

FUNCTIONING AND FINANCING OF FAST TRACK SPECIAL COURTS

A STATE-WISE ANALYSIS



SATYARTHI

KAILASH SATYARTHI CHILDREN'S FOUNDATION

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1. Introduction

Looking at the alarming rise in the number of reported child rape incidents and the pendency in the disposal of cases, the Supreme Court of India on December 16, 2019 passed a detailed order with directions to State Governments on the setting up of exclusive courts for the trial of cases under Prevention of Children against Sexual Offences Act, 2012 (POCSO). This was in continuance of the July 25, 2019 order, when it had directed all states to ensure that an exclusive POCSO court be set up within 60 days in every district that has more than 100 POCSO cases pending¹.

The Ministry of Law and Justice acted upon the Supreme Court directions and came up with the scheme on Fast Track Special Courts (FTSCs) for expeditious disposal of rape and POCSO Act cases in January 2020. The scheme envisaged establishing 1,023 FTSCs, including 389 Exclusive POCSO Courts (EPCs) by the end of FY 2021-22 across India for quicker disposal of rape and POCSO cases².

FTSCs have been set up initially for one year, spread over two financial years - 2019-20 & 2020-21³. As the scheme has completed its original time-period within which the proposed FTSCs, including EPCs were to be established and made functional it is high time to have a close look at the status of FTSCs in terms of their functioning. Therefore, the objective of this paper is to analyse the functioning and financing of FTSCs across states.

Information relating to FTSCs and allocation of funds for functioning of FTSCs have been obtained from the Ministry of Law and Justice, Government of India through RTI applications. Besides these, a couple of information were also collated from the Crime in India reports published by the National Crime Records Bureau, Ministry of Home Affairs, Government of India and used in this paper.

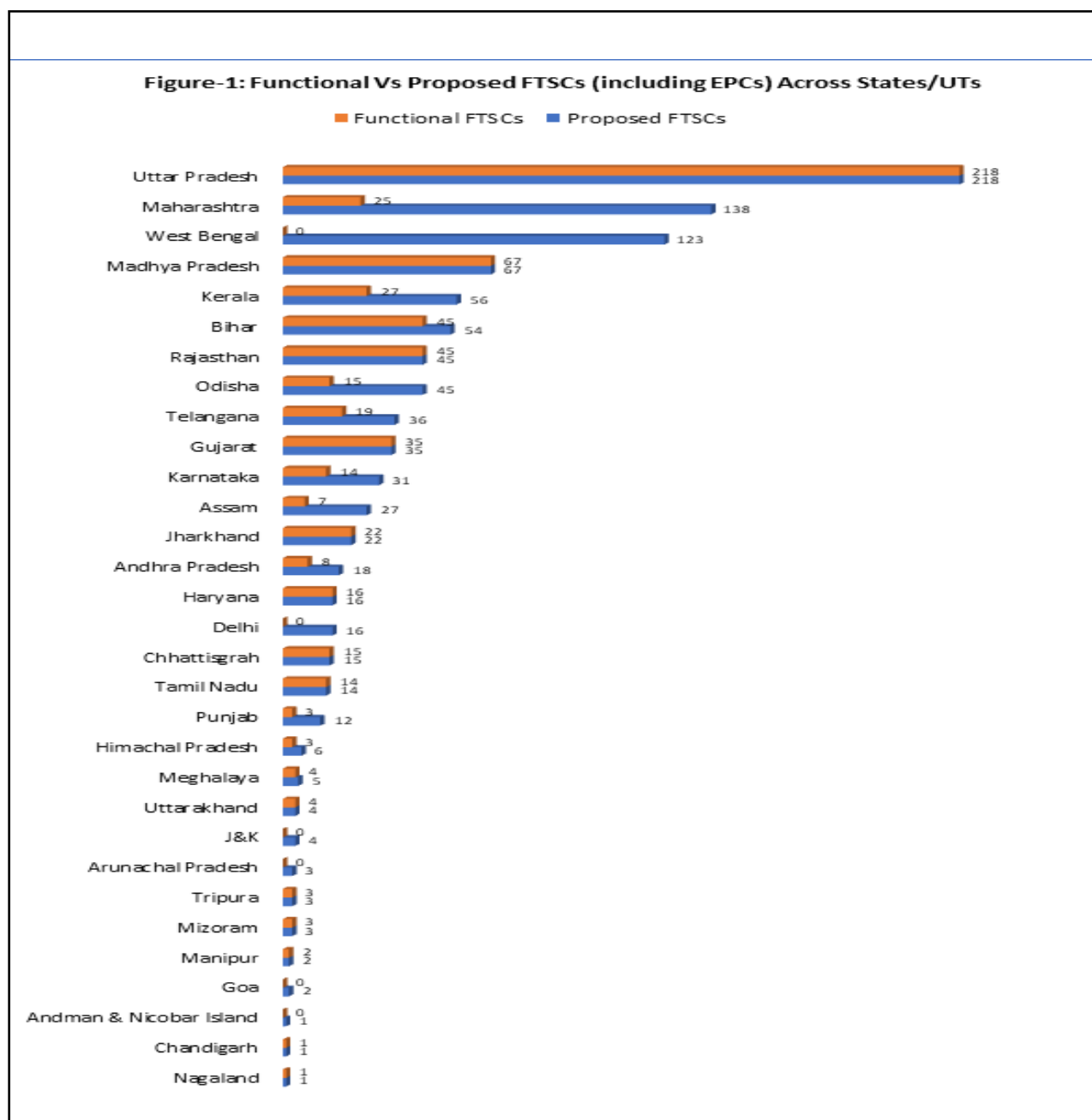
¹ Supreme Court Observer, <https://www.scoobserver.in/court-case/pocso/pocso-day-16-arguments>

