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

(2012 to April 2020)

A Summary Report by HAQ: Centre for Child Rights & CivicDataLab

SUMMARY REPORT

While much can be achieved by strengthening the legal framework for child protection and every successive government in the last two decades has shown enthusiasm in this regard, 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. Ergo, a need was felt to create a Child Rights Law Implementation Tracker for generating updated and systematic data through an interactive platform. Besides data generation, it is hoped that the Tracker will help in galvanising evidence-based advocacy efforts on access to justice for children.

CivicData Lab and HAQ: Centre for Child Rights thus joined hands to use technology for creating such a tracker in a phased manner. With support coming through the AGAMI Data for Justice Challenge for the first phase, the focus has been on tracking implementation of the Protection of Children from Sexual Offences, Act, 2012 (POCSO Act). The main data source has been **the e-Courts portal** that maintains information of cases registered in the **Case Information System (CIS)** by all courts**.** 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.

Since development of the Child Rights Law Implementation Tracker is a technology driven task, using technology to annotate and extract data from the judgements has been a challenge. For instance, language has been a constraint in the first phase, limiting the task to judgements available in English. Besides, there is no uniformity in the contents of a judgement, making it difficult to find all the necessary information that can give insights on the different aspects of law and the justice delivery process. Efforts in this direction will nevertheless continue in future as learning from the first phase shows that there is a bright scope to make this possible at least for some parameters such as sentencing, witness protection and victim compensation.

Amidst the constraints highlighted above, sticking to timelines set out has also been challenging, particularly as the first phase has turned out to be a learning phase. While setting out to look at data on the POCSO Act from seven states, the first phase had to confine itself to data from Assam, Haryana and the National Capital Territory of Delhi. The present report is an outcome of this.

The report provides an analysis of cases for which trial has been or is being conducted under the POCSO Act in the above mentioned three States/Union Territory (UT) between 2012

(when the POCSO Act came into force) and 23 April, 2020. It aims to examine and understand the following:

1. Trends in sexual crimes against children registered under the POCSO Act in the three States/UT;
2. Implementation of the law, gaps and challenges;
3. Data challenges and how can these be overcome;
4. Role of data in informing law and policy; and
5. Possible measures to improve implementation of the law and data management in order to influence and ensure effective law and policy making.

Initially, data was downloaded for 36408 cases. After several rounds of screening of the downloaded data, the analysis was finally undertaken for 19783 cases – 5786 from Assam, 9366 from Delhi and 4631 from Haryana.

Based on the analysis conducted, a summary of key issues and areas for action is presented hereafter.

1. Trends in sexual crimes against children registered under the POCSO Act in the three States/UT

i) The rising number of cases of sexual abuse has been one of the major concerns around ensuring child protection and access to justice for children in the last few decades. Findings from data retrieved from the e-Courts portal and the NCRB reiterate the same (Chart 2.2 and Table 2.2). Implementation of the POCSO Act remains inadequate, making the child protection and access to justice goals even more challenging.

ii) From the total number of 19,783 cases that were analysed, Delhi contributes the maximum number of cases registered under the POCSO Act each year, followed by Assam and Haryana.

iii) Findings from data available on both e-Courts portal and the NCRB show that with regard to court caseload in all the three States/UT, there has been an increase in absolute number of fresh cases as well as pending cases, each year (Table 3.1 and Table 3.10).

iv) Districts identified with maximum and minimum contribution to the total number of cases in the three States/UT are as follows:

a. Assam - Barpeta has the highest share and Dima Hasao has the lowest share (Chart 2.6)

b. Delhi – Highest contribution is from West District and lowest from New Delhi District (Chart 2.9)
c. Haryana – Faridabad has the highest share and Bhiwani has the lowest (Chart 2.12)

v) Within each district, police stations from where maximum number or significant proportion of cases are coming are identified as follows:

a. Police Stations with maximum number of cases in each of the top 5 districts that comprise almost 36% of the total cases from Assam are – Barpeta, Mikhirbheta, Rupahihat, Sonari and Tezpur (Table 2.7).
b. In Delhi, in the top 5 districts that make up for 62.76% of the total POCSO case pool for the period under study, police stations making maximum contribution in each of these districts are – Aman Vihar, Nihal Vihar, Bindapur, Narela and Burari (Table 2.11).
c. Similarly, in Haryana, among the top 5 Districts comprising 47.2% of the total of number of cases from the State, police stations with highest cases in each of these districts are Women Police Station Old Faridabad, Sirsa Women Police Station, Gannaur, Hisar Sadar and Women Police Station Manesar (Table 2.15).

