



# #Data4Justice - Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana

(2012 to April 2020)

A Report by HAQ: Centre for Child Rights & CivicDataLab

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## **AUTHORS**

Bharti Ali  
Urmi Chudgar

## **RESEARCH TEAM**

### **HAQ: Centre for Child Rights**

Bharti Ali  
Dhanpal  
Kumar Shailabh  
Urmi Chudgar

### **CivicDataLab**

Apoorv Anand  
Deepthi Chand

### **For further information, contact:**

HAQ: Centre for Child Rights  
E-mail: [info@haqcrc.org](mailto:info@haqcrc.org)

CivicDataLab  
E-mail: [info@civicaldatalab.in](mailto:info@civicaldatalab.in)

## FOREWORD

### JUSTICE MADAN B. LOKUR

Former Judge  
Supreme Court of India

#### FOREWORD

Data collection has always been a challenge, particularly in matters concerning the judiciary. To some extent, the National Judicial Data Grid initiated by the eCommittee of the Supreme Court has eased the concerns of researchers and academics. HAQ: Centre for Child Rights and CivicData Lab have beneficially utilised the resource to present a study on a matter of great concern, that is, child sexual abuse (CSA) and the POCSO Act.

This remarkable report reveals some of the more disturbing if not terrible aspects of CSA, by itself a horrific crime. In the quest for justice, victims face an uphill task at every stage from the moment the abuse starts. They are unable to articulate their experience and even if they muster the courage to do so, the wheels of justice grind slowly, but not always surely. It is disturbing to note that CSA cases have been increasing across the country and there is a growing list of pending cases. The backlog seems to be overwhelming the justice system and the day does not seem to be far off when it is unable to bear the burden and collapses like a house of cards.

Delay in justice can have deleterious long-term consequences, both for the accused and for the child victim of sexual abuse. The report informs us that though the POCSO Act requires cases to be decided within a year, the average time for disposal is almost a year and a half and some cases have remained pending for over six years. Is this acceptable in matters of child sexual abuse? On the other hand, a Special Court in Delhi could decide the case of mass sexual abuse in a child care institution in Muzaffarpur (Bihar) in 350 days and 124 hearings. There are significant lessons to be learnt from this. Therefore, it is imperative for policy and decision makers to study this report and take immediate corrective steps on several fronts, apart from delays.

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A-26, Gulmohar Park  
New Delhi - 110 049  
E: [madanlokur@hotmail.com](mailto:madanlokur@hotmail.com)  
M: +91-9868219007

The report recommends several noteworthy remedial measures, two of which deserves immediate and serious consideration by the eCommittee of the Supreme Court and other policy makers. The first suggestion is to introduce ‘non-negotiable’ data sets in judgments. This is an easily doable recommendation and can be implemented across the board, not only in POCSO cases. This would make possible more research studies, such as the present, and would definitely go a long way in giving meaning to case management and access to justice. The second is by implication: make access to information a reality. The difficulty faced by HAQ and CivicData Lab is telling. It is due to the struggle in accessing information that the scope of the study had to be limited to three States. I believe, justice delivery does not stop with the verdict being delivered but goes well beyond, into the implementation stage and ultimately research for improvement in the quality of the process and procedures. Court decisions assist researchers in proposing a variety of ways and means to improve justice delivery, as this report demonstrates.

The POCSO Act has been in place for almost a decade and it surely needs revisiting. This is more than evident from reading the report. Will necessary changes be made with the assistance of those activists who are studying issues of CSA and participating in the rehabilitation and reintegration process of child victims? Nobody knows, but researchers need to press on and ensure that the voices of children and activists are heard by those that take critical decisions. If we maintain a stoic silence, we are looking at a bleak future.

The value of this report is, therefore, much more than a wake-up call – it is a call for immediate and sustained action, based on data collected (with some difficulty) from the National Judicial Data Grid and the National Crime Records Bureau.

However, I would like to end on a more positive note. Studies such as this must be encouraged and access to information must be simplified. If ground-level information and data are lacking, can our justice system progress efficiently and effectively? There is so much more that can be done, not only with regard to CSA and the POCSO Act but in child rights in general, and there are so many who are doing an excellent job in this field. They need encouragement and support from all sections of society, not just a handful of concerned citizens. We know the problems and the solutions. Reports such as this sometimes speak for themselves and serve as an alarm bell. Finding a way to implement the solutions is not always a difficult task. Where there is a will, there is a way. All that is required, at the

end of the day, is a dedicated and sincere effort. This is not a tall order and is achievable provided we start now. The clock is ticking. All of us working together can make a difference and let this outstanding report on an important subject serve as the starting block.



(Madan B. Lokur)



## PREFACE

HAQ: Centre for Child Rights (HAQ) is a human rights organisation working for the recognition, protection and promotion of all rights for all children. HAQ is driven by its goal to mainstream children's human rights in all development planning and action through knowledge creation, evidence based advocacy and communication, direct support for children in distress, collaboration and partnership.

Taking this forward, we have engaged extensively on issues concerning children and governance with a focus on child protection and children's access to justice. Accountability is the key to governance and HAQ's work in the last 22 years since its existence, has highlighted a need to strengthen the existing systems with knowledge and tools that can help build such accountability towards children and their rights. In 2019, CivicDataLab (CDL) approached HAQ with an opportunity to join hands in developing technology based tools to track implementation of laws and policies concerning children. The opportunity became a reality when AGAMI launched its Data4Justice Challenge and HAQ and CDL could find the much needed support to initiate exploration into the field of judicial data accountability as part of access to justice with a focus on the rights of children.

The last two decades have witnessed a plethora of changes in the law and policy framework for child protection. While some of it has been led by evidence, some has been a response to populist demands when an untoward incidence takes place awakening public conscience on critical issues such as juvenile justice, child labour, child marriage, child sexual abuse and child trafficking. Even as the laws are put in place, little attention is paid to their implementation and often enough failure to implement a law properly becomes a reason to change the law instead of investing in generating evidence that provide informed solutions. HAQ has been particularly concerned about this and has thus engaged with some of these laws extensively. One such law has been the Protection of Children from Sexual Offences (POCSO) Act, 2012.

In 2018, HAQ released two reports that looked into the implementation of the POCSO Act in Delhi and Mumbai. While these reports draw attention to important aspects of the law ranging from disclosure of crime by a child to registration of a formal complaint and an FIR, police investigation, timely completion of victim testimony and trial, victim compensation and rehabilitation of children, there is a need for continuous research on similar lines to generate data that can help identify the gaps and challenges that need to be addressed in order to enhance the efficacy of laws. Using technology for research can go a long way in generating real time data analytics and this report is an outcome of one such attempt.

There is still a long way to go! Due to data limitations as well as technical challenges, this report is restricted to analysis of implementation of the POCSO Act in Assam, Delhi and Haryana. We hope to overcome the challenges in the near future through continued and joint efforts with CDL as our technology partner. More importantly, we hope to create a "Child



Protection Law Implementation Tracker” that goes beyond tracking implementation of the POCSO Act.

Engaging with judicial data implies engaging with the eCommittee of the Supreme Court. The report throws up a set of “non-negotiables”, which, if considered by the eCommittee, can help improve judicial data accountability and children’s access to justice. Finding key dates, outcome of a hearing, orders and judgements online without compromising on the privacy and confidentiality of children will not only aide research and generation of evidence for law and policy reform but can be empowering for children and their families in a big way, without making them dependent on a lawyer to fetch them the documents that they ought to receive as a right.

We hope that all authorities responsible for upholding children’s rights, law enforcement and justice delivery, including the National Commission and State Commissions for Protection of Child Rights, who are meant to oversee implementation of laws relating to children, will gain from such efforts.

On this note, we seek continued support from all individuals and agencies who share a vision for barrier free justice for children and look forward to more opportunities like the AGAMI Data4Justice Challenge that can help us build on our work.



Bharti Ali  
Co-Founder & Executive Director  
HAQ: Centre for Child Rights



## PREFACE

We at CivicDataLab work at the intersection of data, tech, design and social science to strengthen the course of civic engagement in India. We work with communities to co-create tools, datasets and processes that bridge the gaps between data, research and implementation. Access to information has always been a major challenge in the discourse around law and justice in our country. A crucial component that can bring more transparency and accountability to our systems of law and justice is the data from courts, which is technically available, but often hidden behind CAPTCHAs. This makes it difficult for anyone interested in understanding and creating solutions for the space to access the data for research and analysis.

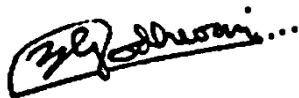
We collaborated with the team from HAQ: Centre for Child Rights (HAQ) on studying the implementation of the POCSO Act using data from courts. Our objective was to learn more about the challenges associated with accessing this information and develop tools to access the data from courts. The task would have been simpler if the courts had Open API in place, or a well-documented process that one can follow to get access to these datasets. However, these resources are not available in the public domain. Even if one manages to get access to these datasets, the task of using them (read, process, analyse) gets more difficult because of lack of documentation and standardisation associated with these datasets. A lot has already been written on these aspects. We hope that the e-Courts Committee takes cognizance of these issues so we can look forward to working with a more accessible e-Courts portal in the near future.

Over the course of this project, we managed to get access to all the court cases registered under the POCSO Act for three states - Assam, Delhi and Haryana. We observed a lot of diversity in the way states have been managing the cases on e-Courts. This further restricted us in automating the data cleaning and data processing workflows, which made the process of creating a robust and standardised dataset for research more time-consuming. Therefore, we had to limit the scope of this analysis to just three states. We enumerate our data preparation process in detail in the following chapter - *"Introduction and Methodology of selection of cases"*.

We would like to thank the HAQ team for supporting us in understanding and handling these datasets, helping us learn about the case management protocols and for guiding us with the



analysis. Moving ahead, we would like to work towards opening up datasets for other states to build on the existing research. One of our objectives is to design de-centralised processes for sourcing these datasets and partnering with various organisations across the country to better inform legal research and advocacy. In this regard, we would like to open up other relevant datasets to research on other critical issues of public interest and work with the legal community to develop data standards that can be adopted to study the implementation of various other laws in the country.



Gaurav Godhwani  
CivicDataLab



Apoorv Anand  
CivicDataLab

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Chairperson, Hon'ble Justice Madan B. Lokur, Former Judge, Supreme Court of India

Member, Dr. Mrinal Satish, Professor of Law, NLSIU, Bangalore

Member, Supriya Sankaran, Co-Founder, AGAMI

Member, Tannistha Datta, Child Protection Specialist, UNICEF

Member, Mr. Sumandro Chattapadhyay, Researcher on Open Data and Digital Economy

Member, Enakshi Ganguly, Co-Founder and Advisor, HAQ: Centre for Child Rights

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As we struggled with issues of privacy and confidentiality of data, we approached Engine Room to guide us through and are indebted to them for making us a part of the Light Touch Support (LiTS) programme that helped us in adopting responsible data practices for this project. We are also grateful to (Late) Ms. Debra Ronan, Director, PACE at the Macquarie Law School, Macquarie University, Sydney and the law students of International Participation and

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Finally, our sincere thanks to Supriya Sankaran and the AGAMI Team for believing in us and bearing with the delay in the publication of this report.

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## LIST OF ABBREVIATIONS AND ACRONYMS

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	CivicDataLab
CHA	Challan
CHI	Challan under IPC
CIS	Case Information System
CNR	Case Number Record
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
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 Scheduled 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
w.r.t.	with respect to

## **CHAPTER I**

### **INTRODUCTION AND METHODOLOGY**

#### **INTRODUCTION**

Child protection in India has received significant attention over the last two decades through new schemes, policies, and legal reform. However, the vast legal framework on child rights is not backed by data which can help monitor and improve the implementation of these laws. The report published by the National Crime Records Bureau ('NCRB') has limited and outdated data and there is no consistency in data to measure certain trends in crimes against children over a period of time.

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 while reducing time and manual effort.

#### **Child Rights Law Implementation Tracker**

While much has been achieved in terms of strengthening the legal framework for child protection, violence against children continues to be on the rise. Therefore, the question to be asked is 'What happens after a law is passed?' To answer this question, tracking the implementation of these laws by analysing relevant data is important. HAQ: centre for Child Rights, in collaboration with CivicDataLab (CDL) as the technology partner, is working on creating a Child Rights Law Implementation Tracker ('CRLIT'). The objective of the project is to generate large scale, dynamic and systematic data through an interactive and live platform that will help strengthen evidence-based advocacy efforts on access to justice for children. The project will also help in measuring progress on Sustainable Development Goal (SDG) 16 – Access to Justice, from a child rights perspective.

Given the wide ambit of laws on child protection, the Child Rights Law Implementation Tracker will be developed in a phased manner. With support coming through the AGAMI Data for Justice Challenge for the first phase of the tracker, the focus in this phase has been on tracking implementation of the Protection of Children from Sexual Offences, Act, 2012 (POCSO Act). This report is a result of attempts made in that direction.

#### **Scope of Research**

The research undertaken for this report covers cases of sexual offences against children which have been registered in the Case Information System (CIS) of the district courts and for which

trial has been or is being conducted under the POCSO Act in 2 States of Assam, and Haryana and the National Capital Territory of Delhi.

Initially, based on HAQ's prior experience with similar research for cases under the POCSO Act in Delhi and Mumbai and an analysis of existing data for all States/UTs, 7 States/UT were identified for research, viz. Assam, Haryana, Delhi, Jharkhand, Maharashtra, Kerala and West Bengal. However, once the team embarked extracting data for research and undertook preliminary analysis, the challenge of non-standardisation of data extracted made the task difficult. Besides, the timeline for the first phase supported by AGAMI was set at six months. Accordingly, a decision was taken to focus on 3 States/UT i.e. Assam, Delhi and Haryana in the first phase, leaving the other States /UTs to be covered in the next and future phases of the project.

The main source of data for research is cases uploaded on the e-Courts web portal. Cases for eight years starting 2012 to 2020 have been considered, though the cut-off date for the year 2020 varies for each State/UT. This is because data for the 3 States/UT has been downloaded at different points in time. For Assam, the cut-off date is 23 April, 2020, while for Delhi, it is 07 March, 2020 and for Haryana it is 21 March, 2020.

## METHODOLOGY

### A. Selection of Cases and Data Challenges

As mentioned above, the primary source of data has been the e-Courts services portal - [https://services.ecourts.gov.in/ecourtindia\\_v6/](https://services.ecourts.gov.in/ecourtindia_v6/). Other data relied upon for comparisons include data retrieved from the Crime in India reports of the NCRB and data presented in response to certain questions raised in the Parliament of India as well as news reports.

The first filter to use has been the relevant act, viz. the POCSO Act. All data available from the ongoing and disposed cases on the e-Courts platform using this filter was downloaded. This was further narrowed down to filter cases under the POCSO Act for the three States/UT covered in this study and their respective districts.

The raw data collected from the e-Courts platform for each of the downloaded cases was then arranged systematically into various columns representing different data fields in an excel sheet. The following are some examples of the data fields:

- CNR No.: a unique 16-digit Case Number Record assigned to each case registered in the CIS
- 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 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

Initially, **36,408** cases, pending and disposed, were downloaded - **7240 from Assam, 13207 from Delhi and 15601 from Haryana.**

With confusing and mixed data coming through, more filters had to be used to arrive at the number of cases that would truly fall within the ambit of this research and reduce the margin of error. These were – “Case Type” and “Designation of Judge”.

## I. Case Type

The first question that arose was whether all case types emerging from the large case data pool were in fact case types wherein a trial under the POCSO Act had been or was being conducted?

For a type of case to fall within the ambit of this 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 the POCSO Act can only be tried by a court of sessions and is commonly referred to as a sessions case or SC case.

From the data fields that are available on the e-Courts portal, variations are found in the case types, both between and within the 3 selected States/UT. Some of the case types are listed herein below exactly as extracted from the portal:

- 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
- D.V.Act
- M
- Remp

With such variations emerging in the case types even after using the filter of the relevant Act, a decision had to be taken on which case types would be applicable for the present research. The filter of “Designation of Judge” and “Case Type” were thus used simultaneously to zero down on the case types that represented a legitimate trial under the POCSO Act by a sessions court, i.e. a sessions case. The case types that have been finally considered are as follows:

- 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

Variations are found even in the way and manner in which case types are mentioned in the e-Courts portal. For example:

- 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

Such lack of standardisation put forth a challenge while consolidating and analysing data.

### ***Broad categorisation of Case Types as the next step***

For ease of reference and data computation, the selected types of cases have been categorised under broader headings:

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

For reference, details of categorisation of case types for each State/UT under study is provided in Annexure 1.1.

After using the aforesaid filters, the count of the total cases came down to **19798**, with the share of each State/UT being as follows:

**Assam – 5799, Delhi – 9366 and Haryana – 4633.**

## **II. Designation of Judge**

In accordance with the POCSO Act, an "appropriate" judge who can conduct trial of cases under the POCSO Act is a sessions judge. 'Designation of Judge' has thus been used as a filter to select only those cases that have come up before such appropriate judge.

Variations are found even in the designations used for the appropriate judge, both between and within the 3 States/UT. The list of variations that reproduced below is exactly as extracted from the e-Courts portal without any change in punctuations, space between words or use of small and capital letters.

- 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

- District & 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 above list shows that apart from the Additional Sessions Judge and the 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 Magistrate Ist Class, Judicial Magistrate IInd Class, Magistrate, Sub-divisional Magistrate, Civil Judge, etc. As these designations do not fit the requirement of a sessions judge for a trial under the POCSO Act, cases in their courts have not been taken into account.

For reference, details of the “Designation of Judge” in each of the 3 States/UT considered for this study have been provided in Annexure 1.2.

### ***Exceptions under the Case Type and Designation of Judge***

For Assam, cases before a judge designated as Assistant Sessions Judge form part of the research because an Assistant Sessions Judge has the power to conduct a sessions trial. One case before a judge designated as Civil Judge No. 2 has also been taken into account as a perusal of the case revealed that it is a case under section 6 of the POCSO Act, which has been transferred to a Civil Judge who also has the charge of an Assistant Sessions Judge. The said case has been disposed of after a duly conducted trial.

Perusal of 5 cases from Haryana before the court of a judge designated as the Principal Judge, Family Court led to further probe into the structure of judicial services in the State, which clarified that a Principal Judge, Family Courts is a judicial officer of the same rank as the Additional District and Sessions Judge. These 5 cases have hence been taken into account for the purpose of this research.

While perusing a sample of cases from Delhi, trials under the POCSO Act were found under the case type “Cr. Case” and “Cr Case” before judges designated as Additional Sessions Judge and Special Judge. A total of 8 such cases have been taken into account for this research, while cases under the case type “Cr. Case” and “Cr Case” wherein the designation of the judge is Metropolitan Magistrate (MM) have been dropped as the MM is not a sessions judge.

Further, while inspecting a sample of cases from Assam under the case type variation “Sessions ( Spl.)” and “Spl (pocso)”, 3 cases were found wherein the designation of the judge is mentioned as Chief Judicial Magistrate. Although the case type is legitimate i.e. Sessions Case, the designation of judge is not appropriate as explained earlier. Therefore, these 3 cases are not included in the final count of cases for this research.

In the data sheet that emerged from compilation of all case-wise information downloaded from the e-Courts portal, 153 cases (from Assam and Delhi) had to be tagged as NA under the “Designation of Judge” field as the requisite information is not available. In addition, there are 2 cases (from Assam) tagged as "CASE NOT ALLOCATED TO COURT." under the “Designation of Judge” data field. In these cases, even though designation of the judge is not known, the court complexes are those of the District and Sessions Judge and hence these 155 cases have been taken into consideration for the purposes of research.

### ***Cases relating to Juveniles (Children in Conflict with the Law)***

In Haryana and Assam, as explained below, a few cases types mention juvenile or CCL, indicating that these relate to children in conflict with the law.

Assam:

- Juvenile Cases
- Juvenile Act Cases
- J J B Case
- Spl (CCL)
- SPECIAL JUVENILE
- SPECIAL JUVENILE CASE

Haryana:

- JJB



- JJB.

A perusal of the such cases from Assam shows that the judges presiding over these cases are designated as Additional Sessions Judge, District and Sessions Judge, Judicial Magistrates, Principal Magistrate, etc. For the cases from Haryana, the presiding judges are found to be designated as Judicial Magistrates, Principal Magistrate etc.

Upon a combined reading of “Case Type and “Designation of Judge” a decision was taken to include only those cases of children in conflict with the law that are before a sessions court judge since it implies that the child was transferred to such court to be tried as an adult.

Therefore, for the State of Assam, 12 cases under the case types “Spl (CCL)”, “SPECIAL JUVENILE” and “SPECIAL JUVENILE CASE” wherein the designated judge is a sessions judge are taken into consideration. For the State of Haryana, none of the cases under the case types “JJB” and “JJB.” have been taken into account as they are cases before judges designated as Judicial Magistrate or Principal Magistrate, implying that these are cases where the presiding judge is holding the charge of a Juvenile Justice Board meant to deal with children in conflict with the law as children.

At this stage, the count of cases further came down to **19803**, with the share of each State/UT being **5796** from **Assam**, **9374** from **Delhi** and **4633** from **Haryana**.

### III. The Final Count of Cases

Further challenges faced in deciding on the final count of cases to be considered for research are as follows:

#### ***Missing Year of FIR***

In 1309 cases from the 3 States/UT, information with respect to the year of registration of the First Information Report (FIR) was found missing under the “FIR Details” on their respective e-Courts pages. While downloading such cases, the value for each of these cases in the raw data files was captured as ‘0’.

Although the year of FIR is unknown for the said cases, all other relevant information was available for the purpose of research. The breakup of these cases between the 3 States/UT is 1250 from Assam, 36 from Delhi and 23 from Haryana.

### ***Invalid FIR Years***

The POCSO Act came into force with effect from 14 November 2012 and therefore only those cases registered under the POCSO Act from 2012 to 2020 have been considered for this research. While perusing the “FIR details” certain cases were found with the year of FIR mentioned as prior to 2012 or with no year mentioned at all. There are a total of 20 such cases from all 3 States/UT, which have not been taken into account.

- 14 cases with FIR number without the year, e.g. 9, 14, 15, 17, 18, 19, 201, 506, 1913, 2081, 2106
- 6 cases with FIR year prior to 2012, e.g. 2005, 2009, 2010, 2011

### ***Missing Districts from Haryana***

On the e-Courts portal, the district of Narnaul is displayed as Mahendragarh whereas district Nuh is displayed as Mewat. There are no cases from Narnaul (Mahendragarh), Nuh (Mewat) and Karnal in the total count of cases considered for the research.

At the time of data mining from the e-Courts portal, the team did not find any case from the district of Nuh (Mewat) due to technical hurdles. Later it was found out that a total of 156 cases from the State of Haryana have been missed out because of poor network and poor functionality of the e-Courts server. In addition, there are 36 cases from the district of Karnal and 55 cases from Narnaul (Mahendragarh) district that are not part of the final count of cases because of invalid case type, i.e. case types such as REMP, CHI, CHA etc.

type_name	count
CHA	12
CHI	13
COMI	2
CRM	11
JJB	21
POCSO ACT	1
REMP	23
UCR	8

The final count of cases considered for this research thus comes to a total of **19783** cases from the selected 3 States/UT, with **5786** cases from **Assam**, **9366** cases from **Delhi** and **4631** cases from **Haryana**.

## **B. Other Limitations & Challenges in Data Computation and Analysis**

Apart from challenges faced at the time of selecting and deciding on the final number of cases to be studied, significant challenges were faced during data analysis due to lack of uniformity and standardisation in the use of terminologies, the manner in which information is written and uploaded on the e-Courts portal and absence of key indicators to measure implementation of a law.

### **I. Nature of Disposal**

Of the total 19783 cases, the number of disposed cases is 8097. A few examples of the nature or type of disposal of cases, as downloaded from the e-Courts portal are given below.

#### ***Disposal Types***

- 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
- SineDie
- CANCEL
- CONVICTED
- Sent to JJB
- Declared Juvenile.

### ***Variations in each Disposal Types***

Each type of disposal has variations in how it is written or mentioned in the e-Courts portal, pointing to the lack of uniformity and standardisation that pose a challenge in consolidating and analysing data.

A few examples are 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, LIFE IMPRISONMENT, UNDERGONE
- PO Consigned – CONSIGNED, CONSIGNED AFTER PROCEEDINGS U/S 299 CR.PC, PO CONSIGN, PO CONSIGNED

### ***Broad categorisation of Disposal Types***

For ease of data compilation and computation, the selected types of disposal have been consolidated under the following broad categories depicting the nature of disposal in a case:

- Abated
- Acquitted
- Convicted
- Discharged
- Transferred
- Quashed
- Untraced
- PO Consigned
- Other Disposal

All the different variations of disposal type that fall within these broad categories have been taken into consideration. Details of categorisation of nature of disposal for each of the 3 States/UT are provided in Annexure 1.3.

It is pertinent to note here that the analysis is not error free. For example – ‘Quashed’ (along with its other variants) as a nature of disposal on the e-Courts portal are actually cases which have ended in acquittal after the respective High Courts have quashed the FIR. However, the concerned trial courts have disposed these cases as ‘Quashed’. In order to reflect the way

disposal is recorded, it was imperative to include these cases under a distinct category of 'Quashed' instead of adding them to the category of cases disposed as 'Acquitted'. Further, there are four different ways of mentioning "PO Consigned", as demonstrated above under the section on variations in each disposal type. Though the number of such cases is small making the error minor, there is a need to standardise the manner in which the nature of disposal is recorded by the concerned courts and uploaded on the e-Courts portal.

This is even more necessary when the disposal is wrongly recorded and uploaded on the e-Courts portal and order and judgements are not available to verify and ascertain the exact nature of disposal. For example, while going through the orders available for some of the cases from Haryana falling under the heading of 'CONSIGNED', the nature of disposal mentioned on the e-Courts portal is different from what the order states. In one such case the accused had died and the nature of disposal should have been recorded as "Abated", instead it figures as 'CONSIGNED'. In another case where the nature disposal is mentioned as 'CONSIGNED', the Punjab & Haryana High Court has actually quashed the proceedings. Upon reading the judgment in one case from Assam where the nature of disposal is recorded as 'Conciliation' on the e-Courts portal, the sessions court has convicted the accused under section 4 of POCSO Act and sentenced the convict to 7 years of imprisonment along with granting compensation to the victim. Instances like these make the entries on the e-Courts portal unreliable and lead to data riddled with errors.

## **II. Acts and Sections / Offence related Data**

The field of "Acts" and "sections" on the e-Courts platform provides information about the laws and legal provisions under which the FIR is registered in a case.

### ***Gaps and Challenges ensuing from Acts and Sections recorded in the e-Courts portal***

While perusing the Acts and sections applicable to the cases, a few challenges emerged in comprehending and standardising the data for computation and analysis.

(i) There are different ways in which the same Act (law) is referenced in the e-Courts platform. Examples of a few, exactly as the way they appear on the e-Courts portal, are as follows:

- 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 POC SO2013, Protection of Children from Sexual Offences Rules, PREVENTION OF CHILDREN FROM SEXUAL OFFENCES ACT*

- Cr.P.C. - *Code of Criminal Procedure, 1973, Code of Criminal Procedure, Cr. P.C., Cr. P. C., Cr.P.c*

- (ii) Names of the Acts do not corroborate with the section numbers mentioned. Section numbers which belong to the POCSO Act are mentioned under CrPC or IPC or ST/ST Act and vice versa.

Under Act(s)	Under Section(s)
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

- (iii) Few cases appear with a name of an Act that is not relevant for the present research, e.g., The Factories Act, 1948, The Partition Act, 1893, The Forward Contracts Regulation Act, 1952, The Foreign Exchange Regulation Act, 1973, The Indian Telegraph Act, 1855, The Indian Tolls Act, 1851, Prize Chits and Money Circulation Scheme (Banning) Act, 1978, The Indian Red Cross Society Act, 1920. However, the legal provisions or sections of law mentioned against these Acts belong to the IPC or CrPC or the POCSO Act or the SC/ST Act. The Act names and the corresponding section numbers, as mentioned on the e-Courts portal, are given hereunder:

Under Act(s)	Under Section(s)
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	--
Partition	---

For a few cases, the name of the Act is available but the corresponding section number is missing.

- (iv) Some of the section numbers are unclear and some have the name of the Act written under the heading 'Under Section(s)'.

Under Act(s)	Under Section(s)
I.P.C(Police)	3636
I.P.C(Police)	-1
Protection of Children from Sexual Offence Act 2012	Pocso
SC/ST Act	-2, II, 1, 392V, 69, STACT, SC



Thus, identification of the section or legal provision under which a case falls became challenging.

- (v) In certain cases, the main substantive section of the POCSO Act is mentioned but the correlating sub-section is missing. For example, there are several sub-sections under Section 3 and 5 of the POCSO Act that specify the type of penetrative sexual assault (PSA) and aggravated penetrative sexual assault (APSA) respectively. Unless the sub-sections are available, it is difficult to conduct a more nuanced analysis of data. There are only 75 cases where relevant sub-sections are mentioned, limiting the analysis to the broad categories of PSA or APSA.
- (vi) There are a total of 1,116 (one thousand one hundred and sixteen) cases where either no section of the POCSO Act is mentioned or those mentioned are sections 16, section 17, section 18, section 34. As a result, the said cases could not be categorised and have been clubbed under the heading – “Offence not known”.

#### ***Rules followed while standardising the Acts and Sections***

- (i) **Principal offence rule:** Where a case is booked under more than one sections of the POCSO Act, the rule of principal offence has been used for data compilation and analysis. This implies that the type of offence is decided on the basis of the section of the law that carries greater punishment. This is also the rule followed by the NCRB. For example, if a case is booked under sections 4 and 6 of the POCSO Act, it has been counted as a case under section 6, which carries higher punishment. Similarly, a case booked under sections 4, 8 and 10 of the POCSO Act is counted as a case of penetrative sexual assault under section 4 since that carries a higher punishment.
- (ii) **Punishment clause and not the substantive clause:** For offence related data computation, the punishment provisions have been relied upon instead of the substantive provision of law that describe the nature of offence. For example, if a case is shown as a case under sections 5 and 6 of the POCSO, it is counted as a case under section 6 as section 5 describes the offence of aggravated penetrative sexual assault and section 6 lays down the punishment for it.

While defining aggravated penetrative sexual assault under section 5 of the POCSO Act, the law lays down several clauses to specify the type of offences that qualify as aggravated penetrative sexual assault. Clause (g) of section 5 for instance, deals with gang penetrative sexual assault on a child (or gang rape in case of girls) and clause (m) deals with penetrative sexual assault on a child below the age of 12 years. Since the punishment for all the specific clauses under section 5 is the same as provided in

section 6 of the POCSO Act, the punishment clause has been considered. In such cases it has not been possible to carry out a detailed clause specific analysis because required detail is available for a miniscule number of cases and where available, absence of daily orders and judgement make it difficult to verify and check.

### **III. Purpose of Hearing**

#### ***Variations in the Purpose of Hearing and Broad Categorisation***

The purpose of hearing for each stage of a case in the criminal justice proceedings has variations with respect to the way and manner in which 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.

Lack of standardisation in the manner in which each purpose of hearing is mentioned on the e-Courts portal put forth a challenge while consolidating and analysing data on number of hearings by purpose of hearing. For ease of reference and practical use, the purpose of hearings is captured through the following broad categories on the basis of available information:

- Miscellaneous Appearance
- Charge
- Prosecution Evidence
- Miscellaneous Order
- Judgment
- Miscellaneous Arguments
- Statement of Accused
- Final Arguments
- Bail
- Defence Evidence
- Miscellaneous
- Other Evidence
- Sentence
- Transfer

There are certain purposes of hearings which cannot specifically be clubbed under any specific category. Such hearings can happen at any stage of a trial. For example, in order to take interim measures, the courts divert from the regular trial proceedings, call for appearance of accused, hear arguments and then pass necessary interlocutory orders. These hearings are categorised under the broad heading of “Miscellaneous Appearances” (Appearances, Appearance of accused, Production of accused, Production Warrant, Presence etc.), “Miscellaneous Arguments” (Arguments, Further Arguments, Misc. Argument etc.) and “Miscellaneous Order” (Order on Application, Necessary Order, ORDER (Criminal) etc.). Other hearings, i.e. Admission, Admission Hearing, Summon to I.O., Consideration, Misc. cases, etc. are also not a specific stage of trial and do not fall under either of the headings mentioned above. These are categorised as “Miscellaneous”.

States/UT-wise details of the Purpose of Hearings are provided in Annexure 1.4.

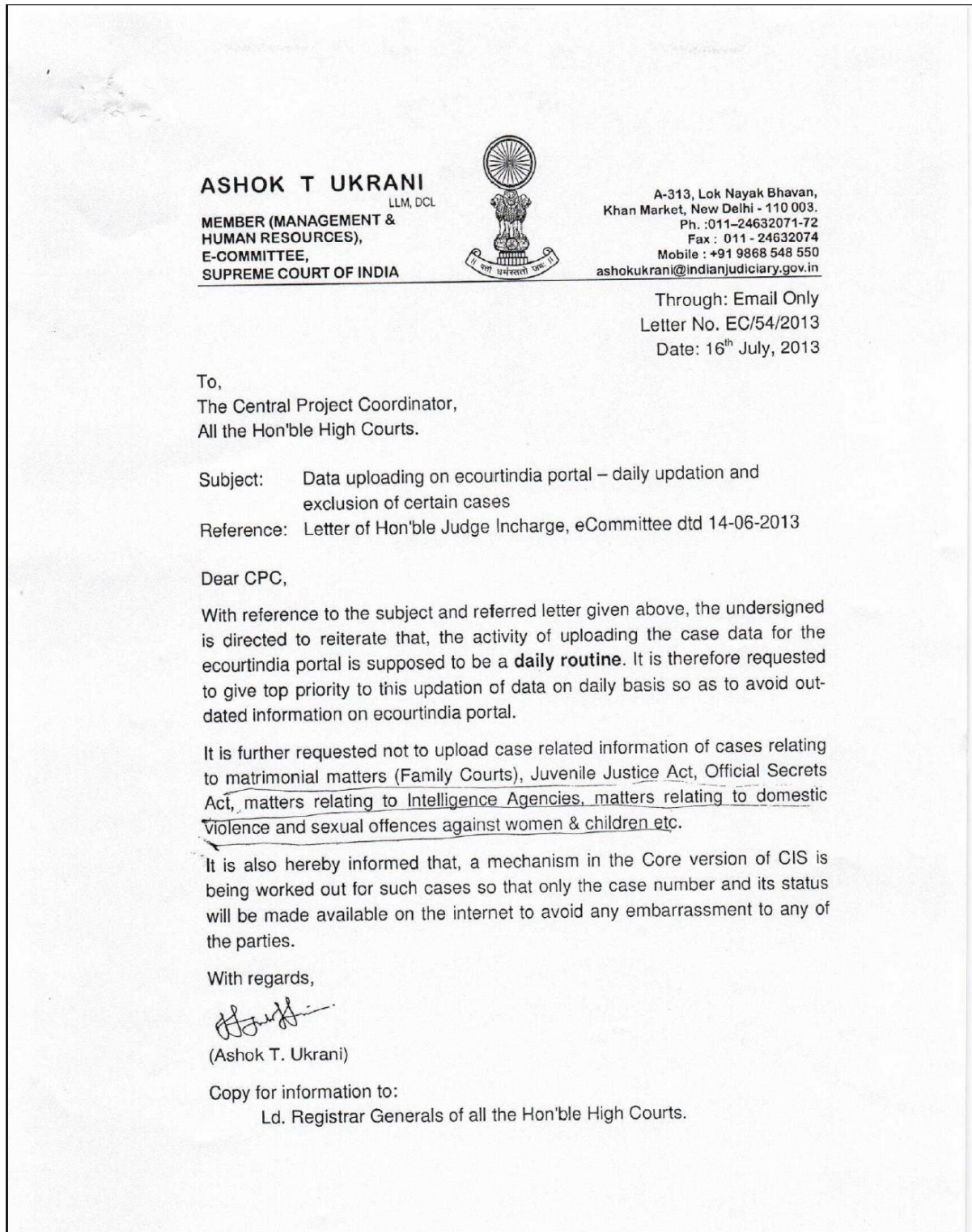
#### IV. Judgments

From a total of 19,783 cases in all the selected States/UT, 11,686 cases are pending as on the date when last set of data was extracted for the three States/UT. Of the 8097 disposed cases, judgments are available only in 3,590 as shown in Table 1.1 that follows.

<b>Table 1.1</b> <b>No. of Judgments Available in Disposed Cases</b> <b>Assam, Delhi &amp; Haryana Combined</b> <b>2012 to 23 April, 2020</b>				
State / UT	Judgment Available	Judgment Not Available	Total Disposed Cases	Judgments Available in Disposed Cases (%)
	Col. A	Col. B	Col. C	Col. D = [Col. A/ Col. C]*100
Assam	1152	1554	2706	42.57
Delhi	328	2018	2346	13.98
Haryana	2110	935	3045	69.29
<b>Total</b>	<b>3590</b>	<b>4507</b>	<b>8097</b>	<b>44.34</b>

There is a vast difference in the number of judgments being uploaded on the e-Courts platform in different States/UTs and there is no standard practice in this regard too. Of a total of 2,346 cases disposed in Delhi, judgments are available on the e-Courts portal for only 328 cases i.e. 14% of the disposed cases. In comparison, Haryana has a total of 3045 disposed cases, of which judgments are available for 2,110 cases i.e. 69% of the disposed cases. Similarly, the State of Assam has a total of 2,706 disposed cases and judgments are available for 1,152 cases i.e. 42% of the disposed cases. Compared to Assam and Haryana, Delhi appears as lagging in uploading judgments. It appears Delhi is strictly following a letter from the Judge in charge of the eCommittee of the Supreme Court of India dated 16 July, 2013, which restricts uploading of data with respect to certain cases such as sexual offences against

children except case number and case status. A copy of the letter is available at <http://delhihighcourt.nic.in/posco/DAILY%20ORDERS.pdf> and also pasted here for the benefit of readers.



While non-availability of judgments is one problem, the other relates to the manner in which judgments are written and lack of standardised practices in this regard. Section 354 of the

CrPC lays down certain mandatory requirements for what a judgment should contain. However, not only do different courts follow different styles of writing judgments, a lot of critical information pertaining to a case is also missing. Given that in cases of sexual offences daily orders are not meant to be uploaded, it becomes even more pressing to ensure that critical information is not missed out in the judgments.

## **V. Privacy and Confidentiality versus Judicial Data Accessibility, Transparency and Accountability**

Increasingly, in India, orders and/or judgments pertaining to cases of sexual crimes are not being made available on the e-Courts portal. The non-availability of relevant information affects the right to information of the parties in a case, making them fully dependent on their counsels, increasing their vulnerability to corrupt and exploitative practices. It also hampers bona fide research, review and social audits that are necessary for good governance. Keeping in mind the fact that information with respect to a case is confidential and any information on a public platform revealing the identity of the victim/survivor can be detrimental to their rehabilitation and well-being and would be a violation of their rights, there is a need to identify a way to achieve the twin goals of privacy and confidentiality of victims and witnesses and judicial data transparency, access and accountability.

In order to understand how different jurisdictions deal with the issue of confidentiality of information and judicial data access and accountability, the students of Macquarie University, Sydney prepared a report for HAQ: Centre for Child Rights titled, “Balancing Children’s Confidentiality and Judicial Accountability: A Cross-Country Comparison of Best Practices Regarding Children’s Privacy in the Criminal Justice System”<sup>1</sup>. The report can be accessed from <https://www.haqcrc.org/wp-content/uploads/2020/06/balancing-childrens-confidentiality-and-judicial-accountability.pdf>

The report examines and evaluates the different approaches followed by different jurisdictions to protect the confidentiality of children, particularly those who have been victims of sexual crimes, whilst maintaining judicial data transparency and accountability. The cross-country comparison of policies and practices make clear that children’s confidentiality and judicial transparency are not mutually exclusive. It is possible for States to maintain anonymity of children through simple name suppression measures which would then enable the release of court documents without endangering the child’s privacy. The report also reveals that there are countries and courts where, upon taking necessary permissions,

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<sup>1</sup> Kane, E., Maddison, T., Nicholas, T., and Emilia, T. *Balancing Children’s Confidentiality and Judicial Accountability: A Cross-Country Comparison of Best Practices Regarding Children’s Privacy in the Criminal Justice System*. LAWS4052, International Participation and Community Engagement. HAQ: Centre for Child Rights, New Delhi, India and Macquarie University, Sydney, Australia. 2020. Available at: <https://www.haqcrc.org/wp-content/uploads/2020/06/balancing-childrens-confidentiality-and-judicial-accountability.pdf>



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 judicial data accessibility, transparency, accountability and protection of children.

Countries which form part of the research include - Australia, Canada, Germany, Hong Kong, Malaysia, Nepal, New Zealand, Philippines, Singapore, South Africa, United Kingdom, United States.

### ***Some Best Practices Emerging from the Study***

Chart 1.1 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							
Canada							
Germany							
Hong Kong							
Malaysia							
Nepal							
New Zealand							
Philippines							
Singapore							
South Africa							
United Kingdom							
United States							
Green = Strong (Practices are in Place) Yellow = Moderate (Improvements Required) Red = Weak (Non-Existant or Otherwise)							

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

#### ***- Strong Non-Identifying Features***

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

Most States examined employ some form of name suppression measures to protect the children's identity such as utilising initials or pseudonyms. This practice ensures that there is anonymity of children involved in the case, whether as victim, witness or perpetrator. Furthermore, when the child reaches adulthood, they can decide whether or not to continue with maintaining their anonymity. This empowering feature allows victims of sexual crimes to take autonomy over their own lives.

- **Redacting Names**

*Best Practice: Australia (NSW); Malaysia; Singapore*

The majority of States have redaction mechanisms in place on a formal level, which ensure that private and confidential information is removed or erased from a record before it is shared. States that ensure total redaction of children's names are identified as better than those that do not.

- **e-Courts**

*Best Practice: Singapore, Australia (NSW), Germany*

e-Courts present the best ability to access court judgments. Whereas visiting courts can be difficult and inaccessible in certain locations, the e-Court system ensures that geographical location does 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, such policies and processes become redundant. Among many States studied in the report, the practicability of accessing court documents has been difficult to ascertain, particularly due to limitation of internet searches. The States that provide consistently published court documents are identified as better than those that do not. Those States offer court judgments for predetermined relevant parties. Best practice is also identified where parties, when applying for court documents, can request for the specific aspects of the case they are seeking (such as submission of evidence, charge sheets, expert reports and judicial reasoning). This is permitted in Singapore through the Integrated Case Management System for certain lower courts.

- **Clear Privacy Legislation**

*Best Practice: Australia (NSW); Nepal; Singapore*

States that have accessible and clear legislation relating to how privacy interacts with child sex abuse cases are identified as better than States that do not. Even where the legislation offers discretion (such as the Magistrate's decision with respect to the 'balance between right to information and privacy'), the legislation is considered to be sufficiently clear.

- **Clear Accessibility Legislation**

*Best Practice: Hong Kong; Canada; United States*

Determining whether or not access is to be granted regarding case records is, in some States, made clear through the relevant legislation. A process to access court records

substantiated in legislation is a significant step towards promoting judicial accountability. This is considered a 'best practice' as it demonstrates the willingness of the court system to commit to the concept of open justice.

- ***Clear Process to Access Court Documents***

*Best Practice: United States; Philippines; Germany*

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

## **OVERCOMING THE CHALLENGE OF STANDARDISATION: RECOMMENDATIONS AND LIST OF NON-NEGOTIABLES**

The idea and objective behind creating an e-Courts platform is to digitize the district judiciary. The CIS software is an initiative of the eCommittee to make the Indian Judiciary more transparent and more litigant/user friendly. However, even basic information and data is not being uploaded on the e-Courts platform properly and navigating the system to find all details pertaining to a case is not easy. This defeats the purpose of an automated system, while allowing continuation of an exploitative system where litigants have to shell money from their pockets to access documents and information in their own case. As mentioned earlier, it also hampers any valuable research on implementation of laws that can help in developing suitable policies and interventions to meet the goals of justice.

In order to overcome the aforesaid challenges and to ensure that access to real time data is easy, the following recommendations may be considered by the eCommittee of the Supreme Court of India.

1. *Standardisation of data on e-Courts portal to ensure the following:*
  - (a) *Uniformity with respect to data variables so that all critical data can be captured for ready reference and use.*
  - (b) *Minimisation of data entry errors. Drop down menus can be a way out.*
  - (c) *Uniformity with respect to terminologies used and their interpretation.*
  - (d) *Establish good practices and standards with respect to judicial data transparency, access and accountability.*
2. *Improving access to judicial data in matters concerning violence against children, particularly those involving implementation of laws such as the POCSO Act.*



- (a) Orders and Judgments relating to cases of sexual crimes should be made available on the e-Courts portal.*
- (b) Privacy and confidentiality of children in cases under the POCSO Act and other child protection legislations can be maintained without compromising on judicial data availability and accountability.*
- (c) Improved and evidence-based policy planning calls for investment in critical data and its management. In the recent past, much has changed in child protection laws as well as the criminal laws dealing with crimes against women and children. Not all reforms withstand the test of human rights standards and have been subjected to criticism for being populist in nature with little support drawn from existing research and judicial data.*

*The e-Courts portal can bridge the gap between data and data management, particularly around cases otherwise withheld from public access in the name of privacy and confidentiality of the victims, for example, orders, judgments and data-sets in matters under the POCSO Act.*

- 3. Training of Judges and all court staff on record keeping and data management using technology.*
- 4. Training of Judges particularly on writing orders and judgments, so that critical information is not missed out.*
- 5. To ensure a standardised and uniform practice in uploading data on the e-Courts portal as well as a standardised framework for capturing essential case related information through judgments and orders, a suggestive list of non-negotiables is proposed for the e-Courts portal at Annexure 1.5 and for Judgments & Orders by courts at Annexure 1.6. These are prepared after a thorough assessment of the challenges faced in access to data and reliability of data extracted from the e-Courts portal along with a thorough analysis of a sample of judgments available in cases under the POCSO Act across three States/UT – Assam, Delhi and Haryana. The fields in the list of non-negotiables are divided by colour – those in black font are the fields already existing on the e-Courts platform, while those in red font are the new fields that need to be included on the e-Courts platform.*

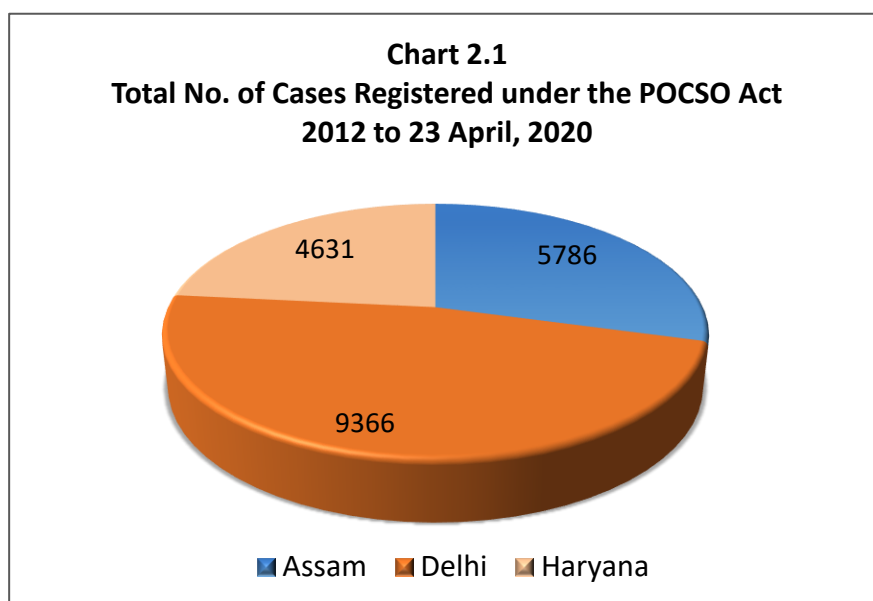
## CHAPTER II

### CASES AND OFFENCES REGISTERED UNDER THE POCSO ACT

This chapter provides a broad analysis of the number of cases registered under the POCSO Act at the State and district levels in Assam, Delhi and Haryana. It also details out the patterns emerging with respect to different types of offences under the POCSO Act. Data is computed on the basis of the number of cases registered in the Case Information System (CIS) of the district courts. The year of registration in the CIS is used for all calculations and analysis. Data used and analysed is for the period commencing enforcement of the POCSO Act, i.e., 14 November, 2012 up to 23 April, 2020. The cut off dates vary for Assam, Delhi and Haryana as the last set of data was obtained for Assam on 23 April, 2020, for Delhi on 7 March, 2020 and for Haryana on 21 March, 2020.