² Ministry of Law and Justice (2019), Scheme on Fast Track Special Courts (FTSCs) for Expeditious Disposal of Cases of Rape and Protection of Children against Sexual Offences (POCSO) Act, Department of Justice, Government of India

³ Ibid. The decision on extension of the scheme beyond one year depends on the recommendations in the external evaluation to be carried out in the third/fourth quarter of the Scheme, and subsequent approvals of the competent authorities.

2. Functional Vs Proposed FTSCs and EPCs

Each FTSC was expected to dispose off, 41-42 cases in each quarter and at least 165 cases each year⁴. Over the past fourteen months, however, the progress made by states in establishing FTSCs and EPCs has been rather tardy.



⁴ Ibid

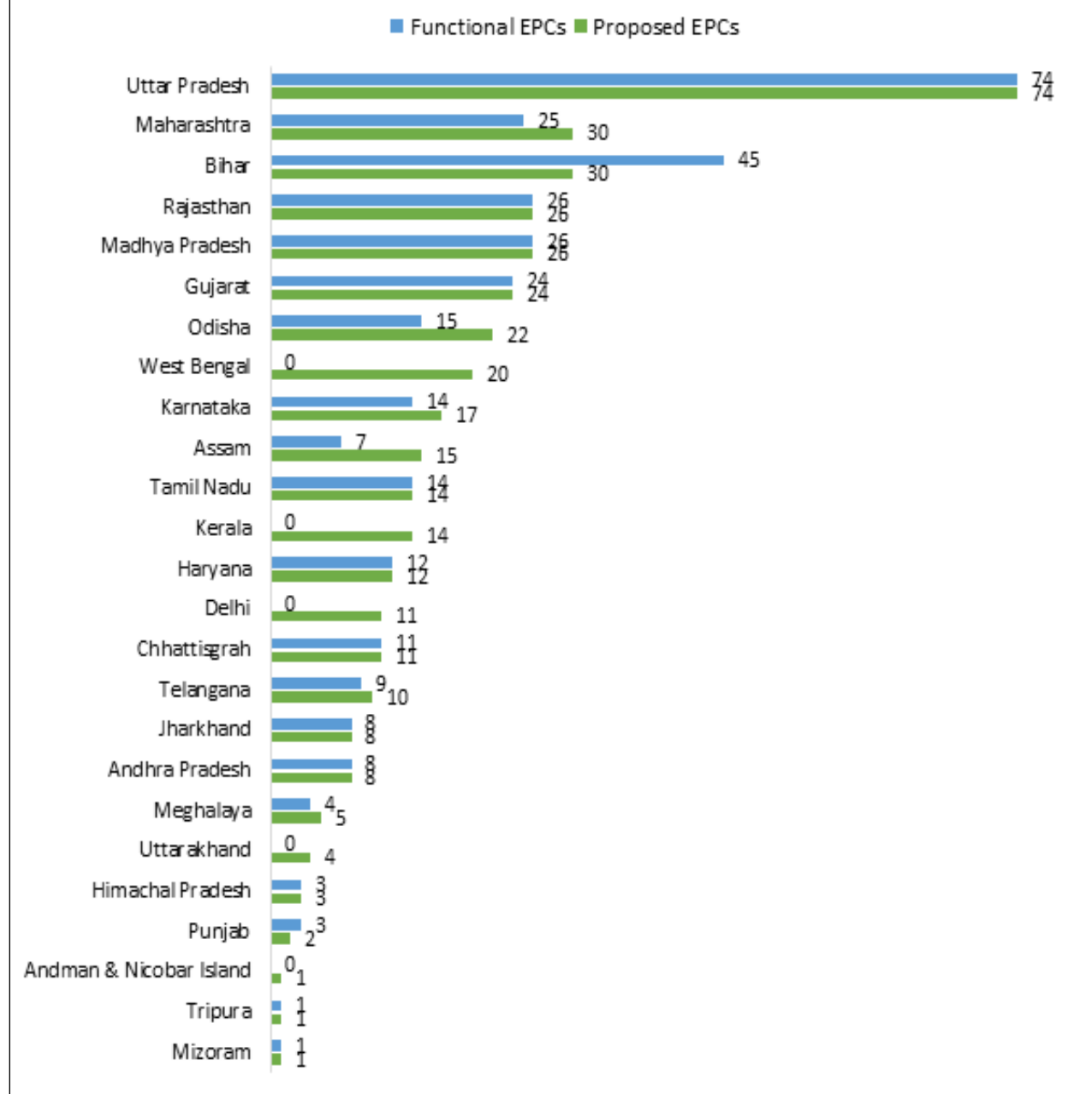
As on January 31, 2021, there were only 616 FTSCs, including 330 EPCs functional across 25 states/UTs of India. Thus, functional FTSCs and EPCs are just 60% and 85%, respectively, of their proposed numbers under the scheme. The delay in establishing such courts is likely to delay the delivery of justice to the victims further as number of pending cases is piling up year on year. The delay in completion of trial subsequently increases the pain and suffering of victims of rape and sexual abuse. In one of the studies carried out by KSCF, it was found that pendency and delays in the justice system are the major hurdles in bringing the survivor of sexual abuse and her/his family back to the mainstream.

Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh, Haryana, Rajasthan, Tamil Nadu, and Uttar Pradesh are the only states where functional and proposed FTSCs are equal in number, thus completing the target of establishing FTSCs. However, West Bengal and Delhi have not yet established even a single FTSC, thus totally disregarding the directions of the Supreme Court. The records of Maharashtra (18%), Punjab (25%), Assam (26%), and Odisha (33%) in adhering to the directions are not good either (Figure-1).

On the other hand, Bihar and Punjab are the only states having established more EPCs than proposed under the scheme. While there are 45 functional EPCs in Bihar as against 30 proposed, Punjab has 3 functional EPCs as against 2 proposed.

Andhra Pradesh, Chhattisgarh, Jharkhand, Gujarat, Madhya Pradesh, Haryana, Rajasthan, Tamil Nadu, and Uttar Pradesh are the other major states with cent percent record of having functional EPCs as against the proposed number under the scheme. However, West Bengal and Delhi stand as defaulter again in terms of not having a single functional EPCs yet under their fold. Among other states/UTs, Himachal Pradesh and Tripura too have cent per cent record of having functional EPCs as against the proposed number under the scheme (Figure-2).

