

STATUS OF **POCSO CASES** IN INDIA

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Introduction

A journey from 'No' law to a 'Special law' highlights the grave need to bring a special system in place especially to address the increasing rise in the number of sexual crimes against children. Almost a decade has passed since the Protection of Children from Sexual Offences Act, 2012 (POCSO) was introduced. However, we are still struggling to ensure its proper and effective implementation to impart justice to victims of child sexual abuse.

This paper is an attempt to highlight the status of disposal of cases registered under POCSO.

Methodology

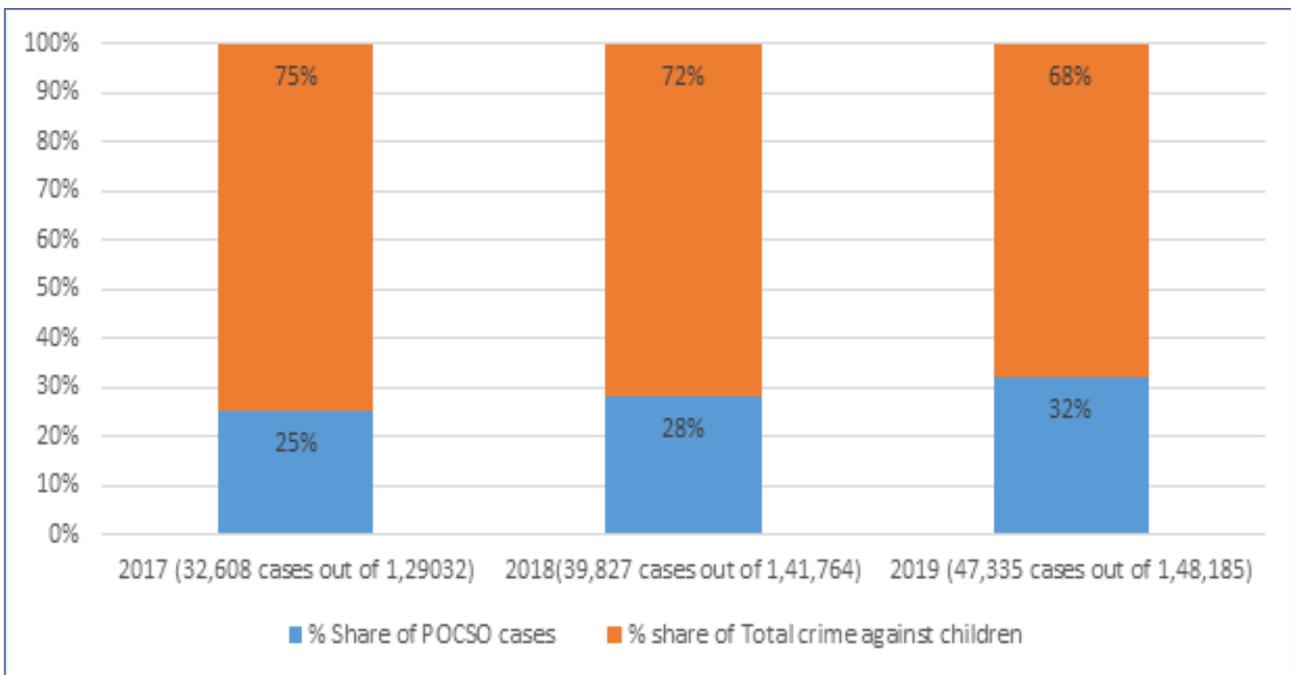
For this paper, total cases of POCSO, Section 4 & 6, Section 8 & 10, and indicators from police and court disposal have been analysed. Data pertaining to POCSO has been extracted from National Crime Records Bureau, Crime in India report 2017-2019. However, data pertaining to the conviction rate of POCSO cases by States for the year 2018 have been taken from Lok Sabha Un-Starred Question No.2627. Besides these, documents published by the Ministry of Law and Justice have been referred to for the number of pending cases.