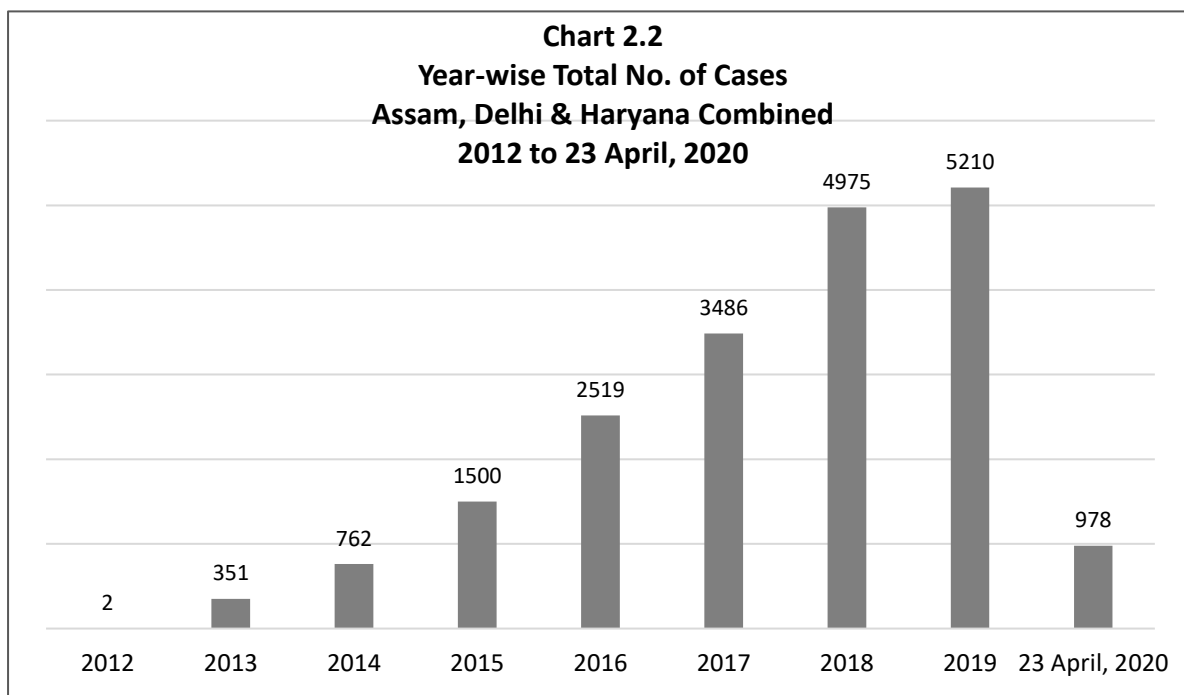
#### BASIC DATA

A total of 19783 cases under the POCSO Act are registered in the States of Assam and Haryana and the Union Territory of Delhi between November 2012 and 23 April, 2020. Of the total 19783 cases, 47.34% are from the Union Territory of Delhi, followed by Assam and Haryana. Chart 2.1 indicates the division of cases between the three States/UT considered for the study.



Charts 2.2 shows the year-wise distribution of all 19783 cases studied and Table 2.1 explains the year-wise share of cases for each of the three States/UT considered for the study as well as their combined total.

Delhi contributes the maximum number of cases registered under the POCSO Act each year and the study also suggests that there is a rise in the total number of cases registered in Delhi between 2012 and 07 March, 2020, when the last data set was mined for the National Capital.



<b>Table 2.1</b> <b>State/UT-wise &amp; Year-wise No. of Cases Registered in the CIS</b> <b>under the POCSO Act</b> <b>(e-Courts Portal)</b>				
<b>Year of Registration</b>	<b>Assam</b>	<b>Delhi</b>	<b>Haryana</b>	<b>Total</b>
<b>2012</b>	0	2	0	<b>2</b>
<b>2013</b>	18	331	2	<b>351</b>
<b>2014</b>	169	482	111	<b>762</b>
<b>2015</b>	353	768	379	<b>1500</b>
<b>2016</b>	632	1300	587	<b>2519</b>
<b>2017</b>	918	1700	868	<b>3486</b>
<b>2018</b>	1522	2281	1172	<b>4975</b>
<b>2019</b>	1793	2158	1259	<b>5210</b>
<b>23 April, 2020</b>	381	344	253	<b>978</b>
<b>Total</b>	<b>5786</b>	<b>9366</b>	<b>4631</b>	<b>19783</b>

The National Crime Records Bureau (NCRB) is the sole government agency tabulating crime data at the national and state level. It started computing data for cases registered under the POCSO Act 2014 onwards, and the data of POCSO cases retrieved from the NCRB portal for Assam, Haryana and Delhi does not match the data procured from the e-Courts portal. Table 2.1. presents the year-wise and State/UT-wise number of cases registered in the CIS under the POCSO Act, while Table 2.2 sums up the data as retrieved from the NCRB portal.

<b>Table 2.2</b> <b>State-wise &amp; Year-wise No. of Cases Registered (FIRs)</b> <b>under the POCSO Act and Section 376 IPC</b> <b>(As per NCRB)</b>				
<b>Year of Registration</b>	<b>Assam</b>	<b>Delhi</b>	<b>Haryana</b>	<b>Total</b>
<b>2012*</b>	156	415	276	<b>847</b>
<b>2013*</b>	230	757	388	<b>1375</b>
<b>2014</b>	311	109	3	<b>423</b>
<b>2015</b>	731	86	440	<b>1257</b>
<b>2016</b>	821	1620	1020	<b>3461</b>
<b>2017</b>	1149	1623	1139	<b>3911</b>
<b>2018**</b>	1733	1842	1933	<b>5508</b>
<b>2019**</b>	1782	1722	2085	<b>5589</b>
<b>23 April, 2020</b>	NA	NA	NA	<b>NA</b>
<b>Total</b>	<b>6913</b>	<b>8174</b>	<b>7284</b>	<b>22371</b>
<i>*For the Year 2012 and 2013, data for Child Rape (cases registered under section 376 IPC) have been considered primarily for two reasons: a) The POCSO Act came into effect from 14 November, 2012; and b) NCRB has not tabulated data for cases registered under the POCSO for 2012 and 2013</i>				
<i>**For Year 2018 and 2019, incidences of "Murder with Rape/POCSO" have also been taken into account as it was added as a distinct category of crimes in the NCRB data</i>				

One of the major reasons for stark differences in the number of cases under the POCSO Act for the year 2012 and 2013 may be due to the method of data computation followed by the NCRB. Until 2013, the NCRB presented separate data for child rape and other sexual offences against children under the IPC, in addition to cases registered under the POCSO Act. This has changed over the years, with some stability in data computation for sexual crimes against children 2017 onwards, as data for all sexual offences under the IPC is now merged within the data for offences under the POCSO Act. The only exception to this are cases involving sexual offence along with murder of the child. This is because the NCRB follows the rule of principal offence, whereby a case involving multiple offences gets counted as a case for the offence which carries higher punishment. As a result, 2018 onwards the NCRB has been providing separate data for "Murder with Rape/POCSO". If data for cases involving sexual offence and murder is added to the data for offences under the POCSO Act, the figure would be higher. One would assume there is no double count, but this requires a clear explanation from the NCRB.

It goes without saying that due to changes in the substantive laws creating new categories of offences as well as frequently changing methodology of data computation by the NCRB, comparison of data over the years since the enforcement of the POCSO Act and trend analysis have become a challenge.

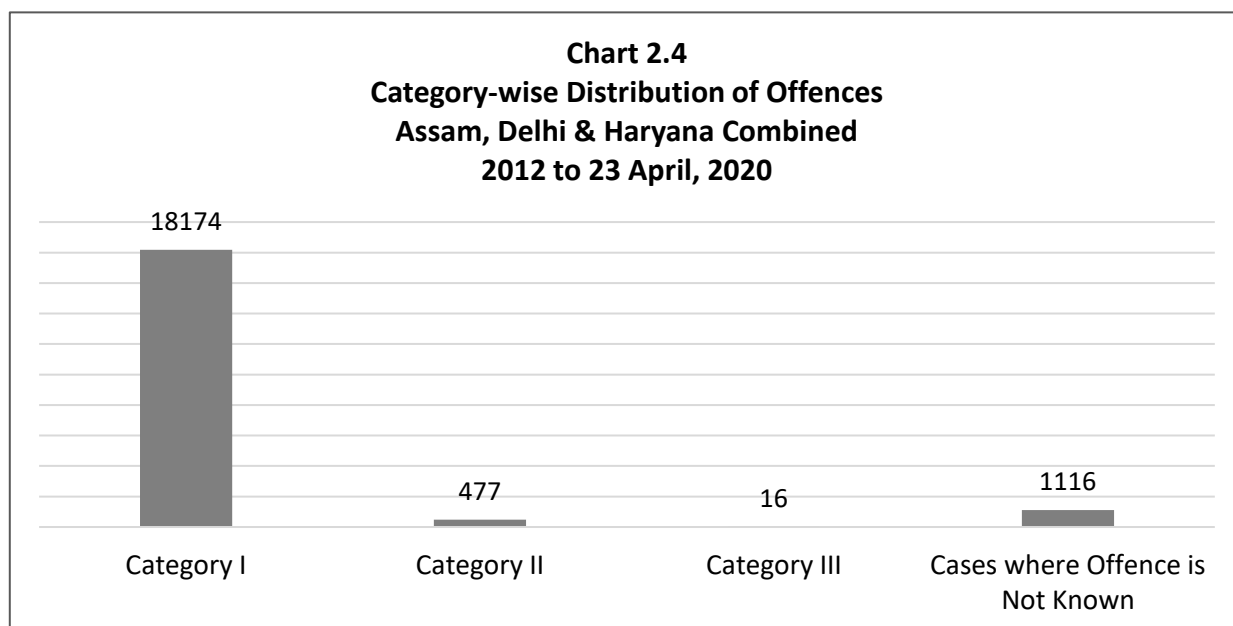
## NATURE OF OFFENCES

The POCSO Act covers a wide range of offences, including those that deal with a sexual offence or its abetment or attempt, cases where provision of mandatory reporting is violated or a report falsely alleges sexual offence against a child, and cases involving privacy and confidentiality violations by media. Among the different types of sexual offences are those recognised as more grave and heinous than others and hence classified as “aggravated” forms of penetrative and non-penetrative sexual assault; those that do not involve any physical contact and hence qualify as “sexual harassment”; and, those which involve creation and storage of child pornographic materials and content.

### A. Type of Offences and Categorisation

For the purpose of analysis, all offences under the POCSO Act have been divided into three categories as detailed out in Chart 2.3. Category I contains all 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 offences relating to failure to report, false reporting and disclosure of identity of the victims by media. The list is as follows:

Chart 2.3 Categories of Offences		
Section of the Act	Nature of Offence	Abbreviation or short form used for Nature of Offence
<b>Category I</b>		
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
<b>Category II</b>		
Section 16 and 17	Abetment of any offence under the POCSO Act	
Section 18	Attempt to commit any offence under the POCSO Act	
<b>Category III</b>		
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	



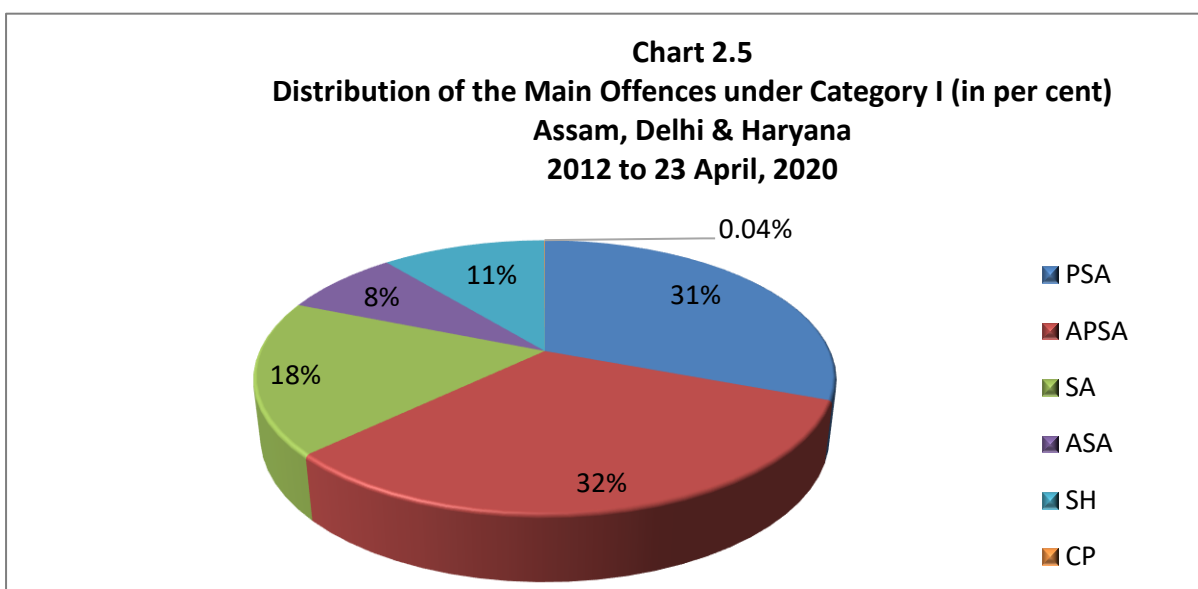
Out of the total 19783 cases registered under the POCSO Act in Assam, Delhi and Haryana, 18174 cases (91.87%), fall under Category I offences, as can be seen in Chart 2.4. Next to follow are Category II offences, with the least number of cases under Category III offences. There are 1116 cases where the offence detail is not available on the e-Courts portal.

#### I. Category I Offences

<b>Table 2.3</b> <b>Offence-wise Distribution of Cases Registered - Category I</b> <b>Assam, Delhi &amp; Haryana Combined</b> <b>2012 to 23 April, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
APSA	5849
PSA	5565
SA	3289
SH	1986
ASA	1432
PSA + CP	13
APSA + CP	9
CP	8
SA + CP	6
SH + CP	6
APSA + Storage of CP	4
ASA + CP	3
PSA + Storage of CP	2
APSA + CP + Storage of CP	1
SH + CP + Storage of CP	1
<b>Total</b>	<b>18174</b>

A closer look at Table 2.3 providing a break-up of offences under Category I, reveals that 32.18% or maximum number of cases in this category are of aggravated penetrative sexual assault (APSA) registered under section 6 of the POCSO Act, followed by 30.62% cases of penetrative sexual assault (PSA) under section 4 of the POCSO Act.

Distribution of the main offences under Category I as shown in Chart 2.5 (excluding those that involve a combination of different types of Category I offences), poses a concerning picture about the nature of sexual crimes committed against children in the three States/UT considered for the study. The situation at the national level is also similar as Table 2.4 containing 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*,<sup>2</sup> suggests that nearly 32% cases registered nationally are of PSA (section 4 of the POCSO Act), followed by 24% cases of APSA.



<b>Table 2.4</b> <b>Percentage share of Different Types of Offences under the POCSO Act</b> <b>All-India</b> <b>(As presented in the Supreme Court of India on 13.11.2019)</b>	
<b>Nature of Offence</b>	<b>Total No. of cases (%)</b>
PSA	32.1
SA	31
APSA	24
SH	8
ASA	3
CP	1
<i>Source: Suo Motu Writ Petition (Crl.) No. 1/2019, Order dated 13.11.2019.</i>	

<sup>2</sup> Supreme Court of India, *In Re: Alarming Rise in The Number of Reported Child Rape Incidents*, Suo Motu Writ Petition (Crl.) No.1/2019, Order dated 13.11.2019.

All the different data sets at National and State/UT level suggest that the cases of child sexual abuse are increasing every year. The POCSO Act has been a welcome move by the Government of India as the legislation has broadened the purview of sexual offences against children, covering both touch and non-touch based sexual crimes, including online sexual crimes. Being a gender neutral law, sexual crimes against boys and children of other gender identities also stands addressed. Although stringent punishments have been introduced over time for offences under the POCSO Act, even after eight years since enactment, its implementation on the ground raises several concerns.

In terms of any effective preventive strategy to curb child sexual abuse, preventive measures such as establishment of village, block and district level child protection committees mentioned under the Integrated Child Protection Scheme (ICPS) when it was launched in 2009 looked promising. However, after more than a decade, child protection committees at the village level are far from reality. In fact, child protection issues are some of the least prioritised subjects when it comes to financial resource allocation by both central government and the states. Over the last ten years (from 2012-13 to 2021-22), child protection has remained constantly underfunded with an average share of 0.04% of the total Union Budget. Budget for the flagship ICPS remained unchanged in the financial year 2020-2021 with total allocation of INR 1500 Crore. What is more, in the Union Budget 2021-22, Child Protection Services and Child Welfare Services are merged into what is now being called “Mission Vatsalya”, which has received a total allocation of INR 900 Crore in 2021-22. This is a huge shortfall of 40% when measured against an allocation of INR 1500 Crore for ICPS alone in the Union Budget for 2020-21.

On one hand, the government has failed to invest in community-based interventions that can help address the increase in number of the sexual crimes against children. On the other hand, whenever a gruesome incident of child sexual abuse receives media attention and there is public outcry, more and more stringent measures are introduced in the laws on the assumption that these will act as a deterrent. The Criminal Law Amendment Act, 2018 and amendments in the POCSO Act in 2019 are the latest and most classic examples of such law-making, whereby death penalty has been introduced for the offence of child rape. Such a move, despite being regressive in nature, has no basis in existing research and remains a populist measure.

## **II. Category II Offences**

For the purpose of this study, Category II offences comprise the following:

- Abetment of any offence under the POCSO Act and the punishment for the same (section 16 & 17 of the Act)
- Attempt to commit any offence under the POCSO Act (section 18 of the Act)
- Different combinations of abetment of an offence and attempt to commit an offence



A total of 477 cases from the three States/UT of Assam, Delhi and Haryana are of Category II offences.

<b>Table 2.5</b> <b>Offence-wise Distribution of Cases Registered - Category II</b> <b>Assam, Delhi &amp; Haryana Combined</b> <b>2012 to 23 April, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
Abetment of APSA	169
Abetment of CP	75
Attempt to APSA	71
Attempt to PSA	41
Attempt to SA	37
Abetment of SA	23
Attempt to ASA	17
Abetment of ASA	10
Abetment of SH	8
Attempt to SH	8
Abetment of PSA	7
Abetment of APSA + Attempt to APSA	4
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 SA + Attempt to SA	1
<b>Total</b>	<b>477</b>

Data presented in Table 2.5 reveals that almost 35.43% cases under Category II are of abetment of aggravated penetrative sexual assault. A look at the year-wise registration of cases under different types of offences shows a gradual increase over the years in cases of abetment of APSA. This can be attributed to better understanding and use of the provisions of the POCSO Act as much as increased reporting.

In the last few years, online child safety has drawn attention and the same is reflected in the data captured in Table 2.5. After “Abetment of APSA”, the most significant number of cases registered are of “Abetment of use of children for pornographic purposes”.

### III. Category III Offences

As can be seen in Table 2.6., there are only 16 cases registered in the CIS during 2012 and 23 April, 2020 that fall under Category III offences. Although very few in number, cases of

offences such as “Failure to Report” and “False Reporting” hold a great significance, especially when reporting an offence is mandatory under the POCSO Act. Instances have been observed where a parent has been booked for not reporting the incident of abuse of their own daughter or child. There are also cases of incest where the mother and the child turn hostile during the trial and do not wish to pursue the case because they are totally dependent on the accused for their survival.

HAQ’s experience of working with children who have suffered sexual violence shows that reporting or following a legal case becomes even more difficult for children and their families when the perpetrator is a known person, particularly someone from the immediate family of the child or a relative. As per the Crime in India Report, 2019, almost 94.2% of the persons accused for committing offences under section 4 and section 6 of the POCSO Act are known to the victims.<sup>3</sup> In 2020, this figure stands at 96%.<sup>4</sup> Percentage of cases of PSA and APSA from Assam where the accused are known to the children is 88% and 86% in the years 2019 and 2020 respectively.<sup>5</sup> The corresponding figures for Haryana are 95.3% in 2019 and 97.5% in 2020<sup>6</sup>. In Delhi, the accused is known to the child in 96.3% cases of PSA and APSA in 2019 and 95.1% cases in 2020.<sup>7</sup>

<b>Table 2.6</b> <b>Offence-wise Distribution of Cases Registered - Category III</b> <b>Assam, Delhi &amp; Haryana Combined</b> <b>2012 to 23 April, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
Failure to report	9
False reporting	6
Disclosure of Identity	1
<b>Total</b>	<b>16</b>

<sup>3</sup> National Crime Records Bureau, *Table 4A.10, Crime in India, 2019*. Available at: <https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>

<sup>4</sup> National Crime Records Bureau, *Table 4A.10, Crime in India, 2020*. Available at: <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>

<sup>5</sup> Ibid. *Table 4A.10, Crime in India, 2019 and 2020*

<sup>6</sup> Ibid. *Table 4A.10, Crime in India, 2019 and 2020*

<sup>7</sup> Ibid. *Table 4A.10, Crime in India, 2019 and 2020*

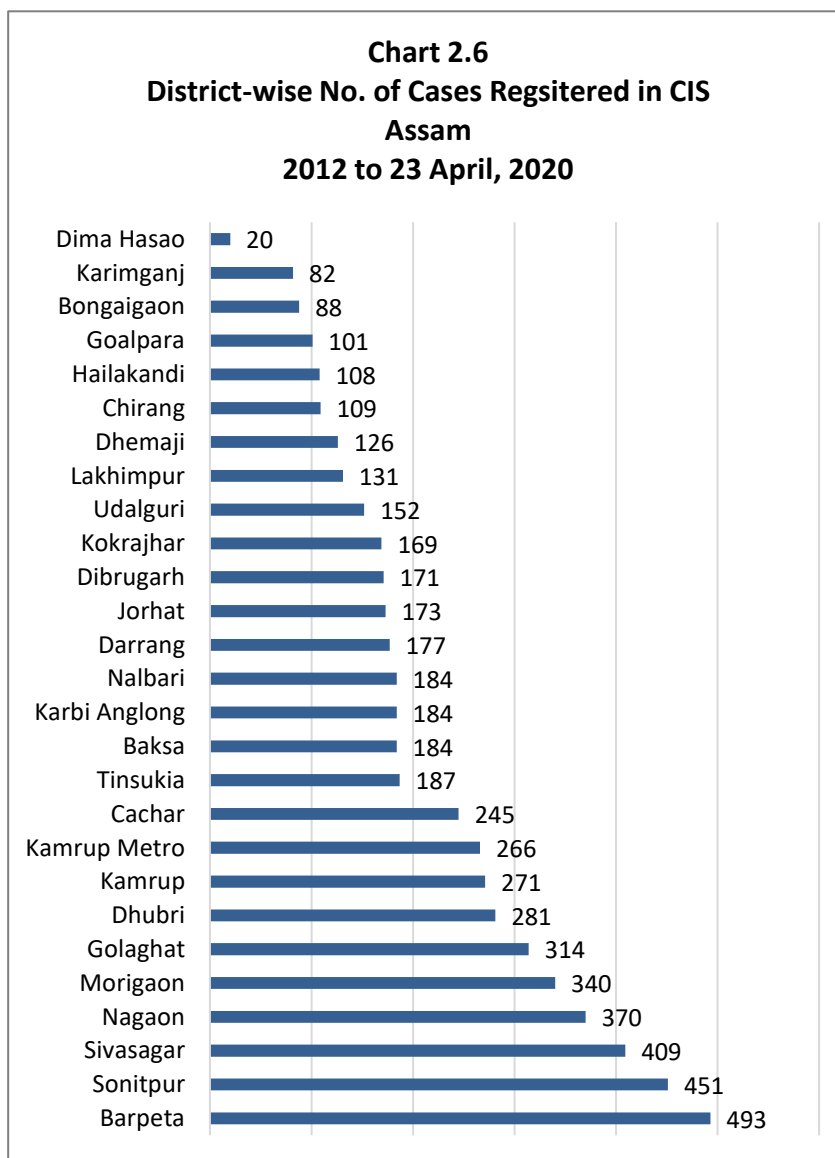
## B. State/UT level Analysis

### I. Assam

As per the Crime in India Reports of the NCRB, there has been an almost 37% increase in crimes against children in Assam between 2017 and 2019, whereas sexual offences against children have increased by almost 55% during the same period.<sup>8</sup>

There are 5786 cases from Assam that are registered in the CIS under the POCSO Act between 2012 and 23 April, 2020, the highest number being registered in 2019. Out of 27 districts of Assam for which data is extracted, 5 districts, namely, Morigaon, Nagaon, Sivasagar, Sonitpur and Barpeta make up for almost 36% of the total offences registered in the CIS under the POCSO Act during the period under study. Barpeta district has the highest number of cases, followed by Sonitpur.

On the other hand, Dima Hasao has the least number of POCSO cases over the years, with only 20 cases registered during



the study period under consideration. Dima Hasao, Karimganj, Bongaigaon, Goalpara, and Hailakandi together contribute 7% of the total POCSO cases registered in the CIS in Assam.

A more detailed mapping of cases of child sexual abuse requires looking at the contribution of different police stations in each district to the total number of cases in a district. For

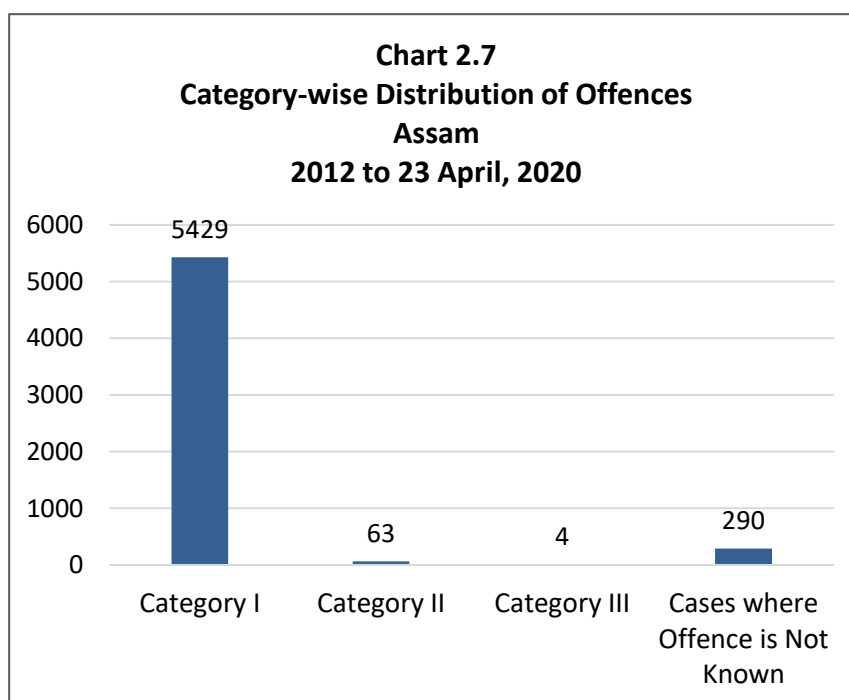
<sup>8</sup> National Crime Records Bureau, *Chapter 4, Crimes against Children, Crime in India Reports - 2017, 2018 and 2019*.

example, there are 11 police stations in Barpeta district and within the district, Barpeta Police Station accounts for the maximum number of 136 cases under the POCSO Act over the years. Table 2.7 details the share of police stations receiving maximum number of cases in each of the top 5 districts in Assam that make up for the highest proportion of cases registered in the CIS under the POCSO Act during the period under study.

<b>Table 2.7</b> <b>Police Stations with Maximum Cases in each of the Top 5 Districts</b> <b>Assam</b> <b>2012 to 23 April, 2020</b>		
<b>District</b>	<b>Police Station</b>	<b>No. of Cases</b>
Barpeta	Barpeta	136
Morigaon	Mikirbheta	70
Nagaon	Rupahihat	57
Sivasagar	Sonari	50
Sonitpur	Tezpur	29

### ***Nature of Offences Registered in Assam under Different Categories***

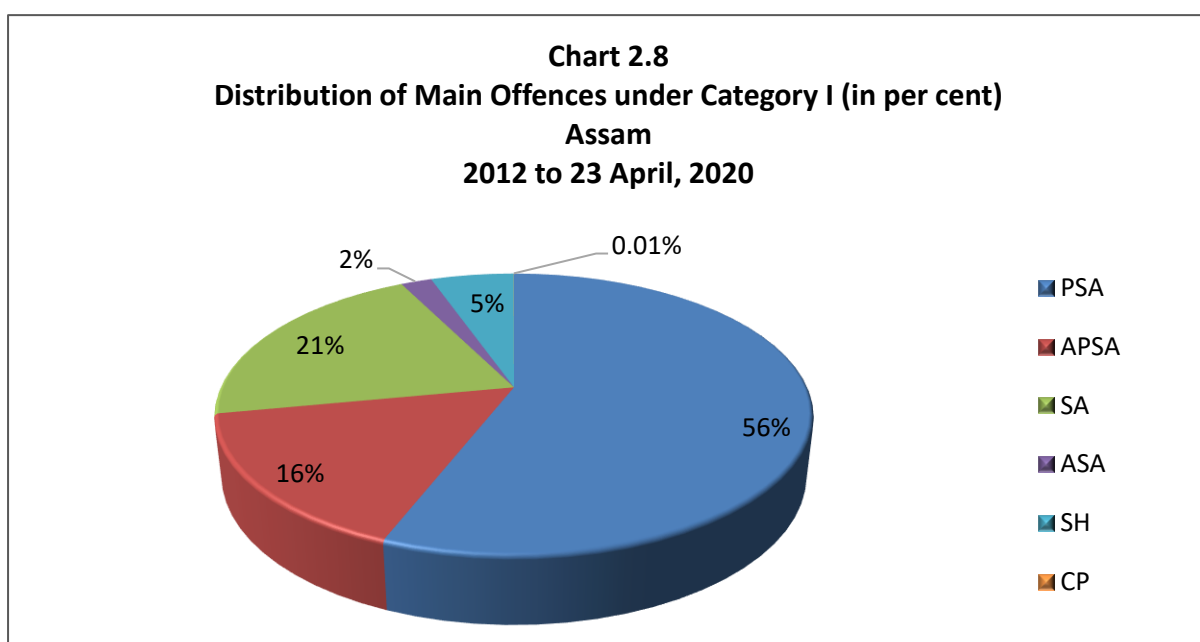
As mentioned in the earlier section, for the purpose of this study, a total of 5786 POCSO cases are extracted from the e-Courts portal for the State of Assam. Of these, 5429 cases fall under Category I offences, i.e., offences registered under sections 4/6/8/10/12/14/15 of the POCSO Act. Offence related details are not available for 290 cases.



#### **(i) Category I Offences**

Under Category I offences from Assam listed out in Table 2.8 and Chart 2.8, 55.88% or maximum number of cases registered are of penetrative sexual assault (section 4), followed by 20.51% cases of sexual assault (section 8) and almost 16% cases of aggravated penetrative sexual assault (section 6).

<b>Table 2.8</b> <b>Offence-wise Distribution of Cases Registered - Category I</b> <b>Assam</b> <b>2012 to 23 April, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
PSA	3034
SA	1114
APSA	868
SH	293
ASA	109
PSA + CP	4
SA + CP	3
PSA + Storage of CP	2
CP	1
APSA + CP	1
<b>Total</b>	<b>5429</b>



A closer look at the Category I offences in Assam reveals a different trend compared to that observed from the combined data for the three States/UT. Aggravated penetrative sexual is one of the major contributors in Category I offences at the three States/UT combined level, whereas at the State level, penetrative sexual assault (section 4) cases are higher in Assam.

Like in most States and the country, in Assam too, crimes against children, especially sexual offences against children have been on the rise. In November 2019, the Assam State Commission for Protection of Child Rights announced launch of a mobile App called “Sishu

Suraksha” to make filing of complaints on child sexual abuse, assault and trafficking easier.<sup>9</sup> Any user can report such cases through this application. Such efforts can be promising if implemented well.

## (ii) Category II Offences

Table 2.9 shows that during the period under study, Assam has recorded only 63 cases under the POCSO Act that fall under Category II i.e. offences related to abatement or attempt to commit certain offences.

<b>Table 2.9</b> <b>Offence-wise Distribution of Cases Registered - Category II</b> <b>Assam</b> <b>2012 to 23 April, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
Abetment of CP	15
Attempt to PSA	13
Attempt to SA	11
Abetment of APSA	8
Attempt to APSA	5
Attempt to SH	4
Abetment of SA	3
Abetment of SH	2
Attempt to ASA	1
Abetment of SA + Storage of CP	1
<b>Total</b>	<b>63</b>

<b>Table 2.10</b> <b>Offence-wise Distribution of Cases Registered - Category III</b> <b>Assam</b> <b>2012 to 23 April, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
False reporting	3
Disclosure of Identity	1
<b>Total</b>	<b>4</b>

## (iii) Category III Offences

Only 4 cases in Assam are found under Category III offences, of which 3 are cases of false reporting (section 22). Although no case of “Failure to Report” is found in the CIS since the POCSO Act came into force in Assam, it will be worthwhile to undertake research that explores

<sup>9</sup> Taskin, B. *Assam child protection body will launch app on 14 November to fight child trafficking*. The Print. 13 November, 2019. Available at: <https://theprint.in/india/assam-child-protection-body-will-launch-app-on-14-november-fight-child-trafficking/320613/>

the dynamics around reporting of sexual offences against children in the socio-political and cultural context of the state.

## II. Delhi

Delhi is the highest contributor to the number of cases under the POCSO Act registered in the CIS during the study period, with a total of 9366 cases between 2012 and 07 March, 2020. Out of 11 districts in Delhi, Chart 2.9 shows that West Delhi has the maximum number of POCSO cases (17%) followed by North-West Delhi (12.17%). 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 5,878 cases (62.76%).

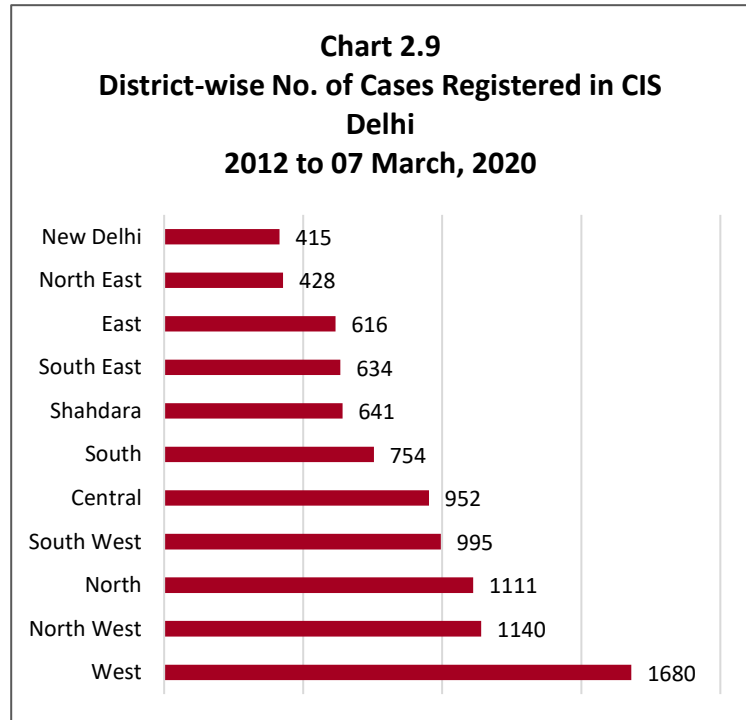
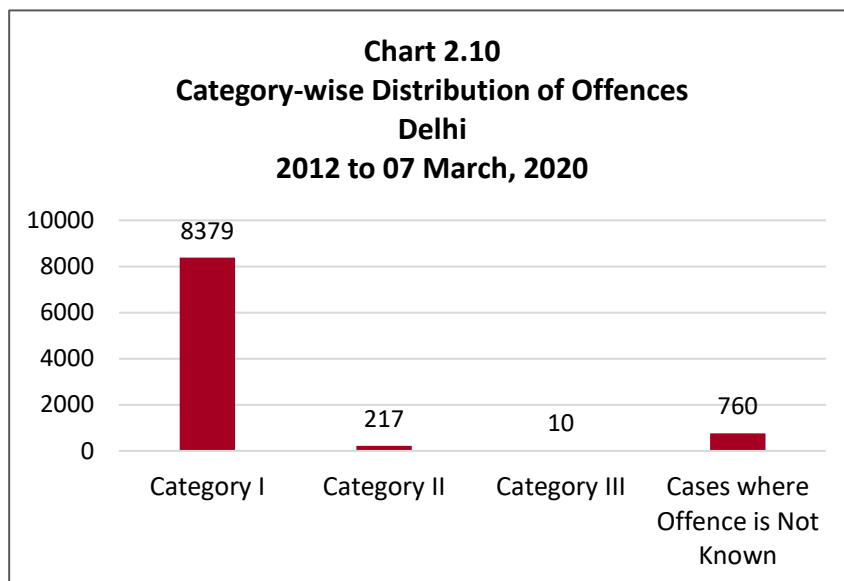


Table 2.11 provides an insight into the police stations that have the highest share of cases in each of the top five districts in Delhi.

<b>Table 2.11</b> <b>Police Stations with Maximum Cases in each of the Top 5 Districts</b> <b>Delhi</b> <b>2012 to 07 March, 2020</b>		
<b>District</b>	<b>Police Station</b>	<b>No. of Cases</b>
North West	Aman Vihar	202
West	Nihal Vihar	197
South West	Binda Pur	158
North	Narela	138
Central	Burari	91

### ***Nature of Offences Registered in Delhi under Different Categories***

Offence-wise details are not available for 760 cases from Delhi, posing a larger question on the centralised case information system and data management. Of the 9366 cases from Delhi 89.46% pertain to offences that fall under Category I, followed by 2.3% cases of Category II offences and 0.1% cases of Category III offences.



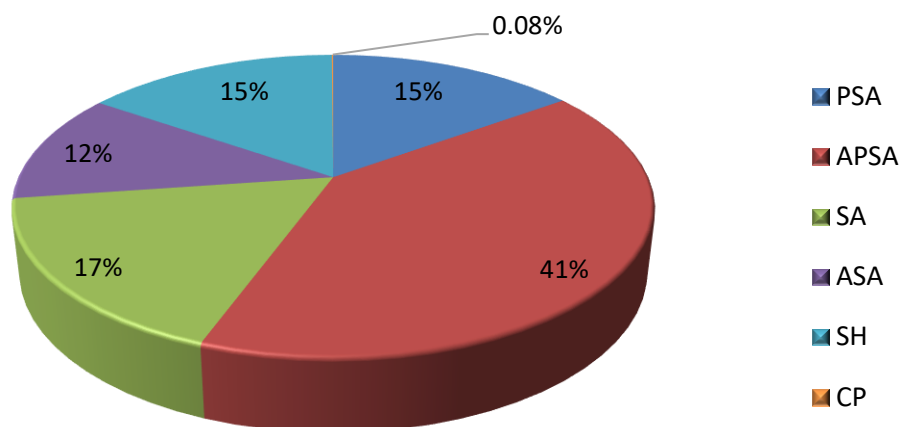
#### **(i) Category I Offences**

Maximum number of cases registered in the CIS in Delhi are of Category I offences. In this, aggravated penetrative sexual assault (section 6) has the highest share of 40.47% as can be seen in Table 2.12. Cases of sexual assault (section 8) have the second highest share of 17.09%.

<b>Table 2.12</b> <b>Offence-wise Distribution of Cases Registered - Category I</b> <b>Delhi</b> <b>202 to 07 March, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
APSA	3391
SA	1432
SH	1284
PSA	1259
ASA	986
CP	7
SH + CP	6
APSA + CP	4
PSA + CP	3
APSA + Storage of CP	3
SA + CP	2
ASA + CP	2
<b>Total</b>	<b>8379</b>



**Chart 2.11**  
**Distribution of Main Offences under Category I (in per cent)**  
**Delhi**  
**2012 to 07 March, 2020**



(ii) **Category II Offences**

**Table 2.13**  
**Offence-wise Distribution of Cases Registered - Category II**  
**Delhi**  
**2012 to 07 March, 2020**

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

Under Category II offences contained in Table 2.13, half of the cases are registered for abetment of aggravated penetrative sexual assault (50.23%). In the remaining half, abetment of use of children for pornographic purposes (15.21%) and attempt to commit aggravated penetrative sexual assault (9.22%) make up for most cases.

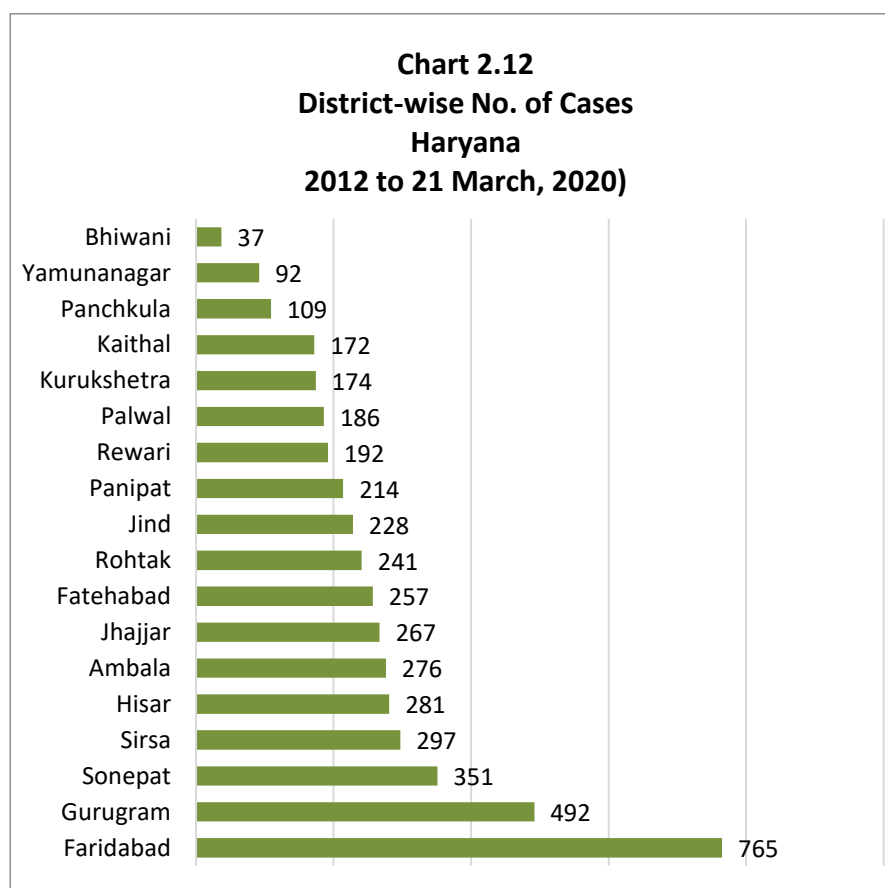
<b>Table 2.14</b> <b>Offence-wise Distribution of Cases Registered - Category III</b> <b>Delhi</b> <b>2012 to 07 March, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
Failure to report	9
False reporting	1
<b>Total</b>	<b>10</b>

### (iii) Category III Offences

Out of the total 9366 cases from Delhi, only 10 cases fall under Category III offences, of which 9 cases are registered for “Failure to Report” (section 21 of the POCSO Act). Although in absolute numbers this is a very small figure, Delhi is the only one out of the three States/UT considered for the study that has such cases.

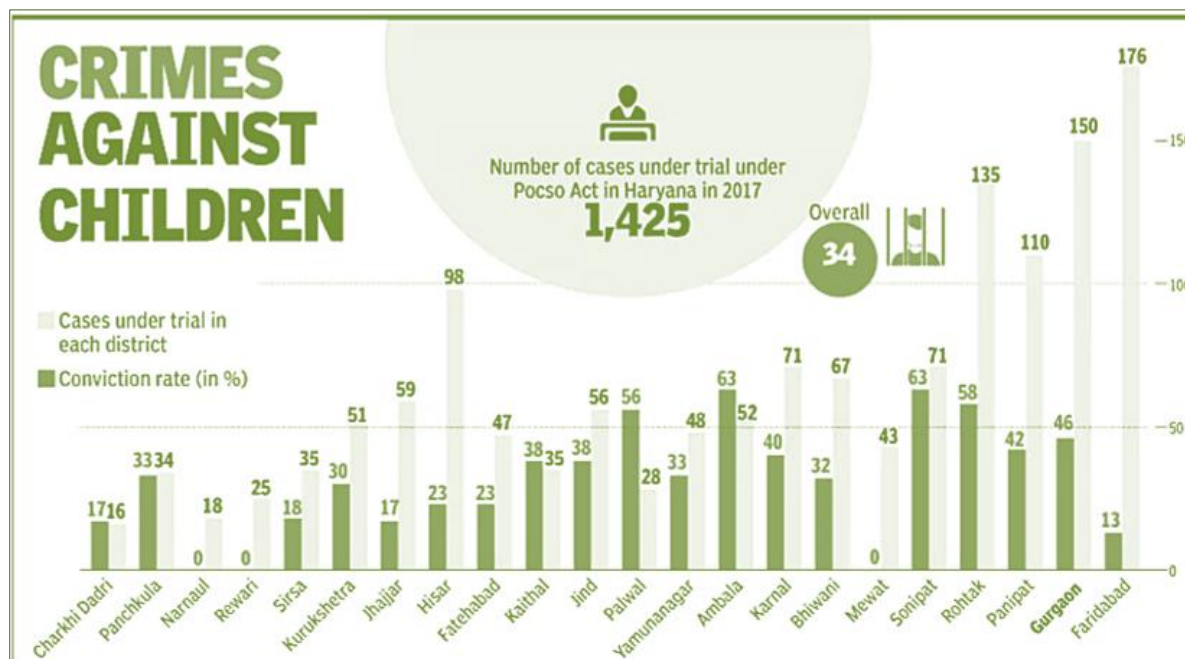
## III. Haryana

In the current analysis for Haryana, a total of 4631 cases registered in the CIS under the POCSO Act between 2012 and 21 March, 2020 have been taken into consideration. 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 a reality that calls for urgent attention from all stakeholders.



As per the analysis, Faridabad has recorded the maximum number of 765 cases in the State during the study period, followed by Gurugram with 492 cases. A newspaper report analysis

for the period April to December 2017 reveals that Faridabad, Panipat and Gurugram are the top three districts with the maximum number of cases under the POCSO Act.<sup>10</sup>



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 data extracted for Haryana from the e-Courts portal, Hisar, Sirsa, Sonapat, Gurugram and Faridabad constitute the top five districts contributing a share of 47.2% in the total number of cases under the POCSO Act in the State.

