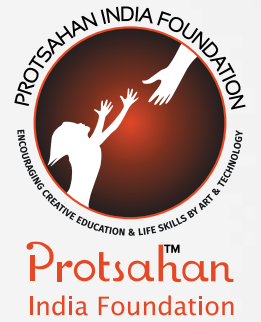
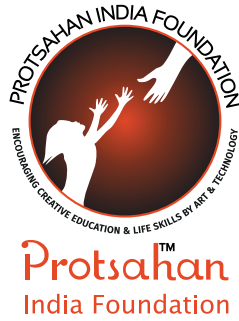


# PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

10-year analysis of NCRB Data on Sexual  
Crimes against Children (2012-2022)





# PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

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Crimes against Children (2012-2022)



# ACKNOWLEDGEMENT

The movement against child sexual abuse (CSA), spearheaded by the Ministry of Women and Child Development, Government of India, had led to the enactment of the legislation called the Protection of Children from Sexual Offences (POCSO) in 2012.

POCSO Act 2012, has completed a decade since its inception and the time is appropriate to take stock of where it stands. Our report has analyzed data of sexual crimes against children by the Crime in India Report published every year for the last ten years by National Crime Record Bureau (NCRB). With the in-depth study of NCRB statistics, the report attempts to spotlight trends over a decade across different categorization of sexual crimes committed against children and to what degree are they resolved by the Special Courts. The report aims to act as a reference document, aiding various governmental and non-governmental stakeholders in the evaluation of the present situational analysis of child sexual abuse in the country and policy planning for the future.

Child Sexual Abuse is a complex crime with several socio-economic, psychological, cultural and legal overlaps (with Child Marriage, Child Trafficking, etc.) which requires constant efforts from all stakeholders. As one goes through the report, they'll notice that we have refrained from giving our 'opinion' on the facts and data trends. This is primarily because we understand that analyzing crime against children data by implying that it is 'bad' to have a high number of recorded crimes is not only wrong, it could lead to harmful practices as the inference is incomplete. To understand crime against children statistics, we must distinguish between three different concepts – incidence of crime, reporting of crime and recording of crime. It is known that not all child victims report sexual crimes to the police. Many children hesitate to report as they fear backlash from family or community, a loss of reputation or due to lack of confidence in the capacity of law enforcement agencies.

It is critical to note that there is quite a bit of work happening in the country to uphold the child protection ecosystem, not all is bleak. For eg. The centrally sponsored scheme under which 1023 fast track courts are being built around the country, is working to fulfill an important need of speedy disposal of such cases. Hopefully, when all these courts are up and running, it will help in lessening the duration for effective and efficient disposal of cases. Targetted interventions like, "Operation Meghchakra" under which CBI conducted raids across country to cease pornographic material involving children deserve our appreciation. The operation collated information from various law enforcement agencies in India, engaged with the relevant law enforcement agencies globally and coordinated closely through the Interpol channels on the issue. Amplification in crimes against children due to uptake of newer digital technologies without safety protocols, is another nuisance to look at when discussing the report in policy forums, law schools, civil society, other institutions, etc. Yet, when it comes to public funding of child protection, a lot more needs to be done. We especially applaud the recent focus of NCRB



from 2017 onwards to provide gender segregation of data for this nature of crimes against children. This is a welcome step.

So how should we then discuss crime against children in the context of this report? Should the police be lauded for faithfully recording cases or criticized for the increase in cases? An honest answer would be that we don't know and through the means of this report, we share some of these alarming trends of a decade, in a clear graphical representation for the public and media at large to now hold the mantle for the debate to happen, especially on critical issues of mandatory reporting, sustainable rehabilitation procedures, age of consent, trauma healing for the abused child, etc.

My special thanks to Vipul Yash, the lead researcher with me on this report, who gave many sleepless nights to read and analyze the NCRB data of past 10-years to make it come to fruition with Deepak's support on design. Special gratitude to our shining beacons of light, Anant Kumar Asthana and Shashank Shekhar who through the deep passion and integrity of their everyday work in strengthening the child protection system of the country have helped us learn on our journey of upholding child rights and who also very graciously agreed to write the foreword for the report. We are extremely grateful.

We hope the reader finds this publication helpful in their work to strengthen the child protection system of our country by creating nourishing spaces that provide abuse prevention, healing and justice to the vulnerable children across strata through informed decisions and evidence backed in this data analysis of a decade 2012-2022 on sexual crimes against children.

SONAL KAPOOR  
Founder Director  
Protsahan India Foundation

# FOREWORD

In my twenty-two year career as an Advocate in various High Courts and the Supreme Court of India and also as a Member of Delhi Commission for Protection of Child Rights (DCPCR), if I go down my memory lane, I find two eras in the arena of Child Sexual Abuse, one being pre 2012 era and the other being post 2012 era. Post 2012 era starting 14th November, 2012, saw the advent of 'Protection of Children from Sexual Offences Act, 2012'. The law exclusively deals with, Child Sexual Abuse in India. The Act is an outcome of Child Abuse Study, 2007, released by Ministry of Women and Child Development, India, wherein it was found that every second child in India has faced sexual abuse in his/her childhood. POCSO Law is a progressive legislation to safeguard children from sexual abuse.

The law also reminds me the tenets of the United Nations Convention on the Rights of the Child (UNCRC), which talks of, 'the child by reason of his/her physical and mental immaturity, needs special safeguard and care, including appropriate legal protection, before as well as after birth.'

The law reminds me of Article 39(f) of the Constitution of India, which provides for children to be given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth to be protected against exploitation and against moral and material abandonment.

The current report by Protsahan India Foundation, on a ten-year-analysis of NCRB data on sexual crimes against children, is a valuable and landmark research in the field of child sexual abuse. I appreciate this unique approach of dealing with the most authentic data related to cases of child sexual abuse, reported to the police in the whole of the country. The data is self-depicting and have been very lucidly presented.

Protsahan and the team deserve kudos for this important report that holds power to guide policy and programmes for betterment of vulnerable children in the country.

Good Work!

SHASHANK SHEKHAR  
Advocate,  
Supreme Court of India

# FOREWORD

At this juncture, in India's one decade endeavour to protect her children from sexual offences, it is important to stop and look back what we have achieved and where we have not paid attention adequately and what we have missed completely.

I am delighted that Protsahan India Foundation has analysed data presented by the National Crime Record Bureau and has made it easy for everyone to comprehend the crime trends on child sexual abuse.

Even a cursory glance at this data analysis makes us realise the sheer magnitude of sexual offences against children and should be a reason enough for all of us in the child protection system and in society to renew and refurbish our commitment to give our best to children in whatever way our work impacts child protection.

I am sure that readers will find this publication relevant and useful. I congratulate Protsahan for bringing out this publication in such a lucid language and easy-to-comprehend presentation.

ANANT KUMAR ASTHANA

Child Rights Lawyer





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# ABOUT THE ORGANISATION

Protsahan - is an education and social service organisation founded in 2010 for girls and marginalised children who are survivors of sexual and gender based violence and adverse childhood experiences. Most of the organisation's work is concentrated in slums of Delhi, where it directly works with migrant girls and their families from Bihar, Rajasthan, Jharkhand, Chhattisgarh, West Bengal, Odisha and Uttar Pradesh. The organisation uses a set of gender-responsive, trauma-informed, and strength-based healing and prevention practices to improve girls' agency, self-efficacy and life skills, as well as their relationships with peers, family members, and adults in their communities through innovative STEM education based in art, stories and technology.

Protsahan India Foundation fights child sexual abuse and sexual and gender based violence through art, cinema and technology based on locally led interventions. The creative power of technology, photography, filmmaking, design, performing arts, academics and meditation is used in a Protsahan classroom to heal and transform broken childhoods of adolescent girls who are either survivors or are at a high risk of abuse. In partnership with the local child protection ecosystem comprising teachers, anganwadis, mohalla clinics, government schools, we hold conversations around safe and unsafe touch, trauma informed compassionate care spaces for vulnerable children, along with linkages to government schemes, scholarships and fellowships for violated girls and survivors for holistic access to services. Regular child parliaments are conducted locally to create conversation points and participation in governance by children themselves.

At Protsahan we believe that by supporting child survivors of sexual violence at the most pivotal time in their lives, we can help them change their world - and ours. Healing, both individual and collective, is possible, when research & data based on survivor centric and rights based approaches lead the way to guide policy and programmes in an equity framework.



# 1 - POCSO IN ITS 10<sup>th</sup> YEAR

As India's landmark Protection of Children from Sexual Offences (POCSO) Act, 2012 enters its 10th year, time is appropriate to take stock and see how the law's implementation has fared over the decade. POCSO aims at making the lives of children free from all forms of sexual atrocities. This document takes stock of penetrative sexual assault, non - penetrative sexual assault and sexual harassment cases against children in India over the past 10 years separately. From how many cases are reported to how many cases are finally convicted under each head, this report analyses the data reported by National Crime Record Bureau (NCRB) in its 'Crimes in India' Report over the last 10 years, specific to sexual crimes against children in the country.