1. Crime Statistics

Despite the existence of a strong legal framework, there has been a substantial increase in the number of crimes against children, according to the NCRB Report on Crimes against Children. As on 2019, this number stands close to a total of 1.5 lakh cases. There has been an year-on year rise of 10% in 2018 and 5% in 2019 in the number of overall crimes against children. The number increased from 1,29,032 cases in 2017 to 1,41,764 in 2018 which further increased to 1,48,185 in 2019.

It is imperative to note that the increase in cases registered under POCSO Act has been much sharper than the overall crimes against children. POCSO cases increased 22% in 2018 and 19% in 2019. Cases registered under POCSO constituted 32% of the total crimes committed against children in 2019, with this number increasing to 47,335 cases in 2019. Uttar Pradesh and Maharashtra registered the highest number of cases under POCSO with 7,594 and 6,558 cases, respectively.

Figure 1: Cases of POCSO to total cases of crime against children, 2017-2019



Victims of POCSO

There has been a difference between the number of victims under POCSO and the total number of cases registered as per the NCRB report. The number of victims of POCSO in 2019 increased by 18% over 2018. i.e. from 40,810 victims in 2018 to 48,043 in 2019. The higher number of victims than the total cases registered shows that in some cases an FIR entails more than one victim.

Out of the total cases registered under POCSO, 55% of cases were registered under Child Rape (Sec 4 & 6 of POCSO Act/ Section 376 of IPC) in 2019, among these cases 99% of the victims were females. These percentages have remained constant since 2017.

However, there has also been a rise in the number of male child victims of penetrative sexual assault. In 2018, the number of male victims increased by 25% (from 183 male child victims in 2017 to 229 in 2018). This further increased by 17% in 2019. i.e. (from 229 male child victims in 2018 to 268 in 2019).

The study carried out by KSCF on Awareness and Perceptions about Child Sexual Abuse among Young Adults in India shows that 25% of males experienced sexual abuse during their childhood. Accordingly, approximately 5.8 Cr male children every year are sexually abused. Despite this, the number of cases registered is negligible, reflecting a huge disparity. The main reasons behind the non-reporting of sexual crimes committed against male children were shame and fear resulting from social stigma.

2. Disposal of Cases

2.1 Disposal by Police

Timely investigation and filing of chargesheet in the court within the stipulated time by the police plays an important role in delivering justice. However, the last three years' data shows that in a given year the number of cases where the investigation was completed by the police is less than the number of cases registered during the year. This has led to the mounting of pending cases year on year.

In 2019, the total number of cases registered was 47,335 and 17,764 cases were carried forward for investigation from the previous year, 85 cases were also reopened for investigation. Thus the total number of cases of which the investigation was to be carried out in 2019 was 65,184.

In 2018 the total cases to be investigated were 54,924 which was a 22% increase over 2017. (from 44,924 cases for investigation in 2017 to 54,924 in 2018). Whereas in 2019 this number increased further by 19% (from 54,924 cases for investigation in 2018 to 65,184 in 2019).

This rise in the number of cases to be investigated in a year is primarily due to the rise in the number of cases carried forward for investigation from the previous year. In 2017, the number of cases carried forward for investigation from the previous year was 12,312 which increased to 15,074 in 2018 and further to 17,764 in 2019.

Thus, since 2017 the pending cases for investigation have increased by 44% in 2019 with an average annual increase of 15%. At this rate instead of reducing the number of pending cases will be doubled in seven years.

The cases disposed off by the police constitute 70% of the total cases listed for investigation in 2019, highlighting the fact that 30% of cases were still pending for investigation. This backlog of cases every year is increasing the number of cases for investigation in the following year. If this continues, the pendency will continue to mount leading to a denial of justice to children.