Table 2.15 Police Stations with Maximum Cases in each of the Top 5 Districts Haryana 2012 to 21 March, 2020		
District	Police Station	No. of Cases
Faridabad	Women Police Station Old Faridabad	163
Sirsa	Sirsa Women	55
Sonapat	Gannaur	50
Hisar	Hisar Sadar	43
Gurugram	Women Police Station Manesar	39

As shown in Table 2.15, in Faridabad district, which has the highest number of POCSO cases in the State, Old Faridabad Police Station reports the maximum number of cases. Similarly,

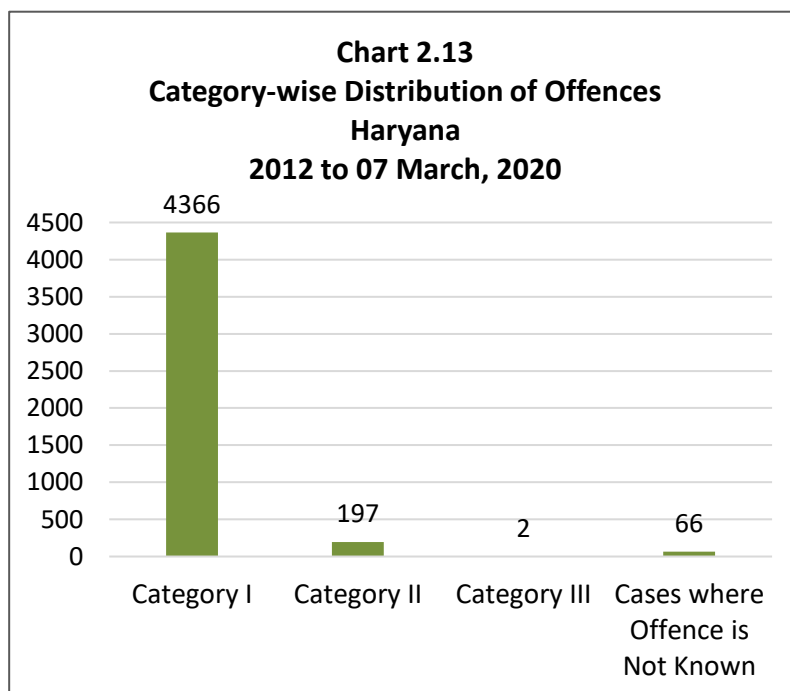
<sup>10</sup> Times News Network. *Haryana Report Card: Faridabad, Gurugram, Panipat lead in child sexual abuse*. 26 January, 2018. Available at: <https://timesofindia.indiatimes.com/city/gurgaon/haryana-report-card-faridabad-gurgaon-panipat-lead-in-child-sexual-abuse/articleshow/62531389.cms>

the Women Police Station at Manesar has the highest number of POCSO cases within Gurugram district (earlier known as Gurgaon).

A perusal of police station level data shows that Haryana is the only state out of the three States/UT considered for the study where cases under the POCSO Act are registered in the women police stations.

### ***Nature of Offences Registered in Haryana under Different Categories***

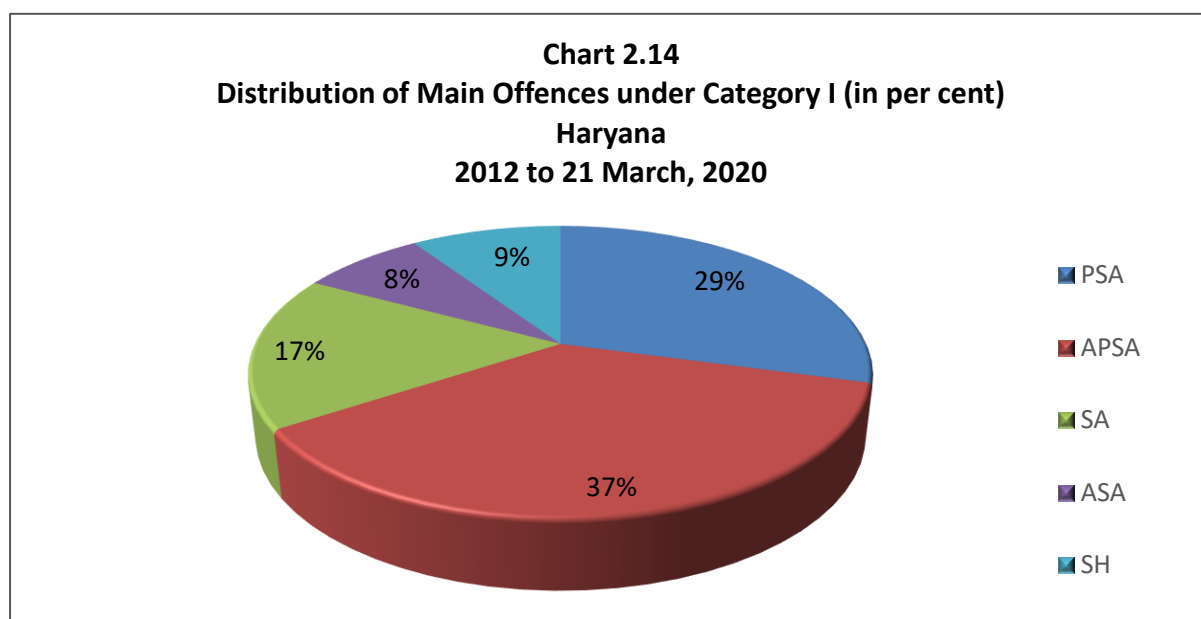
There are 66 cases from Haryana where details of offence are not available on the e-Courts portal and all that can be established is that these are cases under the POCSO Act. Of the total 4631 cases from Haryana, 94.27% pertain to offences under Category I, 4.25% are cases of offences under Category II and 0.04% cases fall under Category III offences. Absolute number of cases under the three categories is given in Chart 2.13.



#### **(i) Category I Offences**

Table 2.15 provides a break-up of offences registered in Haryana that fall in Category I. Under this category of offences, Haryana has maximum number of cases of aggravated penetrative sexual assault (36.42%) followed by penetrative sexual assault (29.13%). Unlike Delhi and Assam, not a single stand-alone case of use of children for pornographic purposes (section 14) is recorded in Haryana for the entire study period, although a combination of use of children for pornographic purposes with other offences in Category I can be found.

<b>Table 2.16</b> <b>Offence-wise Distribution of Cases Registered - Category I</b> <b>Haryana</b> <b>2012 to 21 March, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
APSA	1590
PSA	1272
SA	743
SH	409
ASA	337
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
<b>Total</b>	<b>4366</b>



## (ii) Category II Offences

As seen in Table 2.17, under Category II offences, abetment of aggravated penetrative sexual offences has the highest share (52.40%), followed by attempt to commit aggravated penetrative sexual assault (23.35%). Year-wise break-up of these offences reveals that in Haryana, use of provisions relating to abetment and attempt to commit an offence under the POCSO Act started only in 2015-2016.

<b>Table 2.17</b> <b>Offence-wise Distribution of Cases Registered - Category II</b> <b>Haryana</b> <b>2012 to 21 March, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
Abetment of APSA	52
Attempt to APSA	46
Abetment of CP	27
Attempt to PSA	21
Attempt to SA	20
Abetment of SA	12
Attempt to ASA	8
Abetment of SH	4
Abetment of APSA + Attempt to APSA	2
Abetment of PSA	1
Abetment of ASA	1
Abetment of PSA + CP	1
Abetment of APSA + CP	1
Abetment of PSA + Attempt to PSA	1
<b>Total</b>	<b>197</b>

<b>Table 2.18</b> <b>Offence-wise Distribution of Cases Registered - Category III</b> <b>Haryana</b> <b>2012 to 21 March, 2020</b>	
<b>Nature of Offence</b>	<b>Total No. of Cases</b>
False reporting	2
<b>Total</b>	<b>2</b>

### (iii) Category III Offences

Only two cases from Haryana fall under Category III with the specific offence being that of “False Reporting”, punishable under section 21 of the POCSO Act.

## CONCLUSION AND RECOMMENDATIONS

Out of the three States/UT under study, Haryana has the least number of cases registered in the entire study period. A low number of cases cannot be used to conclude that Haryana is able to protect its children better. Low reporting could well be a reason for the low figures.

Unless states invest in a concerted drive to encourage people to report, provisions in law that make reporting mandatory cannot be brought to use and the goals of improved reporting will remain a challenge. In the case of children, especially those younger in age, decisions to report are taken by the parents/guardians and disclosures often remain unaddressed due to a fear of the system that appears hostile. There are many other factors that affect people's participation in reporting child sexual abuse as well as fighting for justice. Provisions like false reporting create an added challenge and encourage evasion and avoidance on the reporting mandate. Besides, the law requires that the reporting has to be directly to the police, which most people do not want. There is no child protection agency that is identified to receive reports and coordinate with the child, their family and other agencies who can provide necessary support and assistance and instil confidence in children and their families to escalate the case for filing a formal legal complaint.

Based on the overall analysis of data presented in this chapter, it can be safely inferred that there are fewer cases of sexual harassment that get reported compared to cases of penetrative sexual assault and its aggravated forms. The culture of silence around child sexual abuse and many other factors desist people from coming forward in matters that are not perceived as severe, even though experience shows that they can have a long lasting adverse impact on the child's emotional development. Amidst such challenges, one of the ways to ensure that children and their families are able to come forward and break or face the barriers that exist in their mind and on ground, is to ensure proper implementation of laws along with investing in measures that encourage reporting and interventions that help manage each reported case better.

Therefore, while reporting abuse remains a challenge requiring continuous efforts on different aspects ranging from behaviour change communication to putting in place a system that encourages reporting, the increase in the number of reported cases over the years also calls for interventions at different levels, especially to ensure that the system is geared to provide necessary response and redress.

In this backdrop and based on findings from the basic data extracted for Assam, Delhi and Haryana for the purpose of this study, a set of concrete recommendations in addition to what is stated above, is put together for consideration by concerned authorities and agencies.

#### *1. Recommendations for the NCRB –*

- (i) Data computation methodology followed by the NCRB needs to be more inclusive and uniform so that data on socio-cultural and economic background of victims is made available and trends in crimes, especially crimes against children, can be observed and compared over the years.*

(ii) *Methodological improvisations and improvements are necessary to enhance quality of data and make more nuanced data available. However, this should not imply doing away with data sets that are critical and which otherwise used to be available prior to a change in the methodology. It is equally important to explain methodological changes being made from time to time instead of leaving it to the users to draw inferences.*

(iii) *Data sought on cases under the POCSO Act by High Court, the Supreme Court of India and the Parliament of India must include data pertaining to incidence of “Murder with Rape/POCSO”, unless it is already counted as part of the overall incidence recorded in the Crime in India Reports for POCSO Act. A clarification must be provided by the NCRB if that is the case.*

## 2. *Coordination and Linkages –*

(i) *Uniformity in data computation is necessary to help in monitoring the efficacy of any programmes or laws in place and to further devise effective intervention strategies to deal with emerging issues and concerns. This calls for coordination among key Ministries impacting child protection and justice goals, these being the Ministry of Home Affairs, Ministry of Law and Justice and Ministry of Women and Child Development.*

## 3. *Use of Research and Technology for Preventing Child Sexual Abuse and Improved Reporting –*

(i) *Structures and mechanisms such as the village level child protection committees provided for under the ICPS should not remain on paper. Such mechanisms need to be established and strengthened to work towards crime prevention as well as reporting and monitoring at the ground level. Connecting such mechanisms to technological innovations can help track crime on real-time basis.*

(ii) *Alternative methods of reporting cases of child sexual abuse must be introduced, especially in the light of increased use of technological advancement. Efforts must be made towards making reporting of cases of child sexual abuse a hassle-free and victim friendly process.*

(iii) *A careful analysis of available data can enable mapping of crime patterns at police station level and put in place preventive strategies and measures to curb the menace of child sexual abuse, particularly in jurisdictions that reveal alarming data.*

(iv) *Given the nature of crimes that are reported, it is important to ensure that Casework Management becomes an essential part of functioning of every department dealing*



*with children, be it police and law enforcement agencies, child protection units at state and district levels, trial courts and higher judiciary, Child Welfare Committees and NGOs who work with children. Technology can help create effective casework management systems that make it easier to track and follow-up on cases for necessary intervention and also enhance efficiency of the workforce involved in the child protection and justice system.*

4. *Investing in Child Protection and Children's Access to Justice –*

- (i) The grim picture with respect to budgets allocated and spent on child protection must change. Instead of making the laws more punitive, investments are needed to strengthen the existing system, devising a large-scale prevention programme and filling the gaps in the response mechanism for addressing child sexual abuse. In fact, investments in improving judicial response to crimes against children must find a distinct mention in Statement No. 12 in the Expenditure Budget released each year.*
- (ii) Considering poor implementation of the POCSO Act that comes through this study, the state governments need to have specific schemes to address the increasing numbers of child sexual abuse cases in the State.*

## CHAPTER III

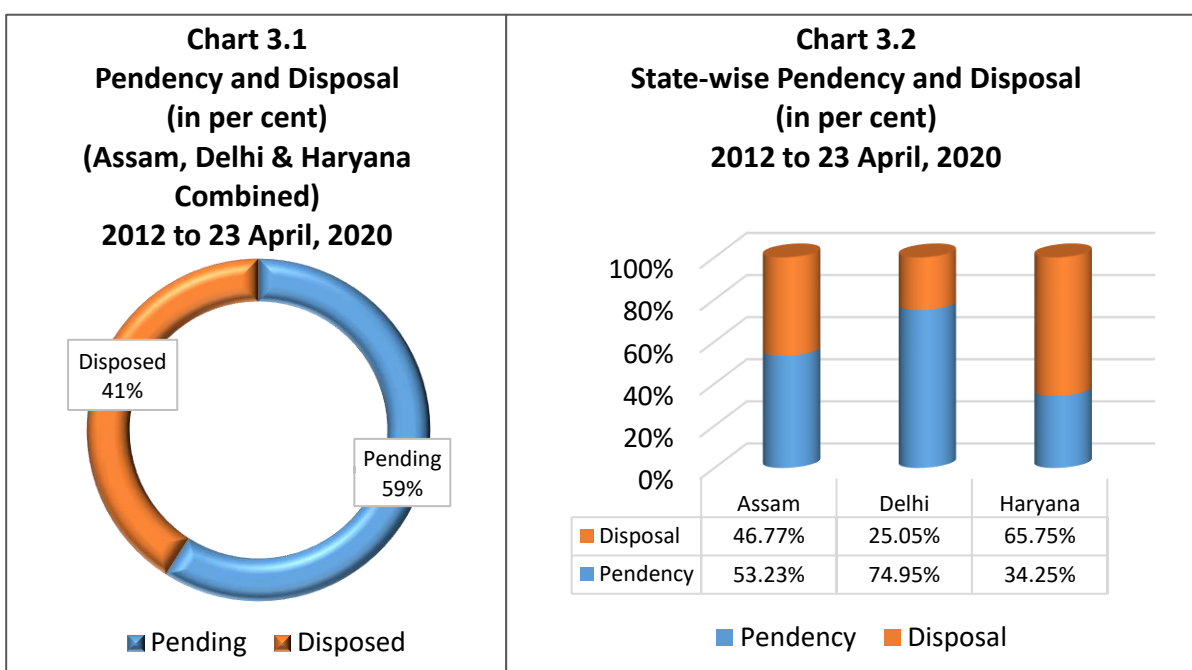
### PENDENCY AND DISPOSAL

This chapter provides a broad analysis of the number of cases pending and disposed at different levels – Overall (Assam, Delhi and Haryana combined), State and District. Data is computed on the basis of the number of cases registered in the courts dealing with cases under the POCSO Act and the date / year of registration of these cases in the CIS. The period for which data is computed and analysed is 2012 onwards, up to 23 April, 2020 in case of Assam, 07 March, 2020 in case of Delhi and 21 March, 2020 in case of Haryana, these being the dates when the last set of data was mined from the e-Courts portal for the respective States/UT.

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. For the purpose of this report, caseload refers to the number of cases registered in the CIS in a given year plus the pending cases from previous years, where trial could not be completed. Pendency is the number of cases in which trial is not completed as on the date of reference used for data computation and analysis. Disposal is the opposite of pendency, referring to the number of cases where trial is completed within the reference time frame.

### BASIC DATA

A total of 19783 cases are registered in the two States of Assam and Haryana and the Union Territory of Delhi between 2012 and 23 April, 2020, of which 11686 or 59% are found to be pending as on 23 April, 2020, while 8097 or 41% cases stand disposed.



The number of cases registered in courts in the eight years in-scope of the study is the lowest in Haryana. With the lowest pendency percentage of 34.25% and the best disposal rate at 65.75%, implementation of the POCSO Act in Haryana appears better compared to Assam and Delhi. Delhi on the other hand is the worst on all parameters with the lowest rate of disposal at 25.05% as seen in Chart 3.2. The single year caseload in Delhi is far greater than in Assam and Haryana, which is reflected in Table 3.1 that follows.

## BUILDING A CASE FOR EVIDENCE BASED PLANNING AND IMPLEMENTATION OF LAW

### A. Court Caseload

<b>Table 3.1</b> <b>Court Caseload per year</b> <b>(New cases registered in a year + Pending cases from previous year)</b>						
Year	NCRB	e-Courts Portal				Combined share of Assam, Delhi & Haryana in All-India Court Caseload (%)
	All-India	Assam, Delhi & Haryana Combined	Assam	Delhi	Haryana	
	Col. A	Col. B = (Col. C + Col. D + Col. E)	Col. C	Col. D	Col. E	Col. F = (Col. B / Col. A * 100)
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	149872	14486	4035	7865	2586	
2020*	NA**	12465	3372	7283	1810	
<b>Note:</b> *Cut-off date for 2020 data varies for the three States/UT under study depending on the date when the last set of data was mined from the e-Courts portal. For Assam it is 23 April, 2020, for Delhi it is 07 March, 2020 and for Haryana it is 21 March, 2020 ** NA – Not Available *** Also see Table 3.10 in Annexure 3, which provides insights on the year-wise combined court caseload 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 give the same information for each State separately.						

## I. NCRB versus e-Courts: Need to Overcome Data Challenges as the First Step

The Crime in India publications of the NCRB present All-India data for disposal of cases by courts for all offences. This includes data on “Cases Pending Trial from the Previous Year” and “Cases Sent for Trial during the year”, summed up as “Total Cases for Trial” in a year, which amounts to the court caseload in a given year. It also includes data pertaining to different types of disposal and pendency percentage. While this data is not available for each State and UT, an attempt has nevertheless been made to compare NCRB’s All-India court pendency and disposal data for offences under the POCSO Act with similar data computed for Assam, Delhi and Haryana on the basis of information extracted from the e-Courts portal. Since the NCRB started compiling data for cases under the POCSO Act 2014 onwards and the last full year for which data is extracted for Assam, Delhi and Haryana from the e-Courts portal is 2019, a comparison is possible only for the years 2014 to 2019.

As evident from Table 3.1, the NCRB data shows a huge surge of 384% in the All-India court caseload under the POCSO Act in the year 2016 (from 20,935 cases going to trial in 2015 to 1,01,326 cases for trial in 2016). Corresponding data for Assam, Delhi and Haryana from the e-Courts portal shows that the combined court caseload for three States/UT increased by 88.39% in 2016 (from 2464 cases for trial in 2015 to 4642 cases for trial in 2016). The combined share of court caseload for Assam, Delhi and Haryana (as extracted from the e-Courts portal) in the All-India court caseload (as provided by the NCRB) is the lowest in 2016 at 4.58%. This sudden fall in the combined share of Assam, Delhi, and Haryana in All-India court caseload under the POCSO Act in 2016 requires an explanation because the court caseload in the three States/UT otherwise shows an increase in absolute number of fresh and pending cases in almost every year considered for the study. Any inference is not easy as the presentation of NCRB’s data is very complicated and in the absence of suitable explanation, can best be understood and deciphered by the NCRB only.

For example, 2016 onwards, the NCRB data for cases booked under the POCSO Act also mentions the relevant IPC provisions suggesting that cases booked under the IPC provisions stand merged with cases under the relevant sections of the POCSO Act. However, on the other hand, separate data continues to be provided for cases of rape, attempt to rape, assault on women with intent to outrage her modesty and insult to modesty of a woman booked under the IPC. Therefore, only NCRB knows what is the exact number of cases of different types of sexual offences against children and how to analyse and infer such data, including data on cases pending trial from previous year, cases sent for trial during a particular year and total court caseload.

## II. Using District and Court Level Data to Inform Policy

As mentioned earlier, the NCRB does not provide state level data on crimes against children, including pendency and disposal of different crimes under different laws. District level data from the NCRB is still a distant reality. However, using the data extracted from the e-Courts portal an attempt has been made to assess the average caseload per court in different districts in Delhi as on 07 March, 2020, when the last data set was extracted for Delhi for the purpose of this study. This has been possible because information on the number of courts created in different districts in Delhi to adjudicate cases under the POCSO Act is available from the e-Courts portal as well as notifications issued by the High Court of Delhi from time to time. Such an exercise helps assess the actual burden of courts and identify the districts that require greater attention or additional Special Courts to try cases under the POCSO Act.

Table 3.2 shows that the lowest court caseload as on 07 March, 2020 was 190 cases per court in the South East district, the highest being 365 cases in New Delhi District.

<b>Table 3.2</b> <b>District-wise Court Caseload, Pendency and Disposal in Delhi</b> <b>(as on 07 March, 2020)</b>			
District	Court Caseload	Number of Courts Adjudicating POCSO Cases	Caseload per court
	Col. A	Col. B	Col. C = (Col. A / Col. B)
South East	571	3	190
South	661	3	220
South West	719	3	240
North	866	3	289
Shahdara	582	2	291
North West	879	3	293
East	592	2	296
Central	614	2	307
North East	355	1	355
West	1079	3	360
New Delhi	365	1	365
<b>Total Cases for Trial as on 07 March, 2020</b>	<b>7283</b>	<b>26</b>	<b>280</b>
Source: e-Courts Web Portal			

In 2019, the Department of Justice launched the “Scheme on Fast Track Special Courts (FTSCS) for Expeditious Disposal of Cases of Rape and Protection of Children Against Sexual Offences

(POCSO) Act.”<sup>11</sup> 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 supports 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), as on 07 March, 2020, Delhi already had 26 courts conducting trials in cases under the POCSO Act. Yet, Delhi’s record on pendency is worst among the three States/UT under study. Further, the goal envisaged under the scheme for disposal of cases by each court is “41-42 cases in each quarter and at least 165 cases in a year.”<sup>12</sup> Even the Special Courts in South East district in Delhi, which have the lowest caseload of 190 cases per court as shown in Table 3.2, cannot achieve this goal.

While developing this scheme, the Department of Justice relied on pendency data collected from all Special Courts under the 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 establishment of Special Courts or Fast Track Courts in the states and districts with higher caseload or as per need. Delhi definitely is a case in point requiring flexibility in the scheme to have more courts where needed and greater funds as reflected through Table 3.2. A similar exercise can be carried out for every State and UT.

At the same time if the e-Courts portal provides updated data on the number of courts dealing with the POCSO Act cases in every State/UT and in all districts, 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 detailed district-wise assessment of the court caseload in each State/UT considered for the study.

### III. Trends in Fresh Cases and Cases Carried Forward from Previous Year

Single year court caseload analysis shows that over the years the proportion of fresh cases to cases carried forward from the previous year has declined in the total court caseload. For example, in 2013, fresh cases comprise 99% of the total court caseload, whereas in 2016, the share of fresh cases in total court caseload is 54% and that of pending cases carried forward from previous year is 46%. By 2019, the share of fresh cases in total court caseload has further declined to 36% while that of cases carried forward from previous year has increased to 64%. Whether this is a positive trend or not requires further investigation as much would depend

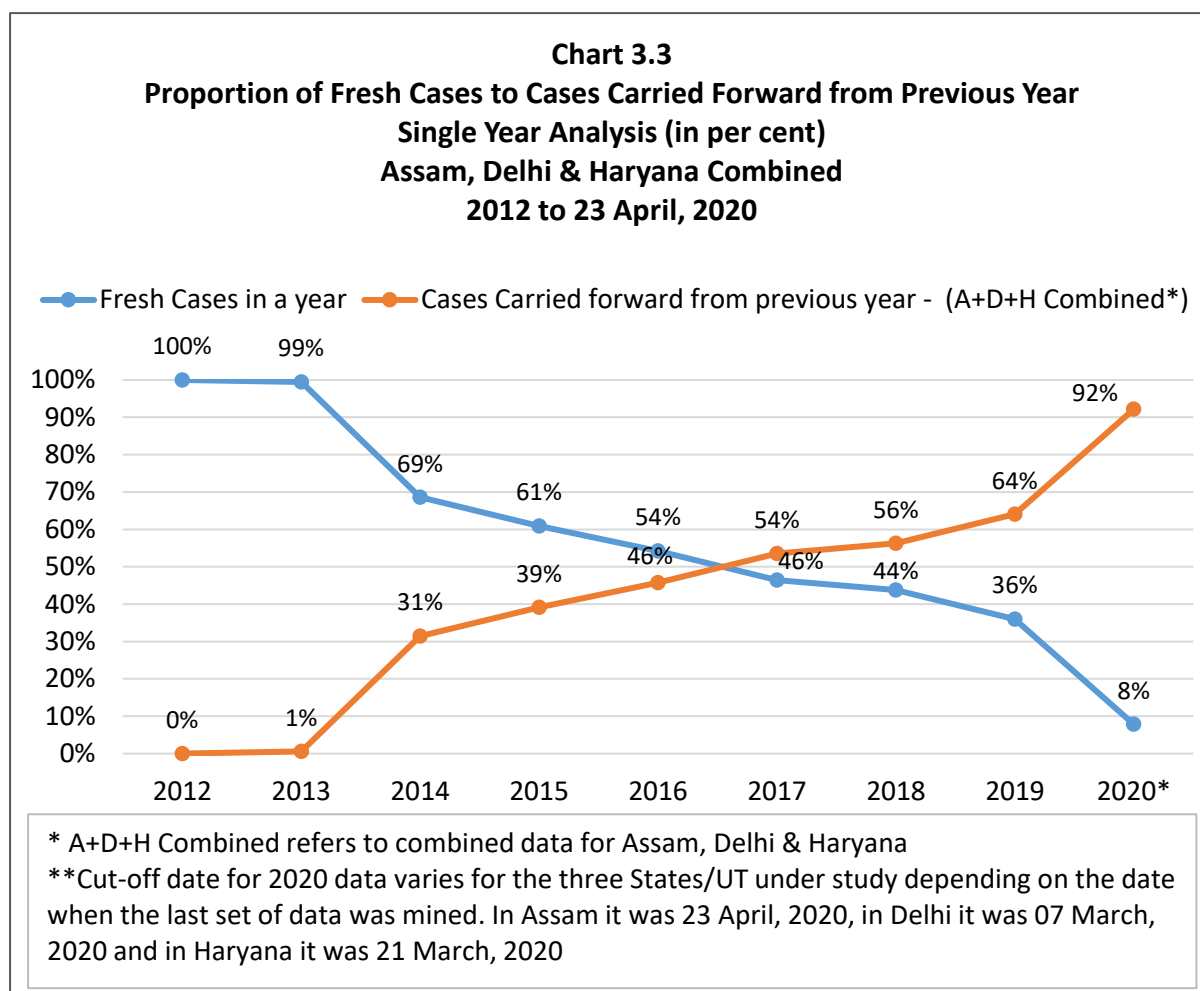
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<sup>11</sup> Department of Justice, Ministry of Law and Justice. *Scheme on Fast Track Special Courts (FTSCS) for Expeditious Disposal of Cases of Rape and Protection of Children Against Sexual Offences (POCSO) Act, Annexure 2.1*. Government of India. 2019. Available at: [https://doj.gov.in/sites/default/files/Fast%20Track%20Special%20Courts%20Scheme%20guidelines%202019\\_0.pdf](https://doj.gov.in/sites/default/files/Fast%20Track%20Special%20Courts%20Scheme%20guidelines%202019_0.pdf)

<sup>12</sup> Ibid. Department of Justice, 2019.

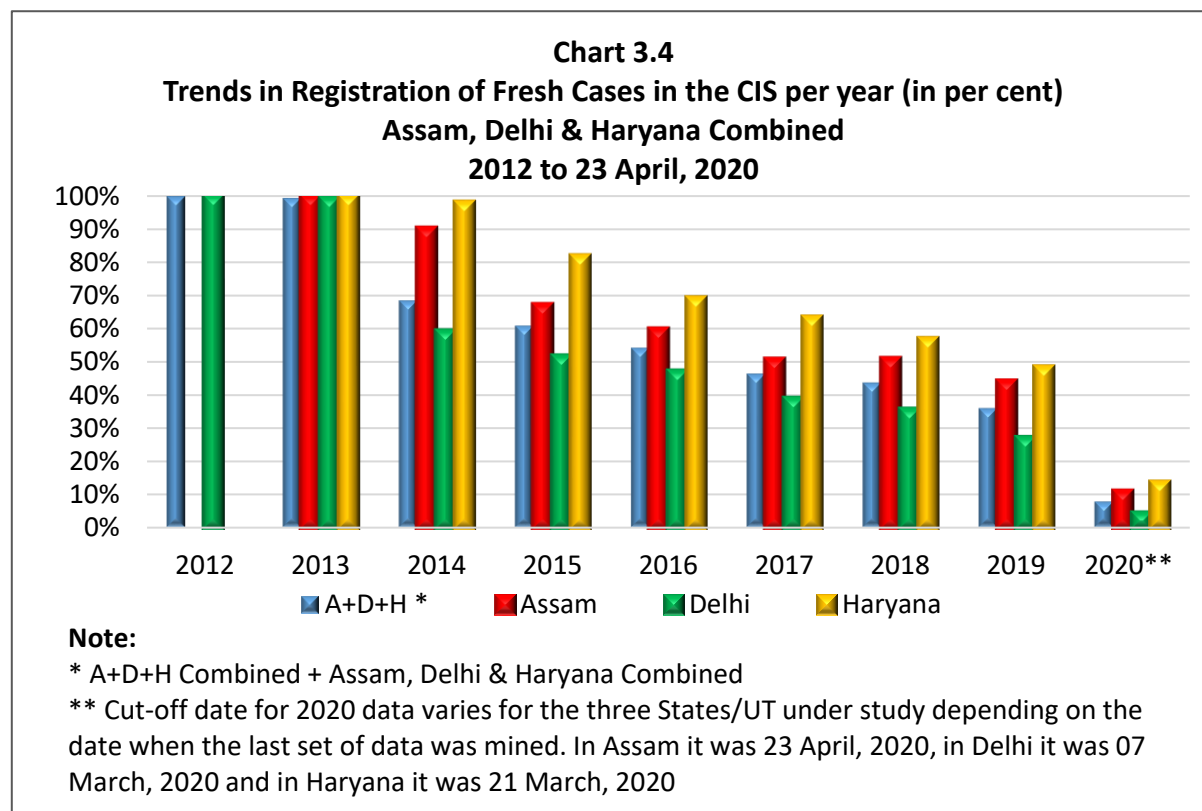
on the actual incidence and rate of charge sheeting. Nonetheless, increased pendency being carried forward from the previous year remains a cause for concern.

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



As evident from Chart 3.4, over the years, Delhi has shown a greater decline in registration of fresh cases in the courts compared to Assam and Haryana. Tables on police disposal of crimes against children in the Crime in India reports of the NCRB suggest that in Delhi, the charge sheeting rate was 28.8% in 2016, going up to 35.2% in 2018 and dipping again in 2019 to 32.4%, which is still lower than the corresponding figures for Haryana (46.3 in 2019) and Assam (65.4% in 2019).<sup>13</sup> This could be a possible cause for low registration of cases in Delhi courts, though it requires further exploration for two reasons. Firstly, State and UT-wise charge sheeting rates are not available for crimes under the POCSO Act specifically. Secondly, it will be important to know at what stage a case is registered in the court to arrive at a final conclusion, i.e., whether court registration of a case under the POCSO Act happens after the filing of charge sheet by the police or as soon as an FIR is registered and a copy of the FIR is sent to the Special Courts. The law requires Special Courts to take suo motu cognizance of cases under the POCSO Act. These courts are meant to have a special status and also have to monitor police investigation. Therefore, in a case under the POCSO Act, there should be no reason to wait for the police to file a charge sheet in order to register a case under the POCSO Act in the court information system. This, however, requires further probe.

If we look at the actual incidence of POCSO cases recorded by the NCRB for the years 2016 to 2019, Delhi has the highest incidence in 2016 and 2017 among the three States/UT in the scope of this study. In 2018 and 2019, Haryana outnumbers Delhi and Assam with 1,924 cases in 2018 and 2,074 in 2019 as against 1,839 and 1,719 cases in Delhi and 1,721 and 1,779 cases



<sup>13</sup> National Crime Records Bureau. *TABLE 4A.4 Police Disposal of Crime against Children (State/UT-wise) – 2016, 2018 and 2019*. Crime in India Reports 2016 to 2019. Government of India.



in Assam in the respective years. More cases invariably imply more burden on the system and delays in registration of cases in the case information system as well as disposal.

#### **IV. District-Wise Contribution to the Total Court Caseload under the POCSO Act in each State/UT**

In each State/UT considered for this study, the number of districts are divided into 5 quintiles or segments. The 5th quintile represents the top 20% districts and the 1st quintile the bottom 20% for the data under consideration.

In order to divide the districts into five equal parts or quintiles, the total number of districts in a State/UT is divided by 5. This helps decide on the size of each quintile. However, it may not always be possible to divide the number of districts equally into five parts and fractions cannot be used when it comes to distribution of districts. Therefore, some quintiles may end up having more districts than others. For example, the number of districts for Assam is 27. When divided by 5, the size of each quintile comes to 5.4. To reach a rounded figure, each quintile must have five districts. But this will leave out two districts, which need to be distributed equally either in the 1st and 2nd quintile or the 4th and the 5th quintile, depending on the objective of data analysis. Similarly, the quintile size for Delhi comes to 2.2, i.e. two districts per quintile. This accommodates 10 out of the 11 districts in Delhi and the remaining one district can then be kept in the 5th quintile. In Haryana, data is available from 18 districts. When divided by 5, the size of each quintile comes to 3.6 or 4 districts per quintile after rounding off the decimal figure. In other words, any two quintiles will have less than 4 districts or 3 districts each.

Going by this method, the distribution of number of districts into different quintiles in the three States/UT is as follows:

- Assam - 5 districts each in the 1st, 2nd and 3rd Quintile and 6 districts each in the 4th and 5th Quintile (Total number of districts = 27).
- Delhi - 2 districts each in the 1st to the 4th quintile and 3 districts in the 5th quintile (Total number of districts = 11).
- Haryana - 3 districts each in the 1st and 2nd Quintile and 4 districts each in all the other quintiles (Total number of districts = 18).

As the next step, district level data for court caseload is arranged in descending order in order to decide on which districts will fall in which quintile.

For the purpose of this chapter and the report, court caseload is calculated for every year under study beginning 2012 to April 2020. This section is based on an analysis of the

cumulative court caseload as on 23 April, 2020, when the last data set was mined for this study from the e-Courts portal.

The total court caseload = Fresh cases registered in the CIS in a given year + Cases pending disposal and carried forward from the previous year.

The 1st quintile represents the lowest court caseload for cases under the POCSO Act. The 2nd quintile represents a comparatively low caseload, while the 3rd quintile represents a caseload that is neither on the lower side nor the higher side and is between the two spectrums. The 4th quintile represents a comparatively high caseload and the 5th quintile represents the highest caseload.

Contribution of districts in each quintile to the total court caseload of POCSO cases in each State/UT is calculated as –

*[Sum total of court caseload in a given quintile ÷ Total court caseload in the State/UT] × 100*

(i) **Assam**

<b>Table 3.3</b> <b>Court Caseload - Top 20% Districts in Assam</b> <b>(as on 23 April, 2020)</b>	
<b>District</b>	<b>Court Caseload</b>
Golaghat	178
Sonitpur	185
Kamrup Metro	219
Barpeta	248
Morigaon	257
Nagaon	266
<b>Total for top 20% districts</b>	<b>1353</b>
<b>Total for State/UT</b>	<b>3372</b>

The top 6 districts in Assam that make up for 40.12% of the total caseload of courts trying cases under the POCSO Act in Assam are as presented in Table 3.3.

The next 20% districts have a share of 27.11% (914 cases) in the total court caseload of POCSO Act cases in the State. Altogether 12 out of the 27 districts in Assam make up for 67.23% of the total POCSO Act caseload of courts in the State. Table 3.4 presents the bottom 20% districts, which make up for only 5.13% of the total POCSO Act caseload in Assam's courts.

<b>Table 3.4</b> <b>Court Caseload - Bottom 20% Districts in Assam</b> <b>(as on 23 April, 2020)</b>	
<b>District</b>	<b>Court Caseload</b>
Dima Hasao	18
Dibrugarh	25
Dhemaji	38
Chirang	43
Karimganj	49
<b>Total for bottom 20% districts</b>	<b>173</b>
<b>Total for State/UT</b>	<b>3372</b>

(ii) **Delhi**

As presented in Table 3.5, the top 3 districts in Delhi contribute 38.78% to the total POCSO Act caseload in Delhi courts. The next 20% districts are South and South West districts, having a share of 18.95% in the total POCSO Act caseload in Delhi courts. The combined share of these 5 districts out of the 11 districts in Delhi is 57.72%.

<b>Table 3.5</b> <b>Court Caseload - Top 20% Districts in Delhi</b> <b>(as on 07 March, 2020)</b>	
<b>District</b>	<b>Court Caseload</b>
North	866
North West	879
West	1079
<b>Total for top 20% districts</b>	<b>2824</b>
<b>Total for State/UT</b>	<b>7283</b>

Two districts each, falling in the 2nd and 3rd quintile make up for a combined share of 32.39% in the total court caseload of POCSO Act cases in the National Capital Territory. The bottom 20% districts or districts in the 1<sup>st</sup> quintile that contribute 9.89% to the total court caseload of POCSO Act cases in Delhi courts are presented in Table 3.6.

<b>Table 3.6</b> <b>Court Caseload - Bottom 20% Districts in Delhi</b> <b>(as on 07 March, 2020)</b>	
<b>District</b>	<b>Court Caseload</b>
North East	355
New Delhi	365
<b>Total for bottom 20% districts</b>	<b>720</b>
<b>Total for State/UT</b>	<b>7283</b>

### (iii) Haryana

The top 4 districts in Haryana having a 43.81% share in the total POCSO Act caseload in the courts of Haryana are presented in Table 3.7.

Table 3.7 Court Caseload - Top 20% Districts in Haryana (as on 21 March, 2020)	
District	Court Caseload
Sirsa	114
Palwal	125
Gurugram	249
Faridabad	305
<b>Total for top 20% districts</b>	<b>793</b>
<b>Total for State/UT</b>	<b>1810</b>

Eleven districts in the 2<sup>nd</sup>, 3<sup>rd</sup> and the 4<sup>th</sup> quintile make up for 50.88% of total POCSO Act caseload of the Haryana courts. These are:

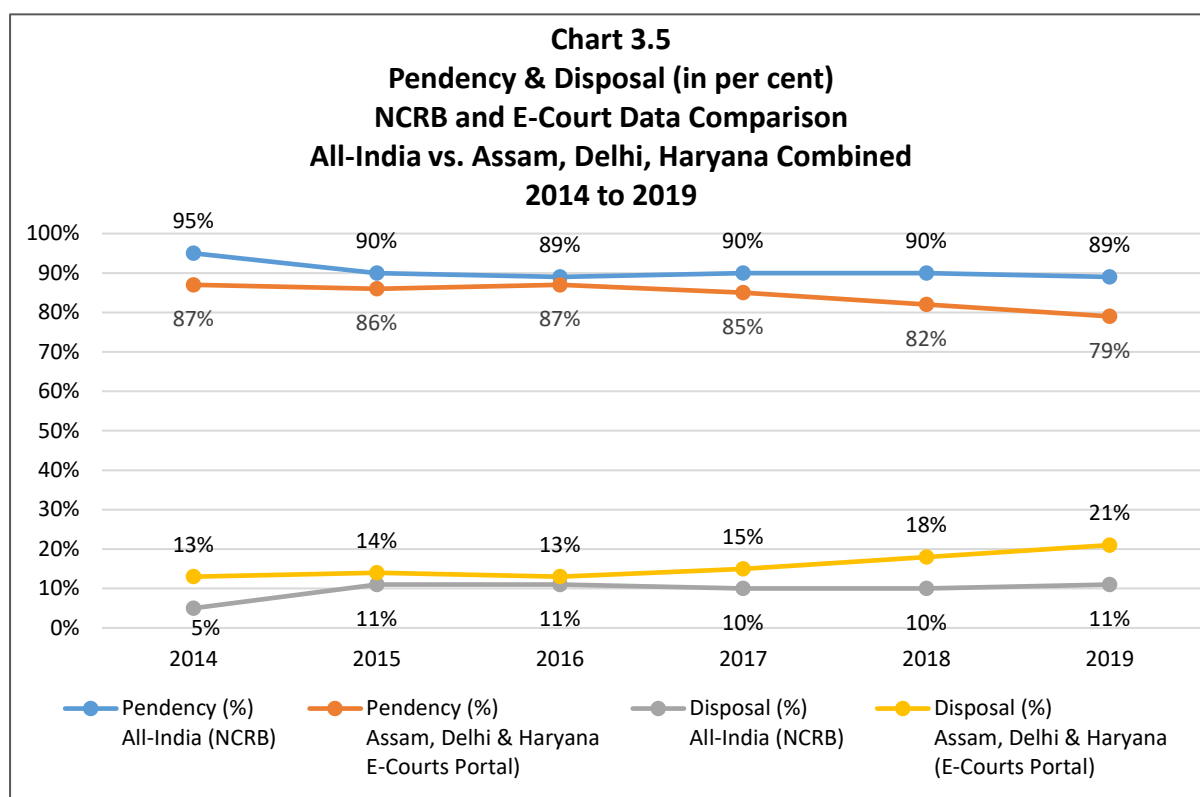
- Hisar, Sonapat, Jind and Ambala in the 4<sup>th</sup> quintile with a share of 23.76%;
- Fatehabad, Rohtak, Rewari, Panipat in the 3<sup>rd</sup> quintile with a share of 17.46%; and
- Kaithal, Panchkula and Kurukshetra in the 2<sup>nd</sup> quintile, contributing 9.67%.

In the bottom 20% category are three districts as shown in Table 3.8, contributing 5.3% to the Haryana court caseload of POCSO Act cases.

Table 3.8 Court Caseload - Bottom 20% Districts in Haryana (as on 21 March, 2020)	
District	Court Caseload
Yamunanagar	7
Bhiwani	37
Jhajjar	52
<b>Total for bottom 20% districts</b>	<b>96</b>
<b>Total for State/UT</b>	<b>1810</b>

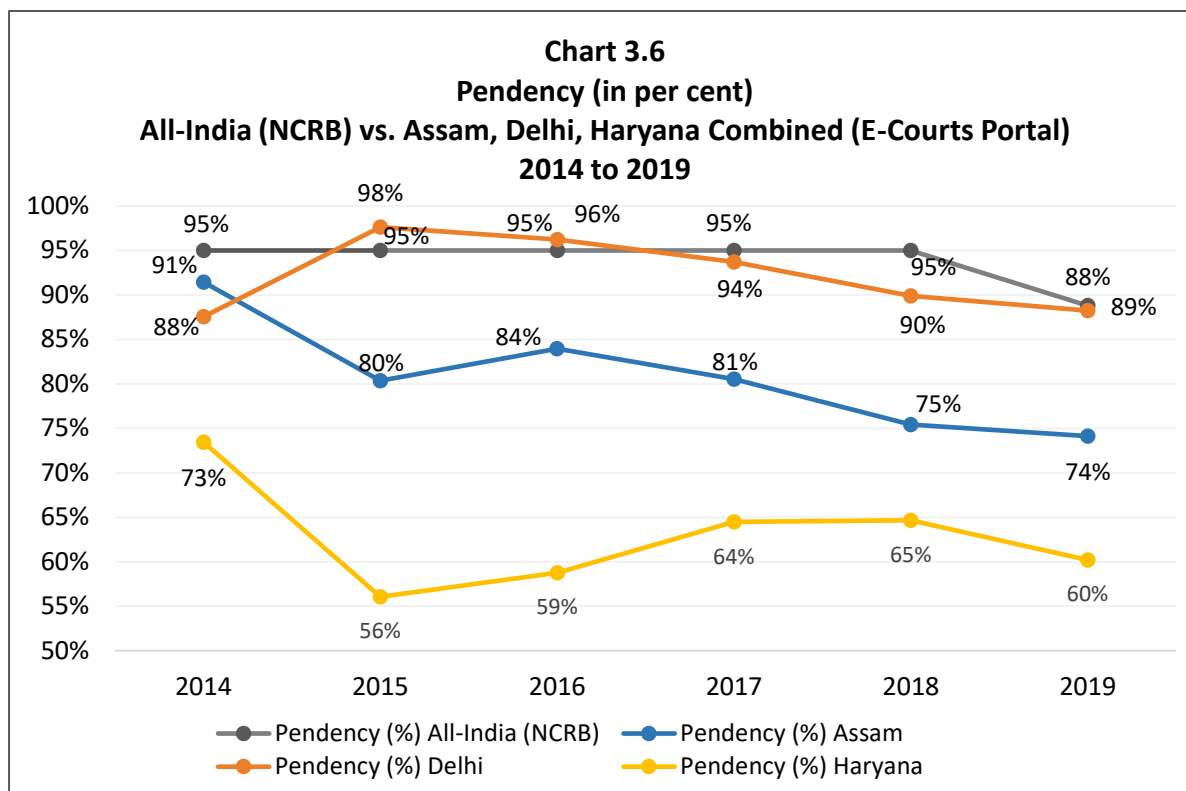
## B. Pendency & Disposal

### I. Data Comparisons



A comparison of the NCRB data and e-Courts data on 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 six years (2014 to 2019) for which comparative data is available.

As mentioned earlier, the State of Haryana is responsible for reflecting better data regarding the combined pendency and disposal in the three States/UT covered under this study.



When looked at separately, Assam and Haryana have lower pendency percentages compared to the All-India figures for 2014 to 2019. In Delhi, the pendency percentage is lower than the corresponding All-India figure for POCSO Act cases in the years 2014, 2017 and 2018, but is substantially high in 2015 at 98% and shows a decline subsequently. In 2019, although it has come closer to the All-India figure, it is still more than the All-India pendency percentage for POCSO Act cases.