vi) It appears from a perusal of police station level data that Haryana is the only state out of the three States/UT under study where cases under the POCSO Act are registered in the women's police stations.

vii) For the purpose of offence-wise analysis, data is divided into three categories – Category I comprises offences under sections 4 to 15 of the POCSO Act and their combinations, Category II comprises cases of abetment and attempt i.e. offences under sections 4 to 15 of the Act read with section 17 and/or 18 of the Act, and Category III comprising offences under sections 21, 22 and 23 of the Act.

viii) A closer look at the Category I offences (Table 2.3) reveals that the maximum number of cases (5849, 32.18%) were registered for aggravated penetrative sexual assault (section 6 of the POCSO Act) followed by penetrative sexual assault (5565, 30.62%). Under Category II offences, maximum number of cases (169, 35.43%) were registered for abetment to commit aggravated penetrative sexual assault (Table 2.5), with gradual increase each year. This can be attributed to better understanding and use of the provisions of the POCSO Act as much as increased reporting. Under Category III, maximum number of cases (9, 56.25%) were registered for 'Failure to Report' an offence (Table 2.6).

ix) Among Category I offences, while the number of cases of aggravated penetrative sexual assault is the highest in both Delhi and Haryana, in Assam, the maximum number of cases are of penetrative sexual assault (Table 2.8).

x) Abetment of aggravated penetrative sexual assault and attempt to commit penetrative sexual assault comprise a significant portion of Category II Offences in Delhi (59.44%) and Haryana (49.75%), whereas in Assam, abetment of use of children for pornographic purposes followed by attempt to commit penetrative sexual assault comprise the highest share (44.44%) (Tables 2.9, 2.13 and 2.17). In Haryana, cases under provisions relating to abetment of and attempt to commit an offence under the POCSO Act start appearing only in 2015-2016.

xi) Under Category III offences, Delhi is the only one out of the three States/UT under study that has cases registered for failure to report an offence (Table 2.14). On the other hand, Assam is the only State to have a case of disclosure of identity of the victim. Cases of false reporting, which is the third offence in this category, are found to have been registered in all the three States/UT, though most such cases are from Assam (3 out of the 6).

2. Implementation of the Law, Gaps and Challenges

i) On the other hand, single year analysis of total court caseload including fresh cases and pending cases carried forward from the previous year shows that over the years the share of fresh cases in the total court caseload has shown a decline (Chart 3.3), while that of pending cases carried forward from the previous year has increased (Chart 3.3), and is a matter of concern. In 2013, the share of fresh cases in total court case load that year was 99%, while in 2016 it was 54% and in 2019 it was 36%.

ii) At the end of 2019, pendency in the three States/UT in the scope of this study stands at 74% in Assam, 88% in Delhi and 60% in Haryana (Tables 3.10A, 3.10B and 3.10C in Annexure 3). 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 (Chart 3.13).

iii) Study of case age data for all pending and disposed cases in the period 2012 to 23 April, 2020 in the three States/UTs 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 oldest disposed case is 2482 days or 6.8 years old, from Delhi, and the oldest pending case, which is also from Delhi, is 2679 days or 7.3 years old.

iv) The 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. Clearly therefore, 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.

v) POCSO Act requires a trial to be completed within one year of cognizance by court. The study reveals 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. Maximum number of cases where disposal has taken more than five years are from Delhi.

vi) Further analysis of data shows that even as the time taken to dispose a case has reduced over the years, the annual rate of disposal has been on a decline (Table 5.4).

vii) On the basis of available data, it is found that on an average 15 hearings are held per case (Table 5.12). However, how many of these are effective hearings cannot be assessed from the nature of data that is available.

viii) Average number of hearings held in disposed cases is 16. The maximum number of hearings in a disposed case is 124, completed within a period of 350 days by a Special Court in Delhi in a case of sexual abuse of girls in a child care institution in Muzaffarpur district of Bihar. The trial in this case was conducted in Delhi in a time bound manner on the orders of the Supreme Court of India. Although trial should not be expedited at the cost of fair hearing and due process, this case does point to the fact that effective hearings without unnecessary adjournments can lead to justice without unnecessary delay.

