

Access to Justice and Restorative Care

Implementation of the POCSO Act, 2012

What does Evidence Tell us?



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The Protection of Children from Sexual Offences Act, 2012

Statement of Objects and Reasons

“...proposed to enact a self-contained comprehensive legislation *inter alia* to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for **safeguarding the interest and well being of the child at every stage of the judicial process**”

Study 1

HAQ & FACSE

Delhi & Mumbai

Courts Records available
on Courts' Websites

14 November 2012 to 31
July 2015

1803 cases - Delhi 154
cases - Mumbai

5 Special Courts - Delhi
3 Special Courts - Mumbai

Study 2

HAQ

Delhi

Cases where HAQ has
provided legal and
psychosocial support

1 January 2015 to 31
December 2017

126 cases

13 Special Courts
2 JJBs

Findings are more or less similar

- Most children are in the 3 to 12 age group
- More girls than boys are in the higher age groups
- Maximum abusers are known to the child (80 to 90 per cent as per different studies)
- Maximum number of accused/offenders are in the 18 to 35 years age group
- Most cases in the 16 to 18 age group are cases of romantic relationship
- Incest cuts across all age groups and is the most difficult to sustain legally as children turn hostile
- In Delhi, 97% cases of 16 to 18 year olds that ended in acquittal were cases of romantic relationship.

Practices that need to change...

Identity of children stands revealed in Daily Orders / Judgements

- In Study 2 - 65 daily orders disclose child's identity and the total number of violations is 78.
- Of these violations, 20% disclose the child's name, 47% give away the mother's name.
- Over the years, such violations are on a decline, but not completely eliminated.

Police related issues

Charge sheeting rate is 97.6, higher than the national rate of 94.2 as per Crime in India 2016.

In 87% cases charge sheet is filed within 90 days from the date of first arrest made in the case.

But ...

How an offence is registered and investigation carried out is the real question

- What makes a sexual offence aggravated is still not clear to the police. Anomaly found in many FIRs
 - 32 out of 71 cases of children below the age of 12 years at the time of the incident
 - 8 of the 33 cases involving family members and close relatives as the accused
 - 3 out of 7 cases where the accused is a person trusted by the child /staff of the institution or school of the child / teacher

- Some and not all mistakes get corrected in the charge sheet filed on completion of investigation
 - In 13 cases the nature of offence changed in the charge sheet on account of child's age
 - But in 12 cases no change was made despite children being below the age of 12 years
- Arguments at the stage of framing of charges last longer in such cases causing delay.
- Child's version suffers unnecessary scrutiny.
- Other problems –
 - FIR or child's statement not recorded in the 'language of the child'
 - Inadequate no. of women police officers / women police officers not trained in investigation
 - Key witnesses not brought on record
 - Documents not filed properly, causing unnecessary delay
 - Violation Section 19 (6) – informing CWC and Special Court about child's need for care and protection
 - Violation of Rule 4 (9) – informing Special Court about support person appointed by the CWC within 24 hours of such appointment

Court related issues

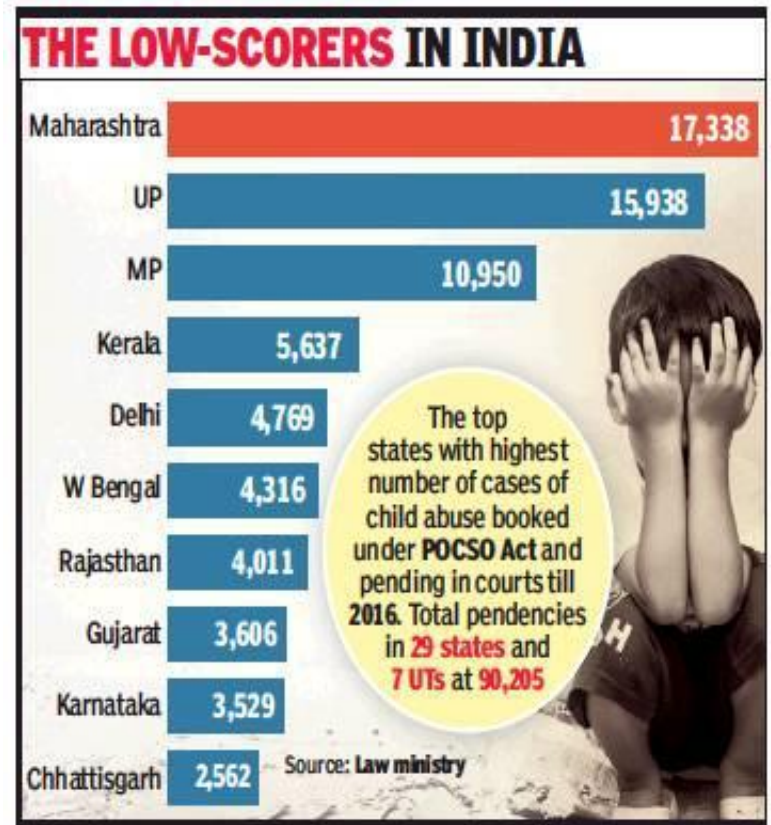
Delhi - From 11 Special Courts to 16
Initially - multiple charges
Now - Exclusive charge of POCSO