Table 1: Cases Pending Investigation

	Protection of Children from Sexual Offences Act,			Section 4 & 6 of POCSO Act or POCSO Act (Section 4 & 6) r/w Section 376 IPC			Section 8 & 10 of POCSO Act or POCSO Act (Section 8 & 10) r/w Section 354 IPC		
	2017	2018	2019	2017	2018	2019	2017	2018	2019
Cases carried forward from Previous Year for investigation	12,312	15,074	17,764	6,583	7,805	9,032	4,315	5,553	6,737
Cases registered during the year	32,608	39,827	47,335	17,557	21,605	26,192	12,016	14,320	16,399
Total Cases for Investigation during the year*	44,924	54,924	65,184	24,144	29,412	35,297	16,331	19,893	23,148
Cases where the investigation was completed	29,817	37,718	45,760	16,334	20,602	25,305	10,762	13,423	16,265
Cases pending investigation at the end of the year	15,078	17,180	19,392	7,798	8,797	9,980	5,557	6,460	6,867
Cases Chargesheeted	28,063	35,568	42,681	15,594	19,715	24,119	11,393	9,995	12,619
Chargesheeting rate	94.1	94.3	93.3	95.5	95.7	95.3	92.9	94.0	92.1

***Including Cases Reported during the year and Cases Reopened for Investigation**

In 2019, the crime against women increased by 7% over 2018. However, POCSO cases (Girl child victims only) in 2019 increased by 19% in 2019 over 2018 and constituted 11% of the total crime against women in 2019.

Cases Charge sheeted

Filing of charge sheet plays an important role as it is the first step towards a fair trial and justice for victims.

In 2019, out of the cases disposed off, the police filed chargesheet for 93% of the cases. The rate of filing charge sheets has remained constant at between 93% - 94% since 2017. The pendency of cases will not reduce until the rate of at which chargesheets are filed exceeds the total number of cases registered in a given year. Faster completion of the investigation by the police officials will lead to faster filling of charge sheets.

2.2 Court Disposal

In 2018, amendments were made to “the Criminal Law (Amendment) Act,” with the motive to prevent sexual offenses against children and women. The idea behind introducing harsh punishment was to create deterrence against such heinous crimes. However, this is only possible if the trial in the court is completed within the time frame and justice is delivered expeditiously to the victims.

The total cases for trial increased 28% in 2018, increasing from 93,423 cases in 2017 to 1,19,710 cases in 2018. This number further increased by 25% in 2019 to 1,49,872 in 2019.

Cases Pending Trial

Data presented by the NCRB in its Crime in India report 2017-2019 shows that even though in terms of absolute numbers, the number of cases with completed trial are increasing, the percentage of trials completed to the total cases for trials remains constant at 10%. As a result, 89% of the total cases for trials had their trials pending. Hence, to complete trials within the stipulated time, there is a dire need for the establishment of more fast-track courts in the country.

In 2019, trial was completed only in 10.8% of the 1.5 lakh cases which were pending for trial during the year. However, this percentage was slightly lower at 9.4% in the year 2018 and 2017. Lower number of cases having completed trials is indicative of the slow process of disposal of cases by the courts.

