

# CHILDREN CANNOT WAIT: EXPEDITING RESOLUTION OF CHILD SEXUAL ABUSE CASES

By Dhan Pal



Pendency of cases in the courts is a serious matter for the justice delivery system. But let's just think of the children who come into the criminal justice system either as a victim of offences or as alleged offender or even as witnesses. Arguably such cases form a small proportion of the total number of pending cases, but their significance lies in the number of years they have lost in their quest for justice.

According to a [recent article in the Times of India](#), the Supreme Court's backlog of cases is now 83,000, the highest ever, even after the number of judges was increased from 31 to 34 in 2019. As on August 30, 2024, about 33 percent of the pending cases (27,604 of 82,831) are less than a year old. While 38,995 fresh cases were filed this year, the Supreme Court disposed of 37,158 cases, the rate of disposal almost matching the rate of institution of cases. The same article states that the cumulative pendency of cases in the High Courts was 41 lakh in 2014, which increased to 61 lakhs in 2023 but dipped to 59 lakh in 2024. The pendency in trial courts was 2.6 crore cases in 2014, which has increased to 4.5 crore cases.

A study by India Child Protection Fund found that more than 2.43 lakh cases under the POCSO Act were pending in fast-track special courts (FTSCs) as on January 31, 2023, and the number of such cases that resulted in conviction in 2022 remained a mere three percent nationally.

HAQ: Centre for Child Rights, which has provided legal and psycho-social support to children in need of care and protection in Delhi, and has been actively engaged in over 500 cases under the Protection of Children from Sexual Offences (POCSO) Act, 2012, since 2013, is privy to the pervasive issue of delayed justice within the criminal justice system. The first case that HAQ undertook illustrates several barriers and bottlenecks in children's quest for justice.

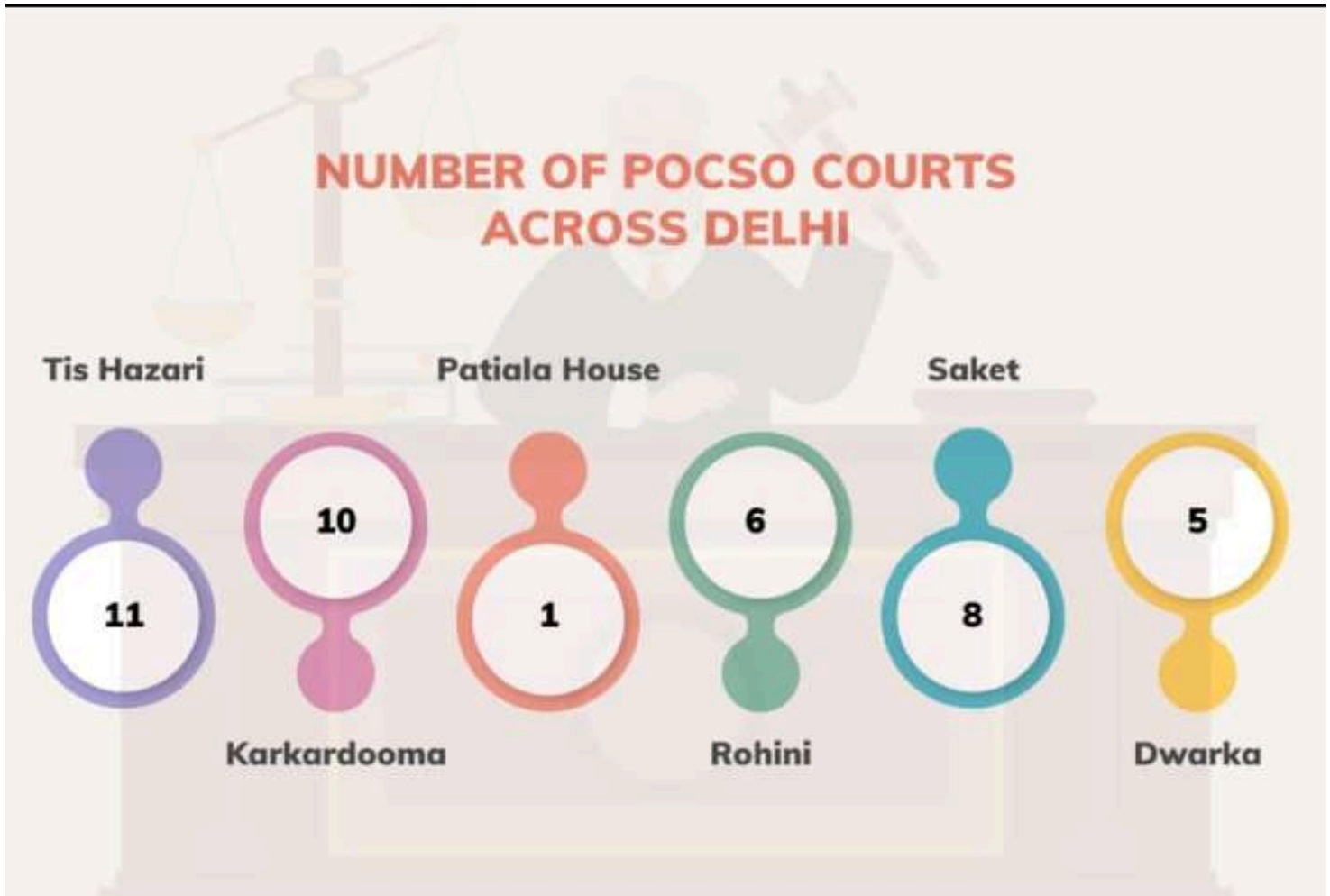
In 2012, three-year-old Rajni (name changed) was sexually assaulted by the husband of her pre-nursery school principal. Following this an FIR was filed, and the accused was charged under the POCSO Act, 2012. But after a five-year long trial, the Special POCSO Court acquitted the accused in 2017, citing the lack of corroborative evidence as the child's account was not supported by medical or forensic reports. Rajni's mother had refused for her internal medical examination as she thought the child was too young. The prosecution appealed against the acquittal before the Hon'ble Delhi High Court in 2017. This appeal is still pending before the Hon'ble Court. In 2024, Rajni is now a high school student but justice has eluded her. Her case is just one of the many children who are deprived of timely justice and the opportunity to move on in life.