ix) Nature of disposal of cases includes not just cases that have ended in conviction or acquittal, but also cases abated, discharged, transferred, quashed and consigned to record room. Shockingly, compromise and conciliation are also found as forms of disposal recorded in the e-Courts in cases under the POCSO Act. Only deeper research informs that of the 3 such cases, 2 have been quashed by the High Court and one ended in a conviction, wrongly recorded as conciliation.

x) Of the total 8097 cases disposed in the three States/UT between 2012 and 23 April, 2020, 59.66% have ended in acquittal and 20.97% in conviction. Courts in Haryana show a greater rate of acquittal at 63.48% compared to Delhi (55.5%) and Assam (58.98%). 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% (Chart 4.2).

xi) When compared with the NCRB data, the study has found that 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 (Table 4.3). Despite more victim centric measures and recent changes in the criminal law and the POCSO Act introducing stricter sentences like death penalty, the combined rate of conviction for the three States/UT 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.

xii) With regard to nature of disposal and time taken, it is found that higher percentage of cases ending in conviction (28.98%) take two years or more for disposal compared to those ending in acquittal (19%) (Table 5.8).

xiii) Single year data for time-taken for disposal shows that only 15% to 25% of the cases registered in the CIS in a given year are disposed in that very year. It also shows that cases registered in the CIS in a year do not necessarily get disposed in the next two or three or more years. While overall data on time taken for disposal is a useful indicator on the extent to which the legal mandate for completion of trial within one year from the date of cognizance by court is being met, single year data analysis for time taken for disposal provides further insights that can be used to review and determine a feasible time frame for completion of trial.

xiv) While the average number of hearings in disposed cases comes to 16, the maximum number of hearings held is 124, in the case of sexual abuse of girls in a child care institution in Muzaffarpur district of Bihar, for which the Supreme Court had directed day-to-day hearings. In 18 cases, it took a single hearing to acquit the accused. While both situations are a cause for concern, especially if speedy trial becomes a goal to achieve at the cost of fairness and due process, the Muzaffarpur trial does indicate that when effective hearings are held and unnecessary adjournments are disallowed, trials can be expedited and justice can be met without undesirable delays.

xv) An analysis of sentences passed is undertaken for 197 cases/judgements from the State of Haryana, where imprisonment and fine is imposed under the POCSO Act and verifiable data is readily available. Key findings based on assessment of these cases are as follows:

a) Out of 197 cases, 117 (59.39%) pertain to sexual offences where minimum mandatory sentences are prescribed. The tendency is generally to prescribe a minimum sentence. In another 50 cases (25.38%), the courts have awarded a sentence between minimum and maximum punishment prescribed. In another 11 cases, where no minimum sentence is prescribed, the courts have awarded sentences ranging from 10 months to 2 years. These are all cases of sexual harassment. There is no uniform sentencing trend emerging in these cases where no minimum sentence is prescribed or where the courts are allowed a discretion between minimum and maximum sentences. In his book titled*, "Discretion, Discrimination and the Rule of Law, Reforming Rape sentencing in India",* Dr. Mrinal Satish cautions against the "unwarranted disparity" and "arbitrariness" that seeps in when there is no guidance on sentencing.[1]

b) Out of 197 cases, fine has been imposed in 196 cases. The highest amount of fine imposed is INR 5,10,000 in a case of aggravated penetrative sexual assault, while the lowest amount is INR 500, in 5 cases (one of penetrative sexual assault, 2 of sexual assault and 2 of sexual harassment).

c) It has also been observed that in few cases, where poverty or incapacity to pay fine are pleaded, there is no valid justification given by the courts for imposing fine to the tune of INR 50,000, INR 1,00,000 or more. It is a well-documented fact that majority of the under-trial prisoners and convicts are marginalised and from the poorer sections of the society. As per NCRB's Prison Statistics India 2019 report, there were 1,44,125 convicts at the end of the year, out of which 70% belong to the SC, ST and OBC category. Educational status of the convicts shows that 25% of them are illiterate and 43% have not completed class 10.[2]

xvi) Victim compensation granted by the courts are two-fold: (a) compensation to be paid out of the fine imposed on the convict and (b) compensation to be paid by the state out of the victim compensation scheme or fund established in the state.

