victim Compensation on out of Fine Imposed -</i> - 1,00,000/-	<i>Victim Compensation on out of Fine Imposed -</i> - 3,00,000/-

- **No victim compensation is awarded** - 2 cases.
- **Victim compensation is awarded out of the fine imposed as well as under the state victim compensation scheme** - 20 cases.

A detailed analysis of the two types of victim compensation in the said 20 cases is as follows:

(i) *Victim compensation awarded out of fine imposed:*

- 4 cases mention Section 357 CrPC. as the basis for compensation being awarded out of the fine imposed on the convicts. However, no effort is made to detail out the specific provision under Section 357 CrPC. that allows victims to be compensated from the amount of fine imposed, i.e. section 357(1)(b).
- In 16 cases while compensation is awarded of the fine imposed, reference to the relevant provision of the CrPC. is missing completely.

(ii) *Victim compensation awarded with reference to the state victim compensation scheme:*

- In 12 cases the Special Courts have exercised their responsibility under the POCSO Act and Rules and determined the amount of compensation to be disbursed by the DLSA from the state victim compensation scheme. These amounts are:
 - 5 lakh rupees - 10 cases;
 - 1 lakh rupees in one case to be kept in a fixed deposit until the child attains the age of 18 years;
 - Graded amounts in one cases for different stages of the child's developmental years (INR 4,000/- per month to the victim for her survival till she attains the age of 9 years, and thereafter, INR 5,000/- per month till she attains the age of 12 years and thereafter, INR 6,000/- per month till attaining the age of 15 years and INR 7,000/- per month till attaining the age of 18 years). In the said case the Special Court, after granting the graded compensation amount, stated that '*no further lump sum compensation shall be payable to the victim under Haryana Victim Compensation Scheme framed under Section 357A CrPC.*'. Rule 7(6) of the POCSO Rules specifically mentions that nothing in the rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence, from seeking relief under any other rules or scheme of the Central or State Government. Thus, in the said case, the Special Court has explicitly limited the right of the victim to apply for further compensation.
- In 8 cases the amount of compensation to be provided under the state scheme is 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.

- **Victim compensation is awarded only as part of fine imposed on the convicts - 3 cases.**

Details are as follows:

- (i) The highest amount awarded as compensation out of fine is INR 3 lakh, although the Special Court in this case fails to make a reference to the relevant provision of the CrPC.
- (ii) In another case, an amount of INR 1 lakh is awarded as compensation out of the fine imposed under Section 357 CrPC. Here again, the Special Court fails to make an effort to refer to the specific provision of the CrPC. that allows compensation to be paid to the victims out of the fine imposed on the convict. Interestingly, while the Special Court could have taken suo moto cognizance of the need for victim compensation using its powers under section 33 (8) of the POCSO Act, it chose not to do so and instead left it to the victim to apply to the DLSA for compensation under the state scheme., which is not the appropriate authority for granting victim compensation under the POCSO Act.
- (iii) In the third case, compensation of INR 40,000/- is awarded out of the fine imposed, but the Special Court has wrongly referred to Section 33(8) POCSO Act and Rule 7 POCSO Rules as victim compensation under the POCSO Act and Rules is not meant to be paid out of the fine. On the contrary, victim compensation under the POCSO Act and Rules is meant to be paid out of the victim compensation scheme (VCS) or any victim compensation fund set up by the state government under Section 357A of the CrPC., irrespective of conviction, i.e. even if there is an acquittal or discharge, or where the accused cannot be traced or identified.

In cases wherein the victim was awarded compensation under Section 357A of CrPC. or under any other provision of the POCSO Act, there is a guarantee that the victim will receive that money as compensation for her rehabilitation. However, in the cases wherein the victim is dependent on the convict giving the victim a share of the fine amount imposed as compensation, there is no assurance that the victim will receive the said amount. The convicts themselves being poor and in a helpless financial position, as prayed by them in most cases, are unable to pay the hefty fine amount imposed on them as part of the sentence. This makes the need and rehabilitation of the victim at the mercy of on the convict's ability payment of the fine amount and in turn leaves the victim at a loss.

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