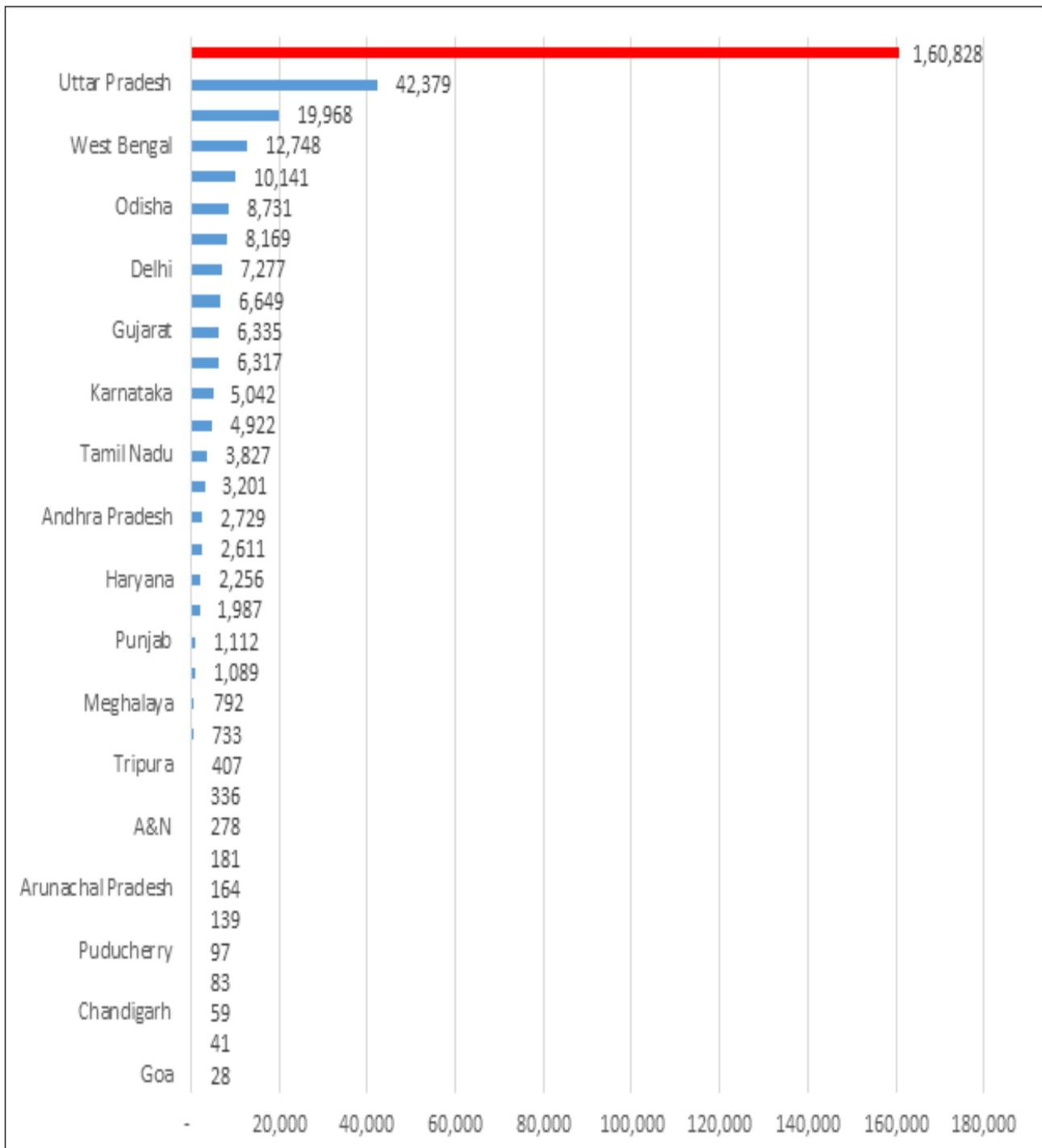
Table 2: Status of Trial of POCSO cases 2017-2019

	Protection of Children from Sexual Offences Act,			Section 4 & 6 of POCSO Act or POCSO Act (Section 4 & 6) r/w Section 376 IPC			Section 8 & 10 of POCSO Act or POCSO Act (Section 8 & 10) r/w Section 354 IPC		
	2017	2018	2019	2017	2018	2019	2017	2018	2019
Cases Sent for Trial during the year	28,063	35,568	42,681	57,138	71,222	86,860	29,266	38,810	50,725
Total cases for trial*	93,423	1,19,710	1,49,872	57,138	71,222	86,860	29,266	38,810	50,725
Cases in which Trials were Completed	9,097	11,345	16,238	5,575	6,937	9,926	2,989	3,701	5,366
Cases Pending Trial at End of the Year	84,143	1,08,129	1,33,068	51,499	64,191	76,771	26,175	34,990	45,020

*Including cases pending trial from previous year and cases sent for trial during the year

In order to assess the number of pending cases at State level the information published by the Ministry of Law and Justice has been referred. It is evident from the data that as on June, 2019 over 1.60 lakh cases of sexual abuse of children were pending trial in the courts.