[1] Satish, Mrinal. *Discretion, Discrimination and the Rule of Law, Reforming Rape sentencing in India*. Cambridge University Press. 2017. p.4, 80

[2] National Crime Records Bureau (NCRB), Government of India, Prison Statistics India 2019. Available at: https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf

To understand trends and issues with respect to victim compensation, a sample of 25 cases is selected from the 197 cases from Haryana, wherein a sentence order is passed.

xvii) It is observed that out of the 25 cases analysed, in 3 cases, victim compensation is awarded from the fine imposed on the convict and in 20 cases, it is awarded from the fine imposed on the convict plus victim compensation under Section 357A and/or Section 33(8) of the POCSO Act read with Rule 7 (which has become Rule 9 post the amendment to the POCSO Rules in 2020). In the remaining 2 cases, no compensation is awarded**.**

xviii) There is no specific trend emerging with respect to the percentage or proportion of fines being awarded as victim compensation. In all 25 cases where information pertaining to the fine imposed is available, the quantum of fine ranges between INR 50,000.00 and INR 5,10,000.00, while the amount of compensation to be paid to the victim out of the fine ranges between INR 30,000.00 to INR 5,00,000.00.

xix) Some concerns with regard to victim compensation are as follows:

a. Courts are not making specific orders for interim compensation or final compensation in all cases. Even if compensation is being rejected, an order to that effect must be written.
b. Despite the law on victim compensation allowing for compensation to be awarded even in cases that end up in discharge or acquittals, this is not happening.
c. Where compensation is awarded, the courts do not necessarily mention the relevant legal provision under which the award is made.
d. Even after 6-7 years of the POCSO Act coming into force, the courts are passing on their responsibility of determining the amount of victim compensation to the District Legal Services Authority. This despite a clear scheme and mandate under the POCSO Act and Rules regarding the role of Special Courts in determining and awarding victim compensation.
e. There are instances where courts have limited the right of the victim to apply for further compensation, despite POCSO Rules specifically allowing it.
f. Courts are also found shifting their responsibility of taking suo-motu cognizance of victim compensation need or entertaining an application in this regard to the District Legal Services Authority, and asking the victim to file an application with the District Legal Service Authority.

3. Data challenges and how can these be overcome

i) Due to changes in the substantive laws creating newer categories of offences as well as frequently changing methodology for data computation by the NCRB, a trend analysis and comparison of data since the enforcement of the POCSO Act have become a challenge. For example, while analysing cases and offences registered under the POCSO Act, it is found that 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 & Table 2.2).

It is further observed that the NCRB started computing data for cases registered under the POCSO Act only 2014 onwards. Until 2013, the NCRB presented data for child rape and sexual offences against children under other provisions of the IPC, in addition to cases under the POCSO Act. This methodology has changed over the years, with some stability witnessed in data computation for sexual crimes against children since 2017. Crime data for 2020 will again see some changes as the POCSO Act stands amended in 2019 and one is yet to see how these changes will be captured by the NCRB. Data for all sexual offences under the IPC is now merged within the data for offences under the POCSO Act, "Murder with Rape/POCSO" being the only exception to the rule. The NCRB follows the principal offence rule and therefore cases under the POCSO Act where the victim is murdered are counted under a distinct category since 2018. One would assume there is no double count, but this requires a clear explanation from the NCRB.

ii) It has been challenging to compare NCRB's All-India POCSO data with the data collected for Assam, Delhi and Haryana from the e-Courts portal (Table 3.1). As the NCRB started compiling data for cases under the POCSO Act 2014 onwards and its latest Crime in India Report is for the year 2019, a comparison on certain aspects has been possible only for the years 2014 to 2019.

iii) In order to protect privacy and confidentiality of the victims, public access to information and data in cases of sexual crimes has increasingly become a challenge. In many States and UTs, orders and judgements in matters under the POCSO Act are no longer being uploaded on the e-Courts portal. Not only does this restrict the right to information of the parties in a case, but also hinders bona-fide research, review and social audits that are necessary for good governance. Therefore, ***while recognising the sensitive nature of cases with respect to sexual offences against children and the need to protect the identity of the victim, it is important to not lose sight of judicial data accessibility, transparency and accountability.***