*In Re: Alarming Rise in the Number of Reported Child Rape Incidents*,<sup>14</sup> the Supreme Court had sought replies from various High Courts on the issue of pendency, number of courts, and other data that could help assess the situation vis-à-vis implementation of the POCSO 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 as mentioned earlier. Although data provided in the scheme document is collected from various High Courts, it 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 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 data entry fields with drop down menus that can ensure

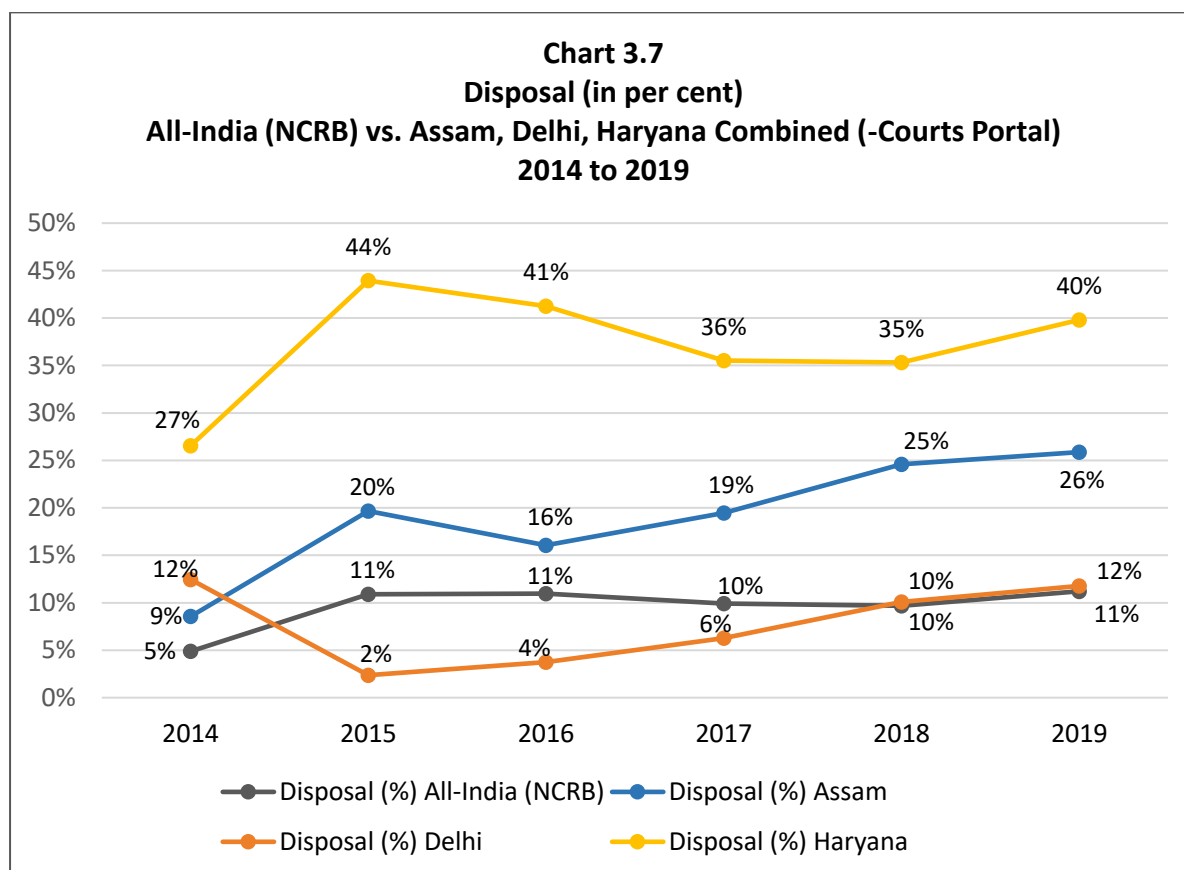
<sup>14</sup> Ibid. Suo Motu Writ Petition (Crl.) No.1/2019

uniformity and standardisation in the manner in which different courts enter data on the e-Courts Portal (See Annexure 1.5 on the non-negotiables for e-Courts portal).

<b>Table 3.9</b> <b>Pendency as per Different Data Sources and on Different Dates</b> <b>Assam, Delhi and Haryana</b>				
Pendency	As on 30 June, 2019		As on 31 December, 2019	As on 07 March, 2020
	FTSC* Scheme of DoJ**	e-Courts Portal	e-Courts Portal	e-Courts Portal
<b>Assam</b>	3201	2586	2991	3080
<b>Delhi</b>	7277	6379	6939	7020
<b>Haryana</b>	2256	1394	1557	1586
<b>Total</b>	<b>12734</b>	<b>10359</b>	<b>11487</b>	<b>11686</b>
*FTSC - Fast Track Special Courts				
**DoJ – Department of Justice, Ministry of Law and Justice, Government of India				

Difference in data entries starts with the way in which the Act and the sections are mentioned on 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 must have been 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 victims.

As on 07 March, 2020, Delhi shows a pendency of 96%. The pendency in Assam as on 23 April, 2020 and in Haryana as on 21 March, 2020 is 91% and 88% respectively. It is not prudent to draw any inference or conclusions for the year 2020 based on data for the first few months collected from the e-Courts portal. Moreover, initial trends observed suggest that pendency is more likely to rise in 2020 due to the slowing down of the courts from the beginning of the year because of various reasons. January has fewer working days due to the winter break in several States/UTs, including the three considered for this study. In many parts of the country, particularly in Delhi and Assam, court functioning was affected by the CAA-NRC protests that continued until early March 2020, only to be followed by the COVID-19 lockdown, since the last week of March 2020.



The All-India rate of disposal for cases under the POCSO Act has increased between 2014 and 2019, ranging from 5% in 2014 to 11% in 2019. Delhi has witnessed the worst decline in disposal rate in 2015, falling from 12% in 2014 to 2% in 2015. Increase in the subsequent years has been slow and it has taken five years for the rate of disposal in Delhi to get closer to the 2014 mark.

While the POCSO 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 registered in the three States/UT combined, none are found to be disposed that year as the law was new and completion of trial takes time. In 2013, only 4 cases are found disposed, but 2014 onwards disposal seems to have picked up some pace. There is an increase in the combined rate of disposal for Assam, Delhi and Haryana from 13% at the end of 2014 to 21% at the end of 2019 (Of all the 14486 cases up for trial in 2019, 21% are found disposed at the end of the year).



<b>Table 3.10</b> <b>Pendency and Disposal at the end of each year</b> <b>(Assam, Delhi, Haryana Combined)</b>							
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. A + Col. B)	Col. D	Col. E = (Col. C - Col. D)	Col. F = (Col. D / Col. C*100)	Col. G = (Col. E / Col. C*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*	978	11487	12465	11686	779	94%	6%
* Cut-off date for 2020 data varies for the three States/UT under study depending on the date when the last set of data was mined. In Assam it was 23 April, 2020, in Delhi it was 07 March, 2020 and in Haryana it was 21 March, 2020							

## II. Analysis of Pendency and Disposal in States/UT and Districts

A State/UT-wise analysis provides details regarding variance in different years in each State/UT, as presented in Tables 3.10A, 3.10B and 3.10C in Annexure 3.

At the end of 2019, pendency in the three States/UT in the scope of this study is found to be 74% in Assam, 88% in Delhi and 60% in Haryana.

A district-wise analysis helps assess how various districts are faring and which districts require more attention considering the caseload, pendency percentage and rate of disposal. This analysis is undertaken based on data available for the year 2019, since 2020 data is limited to the first three to four months. The 2020 data can therefore only be used to assess the districts on court caseload and not on pendency and disposal, which is bound to 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 other indicators to draw any conclusive findings on the

performance of the districts and identify the challenges for a planned intervention. These indicators could be the nature of offence as well as the nature of disposal and time taken for disposal, which have been examined in the subsequent chapters.

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

<b>Chart 3.8</b> <b>Colour Index for District Assessment w.r.t. Court Caseload, Pendency percentage and Disposal Rate</b>					
Colour	Quintile	Caseload	Pendency Percentage	Rate of Disposal	Overall Rating
	1st Quintile	Lowest	Lowest	Highest	Good
	2nd Quintile	Low	Low	High	Better
	3rd Quintile	Between low and high	Between low and high	Between high and low	Satisfactory
	4th Quintile	High	High	Low	Bad
	5th Quintile	Highest	Highest	Lowest	Worst

The number of districts in each State are divided into 5 quintiles or segments for each of the three different variables taken into consideration in this section of the report, these being court caseload, pendency percentage and rate of disposal. Data for all the districts for each of these variables or indicators is first arranged in descending order and then used for distributing the districts into the five quintiles. As mentioned earlier in this chapter, the 5th quintile represents the top 20% districts and the 1st quintile the bottom 20%, for the data under consideration.

The colour code used for each quintile is explained in Chart 3.8. Colour coding helps in comparing data across different variables and provides some form of visual representation for better understanding of data comparison.

Usually a scale is used for rating or ranking performance on certain variables or indicators. Division of data into quintiles is by itself a form of ranking and rating. Colour codes for each quintile can be used to interpret the quantitative and qualitative values assigned to each quintile.

The 1st quintile or green colour may be interpreted as good, 2nd quintile or yellow colour as better, 3rd quintile or orange colour as satisfactory, 4th quintile or pink colour as bad and 5th quintile or red colour as the worst.

To explain using the Assam example, if the court caseload is taken as a data variable, the data for all the districts in the State is first arranged in descending order. It is then used to distribute the districts into the 5 quintiles, with the bottom 5 districts showing lowest court caseload and getting a green colour code and the top 6 districts showing highest court caseload and getting a red colour code. Similarly, the 5 districts in the second quintile get a yellow colour code, the 6 districts in the 3rd quintile get an orange colour code and the 6 districts in 4th quintile get a pink colour code. The same exercise is carried out for the other two data variables also to arrive at a colour coded division of districts into quintiles and an overall rating in terms of good, better, satisfactory, bad and worst.

(i) **Assam**

Of the top 6 districts with the highest court caseload in Assam, Morigaon and Nagaon require utmost attention since their performance is poor on all parameters studied - the caseload is high and so is pendency due to poor disposal.

Among the bottom 5 districts with lowest court caseload in the State, Dima Hasao needs attention as reasons for high pendency and low disposal require a thorough assessment, given that the district has the lowest court caseload in the entire State. The others to note are:

- Bongaigaon and Karimganj in the 1<sup>st</sup> quintile, having high pendency and low disposal despite lower caseloads.
- Goalpara in the 2<sup>nd</sup> quintile, also with substantially high pendency despite a lower court caseload;
- Nalbari in the 3<sup>rd</sup> quintile, as pendency is in on the higher side;
- Cachar and Kamrup Metro in the 4<sup>th</sup> quintile with very high pendency and low disposal, particularly Kamrup Metro with a disposal rate as low as 5%.

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

<b>Chart 3.9</b> <b>Court Caseload, Pendency and Disposal</b> <b>District Report Card</b> <b>Assam</b>			
<b>Districts</b>	<b>Total Caseload (2019)</b>	<b>Pendency Percentage at the end of 2019</b>	<b>Rate of Disposal at the end of 2019</b>
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%

## (ii) Delhi

In Delhi, the pendency percentage is very high starting at 82% in West district, going up to 96% in East district. Although the 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.

<b>Chart 3.10</b> <b>Court Caseload, Pendency and Disposal</b> <b>District Report Card</b> <b>Delhi</b>			
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 3 top districts with highest court caseload fare between good and satisfactory performance on pendency percentage and rate of disposal. The rate of disposal in these districts is closer to or higher than the 2019 All-India disposal rate of 12% in cases under the POCSO Act, as reflected in the Crime in India, 2019 report of the NCRB.

Districts requiring attention are:

- New Delhi district in the 1<sup>st</sup> quintile, having lowest court caseload in the National Capital Territory but very high pendency and low disposal rate;
- East district in the 2<sup>nd</sup> quintile, also with substantially high pendency and low disposal rate;
- Shahdara district in the 3<sup>rd</sup> quintile, as pendency is on the higher side and disposal is only satisfactory; and
- South district in the 4<sup>th</sup> quintile, standing out with a significantly high pendency percentage of 93% and a disposal rate of 7%.

### (iii) Haryana

Among the top 4 districts with highest court caseload, Gurugram and Ambala provide sufficient cause for concern as the pendency percentage in these 2 districts is more than the overall pendency percentage of 60% for cases under the POCSO Act in Haryana in 2019. Interestingly, Faridabad district in the 5<sup>th</sup> quintile has the highest court caseload in the State, but pendency percentage and rate of disposal are better than many of the other districts in the State. It will be worth studying how the courts in Faridabad manage their caseload better.

Of the bottom 3 districts in Haryana with lowest share in court caseload in the State, all require attention as they also account for poor rates of pendency and disposal in the State.

<b>Chart 3.11</b> <b>Court Caseload, Pendency and Disposal</b> <b>District Report Card</b> <b>Haryana</b>			
<b>District</b>	<b>Total Caseload (2019)</b>	<b>Pendency Percentage at the end of 2019</b>	<b>Rate of Disposal at the end of 2019</b>
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%

Other districts requiring attention are:

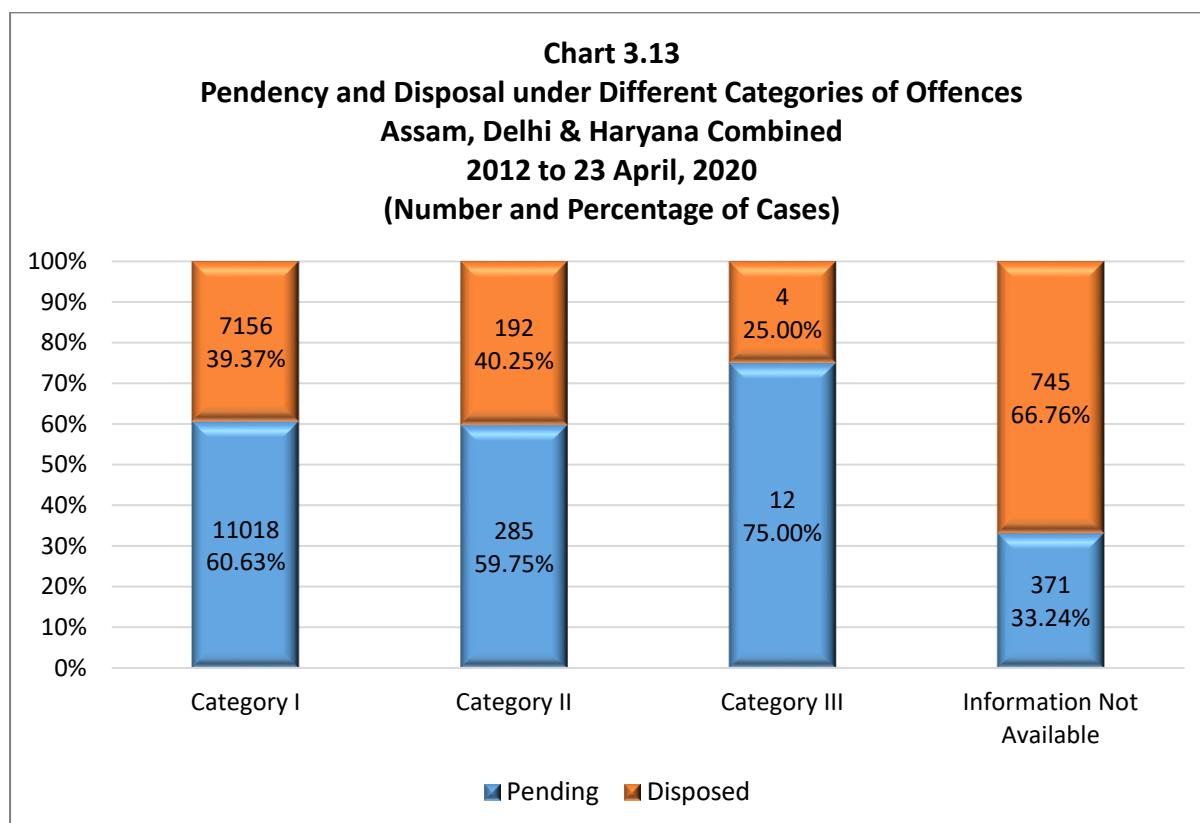
- Panchkula in the 2<sup>nd</sup> quintile, given that the caseload is on the lower side and yet the pendency percentage is relatively high and rate of disposal is relatively low;
- Panipat in the 3<sup>rd</sup> quintile, as the other 3 districts in this quintile are doing comparatively better on pendency and disposal;
- Palwal in the 4<sup>th</sup> quintile, which accounts for lowest court caseload among the 4 districts in this quintile but has a significantly high pendency percentage and low rate of disposal.

Of the 18 districts in Haryana, Yamunanagar in the 1<sup>st</sup> quintile has the lowest court caseload with only 6 cases at the end of 2019. However, the district should not fall off the radar only because it has a low court caseload.

### III. Pendency & Disposal by Category 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 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. A detailed break-up is provided in Chart 3.12.

Chart 3.12 Division of Offences under the POCSO Act into 3 Categories		
Section of the Act	Nature of Offence	Abbreviation or short form used for Nature of Offence
<b>Category I</b>		
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
<b>Category II</b>		
Section 16 and 17	Abetment of any offence under the POCSO Act	
Section 18	Attempt to commit any offence under the POCSO Act	
<b>Category III</b>		
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 considered in this study (91.87%) fall under Category I. Of these, 11,018 cases (60.63%) are found to be pending as on 23 April, 2020, the date on which last set of data was mined.

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% of the 477 cases in Category II) are cases of abetment of an offence, 174 cases (36.48%) are cases of attempt to commit an offence and 6 cases (1.26%) involve both abetment and attempt to commit an offence. Of all 477 cases in Category II, 285 cases (59.75%) are pending disposal.

Category III consists of only 16 cases, comprising 0.07% of total cases under study. Until 2015, no cases were registered in the court information system in this category, but since 2016 there is at least one case of failure to report registered every year, including within the first four months of 2020. Fifty-six percent cases in this category (9 out of 16) are of failure to report (section 21), 38% (6 out of 16) are of false reporting (section 22) and 6% cases are of disclosure of victim's identity by the media (section 23). Pendency within this category is as high as 75%.

There are 1116 cases (5.64% of all 19,783 cases under study) that cannot be classified under any type of offence due to lack of information on the e-Courts portal. Of these, 371 (33.24%) are pending disposal.



#### IV. Pendency in Each Category by Type of Offence

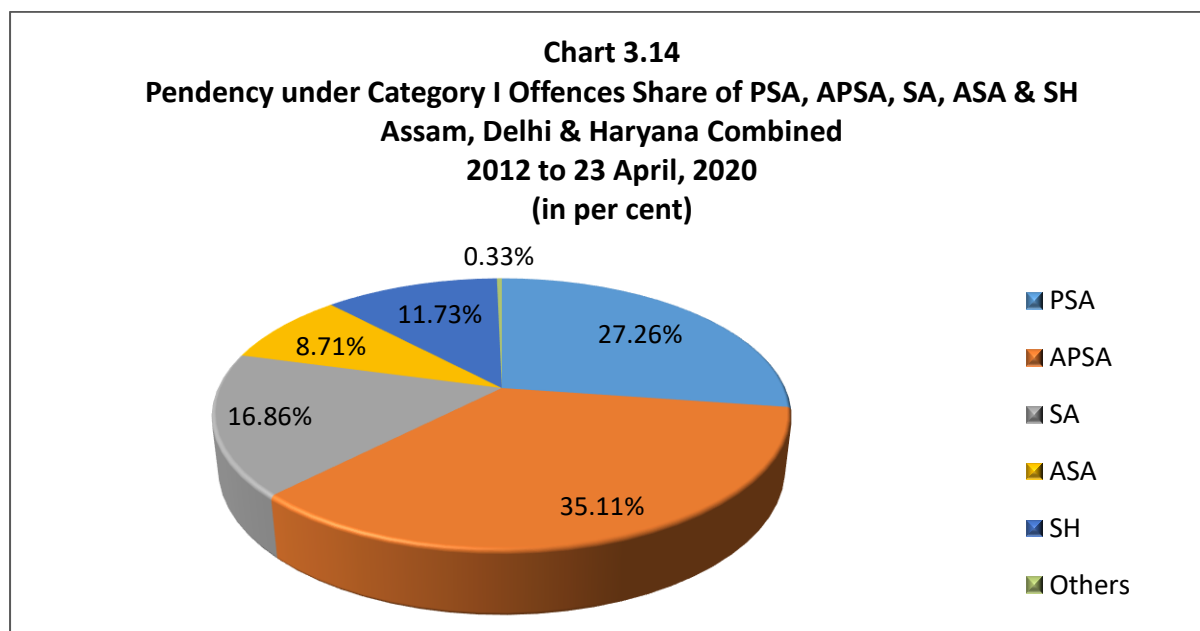
Out of the total 11,686 pending cases between 2012 and 23 April, 2020, information regarding the type of offence is not available for 3.17% cases.

##### **Overall findings:**

- Maximum number of pending cases, i.e. 94.28% pertain to Category I offences, 2.44% to offences under Category II, and 0.10% pertain to offences under Category III.
- A closer examination of pendency of cases by type of offence suggests that pendency is higher for offences that are grave in nature, involving stricter sentences.
- Districts or states with higher incidence or number of reported cases also have higher pendency. Therefore, Delhi has a higher pendency for most offences compared to Assam and Haryana.

##### **(i) Pendency under Category I Offences**

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

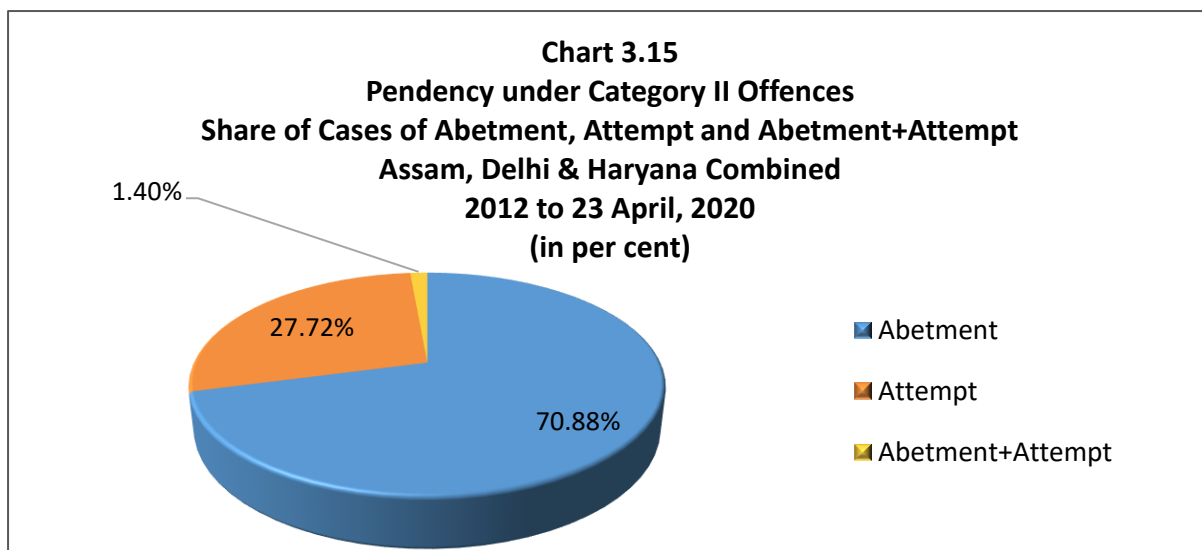


A State-wise break-up in Table 3.11 shows that in Delhi and Haryana aggravated penetrative sexual assault accounts for highest share in pendency under Category I offences, while in Assam it is penetrative sexual assault.

<b>Table 3.11</b> <b>Pendency under Category I – Share of Different Types of Offences</b> <b>2012 to 23 April, 2020</b> <b>(in per cent)</b>				
<b>Offences</b>	<b>Assam, Delhi &amp; Haryana Combined</b>	<b>Assam</b>	<b>Delhi</b>	<b>Haryana</b>
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

For absolute numbers of pending and disposed cases under Category I, refer to Tables 3.11A, 3.11B, 3.11C and 3.11D in Annexure 3.

## (ii) Pendency under Category II Offences



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

<b>Table 3.12</b> <b>Pendency for Abetment of Different Types of Offences</b> <b>Share in Total Pending cases of Abetment</b> <b>2012 to 23 April, 2020</b> <b>(in per cent)</b>				
<b>Different Types of Cases of Abetment</b>	<b>Assam, Delhi &amp; Haryana Combined</b>	<b>Assam</b>	<b>Delhi</b>	<b>Haryana</b>
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

For absolute numbers of pending and disposed cases under Category II, refer to Tables 3.12A, 3.12B, 3.12C, and 3.12D in Annexure 3.

Table 3.12 shows pendency in cases of abetment of an offence under the POCSO Act. Out of 202 such cases, maximum cases (63.37%) are of abetting aggravated penetrative sexual assault followed by abetment of use of children for pornographic purposes (23.27%). The trend is similar for Delhi and Haryana, while for Assam in contrast, the pendency percentage for abetment of use of children for pornographic purposes is the highest (50%) followed by abetment of aggravated penetrative sexual assault (35.71%).

Table 3.13 shows pendency in cases of attempt to commit an offence under the POCSO Act. Combined data for Assam, Delhi and Haryana shows that out of the 79 pending cases of attempt to commit an offence, attempt to commit aggravated penetrative sexual assault has the highest share (43.04%). This is followed by attempt to commit sexual assault (20.25%), attempt to commit penetrative sexual assault (17.72%), attempt to commit aggravated sexual assault (11.39%), and attempt to commit sexual harassment (7.59%).

In Assam, both attempt to commit aggravated penetrative sexual assault and attempt to commit penetrative sexual assault have an equal and highest share in all pending cases of attempt to commit an offence (29.41% each), followed by attempt to commit sexual assault and attempt to commit sexual harassment (17.65% each).

In Delhi and Haryana, 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% in Delhi and 51.52% in Haryana), followed by attempt to commit sexual assault (20.69% in Delhi and 21.21% in Haryana).

Next in line are pending cases of attempt to commit aggravated sexual assault in Delhi (17.24%) and attempt to commit penetrative sexual assault (18.18%) in Haryana.

<b>Table 3.13</b> <b>Pendency for Attempt to Commit Different Types of Offences</b> <b>Share in Total Pending cases of Attempt</b> <b>2012 to 23 April, 2020</b> <b>(in per cent)</b>				
<b>Different Types of Cases of Attempt</b>	<b>Assam, Delhi &amp; Haryana Combined</b>	<b>Assam</b>	<b>Delhi</b>	<b>Haryana</b>
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

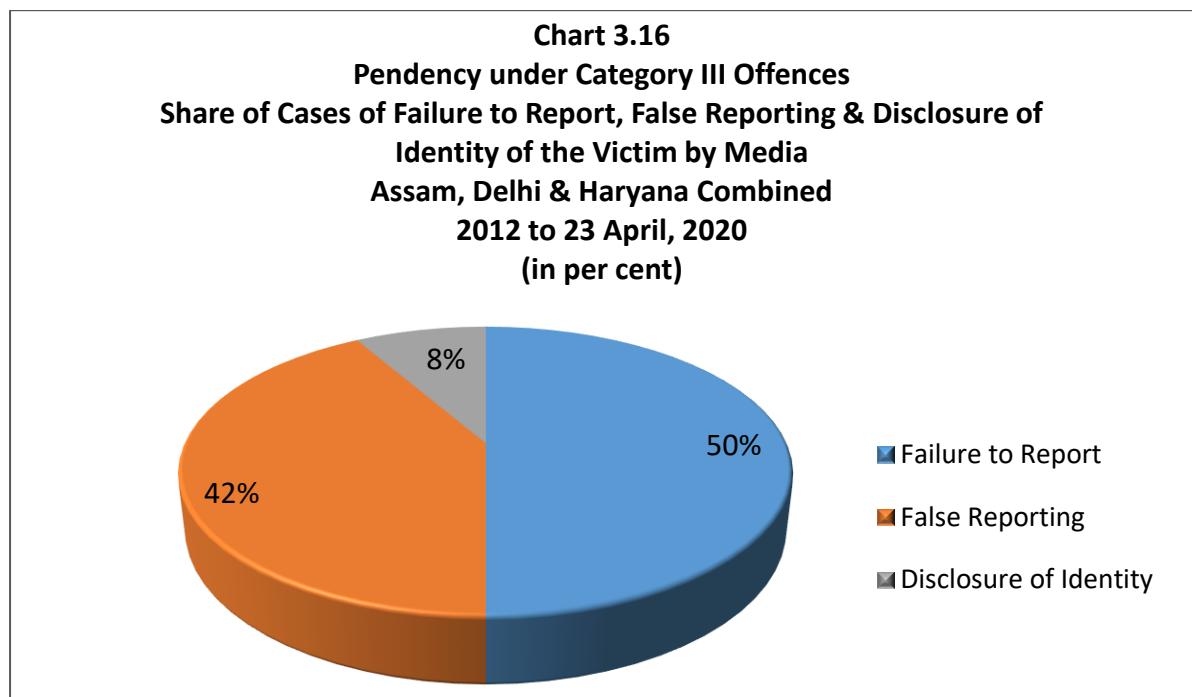
Out of 4 pending cases that involve both abetment and attempt to commit an offence, 3 relate to aggravated penetrative sexual assault (2 from Delhi and 1 from Haryana) and one relates to penetrative sexual assault (from Haryana). Although the number is small, Table 3.14 reflects the percentage share of such cases in the total number of pending cases where both abetment and attempt provisions have been applied (section 17 and 18 of the POCSO Act).

<b>Table 3.14</b> <b>Pendency for Abetment and Attempt to Commit Different Types of Offences</b> <b>Share in Total Pending cases of Abetment + Attempt</b> <b>2012 to 23 April, 2020</b> <b>(in per cent)</b>				
<b>Different Types of Cases of Abetment + Attempt</b>	<b>Assam, Delhi &amp; Haryana Combined</b>	<b>Assam</b>	<b>Delhi</b>	<b>Haryana</b>
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

### (iii) Pendency under Category III Offences

There are 16 cases in Category III, of which 12 are pending disposal. Out of the 12 pending cases in this category, 6 cases (50%) are of non-reporting or failure to report an offence and all of them are from Delhi. Another 5 cases (41.67%) 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 the media, which is from Assam, and has been pending since 2019.



## CONCLUSION AND RECOMMENDATIONS

Absence of critical data on the e-Courts portal and in the available judgments makes it difficult to attempt any correlation of pendency and disposal with the age of victim and proximity between the victim and the accused.

At the same time, lack of uniformity and standardisation in the manner in which data is uploaded by different courts on the e-Courts portal leads to a range of problems in ensuring precision and accuracy in data analysis.

Despite its limitations, the available data provides valuable insights with respect to pendency and disposal of cases as presented in this chapter.

The increasing number of cases and high pendency should certainly be a cause for worry. Creation of new courts is often offered as a solution to deal with such scenarios, although detailed analysis shows that the nature of offence too has a relation to pendency. 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 highest for these cases.

Delhi is a case in point with highest court caseload and pendency despite 26 courts spread over 11 districts hearing cases under the POCSO Act as on 07 March, 2020. Disposal of cases

of aggravated penetrative sexual assault in Delhi is the poorest. Whether this is because Delhi records a high incidence of aggravated penetrative sexual assault or because courts tend to take longer to dispose offences of serious nature punishable with harsher sentences, or both, requires further exploration.

In keeping with the finding in this chapter, the following set of recommendations may be considered for action by appropriate authorities:

1. *Need for thorough research on factors responsible for pendency*

*While gravity of offence has received a response from the legislature in terms of making the law more stringent and prescribing time limits for completion of trial, little attention has been paid to factors responsible for pendency in such cases. The study does that cases that are more heinous in nature comprise the highest proportion of pending cases. This requires thorough research into factors responsible for it and could include research on the following aspects:*

- *Police investigation - gaps, challenges and time taken for completion of police investigation*
- *FSL report - gaps, challenges and time taken for filing FSL report in court*
- *Time taken for framing of charges*
- *Time taken for victim testimony*
- *Time taken for completing all prosecution evidence*
- *Number of adjournments and reasons for adjournments at different stages of a case*

2. *Setting up exclusive Special Courts to deal with cases under the POCSO Act requires better planning based on a needs assessment.*

*(i) The caseload at the district level must decide the number of courts required in a district and the entire State/UT for trying offences 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 considered to make such planning more evidence based and rational.*

*A thorough assessment would require investing in data and research on the following aspects:*

- *Court caseload, i.e., number of fresh cases registered in the CIS of a court in a year and pending cases from previous years*
- *Number of courts dealing with cases under the POCSO Act in every district and State/UT, along with a break-up for number of courts having exclusive charge for*

*trying cases under the POCSO Act as well as number of courts trying cases under the POCSO Act in addition to other matters under their charge*

- *Pendency and rate of disposal per court*
- *Offences taking longer time for disposal and reasons for delay*

3. *Digital India needs to work towards better data management and ensuring parity and comparability between data sets maintained by different sources for the same set of variables or indicators.*

(i) *The NCRB data and the e-Courts data with respect to disposal by courts ought to be comparable. This is only possible through improved data management and training of all actors who have to engage with data along with coordination between the two agencies involved.*

(ii) *Variance in pendency data collected by the Ministry of Law and Justice from the High Courts and pendency data collected through e-Courts portal calls for an explanation along with an effort to standardise data entry. Data entry can be made simpler by adding drop down menus where possible. This will avoid discrepancies in data entry, thus making data more reliable.*

## 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 also presents an analysis of the nature of disposal in terms of the nature of offence. Conviction rates have been looked at specifically as most existing research on crime and deterrence clearly establishes that certainty of conviction has a greater impact on deterrence than severity of punishment.

Although the nature of disposal depends on the facts of each case, not all courts maintain data in a 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) has made it necessary to club certain 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 are also taken into consideration in order to remove the confusion and bring some 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 end in conviction, acquittal or discharge as cases where trial stands completed.

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



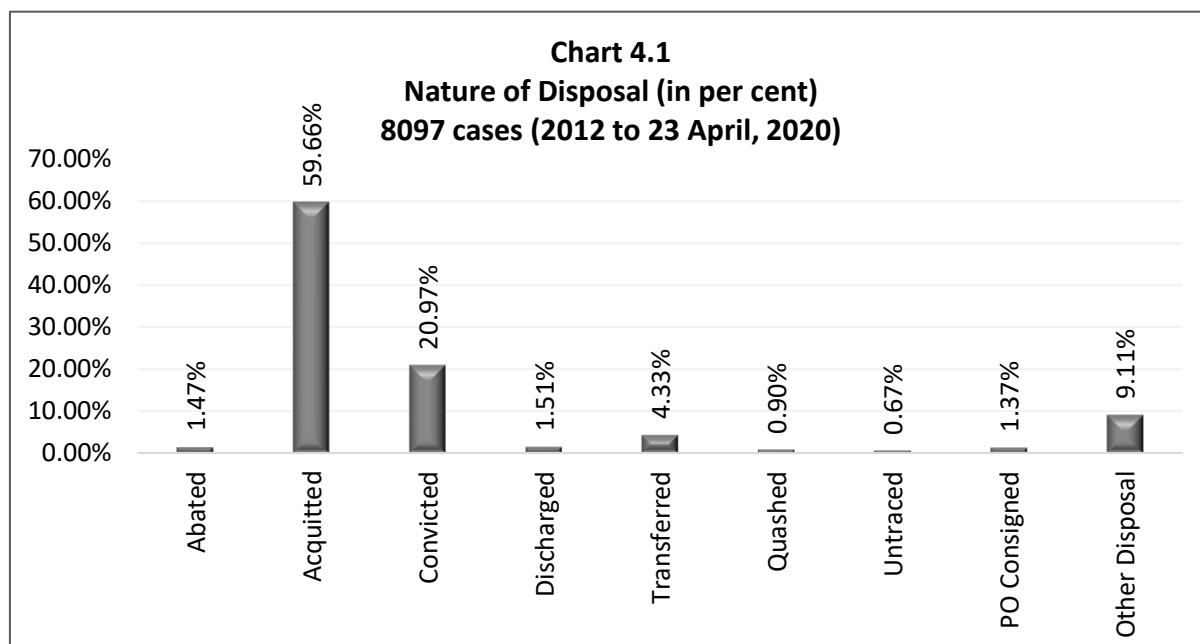
- Case is filed
- Clubbed in FIR
- Compromised
- Conciliation
- Consigned
- Contested
- Converted
- Declared Juvenile
- Decreed with costs
- Dismissed
- Disposed
- Disposed of as withdrawn with permission to file fresh
- Disposed of with directions
- Disposed off on contest
- Disposed otherwise
- Disposed 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

Every chapter in this study has a limitation as analysis is only possible for data that is readily available and can be verified. Maintaining online data requires investment in technology, consistent efforts at improving information management systems as well as ensuring better accessibility. Often the e-Courts portal becomes inactive because of technical issues, making it difficult to cross check and verify information when required and thus adding to the data challenges.

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

The number of cases disposed in the three States/UT in the duration considered for the study is 8097, of which 59.66% ended in acquittal and 20.97% in conviction. Chart 4.1 gives an overall assessment on the different forms of disposal.

## A. Different Forms of Disposal and Confusions that Prevail



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

### Glaring lapses and anomalies...

- Acquittal is recorded as “compromised” in the e-Courts portal.
- Sessions Court convicts the accused under Section 4 of the POCSO Act, but e-Courts portal says the matter ended in “conciliation”.
- Cases that have ended in acquittal or discharge are recorded as “quashed”.

### Question to ask:

Do all Special Courts have the same understanding and interpretation of terms used for recording nature of disposal? Do they all follow the same rules for maintaining records and uploading data on disposal of cases on e-Courts portal?

- ***There are 3 cases in the category of “other disposal”, which are disposed by way of a compromise or conciliation.***

Table 4.1 shows national level data provided by the NCRB on cases disposed by way of compromise or compounding.

<b>Table 4.1</b> <b>Court Disposal of Crimes against Children</b> <b>All India Data - National Crime Records Bureau</b> <b>(2017 - 2019)</b>						
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
<b>Total</b>	<b>102</b>	<b>157</b>	<b>371</b>	<b>7</b>	<b>9</b>	<b>23</b>
Source: NCRB. Table 4A.5 Court Disposal of Crime against Children (Crime head-wise), Crime in India Reports for 2017, 2018, 2019.						

**State of Madhya Pradesh vs. Madanlal [Criminal Appeal No. 231 of 2015], Judgment pronounced on 1 July, 2015**

In this case the trial court had convicted the accused for rape of a 7-year-old girl under section 376 (2)(f) of the IPC. The High Court, hearing the appeal noted that the parties had entered into a compromise and a petition seeking leave to compromise was filed before the Trial Court. Keeping this in mind along with other factors, the High Court held that the offence is non-compoundable and reduced the sentence to the period already undergone by converting the offence under section 376(2)(f) to section 354 of IPC. The State of Madhya Pradesh went in appeal against the High Court’s decision. The Supreme Court hearing the appeal held that ***there is no compromise legally permissible in rape cases***, further stating that such an attitude reflects lack of sensibility towards the dignity of women. The case was remitted back to the High Court for a reappraisal of the evidences and for a fresh decision.

Although the term “compounded” is not found in the disposal record of cases analysed for this study, e-Courts portal also does show “compromise” as a form of disposal, leading to certain concerns.

- (i) At what stage of the proceedings or trial are the parties entering into a compromise?
- (ii) Once a trial commences, a case cannot be disposed of as compromised. The court will have to either acquit or convict the accused based on evidence. How are the Special Courts then allowing or processing a compromise reached between the parties after the commencement of trial?
- (iii) Compoundable offences are those offences where a compromise can be drawn between the parties in order to drop all charges against the accused and a non-compoundable offence is where the charges cannot be dropped against the accused by way of a compromise due to the seriousness of the offence, such as cases involving penetrative sexual assault or rape. How then does the NCRB’s data on court disposal include data on POCSO cases disposed of as “compounded or compromised”? How can a trial court compound a non-compoundable offence, which would require quashing of the case by a higher court?
- (iv) A compromise between the parties concerned may be reached prior to the court taking cognizance of the case. In that situation, the case will not come up for trial but the disposal records will still reflect the nature of disposal because the case has been registered in the CIS. What is the way to ensure better management of data in order to address the confusion created by reflecting “compromise” between the parties prior to trial as a form of disposal of a case under the POCSO Act?

The search for answers to the questions listed above led to a probe into the three cases from Assam, Delhi and Haryana, where the nature of disposal is reflected as “compromised” or “conciliation”. While some questions remain unanswered and require further examination and discussion with the concerned authorities, more lapses in judicial data entry and management emerge from the analysis.

It appears that the Special Courts are recording the fact of compromise in their judgments and disposing the case as such after the quashing of the FIR by the High Court. The disposal in these cases should have been recorded as “quashed” instead of “compromised”.

In a case from Delhi, registered under section 12 of the POCSO Act and sections 377, 323, 498A and 506 of the IPC, the court notes that there is a settlement deed between the parties. While no final order is available in this case, two orders of the Special Court suggest that the complainant and accused were granted divorce with mutual consent and the parties had gone to the High Court for quashing of the case.

The other case of “compromise” from Haryana is actually a case of acquittal, once again pointing to the lapses in the manner in which disposal is recorded in the CIS and the e-Courts portal. This case is registered under section 12 of the POCSO Act, sections 354A/D and 452 of the IPC, and section 3(1)(i) of the SC/ST (Prevention of Atrocities) Act. An order of the Sessions Court trying the case states, *“the complainant and other witnesses have today come present in the court and got recorded their statements with regard to compromise. The parties have been identified by their counsels. Report to this effect be sent to Hon’ble Punjab & Haryana High Court forthwith. Now the case is adjourned to 23.01.2019 for awaiting further order from Hon’ble Punjab & Haryana High Court.”* In its final order/judgment, the Sessions Court has taken note of the quashing of proceedings by the High Court and acquitted the accused.

The third case is of “conciliation” from Assam. In matters that are civil in nature, certain courts have the power to initiate and conclude a conciliation proceeding between the parties. However, in criminal offences like those under the POCSO Act, how can a Special Court conduct a conciliation proceeding and show disposal by way of conciliation? Alarmed by the finding, a search for the daily orders and judgment in this case was carried out only to find that although the case has ended in conviction under section 4 of the POCSO Act and a sentence of 7 years along with a victim compensation order, it is recorded as “conciliation” in the e-Courts portal.

- ***The study has found cases disposed as “Allowed”, “Plaintiff suit is dismissed, counter claims decreed”, “Decreed with costs”.***

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

- ***In 2 cases from Haryana and 12 from Delhi, the courts have released the offender on probation or ordered acquittal under the POCSO Act but conviction under IPC.***

Considering the mitigating circumstances and the nature of offence, courts have preferred to release the offender on probation over imprisonment. These are largely cases of sexual harassment under section 12 of the POCSO Act. In such cases, it is also found that the courts have acquitted the accused of charges under the POCSO Act while convicting under the IPC for offences such as wrongful restraint or causing hurt, as may be applicable on the basis of facts and circumstances of the case. The NCRB does not provide any data on disposal by way of a probation sentence.

- ***In 73 cases, the Special Courts have shown disposal as “quashed”.***

69 cases from Delhi and 4 from Haryana have been disposed as “quashed”. Given that the power to quash does not lie with the trial courts, further probe was carried out to get a better understanding of the situation.

Perusal of daily orders and judgments available in a sample of 20 cases out of the 69 from Delhi that are disposed as “quashed”, suggests that the FIR and related proceedings are quashed by the High Court. These are cases registered under sections 4, 8 and 12 of the POCSO Act. The Special Courts conducting POCSO trial in these cases have taken cognizance of the High Court’s order and accordingly disposed the cases. Similar trend is found in Haryana.

However, this too raises some concerns vis-à-vis the manner in which disposal is recorded in the e-Courts portal.

- (i) Even where the judgment says that the accused is acquitted or discharged, the nature of disposal reflected in e-Courts portal is “quashed”, thus providing an incorrect picture on the nature of disposal. This is bound to cause an anomaly in data computation and analysis on disposal of cases under the POCSO Act.

In a case under section 8 of the POCSO Act, the judgment of the Special Court reads as follows:

*“FP / Accused is present on Bail with Counsel... Since the Proceedings/ FIR has been Quashed by the Hon’ble High Court vide order Dt. 15.11.19, the accused is Acquitted. Bail Bonds Stands Cancelled. Surety Stands Discharged. File Be Consigned To RR.”*

In another case under section 8 of the POCSO Act, the judgment states,

*“In view of the order dated 12-02-2020 of Hon’ble High Court of Delhi passed by HML Sj Rajnish Bhatnagar in Crl. Misc. Main No.767/20, as the FIR of this case and the proceedings emanating therefrom have been quashed, the accused persons stand discharged. File be consigned to R/R”*

- (ii) One of the forms of disposal included in the category of “other disposal” in Chart 4.1 is “consigned”. Perusal of judgments in cases disposed as “quashed” shows that in most such cases the judge writes that the *“FIR is quashed by Honourable High Court and File be consigned to Record Room”*. Given the way data is uploaded or managed on the e-Courts portal, the possibility of the nature of disposal getting recorded as “consigned” in such cases instead of the actual outcome of the case cannot be ruled out.
- ***“Stayed”, “Consigned”, PO consigned”, “Consigned After Proceeding u/s 299 CrPC”, “Untraced”, “PO” and “Proclaimed Offender” are some other forms of disposal found in the study.***

For the purpose of analysis, “PO Consigned” and “Untraced” are reflected as distinct categories in Chart 4.1, while cases disposed of as “Consigned” or “Consigned after Proceeding u/s 299 CrPC” are clubbed under the category of “Other Disposal”. This is because there are fewer such cases and relevant daily orders, which could have helped in gaining some clarity, are not available on the e-Courts portal.

A file may be consigned to the record room when the accused is absconding and cannot be traced and there is no immediate prospect of arresting the accused. Going by section 299 CrPC, “PO consigned” would imply that the accused is declared a “Proclaimed Offender”, i.e. PO under section 82 CrPC because he was absconding and the file is consigned to the record room because he remains absconding. One may wonder then how is use of the term “Untraced” as a form of disposal any different from “Consigned After Proceeding u/s 299 CrPC”, or for that matter, how is disposal as “Proclaimed Offender” different from disposal as “PO consigned” or just “consigned”. Some courts have used the term “stayed” in their disposal orders for such cases where proceedings cannot be concluded in the absence of the accused. Although it is difficult to infer if these terms have been used interchangeably with the same interpretation and import by all courts, there is a need to ensure a common understanding and usage of such terms by trial courts across the country.

Table 4.2 shows that the courts in Assam have disposed some cases as “stayed”, while those in Delhi have used both “PO Consigned” and “Untraced” as a form of disposal and Haryana courts have used “Consigned After Proceeding u/s 299 Cr.P.C” or just “Consigned” for similar type of disposal under the POCSO Act.

Table 4.2 Use of Different terms for Disposal in Different States/UTs						
State/UT	Stayed	Proclaimed Offender or PO	PO Consigned	Consigned After Proceeding u/s 299 CrPC	Consigned	Untraced
Assam	10	0	0	0	0	0
Delhi	0	0	106	0	0	54
Haryana	0	5	0	15	3	0

To demystify this data and use of the different terms while recording disposal of cases, an attempt was made to locate daily orders and judgments in a few cases.

There are a total of 18 cases in Haryana disposed as “Consigned” (3 cases) and “Consigned after proceedings under section 299 of CrPC” (15 cases).

All the 3 cases disposed as “Consigned” are cases under section 12 of the POCSO Act. A perusal of the orders in these cases shows that -

- In one case, the accused had died. This should have been recorded as “abated” instead of “consigned”;
- In the second case, the matter is disposed on the same date as the date of registration of the case in the CIS. No order is available, but perusal of daily status given on the e-Courts portal suggests that the case is “consigned”; and,
- In the third case, the High Court has quashed the proceedings, but disposal on the e-Courts is recorded as “consigned” because the order of the Sessions Court ends on the note that *“all the consequent proceedings arising therefrom are hereby quashed. Therefore, file be consigned to the record room after due compliance.”*

Of the 15 cases where disposal is recorded as “Consigned after proceedings under section 299 of CrPC”, a sample of 3 cases was taken up for further probe. It is found that -

- the court orders in these cases record the fact of the accused absconding and/or being declared a proclaimed offender and state that the file be consigned to the record room with a red ink note that it shall not be destroyed and will be taken up as and when the accused is arrested or surrenders.

There are a total of 106 cases in Delhi where disposal is recorded on the e-Courts portal as “PO Consign” (42 cases) or “PO Consigned” (64 cases). Orders in many of these cases are not available and the daily status of cases on e-Courts portal in some cases is not descriptive, only stating PO or PO and consigned to record room. Efforts at digging out more information from the e-Courts portal and daily orders in a few cases are summed up as follows -

- In one case disposed on 25.01.2020, it seems the accused is apprehended subsequently and hence the case is revived on 19.01.2021.



- In another case, the accused is a proclaimed offender as per the last accessed daily status of the case and the nature of disposal is recorded as “PO Consign”.
- In one of the cases, the daily status on e-Courts portal says, “Accused not traceable”. The order of the Special Court says that the file be consigned to record room and proclaimed offender’s file be revived if the accused is traced.
- Perusal of order of the Special Court in yet another case suggests that the accused is declared a proclaimed offender.
- While the last order is not available in one case, perusal of the last few orders suggests that the process under section 82 CrPC to declare the accused a proclaimed offender has been duly executed.