Figure 2: Total Number of POCSO Cases Pending Trial in States and UT's as on 30.06.2019



Source: scheme on fast track special courts (FTSC's) for expeditious disposal of cases of rape and protection of children against sexual offences (POCSO) act 2019, Ministry of Law and Justice

3. Quality of Disposal of Cases

The POCSO amendment act was notified on 6th August 2019. The amendment addresses penetrative sexual assault, aggravated sexual assault, aggravated penetrative sexual assault, and the use of children for pornographic purposes. Key to note among these is the increase in minimum punishment for an aggravated penetrative assault from 10 years to 20 years, with the death penalty as maximum punishment¹. However, sentencing an accused to the death penalty would require judges to be very sure of executing it as this would further delay the trial, making the child wait longer for justice.

3.1 Completion of trials leading to convictions

Data shows that the conviction rate over the years has remained almost constant around 34%. However, the rate of conviction for sections 8 & 10 decreased by four percentage points in 2019 as compared to 2018. The conviction rate for child rape which remained constant at 32% in 2017 and 2018, increased marginally by three percentage points in 2019 over 2018.

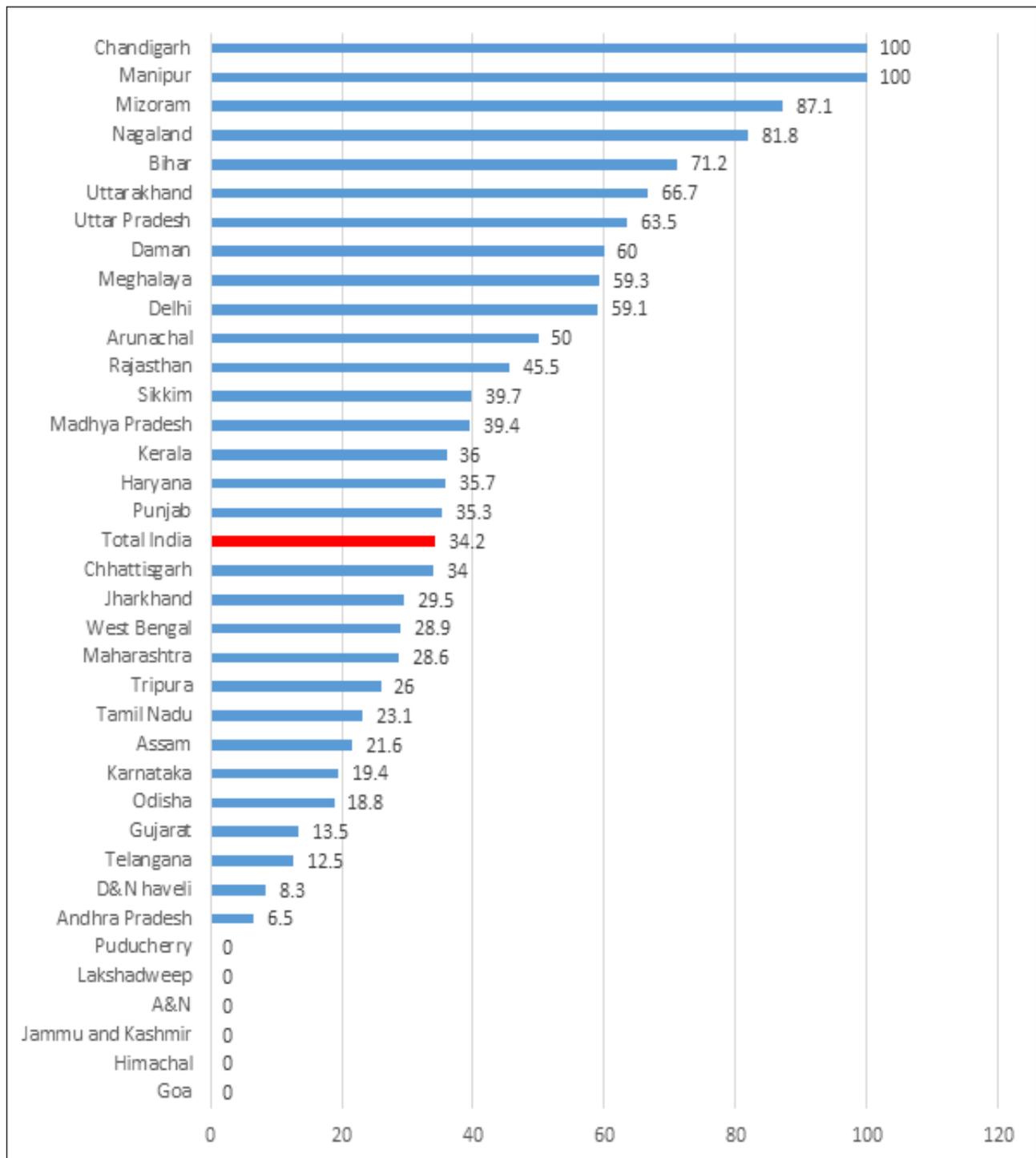
Table 3: Conviction in POCSO Cases, 2017-2019