*As the UN Committee on the Rights of the Child is drafting a General Comment on Children's Access to Justice and Effective Remedies, children like Rajni are also asking the hard-hitting question: What does Access to Justice actually mean?*

As time is of essence for justice for children in such sensitive cases, Special Courts are mandated under the POCSO Act, to conclude trials within one year of taking cognizance. According to HAQ's records of 539 POCSO cases in Delhi, the child victim's testimony was concluded within the prescribed time frame in only 49 percent of the POCSO cases. Indeed, the Special POCSO Courts took more than 30 months in 12 percent of cases while the average completion time for child's testimonies was 460 days.

Of the 539 cases with HAQ, 166 cases were concluded at an average rate of four years — four times longer than intended in the POCSO Act. About 58 percent of the cases currently being dealt with by HAQ, have been going on for more than four years. Some cases took more than nine years to be disposed-off, underscoring the disparity between the mandate provided under the POCSO Act and the trauma and uncertainty faced by victims and their families in their quest of justice.

The reform of the judicial system is much needed but may take time in view of its enormity and complexity. But how long can children wait for the system to fix itself? To address many of their concerns and to contribute to improvement in the overarching system, the process of recording the child testimony needs to be streamlined and legal documents need to be managed efficiently with focus on the timely examination of prosecution



It needs to be noted that the only Special Court at Patiala Sessions Court in Delhi presided over by a single judge had the maximum pendency with 799 POCSO cases as on August 30, 2024. The Rohini Sessions Court with six Special Courts also has heavy pendency with on an average 471 POCSO cases.

At the Sessions Court level, more than 60 percent of court hearings experience adjournments, often due to judges on leave or engaged in training programmes (15 percent) or the pleas for adjournments from defence counsels (10 percent) or non-availability of witnesses (11 percent) or the accused (8 percent), the Court's paucity of time (8 percent) and Investigating Officers seeking adjournment. Such interruptions prolong trials and exacerbate the backlog of cases.

evidence. Additional measures, such as child rights-based training programmes through the Bar Councils may help in sensitising the lawyer fraternity and may also curb unjustified adjournments by defence counsels and expedite proceedings significantly.

In conclusion, ensuring timely justice for victims under the POCSO Act cases requires concerted efforts from all stakeholders including by providing child rights education in the law universities and colleges. By enhancing judicial efficiency, reducing procedural delays, and fostering accountability, India can move closer to a justice system that upholds constitutional rights of children and delivers swift and fair outcomes for all including children and society at large.