No further analysis can be derived from the daily orders in cases recorded as “stayed”. Since 2017, the NCRB has been providing data for “Cases Stayed or Sent to Record Room” as shown in Table 4.1. However, no conclusion can be drawn on what all is included in this category as the word “or” between the terms “stayed” and “sent to record room” suggests the two terms do not form part of the same outcome and are two different options or possible outcomes.

## B. Nature of Disposal in the States/UT

This section analyses the nature of disposal in each of the three States/UT considered for the study, starting with key comparisons between Assam, Delhi and Haryana.

### I. Key Cross-State/UT Comparisons

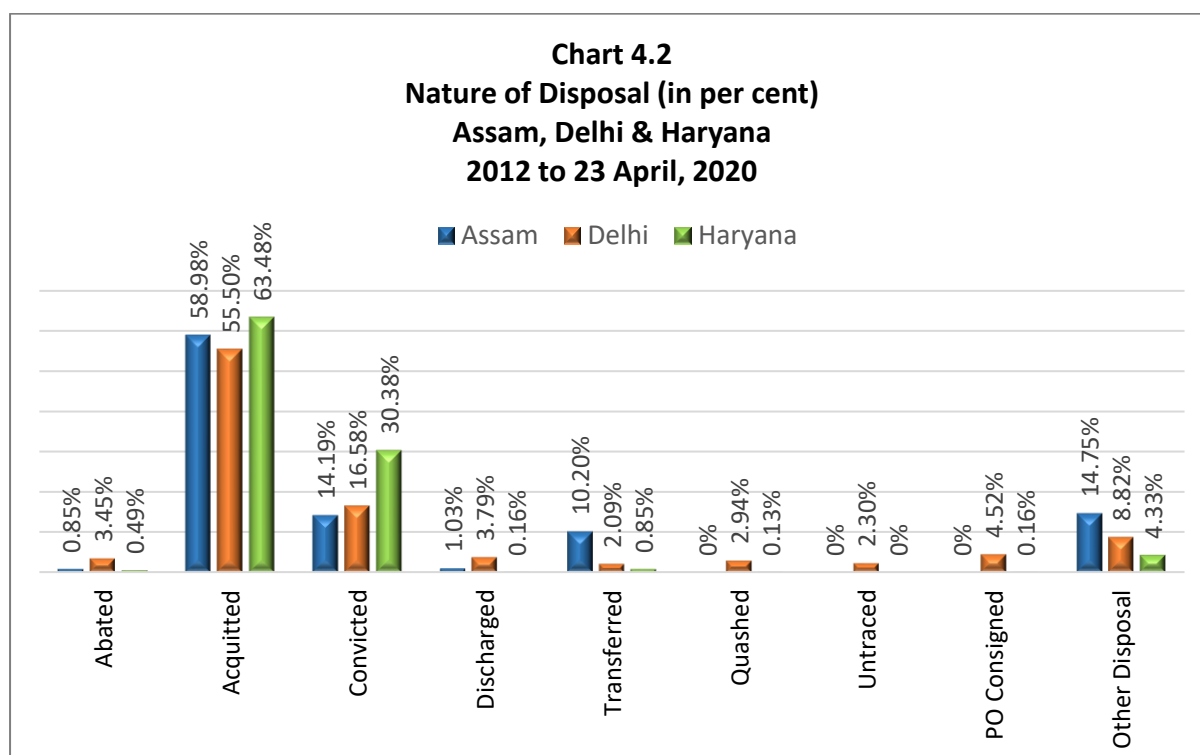


Chart 4.2 explains the nature of disposal by courts in Assam, Delhi and Haryana, allowing for cross-State/UT comparison on any given form of disposal. Key findings from such comparison are as follows.

- (i) Most cases have ended in acquittal in all the three States/UT that form part of this study. Courts in Haryana show a greater rate of acquittal at 63.48% compared to Delhi (55.5%) and Assam (58.98%).
- (ii) Rate of conviction on the other hand is lowest in Assam at 14.19%, followed by Delhi at 16.58% and Haryana at 30.38%.
- (iii) A significant 14.74% of the disposed cases in Assam fall in the category of “Other disposal” as against only 4.33% in Haryana and 8.82% in Delhi.
- (iv) 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.

## II. District-wise Data on Different Forms of Disposal in Each State/UT

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

### (i) Assam

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.

Some of the findings worth mentioning are:

- No case in Assam is disposed as quashed, untraced or PO consigned.
- Dima Hasao is the district with lowest number of disposed cases but 100% acquittal. There are only 2 disposed cases in the district, both ending in acquittal.
- Barpeta has the highest number of 268 disposed cases with a significant 74.25% of these ending in acquittal and a rate of conviction of 9.70%.
- Goalpara stands out as the only district with zero conviction rate in the seven and a half years for which data is analysed in this study.
- The district with the highest rate of conviction of 46.03% is Karbi Anglong. Dibrugarh is the next to follow with 27.7% conviction rate.
- As regards disposal by way of transfer, Nagaon has the highest rate of 43.24%, followed by Nalbari at 34.21%, Sivasagar at 26.14%.

<b>Table 4.2 A</b> <b>District-wise Nature of Disposal</b> <b>Assam</b> <b>(2012 to 23 April, 2012)</b>									
District	Abated	Acquitted	Convicted	Discharged	Transferred	Other Disposal	Acquittal (%)	Conviction (%)	Transfer (%)
	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G = (Col. B / Total of Col. A to F) x 100	Col. H = (Col. C / Total of Col. A to F) x 100	Col. I = (Col. E / Total of Col. A to F) x 100
Baksa	0	15	1	0	0	28	34.09	2.27	0
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
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
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	0
Goalpara	0	14	0	0	3	4	66.67	0	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
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
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
<b>Total</b>	<b>23</b>	<b>1596</b>	<b>384</b>	<b>28</b>	<b>276</b>	<b>399</b>	<b>58.98</b>	<b>14.19</b>	<b>10.20</b>

(ii) **Delhi**

In Table 4.2B, percentage is calculated for “Acquittal”, “Conviction” and “PO Consigned”, which together account for the maximum number of disposals. Keeping aside the category of “other disposal”, “PO Consigned” makes up for the third highest number of disposed cases after acquittal and conviction.

<b>Table 4.2 B</b> <b>District-wise Nature of Disposal</b> <b>Delhi</b> <b>(2012 to 07 March, 2020)</b>												
District	Abated	Acquitted	Convicted	Discharged	Transferred	Quashed	Untraced	PO Consigned	Other Disposal	Acquittal (%)	Conviction (%)	PO Consigned (%)
	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H	Col. I	Col. J = (Col. B / Total of Col. A to I) x 100	Col. K = (Col. C / Total of Col. A to I) x 100	Col. L = (Col. H / Total of Col. A to I) x 100
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
<b>Total</b>	<b>81</b>	<b>1302</b>	<b>389</b>	<b>89</b>	<b>49</b>	<b>69</b>	<b>54</b>	<b>106</b>	<b>207</b>	<b>55.50</b>	<b>16.58</b>	<b>4.52</b>

Key findings for cases from Delhi are as follows:

- The highest rate of acquittal is 64.31% in the North district, followed by the West district where 63.29% of the disposed cases have ended in acquittal. The number of disposed cases however, is far lower in the North district (269 cases) compared to the West district (662 cases).
- The highest rate of conviction is 33.06% in the Central district, with 119 convictions out of 360 cases disposed between 2012 and 07 March, 2020. The total number of cases registered in the CIS for Central district is 3287.

- The lowest rate of conviction on the other hand is 3.64% in New Delhi district, which has only 55 cases disposed out of a total of 1263 cases registered in the district over the period of seven and a half years considered for the study.
- Shahdara district has the highest percentage of 9.09% cases disposed as “PO Consigned” out of a total disposal of 77 cases, followed by the North West district with 8.57% disposed as “PO Consigned”, although the number of disposed cases in the North West district is much higher at 280 cases.
- The highest percentage of cases disposed as “Untraced” is 7.27% in New Delhi district, with 4 out of 55 cases disposed in this category.
- Districts accounting for more than 10% of disposal by way of “PO Consigned” and “Untraced” taken together are North West district (10.71%) followed by North district (10.41%) and Shahdara district (10.39%).

(iii) **Haryana**

Table 4.2C reflects the nature of disposal in Haryana. Percentage calculation is shown only for “Acquittal” and “Conviction” as most disposals in Haryana are in the form of acquittal, followed by conviction.

Key findings on nature of disposal in cases from Haryana are as follows:

- Jhajjar has the highest acquittal rate of 78.54%, followed by Fatehabad at 77.25%, Sirsa at 70.92% and Ambala at 70.45%.
- Sonapat accounts for the third highest share of crimes under the POCSO Act in the State and has the highest rate of conviction at 45.9%. The second highest rate of conviction is found in Panchkula at 44.83%, whereas the number of cases under the POCSO Act in Panchkula is 109 as against 351 in Sonapat.
- Faridabad and Gurgaon have been in the news for recording the highest number of cases in the state under the POCSO Act. Between the two, Faridabad has a better rate of disposal and conviction. Faridabad has the highest share of 765 cases registered under the POCSO Act in the State between 2012 and 21 March, 2020, of which 500 stand disposed, and the rate of conviction in the district is 35.2%. Gurugram has the second highest share of 492 registered cases, of which 270 cases are disposed and the conviction rate is 24.81%.
- In many of the cases that figure in the category of “other disposal”, where the courts have mentioned that the cases are disposed with directions, the nature of directions cannot be ascertained from the information available on the e-Courts portal.

<b>Table 4.2 C</b> <b>District-wise Nature of Disposal</b> <b>Haryana</b> <b>(2012 to 21 March, 2020)</b>										
District	Abated	Acquitted	Convicted	Discharged	Transferred	Quashed	PO Consigned	Other Disposal	Acquittal (%)	Conviction (%)
	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H	Col. I = (Col. B/ Total of Col. A to H) x 100	Col. J = (Col. C/ Total of Col. A to H) x 100
Ambala	2	124	46	0	1	0	0	3	70.45	26.14
Bhiwani	0	3	2	0	0	0	0	0	60.00	40.00
Faridabad	0	293	176	1	3	4	3	20	58.60	35.20
Fatehabad	0	146	32	1	0	0	0	10	77.25	16.93
Gurugram	0	176	67	1	6	0	0	20	65.19	24.81
Hisar	2	122	59	0	4	0	1	7	62.56	30.26
Jhajjar	0	183	43	0	2	0	1	4	78.54	18.45
Jind	0	80	42	0	0	0	0	8	61.54	32.31
Kaithal	0	88	34	0	0	0	0	5	69.29	26.77
Kurukshetra	2	66	38	0	0	0	0	4	60.00	34.55
Palwal	1	40	23	0	2	0	0	8	54.05	31.08
Panchkula	1	24	26	1	0	0	0	6	41.38	44.83
Panipat	0	82	46	1	3	0	0	2	61.19	34.33
Rewari	3	62	48	0	1	0	0	7	51.24	39.67
Rohtak	0	117	53	0	1	0	0	3	67.24	30.46
Sirsa	2	139	42	0	0	0	0	13	70.92	21.43
Sonepat	0	131	123	0	3	0	0	11	48.88	45.90
Yamunanagar	2	57	25	0	0	0	0	1	67.06	29.41
<b>Total</b>	<b>15</b>	<b>1933</b>	<b>925</b>	<b>5</b>	<b>26</b>	<b>4</b>	<b>5</b>	<b>132</b>	<b>63.48</b>	<b>30.38</b>

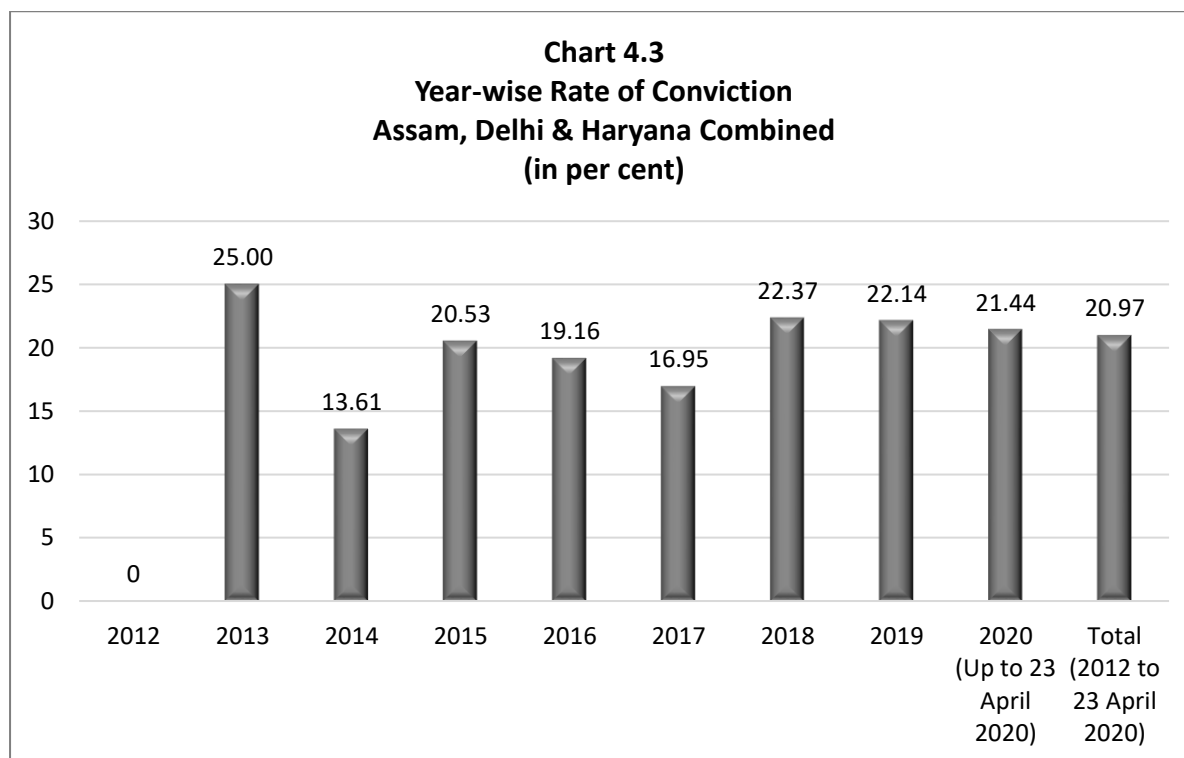
## C. Analysis w.r.t. Conviction

### I. Overall Conviction Rate and Data Comparison

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 has worsened between the years 2015 and 2017. Despite more victim centric measures and changes in the criminal law and the POCSO Act introducing stricter sentences like death penalty, the rate of conviction has fallen from 22.4% in 2018 to 22.1% in 2019. This calls for

further exploration as research and experience indicate that courts tend to acquit when sentences become harsher and there is an increase in victims and witnesses turning hostile in cases where the accused and the victim share close proximity.

<b>Table 4.3</b>		
<b>Rate of Conviction as per the NCRB and under the Present Study</b>		
<b>Protection of Children from Sexual Offences Act - Conviction Rate</b>	<b>NCRB All India</b>	<b>Present Study Assam, Delhi &amp; Haryana Combined</b>
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
<b>Source:</b> 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.		



Data collected from the e-Courts portal for the present study suggests that out of 8097 cases disposed in the three States/UT between 2012 and 23 April, 2020, 1698 or 20.97% have ended

in conviction. No case is 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 is disposed in Assam and Haryana, while in Delhi only 4 cases are disposed out of the 333 that were up for trial that year, and only one of these has ended in conviction.

## II. State-wise Rate of Conviction

The NCRB does not provide state level data on disposal of cases by police and courts. Data with respect to rate of conviction varies amongst the different sources of information. For example, several questions are raised in the Parliament of India on the subject, presenting state-wise data on pendency and disposal of cases under the POCSO Act (Table 4.4). This varies from similar data presented in other reports and news as well as data computed under this study (Chart 4.4), once again pointing to the need for investing in a competent data management system and establishing linkages between the police and the court records.

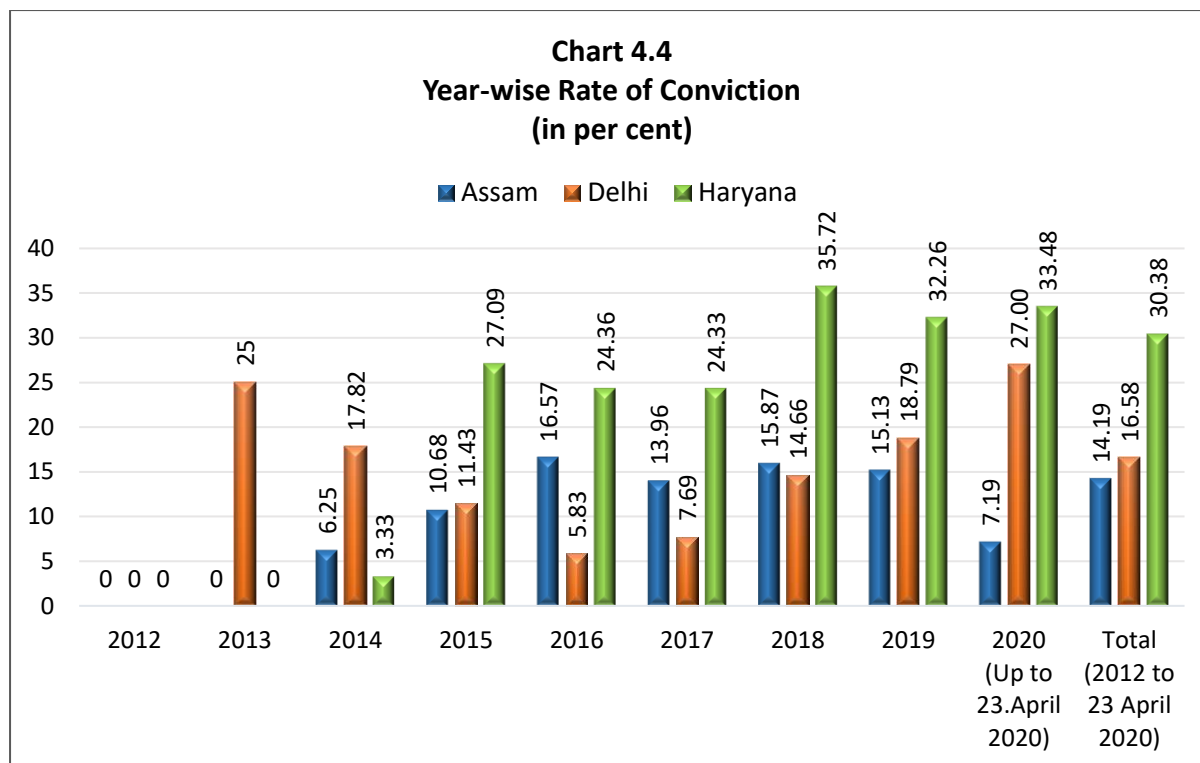
<b>Table 4.4</b> <b>State-wise Rate of Conviction</b> <b>(Retrieved from Response to Parliament Questions)</b>			
<b>POCSO Act - Conviction Rate</b>	<b>Assam</b>	<b>Delhi</b>	<b>Haryana</b>
<b>2014</b>	40.0	35.3	19.3
<b>2015</b>	37.5	42.8	30.4
<b>2016</b>	35.2	41.9	20.8
<b>2017</b>	31.1	46.2	31.3
<b>2018</b>	21.6	59.1	35.7
<b>Sources:</b>  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 Delhi State Legal Services Authority (DSLISA) in a Public Interest Litigation (PIL) being heard by the Delhi High Court in 2016 stated 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.”<sup>15</sup> A study by the Centre for Child and the

<sup>15</sup> Press Trust of India. *Conviction rate in POCSO cases alarmingly low: DSLISA to HC*. October 24, 2016. Business Standard. Available at: [https://www.business-standard.com/article/pti-stories/conviction-rate-in-pocso-cases-alarmingly-low-dslisa-to-hc-116102400909\\_1.html](https://www.business-standard.com/article/pti-stories/conviction-rate-in-pocso-cases-alarmingly-low-dslisa-to-hc-116102400909_1.html)



Law, NLSIU Bangalore of 667 judgments from Delhi passed between 1 January 2013 and 30 September 2015 showed a conviction rate of 16.8%.<sup>16</sup> A similar study of 172 judgments from Assam in the same period, reported a conviction rate of 20.93% in 2015 and 25.60% between January-August 2016.<sup>17</sup>



### III. District-wise Rate of Conviction in the three States/UT

District-wise break-up of 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 can be seen in the year 2014 in Cachar and Sonapat districts respectively, picking up at a 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 is from the Central district in 2013. In cases from the East, North East, Shahdara, South and South East districts of Delhi, the first conviction is recorded in 2019.

<sup>16</sup> 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*. p. 53. 29 January, 2016. Available at: <https://ccl.nls.ac.in/wp-content/uploads/2017/01/specialcourtPOSCOAct2012.pdf>

<sup>17</sup> 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*. p. 44. 15 February, 2017. Available at: <https://ccl.nls.ac.in/wp-content/uploads/2017/01/studyspecialcourtassamPOSCOAct2012.pdf>

**Table 4.5**  
**Assam - District-wise Rate of Conviction (2012 to 23.04.2020)**

District	2012	2013	2014	2015	2016	2017	2018	2019	2020 (Up to 23.04.2020)	Total (14.11.2012 to 23.04.2020)
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 07.03.2020)										
District	2012	2013	2014	2015	2016	2017	2018	2019	2020 (Up to 07.03.2020)	Total (14.11.2012 to 07.03.2020)
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 21.03.2020)										
District	2012	2013	2014	2015	2016	2017	2018	2019	2020 (Up to 21.03.2020)	Total (14.11.2012 to 21.03.2020)
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

#### IV. Trends in Conviction by Type of Offence

<b>Table 4.8</b> <b>Percentage Share of Offences in Total Convictions &amp; Offence-wise Rate of Conviction</b> <b>(Overall – Assam, Delhi &amp; Haryana Combined)</b> <b>(14.11.2012 to 23.04.2020)</b>				
<b>Type of Offence</b>	<b>No. of Cases Disposed</b>	<b>No. of Cases that ended in Conviction</b>	<b>Offence-wise Conviction Rate (%)</b>	<b>Share in Total Convictions (%)</b>
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
<b>Total (All Offences)</b>	<b>8097</b>	<b>1698</b>	<b>20.97</b>	<b>100.00</b>

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% of all convictions, followed by penetrative sexual assault at 26.97% and sexual assault at 16.49%. All other offences have a share of less than 10% in total convictions.
- The average rate of conviction in 8097 cases disposed under the POCSO Act in the years 2012 up to 23 April, 2020 comes to 20.97%.
- There is 100% conviction in the one and only disposed case of false reporting as well as the only disposed case of aggravated penetrative sexual assault combined with storage of child pornography for commercial purposes.
- Among other offences, rate of conviction is higher than the average in cases of aggravated penetrative sexual assault, cases of attempt to commit offences like sexual harassment, aggravated sexual assault, penetrative sexual assault and aggravated penetrative sexual assault, and cases involving use of children for pornographic purposes as a stand-alone offence or in combination with penetrative sexual assault.

Table 4.9 presents the rate of conviction for each category of offences and percentage share of each category of offences in total convictions.

<b>Table 4.9</b> <b>Conviction by Category of Offences</b> <b>(Overall – Assam, Delhi &amp; Haryana Combined)</b> <b>(14.11.2012 to 23.04.2020)</b>				
<b>Category of Offences</b>	<b>No. of Cases Disposed</b>	<b>No. of Cases that ended in Conviction</b>	<b>Rate of Conviction</b>	<b>Percentage Share of each Category of Offences in Total Convictions</b>
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
<b>Total (All Offences)</b>	<b>8097</b>	<b>1698</b>	<b>20.97</b>	<b>100.00</b>

- Category I has the highest share in all convictions since it includes all the major offences under the POCSO Act and has the highest number of cases registered and disposed. The rate of conviction however, is highest for Category III, though it makes up for only 0.06% of all convictions.

Tables 4.9A, 4.9B and 4.9C provide offence-wise data on convictions under Category I, Category II and Category III respectively. The tables present offence-wise percentage of disposed cases that ended in a conviction, which is called the rate of conviction. They also present which offence in each category has what share in the total convictions under that category.

- In total convictions under Category I, aggravated penetrative sexual assault (offences under section 6 of the POCSO Act) has the highest share 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.
- Among total Category II convictions, attempt to commit aggravated penetrative sexual assault (section 6 read with section 18 of POCSO Act) has the highest share of 26.32% and a comparatively high rate of conviction too at 27.03%.
- In Category III, there is no conviction in the 3 cases of failure to report that stand disposed, while false reporting shows 100% conviction, with the one and only disposed case ending in conviction.
- Rate of conviction for all 745 disposed cases where the offence is not known, comes to 19.46%.

<b>Table 4.9 A</b> <b>Rate of Conviction by Type of Offence in Category I</b> <b>(Overall – Assam, Delhi &amp; Haryana Combined)</b> <b>(14.11.2012 to 23.04.2020)</b>				
<b>Type of Offence</b>	<b>No. of Cases Disposed</b>	<b>No. of Cases that ended in Conviction</b>	<b>Rate of Conviction</b>	<b>Percentage Share of Type of Offence in Total Convictions under Category I</b>
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
<b>Total Category I Offences</b>	<b>7156</b>	<b>1514</b>	<b>21.00</b>	<b>100.00</b>

<b>Table 4.9 B</b> <b>Rate of Conviction by Type of Offence in Category II</b> <b>(Overall – Assam, Delhi &amp; Haryana Combined)</b> <b>(14.11.2012 to 23.04.2020)</b>				
<b>Type of Offence</b>	<b>No. of Cases Disposed</b>	<b>No. of Cases that ended in Conviction</b>	<b>Rate of Conviction</b>	<b>Percentage Share of Type of Offence in Total Convictions under Category II</b>
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
<b>Total Category II Offences</b>	<b>192</b>	<b>38</b>	<b>19.79</b>	<b>100.00</b>

<b>Table 4.9 C</b> <b>Rate of Conviction by Type of Offence in Category III</b> <b>(Overall – Assam, Delhi &amp; Haryana Combined)</b> <b>(14.11.2012 to 23.04.2020)</b>			
<b>Type of Offence</b>	<b>No. of Cases Disposed</b>	<b>No. of Cases that ended in Conviction</b>	<b>Rate of Conviction</b>
False reporting	1	1	100.00
Failure to report	3	0	0.00
<b>Total Category III Offences</b>	<b>4</b>	<b>1</b>	<b>25.00</b>

State-wise assessment on similar lines is presented through Tables 4.10A and 4.10B for Assam, Tables 4.11A, 4.11B and 4.11C for Delhi, and Tables 4.12A, 4.12B and 4.12C for Haryana.

(i) **Assam**

<b>4.10 A</b> <b>Rate of Conviction by Type of Offence in Category I - Assam</b> <b>(2012 to 23.04.2020)</b>				
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 Convictions under Category I
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
<b>Total Category I Offences</b>	<b>2525</b>	<b>362</b>	<b>14.00</b>	<b>100.00</b>

<b>Table 4.10 B</b> <b>Rate of Conviction by Type of Offence in Category II - Assam</b> <b>(2012 to 23.04.2020)</b>				
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 Convictions under Category II
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
<b>Total Category II Offences</b>	<b>32</b>	<b>6</b>	<b>18.75</b>	<b>100.00</b>

Key findings:

- 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 the lowest when compared to other Category I offences where conviction has taken place.

- In Category II, attempt to commit penetrative sexual assault makes up for 50% of all convictions and has the highest rate of conviction among other offences in this category.
- Of the 4 disposed cases in Category III, none have been disposed. Three of these are cases of false reporting and one of disclosure of identity.
- Rate of conviction for 149 disposed cases in the State where the offence is not known comes to 10.74%.

## (ii) **Delhi**

### Key Findings:

- 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.
- Conviction for abetting use of children for pornographic purposes accounts for the highest share in all convictions under Category II and has the second highest rate of conviction in this category.
- Among the Category II offences that ended in conviction, abetment for sexual harassment has 100% conviction rate as there is only one such disposed case that ended in a conviction. Attempt to commit aggravated penetrative sexual assault on the other hand has the lowest rate of conviction.
- The share of all cases of attempt to commit an offence in total convictions under Category II is the same. Among all attempt cases, the rate of conviction is 100% 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.
- There are 3 disposed cases of failure to report in Category III. None ended in a conviction.
- Of the 540 disposed cases where the offence is not known, 109 ended in a conviction, bringing the rate of conviction to 20.19%.

<b>Table 4.11 A</b> <b>Rate of Conviction by Type of Offence in Category I - Delhi</b> <b>(2012 to 07.03.2020)</b>				
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 Convictions under Category I
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
<b>Total Category I Offences</b>	<b>1755</b>	<b>273</b>	<b>15.56</b>	<b>100.00</b>

<b>Table 4.11 B</b> <b>Rate of Conviction by Type of Offence in Category II - Delhi</b> <b>(2012 to 07.03.2020)</b>				
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 Convictions under Category II
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
<b>Total Category II Offences</b>	<b>48</b>	<b>7</b>	<b>14.58</b>	<b>100.00</b>

<b>Table 4.11 C</b> <b>Rate of Conviction by Type of Offence in Category III - Delhi</b> <b>(2012 to 07.03.2020)</b>			
Type of Offence	No. of Cases Disposed	No. of Cases that ended in Conviction	Rate of Conviction
Failure to report	3	0	0.00
<b>Total Category III Offences</b>	<b>3</b>	<b>0</b>	<b>0.00</b>

## Haryana

- The State of Haryana contributes significantly to the overall rate of conviction in cases analysed for this study and to higher convictions under certain types of offences.
- Aggravated penetrative sexual assault has the highest share in total Category I convictions. The rate of conviction for aggravated penetrative sexual assault is also the highest among all cases disposed under Category 1. Penetrative sexual assault has the 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 64% of all Category II convictions. The rate of conviction for these offences is greater than the State average of 22.32% for Category II convictions.
- While the share of aggravated sexual assault in total Category I convictions and share of attempt to commit aggravated sexual assault in total Category II convictions is as low as 8%, both have a higher-than-average rate of conviction for the respective category of offences.
- There is only one disposed case of false reporting in Category III that ended in a conviction.
- Rate of conviction for 56 disposed cases where the offence is not known is 35.71%.

<b>Table 4.12 A</b> <b>Rate of Conviction by Type of Offence in Category I - Haryana</b> <b>(2012 to 21.03.2020)</b>				
<b>Type of Offence</b>	<b>No. of Cases Disposed</b>	<b>No. of Cases that ended in Conviction</b>	<b>Rate of Conviction</b>	<b>Percentage Share of Type of Offence in Total Convictions under Category I</b>
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
<b>Total Category I Offences</b>	<b>2876</b>	<b>879</b>	<b>30.56</b>	<b>100.00</b>

<b>Table 4.12 B</b> <b>Rate of Conviction by Type of Offence in Category II - Haryana</b> <b>(2012 to 21.03.2020)</b>				
<b>Type of Offence</b>	<b>No. of Cases Disposed</b>	<b>No. of Cases that ended in Conviction</b>	<b>Rate of Conviction</b>	<b>Percentage Share of Type of Offence in Total Convictions under Category II</b>
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
<b>Total Category II Offences</b>	<b>112</b>	<b>25</b>	<b>22.32</b>	<b>100.00</b>

<b>Table 4.12 C</b> <b>Rate of Conviction by Type of Offence in Category III - Haryana</b> <b>(2012 to 21.03.2020)</b>			
<b>Type of Offence</b>	<b>No. of Cases Disposed</b>	<b>No. of Cases that ended in Conviction</b>	<b>Rate of Conviction</b>
False reporting	1	1	100.00
<b>Total Category III Offences</b>	<b>1</b>	<b>1</b>	<b>100.00</b>

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

## CONCLUSION AND RECOMMENDATIONS

Data driven law and policy reform is the need of the hour. Yet, improvement in quality of data and data management is slow to come by. Neither the NCRB data nor data presented in the Parliament or for that matter data generated from the e-Courts portal is standardised, comprehensive, accurate and reliable.

Just as it is difficult to know the exact incidence of different offences under the POCSO Act because of the manner in which cases are registered by the police and entered in their case

information system, it is also difficult to say with accuracy as to how many cases are actually disposed before trial and after trial and in what manner.

Frequent changes in laws and equally frequent changes in the methodology for data computation has come to be a detriment to systematic research and data analysis.

As regards disposal of cases under the POCSO Act, several forms of disposal visible on e-Courts portal or reflected in the orders and judgments such as “Conciliation”, “Plaintiff suit is dismissed, counter claims decreed”, “Decreed with costs”, do not fit into the scheme of the law and the criminal jurisdiction of courts making such orders. Even compounding or compromise in grave and heinous sexual offences, especially coming from the trial courts as a form of disposal, is beyond comprehension.

It is found that many cases where disposal is shown as “File consigned to the record room” are cases that have ended in acquittal or conviction. To what extent they impact data on conviction and acquittal cannot be gauged due to lack of access to the daily orders and judgments in all POCSO cases. As a result, the exact number of acquittals and convictions cannot be known or assessed if such anomalies persist.

In a significant number of cases computed under the category of “Other Disposal” for the purpose of this study, the type of disposal is not known. Similarly, in a number of cases the nature of offence cannot be ascertained from the information uploaded on e-Courts portal. Such challenges also affect accuracy and reliability of data.

Drawing any conclusion about a court or a district or a state with respect to the nature of disposal in cases of sexual violence against women and children, particularly the 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 that are emerging, which is not possible if data entry practices/processes are not standardised.

Finally, to reiterate, stringent laws with harsher sentences do not necessarily lead to higher conviction. If the rate of conviction is to improve, the goal has to be certainty of conviction and not harsher sentences. This requires a change in the approach to laws and law-making for protection of women and children.

In other words, while efficient use of technology to enhance quality of judicial data and access to judicial data is one area requiring attention, the approach to justice for children and policies on sentencing are other critical areas of concern.

The key recommendations for consideration by appropriate authorities and agencies that emerge from this chapter and are in continuity with those in the previous chapters are as follows:

*1. Minimizing scope for data inconsistencies through effective data entry practices, interlinkages between the police and court data and use of technology*

*(i) Introduction of a predetermined drop-down menu for data entry on the nature or type of disposal of cases - This can help in reducing inconsistencies in data entry practices, standardise the data on key aspects, enhance quality of data and build a robust base for conducting empirical legal research.*

*(ii) Need to integrate data managed by the police with judicial data managed by the e-Courts - some uniformity needs to be ensured in data variables and indicators used by police and the judicial system. Necessary interlinkages can go a long way in not just providing accurate and improved data but also in dispensation of justice.*

*(iii) Investing in use of technology for efficient data management practices - This can help correct the glaring anomalies in data.*

*2. Training and Capacity Building of Judges and Court Staff*

*To ensure that different terms used for the different types of disposition are understood and applied uniformly, investing in both standardisation of terminology and training of judges as well as the court staff is critical.*

*(i) Every judge should undergo at least one training programme before they assume office as a Judge of a Special Court under the POCSO Act and a refresher course at least once every year, which must necessarily include specific sessions on data entry and management.*

*(ii) Findings from this study make a strong case for regular and periodic training of the staff of Special Courts too in order to ensure standardisation and uniform practices with respect to data entry/storage of necessary information and case records in the case information system and the e-Courts portal. It is the court staff that engages with data more than the Judge.*

*3. Action on the judicial side*

*Judicial intervention may be required to get clarity on how cases under the POCSO Act are compounded when the law does not provide for it.*

#### 4. Areas for further research

- (i) A cross-country systematic assessment of the type of offences being compounded or compromised needs to be undertaken.*
- (ii) A similar assessment with respect to transfer of cases will also add to existing knowledge regarding trends in disposal and reasons for transfer. However, this is possible only when the quality of data and information related to case transfers improves.*
- (iii) Further investigation is required into the nature of disposal and nature of offence, correlating it with the age of the victim, proximity between the victim and the accused as well as the time taken for disposal. Without orders and judgments being uploaded in all cases under the POCSO Act, it is difficult to carry out any such research.*

#### 5. Data Required from the NCRB

- (i) It is high time the NCRB provides state and district level data with respect to police and court disposal of all crimes against children with clear indicators for disposal of cases without trial and disposal through trial.*

## CHAPTER V

### CASE AGE & TIME TAKEN FOR DISPOSAL

The focus of this chapter is to assess the time taken for completion of trials and duration of pendency, also termed as case age. At the same time an attempt is made to explore if there is any relationship between the time taken for disposal and nature of disposal as well as the nature of offence.

As the age old saying goes, “Justice Delayed is Justice Denied!” The need to expedite trial in order to reduce a victim’s trauma and restore their faith in the justice system led to the setting of time frames in sections 35(1) and 35(2) of the POCSO Act for recording victim’s testimony and completion of trial respectively. At the same time, through section 40 of the Act, the law ensures that victims are adequately represented by a lawyer of their choice or receive free legal assistance. Any violation of provisions of the law that affect victims’ rights can thus find representation or a voice in the court.

#### Protection of Children from Sexual Offences (POCSO) Act

##### Section 35 (1)

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

##### Section 35 (2)

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

##### Section 40

*“Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:*

*Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.”*

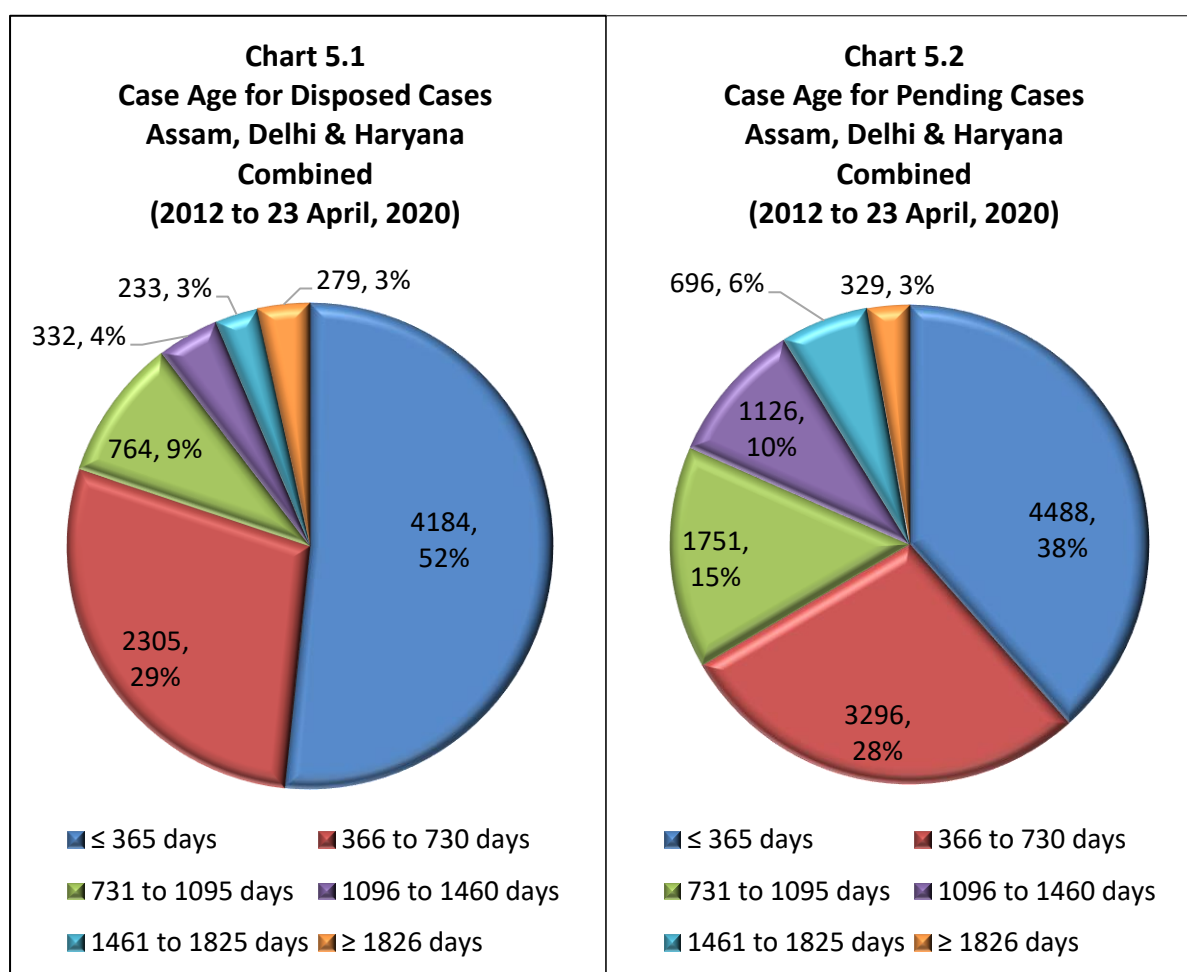
An analysis of implementation of section 35 (1) of the POCSO Act has not been possible in this study because the information required is not available on the e-Courts portal. While the “statement of the accused” finds space on the portal because it is recognised as a distinct stage in a criminal justice proceeding, the same is not the case with the testimony of victims, which is subsumed under the category of “Prosecution Evidence”. As a result, despite inclusion of positive provisions like section 35 (1) and section 40 in the POCSO Act, victims’ rights are yet to become a measurable indicator and remain elusive. Absence of all daily orders passed by the courts in cases under the POCSO Act further makes it difficult to understand how and when the testimonies of victims are recorded. Ironically, even as there



has been a public outcry around delay in trials, timely recording of testimony of victims has not received adequate attention.

Analysis of implementation of section 35(2) also has limitations. The period prescribed in law for completion of trials is one year from the date of cognizance of a case by the court. However, date of cognizance is not available on e-Courts portal and cannot be ascertained from the few uploaded daily orders or judgments. Hence, for the purpose of this study, the age of a case or time taken for disposal is calculated from the date on which cases are registered in the CIS instead of date of cognizance by court, as stipulated in law. Besides, no information is available on how long it takes for the court to take cognizance of a case once it is registered in the CIS. Therefore, instead of placing emphasis on the stipulated period of one year for completion of trial from the date of cognizance, an assessment is made of the number or percentage of cases that have crossed two years since registration in the CIS.

## 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. Case age is calculated from the date of registration of cases to the date when the last set of data was mined for Assam (23 April, 2020), Delhi (07 March, 2020) and

Haryana (21 March, 2020). Since an overall analysis is made on the time taken for disposal in cases that have been disposed and the duration of pendency in cases that remain pending, percentage calculations are made against the number of disposed and pending cases respectively instead of the total number of cases registered.

Key Findings are as follows:

- Case age data for all pending and disposed cases in the period 2012 to 23 April, 2020 in the three States/UT considered for this study shows that 19.86% of disposed cases and 33.39% of pending cases are more than two years old. The average age for a disposed case is 1.3 years, while for pending cases it is 1.7 years.
- The average age for disposed cases from Assam is 1.2 years and for pending cases it is 1.4 years. The average age for both disposed and pending cases from Delhi is 2.1 years. Delhi also has the highest number of cases going to trial. In Haryana, the average age is 0.9 years for disposed cases and 0.8 years for pending cases.
- The oldest disposed case is 2482 days or 6.8 years old, from Delhi, and the oldest pending case is 2679 days or 7.3 years old, also from Delhi.
- Table 5.1 shows the maximum case age of disposed and pending cases in Assam, Delhi and Haryana between 2012 and the date on which the last set of data was mined for each of the three States/UT.

Table 5.1 Maximum Case Age			
Maximum Case Age	Assam (as on 23 April, 2020)	Delhi (as on 07 March, 2020)	Haryana (as on 21 March, 2020)
Disposed case	2119 days or 5.8 years	2482 days or 6.8 years	1461 days or 4 years
Pending case	2430 days or 6.7 years	2679 days or 7.3 years	1688 days or 4.6 years

- Of all pending cases in the respective States/UT, 22.76% cases in Assam are found pending for more than two years (as on 23 April, 2020). The corresponding figure for Delhi is 44.29% (as on 07 March, 2020) and for Haryana it is only 5.80% (as on 21 March, 2020). Pending cases with an age of two years or less are 77.24% in Assam, 55.71% in Delhi and 94.20% in Haryana.

## TRACKING DISPOSAL

### A. Time Taken for Disposal

This section analyses the time taken for disposal with a view to identify areas requiring attention and further research.

## I. Overall Analysis

Time taken for disposal uses simple calculation to assess how many trials could actually be completed within the time frame of one year from the date of cognizance stipulated in section 35(2) of the POCSO Act. Although the assessment is based on the time taken for disposal from the date of registration of a case in the CIS instead of date of cognizance by court up to the date of judgment, it does provide an idea about the extent to which the legal mandate can be achieved. Such an exercise can help set more realistic timelines, while working towards swift justice goals.

Key findings based on further analysis are as follows:

- Combined data for Assam, Delhi and Haryana shows that out of 19,783 cases registered in the CIS, 38.20% stand disposed within two years of registration and 8.13% are disposed within two to seven years, while 59.07% cases are pending disposal.
- More than half the disposed cases (4184 out of 8097) stand disposed within one year from the date of registration in the CIS and 4/5th or nearly 80.14% cases (6489 out of 8097) stand disposed within two years. Cases that have taken more than two years for disposal comprise 19.86% of the disposed cases (1608). In 764 or 9.68% of total disposed cases, time taken for disposal is 2 to 3 years. Another 332 or 4.10% of the disposed cases are disposed in 3 to 4 years, 233 or 2.88% are disposed in 4 to 5 years, and 279 or 3.45% are disposed in 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, 148 cases stand disposed the same day as the date of registration. There are 3 cases with negative case age - 2 of these are disposed five days before the date of registration and one is disposed two days before the date of registration. Details of these cases are provided in Table 5.2.
- Chapter IV has already highlighted anomalies in the manner in which nature of disposal is recorded. This chapter reveals further callousness in recording, maintaining and/or uploading case related information on the e-Courts portal. Disposal of a case even before it is registered in the CIS is incomprehensible. An attempt was therefore made to fetch more details in the 3 cases that appear as disposed prior to the date of registration. Of the 3 cases, judgment is available only for one case, which is a case of aggravated penetrative sexual assault disposed two days prior to the date of registration as per information retrieved from the e-Courts portal. The portal shows the date of judgment as 19.07.2014 and the date of registration as 21.07.2014, while the nature of disposal recorded on the portal is “stayed”. A perusal of the judgment on the other hand shows that the judgment is dated 28.03.2017, which states that the case is “disposed on contest”, implying that a proper trial was conducted. The case has actually ended in an “acquittal”.

<b>Table 5.2</b> <b>Cases Disposed the same day as the Date of Registration</b> <b>Nature of Disposal and Nature of Offence</b> <b>Assam, Delhi &amp; Haryana Combined</b>									
<b>Nature of Offence</b>	<b>PSA</b>	<b>APSA</b>	<b>SA</b>	<b>ASA</b>	<b>SH</b>	<b>CP</b>	<b>Abetment of SA</b>	<b>Offence Not Available</b>	<b>Total</b>
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
<b>Total</b>	<b>64</b>	<b>18</b>	<b>31</b>	<b>5</b>	<b>20</b>	<b>1</b>	<b>1</b>	<b>8</b>	<b>148</b>
<b>Cases Disposed 2 days before the Date of Registration</b> <b>Nature of Disposal and Nature of Offence</b>									
Acquitted	NA	1	NA	NA	NA	NA	NA	NA	1
<b>Cases Disposed 5 days before the Date of Registration</b> <b>Nature of Disposal and Nature of Offence</b>									
Transfer to Outside Complex	NA	NA	1	NA	1	NA	NA	NA	2
*Note: NA – Not Applicable									

Rate of disposal is inversely related to the number of cases registered in a year. The higher the number of cases registered in a year, the lower the rate of disposal in that year leading to cases spilling over into the following years as the burden of courts increases.

Chart 5.3 and Table 5.3 provide state-wise data for disposed cases only and number of cases disposed within a certain time frame.