	Protection of Children from Sexual Offences Act,			Section 4 & 6 of POCSO Act or POCSO Act (Section 4 & 6) r/w Section 376 IPC			Section 8 & 10 of POCSO Act or POCSO Act (Section 8 & 10) r/w Section 354 IPC		
	2017	2018	2019	2017	2018	2019	2017	2018	2019
Conviction Rate	33.2	34.2	34.9	32.2	31.6	34.7	36.1	39.2	35.1
Pendency Percentage	90.1	90.3	88.8	90.1	90.1	88.4	89.4	90.2	88.8

1 <https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf>

The data relating to State wise rate of conviction under POCSO cases for 2018 is sourced from Lok Sabha Un-Starred Question No.2627. Figure 3 shows that states such as Bihar, Mizoram, Meghalaya, Nagaland, and Manipur have a very high conviction rate (70%-100%). Whereas, states and UT such as Delhi, Uttar Pradesh, Haryana, Maharashtra, and Madhya Pradesh that report a high number of cases have a conviction rate between 30% to 64%.

Figure 3: State wise Conviction rate under POCSO Act - 2018



Source: Lok Sabha Un-Starred Question No.2627, 2018

Conclusion

Child sexual abuse is one of the most pressing concerns of the day. The rising number of cases of children who are reported to have suffered some form of sexual abuse is indicative of the failure of the state and society to provide children with an environment conducive to growth, in accordance with the United Nations Convention on the Rights of the Child. However, it is also an opportunity to take cognizance of the problem and strive towards getting justice for victims, and aim to prevent future instances of child sexual abuse. The rising public consciousness and media attention, along with the proactive measures taken by the judiciary in the last few years is proof that the right of children to live with dignity is finally getting the attention it requires.

States such Madhya Pradesh, Maharashtra, Uttar Pradesh, Haryana and Delhi constitute 51% of the POCSO cases in the country. Yet, we see that the rate of conviction in these states is between 30%-64%. According to an RTI response dated 19/2/21, out of the 1023 Fast track courts to be set up, 612 FTC's are already functional. Thus, there is an urgent need for these courts to speed up their justice delivery mechanism in order to ensure timely justice to the victims of child sexual abuse as 89% of the cases still await trial.

Recommendations:

1. Since women and children constitute one of the most vulnerable sections of society, they deserve special attention and the crimes against them need to be treated on priority and with the utmost sensitivity. Instead of 'coercive policing', 'compassionate policing' is needed to deal with such cases. Therefore, there is a need for a dedicated unit headed by the Additional Superintendent of Police and/or Deputy Commissioner of Police including experts from forensics for investigating sexual offences against women and children. The unit is required to have adequate manpower, infrastructure, and equipment so 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.

2. As discussed above, the total number of cases sent to court for trial in 2019 were 42,681 of which trial was completed in 16,238 , making only 38% of the total cases. In order to reduce the pendency at least 42,681 cases should have been disposed off in 2019 instead of 16,238. As only 10% of the cases out of the total cases sent for the trial are disposed off every year, the need for more special courts for POCSO is essential. More courts need to be established and made functional to complete trials within the given time without further delaying the justice delivery mechanism.



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