It must be noted that POCSO as a Law has been path breaking and much needed as reflected in the 'Study on Child Abuse: India 2007' conducted by Ministry of Women and Child Development which established consistent increase in cases of sexual offences against children. The 'Economist Intelligence Unit', a London based research and analysis division of the Economist newspaper rated POCSO Act, 2012 of India as having the best legal framework to protect children from child sexual abuse. It placed India's framework above the United Kingdoms, Sweden and Australia.

Though very well intentioned and drafted, the NCRB data trends in POCSO's implementation suggests, that the increasing

punitiveness of the Act has been unable to curb the rising number of sexual offence cases against children year after year. These cases have been piling up for disposal at the judicial level. Even after a decade, not only are we struggling to bring the number of offences down, but are also unable to stop the imminent rise in new child sexual abuse (CSA) cases. The intention of this report is to spotlight the disturbing trends in sexual crimes against children so that all stakeholders can work together to create safer spaces, age appropriate conversations on personal safety with openness to report so that the rising number of POCSO cases can be brought down and society's awareness be heightened. This report offers a seminal analysis and NCRB data backed evidence to open up debate on the need of increased resource allocation for child protection in the subsequent union budgets.

Overall, cases under POCSO have been rising at an alarming level. National Crime Record Bureau, recently released the 'Crimes in India 2021' report. According to the report, 1,49,404 cases of crimes against children were reported in the year 2021. 53,874 cases were of POCSO, amounting to 36.05% of the total cases.

There were 47,221 POCSO cases out of 1,28,531 cases of crime against children in 2020 (36.73%) and 47,335 of 1,48,090 such cases in 2019 (31.94%).

NCRB data on cases registered under POCSO show a steady increase in the rate (incident per 1 lakh children):

**10.6** children per **1 lakh** children in **2019** - **46005** girls, **1330** boys

**10.6** children per **1 lakh** children in **2020** - **46,123** girls, **1098** boys

**12.1** children per **1 lakh** children in **2021** - **52,836** girls, **1038** boys

This rise in the number of POCSO cases has been going on for a long time. The table below highlights the rise in cases

All Crimes Against Children Vis and Vis POSCO Cases

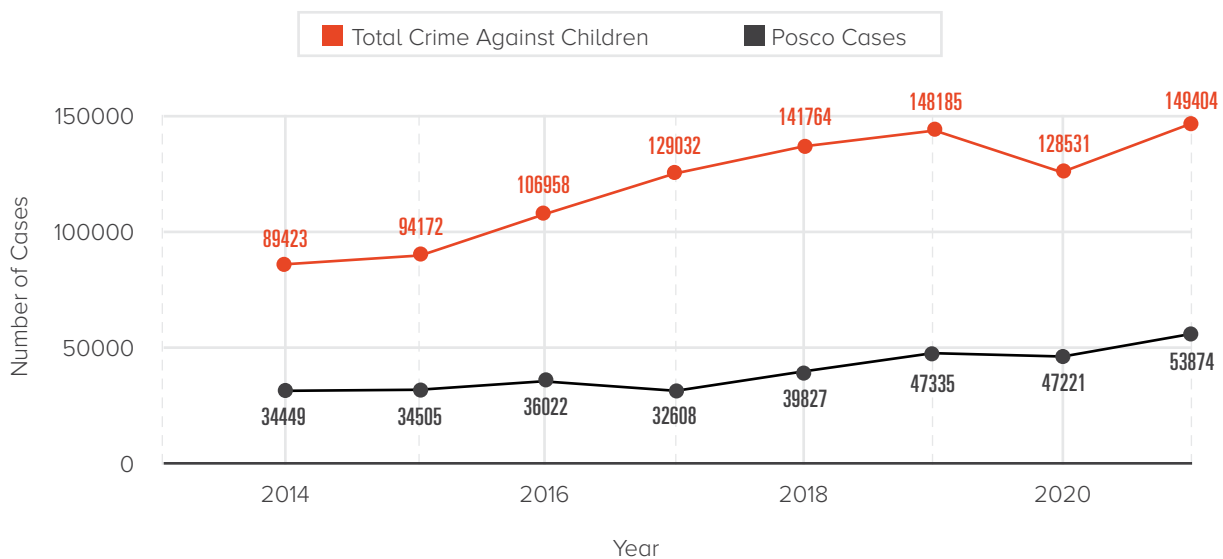


Figure A

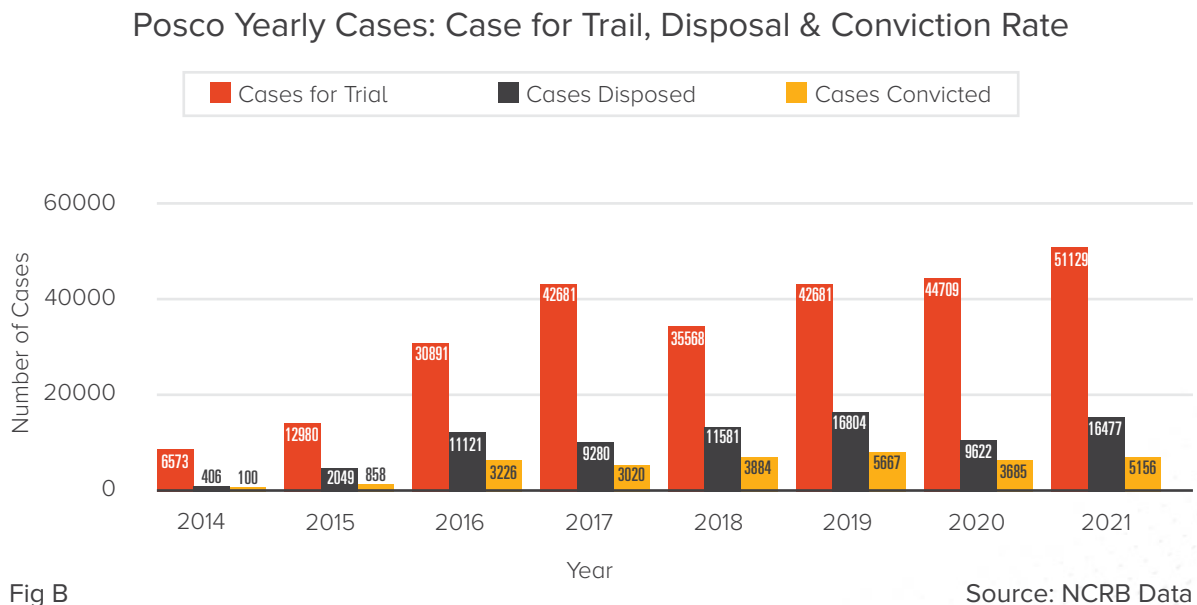
Source: NCRB Data

Year	2014	2015	2016	2017	2018	2019	2020	2021
Total Cases of Crime Against Children	89423	94172	106958	129032	141764	148185	128531	149404
POCSO Cases	34449	34505	36022	32608	39827	47335	47221	53874
POCSO as Percentage of Total Cases	38.52%	36.64%	33.67%	25.27%	28.00%	31.94%	36.73%	36.05%

Source: NCRB Data

From 2014 to 2021, there has been a 36% rise in POCSO cases reported across India. The statistics found by the combination of data from the National Crime Record Bureau for the past 8 years can very clearly establish that crimes have risen under each head of the crimes enumerated in the POCSO Act. Another major area of concern with

POCSO cases is slow disposal and abysmal conviction rate. The chart below showcases all the new POCSO cases that are sent for trial every year against the disposal rate and the conviction rate. It is apparent that new cases coming in every year is higher than the yearly disposal rate and much more higher than the conviction rate.



*Different years i.e. 2012, 2014 & 2017 have been taken as starting points of various data sets as that was the year Crimes in India Report started reporting under that specific data set head.*



## 2 - SALIENT FINDINGS OF THE REPORT



### POCSO

- Since 2014, of all crimes committed against children, **34%** are cases of child sexual abuse and related issues under POCSO Act 2012.
- Since 2014, as per NCRB data, **252,594** cases under POCSO have been sent to trial. Of all these cases, **77,340** have been disposed of. Hence, since 2014, **70%** of all POCSO cases sent to trial still seek justice. It is prudent to note here that under sec- 35 of the POCSO Act, the courts are expected, to the best of their ability, to try and dispose of the case within the period of one (1) year.
- Since 2014, as per NCRB data, of the **77,340** cases that were disposed of by the courts, **25,596** cases led to conviction. This puts the overall conviction rate since 2014 at **33%**.

### Penetrative Sexual Assault & Aggravated Penetrative Sexual Assault (Rape)



Since 2012, there has been a **290%** increase in penetrative sexual assault and aggravated penetrative sexual assault against children



Since 2012, of all the **186,602** cases of penetrative sexual assault and aggravated penetrative sexual assault (rape) against children sent to trial, **66,930** cases have been disposed, putting the overall pendency rate at **64.1%**



Since 2012, of all the **66,930** cases of penetrative sexual assault and aggravated penetrative sexual assault (rape) against children disposed off by the courts, **21,652** led to convictions, putting the conviction rate at **32.3%**

## Sexual Assault and Aggravated Sexual Assault



Since 2014, there has been a **115%** increase in sexual assault and aggravated sexual assault cases against children.