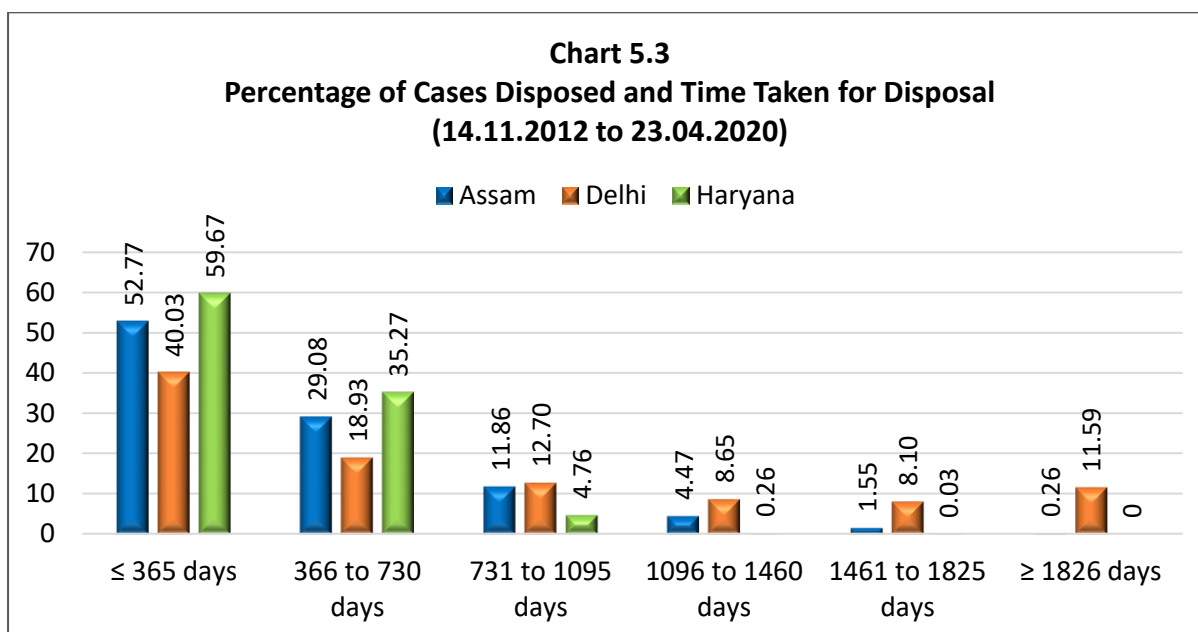


Table 5.3 Time Taken for Disposal							
Time Taken for Disposal		Assam		Delhi		Haryana	
		No. of Disposed cases	%	No. of Disposed cases	%	No. of Disposed cases	%
≤ 365 days	≤ 1 yr.	1428	52.77	939	40.03	1817	59.67
366 - 730 days	1 yr. - 2 yrs.	787	29.08	444	18.93	1074	35.27
731 - 1095 days	2 yrs. - 3 yrs.	321	11.86	298	12.70	145	4.76
1096 - 1460 days	3 yrs. - 4 yrs.	121	4.47	203	8.65	8	0.26
1461 - 1825 days	4 yrs. - 5 yrs.	42	1.55	190	8.10	1	0.03
≥ 1826 days	> 5 yrs.	7	0.26	272	11.59	0	0.00
Total		2706	100%	2346	100%	3045	100%

#### Key Findings:

- Of the three States/UT considered in this study, Haryana fares better on the rate of disposal as well as the time taken for disposal, followed by Assam and Delhi.
- Haryana has the highest number of 1817 cases disposed within one year from date of registration in the CIS, comprising 59.67% of total 3045 cases disposed in the State. The corresponding figure for Assam is 52.77% cases (1428 out of 2706) and for Delhi it is 40.03% cases (939 out of 2346).
- Maximum number of cases in Assam and Haryana are disposed within two years - 81.86% in Assam and 94.94% in Haryana.
- Delhi has a 60:40 ratio for disposal of cases within two years and disposal after two years. Maximum number of cases where disposal took more than five years are from Delhi.

## II. Single Year Case Disposal Status and Time Taken for Disposal

<b>Table 5.4</b> <b>Percentage of Cases Disposed &amp;</b> <b>Time Taken for Disposal</b> <b>Assam, Delhi &amp; Haryana Combined</b> <b>(2012 to 23 April, 2020)</b>											
Year of Registration	No. of Cases registered each year	Disposed cases	Same yr.	1-2 yrs.	2-3 yrs.	3-4 yrs.	4-5 yrs.	5-6 yrs.	6-7 yrs.	7-8 yrs.	Disposal (%)
			≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	1826 - 2190 days	2191 - 2555 days	2556 - 2920 days	
	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H	Col. I	Col. J	Col. K = (Col. B / Col. A * 100)
Col. C to J = (No. of Cases Disposed in a Particular Year / Total No. of Cases Registered in Same Year*100)											
<b>2012</b>	2	1	0.00	0.00	0.00	0.00	0.00	50.00	0.00	0.00	50.00
<b>2013</b>	351	310	15.67	11.11	4.56	6.27	10.83	14.53	25.36	0.00	88.32
<b>2014</b>	762	547	21.13	9.32	7.35	7.74	8.53	17.32	0.39	0.00	71.78
<b>2015</b>	1500	895	25.20	11.47	8.60	6.07	8.13	0.20	0.00	0.00	59.67
<b>2016</b>	2519	1488	23.86	18.98	9.81	6.11	0.32	0.00	0.00	0.00	59.07
<b>2017</b>	3486	1892	23.81	21.60	8.69	0.17	0.00	0.00	0.00	0.00	54.27
<b>2018</b>	4975	2023	25.09	15.32	0.26	0.00	0.00	0.00	0.00	0.00	40.66
<b>2019</b>	5210	910	16.89	0.58	0.00	0.00	0.00	0.00	0.00	0.00	17.47
<b>2020</b>	978	31	3.17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.17
<b>Total</b>	<b>19783</b>	<b>8097</b>	<b>21.15</b>	<b>11.65</b>	<b>3.86</b>	<b>1.68</b>	<b>1.18</b>	<b>0.95</b>	<b>0.47</b>	<b>0.00</b>	<b>40.93</b>
Note: Percentage for time taken in disposed cases is calculated from the total number of cases registered in order to get the rate at which cases are being disposed as well as time taken for disposal.											

### Key findings:

- The law requires a trial to be completed within one year of cognizance by court, 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.
- An assessment of all disposed cases and the time taken for their disposal as shown in Table 5.3 suggests that maximum number of such cases (80.14%), are disposed within a year or two of their registration in the CIS, with over 50% getting disposed within a year

of registration. The picture however, changes when single year data is analysed based on the number of cases registered in a year (including both disposed and pending cases). As is shown in Table 5.4, out of the cases registered in a particular year, only 15% to 25% are being disposed in the same year as the year of registration.

- A comparison of Table 5.3 and Table 5.4 suggests that the manner in which data is presented and read can make a lot of difference to law and policy making. Table 5.3 presents a good picture and has its own value in understanding how much time is taken in cases that are disposed. Table 5.4 that generates further evidence to show that the cases do not necessarily get disposed in the same year that they are registered or even the next year or the year after and the rate of disposal declines with every passing year. Such analysis can help review the feasibility of meeting the legal mandate of completing trials within one year from the date of cognizance of case by a court and should be used as the basis for setting realistic timeframes for completion of trials.
- Even as the time taken to dispose a case has reduced over the years, the annual rate of disposal has been on a decline as can be seen in Table 5.4. Many cases from each of the nine years under study remain pending. It is understandable to find cases registered in the years 2018 and 2019 to be pending as on 23 April, 2020, but cases from previous years that remain pending or have taken more than two years for disposal from the time of registration in the CIS call for an explanation.
- 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 five years.
- The overall combined rate of disposal for the three States/UT is the best for the year 2013 as 88.32% of cases registered in the year 2013 have been disposed by 23 April, 2020. However, only 26.78% of all registered cases in 2013 are disposed within two years from the date of registration in the CIS, 21.66% are disposed within two to five years and 39.89% have taken five to seven years. A significant 25.36% are disposed after a long wait of more than six years, while 11.68% cases are still pending, as on 23 April, 2020.
- Similarly, almost 72% cases registered in the year 2014 stand disposed as on 23 April, 2020, but 17.71% are disposed after five years and 28.22% remaining pending.
- Maximum disposal of cases registered in the years 2015 to 2018 is within three years of their registration in the CIS.

A state-wise assessment of the average rate of disposal as well as time taken for disposal of cases registered in a given year is presented in Tables 5.5, 5.6 and 5.7. The percentages in columns C to J are calculated from the number of cases registered in a given year instead of the number of cases disposed. This helps provide insights on how many of the registered cases are disposed in what time.

<b>Table 5.5</b> <b>Percentage of Cases Disposed &amp;</b> <b>Time Taken for Disposal</b> <b>Assam</b> <b>(2012 to 23 April, 2020)</b>											
Year of Registration	No. of Cases registered each year	Disposed cases	Same yr.	1-2 yrs.	2-3 yrs.	3-4 yrs.	4-5 yrs.	5-6 yrs.	6-7 yrs.	7-8 yrs.	Disposal (%)
			≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	1826 - 2190 days	2191 - 2555 days	2556 - 2920 days	
	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H	Col. I	Col. J	Col. K = (Col. B / Col. A * 100)
Col. C to J = (No. of Cases Disposed in a Particular Year / Total No. of Cases Registered in Same Year*100)											
2012	0	0	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2013	18	13	11.11	33.33	5.56	16.67	0.00	5.56	0.00	0.00	72.22
2014	169	144	30.18	15.98	15.98	13.02	6.51	3.55	0.00	0.00	85.21
2015	353	291	25.21	19.83	17.56	12.18	7.65	0.00	0.00	0.00	82.44
2016	632	470	23.58	26.58	15.51	8.07	0.63	0.00	0.00	0.00	74.37
2017	918	631	30.07	24.73	13.73	0.22	0.00	0.00	0.00	0.00	68.74
2018	1522	722	28.98	18.00	0.46	0.00	0.00	0.00	0.00	0.00	47.44
2019	1793	411	22.09	0.84	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
<b>Total</b>	<b>5786</b>	<b>2706</b>	<b>24.68</b>	<b>13.60</b>	<b>5.55</b>	<b>2.09</b>	<b>0.73</b>	<b>0.12</b>	<b>0.00</b>	<b>0.00</b>	<b>46.77</b>
Note: Percentage for time taken in disposed cases is calculated from the total number of cases registered in order to get the rate at which cases are being disposed as well as time taken for disposal.											



**Table 5.6**  
**Percentage of Cases Disposed &**  
**Time Taken for Disposal**  
**Delhi**  
**(2012 to 07 March, 2020)**

Year of Registration	No. of Cases registered each year	Disposed cases	Same yr.		1-2 yrs.		2-3 yrs.		3-4 yrs.		4-5 yrs.		5-6 yrs.		6-7 yrs.		7-8 yrs.		Disposal (%)
			≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	1826 - 2190 days	2191 - 2555 days	2556 - 2920 days									
	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H	Col. I	Col. J	Col. K = (Col. B / Col. A*100)								
			Col. C to J = (No. of Cases Disposed in a Particular Year / Total No. of Cases Registered in Same Year*100)																
2012	2	1	0.00	0.00	0.00	0.00	0.00	50.00	0.00	0.00	50.00								
2013	331	295	16.01	9.67	4.23	5.74	11.48	15.11	26.89	0.00	89.12								
2014	482	292	6.85	3.32	4.77	7.68	11.20	26.14	0.62	0.00	60.58								
2015	768	226	2.08	2.99	5.73	5.99	12.24	0.39	0.00	0.00	29.43								
2016	1300	445	8.85	9.38	8.23	7.46	0.31	0.00	0.00	0.00	34.23								
2017	1700	450	12.47	7.47	6.29	0.24	0.00	0.00	0.00	0.00	26.47								
2018	2281	411	12.54	5.35	0.13	0.00	0.00	0.00	0.00	0.00	18.02								
2019	2158	222	10.19	0.09	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	10.03	4.74	3.18	2.17	2.03	1.92	0.98	0.00	25.05								
Note: Percentage for time taken in disposed cases is calculated from the total number of cases registered in order to get the rate at which cases are being disposed as well as time taken for disposal.																			

<b>Table 5.7</b> <b>Percentage of Cases Disposed &amp;</b> <b>Time Taken for Disposal</b> <b>Haryana</b> <b>(2012 to 21 March, 2020)</b>											
Year of Registration	No. of Cases registered each year	Disposed cases	Same yr.	1-2 yrs.	2-3 yrs.	3-4 yrs.	4-5 yrs.	5-6 yrs.	6-7 yrs.	7-8 yrs.	Disposal (%)
			≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	1826 - 2190 days	2191 - 2555 days	2556 - 2920 days	
	Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H	Col. I	Col. J	Col. K = (Col. B / Col. A * 100)
Col. C to J = (No. of Cases Disposed in a Particular Year / Total No. of Cases Registered in Same Year*100)											
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	50.00	50.00	0.00	0.00	0.00	0.00	0.00	100.00
2014	111	111	69.37	25.23	5.41	0.00	0.00	0.00	0.00	0.00	100.00
2015	379	378	72.03	20.84	6.07	0.53	0.26	0.00	0.00	0.00	99.74
2016	587	573	57.41	32.03	7.16	1.02	0.00	0.00	0.00	0.00	97.61
2017	868	811	39.40	45.97	8.06	0.00	0.00	0.00	0.00	0.00	93.43
2018	1172	890	44.45	31.23	0.26	0.00	0.00	0.00	0.00	0.00	75.94
2019	1259	277	20.97	1.03	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
<b>Total</b>	<b>4631</b>	<b>3045</b>	<b>39.24</b>	<b>23.19</b>	<b>3.13</b>	<b>0.17</b>	<b>0.02</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>65.75</b>
Note: Percentage for time taken in disposed cases is calculated from the total number of cases registered in order to get the rate at which cases are being disposed as well as time taken for disposal.											

#### Key findings:

- The average rate of disposal for the total number of cases in the seven-and-a-half-year period under study is 65.75% for Haryana, 46.77% for Assam and only 25.05% for Delhi.
- State variations show 100% rate of disposal in Haryana for cases registered in the years 2013 and 2014. In Assam on the other hand, the rate of disposal has been at its best for cases registered in the years 2014 and 2015. In comparison, in Delhi, among all the years under study, the rate of disposal has been the highest for cases registered in 2013, with 28.5% dip in the following year and a further 31% dip in 2015.
- There is a gradual dip in the rate of disposal 2014 onwards in all the three States/UT.

### III. Nature of Disposal and Time Taken

Table 5.8 looks at the time taken for different forms of disposal analysed in Chapter IV.

### Key Findings:

- A higher percentage of cases ending in conviction (28.98%) take two years or more for disposal compared to those ending in acquittal (19%).
- While disposal in cases “abated” will depend on when the fact of death of the accused comes to the notice of the court, disposal in cases “quashed” spilling over to different time ranges, with 32.88% of such cases taking more than two years for being quashed reflects a delay that can be avoided.
- In 33.33% cases disposed as “PO consigned”, the disposal is after two years of registration of the case in the CIS. This also shows that there is delay either in the police related processes or court processes after a person is declared a proclaimed offender or both. Such delays too call for attention and rectification.
- Where disposal is in the form of transfer of a case to a court of appropriate jurisdiction, in 91.45% cases, the time taken for such transfer or disposal is less than two years from their date of registration in the CIS.

<b>Table 5.8</b> <b>Nature of Disposal and Time Taken for Disposal (in percent)</b> <b>Assam, Delhi &amp; Haryana Combined</b> <b>(2012 to 23 April, 2020)</b>							
Nature of Disposal	≤ 1 yr.	1 - 2 yrs.	2 - 3 yrs.	3 - 4 yrs.	4 - 5 yrs.	> 5 yrs.	> 2 yrs.
	≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	≥ 1826 days	≥ 731 days
Abated	44.54	26.05	19.33	5.88	2.52	1.68	29.41
Acquitted	53.14	27.86	9.09	3.81	2.53	3.58	19.00
Convicted	31.39	39.63	12.60	6.18	4.71	5.48	28.98
Discharged	78.69	17.21	2.46	1.64	0.00	0.00	4.10
Transferred	74.93	16.52	4.84	1.99	1.42	0.28	8.55
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	3.70
PO Consigned	40.54	26.13	11.71	8.11	8.11	5.41	33.33
Other Disposal	74.39	16.80	5.42	1.90	1.22	0.27	8.81
<b>Total</b>	<b>51.67</b>	<b>28.47</b>	<b>9.44</b>	<b>4.10</b>	<b>2.88</b>	<b>3.45</b>	<b>19.86</b>

Tables 5.8A, 5.8B and 5.8C show similar trends in each of the three States/UT under study.

<b>Table 5.8 A</b> <b>Nature of Disposal and Time Taken for Disposal (in percent)</b> <b>Assam</b> <b>(2012 to 23 April, 2020)</b>							
Nature of Disposal	≤ 1 yr.	1 - 2 yrs.	2 - 3 yrs.	3 - 4 yrs.	4 - 5 yrs.	> 5 yrs.	> 2 yrs.
	≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	≥ 1826 days	≥ 731 days
Abated	43.48	26.09	30.43	0.00	0.00	0.00	30.43
Acquitted	49.75	31.33	12.53	4.45	1.63	0.31	18.92
Convicted	32.81	39.06	17.97	8.07	1.82	0.26	28.13
Discharged	82.14	14.29	0.00	3.57	0.00	0.00	3.57
Transferred	73.55	18.12	5.80	1.81	0.72	0.00	8.33
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 Disposal	68.17	19.30	7.27	3.26	1.75	0.25	12.53
<b>Total</b>	<b>52.77</b>	<b>29.08</b>	<b>11.86</b>	<b>4.47</b>	<b>1.55</b>	<b>0.26</b>	<b>18.14</b>
*NA - Not Applicable as there is no such disposal							

<b>Table 5.8 B</b> <b>Nature of Disposal and Time Taken for Disposal (in percent)</b> <b>Delhi</b> <b>(2012 to 07 March, 2020)</b>							
Nature of Disposal	≤ 1 yr.	1 - 2 yrs.	2 - 3 yrs.	3 - 4 yrs.	4 - 5 yrs.	> 5 yrs.	> 2 yrs.
	≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	≥ 1826 days	≥ 731 days
Abated	43.21	23.46	18.52	8.64	3.70	2.47	33.33
Acquitted	35.56	22.35	13.29	8.53	7.37	12.90	42.09
Convicted	11.05	11.57	17.74	17.48	18.51	23.65	77.38
Discharged	77.53	17.98	3.37	1.12	0.00	0.00	4.49
Transferred	69.39	16.33	2.04	4.08	6.12	2.04	14.29
Quashed	40.58	24.64	18.84	5.80	7.25	2.90	34.78
Untraced	87.04	9.26	3.70	0.00	0.00	0.00	3.70
PO Consigned	40.57	25.47	11.32	8.49	8.49	5.66	33.96
Other Disposal	85.51	7.73	4.83	0.48	0.97	0.48	6.76
<b>Total</b>	<b>40.03</b>	<b>18.93</b>	<b>12.70</b>	<b>8.65</b>	<b>8.10</b>	<b>11.59</b>	<b>41.05</b>
*NA - Not Applicable as there is no such disposal							

<b>Table 5.8 C</b> <b>Nature of Disposal and Time Taken for Disposal (in percent)</b> <b>Haryana</b> <b>(2012 to 21 March, 2020)</b>							
Nature of Disposal	≤ 1 yr.	1 - 2 yrs.	2 - 3 yrs.	3 - 4 yrs.	4 - 5 yrs.	> 5 yrs.	> 2 yrs.
	≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	≥ 1826 days	≥ 731 days
Abated	53.33	40.00	6.67	0.00	0.00	0.00	6.67
Acquitted	67.77	28.71	3.41	0.10	0.00	0.00	3.52
Convicted	39.35	51.68	8.22	0.65	0.11	0.00	8.97
Discharged	80.00	20.00	0.00	0.00	0.00	0.00	0.00
Transferred	100.00	0.00	0.00	0.00	0.00	0.00	0.00
Quashed	75.00	25.00	0.00	0.00	0.00	0.00	0.00
Untraced	NA	NA	NA	NA	NA	NA	NA
PO Consigned	40.00	40.00	20.00	0.00	0.00	0.00	20.00
Other Disposal	75.76	23.48	0.76	0.00	0.00	0.00	0.76
<b>Total</b>	<b>59.67</b>	<b>35.27</b>	<b>4.76</b>	<b>0.26</b>	<b>0.03</b>	<b>0.00</b>	<b>5.06</b>
*NA - Not Applicable as there is no such disposal							

#### Key Findings:

- The two main forms of disposal that public and policy makers are generally interested in are conviction and acquittal. Convictions and acquittals taken together constitute 93.86% of all forms of disposal in Haryana, whereas in Assam they constitute 73.17% of all forms of disposal and the corresponding percentage for Delhi is 72.08%. An equally high percentage of cases that have ended conviction and acquittal in Haryana are disposed within two years of registration in the CIS (88.90%). In Assam, 58.02% of all convictions and acquittals in the State during the period under study are disposed within two years of their registration in the CIS. In contrast, Delhi has only 35.69% of all convictions and acquittals disposed within two years.
- A look at data on convictions alone shows that a significant 77.38% of cases that ended in conviction in Delhi have taken two or more years for disposal. Another 23.65% have taken more than five years and 18.51% have taken four to five years for disposal. This is a pressing concern, considering that only 389 of all 2346 disposed cases in Delhi have ended in a conviction.
- In Delhi, the share of acquittals in all disposed cases is the lowest (1302 out of 2346) compared to Assam (1596 out of 2706) and Haryana (1933 out of 3045). However, acquittals that took more than two years for disposal from the date of registration in the CIS are the highest in Delhi (42.09%) compared to Assam (18.92%) and Haryana (3.52%).
- Maximum cases of “transfer” are disposed within two years of registration, with Haryana showing 100% disposal of such cases within one year. However, in Delhi, 14.29% of the

cases disposed as “transferred” have taken more than two years for disposal and in Assam 8.33% of such cases are disposed after two years.

- It is evident that quashing of cases in Delhi is taking longer than in Haryana. Assam does not have any cases disposed as “quashed”. Similarly, disposal in the form of “PO Consigned” is taking longer in Delhi compared to Haryana, and Assam has no such disposal. This suggests that either there are lapses in investigation and/or delay on the part of the police in tracing the accused and filing their report in court, or there is delay in matters being quashed by the High Court that results in delay in disposal by the trial court. All these situations call for further probe in order to address the gaps and speed up the justice delivery process.

#### **IV. Nature of Offence and Time Taken for Disposal**

An attempt is made in Table 5.9 to understand the relation between nature of offence and time taken for disposal, if any. Tables 5.9A and 5.9B summarise data on number and percentage of cases where disposal has taken more than two years and more than five years from the date of their registration in the CIS.

##### **Key Findings:**

- Leaving aside the category of “offence not known”, penetrative sexual assault has the highest share in disposed cases that have taken more than two years for disposal (24.63%). The next to follow are cases of aggravated penetrative sexual assault with a share of 21.46% cases, sexual assault with 14.74% cases, sexual harassment with 7.77% cases and aggravated sexual assault with 5.97% cases. The share of all other offences in the number of cases where disposal has spilled beyond two years from the date of registration in the CIS, ranges between 0.5% to 1%.
- Similarly, among cases disposed after five years of registration in the CIS, aggravated penetrative sexual assault has the highest share of 22.94%, followed by penetrative sexual assault (16.13%), sexual assault (11.11%), sexual harassment (6.45%) and aggravated sexual assault (6.09%). Others have a share ranging between 0% to 2% as can be seen in Table 5.9B.
- A greater number of cases is certainly one of the reasons for offences like penetrative sexual assault and aggravated penetrative sexual assault taking longer time for disposal than others.
- Relationship between time taken for disposal and nature of offence requires further research based on judgments in such cases as well as number of effective and non-effective hearings in order to draw any substantial conclusions.

<b>Table 5.9</b> <b>Type of Offence and Time Taken for Disposal</b> <b>(Number of cases)</b> <b>Assam, Delhi &amp; Haryana Combined</b> <b>(2012 to 23 April, 2020)</b>							
Type of Offence	≤ 1 yr.	1 - 2 yrs.	2 - 3 yrs.	3 - 4 yrs.	4 - 5 yrs.	> 5 yrs.	Total
	≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	> 1826 days	
PSA	1355	810	236	78	37	45	2561
APSA	1047	589	171	68	42	64	1981
SA	800	394	115	45	46	31	1431
ASA	258	118	46	23	10	17	472
SH	394	175	64	28	15	18	694
CP	1	0	0	0	0	1	2
PSA + CP	2	4	1	0	0	0	7
PSA + Storage of CP	1	1	0	0	0	0	2
APSA + Storage of CP	1	0	0	0	0	0	1
APSA + CP + Storage of CP	0	1	0	0	0	0	1
SA + CP	1	1	0	0	0	0	2
ASA + CP	1	0	0	0	0	0	1
SH + CP + Storage of CP	1	0	0	0	0	0	1
Abetment of PSA	1	0	1	0	0	0	2
Abetment of APSA	16	12	6	0	2	5	41
Abetment of SA	8	6	1	1	0	0	16
Abetment of ASA	2	1	0	1	0	0	4
Abetment of SH	1	1	1	0	0	0	3
Abetment of CP	12	11	2	0	1	2	28
Attempt to PSA	17	7	1	1	0	1	27
Attempt to APSA	22	10	2	1	2	0	37
Attempt to SA	16	3	2	0	0	0	21
Attempt to ASA	4	2	0	1	0	1	8
Attempt to SH	0	1	0	0	1	0	2
Abetment of PSA + CP	1	0	0	0	0	0	1
Abetment of APSA + Attempt to APSA	1	0	0	0	0	0	1
Abetment of SA + Attempt to SA	0	0	0	0	0	1	1
Failure to report	2	1	0	0	0	0	3
False reporting	1	0	0	0	0	0	1
Not Available	218	157	115	85	77	93	745
<b>Total</b>	<b>4184</b>	<b>2305</b>	<b>764</b>	<b>332</b>	<b>233</b>	<b>279</b>	<b>8097</b>

<b>Table 5.9 A</b> <b>Type of Offence and Disposal beyond 2 years of Registration in CIS</b> <b>Assam, Delhi &amp; Haryana Combined</b> <b>(2012 to 23 April, 2020)</b>		
<b>Offence</b>	<b>No. of Cases that have taken &gt; 2 yrs. for disposal</b>	<b>Percentage share in total number of cases where disposal has taken &gt; 2 yrs.</b>
PSA	396	24.63
Offence Not Known	370	23.01
APSA	345	21.46
SA	237	14.74
SH	125	7.77
ASA	96	5.97
Abetment of APSA	13	0.81
Abetment of CP	5	0.31
Attempt to APSA	5	0.31
Attempt to PSA	3	0.19
Abetment of SA	2	0.12
Attempt to SA	2	0.12
Attempt to ASA	2	0.12
CP	1	0.06
PSA + CP	1	0.06
Abetment of PSA	1	0.06
Abetment of ASA	1	0.06
Abetment of SH	1	0.06
Attempt to SH	1	0.06
Abetment of SA + Attempt to SA	1	0.06

<b>Table 5.9 B</b> <b>Type of Offence and Disposal beyond 5 years of Registration in CIS</b> <b>Assam, Delhi &amp; Haryana Combined</b> <b>(2012 to 23 April, 2020)</b>		
<b>Offence</b>	<b>No. of Cases that have taken &gt; 5 yrs. for disposal</b>	<b>Percentage share in total number of cases where disposal has taken &gt; 5 yrs.</b>
Offence Not Known	93	33.33
APSA	64	22.94
PSA	45	16.13
SA	31	11.11
SH	18	6.45
ASA	17	6.09
Abetment of APSA	5	1.79
Abetment of CP	2	0.72
CP	1	0.36
Attempt to PSA	1	0.36
Attempt to ASA	1	0.36
Abetment of SA + Attempt to SA	1	0.36



## V. Conviction, Acquittal and Time Taken for Disposal by Type of Offence

Since conviction and acquittal form a significant portion of all disposed cases, further assessment is carried out in Table 5.10 to see if the type of offence has any relationship with time taken for disposal in cases that have ended in conviction and acquittal.

Data analysis shows that the relationship between the nature of offence, conviction, acquittal and time taken for disposal requires further research based on the daily orders and judgments. However, trends that emerge from Tables 5.10 and 5.11 along with Tables 5.10A and 5.10B (annexed at Annexure 5.1) are as follows:

- Out of 1698 cases that have ended in conviction, 492 or 28.98% have taken more than two years for disposal.
- Out of 4831 cases that have ended in acquittal, 918 or 19% have taken more than two years for disposal.
- In all the disposed cases that have ended in conviction and have taken more than two years for disposal, aggravated penetrative sexual assault has the highest share of 28.46% followed by penetrative sexual assault at 21.34%, sexual assault at 14.16%, sexual harassment at 8.06% and aggravated sexual assault at 4.79%
- In all the disposed cases that have ended in acquittal and have taken more than two years for disposal, there is a reversal with penetrative sexual assault having the highest share of 27.23%, followed by aggravated penetrative sexual assault at 19.06%. The share of other major offences in descending order is 13.62% for sexual assault, 8.33% for aggravated sexual assault and 7.11% for sexual harassment.
- In other words, among all offences, there are more cases of penetrative sexual assault that have ended in acquittal, with disposal stretching beyond two years from the date of registration in the CIS.
- The share of all other offences ending in conviction or acquittal after two years is less than 1%.

<b>Table 5.10</b> <b>Convictions under Different Types of Offences and Time Taken for Disposal</b> <b>Assam, Delhi and Haryana Combined</b> <b>(in percent)</b> <b>(2012 to 23 April, 2020)</b>							
Type of Offence	≤ 1 yr.	1 - 2 yrs.	2 - 3 yrs.	3 - 4 yrs.	4 - 5 yrs.	> 5 yrs.	> 2 yrs.
	≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	> 1826 days	> 731 days
PSA	28.38	48.69	13.54	5.02	1.31	3.06	22.93
APSA	29.10	43.55	11.91	6.25	4.69	4.49	27.34
SA	39.64	36.43	11.43	4.29	3.93	4.29	23.93
ASA	33.86	33.86	15.75	8.66	3.15	4.72	32.28
SH	48.12	25.56	12.78	4.51	6.02	3.01	26.32
CP	0.00	0.00	0.00	0.00	0.00	100.00	100.00
PSA + CP	0.00	100.00	0.00	0.00	0.00	0.00	0.00
PSA + Storage of CP	0.00	0.00	0.00	0.00	0.00	0.00	0.00
APSA + Storage of CP	100.00	0.00	0.00	0.00	0.00	0.00	0.00
APSA + CP + Storage of CP	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SA + CP	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ASA + CP	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SH + CP + Storage of CP	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Abetment of PSA	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Abetment of APSA	12.50	50.00	25.00	0.00	12.50	0.00	37.50
Abetment of SA	0.00	100.00	0.00	0.00	0.00	0.00	0.00
Abetment of ASA	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Abetment of SH	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Abetment of CP	0.00	60.00	20.00	0.00	0.00	20.00	40.00
Attempt to PSA	42.86	42.86	0.00	14.29	0.00	0.00	14.29
Attempt to APSA	30.00	50.00	0.00	10.00	10.00	0.00	20.00
Attempt to SA	33.33	33.33	33.33	0.00	0.00	0.00	33.33
Attempt to ASA	0.00	66.67	0.00	0.00	0.00	33.33	33.33
Attempt to SH	0.00	0.00	0.00	0.00	100.00	0.00	100.00
Abetment of PSA + CP	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Abetment of APSA + Attempt to APSA	0.00	0.00	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	0.00	0.00
Disclosure of Identity	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Failure to report	0.00	0.00	0.00	0.00	0.00	0.00	0.00
False reporting	100.00	0.00	0.00	0.00	0.00	0.00	0.00
Offence Not Known	17.93	18.62	12.41	13.10	16.55	21.38	63.45
<b>Total Conviction Cases</b>	<b>31.39</b>	<b>39.63</b>	<b>12.60</b>	<b>6.18</b>	<b>4.71</b>	<b>5.48</b>	<b>28.98</b>

<b>Table 5.11</b> <b>Acquittals under Different Types of Offences and Time Taken for Disposal</b> <b>Assam, Delhi and Haryana Combined</b> <b>(in percent)</b> <b>(2012 to 23 April, 2020)</b>							
Type of Offence	≤ 1 yr.	1 - 2 yrs.	2 - 3 yrs.	3 - 4 yrs.	4 - 5 yrs.	> 5 yrs.	> 2 yrs.
	≤ 365 days	366 - 730 days	731 - 1095 days	1096 - 1460 days	1461 - 1825 days	> 1826 days	> 731 days
PSA	53.80	30.74	9.09	2.97	1.55	1.86	15.46
APSA	57.17	27.05	8.21	2.61	1.44	3.52	15.78
SA	56.70	27.88	7.00	3.20	3.08	2.14	15.42
ASA	61.23	22.83	7.61	3.26	1.09	3.99	15.94
SH	53.49	27.39	9.82	4.13	1.81	3.36	19.12
CP	0.00	0.00	0.00	0.00	0.00	0.00	0.00
PSA + CP	40.00	40.00	20.00	0.00	0.00	0.00	20.00
PSA + Storage of CP	0.00	100.00	0.00	0.00	0.00	0.00	0.00
APSA + Storage of CP	0.00	0.00	0.00	0.00	0.00	0.00	0.00
APSA + CP + Storage of CP	0.00	100.00	0.00	0.00	0.00	0.00	0.00
SA + CP	0.00	100.00	0.00	0.00	0.00	0.00	0.00
ASA + CP	100.00	0.00	0.00	0.00	0.00	0.00	0.00
SH + CP + Storage of CP	100.00	0.00	0.00	0.00	0.00	0.00	0.00
Abetment of PSA	50.00	0.00	50.00	0.00	0.00	0.00	50.00
Abetment of APSA	34.62	30.77	11.54	0.00	3.85	19.23	34.62
Abetment of SA	40.00	40.00	10.00	10.00	0.00	0.00	20.00
Abetment of ASA	100.00	0.00	0.00	0.00	0.00	0.00	0.00
Abetment of SH	33.33	33.33	33.33	0.00	0.00	0.00	33.33
Abetment of CP	45.00	40.00	5.00	0.00	5.00	5.00	15.00
Attempt to PSA	62.50	25.00	6.25	0.00	0.00	6.25	12.50
Attempt to APSA	73.91	17.39	4.35	0.00	4.35	0.00	8.70
Attempt to SA	82.35	11.76	5.88	0.00	0.00	0.00	5.88
Attempt to ASA	75.00	0.00	0.00	25.00	0.00	0.00	25.00
Attempt to SH	0.00	100.00	0.00	0.00	0.00	0.00	0.00
Abetment of PSA + CP	100.00	0.00	0.00	0.00	0.00	0.00	0.00
Abetment of APSA + Attempt to APSA	100.00	0.00	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	100.00	100.00
Disclosure of Identity	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Failure to report	0.00	100.00	0.00	0.00	0.00	0.00	0.00
False reporting	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Offence Not Known	28.85	23.21	15.62	11.50	9.11	11.71	47.94
<b>Total Acquittal Cases</b>	<b>53.14</b>	<b>27.86</b>	<b>9.09</b>	<b>3.81</b>	<b>2.53</b>	<b>3.58</b>	<b>19.00</b>

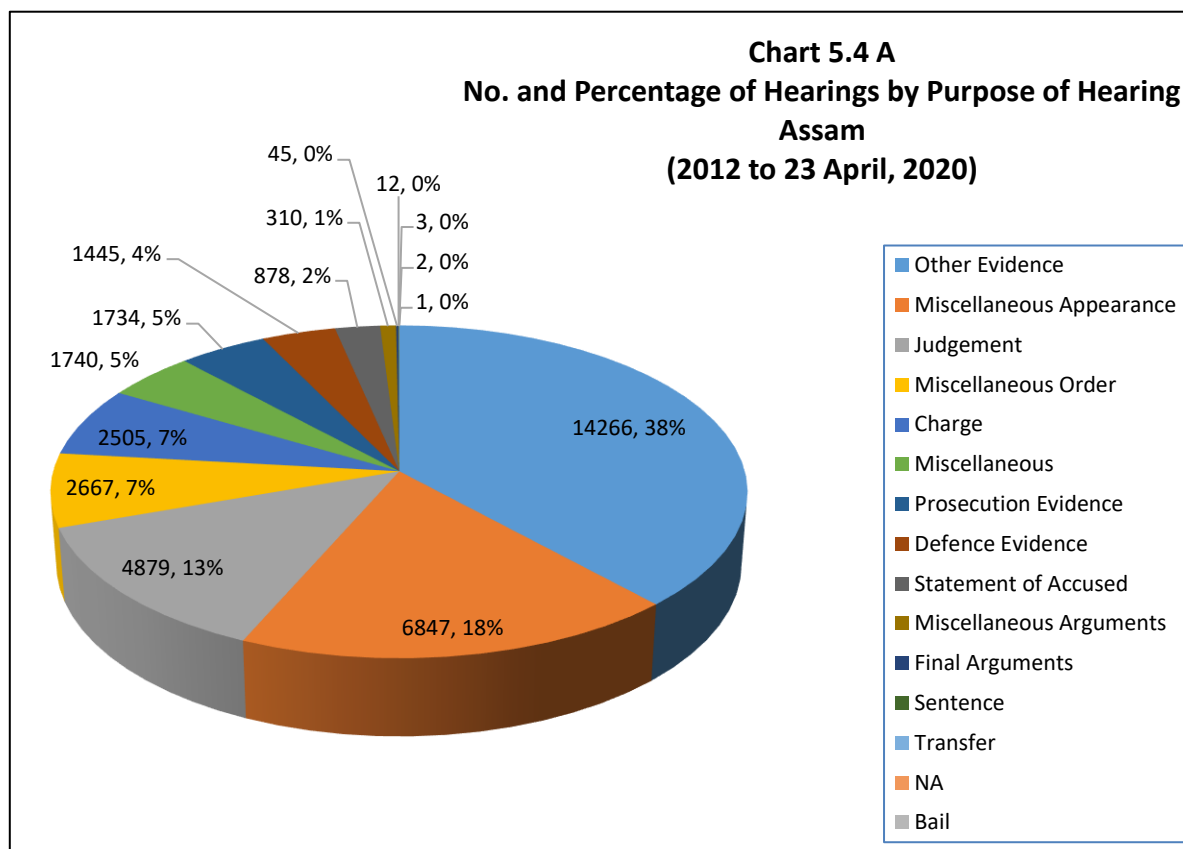
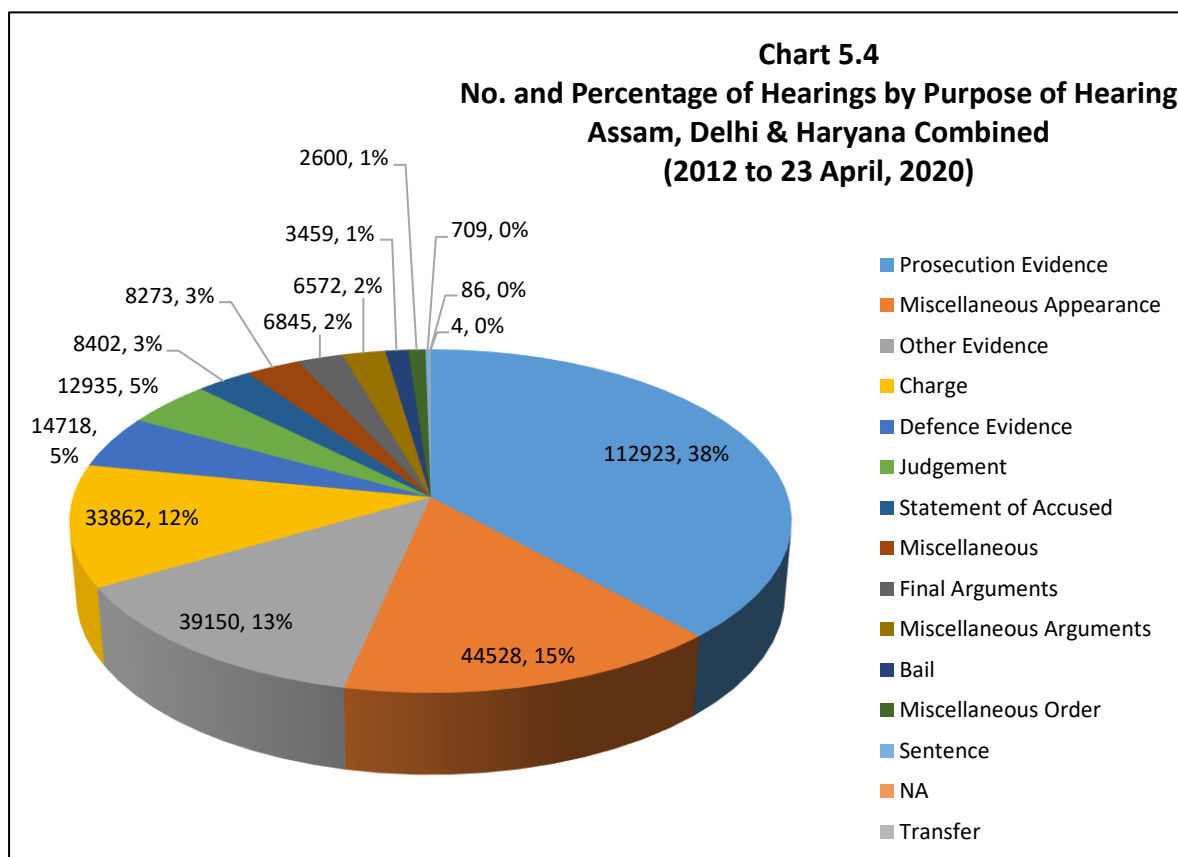
## B. Number of Hearings Held in Disposed Cases

Table 5.12 and Charts 5.4, 5.4A, 5.4B, 5.4C reflect the number of hearings held for different purposes or at different stages of a trial and the share of each purpose or stage of hearing in the total number of hearings.

### Key Findings:

- On the basis of available data, on an average 15 hearings are held per case.
- The stage of “Prosecution Evidence” has the largest share of 38.27% in total hearings followed by “Miscellaneous Appearance” (15.09%), “Other evidence” (13.27%) and the stage of “Charge” (11.48%).
- All the other stages of criminal justice proceedings in a trial together constitute 21.89% of the total 2,95,066 hearings held.
- How many of these hearings are effective hearings, where the listed purpose of hearing is met, cannot be stated from the nature of data available. This will require access to daily orders or proper entries in the “daily Status” of the “Business on Date” section available on e-Courts portal.

<b>Table 5.12</b> <b>No. of Hearings by Purpose / Stage of Criminal Justice Proceedings</b> <b>Assam, Delhi &amp; Haryana Combined</b> <b>(2012 to 23 April, 2020)</b>					
<b>Purpose of Hearing</b>	<b>Total No. of Hearings</b>	<b>Share of Different Purposes of Hearing in Total No. of Hearings (%)</b>	<b>No. of Cases Disposed</b>	<b>No. of hearings in Disposed Cases</b>	<b>Average No. of Hearings per Disposed Case</b>
Prosecution Evidence	112923	38.27	4982	43945	9
Miscellaneous Appearance	44528	15.09	4782	15270	3
Other Evidence	39150	13.27	2497	18275	7
Charge	33862	11.48	4625	9394	2
Defence Evidence	14718	4.99	2934	12109	4
Judgment	12935	4.38	8086	12219	2
Statement of Accused	8402	2.85	3309	5492	2
Miscellaneous	8273	2.80	1308	3200	2
Final Arguments	6845	2.32	918	4035	4
Miscellaneous Arguments	6572	2.23	1681	4392	3
Bail	3459	1.17	249	808	3
Miscellaneous Order	2600	0.88	714	1239	2
Sentence	709	0.24	479	673	1
NA	86	0.03	4	4	1
Transfer	4	0.00	2	2	1
<b>Total</b>	<b>295066</b>	<b>100.00</b>	<b>8097</b>	<b>131057</b>	<b>16</b>
*NA – Purpose / Stage of Case Not Available					



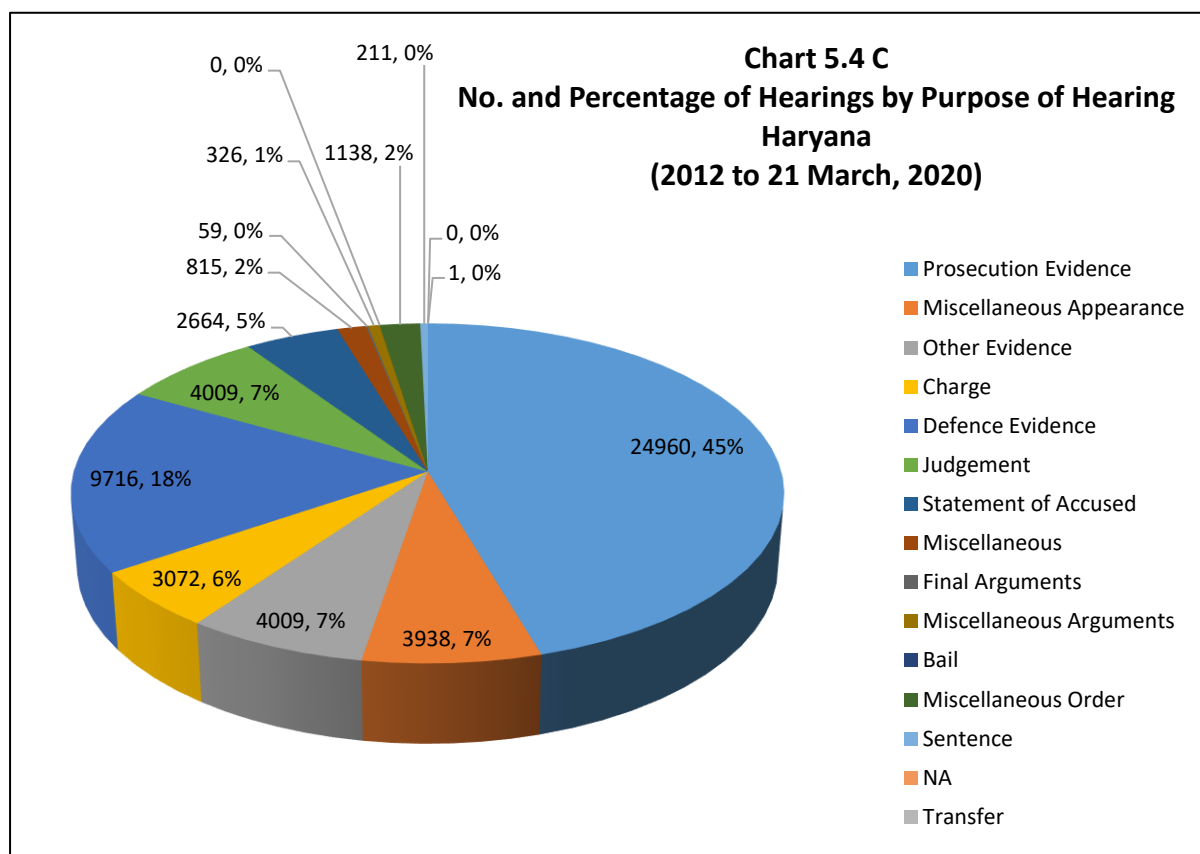
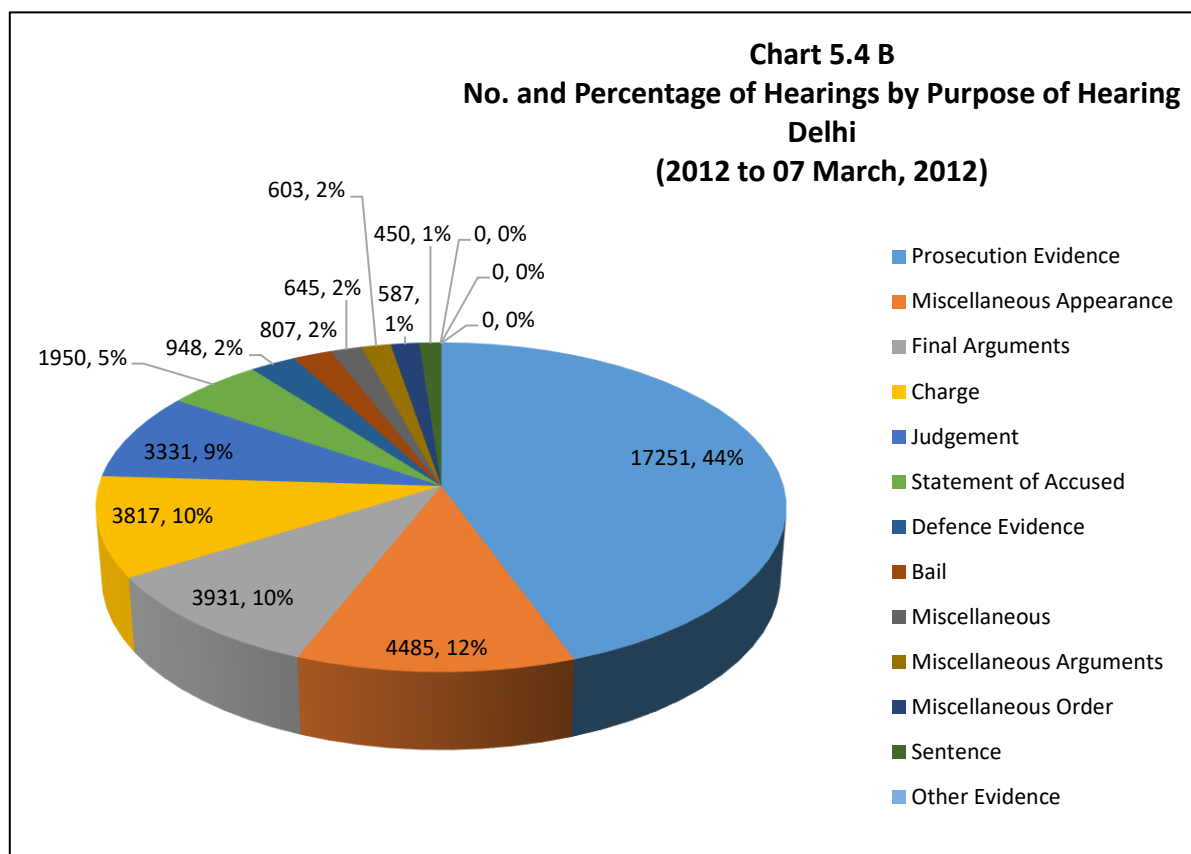


Table 5.12 also reflects the total number of hearings held in disposed cases. Key findings in this regard are as follows:

- The average number of hearings in disposed cases comes to 16.
- Among the disposed cases, the maximum number of hearings held is 124, in a case of sexual abuse of girls in a child care institution in Muzaffarpur district of Bihar which drew a lot of media attention. The case was transferred in February 2019 from a local court in Muzaffarpur to the Special Court conducting trials under the POCSO Act in the South District in Delhi. The Supreme Court had directed the trial to be concluded within six months through day-to-day hearings. The case ended in conviction of 19 out of the 20 accused persons within 350 days from its registration in the CIS. To that extent, even though day-to-day hearings were not possible in this case, it is one of those rarest of rare cases where trial has been conducted in a time bound manner. While speedy trial should not be at the cost of fairness of trial and due process, this case does point to the fact that when effective hearings are held and unnecessary adjournments are disallowed, trials can be expedited and justice can be met without undesirable delays.
- 295 cases are disposed in one hearing, which is the minimum number of hearings held in disposed cases. Leaving aside the cases falling under the category of “other disposal”, a large number of those disposed in a single hearing are cases disposed as “transferred”. There are 79 such cases and as can be seen in Table 5.13, 75 of these are from Assam.
- In 18 cases, the accused are acquitted in a single hearing. Absence of daily orders and judgment makes it difficult to understand how an acquittal can be reached in a single hearing.