The difficulty in accessing orders and judgements led to a parallel research on practices around judicial data accessibility and transparency in other countries in matters of sexual crimes against women and children. The findings of this research[3] suggest 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. Best practices from various countries are documented in the report and can be referred to by the Indian courts for the purpose of balancing confidentiality and judicial data transparency.

iv) A thorough analysis of the various judgments (total 19,783 cases) from the three states reveals that even though the Courts/Judges have a legal mandate to follow under section 354 of the CrPC with respect to language and contents of a judgment, unfortunately many judgments do not contain the necessary vital information. This too makes analysis of data from the judgments challenging as critical information is neither captured in the judgement nor on the e-Courts portal. ***A list of non-negotiables with respect to judgments has been prepared for consideration of the e-Courts Committee of the Supreme Court and other concerned authorities (See Annexure 1.5 of the report).***

v) Details like date of cognizance by court, date of framing of charges and other critical elements in a criminal proceeding are not available on the e-Courts portal. Even data on the nature of offence is not available for 760 cases from Delhi, further reiterating the need to improve data management on the centralised case information management system of the e-Courts. Similarly, there is no information available on victim compensation (interim and final) in the e-Courts portal.

a) 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 victim and the accused, prohibiting direct and aggressive questioning to the victim are measures that will remain on paper. Despite the POCSO Act mandating a timeframe for completion of victim testimony, neither the judgements nor daily orders and any of the data fields on the e-Courts

[3] Elder, K., Tan, M., Trappett , N. and Turnbull, E., 2020. *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. Available at: https://www.haqcrc.org/wp-content/uploads/2020/06/balancing-childrens-confidentiality-and-judicial-accountability.pdf

portal capture such information. 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.

b) While the Supreme Court has time and again directed the trial courts to avoid adjournments, it is impossible to ascertain from available data on e-Courts portal as to how many hearings in a case are effective hearings, where the listed purpose of hearing is met. This will require the daily orders to capture such information along with the reasons for adjournments as well as access to access to the daily orders and proper data entry in the "Daily Status" of the "Business on Date" section of the e-Courts portal.

vi) ***A list of non-negotiables covering all the critical stages in a criminal justice proceeding that ought to be captured in order to identify areas or processes requiring attention and to carry out informed intervention towards improving the justice delivery process has been compiled for consideration of the e-Courts Committee and other concerned authorities (See Annexure 1.4 of the report).***

vii) ***There is a need for standardisation and uniformity with respect to data entry and uploading information on the e-Courts portal.*** This put forth an enormous challenge in capturing, analysing and comparing data. Some examples of lack of uniformity in data input are as follows:

i. The same case type is mentioned on the e-Courts portal in different ways (For example, there are many different spellings and styles used for mentioning disposal of a case by way of acquittal – "Acquitted", "Accused are Acquitted.", "Acquited", "ACQUITTED", "Acquitted on benefit of dought", "Acquitted.", "Judgment is delivered in the open Court, the accused person is acquitted";
ii. The terms, spellings and style used for each purpose of hearing also varies (For example, the different permutations and combinations available on the portal for the stage of prosecution evidence are – "Plaintiff Evidence", "Plantiff 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";
iii. There are different ways in which the same Act is referenced (For example, "*Indian Penal Code", "1Indian Penal Code", "IPC", "I.P.C. (Police)"* are the variations used for the Indian Penal Code or IPC);
iv. Act names do not corroborate with the section numbers mentioned. (For example, sections that apply under the POCSO Act are mentioned as sections under the CrPC or IPC, or the SC/ST (POA) Act and vice versa).

v. As there are different variations of each variable, where a combination of variables needs to be used for data computation and analysis, e.g., Act and Section or Act and Court, or nature of disposal and offence, the problem becomes exponential and also poses a challenge as to the reliability of data.

viii) Callousness in recording, maintaining and/or uploading case related information on the e-Courts portal is also quite evident. For example, in one case of aggravated penetrative sexual assault, the e-Courts portal shows the judgement precedes the registration of case in the CIS (date of judgement as 19.07.2014 and the date of registration as 21.07.2014). The nature of disposal in this case is recorded as "stayed". A perusal of the judgement on the other hand shows that the judgement is dated 28.03.2017 and the cases has ended in an "acquittal".