Since 2014, of all the **92368** cases of sexual assault and aggravated sexual assault sent to trial, **26473** cases have been disposed, putting the overall pendency rate at **71.33%**.



Since 2014, of all the **26473** cases of sexual assault and aggravated sexual assault disposed off by the courts, **9330** led to convictions, putting the conviction rate at **35.2%**.



## Sexual Harassment

- Since 2014, there has been a **77%** increase in sexual harassment cases children.
- Since 2014, of all the **9518** cases of sexual harassment sent to trial, 2017 cases have been disposed, putting the overall pendency rate at **78.8%**.
- Since 2014, of all the 2017 cases of sexual harassment disposed off by the courts, **488** led to convictions, putting the conviction rate at **24%**.

## Gender Segregated Data of POCSO



Since 2017, of all the **126,767** penetrative sexual assault and aggravated penetrative sexual assault (rape) that were committed against children, **125,560** were committed against girls, making girl children **99%** of the victims.



Since 2017, of all the **75002** sexual assault and aggravated sexual assault that were committed against children, **74078** were committed against girls, making girl children **98.7%** of the victims.



Since 2017, of all the **8700** sexual harassments that were committed, **8476** were committed against girls, making girl children **97.42%** of the victims.

## 3 - SETTING CONTEXT

Sexual abuse of children has been a persistent problem that India has faced for a long time. Child Sexual Abuse, not only violates the child in the given moment but also gives the child trauma for his or her life time, which if not dealt with carefully may lead to a unhealed adulthood. The problem of child sexual abuse needed to be addressed through an unambiguous law which provided as much clarity on variation of child sexual abuse as possible. Before 2012, Indian Penal Code (IPC) was applied for the cases of child sexual abuse. But IPC had various limitations when it came to ‘protection of children’ from sexual abuse. The limitations were:

- ▶ Boys who were sexually exploited were not protected under rape in the IPC.
- ▶ What constitutes ‘modesty of a woman’ is not unambiguously explained by the IPC.
- ▶ Children were protected by the same provisions made for adults. Due to this, the extra care and protection that child victims needed was not provided and they were treated in the same manner as an adult victim.

With the the rising number cases in India, despite having IPC in place, a need was felt for a special law which could help counter the problem of child sexual abuse (CSA) exclusively. Before 2012, Goa was the only state in India which had a special law for children which dealt with CSA. Goa’s

Children’s Act 2003, had severe penalties for child sexual abuse and a need was felt to have such a law at a national level.

The Government, empowered by Article 15(3) of the Constitution, to make special provisions for children, brought in the POCSO Bill. The Bill was introduced and enacted with a view to protect the children from all forms of conceivable sexual offences. The Protection of Children from Sexual Offences (POCSO) Act, 2012 was passed by both the houses of Parliament and assented by the President on **19<sup>th</sup> June 2012**. This Act came into force on **14<sup>th</sup> November, 2012**.

The law provided a detailed list of offences on child sexual abuse. The list is as follows:

- a. Penetrative
  - i. Penetrative Sexual Assault
  - ii. Aggravated Penetrative Sexual Assault
- b. Non- Penetrative
  - i. Non- Penetrative Sexual Assault
  - ii. Aggravated Non- Penetrative Sexual Assault
- c. Sexual Harassment
- d. Using Child for Pornographic Purposes

In this document we will individually be looking into:

1. Penetrative Sexual Assault
2. Sexual Assault
3. Sexual Harassment

For each of the category of sexual crimes against children that has been mentioned

above, we will be looking at the following statistics:

1. Number of cases reported to the police.
2. Number of cases in which investigation was completed by the police.
3. Number of cases for trial during the year.
4. Number of cases in which trials were completed during the year.
5. Conviction Rate
6. Pendency Rate

The intention of this report is to help all key stakeholders in the child protection ecosystem to understand trends in sexual crimes against children over the past decade, so that better decision making can be instituted across domains of policy, research and funding. Key challenges that undermine the effective implementation of this well intentioned and pointed Act have also been spotlighted along with critical case laws so that this report also serves as a sector enabling knowledge resource.

## SOURCE

The main source of data in this document is National Crime Record Bureau's (NCRB) Crimes in India Report. Reports from

the years 2012 to 2021 have been used extensively for the trend analysis of POCSO cases over the past 10 years. **Different years have been taken i.e. 2012, 2014 & 2017 as starting points of various data sets as that was the year Crimes in India Report started reporting under that specific data set head.**

## SCOPE OF THE REPORT

As this report is theoretical in nature i.e. based on Reports, it is bound by the reporting done in those documents. The Report considers every data provided in the Crimes in India Report to be true and has based its findings on it.

## RESEARCH

The research for the report which included compilation of NCRB data through its 'Crimes in India Report' from 2012 to 2022 and its analysis has been conducted by Mr. Vipul Yash and Ms. Sonal Kapoor from Protsahan India Foundation.

## DESIGN

The report has been designed by Mr. Deepak Sharma.

## 4 - PENETRATIVE & AGGRAVATED PENETRATIVE SEXUAL ASSAULT AGAINST CHILDREN

### Puja & Diya's Story of Child Sexual Abuse

Raghav, 23 year old man, lives in Delhi with his two sisters, Puja and Diya who are 7 and 15 years old respectively. Raghav is a drug addict, regularly rapes both his minor sisters and ties them up to constrain their movements. Their parents live back in the village, unaware of the atrocities on the sisters at the hands of their own elder brother.

When the case is reported and the parents are made aware of the crime, their first response is to protect their son from the police. They are angry at their daughters for reporting the case to the authorities.

This is a case of aggravated penetrative sexual assault as the crime of rape is committed by a family member in the position of trust and also one of the victim is under the age of 12.

Penetrative and aggravated penetrative sexual assault cases are generally referred to as 'rape', are the most heinous offences covered under POCSO attracting the gravest of punishments.

### PENETRATIVE SEXUAL ASSAULT

A person commits 'penetrative sexual assault' if he:

- ▶ Penetrates his penis into the vagina, mouth, urethra or anus of the child, or
- ▶ Makes a child do the same, or
- ▶ Inserts any other object into the child's body, or
- ▶ Applies his mouth to a child's private parts

The above mentioned pointers apply accordingly to men and women both.

Hence both men and women are capable of committing penetrative sexual assault and as it will be further discussed, aggravated penetrative sexual assault on a child.

### PUNISHMENT FOR PENETRATIVE SEXUAL ASSAULT

After the POCSO (Amendment) Act 2019 came into force, the minimum penalty for penetrative sexual assault was increased from seven (7) years to ten (10) years of imprisonment. A new distinction is also made based on age i.e. if the assault is committed against a child who is below the age of 16, the minimum penalty is twenty (20) years. The maximum punishment for both scenario is life imprisonment.

## AGGRAVATED PENETRATIVE SEXUAL ASSAULT

Penetrative sexual assault turns into aggravated penetrative sexual assault under the following three (3) context:

- ▶ Who did the assault?
- ▶ What was the result of the assault?
- ▶ In what circumstances was the crime committed?

### WHO DID THE ASSAULT?

- ▶ police officer
- ▶ member of the armed forces or security forces
- ▶ public servant
- ▶ management/ staff of a jail, remand home, protection home, observation home etc
- ▶ management/ staff of a hospital, whether government or private
- ▶ management/ staff of an educational institution
- ▶ management/ staff of a religious institution
- ▶ relative by blood/ adoption/ marriage/ guardianship or foster care. Family friends or people who live in a shared household also fall under this category
- ▶ owner/ management/ staff of any form of institution which provides services to the child.
- ▶ person who is in a position of trust or authority to the child
- ▶ person who has been previously convicted of any sexual offence punishable under any other law

## WHAT WAS THE RESULT OF THE ASSAULT?

- ▶ grievous hurt/ causing bodily harm and injury/ injury to the sexual organ of the child
- ▶ if the assault leads to physical or mental incapacitation of the child
- ▶ if the assault leads to pregnancy in a female child
- ▶ if the assault inflicts HIV or any other life threatening disease which might temporarily or permanently impair the child
- ▶ if the assault leads to death of the child

### IN WHAT CIRCUMSTANCES WAS THE ASSAULT COMMITTED?

- ▶ gang rape
- ▶ usage of deadly weapon, fire, heated substance or corrosive substance
- ▶ taking advantage of a child's physical or mental disability
- ▶ multiple assault
- ▶ child is below the age of 12
- ▶ assault was committed on an already pregnant child
- ▶ murder attempt of the child
- ▶ communal or sectarian violence
- ▶ natural calamity
- ▶ assault was followed by striping the child in public or the child was paraded naked in public

If any one criteria is covered from the above mentioned 3 sections, penetrative sexual assault converts into aggravated penetrative sexual assault.

## **PUNISHMENT FOR AGGRAVATED PENETRATIVE SEXUAL ASSAULT**

Post 2019 amendment, the minimum sentence for aggravated penetrative sexual

assault was increased to twenty (20) years and maximum penalty was set at death penalty.

