

POLICE CASE DISPOSAL PATTERN: AN ENQUIRY INTO THE CASES FILED UNDER POCSO ACT

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- **About 3,000 POCSO cases every year fails to reach court for a fair trial**
- **Almost 4 child victims of sexual abuse every day denied justice due to closure of their case by the police because of insufficient evidence and clue**

Introduction

Police investigation is one of the most important parts of the Criminal Justice System which is carried out independently by the police under the oversight of the judiciary. The police investigation is carried out as per the processes prescribed under Chapter 12 of the Criminal Procedure Code, 1973 (CrPC) which deals with the information to the police and their powers to investigate. Once the investigation is completed, the officer in charge of the police station forwards the report along with all relevant documents to a Magistrate empowered to take cognizance of the offence. The outcome of an investigation by the police may result in either closure of the case by filing a final report, or by filing a charge sheet in the court for commencement of trial. If in an investigation, it is found that an offence is committed and there is sufficient evidence to prosecute the accused, then the final report is termed as 'charge sheet'. But, in the absence of evidence, untraced accused, or false FIR the final report is termed as 'closure report'.

Therefore, to file an appropriate 'final report' in the form of a charge sheet or closure report to the Magistrate it is important on the part of the police to complete its investigation without unnecessary delay and with due diligence. Timely and thorough investigation and filing charge sheets are the most crucial elements of the justice delivery system.

Objective

The objective of the present paper is to find out the POCSO case disposal pattern at the level of the Police.

This paper is based on the data and information presented in the Crime in India report published by the National Crime Records Bureau (NCRB). The pattern of Police disposal of cases registered under the Protection of Children from Sexual Offences Act, 2012 has been assessed for the years 2017, 2018, and 2019.

Cases reported under the ‘Protection of Children from Sexual Offences Act, 2012 (POCSO Act, 2012)

POCSO is a comprehensive law enacted to protect children from various forms of sexual abuse and sexual harassment, including pornography. The Act safeguards the best interest of the child throughout the judicial process by providing a child-friendly judicial process, such as reporting, recording of evidence, investigation, speedy trial, etc. The Preamble of the POCSO, Act, 2012 mentioned that the sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed. As a result, it becomes very important for the police to conduct its investigation with due diligence and without any delay.

However, NCRB data for the last three years shows that there is a sizable number of cases filed under the POCSO Act, 2012 in which investigation was completed by the police without filing the chargesheet. It has been observed that in the years 2017 and 2018, 6% of the total number of POCSO cases under investigation were disposed-off at the level of police, which was marginally increased in 2019. Although, in terms of percentage points it appears to be low the absolute numbers raise serious concern as about 3,000 POCSO cases in 2019 were disposed off without the filing of charge-sheet.

Table 1 Trend of Police disposal of cases in last three years

Year	No. of cases under investigation during the year	No. of cases in which investigation was completed during the year	Cases in which final report submitted but not chargesheeted		Cases chargesheeted and sent to court for trial	
			No.	% to total cases in which investigation was completed	No.	% to total cases in which investigation was completed
2017	44,924	29,817	1,700	6%	28,063	94%
2018	54,924	37,718	2,080	6%	35,568	94%
2019	65,184	45,760	2,984	7%	42,681	93%

Further, it is evident from the crime in India report that during 2017-19 police had disposed-off many cases based on the following five reasons;