Mumbai- Initially multiple charges
Now 3 Special Courts - exclusive charge of POCSO

More courts with exclusive charge BUT high pendency

Study 1 – As on 31 July 2015, pendency of POCSO cases before the Special Courts was 86% in Mumbai and 75% in Delhi.

Law Ministry - More than 90,205 cases pending trial across 29 states and seven union territories till 2016



Order dated 16.10.2017 – “Short date is not possible as dates of December, 2018 are now being given for evidence of the prosecutrix in other cases in this court”.
NDOH – 14.12.2018

- Courts are not aware of Support Persons appointed.
- Courts do not have a list of translators, interpreters, experts, support persons from the DCPU, neither do they ask for it.
- Children are restored without court's knowledge – no linkage between Special Courts and JJ system
- Over the years, child's lawyer has gained acceptance but the name does not figure in the daily orders even when the lawyer is present for the hearing.
- Presence of child's lawyer still not seen as necessary for bail hearings.

Victim Testimony

Study 1 –

- 66.9% cases – testimony completed in single hearing (DELHI)

BUT...

- Testimony recorded beyond 30 days from date of cognizance –
 - 89.4% cases (DELHI), extending as far as 27 months.
 - 86% cases (MUMBAI), extending as far as 18 months.

Study 2 –

- 61% cases – testimony completed in single hearing

BUT...

- 99% cases - testimony recorded beyond the stipulated period of 30 days from the date of cognizance, extending as far as 874 days or 29 months.

Victim Testimony – Child-friendly measures

- Vulnerable Witness Deposition Complex (VWDC) – In 4 out of the 6 District Court Complexes, catering to 13 out of the 16 Special Courts. VWDRs being thought about for JJBs.
- Separate entry to the VWDC
- Waiting area for children – toys, games, colours and paper to draw
- Snacks served
- Use of the physical anatomy chart helps smaller children
- Transport facility to and from the court for those who need it

YET...

- much depends on the sensitivity of the individual judge.
- Section 33 (2) of the POCSO Act requires that questions be put to the child through the Judge. This seldom happens in courts that do not have the VWDC facility.
- Questions to be put to children - still not being taken in writing in some courts
- Special efforts by judges are however few and need to become a norm!

Bail – issues requiring attention

- Generally, courts expedite trials of those in custody, but no such trend is noticed in the cases examined in both studies.
- Bail granted prior to filing of charge sheet
 - 28% cases from Delhi (STUDY 1)
 - 6% cases (STUDY 2)
- Bail granted prior to child's testimony
 - 20% or 25 out of 126 cases (STUDY 2)
 - 23 cases - the accused was known to the child (Main accused - 4 teachers, 2 employers, 1 step father, 3 close relatives, 7 neighbours, 1 *tantrik*, 3 friends)
 - 8 cases - children were below the age of 12 years
- Anticipatory bail is also being granted (STUDY 1 - co-accused, STUDY 2 – Main accused)
- Bail hearings sometimes conducted like trials
- Witness protection needs not assessed
- Voice of the victims goes unheard as they have no information about bail hearing