### **Ridhi's Story of Child Sexual Abuse**

Mukesh lives in a hutment with his wife, Seema and his 10-year-old daughter, Riddhi. Mukesh is an alcoholic and does not hold any steady job. He regularly beats his wife and rapes his own daughter. Riddhi on multiple occasions has shared her angst and horror with her mother, but Seema remains silent, for not breaking the family apart and Mukesh being the single breadwinner.

Finally, Riddhi discloses the atrocities she is encountering to her trusted teacher at school. This led to reporting of the case, but the mother is still upset with Riddhi as her husband was taken away by the Police.

## 4.1 - NEW CASES - (AGGRAVATED) PENETRATIVE SEXUAL ASSAULT

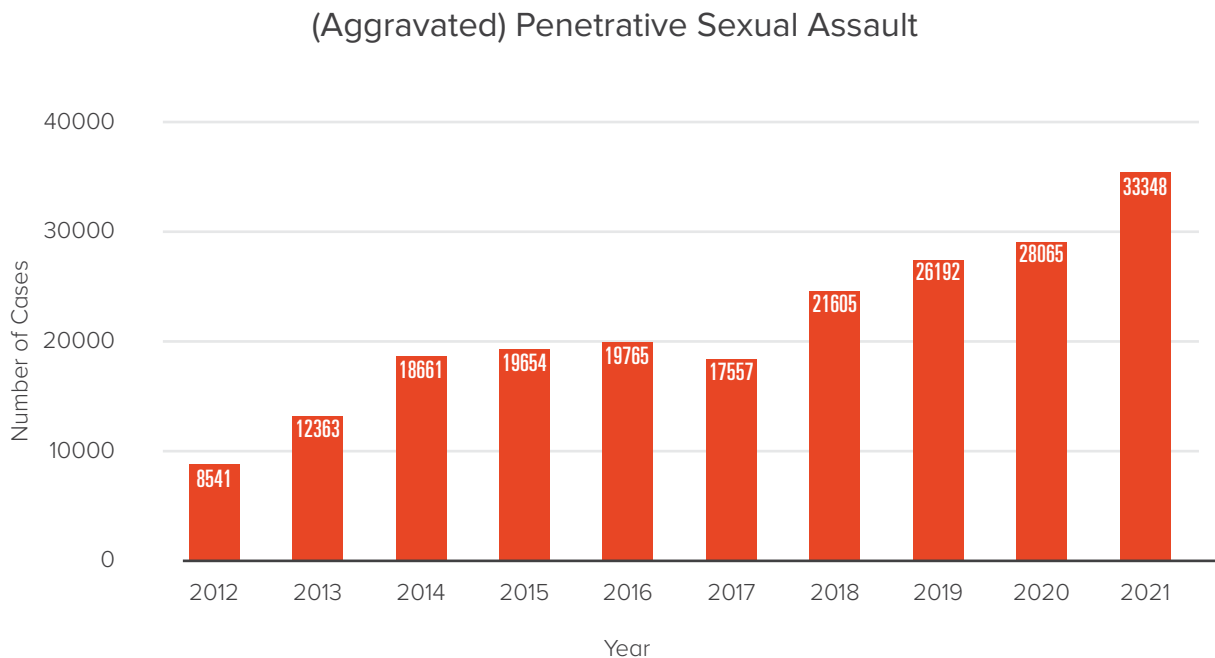


Fig 1.1

Source: NCRB Data

For the purposes of this analysis, the data for penetrative sexual assault and aggravated penetrative sexual assault is clubbed together for the similar nature of the crimes. Fig 1.1 clearly indicates that there has been an continuous rise in child rape cases, ever since 2012. Since 2012, penetrative and aggravated penetrative sexual assault have risen by 290%. The cases plateau from 2014

to 2016. In the following year 2017, there was a dip in rape cases of children. But post 2017, there has been a constant rise in the cases. **Given the beginning of the pandemic in January 2020, the increase in cases did not stop, and on the basis of last official data, the number of rape cases against children has increased to 33,348 from 26,192 pre pandemic i.e. increase of 27%.**



## 4.2 - POLICE INVESTIGATION - (AGGRAVATED) PENETRATIVE SEXUAL ASSAULT

(Aggravated) Penetrative Sexual Assault - Total Cases for Investigation

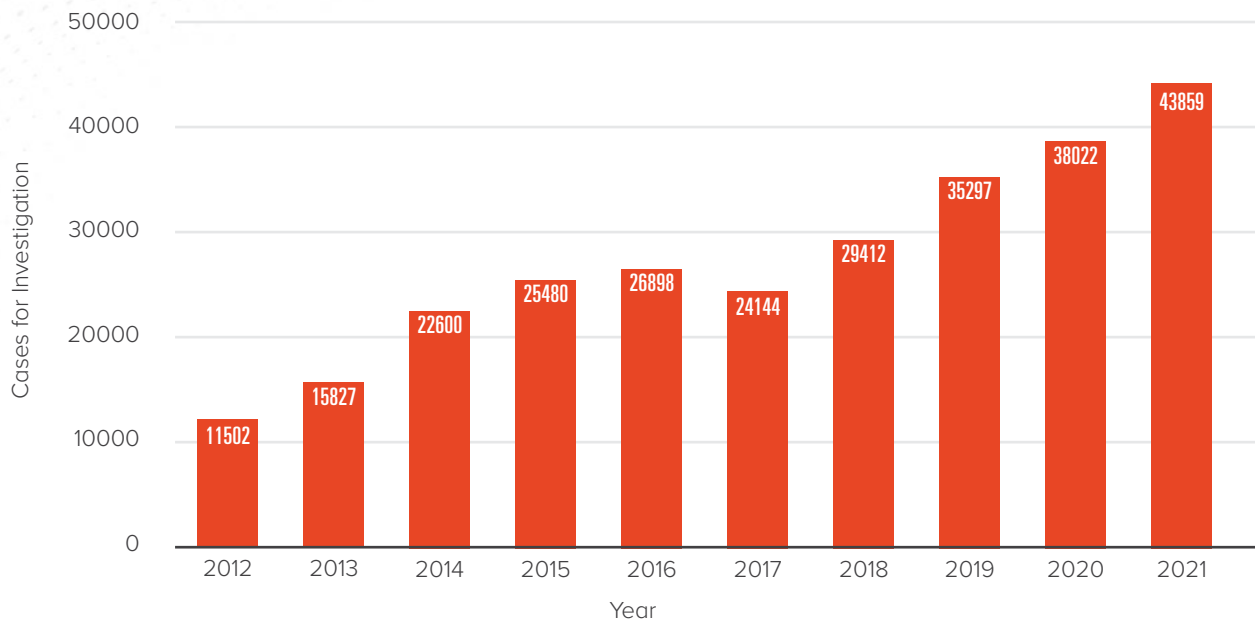


Fig 1.2

Source: NCRB Data

From 2014 to 2021, there has been a consistent increase in (aggravated) penetrative sexual assault cases for investigation. With the increase in penetrative sexual assault cases and aggravated penetrative sexual assault cases, the requirement of police investigation is also increasing every year. It must be noted here that the burden of previous years' unsolved

cases also adds pressure on the police along with new cases that come up every year. In 2014 the number of cases to be investigated was 22,600 whereas in 2021, the cases went up to 43,859. **Hence the cases of sexual crime against children under this category reported for police investigation have almost doubled in the past 8 years.**

(Aggravated) Penetrative Sexual Assault: Cases for investigation at the beginning of the year versus Cases Pending Investigation at the End of Year

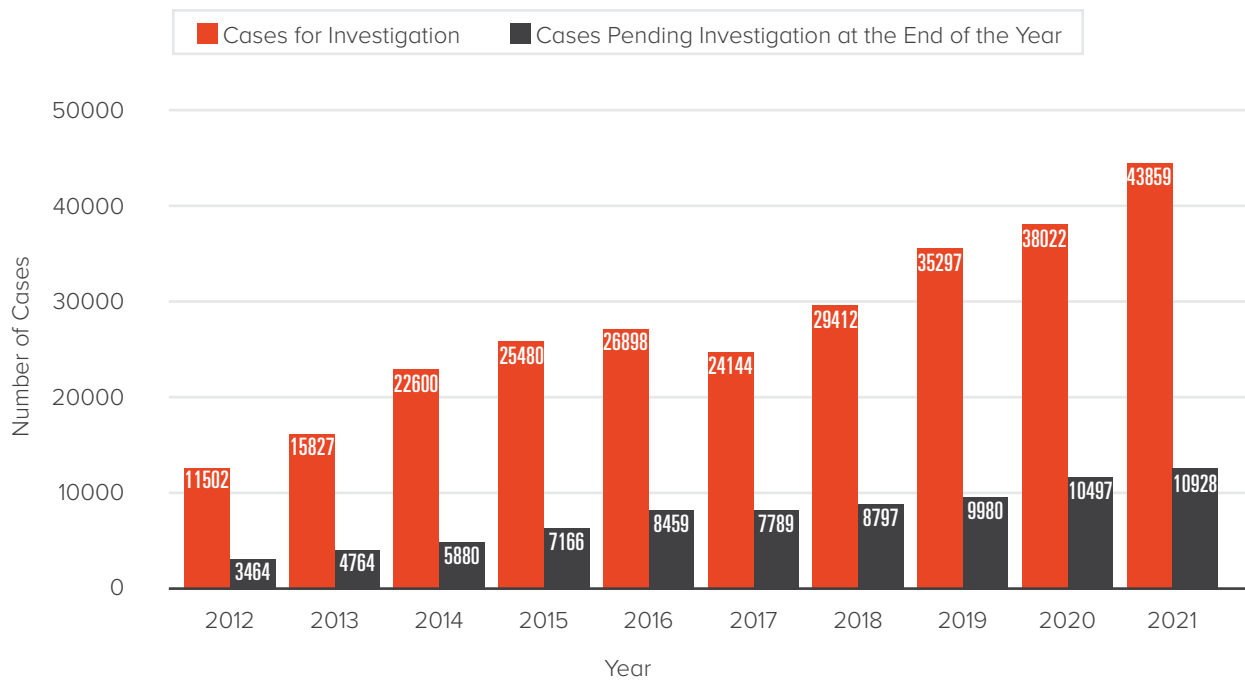


Fig 1.3

Source: NCRB Data

Glancing at Fig 1.3, it is clear that cases pending police investigation have not increased in proportion to the cases provided to the police for investigation. Growth of cases for police investigation is not exponential as it is in the case of legal pendency which we