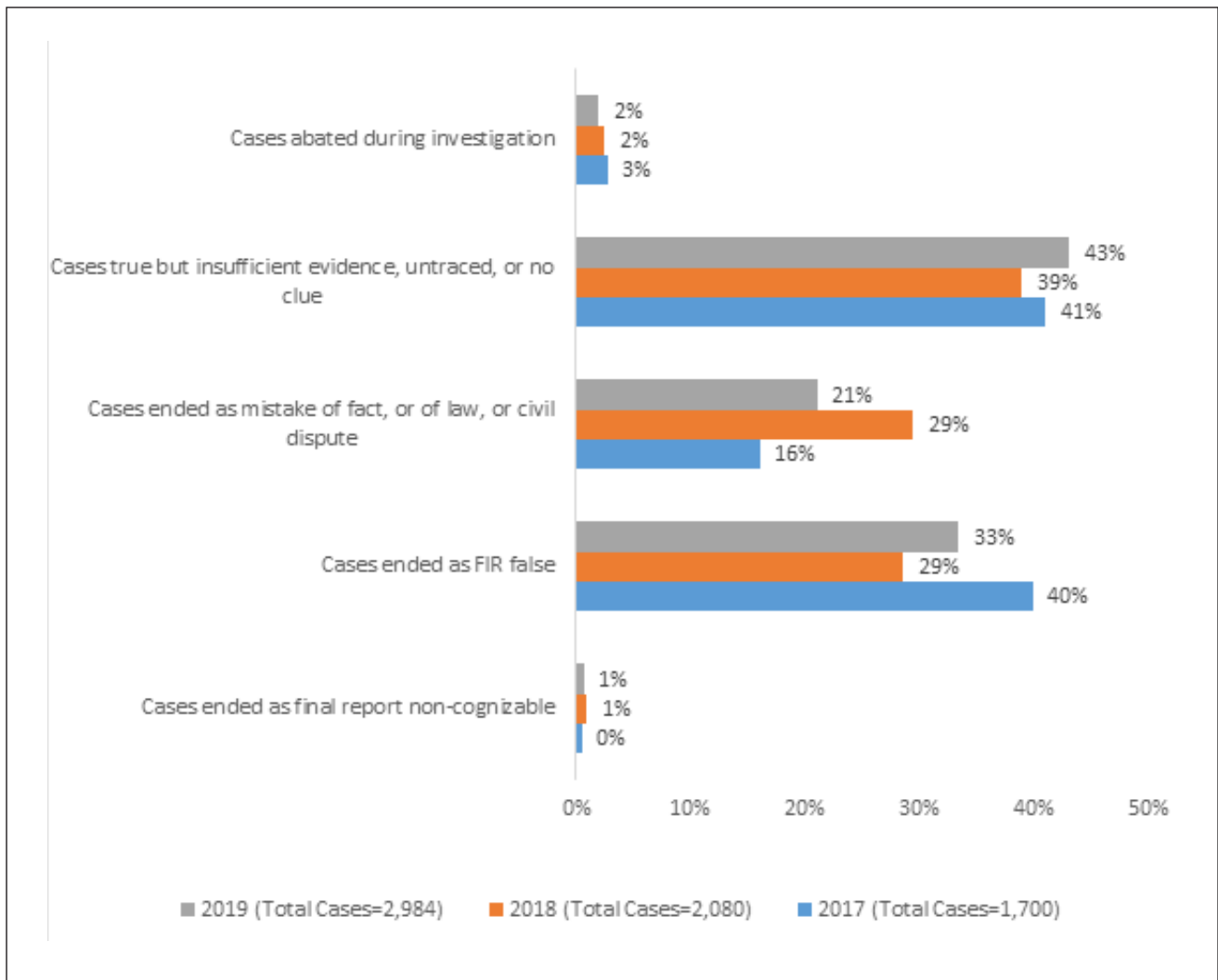
- Cases ended as final report non-cognizable
- Cases ended as final report false
- Cases ended as a mistake of fact, or law, or civil dispute
- Cases true but insufficient evidence, untraced, or no clue
- Cases abated during the investigation

Primarily there could be two reasons for closure and cancellation of a case by the police. These are:

- a) **Cases where the accused is a family member.** In the name of the honor of the family, the victim and their parents resile from their original statements made during registration of the FIR.
- b) **Cases where the victim belongs to the marginalised society.** Victims from poor economic backgrounds, domestic servants, children of poor parents, children from Scheduled Caste and Scheduled Tribes communities always face the challenge to continue with the original complaint. In many instances, coercion makes the victim hostile or resile from the facts mentioned in FIR. It also often happens under the influence of the rich accused police reports the case as false.

Figure 1 reveals that in the majority (two-fifths) of POCSO cases that were disposed-off/closed by the police without filing a chargesheet the reason cited was '*cases true but insufficient evidence, or untraced, or no clue*'. In 2019, 43% of cases disposed-off by police in its final report on this particular ground which is higher than in 2017 and 2018. In the year 2019, out of 2,984 cases for which the final report was submitted, 1,296 cases (43%) were closed on the ground of, '*cases ended as a mistake of fact, or law, or civil dispute*'. False reporting was the second most prominent reason for the disposal of POCSO cases. It is however encouraging to observe that cases disposed-off, for this reason, has reduced over the years (reduced from 40% in 2017 to 33% in 2019).

Figure 1 Reasons Stated in Final Report for Closure of POCSO Cases



Further, it has also been observed that there were cases under Section 4 and 6 (POCSO Act) ¹ r/w (read with) section 376 (IPC) ², and Section 8 & 10 (POCSO Act) ³ r/w section 354 (IPC)⁴ which have been disposed of by the police by filing the final report on the ground of '*cases to be true but insufficient evidence, or untraced, or no clue*'. The details of the same are presented in Tables 2 and 3.