Table 5.13 Number of Cases Disposed in Single Hearing and Type of Disposal Assam, Delhi and Haryana				
Type of Disposal	Assam	Delhi	Haryana	Total
Convicted	2	0	0	2
Acquitted	14	1	3	18
Transferred	75	2	2	79
Discharged	5	3	0	8
Untraced	0	18	0	18
Abated	0	7	0	7
Quashed	0	5	0	5
PO Consigned	0	8	0	8
Other Disposal	89	44	17	150
<b>Total</b>	<b>185</b>	<b>88</b>	<b>22</b>	<b>295</b>

## CONCLUSION AND RECOMMENDATIONS

In 2012, when the POCSO Act came into existence, it laid down a mandate to complete trial in all cases of sexual offences under the Act within one year from the date of cognizance by court. The Criminal Law Amendment of 2013 further reduced the timeframe for completion of trials in all rape cases under sections 376, 376A, 376B, 376C and 376D of the IPC within two months of filing of charge sheet. Criminal Law Amendment of 2018, extended this requirement to other new additions in the substantive law on rape, these being sections 376AB, 376DA and 376DB of the IPC. However, what is an ideal timeframe for deciding a case has never been considered on the basis of evidence. Much is decided in response to or as a reaction to populist demands. This study shows that even as most cases of offences that are of grave nature are disposed within two years, disposal in a sizeable number of such cases spills beyond two years, sometimes even beyond five to six years, leading to travesty of justice.

The POCSO Act provides a timeframe for completion of victim testimony also. It is three months from the date of cognizance of case by a court. However, e-Courts portal does not provide data in this regard. Victim testimonies are part of the stage of “Prosecution Evidence” and therefore no separate data is available for this critical stage of a case. This shows that efforts at making laws victim friendly are half-hearted. Implementation of every aspect of law is important for a law to achieve its goals. Unless the timeframe set for recording of victim testimony is monitored, provision of in-camera trials, screen between the victim and the accused, prohibiting direct and aggressive questioning to the victim are measures that will remain on paper.

The Criminal Law Amendment in 2013 also stipulated day to day hearings in all cases unless adjournment is necessary. There have been ample judgments of the Supreme Court reiterating the need for speedy trial and coming down heavily on adjournments that delay timely completion of trial.



**Vinod Kumar vs. State of Punjab [CRIMINAL APPEAL NO. 554 OF 2012, Para 41],  
Judgment dated 21 January, 2015**

“Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts. ...The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. ... It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, “Awake! Arise!”. There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery.”

The key recommendations that emerge from this chapter are as follows:

**1. Enhancing Court Performance**

*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.*

**2. Tracking Effective and Ineffective Hearings**

*If all daily orders are uploaded and certain parameters are added to the court information system, useful data can be generated on the number of effective and ineffective hearings and reasons for adjournment. This can help identify areas for course correction, particularly for avoiding the unnecessary adjournments.*

### 3. *Expediting Victim testimony*

*Considering that victims are unable to overcome their trauma and stress and move on in life till their testimony is recorded, it is important to build and draw upon evidence around time taken for recording the victim's testimony and take necessary measures to address the delay. As a first step, this would require recognition of victim testimony as a distinct stage in the judicial proceedings so that it gets recorded in the CIS. Daily orders should reflect orders passed on the recording of the child's evidence while respecting their privacy and confidentiality. Judgments should also record the date on which the child's testimony was due as per the mandated timeline in section 35(1), the date on which it was listed, when it actually started and when did it conclude, along with the reasons for delay, if any.*

### 4. *Need to invest in judicial data management*

*It is high time Digital India invests in judicial data management, drawing upon the evidence generated from data analysis presented in the different past and current research on implementation of laws like the POCSO Act and in consultation with civil society organisations and other key stakeholders.*

## CHAPTER VI

### SENTENCE

#### SCOPE OF RESEARCH AND METHODOLOGY

For this chapter, the scope of analysis is limited to imprisonment and fine imposed in a sample set of 197 cases from the State of Haryana. This analysis is based on data fetched through annotation of judgments and scaling up and verifying the information thus generated.

Judgment annotation meant using a computer application to search for specific data from large textual dataset with the help of certain identified words or terms or phrases. This also requires identifying language patterns used in the judgments for particular data. For example, in a judgment, the part on sentence may be written in more than one ways by different judges, yet there can be words and phrases and a language pattern that helps identify the quantum of imprisonment or fine imposed in a case. Easy and exciting as it may sound, lack of uniformity in the manner in which judgments are written, absence of use of standard terminology and absence of certain critical facts pertaining to a case make judgment annotation a challenging and limiting exercise. When the same words or phrases appear more than once in different places and no clear language patterns emerge for a particular data field or variable, different permutations and combinations of data appear that need to be cross-checked and verified manually to draw accurate inference. As a result, data derived through judgment annotation had to be verified before it could be used for any analysis.

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.

In order to complete the challenging exercise and identify the sentence given to the accused in each of the said cases, the imprisonment context had to be assessed. The cases where data fetched through judgment annotation was incomplete or unclear, judgments had to be searched manually for extracting necessary information.

In some of the cases, the imprisonment context picked up from the judgment matched what emerged from the judgment annotation exercise and it was possible to accurately infer the years of imprisonment and amount of fine imposed on the convict for a particular offence. In some others, the judgment annotation process fetched part information about the maximum and minimum imprisonment prescribed for a specific offence instead of the actual sentence imposed. This can happen in technology-based processes that depend on searching for language patterns or establishing patterns on the basis of use of certain words and terms. It takes a long time to refine the process and arrive at more accurate information.

Getting accurate information on the Acts and sections under which a person is convicted through judgment annotation has been challenging. This is because of the manner in which the Acts and sections are mentioned in the judgments. 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 computer application. Besides, no computer application can correct a human error. Judges and court staff sometimes make mistakes and do not check if the Acts and sections appear correctly. For example, there are a few judgments where the accused is 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 information on the fine amount imposed also, in many cases it was difficult to pinpoint the fine amount and the section under which it was imposed through judgment annotation alone. The information derived through judgment annotation had to be verified manually from the judgment itself.

State Vs. Amit 18			
Offence	Punishment	Fine	Punishment in default of payment of fine
363 IPC	Rigorous Imprisonment for 5 years	Rs.5,000/-	Simple imprisonment for three months
4 of POCSO ACT.	Rigorous imprisonment for 7 years	Rs.25,000/-	Simple imprisonment for one year.

However, sentences awarded to the convict on all the counts, shall run concurrently. The period of sentence already

The screen shot above reflects the manner in which sentence orders are written in Haryana and is certainly a good practice providing a clear picture on the offence and the sentence imposed and reducing scope for any ambiguity. However, attempts at using technology to capture such information with accuracy has not worked so far because the relevant context of the sentence order is spread over more than two lines, there is more than one section under which the accused is sentenced, information is divided into rows and columns and the same language is used in two different places causing confusion for a computer application to provide accurate results.

The process of judgment annotation is indeed time consuming. CDL and HAQ are committed to continue with the experiment, while advocating for some degree of uniformity and standardisation in the manner in which judgments are written. HAQ and CDL will also 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 judgment 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 the child's age, gender, disability, pregnancy, etc.

### ***Final selection of cases and focus for analysis***

A total of 2120 judgments from Haryana that were annotated. Initially a sample of 205 cases was selected, but further screening using manual verification brought the number down to 197.

The limiting factors are as follows:

- (i) Judgment not available and accused acquitted of charges

Of the 205 cases selected initially, 4 had to be dropped for the analysis on sentence because in one case the judgment is not available, in another case, the accused is acquitted of all charges and in 2 cases the accused are acquitted under the provisions of the POCSO Act.

- (ii) Cases where sentence order is not available

There are 4 cases for which the judgment convicting the accused under the relevant sections of the POCSO Act is available, but the order on sentence is not accessible to ascertain the term of imprisonment and fine imposed.

## **SENTENCING**

One of the most vital aspects of the criminal justice system that is perceived as a powerful tool of crime deterrence is the sentence. Passing a sentence is an art that rests on the rules of 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. This part of the report draws upon the extensive work documented by Dr. Mrinal Satish in his book “Discretion, Discrimination and the Rule of Law, Reforming Rape Sentencing in India”.<sup>18</sup> Dr. Satish refers to the 47<sup>th</sup> Report of the Law Commission of India, issued in 1972, which attempted to answer the question on how

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

sentences ought to be determined. The paragraph from the Law Commission's report that is often cited by the Supreme Court says:

*"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 age of the offender, the professional and social record 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."*<sup>19</sup>

Citing certain judgments of the Supreme Court, Dr. Satish draws attention to **Modi Ram v. State of Madhya Pradesh**,<sup>20</sup> where 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 is committed, the motive of the offender, his age, character, antecedent, and social status should be considered; and, the sentence should neither be too lenient nor too severe.<sup>21</sup> Further, in **Jagmohan Singh v. State of Uttar Pradesh**,<sup>22</sup> the Supreme Court has listed various aggravating and mitigating factors to be considered while sentencing.<sup>23</sup> While the aggravating factors relate to the manner in which the offence is perpetrated, the mitigating factors could include age, sex and marital status of the offender, social and economic background of the offender, medical condition, provocation, absence of bad intention, self-defence, possibility of reformation, etc. In the case of **Dhananjay Chatterjee v. State of West Bengal**,<sup>24</sup> the Supreme Court pronounced a death sentence on the grounds that "sentencing must respond to 'society's cry for justice' against criminals."<sup>25</sup> One of the most commonly cited quotes in judgments, particularly in rape cases, is:

*"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."*

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<sup>19</sup> Ibid. Satish, Mrinal. p.62

<sup>20</sup> (1972) 2 SCC 630

<sup>21</sup> Ibid. Satish, Mrinal. p.62

<sup>22</sup> (1973) 1 SCC 20

<sup>23</sup> Ibid. Satish, Mrinal. p.62

<sup>24</sup> (1994) 2 SCC 220

<sup>25</sup> Ibid. Satish, Mrinal. p.64

According to Dr. Satish, over time, the ‘theory’ of ‘society’s cry for justice’ thus gained popularity and is being used more regularly to justify sentences.<sup>26</sup>

In the case of **Rajbala v. State of Haryana**,<sup>27</sup> the 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. A perusal of judgments of trial courts analysed for this study also shows that in many cases 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.

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. Dr. Satish points out that “the Supreme Court has not been consistent in advising the courts on which theories (or justifications) of punishment should be applied”.<sup>28</sup> He further notes that “The Court’s own philosophy has changed from decade to decade and from judge to judge. In order to avoid having to grapple with this complex issue, the Court often does not give reasons for sentences that it imposes, though required by the statute to do so. This practice has percolated to subordinate courts and resulted in widespread arbitrariness in sentencing.”<sup>29</sup>

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. 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. On the other hand, the said amendments have increased the range between the minimum and maximum, which does give the judges an even wider discretion at the time of sentencing the convict, though without much guidance or a sentencing policy to follow in such situations.

## PUNISHMENT UNDER THE POCSO ACT AND THE IPC

Once the court passes a judgment 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 number of years to which the convict can be sentenced is provided in the corresponding section for punishment.

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<sup>26</sup> Ibid. Satish, Mrinal. p.64

<sup>27</sup> (2016) 1 SCC 463

<sup>28</sup> Ibid. Satish, Mrinal. p.63

<sup>29</sup> Ibid. Satish, Mrinal. p.64

## 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 deciding 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 (“**Amendment 2013**”) and thereafter the Criminal Law (Amendment) Act, 2018 (“**Amendment 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.

### A. 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



		<p>remainder of that person's natural life and shall also be liable to fine.</p> <p>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.</p>
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 the IPC - Section 376 and Section 377***

#### **(i) Prior to the Amendment 2013**

Under section 376(1) of the IPC, for cases, except the ones provided under section 376(2), the minimum punishment prescribed was 7 years which could extend up to imprisonment for life or for a term up to 10 years and was also 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 was 10 years but which could extend to life and was also 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.*

(ii) Post 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 rigorous imprisonment of either term which shall not be less than 7 years but which may extend to imprisonment for life and shall also be liable to fine.

Punishment under section 376(2) was amended to a 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.*

(iii) Post Amendment 2018

Section 376 (1) of IPC was further amended in 2018 to increase the minimum punishment for rape from 7 years to 10 years.

Additionally, section 376 (3) of IPC was added which provides the punishment for rape of a woman under of age of 16 years of age. The minimum imprisonment under section 376 (3) as per the amendment 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 added by Amendment 2013***

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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 added by the Criminal Law (Amendment), 2018***

(i) 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.

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

The punishment for gang rape of 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.

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

The punishment for gang rape of 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.

(iv) Section 377 Unnatural offences

The section states that whoever has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life or with imprisonment which may extend to 10 years. Punishment under the said clause has not changed 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, in cases where 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 lower than that prescribed under section 4 and 6 of the POCSO Act.

After the Amendment 2013, section 376(2) specifically mentioned the 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,<sup>30</sup> the Supreme Court in the year 2005, referring to the case of Gopal Vinayak Godse v. The State of Maharashtra and Others,<sup>31</sup> 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 convicted person's natural life. Though the case at hand referred to section 302 of IPC (murder), this thought process has found its way into the law with the amendments mentioned above. In some cases analysed for this study, the courts have considered section 376(2) for punishment as against section 6 of the POCSO Act and have sentenced the convict under the former since it carried punishment greater in degree.

## B. Punishment under Section 8 and 10 of the POCSO Act

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

### *Corresponding Sections under the IPC*

The corresponding sections under the 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. Amendment 2013 amended the period of punishment prescribed under section 354 which now shall not be less than 1 year and may be extend up to 5 years. Section 354 B was inserted by the 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 prescribed under sections 8 and 10 of the POCSO Act and its corresponding sections under the IPC is the same and thus the question of greater punishment as the alternative under the section 42 of the POCSO Act does not arise.

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<sup>30</sup> 2005(7) SCC 417

<sup>31</sup> 1961 SCR (3) 440

### C. Punishment under Section 12 of the POCSO Act

Section No.	Punishment details
Section 12 (SH)	Imprisonment which may extend to 3 years and shall also be liable to fine.

#### ***Corresponding Sections under the IPC***

The corresponding sections under the IPC would be section 354 A, 354 D and 509 which states '*Sexual Harassment and punishment for sexual harassment*', '*Stalking*,' '*Word, gesture or act intended to insult the modesty of a woman*' respectively. This section was inserted vide the Amendment 2013 and the punishment prescribed under sections 354 A, 354 D and 509 is imprisonment for a term which may extend to 3 years or with fine or with both [for section 354(1)(i) to (ii)], imprisonment for a term which may extend to 1 year or with fine or with both [for section 354(1)(iv)]; imprisonment for a term which may extend to 3 years and shall also be liable to fine (section 354D and section 509).

Section 12 of the POCSO Act and its corresponding sections under the IPC prescribe the same punishment. Thus, the question of greater punishment as the alternative under the section 42 of the POCSO Act does not come into picture.

## **SENTENCE AWARDED**

### **A. Type of Offence and Sentence**

The chapter analyses the sentence awarded 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 a total of 205 accused who have been convicted and sentenced. For analysis, the number of cases has been used as reference and not the number of accused.

The analysis on quantum of sentence is presented under 2 categories based on the acts under which the sentence is awarded to the convict:

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

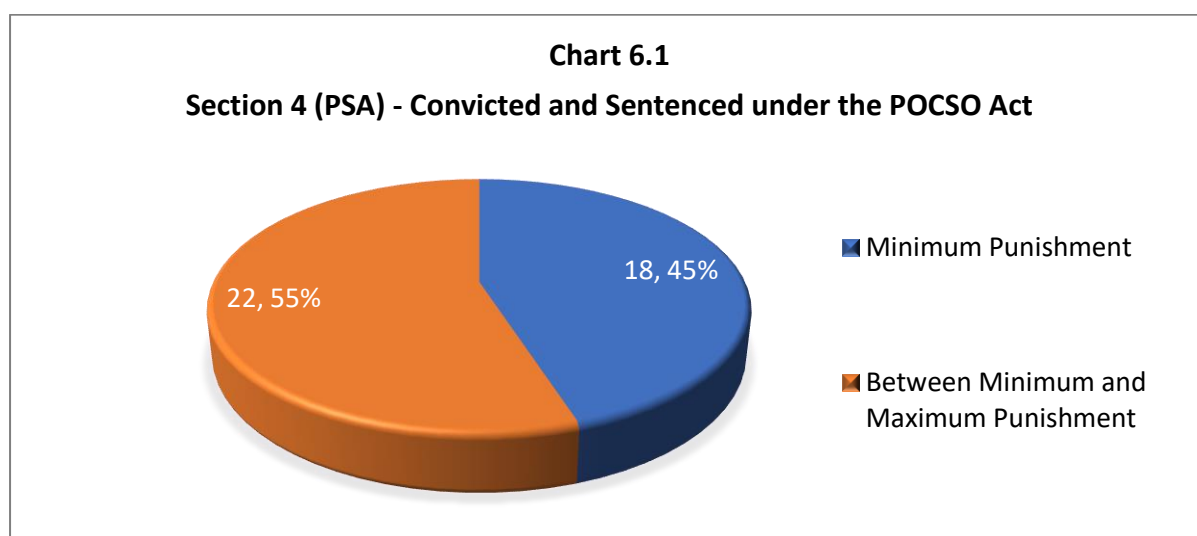
Rule of Principal Offence - Cases wherein the accused has been convicted under more than one sections of the POCSO Act, only the offence with higher punishment or the principal offence has been taken into consideration.

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

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

### ***Convicted and Sentenced under the POCSO Act – 40 cases***

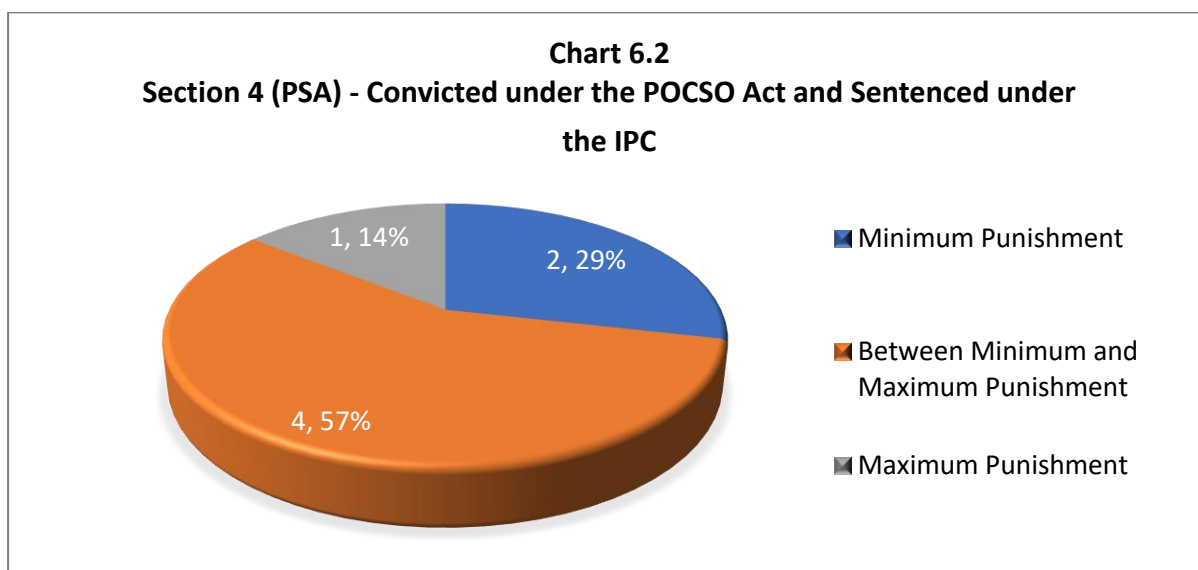
Of the 48 cases, in 40 cases the convict has been sentenced under section 4 of the POCSO Act to imprisonment ranging from a minimum of 7 years to 10 years.



- (i) Minimum Punishment
  - 7 years - 18 cases
- (ii) 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 – 7 cases***

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



- (i) 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 are three accused who are convicted under section 4 of the POCSO Act and section 376 D of the IPC. As per the facts of the case, the child was 16 years old. The child 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 child 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 both of her hands, and then she narrated the whole incident to her parents. Noting 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, the trial court has held all of them liable for the commission of offence under section 376 D IPC read with section 34 of the IPC. While the main accused is also convicted for commission of offence under section 4 of the POCSO Act, the other two co-accused are 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 pleaded for a lenient view stating that they were from poor families and were victims of circumstances. The minimum imprisonment for gang rape under section 376 D is 20 years and so the court has 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 of the POCSO Act was a minimum of 7 years which could extend up to imprisonment for life. Therefore, while sentencing the main accused to 7 years (minimum imprisonment) under section 4 of the POCSO Act and the two co-accused to 7 years each under section 17 read with section 4 of the POCSO Act, the court notes that the sentence given to the accused under the provisions of the POCSO Act shall run concurrently with that prescribed under the provisions of the IPC.

- (ii) Between Minimum and Maximum Punishment
  - 20 years – 4 cases

#### Sentenced under Section 376 (3)

In 4 cases, 3 from in district Palwal and one from Rewari, bearing registration date between July and October, 2018, the accused are convicted under section 4 of the POCSO Act and section 376(3) of the IPC. However, the sentence is awarded under section 376(3) of the IPC as the punishment under the said section at that time was greater than that under section 4 of the POCSO Act. In these 4 cases, the accused committed penetrative sexual assault on a child under the age of 16 years. This quantum of punishment falls between the minimum and maximum punishment prescribed under section 376(3) of the IPC.

- (iii) Maximum Punishment
  - Life Imprisonment – 1 case

#### Sentenced under Section 377 – Imprisonment for Life

In one case registered in May 2018, the accused is convicted under section 4 of the POCSO Act and section 377 of the IPC. Following the rule prescribed in section 42 of the POCSO Act, the accused is 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 child victim is aged 13 years and belongs to a Scheduled Caste. 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 child, despite his resistance. When the child tried to raise an alarm, the accused gagged his mouth and threatened to kill him. The child had complained to his father who then immediately filed a



complaint with the police. The medical reports suggested injury in and around the child's rectum. As per the FSL report, no semen was detected. Not taking away from the case of the prosecution, the court states that no human semen was detected on the clothes of the child victim is not a ground to discard the testimony of the victim. Further, it notes that the child was subjected to lengthy cross-examination, but nothing came out from his cross-examination, which could shake the child's credibility.

Based on the evidence put forth by both sides, the court has convicted the accused under section 4 of the POCSO Act and section 377 of the IPC read with section 3(2)(v) of the SC/ST 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 his 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 has sentenced the convict to undergo rigorous imprisonment for life under section 377 of the IPC read with section 3(2)(v) of the SC/ST Act, 1989. While relying on section 42 of the POCSO Act to pass a sentence that is greater in degree, the court seems to have missed that unlike section 4 of the POCSO Act, section 377 of the IPC does not prescribe a minimum punishment. Moreover, life sentence under section 377 of the IPC is optional to a sentence that can extend to a maximum of 10 years, whereas the maximum sentence under section 4 of the POCSO Act has always been life imprisonment.

## **II. 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 a case of Attempt to PSA, the child was 16 years old and had gone outside her house to answer nature's call at night. 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 child and accused's family members intervened. Noting that the child 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 has quoted the Supreme Court's judgment in *Dhananjay Chatterjee v. State of West Bengal*,<sup>32</sup> stating that the court would be failing in its duty if appropriate punishment is not awarded for a particular crime. The court says:

*"Large number of criminals go un-punished thereby encouraging the criminals and in the ultimate making justice suffer by weakening the system's credibility."*

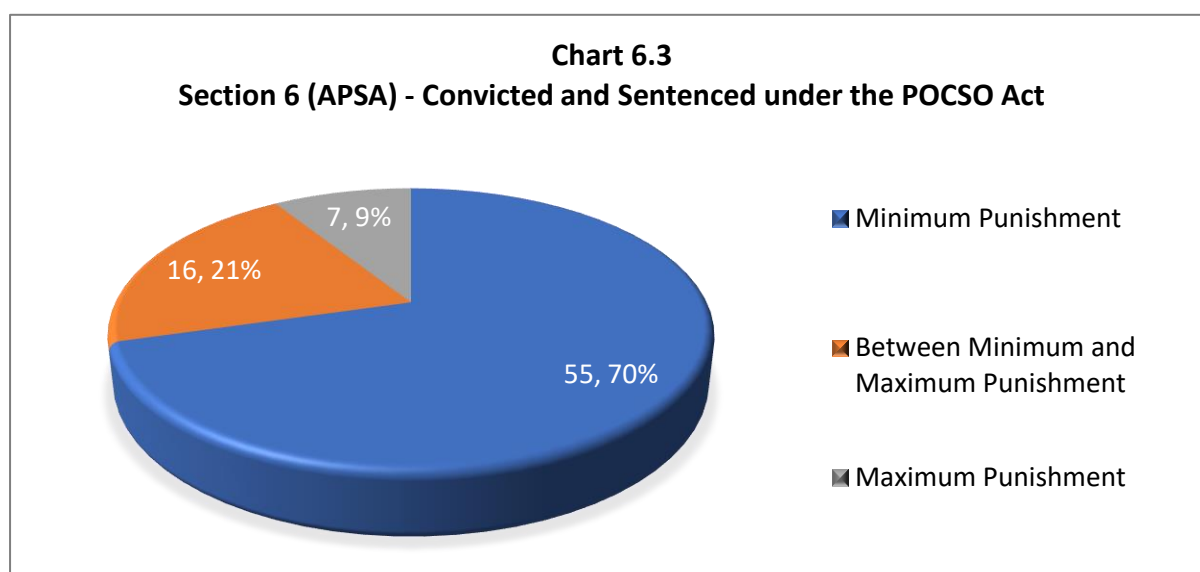
Further, the court has stated that the imposition of appropriate punishment is the court's response to the "society's cry for justice" against the criminals and the justice demands that the court should impose punishment befitting the crime.

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 is sentenced to imprisonment for a period of 3.5 years i.e. half of the minimum imprisonment prescribed under section 4 of the POCSO Act.

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

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

#### ***Convicted and Sentenced under the POCSO Act***



<sup>32</sup> 1994 (2) SCC 220

(i) 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 are more than one accused, three and two accused respectively, and they are all sentenced to imprisonment of 10 years each.

(ii) Between Minimum and Maximum Punishment

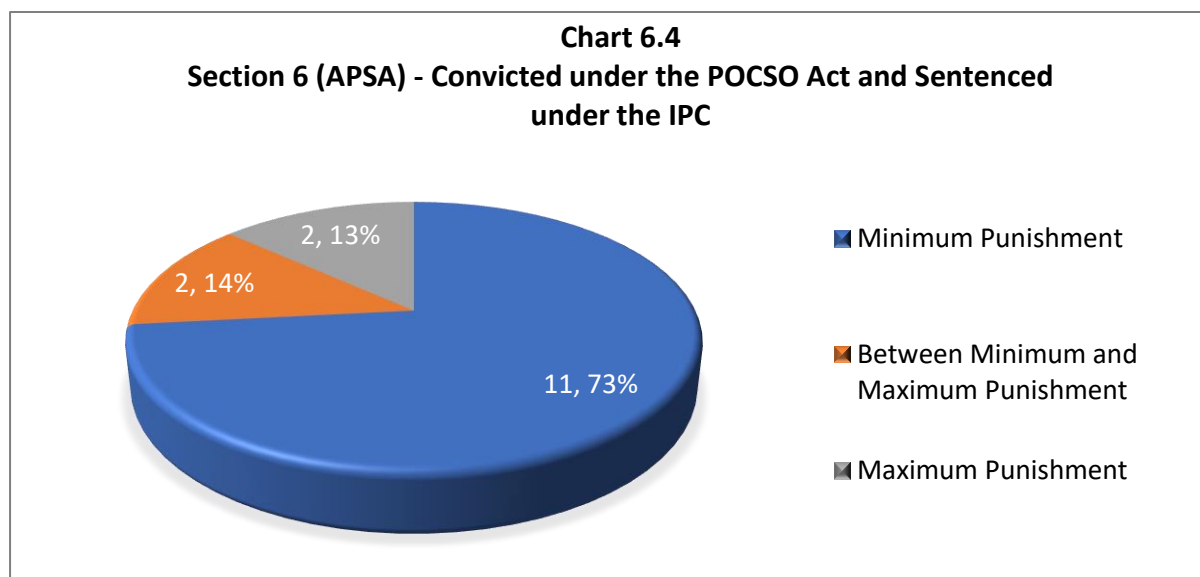
In 16 cases the accused has been sentenced between the minimum and maximum imprisonment prescribed under section 6 of the POCSO Act (between 10 years and life imprisonment)

- Imprisonment for 12 years - 1 case
- Imprisonment for 14 years - 2 cases
- Imprisonment for 20 years - 13 cases (Period of the cases ranges between the year 2016 and 2019)

(iii) Maximum Punishment

In 4 cases, the accused are awarded the maximum sentence under section 6 of the POCSO Act, i.e. imprisonment for life, and in 3 cases the accused are awarded life imprisonment under the provisions of the POCSO Act as well as the IPC – 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.

- (i) 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
- (ii) Between Minimum and Maximum Punishment
  - Imprisonment of 12 years – 1 case
  - Imprisonment of 14 years under section 376 (2)(i) – 1 case
- (iii) 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 is convicted for the rape of the child under 16 years of age and following the rule under section 42 of the POCSO Act, is sentenced to imprisonment for the remainder of his natural life under section 376(2)(i) of IPC. At that time, punishment under the said section of IPC was greater than the punishment prescribed under section 6 POCSO Act.

In the said case, the child 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 child's parents were out for work, the accused forcibly took her 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 child crying, she enquired as to what had happened. Due to the fear of the accused, the child hesitated at the beginning in telling her mother about the incident but subsequently she disclosed the abuse. The mother took the child to the police station the next morning and reported the matter.

At the time of the prosecution evidence, the child 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 two 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, the court decided that if either of the documents are relied upon, the child'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, there was nothing to prove that the child/family had enmity with the accused and filed a false complaint against the accused. The court has emphatically states that -

*“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 poor, not a previous convict, has five 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.

*“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 a basic principle that crime and punishment are two sides of the 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 the criminal justice delivery system.**”*

Keeping in mind the aforesaid principles, the court is of the considered view that in such types of cases no leniency can be taken, the deterrence 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/her 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 is sentenced to death under section 376 A (section inserted after the 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.

The court has treated the said case as one that falls within the category of 'rarest of the rare' and awarded death sentence to the convict. The facts of the case and the reasoning provided by the court are interesting to understand and note.

The child, since deceased, was 8 years of age at the time of commission of offence and her younger brother was aged 5 years. On 08.06.2018, at 10 am, the parents of the child had taken their son to the hospital and left their daughter alone at home. When they returned at around 12 pm, they noticed that the child was nowhere to be seen. The accused, their neighbour, was in the area alone and when he was asked where the child was, he mentioned that some girl had come to call the her and took her along. The accused seemed perplexed when he was asked questions about the child. Not paying too much attention to his behaviour, the parents started looking for the child frantically. The accused, after locking his room, also helped them to look for her. Their search went in vain and at 1:30 pm the police were 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 their absence, he had taken the child to his room. At first, he showed her a blue film and then had forceful sexual intercourse with her. On her resistance, he tied her hands and mouth, committed rape and then murdered her. The dead body of the child 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 cloth which was tied around the hands of the child and her underwear. The court is of the opinion that this established that the accused had forceful sexual intercourse with the child before her murder.

Relying on the evidences of the family members, the fact that there was no proven enmity between the accused and the child's family, circumstantial evidence, DNA report and last seen theory (on questioning the accused had stated that he saw some girl call the child and take her along, 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 POCSO Act.

At the time of sentencing the convict, the prosecution argued vehemently that the child was innocent, had a bright future and her life was appallingly cut short by the heinous acts of the accused.

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 notes that the convict was a co-tenant in the same house as the child and he brutally raped and murdered the 8-year-old deceased child in broad daylight.

The court also states that a heinous act like this threatens the safety and security of the child and this type of incident, if allowed to occur, will create havoc in the society. Considering it to be a case under the category of “rarest of the rare”, the court is not inclined to give lesser punishment stating that if let out, the convict would be a danger to the society and the punishment given should be a lesson for the others before thinking of committing such an act.

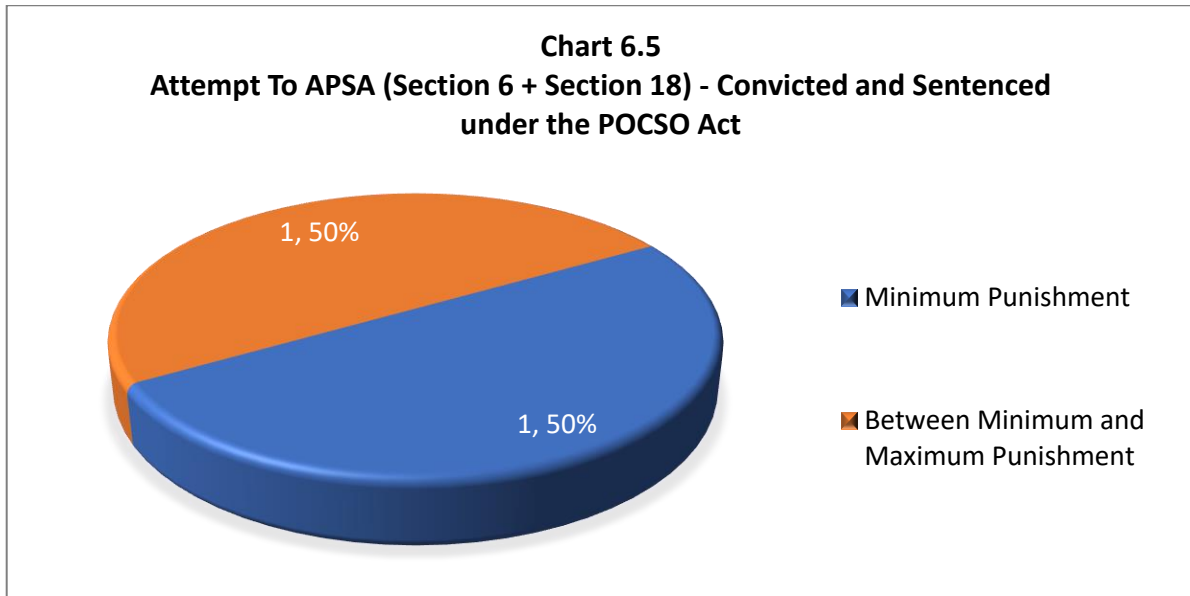
*“...with respect to sentencing policy wherein it is observed that “when the victim is an innocent child or a helpless woman, the murderer is in dominating position then the Court cannot grant lesser sentence.”*

Referring to the act being as heinous as in the Nirbhaya case, the court is of the view that it 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 finds no reason to award anything less than capital punishment for such an offence and hence the convict is 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.

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



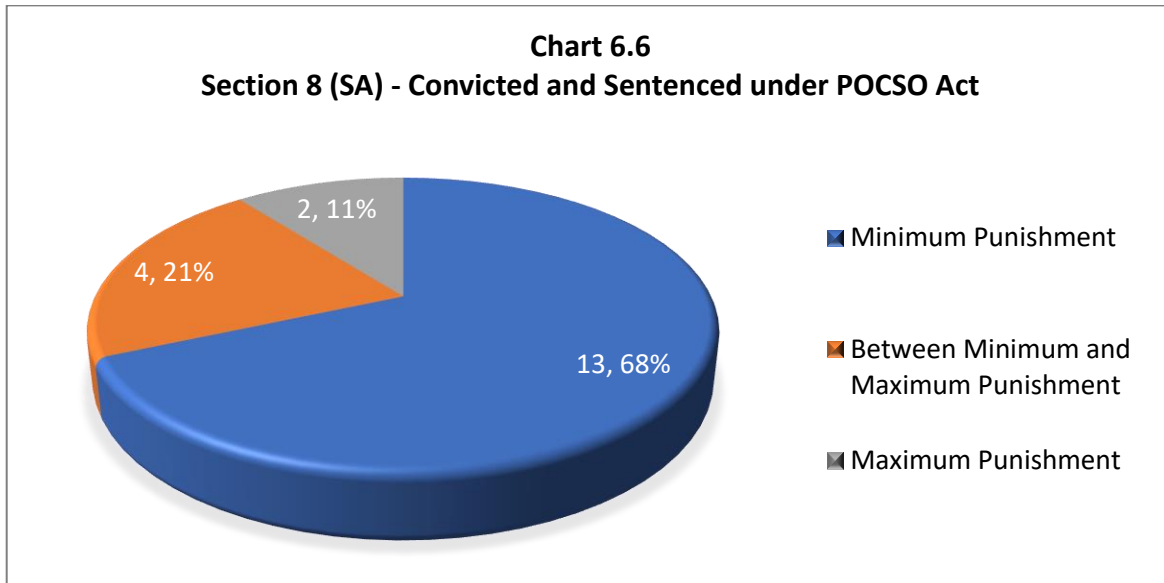
With respect to cases with a combination of section 18 read with section 6 (Attempt to commit APSA), the punishment prescribed in section 18 is an imprisonment for a term which may extend to one half of life imprisonment or one half of the longest term of imprisonment provided for that offence.

There are two such cases pertaining to the year 2017 and 2018 respectively. During that time, the longest term provided under section 6 was imprisonment for life and the minimum imprisonment sentence was 10 years. In one case the accused is sentenced to imprisonment for a period of 5 years i.e. half of the minimum imprisonment sentence applicable and in another the accused is awarded imprisonment of 10 years which falls between the minimum and maximum sentence applicable under section 6 read with section 18.

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

Out of the total 197 cases, there are 20 cases of sexual assault, of which 19 are under section 8 of the POCSO Act and one under section 8 read with section 17 of the POCSO (abetment of sexual assault).





In the 19 cases wherein the accused are convicted under section 8 i.e. SA, the range of sentence awarded is as follows:

- (i) Minimum Punishment
  - 3 years - 13 cases (1 case specifically mentions that the accused shall undergo simple imprisonment of 3 years and 3 cases do not specifically mention rigorous or simple)
- (ii) Between Minimum and Maximum Punishment
  - 4 years - 4 cases
- (iii) Maximum Punishment
  - 5 years - 2 cases

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

At the time of deciding on the sentence, the child-in-conflict with the law prayed for a lenient view on the ground that he was a student of 12<sup>th</sup> class, not a previous convict and is a poor person with old ailing parents. The court in this case opines that the child-in-conflict with the 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 suggest that he committed the offence with pre-determination. In this backdrop coupled with the social background report submitted by a legal cum probation officer, the court has decided to deal

with the child-in-conflict with the law with some severity and sentenced him to imprisonment above the minimum sentence prescribed under section 8 of the POCSO Act.

In one case the child was 12 years of age and the accused was about 60 years of age. The accused called the victim behind the statue of lord Shiva, removed her salwar and tried to rape her, when a few men from the surrounding area came to the spot and rescued the child from the clutches of the accused. At the time of arguments on sentence, the accused prayed for a reformatory approach considering his age and the fact that he had a wife and 9 children. While sentencing the convict to the maximum imprisonment under section 8 of POCSO Act i.e., 5 years, the court has followed the theory of deterrence and the ideology set out by the Supreme Court in *Shanti Lal Meena v. NCT of Delhi*,<sup>33</sup> -

*'crime and punishment are two sides of the same coin and awarding of sentence must be proportional to the culpability'.*

In another case, the child was sexually assaulted by the accused on her way back from school. The child's testimony was consistent, reliable and well corroborated by other witness, and on that basis the accused has been convicted under section 8 of the POCSO Act. At the time of sentencing, the court is 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 have 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 states 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."*

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<sup>33</sup> CBI (2015) 6 SCC 185

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

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

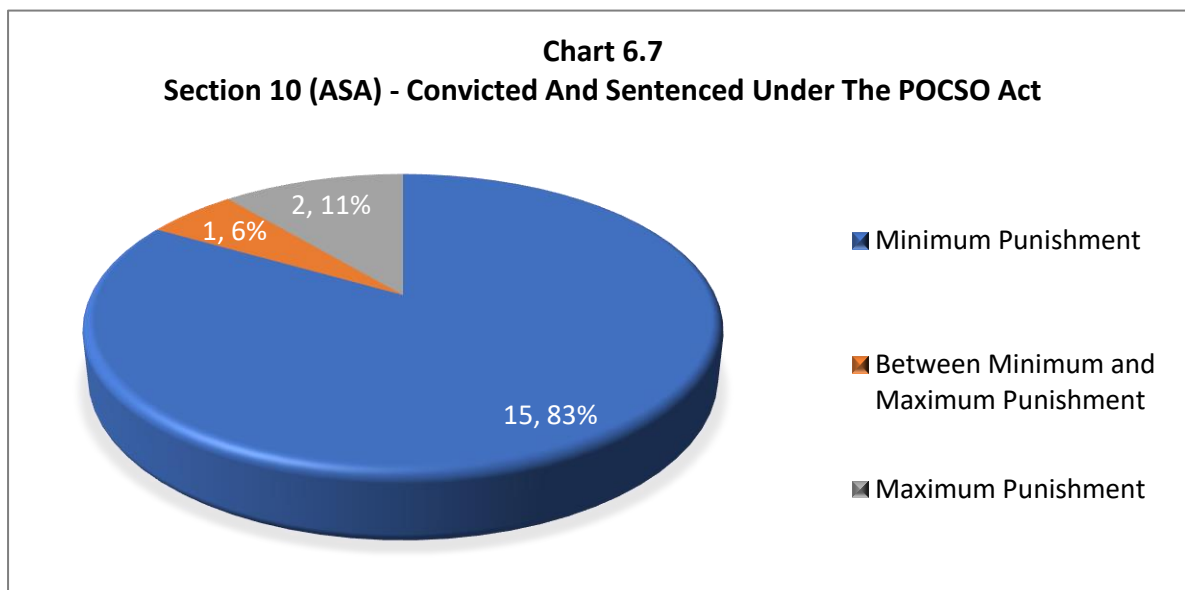
In the said case, the child, 15 years of age, was on her way back from tuition and was waiting at the bus stop. One of the accused came to the flyover on his motorcycle and insisted that the child sit with him on the bike. Upon her refusal, he called two of his friends (the co-accused) and gave his motorcycle to them and boarded in the same bus as the child. 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 notes 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. It further notes that the commission of the acts by the other two co-accused, i.e., taking his motorcycle and also of following the bus in which the main accused was sexually harassing the prosecutrix, thereby also establishes their guilt with respect to abetment of the offence under section 8 read with section 17 of the POCSO Act.

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 are sentenced to imprisonment for a period of 3 years, i.e., the minimum imprisonment sentence prescribed under section 8 of the POCSO Act.

## **VII. Aggravated Sexual Assault (ASA) - Section 10 of the POCSO Act**

Out of the total of 197 cases, there are 18 cases wherein the accused are convicted under section 10, i.e., for aggravated sexual assault (ASA).



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

In one of the cases wherein the sentence is of maximum imprisonment, the accused was the headmaster of the school where the child was studying. In such capacity he was the guardian of the students and was duty bound to protect the children, but instead himself committed the offence. The court in this case feels that taking a lenient view in favour of the convict would be inadequate and equally harmful to the criminal justice system.

To instil public confidence in the efficacy of law and to provide sufficient deterrence, the court notes that it is 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 a 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 feels that a lenient view in favour of convict is not warranted at all.

In another case, the accused had forcibly taken the child, aged 6 years old, to his house with the intent to commit rape upon her. Just when he took her to his house, removed her clothes and tried to commit rape upon the child, some women of the area, who had seen him forcibly take the child away, came to his house and rescued the child from the clutches of the accused.

During the trial, the accused took the defence that the child's parents had fabricated the case against him. In this regard, the court has 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 the 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 in proving the case beyond reasonable doubt. The accused is thus 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. The 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 child so as to set an example before the society and to deter the other similarly minded persons from committing similar offences.