will read later. This may reflect that till now i.e 2021, police administration of the country has been able to conduct inquiry into POCSO cases at a pace which does not lead to piling up of cases.

### SOP for Efficient POCSO Investigation

To expedite the investigation process faster than the suggested 1 year, the Chennai Police Department has devised a Standard Operating Procedure (SOP) for expeditious investigation of cases reported under the Protection of Children from Sexual Offences (POCSO) Act, 2012. As stated by the Chennai Police Commissioner, *“The objective is to make sure that there is no scope for any gaps in the investigation that may benefit the accused. The probe should take a 360-degree view of the case by covering all angles of investigation”*. A checklist of 122 points has been prepared for the investigation officer (IO) to cover the procedures of ‘reporting of offence’, ‘recording information given by a child with disability’, ‘collection of samples’, ‘sharing information’ and ‘monitoring of cases’. For more info click [here](#).

## 4.3 - LEGAL TRIAL- (AGGRAVATED) PENETRATIVE SEXUAL ASSAULT

(Aggravated) Penetrative Sexual Assault: Cases for Trial

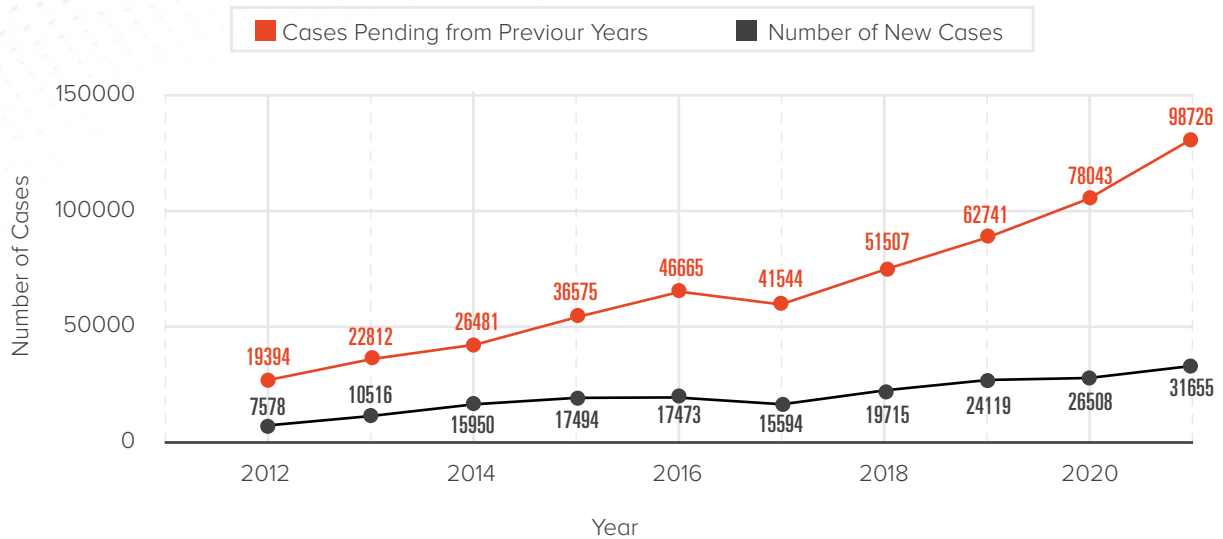


Fig 1.4

Source: NCRB Data

(Aggravated) Penetrative Sexual Assault:  
Cases Pending at the End of Every Year