ix) While analysing the 19,783 cases for **Pendency and Disposal**, it is found that there is no parity between data sets maintained by different sources for the same set of variables or indicators. This leads to challenges in terms of comparing and analysing the data sets. For example, *In Re: Alarming Rise in the Number of Reported Child Rape Incidents*, 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. However, the data on pendency submitted by the respective High Courts suggests a higher number of cases pending in Assam, Delhi, and Haryana when compared with the data extracted from the e-Courts portal, once again pointing to the need for a uniform system of data collection and computation. It is also a cause for concern that there is no parity in the information generated by different offices or units of work under the same judicial administration.

x) Glaring anomalies and lapses are found even in the data on the **Nature of Disposal** and different forms of disposal under the POCSO Act as extracted from the e-Courts portal. For example, in one case, an acquittal is recorded as "compromised". In another case it is observed that although the case has ended in conviction under section 4 of the POCSO Act with a sentence of 7 years along with a victim compensation order, it is recorded as "conciliation". In yet another case disposed as "compromised", only further probe helped in understanding that the Special Court has recorded the fact of compromise in the judgement and disposed the case after the FIR is quashed by the High Court. The outcome of this case should have actually been recorded as "quashed" and not "compromised". The NCRB's data on court disposal also includes data on POCSO cases disposed of as "compounded or compromised". This is a major loophole because a trial court cannot compound a non-compoundable offence, as it requires quashing of the case by the High Court. Such examples point to not only the lapses in the manner

in which disposal is recorded by Judges and uploaded on the e-Courts portal, but lack of education of the Judges and the law enforcement agencies on legal terminologies.

Current data entry practices/processes and lack of standardisation in data entry make it difficult to draw any useful 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.

xi) Data with respect to **Rate of Conviction** too varies amongst the different sources of information. For example, several questions are raised in the Parliament of India on the subject. The replies to such questions come from the Ministry of Home Affairs. The irony lies in the fact that what gets presented in the Parliament by the Ministry of Home Affairs does not necessarily match with the data published by the NCRB, which also functions under the same Ministry. Indeed, data extracted from the e-Courts portal or that made available by the State Legal Services Authority and other agencies also differs. This calls for investing in competent data management system, establishing linkages between the police and the court data management systems.

4. Role of data in informing law and policy

i) 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."[4] The scheme envisages creation of 1023 FTSCs in 30 States and UTs with an aim to dispose of "41-42 cases in each quarter and at least 165 cases in a year."[5] The scheme promises financial support to Delhi for 16 courts, but as on 07 March, 2020, even with 26 functional exclusive Special Courts to conduct trials under the POCSO Act, the lowest court caseload in Delhi is found to be 190 cases in the Special Court in South East district. Even with the best of intentions, the expected goal of the scheme seems elusive. The decision to set up 1023 FTSCs has come in the wake of the Supreme Court's observations on high pendency of cases under the POCSO Act. However, pendency alone cannot be the basis for deciding on the number of exclusive courts required and where. What can better inform such decisions is identification of police stations that are contributing to the case load under the POCSO Act, a systematic district-wise

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

[5] Ibid.

assessment of court caseload, i.e., fresh case intake in a year, pendency that gets carried forward from the previous year and the rate of disposal, along with number of effective and non-effective hearings or adjournments and the reasons for the same. Data management must therefore be geared towards generating evidence that can inform law, policy and programmatic interventions.

ii) Currently, there is no scope in the e-Courts portal to capture child friendliness of courts in the justice delivery process. Since the law makes specific provisions in this regard, indicators that can measure child friendly court practices can fill the gap between theory and practice and identify areas for further improvement in law, policy and action.