Figure-2: Functional Vs Proposed Exclusive POC SO Court Across States/UTs



3. POCSO Cases Pending Trial in Courts

One of the fallouts of many states still not having functional FTSCs/ EPCs as per the directions of the Supreme Court has been the continued high pendency of POCSO cases in the country. Data presented by the NCRB in its Crime in India reports (2017-2019) shows that even though the cases with completed trials are increasing in absolute numbers, 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 FTSCs/ EPCs across the states.

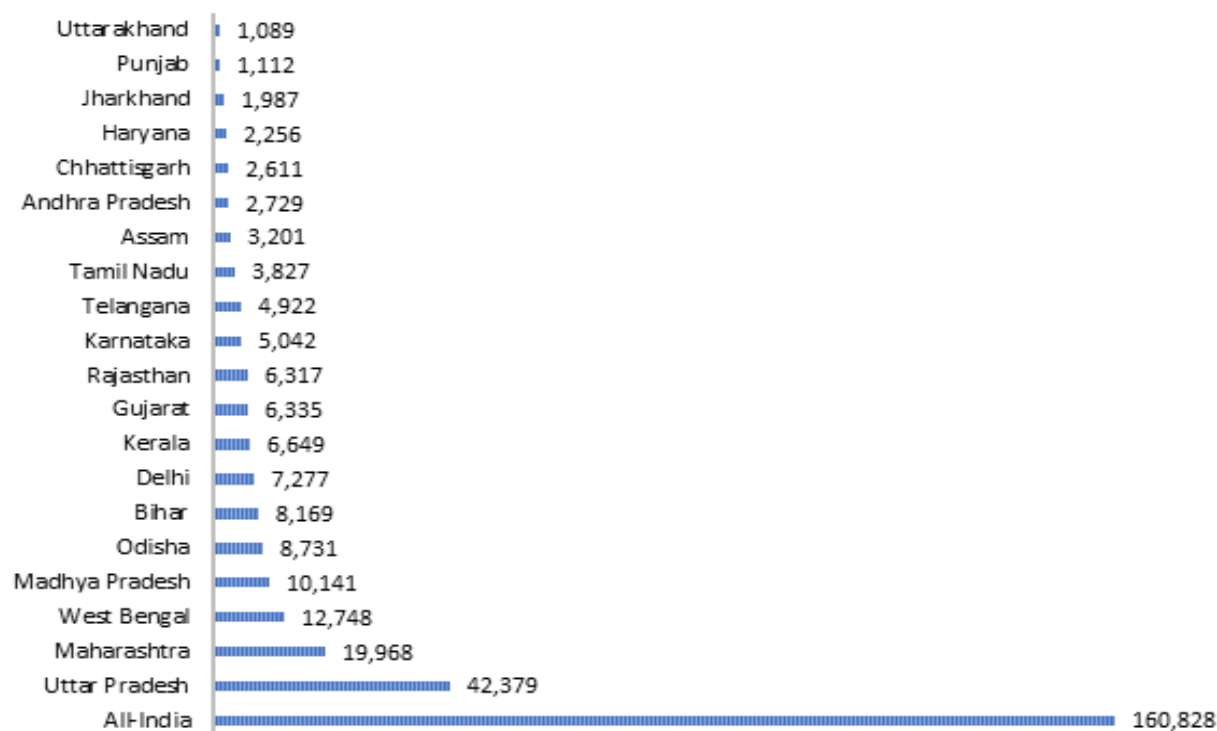
Table-1: Status of Trial of POCSO Cases (2017-2019)

	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	71,222w	86,860	29,266	38,810	50,725
Cases in which trials completed	9,097	11,345	16,238	5,575	6,937	9,926	2,989	3,701	5,366
Cases pending trial at the year-end	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 2019, trial was completed only in 10.8% of the 1.49 lakh POCSO cases which were pending for trial during the year. However, this percentage was slightly lower at 9.4% in the year 2018 and 2017 (Table-1). Lower number of POCSO cases having completed trials is indicative of the slow process of disposal of cases by the courts and need to have more functional EPCs.