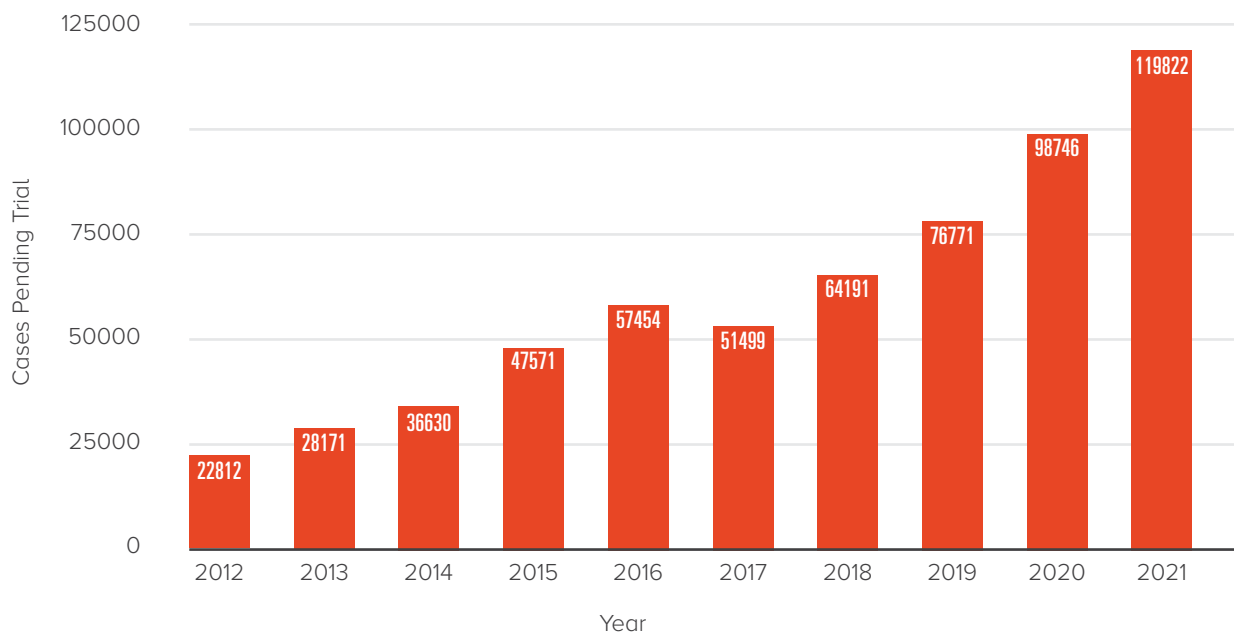


Fig 1.5

Source: NCRB Data

## (Aggravated) Penetrative Sexual Assault: Conviction Rate

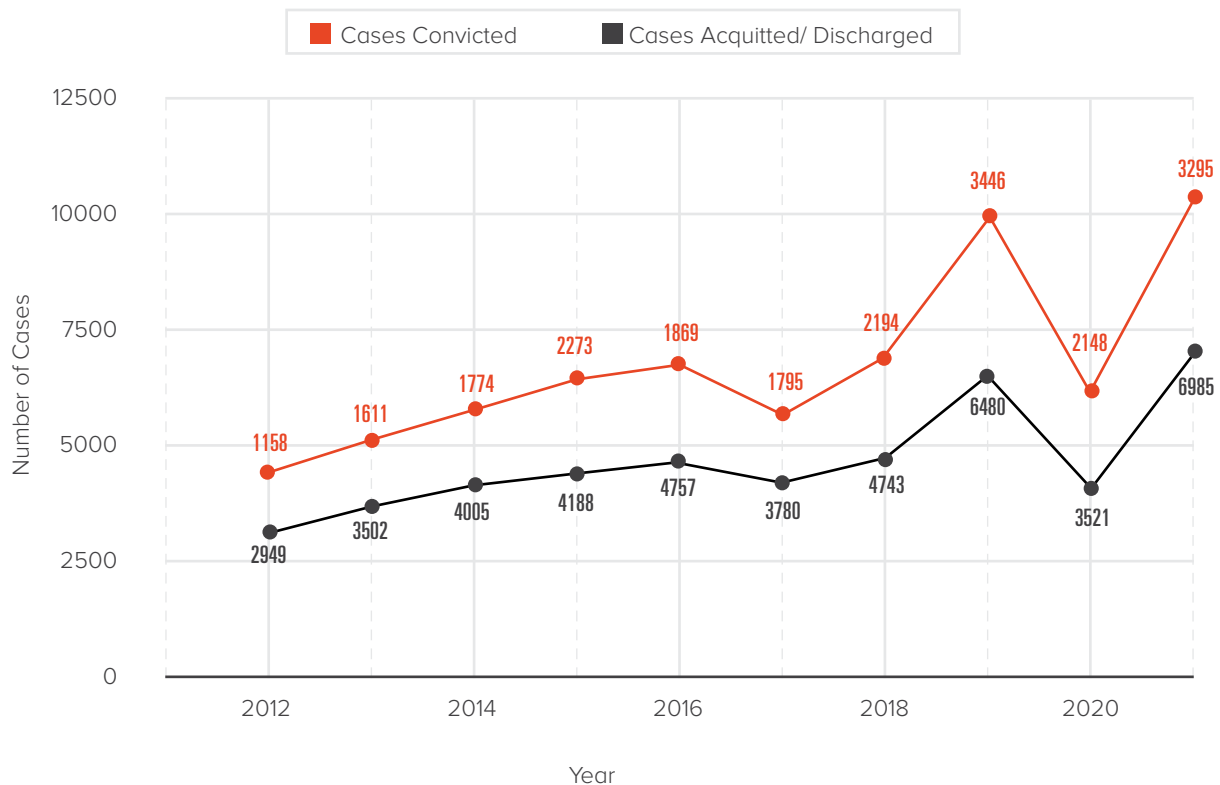


Fig 1.6

Source: NCRB Data

From a glance at fig 1.4 & 1.5 it is clear that the pendency of penetrative sexual assault and aggravated penetrative sexual assault has increased year after year. The rise in pendency has two (2) factors behind it:

- ▶ Roll over cases from past year
- ▶ Rise in new cases year after year

As per the latest NCRB data (Fig 1.4), the total number of cases for trial in the year of 2021 are 1,30,381. In comparison, the number of cases for trial in 2012 are 26,972. It is an increase of almost 383%. It hardlines yet again, the requirement of new measures for quick disposal of such cases. Though there has been establishment of ‘Special Courts’ as mandated under the POCSO Act, not every district in India has a ‘Special Court’ and many do not have them fully and effectively functional.

At the end of 2021, the number of pending cases rose up to 1,19,822 (Fig 1.5), breaching the 1 lakh mark. At the end of 2014, the number of cases pending trial was 36,630. **So since 2014, there has been a 5 fold increase in year-end pending cases for penetrative sexual assault and aggravated penetrated sexual assault against children.**

Of all the cases that completed trial, it is important to note the conviction rate of the crime. Fig 1.6 clearly indicates that there has been a higher acquittal rate in comparison to conviction rate. The chart below reflects that conviction rate of penetrative sexual assault and aggravated penetrative sexual assault has always hovered around 30%. This conviction does not stand uniform across the states.

Year	Case Acquitted/ Discharged	Case Convicted	Conviction Rate
2012	2949	1158	39.26%
2013	3502	1611	46.00%
2014	4005	1774	30.70%
2015	4188	2273	35.20%
2016	4757	1869	28.20%
2017	3750	1795	32.20%
2018	4743	2194	31.60%
2019	6480	3446	34.70%
2020	3521	2148	37.90%
2021	6985	3295	32.10%

Source: NCRB Data

## 5 - SEXUAL ASSAULT & AGGRAVATED SEXUAL ASSAULT AGAINST CHILDREN

### Pakhi & Pallavi's Story of Child Sexual Abuse

Sisters Pakhi and Pallavi, live in a 100 square feet home with 5 other family members. Their mother died a few years back and father has become mentally challenged since then. Since none of their parents are there to protect them, they are vulnerable to the inappropriate physical advances of their uncle (*chacha*) Ramesh, who does not have a steady job and is addicted to various drugs. Whenever he finds Pallavi alone, he undresses himself and her, and touches her body inappropriately without her consent.

Pallavi is too young to realise what is happening to her, but still understands that whatever it is, it makes her feels uncomfortable, unsafe and is wrong. This is a clear case of Aggravated Sexual Assault as it does not involve penetration but is committed by the family member who is in a position of trust for the child.

On the premise we need to clarify that 'Sexual Assault' & 'Aggravated Sexual Assault' are two distinct crimes as is in the case of 'Penetrative Sexual Assault' and 'Aggravated Penetrative Sexual Assault'.

### SEXUAL ASSAULT

For a crime of Sexual Assault to be committed there are two primary elements to look out for. The elements are sexual intention and touch. The primary distinction between 'penetrative sexual assault' and 'sexual assault' is penetration. In sexual assault as the POCSO Act defines, there is no penetration involved. POCSO Act has given a list of body parts that are touched in furtherance of a sexual assault i.e. vagina, penis, anus or breast. Sexual assaults occurs when the alleged

person commits the above mentioned act to a child or makes the child do the act to him/her or any other person.

### PUNISHMENT FOR SEXUAL ASSAULT

The minimum punishment for sexual assault is imprisonment for three (3) years while the maximum punishment is imprisonment up to five (5) years.

### AGGRAVATED SEXUAL ASSAULT

Sexual assault turns into aggravated sexual assault under the following three (3) context:

- ▶ Who did the assault?
- ▶ What was the result of the assault?
- ▶ In what circumstances was the crime committed?

## WHO DID THE ASSAULT?

- ▶ police officer
- ▶ member of the armed forces or security forces
- ▶ public servant
- ▶ management/ staff of a jail, remand home, protection home, observation home etc
- ▶ management/ staff of a hospital, whether government or private
- ▶ management/ staff of an educational institution
- ▶ management/ staff of a religious institution
- ▶ relative by blood/ adoption/ marriage/ guardianship or foster care. Family friends or people who live in a shared household also fall under this category
- ▶ owner/ management/ staff of any form of institution which provides services to the child.
- ▶ person who is in a position of trust or authority of the child
- ▶ person who has been previously convicted of any sexual offence punishable under any other law

## WHAT WAS THE RESULT OF THE ASSAULT?

- ▶ grievous hurt/ causing bodily harm and injury/ injury to the sexual organ of the child
- ▶ if the assault leads to physical or mental incapacitation of the child
- ▶ if the assault inflicts HIV or any other

life threatening disease which might temporarily or permanently impair the child

- ▶ if the assault leads to death of the child

## IN WHICH CIRCUMSTANCES WAS THE ASSAULT COMMITTED?

- ▶ gang sexual assault
- ▶ usage of deadly weapon, fire, heated substance or corrosive substance
- ▶ taking advantage of a child's physical or mental disability
- ▶ multiple assault
- ▶ child is below the age of 12
- ▶ assault was committed on an already pregnant child
- ▶ murder attempt of the child
- ▶ communal or sectarian violence
- ▶ natural calamity
- ▶ assault was followed by stripping the child in public or the child was paraded naked in public
- ▶ Child being administered hormones for purposes of attaining sexual maturity

If any one criteria is covered from the above mentioned 3 sections, sexual assault converts into aggravated sexual assault.

## PUNISHMENT FOR AGGRAVATED SEXUAL ASSAULT

The minimum punishment for aggravated sexual assault is imprisonment for five (5) years while the maximum punishment is imprisonment up to seven (7) years.

## 5.1 - NEW CASES - (AGGRAVATED) SEXUAL ASSAULT

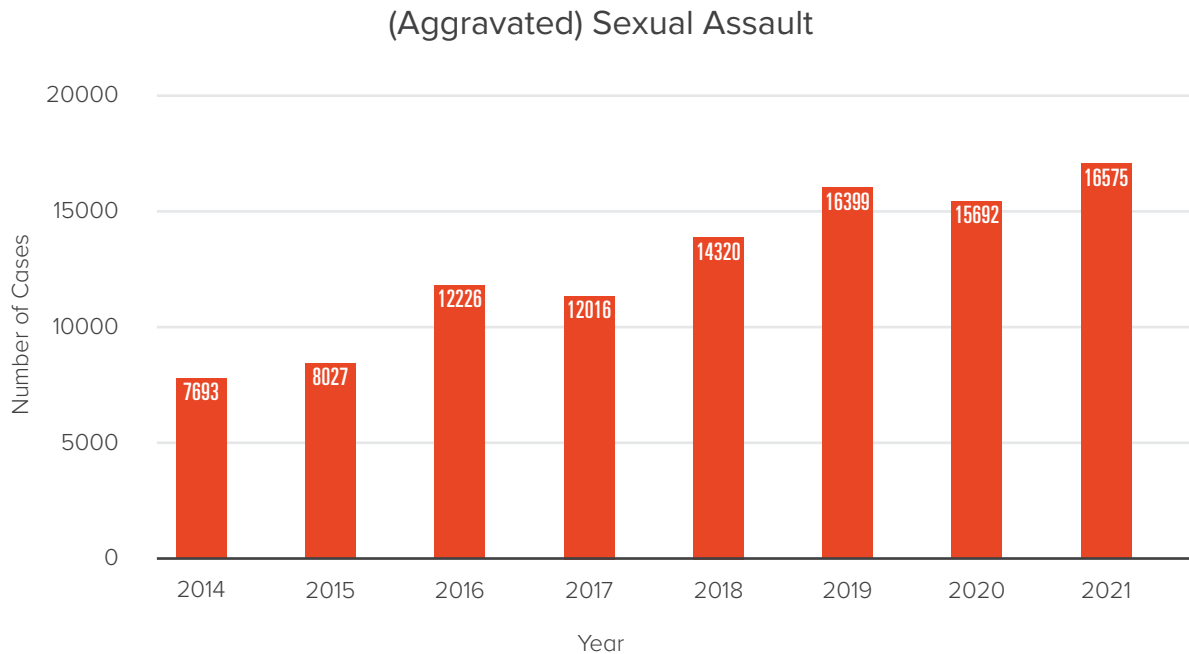


Fig 2.1

Source: NCRB Data

For the purposes of this analysis, the data for sexual assault and aggravated sexual assault is clubbed together for the similar nature of the crimes. Fig 2.1 clearly indicates that there has been a continuous rise in non penetrative sexual assault cases till 2019 post which there has been slight decrease and plateau of cases. The cases also plateaued in the year of 2016 & 2017 but then again started rising in 2018. Given the beginning of the pandemic in January 2020, children were at