Disposal and Time Taken

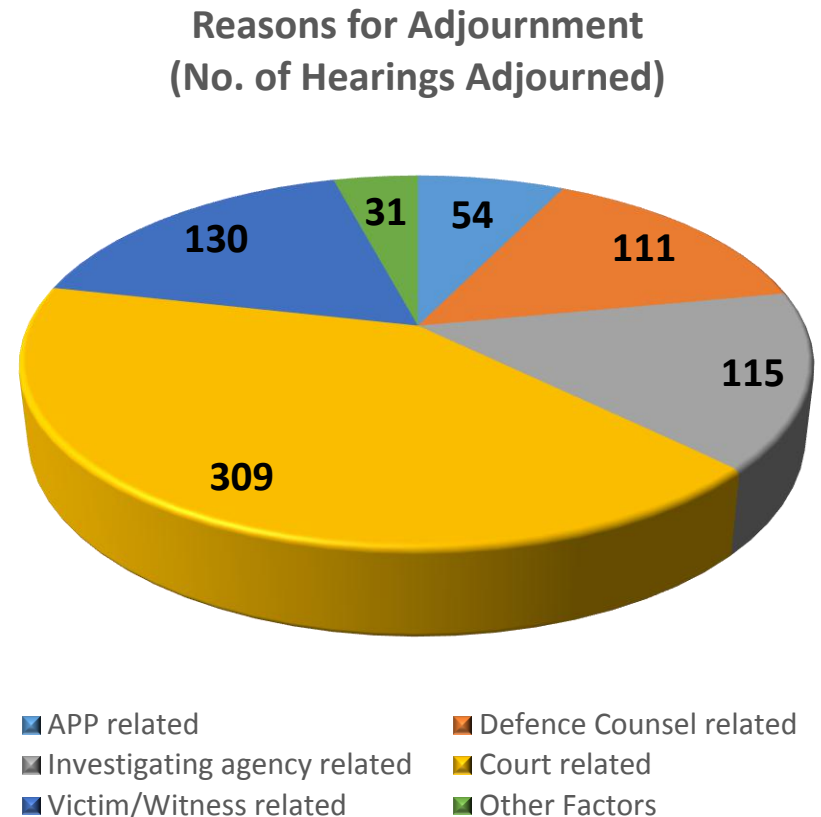
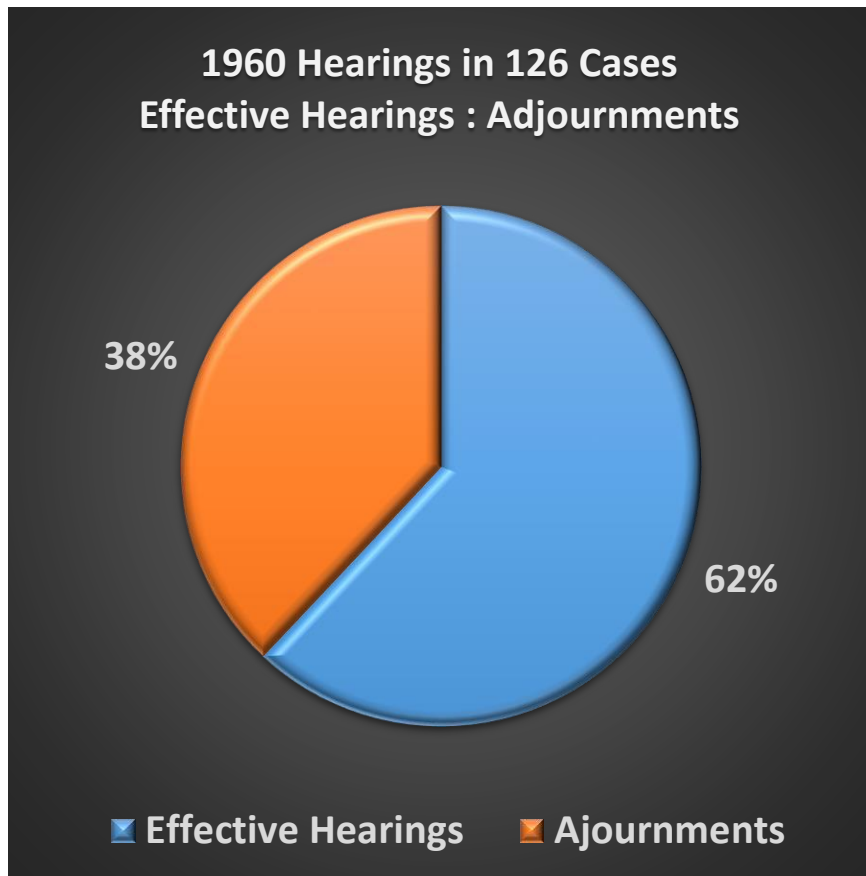
- Cases Disposed
 - STUDY 1 - 25.5% (Delhi)
 - 14% (Mumbai)
 - STUDY 2 - 7%
- Trial completed within one year from the date of cognizance by court
 - STUDY 1 - 28% of all disposed cases
 - STUDY 2 - 43% of all disposed cases
- Conviction in cases disposed by way of Conviction/Acquittal
 - STUDY 1 - 24% disposed cases
 - STUDY 2 - 43% disposed cases (sample size is too small)
- Rate of conviction
 - STUDY 1 - 22% (Delhi)
 - 62% (Mumbai)
 - STUDY 2 - 43% (but sample size is too small)