Therefore, keeping in view the social background and the fact that the convict committed sexual assault which caused the child immense physical and mental trauma, leaving an everlasting scourge on her soul, the court states that it is not in favour of taking a lenient view in favour of the convict.

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

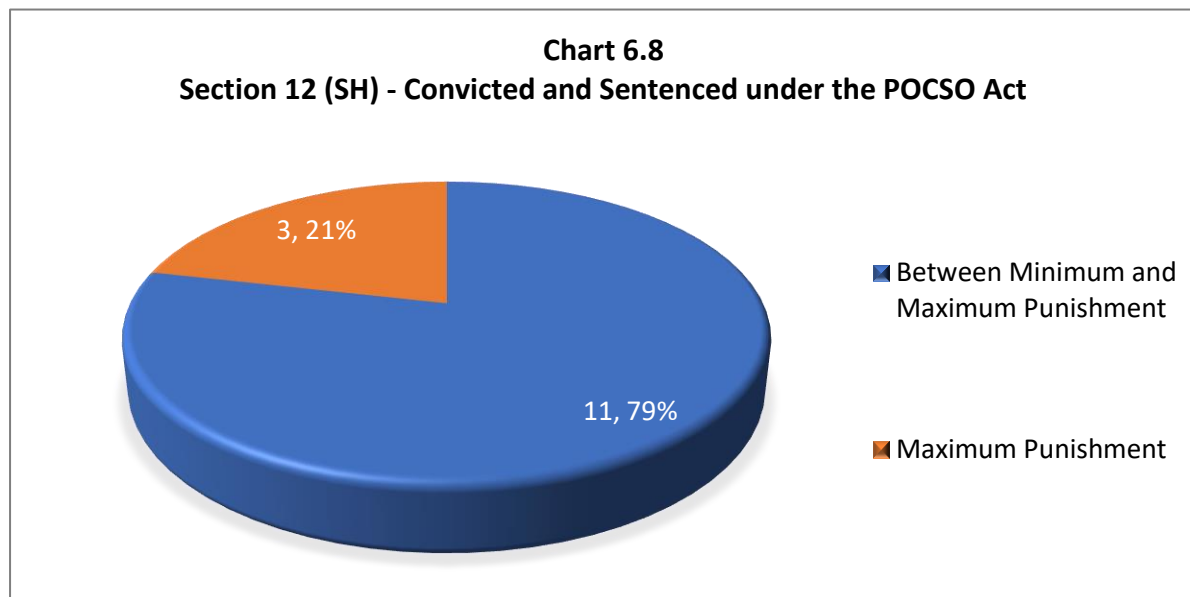
On the other hand, in one case, the court while sentencing the convict to the minimum sentence for an offence under section 10 of the POCSO Act, has stated that it has to weigh in

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 case, the court has considered the conduct of the convict during the trial as a relevant factor amongst others such as the convict being the sole caretaker of his old mother and widow sister and accordingly sentenced him to minimum punishment prescribed under section 10 of the POCSO Act, i.e., 5 years

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

Out of the total 197 cases, in 15 cases the accused are convicted under section 12, i.e., SH and in one case under section 12 read with section 18 of the POCSO Act.



- (i) Less than the Maximum Punishment Prescribed
  - Imprisonment for 10 months – 1 case
  - Imprisonment for 1 year – 2 cases
  - Imprisonment for 15 months – 1 case
  - Imprisonment for 2 years - 7 cases
- (ii) Maximum imprisonment
  - Imprisonment of 3 years - 3 cases
- (iii) Sentence Undergone but Not Known – 1 case

In one case under section 12 of the POCSO Act, the accused used to be the child's ex-landlord and used to constantly stare at the child (aged 13 years). This escalated when he started

leaving obscene notes outside her gate. The child's current landlord informed her father about the notes. On 28.12.2017 the accused was caught red handed by the parents of the child and some other neighbours and a police complaint was filed against the accused. After weighing the evidence 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 sentence, 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, there is nobody to look after his old wife, his daughters have been married off and he is dependent on them.

The Court has sentenced the convict to the term of imprisonment already undergone stating that –

*“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 is 28.12.2017 and the date of pronouncement of decision is 29.01.2020, when the accused was on bail. On this basis, it may be concluded that the convict would have been in judicial custody for a maximum period of 2 years. Thus, the punishment so awarded can be categorised 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 has thus sentenced him to 10 months of imprisonment for the offence under section 12 of the POCSO Act.

#### **IX. 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 child (by unzipping his pants) when the father of the child reached the scene of crime and stopped him. In this case, the court has analysed the stages of crime to determine if the crime was in fact committed or it was an attempt to commit 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 has 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 has taken into consideration the Hon’ble Supreme Court’s observation in *Dhananjay Chatterjee v. State of West Bengal*,<sup>34</sup> wherein it is 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 has 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 child, studying in 12<sup>th</sup> 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 is that offences against children should be countered by imposing penalties as an effective ‘deterrence’. The court has thus sentenced the convict to imprisonment of 3 years, i.e., maximum imprisonment prescribed under section 12 of the POCSO Act.

## **B. Overall Analysis of Sentence Awarded**

It is observed that the offences under the POCSO Act and the IPC, as mentioned hereinabove, have a certain range of minimum and maximum punishment prescribed. The wide gap between the maximum and the minimum punishments affects the sentencing system. Even as the courts have the discretion to consider the facts and circumstances of the case, including the aggravating and/or mitigating factors while passing an order, as mentioned by Dr. Mrinal Satish, absence of any guidance on sentencing runs the risk of “unwarranted disparity” and “arbitrariness” in sentencing.<sup>35</sup>

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<sup>34</sup> 1994 (2) SCC 220

<sup>35</sup> Ibid. Satish, Mrinal. p, 4, 80.

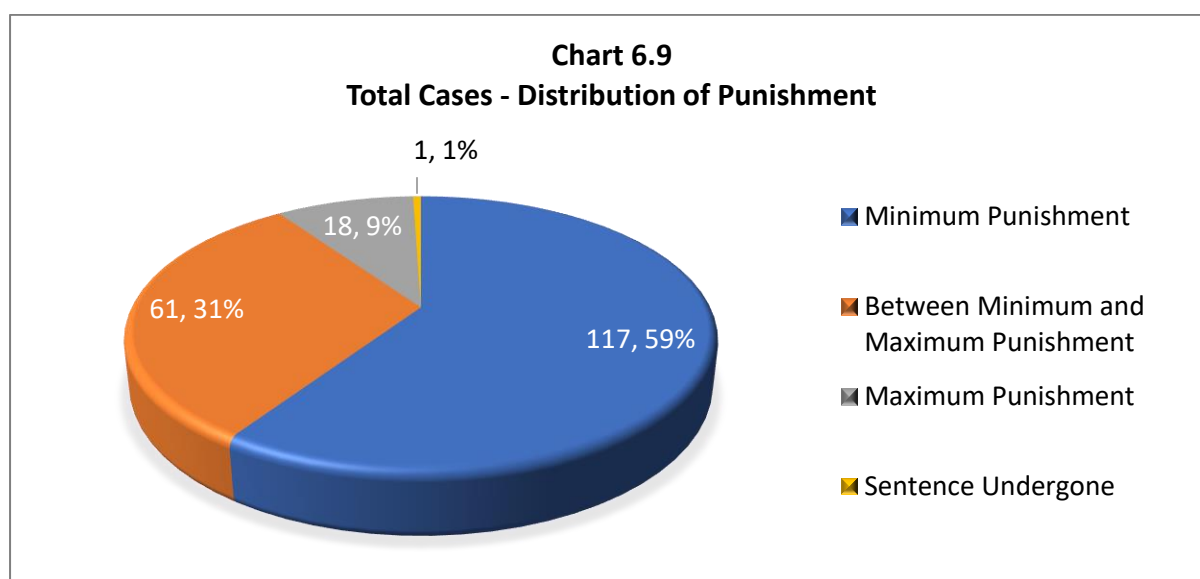


At the time of sentencing, the common plea taken by most of the convicts is that they are poor, have parents who are old and/or have ailments, they are the sole bread earner of the family, are married have young children, they are young/old and that they are not a previous convict/do not have any case 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 the 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 recognise the fact that courts are bent towards using deterrence as a purpose of punishment. The Hon'ble Supreme Court in the case of State of Karnataka v. Krishnappa,<sup>36</sup> stated that sentences imposed on rape offenders should be deterrent in nature.

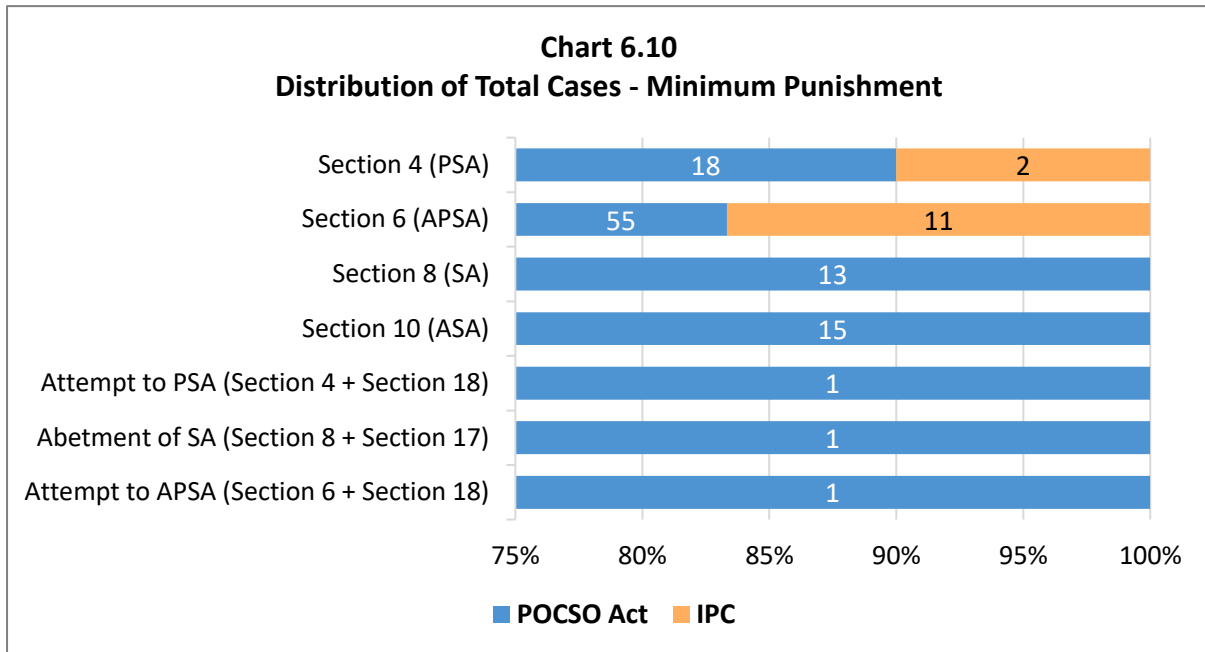
In many cases, courts have followed the 'deterrence theory' as their primary approach to crime and punishment. While a few judgments also reflect the reformation approach, by and large, the courts have kept in consideration the fact that punishment must be appropriate and in response to the "society's cry for justice" against the criminals. Courts have also mentioned the basic principle that crime and punishment are two sides of the same coin, thus, it must impose punishment which is "befitting the crime" and that the "sentence must be proportionate to culpability."

The overall distribution of cases in which the punishment is awarded is given in Chart 6.9 that follows.

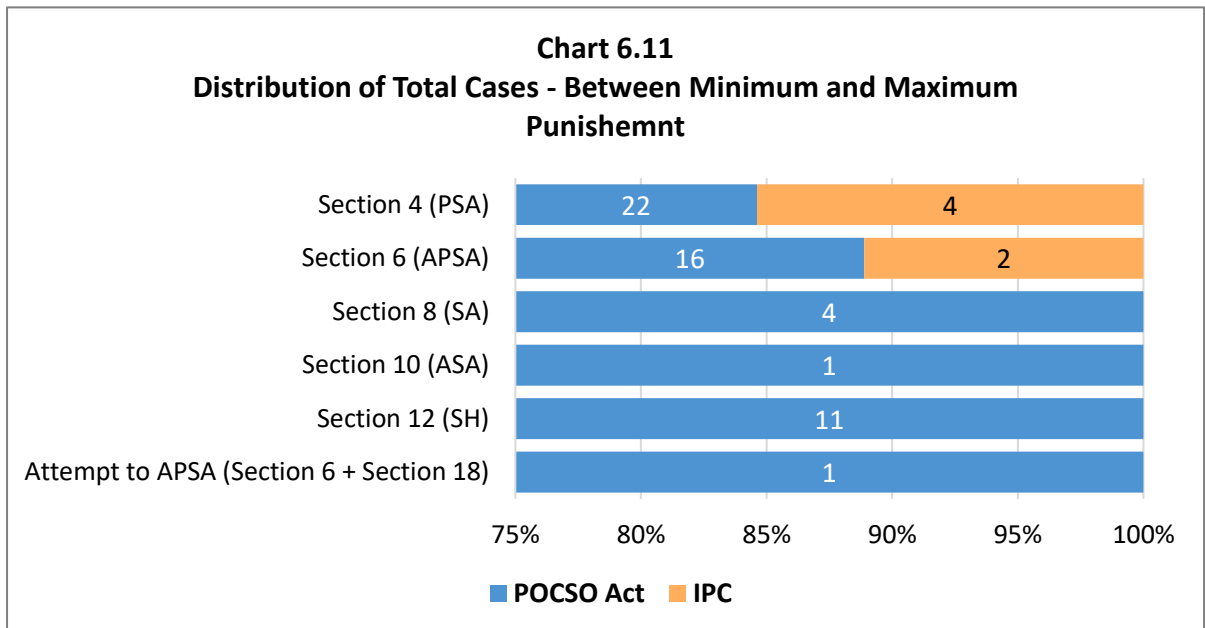


<sup>36</sup> (2000) 4 SCC 75

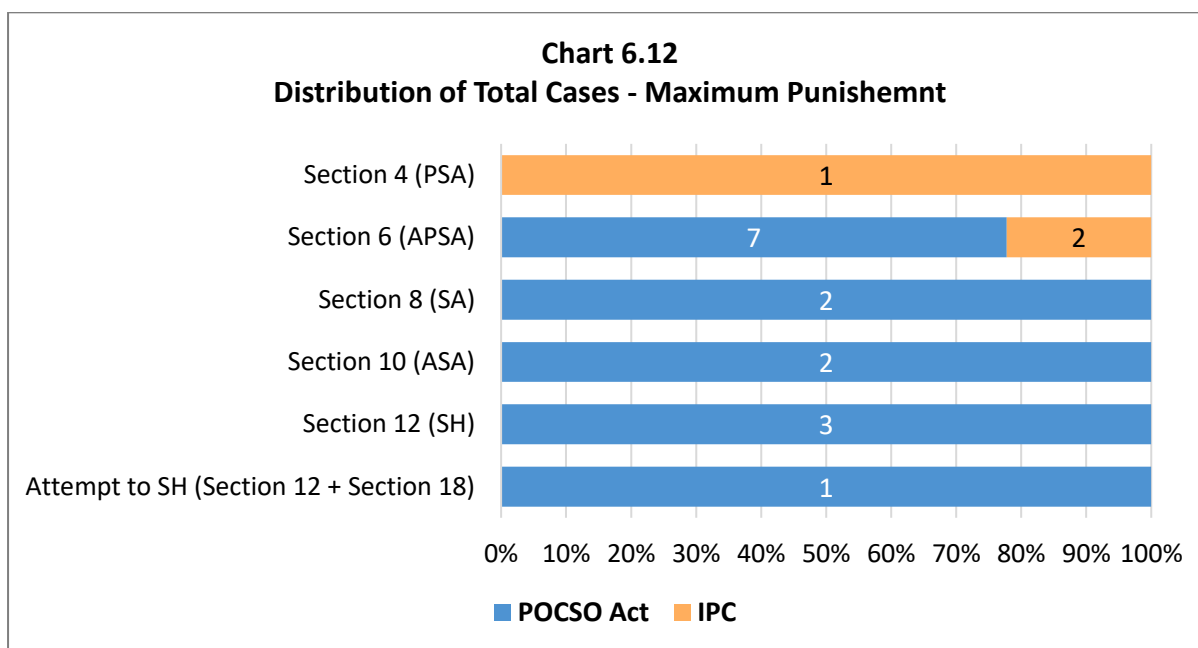
- Of the total 197 cases, in 59% or 117 cases, the courts have sentenced the convict to the minimum sentence prescribed in law as applicable at that time. Of the 117 cases, the offence-wise break-up of sentence awarded is given in Chart 6.10.



- In 31% or 61 cases, the sentence awarded to the convict is between the minimum and maximum punishment prescribed under the applicable law. Of the 61 cases, the offence-wise break-up of sentence awarded is given in Chart 6.11.



In 9% of 18 cases, the sentence awarded to the convict is the maximum punishment prescribed under the applicable law. Of the 18 cases, offence-wise break-up of the sentence awarded is given in Chart 6.12.



Of the 197 cases, there is one case wherein the sentence awarded by the court is the term of imprisonment which was already undergone by the convict and falls between minimum and maximum punishment prescribed. As highlighted earlier, this is a case of sexual harassment under section 12 of the POCSO Act.

Cases where the courts have awarded a sentence above the minimum punishment prescribed are those where it is observed that the offence committed by the convict has very serious and has far-reaching implications on the social fabric of the society. Of the 197 cases, there are no cases where the courts have gone below the prescribed minimum sentence. The discretion of the courts in such cases to go below the minimum punishment prescribed was taken away with the enactment of the POCSO Act in 2012 and by the Amendment 2013, which together introduced the regime of ‘mandatory minimum sentences’ in cases of sexual crimes against women and children.

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 is stated that acts like these, i.e., brutal rape and murder of a young child, creates havoc in the society. Relating it to the Nirbhaya case the court has clearly noted that giving a lesser punishment to the convict would be dangerous to the society. Finding no reason to impose a lesser punishment the court has 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 moves towards murder and the sentencing is based on that.

In one case, under section 8 of the POCSO Act, the convict was a child-in-conflict with law who was tried as an adult. During the arguments on sentence, the child in conflict with the law prayed for a lenient view as he was a young boy and had a chance to reform himself. However, the considering that cases like these are on the rise and the fact that he had acted with pre-determination, the court has 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 for a rape sentence, the courts have indicated that they cannot stand any attack on the dignity and sexual autonomy of children and seek to deter criminals from committing such offences. Reiterating the same sentiment, in one of the cases, the court has 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 the case of *Shyam Norain v. State (NCT of Delhi)*,<sup>37</sup> 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 discretion according to well established judicial principles, according to reason and fair play, and not according to whim and caprice.

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<sup>37</sup> 2013 (3) RCR (Criminal) 102

The Gujarat High Court in the case of *State of Gujarat v. Pandya Premashanker*,<sup>38</sup> 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.

Hiteshi Agarwal in his article on sentencing policy in India<sup>39</sup> highlights that the Malimath Committee in its report issued in March 2003 had emphasised on the need for sentencing guidelines to minimize the uncertainty in awarding sentences as stated that -

*“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.”*

Thus, doing away with the discretionary powers of the courts or having a straitjacket approach in such an ever-changing field of law is not feasible. To reiterate, the need of the hour is to have clear guiding principles of sentencing policy laid out in order to assist the courts in passing sentence orders in a manner that the “unwarranted disparity”<sup>40</sup> is reduced to a great extent. Sentencing discretion is an unavoidable evil, it can only be structured, regulated and disciplined.<sup>41</sup>

## FINE IMPOSED

Fine is the money that must be paid by the convict as part of his/her punishment for being convicted for committing an offence under the law. Unlike years of imprisonment, the sections under the POCSO Act or the IPC do not provide for a range/bracket within which the courts can impose a fine on the convict. Courts have the 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

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<sup>38</sup> 1999 CriLJ 1841

<sup>39</sup> Agarwal, Hiteshi. *Sentencing Policy in India – An Overview*. April 07, 2020. Available at: [http://racolblegal.com/sentencing-policy-in-india-an-overview/#\\_ftn1](http://racolblegal.com/sentencing-policy-in-india-an-overview/#_ftn1)

<sup>40</sup> Ibid, Satish, Mrinal. p. 4

<sup>41</sup> Ibid. Agarwal, Hiteshi

a period of 1 month / 6 months / 1 year etc. In the case of *Paras Nath and Ors. v. State*,<sup>42</sup> the Hon'ble Supreme Court stated that the sentence of imprisonment in default of payment of 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:

*“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 Research

For the sake of convenience of data computation and ease of understanding, the analysis of fine imposed is presented in terms of the nature of offence for which a person is convicted rather than the particular section of law under which a person is sentenced, for example, fine imposed for PSA, APSA, SA etc. However, the fine taken into account is that which is corresponding to the section under which the person is sentenced.

### A. Type of Offence and Fine Imposed

Table 6.1 shows that the quantum of fine imposed by the court varies for the different types of offences under which the accused is convicted, ranging from INR 500 to INR 5,10,000 to no fine at all.

Table 6.1 Offence-wise Quantum of Fine Imposed										
Fine Amount	PSA	Attempt to PSA	APSA	Attempt to APSA	SA	Abetment of SA	ASA	SH	Attempt to SH	Total
₹ 0	0	0	0	0	1	0	0	0	0	1
₹ 500	1	0	0	0	2	0	0	2	0	5
₹ 1,000	0	0	0	0	3	0	0	3	0	6
₹ 2,000	2	0	2	0	4	0	1	4	1	14
₹ 3,000	1	1	0	0	0	0	1	1	0	4
₹ 3,500	1	0	0	0	0	0	0	0	0	1

<sup>42</sup> 1969 CriLJ 350

₹ 4,000	0	0	0	0	0	0	0	1	0	1
₹ 5,000	3	0	5	1	6	0	4	3	0	22
₹ 7,000	2	0	0	0	0	0	0	0	0	2
₹ 10,000	16	0	46	1	2	0	4	1	0	70
₹ 11,000	1	0	0	0	0	0	0	0	0	1
₹ 15,000	2	0	1	0	1	0	0	0	0	4
₹ 20,000	6	0	8	0	0	0	2	0	0	16
₹ 21,000	0	0	1	0	0	0	0	0	0	1
₹ 23,000	0	0	1	0	0	0	0	0	0	1
₹ 25,000	4	0	9	0	0	1	1	0	0	15
₹ 30,000	1	0	3	0	0	0	3	0	0	7
₹ 40,000	0	0	1	0	0	0	0	0	0	1
₹ 50,000	5	0	13	0	0	0	2	0	0	20
₹ 1,00,000	2	0	2	0	0	0	0	0	0	4
₹ 5,10,000	0	0	1	0	0	0	0	0	0	1
<b>Grand Total</b>	<b>47</b>	<b>1</b>	<b>93</b>	<b>2</b>	<b>19</b>	<b>1</b>	<b>18</b>	<b>15</b>	<b>1</b>	<b>197</b>

- The highest amount of fine imposed by a court in the said 197 cases is INR 5,10,000, in a case of APSA.

Of the total 93 cases of APSA, the highest amount of fine imposed is INR 5,10,000, where the child was 15 years of age and the accused was her grandfather. The child and her sisters started staying with their grandfather after their mother passed away. The incident happened when the child 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 her to their neighbour (who was a journalist) and filed a complaint with the police. During investigation, it was found that in order to conceal the evidence against him, the accused had burnt the clothes of the child. Relying on the child's consistent and unswerving testimony, the court convicted the accused. At the time of sentencing the convict, taking note of the number of properties which the grandfather owns, the court states 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 has directed the convict to pay INR 5,00,000 as compensation to the child to assist her in her rehabilitation and future.

- The lowest amount of fine imposed is INR 500 in 5 cases (2.5 percent of the total 197 cases). One of these is a case of sexual assault and 2 each are cases of sexual assault and sexual harassment respectively.
- In a significant 35.5% of cases (70 cases), the courts have imposed INR 10,000 as the fine amount.

- There is one case wherein no fine is imposed on the convict.
- In 16 of the 47 cases of PSA, i.e. 34% of the cases, the concerned courts have imposed a fine of INR 10,000 and in 6 cases, i.e. 12 percent of the cases, the fine imposed is INR 20,000.
- Of the 47 cases of PSA wherein a fine is imposed, there are 5 cases where the amount of fine is INR 50,000 and 2 cases wherein the amount goes up to INR 1,00,000 per accused. In all these cases the child is aged between 14 to 17 years and the accused is a person known to the child / child's family i.e. neighbour, family friend etc. The imprisonment awarded in these cases ranges from minimum sentence prescribed to that between the minimum and maximum prescribed.
- In 30% or 6 cases of SA, the courts have imposed a fine amount of INR 5,000 and in 20% or 4 cases of SA, the fine imposed is INR 2,000.
- In one case of SA, the court sentenced the convict to imprisonment for 4 years, however, did not impose any fine.

This is 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 12<sup>th</sup> 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 above said substantive sentence.

- In one case of Abetment of ASA, 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 main convict to the minimum imprisonment prescribed under section 8 of the POCSO Act and his 2 accomplices to the minimum punishment under section 17 read with section 8 of the POCSO Act. However, the fine imposed on all 3 is the same, i.e. INR 25,000 each.
- In two cases of ASA, the fine imposed is INR 50,000. In both these cases the offence of sexual assault is aggravated but for different reasons. In one case, the child was five years of age and in the other, the accused was the headmaster of the school where the child studied, i.e. on the management or staff of an educational institution.



- There is only one case of ASA where the lowest fine amount imposed is INR 2,000.

In this 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 child (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 on the rise in 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.

- In cases of SH, the highest fine imposed is INR 10,000 in one case.

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 child in broad daylight, stalked her regularly and thus did not deserve any mercy. The court states that the convict must not be shown mercy at the time of sentencing as the convict has committed a *“daredevil 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 court observes that the 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 Romeos like the accused and because of such regular harassment, either girls drop out from school or adopt other means to study than to attend a school regularly. However, the court also states 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 a first time offender, the court has sentenced him to imprisonment for a period of 2 years and imposed a fine of INR 10,000.

- The lowest amount of fine imposed in 2 cases of SH is INR 500.

In one of these cases, 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.

In the other case, the convict is sentenced to the term of imprisonment already undergone. In this case, the convict stated that he was a poor old man who has been taking treatment for depression from a psychiatrist. He also stated that his wife is also old and she has been suffering from some ailments, daughters are married and live with their families. The convict further 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 they have been living in an ashram for the last leg of their lives.

- In 27% or four cases of SH the fine imposed is INR 2,000, in 20% or 3 cases of SH, it is INR 5,000 and in another 20% cases it is INR 1,000.

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

The court notes that at the time of sentencing, the courts must focus on the relevant and peculiar facts and circumstances of each case, keep in mind not just the deterrent or retributive factors but also the rehabilitative and reformatory factors and strike a balance, so that the sentence does not become disproportionate to the harm caused in the offence or lenient or inadequate to the extent of affecting social good.

## CONCLUSION AND RECOMMENDATIONS

The laws relating to sexual offences against women and children have by and large taken away the discretion of judges on sentencing by prescribing minimum and maximum mandatory sentences. Studies on implementation of the POCSO Act in the past by HAQ: Centre for Child Rights<sup>43</sup> and on functioning of the Special Courts under the POCSO Act in five states by the Centre for Child and the Law, NLSUI, Bangalore<sup>44</sup> have clearly pointed out that this leads to more acquittals than convictions. These studies show that higher sentences do not deter a perpetrator from committing the crime. In most cases of sexual crimes against

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<sup>43</sup> Ali, Bharti, Maharukh Adenwalla and Sangeeta Puneekar. *Implementation of the POCSO Act, Goals, Gaps and Challenges: Study of Cases of Special Courts in Delhi & Mumbai (2012 - 2015)*, p. 111. HAQ: centre for Child Rights and Forum Against Sexual Exploitation of Children (FACSE). November 2017. Available at: <https://haqcrc.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf>

<sup>44</sup> Centre for Child and the Law (CCL), National Law School of India University (NLSIU). *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues, Based on CCL-NLSIU's Studies on the Working of Special Courts in Five States*, p. 59-60. February 2018. Available at: <https://ccl.nls.ac.in/wp-content/uploads/2017/01/Implementation-of-the-POCSO-Act-2012-by-speical-courts-challenges-and-issues-1.pdf>

children, the perpetrators are known to the child and higher punishments not only deter children from reporting the incident but also force them to turn hostile if the case is reported.

The courts are over burdened with cases of romantic relationship. In cases of elopement, there has been evidence in the past showing that the accused is discharged under the POCSO Act but convicted for charges of kidnapping. With time and since the judgement of the Supreme Court in *Independent Thought v. Union of India & Anr.*,<sup>45</sup> cases of consensual sex in romantic relationships involving minors including cases of child marriage, where marriage is consummated, have come to be treated as a statutory offence. In such cases, the girl, who may have become pregnant or even borne a child out of the relationship, does not wish to see her partner/accused languishing in jail for 10 years or more. Not only does such treatment stigmatise and criminalise the girl and the accused, even the child born out of the relationship, if any, suffers stigma for the rest of life as a child born out of statutory rape, besides being denied the right to grow up in the care and protection of both parents.

By and large the courts tend to award the minimum punishment prescribed or at best between the minimum and the maximum prescribed. Only in 9% of the 197 cases studied in this report for the analysis on sentencing, the courts have awarded the maximum sentence prescribed. In one case, the sentence awarded is as undergone. The HAQ and CCL-NLSIU reports mentioned earlier also show cases where the Special Courts have awarded less than minimum sentence or felt compelled to award minimum sentence in the absence of discretion<sup>46</sup>. Where the sentence awarded is between the minimum and maximum prescribed, there is no guidance available with the judges to decide on the quantum of imprisonment. As mentioned by Dr. Mrinal Satish and reiterated by Shraddha Chaudhary in the report published by CCL-NLSIU, "Judicial discretion framed within clear policy guidelines is, therefore, likely to be more effective increasing the rates of conviction and extending justice to a larger number of victims. This, in turn, would further the deterrent objective of the POCSO Act."<sup>47</sup>

As evident from the Prison Statics for 2019 published by the NCRB, of the 1,44,125 convicts at the end of the year, 70% belong to the SC, ST and OBC category. Their educational status shows that 25% of them are illiterate and 43% have not completed class 10.<sup>48</sup> At the time of sentencing, the courts take into consideration the aggravating and mitigating circumstances of the case. The mitigating factors may be the age of the accused, economic/financial condition of the accused and his family, family condition, criminal antecedents and other socio-economic indicators of the convict. In many cases, while arguing on sentence, the convicts take a plea that they are poor, sole bread earner of their family, have a wife and

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<sup>45</sup> [2017] 10 SCC 800, AIR 2017 SC 4904

<sup>46</sup> Ibid. Ali, Bharti, Maharulh Adenwalla and Sangeeta Puneekar., November 2017, p. 109.

<sup>47</sup> Ibid, CCL-NLSIU, February 2018, p. 62.

<sup>48</sup> National Crime Records Bureau (NCRB). *Prison Statistics India 2019*. Government of India. Available at <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>

minor children, no one to look after their parents or have parents who are old and suffering from ailments. Some convicts also plead that it is their first offence and pray for a lenient view on sentence. Despite such pleas, where the courts have convicted the accused, the general sentiment is that sexual offences are heinous and deserving of punishment severe enough to act as a deterrent. Fines to the tune of INR 50,000 or INR 1,00,000 and more, without any reasonable justification are part of the same sentiment and seem out of proportion in cases where the convict has pleaded poverty or incapacity to pay. 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.

Drawing from the analysis and the conclusion, the following recommendations may be considered for action.

### 1. Guidelines on sentencing

*There is a need for policy guidelines on sentencing to minimize the unwarranted disparity and arbitrariness that can result in awarding of sentences. The predilections of individual judges should find no space in the justice system, especially in a highly stratified and socially disparate society. It is not a question of restraining the discretion of courts, but of providing guidance that can promote objectivity in sentencing and lead to uniform practices based on an agreed approach to the criminal justice goals.*

### 2. Need to focus on thorough investigation, fairness of trial and certainty of conviction instead severity of punishment

Higher maximum sentences and a mandatory minimum sentence has been a cause for concern for people working in the area of child rights. It has emerged as a populist measure but the ground realities need to be looked at, considering that 96% of the perpetrators are known to the child,<sup>49</sup> the age of consent has been raised to 18 years and reporting is mandatory under the POCSO Act.

Considering that high minimum and maximum mandatory sentences deter children from reporting crimes by persons known to them or put different kinds of pressure on children to turn hostile, the approach to justice in cases of sexual offences needs to undergo a change. Moreover, if people's faith in the justice system is to be restored, the goal needs to be certainty of conviction and not severity of punishment.

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<sup>49</sup> National Crime Records Bureau. *Crime in India 2020, Volume 1, Table 4A. 10.* p 354. Government of India. Available at: <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf> .

Further, in cases where circumstances are complex and punishment is high, it becomes important to ensure there is thorough investigation and trial is conducted in all fairness and in accordance with the criminal justice principles.

### 3. *Need for a rational basis for imposing fine*

*There is no rational basis on which courts are imposing fine on the convict. There are some cases where the courts have considered the aggravating and mitigating circumstances. However, there is no data available in public domain on whether the said fine amount imposed has been recovered from the convict or if the convict undergoes imprisonment sentence for default of payment of fine.*

*Courts must assess if the convict is in a position to / has the capacity to pay the fine amount and find a rational basis for deciding the quantum of fine.*

### 4. *Areas for further research*

- i) A systematic and large-scale analysis of judgments in terms of the approach to sentencing and the sentencing principles followed by courts in cases under the POCSO Act has not been possible due to paucity of time as much as lack of access to all the judgements and sentence orders. It would certainly be worthwhile to invest in such research in future.*
- ii) Another important area for research is with respect to the fines imposed, the capacity of the convicts to pay the amount of fine and what happens if they are unable to pay. Such research can help evolve certain guidelines and a rational basis for the courts to follow while imposing fine.*

## CHAPTER VII

### VICTIM COMPENSATION

#### VICTIM COMPENSATION: PROVISIONS UNDER THE CrPC AND THE POCSO ACT

Section 33 of the POCSO Act read with Rule 7 of the POCSO Rules (which stands changed to Rule 9 post amendment to the POCSO Rules in 2020) provides that the Special Courts may on their own or on receiving an application, *“recommend the award of compensation”*, which includes determining 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, is supposed to consider 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 was inserted in the CrPC requiring the state governments to make funds available for payment of compensation to a victim upon the recommendation of the court. Under section 357 A of CrPC, 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”. Under the victim compensation scheme, 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

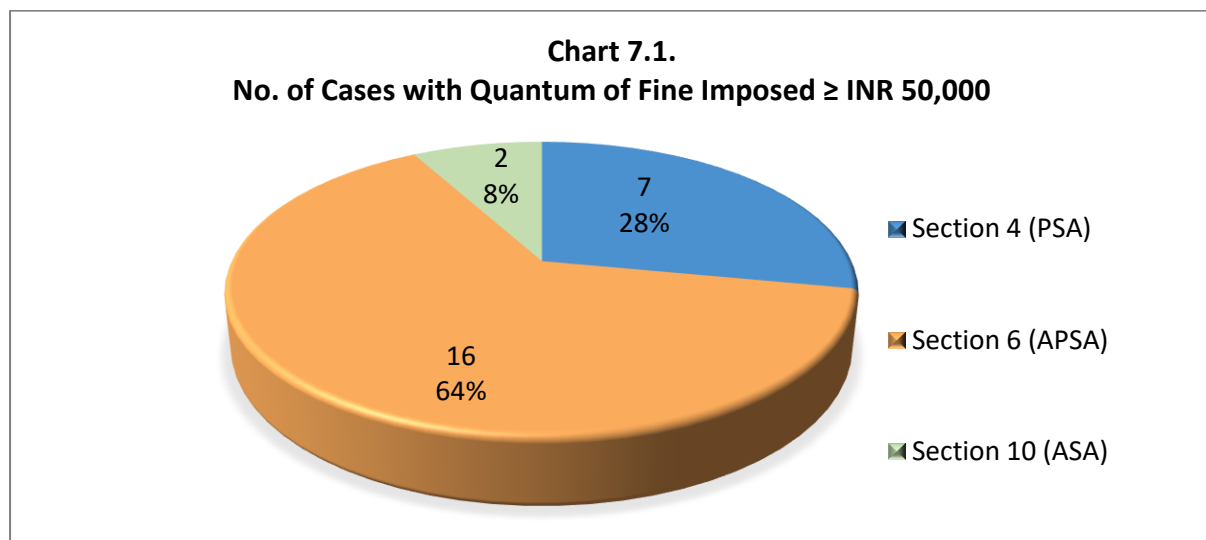
compensation and also determine the quantum of compensation and accordingly make a direction to the SLSA or DLSA concerned for disbursement of compensation. The said compensation is payable through schemes or funds established for such purpose by the state governments.

### ***Amendments to the IPC and the POCSO Act w.r.t. Imposition of Fine for Victim's Rehabilitation***

The Amendment 2018 inserted an additional clause to section 376(3), section 376 AB, section 376 DA, section 376 DB with respect to imposition of fine - *“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 of the POCSO Act - *“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.”*

Of the total 197 cases analysed in Chapter VI, there are only 25 cases wherein the quantum of fine imposed on the convict is equal to or more than INR 50,000. The break-up of the said 25 cases is as follows:



This clearly reiterates the limitations of providing any relief to the victims out of the fine imposed on the convicts.

### **ANALYSIS OF VICTIM COMPENSATION**

The analysis of victim compensation is based on just 25 cases due to limited availability of information in this regard. The e-Courts portal does not capture information on victim

compensation and the information in the orders on sentence is limited. Most often the order on sentence itself is not accessible.

In the 25 cases analysed for this chapter, victim compensation is granted in 23 cases. The compensation granted by the courts is two-fold:

- (i) victim compensation out of the fine imposed on the convict + compensation granted to the victim out of the victim compensation scheme or fund established by the state government - 20 cases
- (ii) victim compensation only out of the fine imposed on the convict - 3 cases

Table 7.1. Details of Victim Compensation			
Victim Compensation Method	Legal Provision used for Victim compensation	Compensation Out of Fine Imposed	Compensation Under State Scheme
Victim Compensation through Fine Imposed + State Victim Compensation Scheme	u/s 357 CrPC (Out of Fine) + 357 A CrPC	- INR 30,000 in one case - INR 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)	- Amount left to be determined by DLSA in both cases
	u/s 357 CrPC + 357A CrPC+u/s 33 (8) and Rule 7 POCSO Act	- INR 40,000 (FD and payable at age 18)	- INR 4,000 per month to the child 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.
	u/s 357 CrPC + No section mentioned for VC out of State Scheme	- INR 45,000	- Amount left to be determined by DLSA
	No section mentioned for VC out of Fine + u/s 357A CrPC	- INR 40,000 in 5 cases - INR 50,000 in 2 cases - INR 1,00,000 in one case	- INR 5,00,000 in 2 cases - INR 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
	No section mentioned at all	- INR 40,000 in 5 cases - INR 50,000 in 3 cases	- INR 5,00,000 in all 8 cases
Victim Compensation only through Fine Imposed	u/s 33(8) POCSO Act and Rule 7 POCSO Rules	- INR 40,000	
	u/s 357 CrPC + Liberty granted to apply to DLSA	- INR 1,00,000	
	No section mentioned for VC out of Fine Imposed	- INR 3,00,000	



**(i) Victim Compensation awarded out of fine as well as under the state scheme**

A detailed analysis of victim compensation in the 20 cases where compensation is granted both out of the fine imposed and under the state scheme is as follows:

*(a) 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 from the fine imposed, reference to the relevant provision of the CrPC is missing completely.

*(b) Victim compensation awarded with reference to the state victim compensation scheme/fund:*

- 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 case 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).

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. However, in the said case, the Special Court has explicitly limited the right of the victim to apply for further compensation. Stating in its order that –

*'no further lump sum compensation shall be payable to the victim under Haryana Victim Compensation Scheme framed under section 357A CrPC'.*

- 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.

**(ii) Victim compensation awarded only as part of the fine imposed on the convicts**

Details of 3 cases where victim compensation is awarded only out of the fine imposed are as follows:

- The highest amount awarded as compensation only out of the fine imposed is INR 3 lakh, although the Special Court in this case fails to make a reference to the relevant provision of the CrPC.
  - 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 motu 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.
- (i) 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.

To sum up, in all 25 cases where information pertaining to fine imposed is available, the quantum of fine ranges between INR 50,000 and INR 5,10,000, while the amount of compensation to be paid to the child out of the fine ranges between INR 30,000 to INR 5,00,000, except in two cases where no compensation is awarded out of the fine imposed. There is no specific trend emerging with respect to the percentage or proportion of fines being awarded as victim compensation.

There are 16 cases where the amount of fine imposed is INR 50,000. In one of these cases, the court has awarded the entire amount as compensation, while in another case, no compensation is awarded out of the fine of INR 50,000. In the remaining 14 cases, the proportion of compensation out of the fine imposed ranges between 60% to 80% of the fine amount.

In the 4 cases where the amount of fine imposed is INR 60,000, the amount awarded as compensation is INR 50,000, i.e. 83.33% of the fine imposed.

Among the 3 cases where the total amount of fine imposed is INR 1,05,000.00, in one case no compensation is awarded from the fine and in 2 cases, compensation awarded is INR 1,00,000.00, comprising 95% of the fine imposed.

In one case involving three convicts, the amount of fine imposed under the POCSO Act is INR 1,00,000 per accused, while under the IPC, 2 accused are directed to pay a fine of INR 90,000 each and one has been asked to pay a fine of INR 40,000. All the 3 accused have been asked to pay INR 1,00,000 as compensation to the victim. In the case of 2 accused, this comes to 52.63% of the total fine imposed, while in the case of one accused, it comes to 71.43% of the total fine imposed.

There is only one case where the fine imposed is as high as INR 5,10,000 of which INR 5,00,000.00 is awarded as compensation, i.e. 98% of the fine imposed.

## **CONCLUSION AND RECOMMENDATIONS**

The first and most important issue that needs attention is the lack of information on victim compensation in most judgements or orders on sentence, especially when it is granted under the provisions of the POCSO Act read with section 357A of the CrPC. In fact, while final compensation may still find a mention in the sentence order, interim compensation finds no mention in any orders of the Special Courts.

In cases wherein the child is awarded compensation under section 357A of CrPC or under any other provision of the POCSO Act, there is a guarantee that the child will receive that money as compensation for her/his rehabilitation. However, in the cases wherein the child is dependent on the convict giving a share of the fine amount imposed as compensation, there is no assurance that the child 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 leaves the need for rehabilitation of the victim at the mercy of the convict and their ability to pay the fine amount, in turn adding to a victim's woes.

Much confusion prevails over victim compensation under the POCSO Act. For many judges presiding over the Special Courts under the POCSO Act, the reference to section 357 A of CrPC in rule 7 (rule 9 as per the amended POCSO Rules of 2020) of the POCSO Rules is read and understood as a requirement to follow the process laid down for victim compensation under the state victim compensation scheme. As a result, instead of exercising their powers given in the POCSO Act and the Rules, they pass on the question of determination of amount of victim compensation to the DLSA. Some judges, even while exercising their power to deal with the question of victim compensation, tend to rely on the state victim compensation scheme for determining the amount of compensation instead of making their own assessment as per rule 7(3) (rule 9(3) as per the amended POCSO Rules of 2020). Such confusions must be resolved at the earliest.

It is not possible for the victims to challenge compensation orders given their lack of capacity to find legal representation for such issues. The legal services authorities cannot challenge victim compensation orders as that would lead to a conflict of interest. It is important to therefore not only resolve confusions around victim compensation in cases under the POCSO Act, but also to set up a mechanism for review of victim compensation order if a child or parent/guardian of a child feels aggrieved by an order of victim compensation.

In keeping with the above analysis and conclusion, the following recommendations are made for consideration by the concerned authorities:

1. *Need for a separate order on victim compensation and systematic compilation of data on victim compensation*

*Victim compensation orders are understandably not accessible to all as privacy and confidentiality of victims must be protected. However, to ensure effective implementation of victim compensation provisions given in law, it is imperative that information with respect to both interim and final compensation granted out of any scheme or compensation ordered from fine gets documented and assessed systematically. This will require the following measures:*

- (i) Some indicators/data input variables should be added in the e-Courts portal to capture information about victim compensation granted from the fine imposed as well as that granted under any other provision of law or scheme, including the date on which victim compensation (both interim and final), is granted, amount of compensation granted as well as terms and conditions of disbursement or use, if any.*
- (ii) There must be a separate order of the court granting interim and final compensation or compensation out of fine.*

*(iii) Details of the interim compensation, if granted to a victim during the course of the trial, must also be mentioned in the final compensation order.*

*(iv) Further, while granting compensation, Courts must specify the exact provision of CrPC or POCSO Act under which the said compensation is being granted to the child.*

*(v) Compensation orders, both interim and final, must be made available on the e-Courts portal, at least with access to the party concerned.*

2. *The orders of the court on victim compensation must be speaking orders.*

*There should be an order on victim compensation, both interim and final, even where it is rejected.*

*All orders of victim compensation, interim or final, must be speaking orders, giving reasons for granting or rejecting victim compensation.*

*Where the fact of sexual assault or harassment is established, even if the case ends in an acquittal or discharge, the courts must determine the need for victim compensation and make an order accordingly.*

3. *POCSO Courts to determine the quantum of compensation*

*Courts must take suo moto action and determine the quantum of compensation to be granted to the child as per the POCSO Act and Rules. The role of the DLSA must be limited to disbursement of the compensation amount.*

4. *Need for some guidance regarding victim compensation to be paid out of fine imposed on the convict.*

*The guidelines laid down in Karan vs. State of NCT Delhi<sup>50</sup> require consideration, especially w.r.t. to the part requiring determination of capacity of the accused to pay fine and compensation out of fine.*

*The amount of fine imposed must be based on verification of the capacity of the accused to pay fine and this should not deter the courts from awarding compensation under Section 357A read with section 33 (8) and Rule 7 of the POCSO Rules (Rule 9 as per the amended POCSO Rules of 2020).*

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<sup>50</sup> [2020] DLT 352

5. *Victim compensation granted from fine should not restrict the child's right to compensation under any other provision on victim compensation contained in the CrPC or the POCSO Act and Rules, or any other applicable law.*

*In order to ensure that the victims get the compensation due to them for their rehabilitation and are not dependent on the convict for compensation, courts and DSLA should use section 357A of CrPC and section 33(8) of POCSO Act read with Rule 7 of the POCSO Rules (Rule 9 as per the amended POCSO Rules of 2020).*

*In fact, Rule 7 (4) (Rule 9(6) of the amended POCSO Rules of 2020) clearly allows child or child's parents or guardians to seek compensation under any other provision of law or scheme in addition to what is granted under the POCSO Act and Rules.*

*In other words, victim compensation should be an enabling part of justice delivery instead of becoming restrictive.*

6. *Courts need to take suo moto cognizance of POCSO cases to ensure victims get timely compensation and relief.*

*It is observed that unless an application is moved, courts are not granting interim compensation to the victims. Such practice must change if the objectives of rehabilitation and relief to the victims as mentioned in the law are to be met.*

7. *Needs assessments for victim compensation*

*Courts should conduct a needs assessment in the case of each victim and determine the need for interim and final compensation as well as the quantum of compensation as required under Rule 7(3) of the POCSO Rules (Rule 9(3) as per the amended POCSO Rules).*

*Assistance may be taken by the courts from support persons assigned in cases under the POCSO Act by the Child Welfare Committees or the DSLAs in making such assessments as well as for follow-up post grant of compensation to ensure that the amount is being used judiciously.*

8. *The grant of final compensation must be regardless of the outcome of the case (section 357A (3)/(4) of CrPC) if the fact of abuse stands established.*