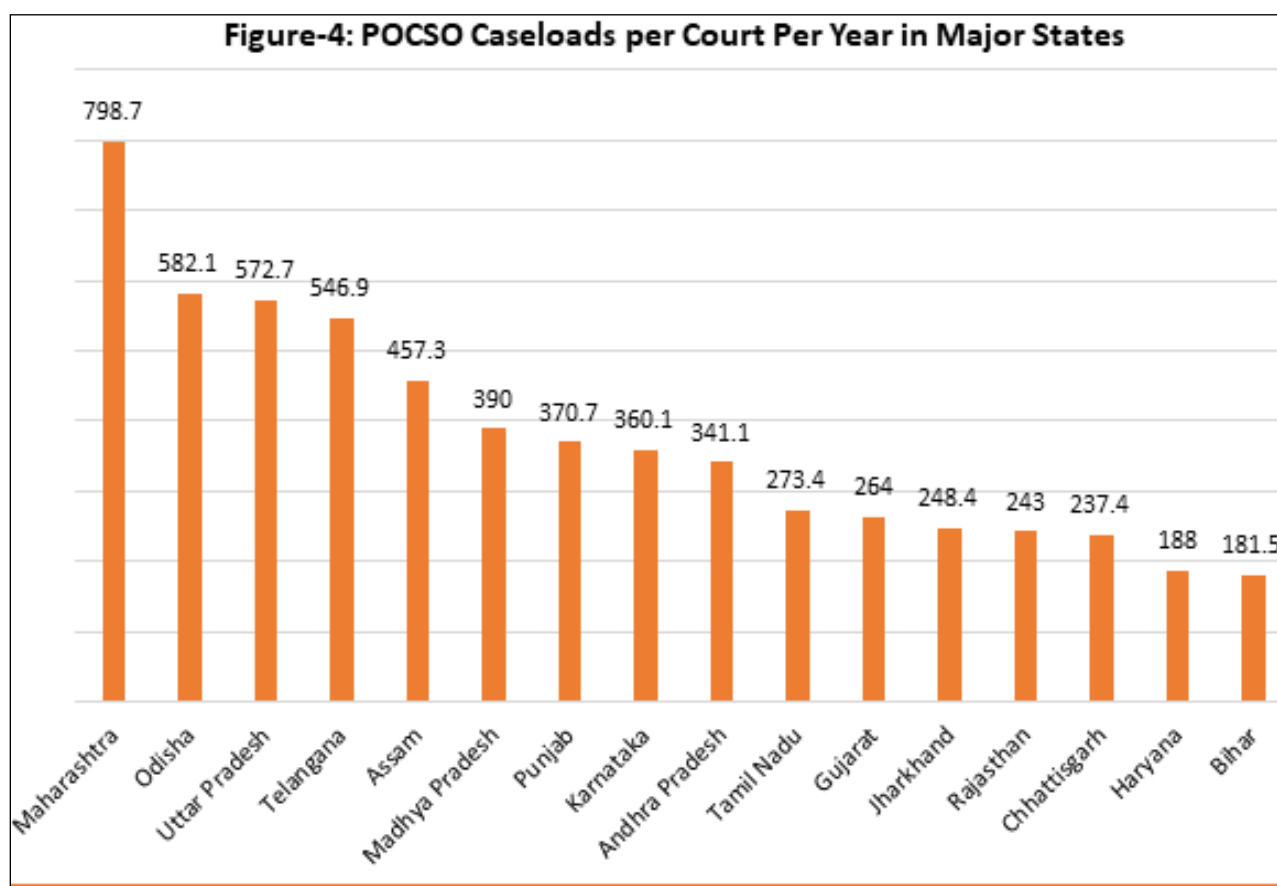
Figure-3: Total Number of POCSO Cases Pending Trial in States and UTs (as on June 30, 2019)



Source: Ministry of Law and Justice (2019), Department of Justice, Government of India

The status of states and UTs with at least over 1000 POCSO cases pending trial as on June 30, 2019 is presented in Figure-3. Uttar Pradesh (42,379), Maharashtra (19,968), West Bengal (12,748), and Madhya Pradesh (10,141) were some of the major states with over 10,000 POCSO cases pending trial. The corresponding all-India level figure was 1.60 lakh POCSO cases pending trial as on June 30, 2019.