iii) A similar exercise of developing indicators on support services for victims mandated in law will help strengthen restorative care as part of children's access to justice. In Re: Alarming Rise in the Number of Reported Child Rape Incidents (SMW (Crl.) 1/2019) the Supreme Court has directed the Union of India and State Governments to fund the courts through a central scheme for "appointment of support persons" and "infrastructure, including creation of child-friendly environment, and vulnerable witness court rooms, etc."[6] The Apex Court has further directed that "while drawing up the panel(s) of support persons in each district which should not exceed a reasonable number keeping in mind the total number of cases to be tried by the Special Court to be set up in each district, care should be taken to appoint persons who are dedicated to the cause and apart from academic qualifications are oriented towards child rights; are sensitive to the needs of a child and are otherwise child friendly."[7]

iv) Police station level data helps identify locations and jurisdictions that reflect high incidence and poor implementation of the law. For example, in Delhi, North District is among the top 20% districts contributing to the court caseload of POCSO cases in the National Capital and the rate of disposal in the district is only 11%, with a case pendency as high as 89% (Chart 3.10). As on 07, March 2020, Narela police station in the North District if found to be contributing the maximum number of cases under the POCSO Act in the district (Table 2.11). Such analysis can help in investigating deeper into the causes and response and make better investment in the areas of prevention, protection and rehabilitation.

5. Possible measures to improve implementation of the law and data management that can inform effective law and policy reform

[6] In Re: Alarming Rise in the Number of Reported Child Rape Incidents, Suo Motu Writ (Crl.) 1/2019, Order dated 25.07.2019. Available at: https://indiankanoon.org/doc/183346552/

[7]

i) Data Management

In order to overcome data challenges and to ensure that real time data is generated on critical aspects of law implementation, following measures are required to be taken:

- Need to undertake regular review of data input fields in keeping with the larger goals of generating evidence that can inform measures that may be taken for improving the justice delivery process and implementation of laws.
- A list of non-negotiables on information that must get recorded on the e-Courts portal for cases under the POCSO Act has been prepared and annexed herewith for consideration as Annexures 1.4 and 1.5. A similar exercise may be undertaken with respect to other critical pieces of legislation.
- Need to ensure all data variables are uniformly filled/fed in/to the system such that data entry errors can be minimised, for example through pre-determined drop down menus.
- Need to establish and maintain uniformity with regard to terminologies and their interpretations
- There should be special and specific training of Judges and court staff engaging with e-Courts portal and the CIS on data input and management. Such training should be mandatory.
- Training of judges with respect to judgement and order writing as well as protecting privacy and confidentiality of the victims is crucial.
- Good practices adopted in other countries to ensure privacy and confidentiality of victims as well as judicial data transparency, accessibility and accountability should be adapted to the Indian judicial system.
- Ensuring parity in data from different sources is equally critical. This requires convergence between the sources that produce data on crimes, crime management and disposal.
- There is a need prioritise investment in setting good practices and standards with respect to judicial data management and accountability.

ii) Scope for further research:

- It is high time the NCRB provides state and district level data with respect to police and court disposal of all crimes against children.

- Prevention, protection and rehabilitation are the three key areas for interventions towards ensuring child protection and access to justice goals. Such interventions need to be planned, designed and executed in areas and locations reflecting high incidence and poor implementation of the law as deduced from data analysis. Ranking of police stations and districts on the basis of crimes being registered, disposal, pendency and time taken for disposal can held in this regard. It is therefore crucial to invest in such data driven exercises that can provide a nuanced assessment of the situation at the lowest unit of implementation of law and identify jurisdictions requiring attention.

- 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. However, this will require availability of orders and judgements under the POCSO Act to researchers. Automated procedures can be developed for researchers to seek permission for using court records. However, the procedures should be simple and such that encourage research by bonafide organisations and individuals. The US, Hong Kong and Germany all permit 'bona fide' researchers to access court documents and have clear processes by which the applicant may access those records. Some of these good practices are documented in the report titled, "Balancing Children's Confidentiality and Judicial Accountability: A Cross-Country Comparison of Best Practices Regarding Children's Privacy in the Criminal Justice System".[8]

- A cross-country systematic assessment of the type of offences being compounded, compromised, quashed and transferred needs to be undertaken to get a better understanding on how much court time is spent on such cases and what can be possible alternate solutions so that cases where trial is necessary and ought to be time bound receive adequate time and attention.

iii) Critical areas for law reform

(a) Whenever a gruesome incident of child sexual abuse receives media attention and public outcry, more and more stringent changes are introduced in the legislations. The Criminal Law Amendment Act, 2018 and amendments in the POCSO Act in 2019 are the latest and most classic example of skewed 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 has been a populist measure. For example, Table 2.1 clearly shows an increase in the total

[8] Ibid. Elder *et al.* 2020

number of offences (both state-wise plus combined) taking place over the years, despite introduction of stricter punishments in law. Furthermore, Table 2.3 reveals that the maximum number of cases are of aggravated penetrative sexual assault, despite the offence carrying the most stringent punishment. Therefore, 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 to ensure certainty of conviction in a time bound manner.