Acquittal

- **Maximum cases where accused was KNOWN**
 - STUDY 1 - 66% (Delhi)
 - 50% (Mumbai)
 - STUDY 2 - 100%
- **Proximity**
 - STUDY 1 - Mostly romantic relationship (39%), Neighbour (25%), Relative (19%)
 - STUDY 2 - Relative (74%), Employer (25%)
- **Most common reason for acquittal** - Material witness(es) turn hostile
- In cases of incest they turn hostile as soon as they are restored to their family or come in contact with their family
- **Questions to ask ...**
 - WHY do children turn hostile?
 - WHY do courts accept “No Objection” of the mother when the child is otherwise competent to testify
 - WHAT efforts are made to reach the truth?
 - WHY is victim protection not a norm?

Tareekh - pe - Tareekh

24% of the total hearings adjourned due to judge on leave, 9% due to paucity of time. 17% due to victim; 15% due to Defence Counsel, 3% due to Lawyers' Strike.



Victim Compensation : also suffers Delay

- Special Courts yet to understand their powers to grant and decide amount of victim compensation (interim and final) using the provisions of the POCSO Act and Rules
- In maximum cases, it takes between three to six months to receive the interim compensation, which is actually for meeting the most immediate needs.
- Some courts tend to wait for child's testimony to be completed.
- Other reasons for delay:
 - The child does not have a bank account
 - Child does not have valid documents to open a bank account
 - Child's bank account opened recently and DLSA is yet to receive details of the same
 - DLSA did not receive copy of the interim compensation order
 - Delay in disbursement due to lack of funds with DLSA
 - She is presently staying in a shelter home
- Practice of keeping 80% of interim compensation in Fixed deposits –
 - What is the basis?
 - Certainly not the support person's report!

- Police also not aware of victim compensation provisions of the POCSO Act and Rules – so they file applications with DLSAs
- Sometimes we also do that if the courts are not too forthcoming as the process is less time taking
- DLSA helps in opening the bank accounts – but all are not aware of this
- Children who turn 18 face difficulties, especially when restored to their home state - No instructions to banks to transfer child's accounts to a bank near their residence once the child turns 18.

The REAL Problems remain ignored

- In the name of “Justice and Child Protection” voices for “Death Penalty” become shriller day by day. But the real issues remain ignored...
- STUDY 2 shows –
 - 20% (25 of the 126) of the children had to relocate their residence after the incident due to various reasons.
 - 60% of them had to move because of safety reasons.
 - As many as 26% children discontinued education.
 - 16% had medical needs resulting from the incident for which they needed assistance over and above free treatment.

Prevention and Response: both require improvement

- Where are the village/ward level child protection committees?
- Nobody has looked at cities like Delhi to decide on the size of population over which a committee needs to be established as wards are too large
- Children are taught good touch and bad touch and then what? Are parents, schools, hospitals, neighbourhoods equipped to respond?
- Most disclosures are made to family members, particularly mothers. Are they informed and empowered to deal with it?
- Study 2 shows only 2.5% children disclosed to Childline or an NGO.

Structural and Procedural Compliances cannot ignore Children's Realities

Time to wake up and think which way we want to go ...

Certainty of Conviction or introducing stricter sentences?

Victim support or children turning hostile?

Delay or swift justice?

THANK YOU!



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