Based on the pendency of POCSO cases (with at least over 1000 POCSO cases pending trial as on June 30, 2019) and the status of functional Exclusive POCSO Courts (with at least one Exclusive POCSO courts as on January 31, 2021), the POCSO caseloads/year of major states (assuming that trial of all pending POCSO cases will be taken up by EPCs) is presented in Figure-4.



Maharashtra (789.7), Odisha (582.1), and Uttar Pradesh (572.7), despite having 25, 15, and 74 functional Exclusive POCSO Courts at their disposal, are the states with maximum POCSO caseloads per court per year. This means each Exclusive POCSO Court would have to dispose of 789.7, 582.1 and 572.7 POCSO cases in Maharashtra, Odisha, and Uttar Pradesh, respectively, to wipe out pendency of POCSO cases in one year, which appears to be impossible. Similarly, POCSO caseloads per court per year is very high in Telangana (546.9), Assam (457.3), Madhya Pradesh (390), and Punjab (370.7).

It is important to note that states, such as, West Bengal, Kerala, and Delhi are equally having significantly higher POCSO caseloads, but Figure-4 above does not show it as none of these were having even a single functional POCSO courts as on January 31, 2021. As a matter of fact, even if West Bengal, Kerala, and Delhi might have 20, 14, and 11 functional Exclusive POCSO Courts as proposed under the scheme, they would still have 637.4, 661.5, and 474.9 POCSO caseloads per court, respectively, as on January 31, 2021, which is quite staggering. Thus, there is urgent need to establish greater number of Exclusive POCSO Courts in each state with significant number of POCSO cases pending trial.

4. Financing of Fast Track Special Courts

FTSCs had a budget allocation of Rs.767.25 crore under Centrally Sponsored Scheme under 60:40 and 90:10⁵ funding pattern between Centre and State, including Central support of Rs.474 crore for one year, which was to be funded from Nirbhaya Fund. Provision of funds is made for meeting expenses of rent for the FTSC premises, remuneration to one presiding officer & seven support staff, and flexi grants.

As on January 31, 2021, central share amounting to Rs.274.97 crore (140 crore in 2019-20 and 134.97 crore in 2020-21) had been released to 25 States/UTs for setting up FTSCs, including Exclusive POCSO Courts. This is just 58% of Rs.474 crore Central support proposed for one year and spread over two financial years. Surprisingly, West Bengal and Delhi, the two states having one of the highest pendency of rape and POCSO cases, have no functional FTSCs to show up. Incidentally, these two states have not been released any Central Government fund for setting up FTSCs either. The release of funds depends on the plans submitted by states, so if the release is not too good, it is because states are yet to submit their plans.⁶

The main reason for FTSCs remaining non-starter in some states has been their inability to shell out their share of funds to set up the courts it seems. They had cited poor fiscal situation and wanted the central government to bear the entire cost of Rs 767 crore to set up the proposed FTSCs.⁷ For each FTSC, Rs.75 lakhs was provided for one year, 60% of which is given by the Central Government and the rest 40% is to be borne by the states.

⁵ Ratio of 60:40 is applicable for all States except North-Eastern States including Sikkim and three hilly States, i.e., J&K, Himachal Pradesh, and Uttarakhand where the sharing is in the ratio of 90:10. Further, for UTs with legislature the ratio will be 60:40 and for other UTs, entire funding is by the Central government.