(b) Fixing a mandatory minimum sentence for offences under the POCSO Act, takes away the discretion from the Judges to give a sentence below the minimum, based on individual circumstances of a case, reason and the test of reasonableness. Cases of adolescent consensual sexual activity are an example of unnecessary criminalisation resulting from mandatory reporting combined with raising the age of sexual consent to 18 years and mandatory minimum sentences. There is substantial research to suggest that such elements of law discourage adolescents from seeking support services, particularly reproductive and sexual health services and psychological help when in need. Besides, they impact reporting of abuse in a romantic relationship. Even in cases where the abuser is from the child's family, minimum mandatory sentences are a hurdle in reporting or supporting trial. In fact, in most such cases that get reported, the victims turn hostile, leading to acquittal. Minimum mandatory sentences, higher age of sexual consent and mandatory minimum sentences have actually created a conflict between the goals of justice and child protection. While justice demands fairness of procedures and reasonableness in trial and its outcome, child protection adopts a protectionist approach of ensuring protection for all children under 18 years even if it is at the cost of criminalising them for consensual sex. It is imperative to do away with this unnecessary conflict in the interest of children. Criminal law reform addressing these concerns is the need of the hour. At the same time, along with judicial discretion, guidance on sentencing can go a long way in meeting the objectives of justice as well as child protection, without creating a conflict between the two.

(c) In cases wherein the victim is awarded compensation under section 357A of CrPC or under any other provision of the POCSO Act, there is a guarantee that the victim will receive that money as compensation for her rehabilitation. However, in cases wherein the victim is dependent on compensation from the fine imposed on the convict, there is no assurance that the victim will receive the said amount. The convicts themselves being poor and in a helpless financial position, as prayed by them in most cases, are unable to pay the hefty fine amount imposed on them as part of the sentence. Out of the 23 cases where compensation is awarded, in 20 cases (as mentioned above), an additional order for victim compensation under Section 367A CrPC or POCSO Act is made. Increasingly courts are being asked to

adjust the amount of compensation received through fine with compensation under section 357 A of the CrPC and/or section 33(8) of the POCSO Act (Karan vs. State NCT of Delhi, CRL.A. 352/2020, High Court of Delhi, decided on 27 November, 2020). As a result, unless the convict pays up, compensation under section 357A and/or section 33(8) also gets deferred. Such issues require more discussion and resolution.

In addition, confusion around victim compensation under the POCSO Act need to be settled once and forever. Reference to victim compensation scheme or fund in the POCSO Rules is more in the context of fixing the source from where funds have to be procured for victim compensation. It does not imply that courts have to follow the scheme. In fact, the pOCSO Rules make it amply clear that the amount of compensation has to be determined according to the specified criteria. The second issue that requires clarity is whether the Special Courts trying cases under the POCSO Act are supposed to determine the quantum of compensation or pass it on to the District Legal Services Authority. Various High Courts and the Supreme Court of India in Nipun Saxena vs. have time and again clarified that it is the role of the Special Courts to determine the amount of compensation. Yet, the confusions prevail and need to be addressed at the earliest. Judicial training can address these issues to some extent, but clarity in law can settle confusion forever, without having to train every new Judge each time when there is a change of judicial officer presiding over the Special Courts.

iv) Community based Child Protection and Response Mechanisms

There is a need to invest in community-based protection and response mechanisms and interventions in order to improve reporting, first response and support for the victims. One such step could be setting up functional child protection committees at the village/ward and block level, as envisaged under the Integrated Child protection Scheme.

v) Budget for Child Protection and Children's Access to Justice

The last ten year average for share of child protection in the Union Budget comes to 0.04%. In 2021-22, Child Protection Services and Child Welfare Services have been merged into "Mission Vatsalya", which has received a total allocation of INR 900 Crore. This is a huge shortfall of 40 per cent when measured against an allocation of INR 1500 Crore in 20-21 for the Integrated Child Protection Scheme (ICPS) alone. Adequate investment in child protection is a critical need and there should be no compromise with child protection budget. In addition, 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.