a higher risk of CSA due to decreased social protection, but unlike the rise in penetrative sexual assault, there was no such rise found in sexual assault cases, it could also be because of non-reporting or decreased reporting of the same during the pandemic induced lockdowns. But when we start analysing raw numbers, in comparison to 2014, the number of cases of sexual assault and aggravated sexual assault against children has more than doubled in the past 8 years.



## 5.2 - POLICE INVESTIGATION - (AGGRAVATED) SEXUAL ASSAULT

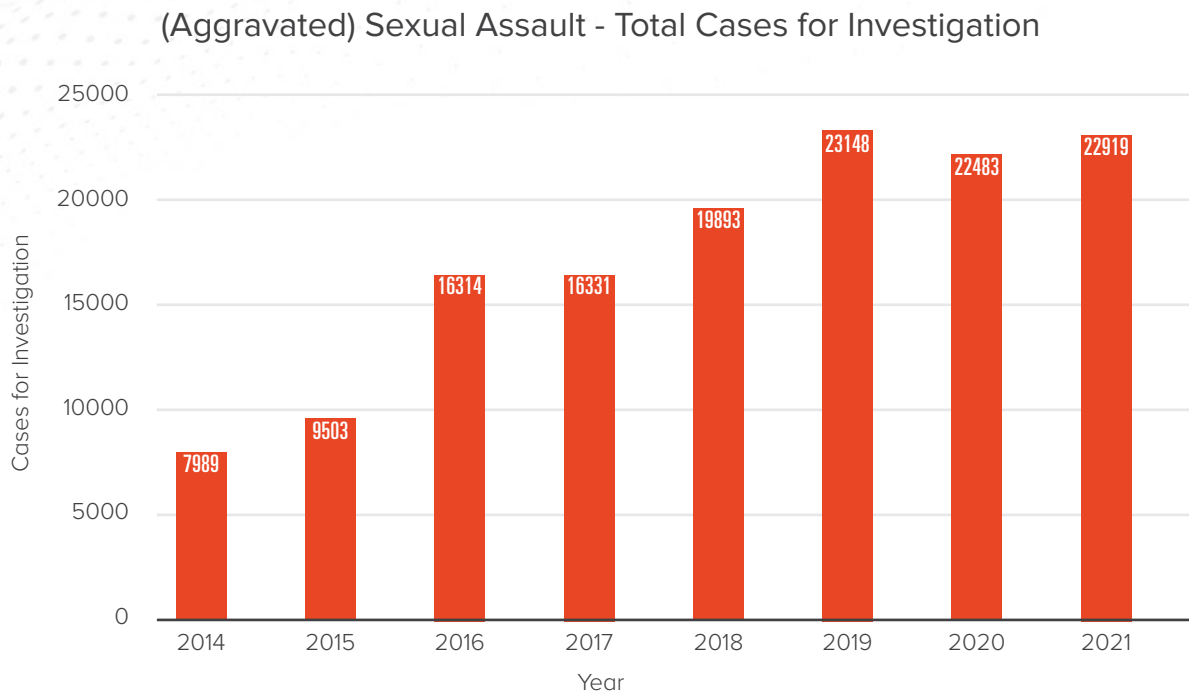


Fig 2.2

Source: NCRB Data

From 2014 to 2019, there has been a consistent increase in this category of cases for investigation with the exception of the year of 2017. Since 2019 there has been a

plateau in cases for investigation giving police an opportunity to clear the backlog of cases.

(Aggravated) Sexual Assault: Cases for investigation at the beginning of the year versus Cases Pending Investigation at the End of Year

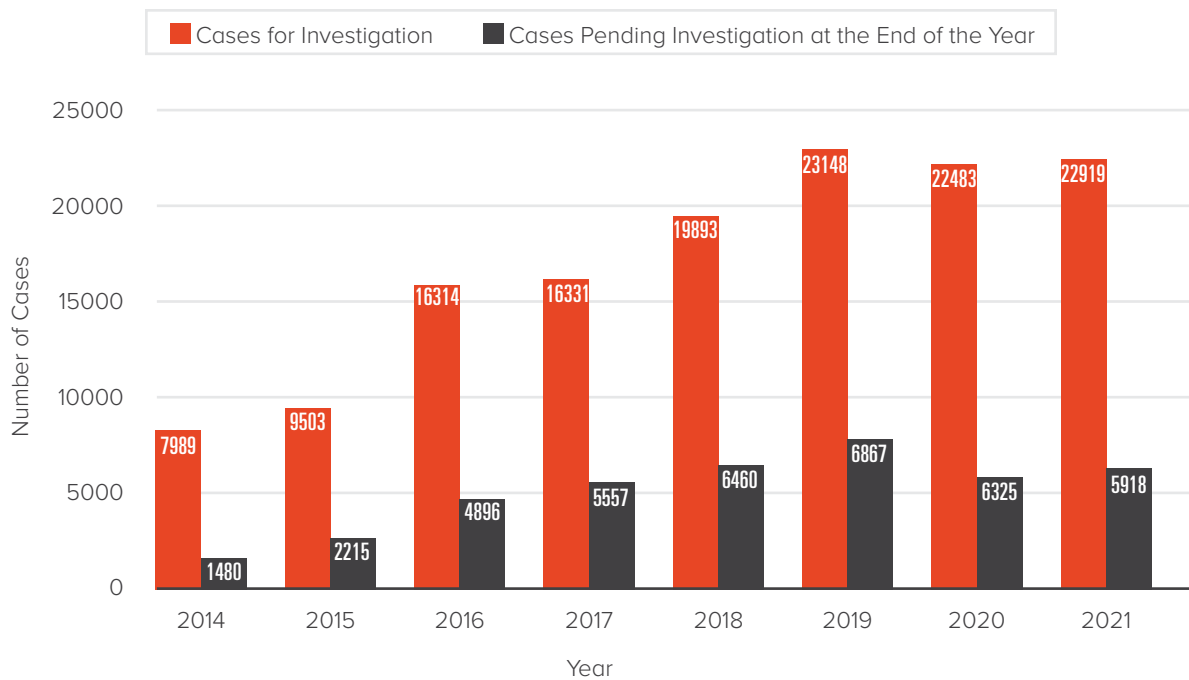


Fig 2.3

Source: NCRB Data

Glancing at Fig 2.3, it is clear that cases pending police investigation have not increased in proportion to the cases provided to the police for investigation. Growth of cases for police investigation is not exponential as it is in the case of legal pendency as we saw in the case of penetrative sexual assault and

will see further. In fig 2.3, if we see data for the year 2019, 2020 & 2021, we will notice a positive decrease in cases yearly. It is a very welcome and promising statistic as it reflects movement in a positive direction rather than in unmanageable direction with respect to swiftness in case investigation.