⁶ Salve, Prachi (December 11, 2020), Poor infra, staff shortages: Here's what is slowing down fast-track courts, IndiaSpend,

⁷ https://www.business-standard.com/article/current-affairs/poor-infra-staff-shortages-here-s-what-is-slowing-down-fast-track-courts-120121100124_1.html

Table-2: State-wise Fund Released for FTSCs

S.No	States/UTs	Total Funds Released (in Rs. Cr.) 2019-20	Total Funds Released (in Rs. Cr.) 2020-21	Total Funds Received (in Rs. Cr.) 2019-21	No. of Proposed FTSC	Funds Released/ FTSC (in Rs. Cr.) 2019-21
1	Uttar Pradesh	13.81	84.29	98.10	218	0.45
2	Maharashtra	31.05	0.00	31.05	138	0.23
3	West Bengal	0.00	0.00	0.00	123	0.00
4	Madhya Prdsh	15.08	15.08	30.15	67	0.45
5	Kerala	8.40	0.00	8.40	56	0.15
6	Bihar	2.03	0.00	2.03	54	0.04
7	Odisha	5.40	0.00	5.40	45	0.12
8	Rajasthan	5.85	14.40	20.25	45	0.45
9	Telangana	8.10	0.00	8.10	36	0.23
10	Gujarat	7.88	7.88	15.75	35	0.45
11	Karnataka	6.98	0.00	6.98	31	0.23
12	Assam	2.86	0.00	2.86	27	0.11
13	Jharkhand	4.95	2.48	7.43	22	0.34
14	Andhra	1.80	0.00	1.80	18	0.10
15	Delhi	3.60	0.00	3.60	16	0.23
16	Haryana	3.60	1.80	5.40	16	0.34
17	Chhattisgarh	3.38	1.69	5.06	15	0.34
18	Tamil Nadu	3.15	3.15	6.30	14	0.45
19	Punjab	2.70	0.00	2.70	12	0.23
20	Himachal	1.01	1.52	2.53	6	0.42
21	Meghalaya	1.69	0.00	1.69	5	0.34
22	J&K	0.56	0.00	0.56	4	0.14
23	Uttarakhand	2.70	0.00	2.70	4	0.68
24	Mizoram	1.01	1.01	2.03	3	0.68
25	Tripura	1.01	1.01	2.03	3	0.68
26	A&N Island	0.00	0.00	0.00	3	0.00
27	Goa	0.23	0.00	0.23	2	0.11
28	Manipur	0.68	0.68	1.35	2	0.68
29	Nagaland	0.34	0.00	0.34	1	0.34
30	Chandigarh	0.19	0.00	0.19	1	0.19
31	Arunachal	0.00	0.00	0.00	1	0.00
Total		140.00	134.97	274.97	1023	0.27

Variations in release of funds for FTSCs to the states are clearly visible. While the Central Government has released Rs.45 lakhs per FTSC to Uttar Pradesh, Madhya Pradesh, Rajasthan, Gujarat, and Tamil Nadu, which is exactly 60% of Rs.75 lakh proposed to each FTSC for one year (though spread over two financial years), it works out to be Rs.4 lakh, Rs. 10 lakhs, and Rs.12 lakhs per FTSC for Bihar, Andhra Pradesh, and Odisha, respectively, which are on the lower side. Funds released per FTSC to Jharkhand, Chhattisgarh, and Haryana (34 lakh) & Punjab, Karnataka, Telangana, and Delhi (23 lakh) are also lesser, on the other hand.⁸

5. Conclusion

In the context of the scheme on Fast Track Special Courts (FTSCs) for expeditious disposal of rape and POCSO Act cases, the initial one-year window to establish these courts and make them functional as directed by the Supreme Court has come to an end. However, there is still a wide gap existing between the functional and proposed FTSCs. One of the fallouts of many states still not having functional FTSCs/ EPCs has been the continued high pendency of POCSO cases in the country. However, for effective implementation of the Criminal Law Amendment Act, 2018 by ensuring targeted disposal of pending rape & POCSO Act cases, there is dire need to make all proposed courts functional and establish more FTSCs/ EPCs across the country. Therefore, it would only be prudent that the scheme is extended beyond one year and the causes and loopholes which resulted in FTSCs not progressing in many states as targeted are carefully looked into and addressed.

⁸ Nevertheless, one cannot read too much out of these figures because variations could also result from the terms of fund release which include, among others, veracity of the proposals received, utilisation of previously released funds, functionalities of FTSCs, online information/ data submitted on disposal of cases in the format as needed, release of state share of the funds, etc.