The number of child rape (penetrative sexual assault) cases which were disposed-off by the police in its final report in 2019 stating the reason '*cases to be true but insufficient evidence, or untraced, or no clue*' increased to more than double in comparison to 2017(increased from 276 in 2017 to 610 in 2019).

¹ Section 4 (POCSO Act): Punishment for penetrative sexual assault.

ction 6 (POCSO Act): Punishment for aggravated penetrative sexual assault.

² Section 376 (IPC): Punishment for rape.

³ Section 8 (POCSO Act): Punishment for sexual assault.

Sectihbnxxr5f 10 (POCSO Act): Punishment for aggravated sexual assault.

⁴ Section 354 (IPC): Assault or criminal force to woman with intent to outrage her modesty.

Table 2 Reasons stated in the final report for disposal of penetrative sexual assault cases

Final report filed u/s 4 &6 (POCSO) r/w sec. 376 IPC							
Year	Total cases for investigation u/s 4 &6 (POCSO) r/w sec. 376 IPC(including previous year backlog)	Cases ended as FR non-cognizable	Cases ended as FR false	Cases ended as a mistake of fact, or law, or civil dispute	Cases true but insufficient evidence, untraced, or no clue	Cases abated during the investigation	Total cases for which FR was filed
2017	24,144	3	275	118	276	28	700
2018	29,412	5	200	223	367	43	838
2019	35,297	8	283	192	610	20	1,113

As compared to 2018 the total number of cases of child sexual assault for investigation increased by 16% in 2019, whereas the disposal/closure of such cases at the level police increased by 61% during this period (increased from 788 in 2018 to 1,272 in 2019).

Table 3 Reasons Stated in Final Report for disposal of child sexual assault cases

Final report filed u/s 8 & 10 (POCSO) r/w sec. 354 IPC							
Year	Total cases for investigation u/s 8 & 10 (POCSO) r/w sec. 354 IPC (including previous year backlog)	Cases ended as FIR non-cognizable	Cases ended as FIR false	Cases ended as a mistake of fact, or law, or civil dispute	Cases true but insufficient evidence, untraced, or no clue	Cases abated during the investigation	Total cases for which Final Report was filed
2017	16,331	5	281	125	336	13	760
2018	19,893	11	240	236	296	5	788
2019	23,148	11	445	256	537	23	1,272

Conclusions

Over the year it has been observed that there is an increase in the number of cases that have been closed by the police after investigation without filing the chargesheet. A large number of cases closed by the police on the ground of false reporting indicates that there are many cases in which the investigation was not done properly.

It is important that offences relating to sexual exploitation of children which are grave in nature need to be investigated thoroughly and all efforts should be made to trace the offender. It is understood that owing to the small age, children are not able to either identify the accused or explain the circumstance in which the incident has taken place in detail to proceed with the investigation. But, these are some exceptional cases. Therefore, the majority of cases cannot be disposed-off by police on the ground of lack of evidence or offender untraced, etc.

Such closure of cases raises a serious concern about the investigation conducted by the police. An increase in the trend of the closure of cases because of insufficient evidence, or offender untraced, or no clue indicates 'rush' or 'lack of proper investigation' on the part of the police. On the one hand, it is always advisable to conduct an investigation process without any delay, but at the same time, to bring justice to a child victim of sexual abuse, it is important for the police to conduct a proper investigation promptly.

Besides this, in cases where the accused is a family member or the victim belongs to the marginalised community, the chances of the victim getting hostile or resile from the facts mentioned in FIR are very high. In such cases, the victim and the family must be explained or counseled to continue with the case. Also, the victims need to be protected from coercion or induced financial benefits offered by the accused. In the absence of these measures, sexual crimes against children will continue to exist.

Recommendations

It is recommended that all cases registered under POCSO must be closely supervised by the Additional Superintendent of Police and/or Deputy Commissioner of Police. Further, wherever necessary the family should be provided protection and relocated with a changed identity to avoid any possible interaction and influence of the accused.

There is also a need for a dedicated unit for investigating cases relating to sexual offences committed against children. The unit must have adequate manpower, infrastructure, and equipment so that these cases are investigated thoroughly and on priority. Most of the Districts do not have dedicated special units to investigate the sexual offence committed against women and children. Hence, there is a need for a special unit for dealing with victims compassionately. Trained manpower with the psychological bend of mind is needed to deal with the trauma that women and child victims face.

Training and refresher courses for the police officers investigating the POCSO cases must be done on a regular basis so that they undergo behavioural changes. The training must be designed to cover the behavioural aspect along with the professional aspect of the investigating officers.