## 5.3 - LEGAL TRIAL - (AGGRAVATED) SEXUAL ASSAULT

(Aggravated) Sexual Assault: Cases for Trial

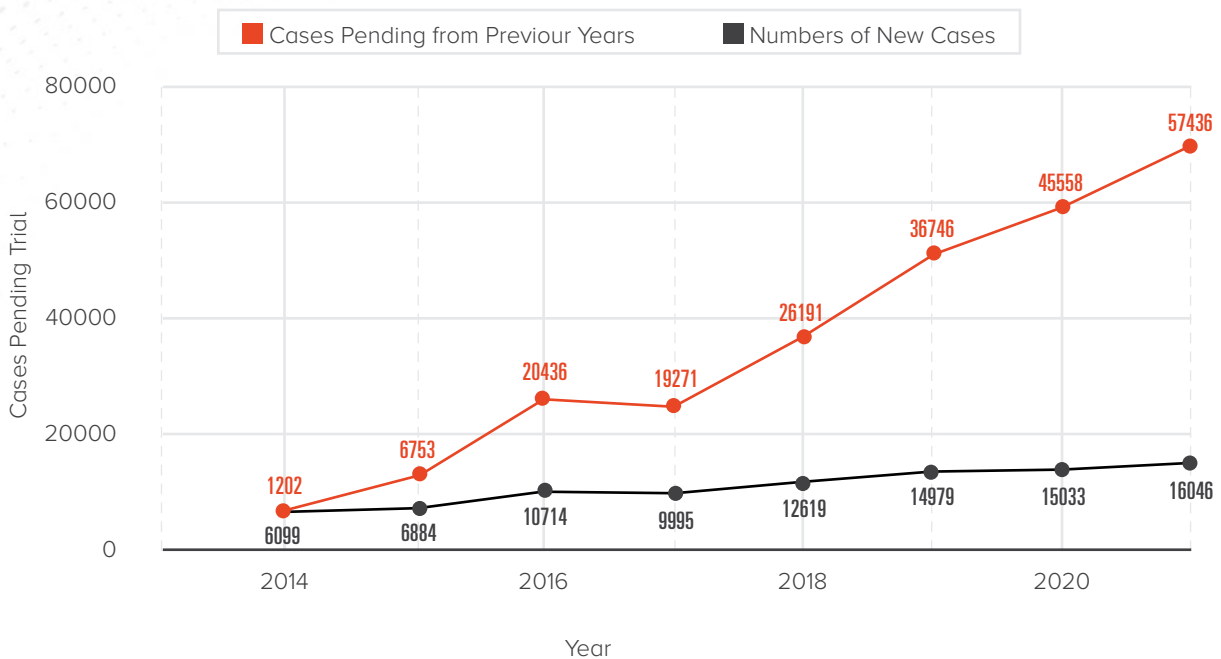


Fig 2.4

Source: NCRB Data

(Aggravated) Sexual Assault: Cases Pending Trial at the End of Every Year

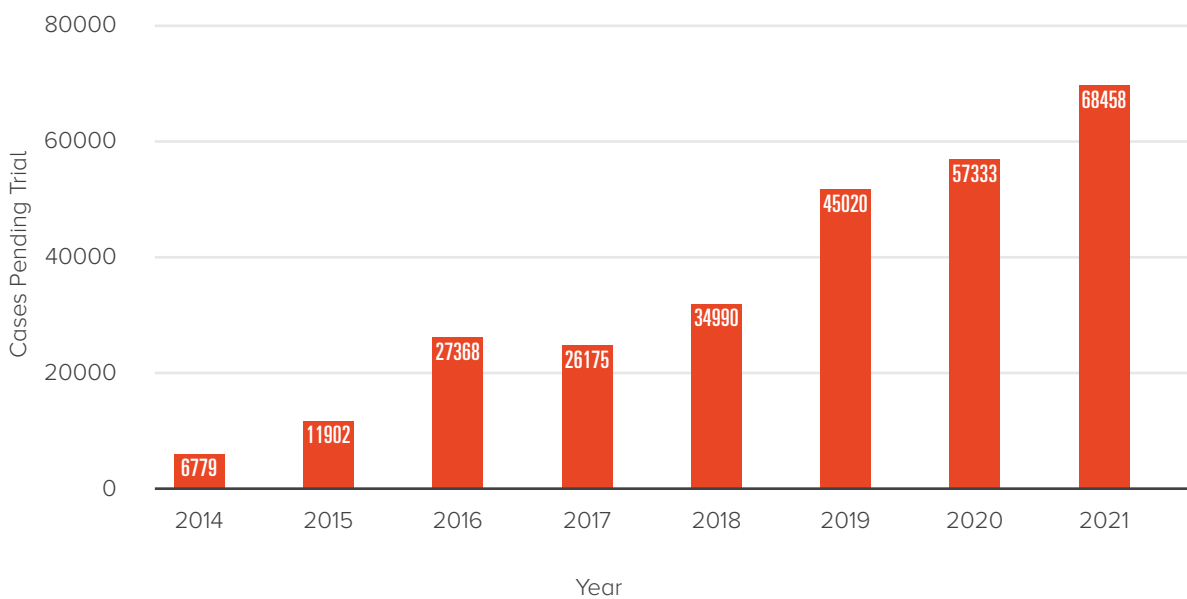


Fig 2.5

Source: NCRB Data

### (Aggravated) Sexual Assault: Conviction Rate

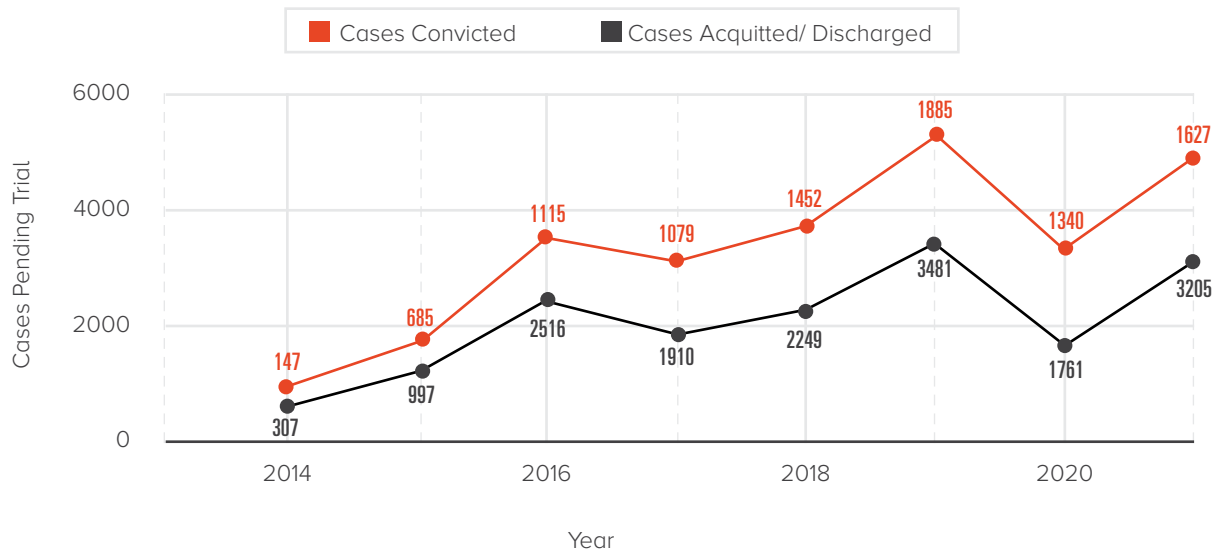


Fig 2.6

Source: NCRB Data

Just like in the case of penetrative sexual assault crimes against children, legal pendency has a similar trend in sexual assault crimes against children cases as well. If we look at fig 2.4 & 2.5 it is clear that the pendency of sexual assault and aggravated sexual assault has increased year after year.

As per the latest NCRB data (Fig 2.4), the total number of cases for trial in the year of 2021 is 73,482 in comparison to the number of cases for trial in 2014 i.e. 7301. It shows an alarming increase in cases by 10 times. But it must also be noted here that earlier many such cases were never reported and hence the reported cases were as low as 7,301. Increased agency and awareness over the years have helped victims coming forward to report abuse.

At the end of 2021, the number of pending cases rose up to 68,485 (Fig 2.5). At the end of 2014, the number of cases pending trial was 6,776. So there has been a 10 fold increase in 2021 as compared to 2014 for the cases pending at the end of the year.

Of all the cases that completed trial, it is important to note the conviction rate of the crime. Fig 2.6 clearly indicates that there has been a higher acquittal rate. The chart below reflects that conviction rate of penetrative sexual assault and aggravated penetrative sexual assault has always hovered between 30-40%. **The level of case completion in sexual assault cases is very miniscule compared to the pending cases, given the fact that there is no rise in number of cases since 2019.**

Year	Case Acquitted/ Discharged	Case Convicted	Conviction Rate
2014	307	147	32.40%
2015	997	685	40.70%
2016	2516	1115	30.70%
2017	1910	1079	36.10%
2018	2249	1452	39.20%
2019	3481	1885	35.10%
2020	1761	1340	43.20%
2021	3205	1627	33.70%

Source: NCRB Data

## 6 - SEXUAL HARASSMENT AGAINST CHILDREN

### Siddhi's Story of Child Sexual Abuse

Siddhi, is 15 year old girl and a student of class 10 in the local government school. Every morning, she walks from her home to school which takes her 10 minutes. On her way to school, few men regularly make sexually suggestive comments on her. Every other day, she tries to avoid them by taking a different route, but they find her one way or the other. Her parents often times have made her miss school for the same reason as being daily wage workers, they cannot accompany her on her way to school or back. Siddhi is scared that her parents will make her drop out eventually to secure her safety. *'When the choice is between my daughter's safety and her learning, it is a no brainer, that I will pick her safety,' says her father.*

There are several ways in which sexual harassment can occur. It has been enlisted in the POCSO Act. Important distinction between 'assault' and 'harassment' that must be noted here is 'touch'. In case of harassment, there is no touch involved. The list of actions (not involving touch) which may lead to harassment are as follows:

- ▶ Uttering any word with sexual intent
- ▶ Making any sound with sexual intent
- ▶ Making any gesture with sexual intent
- ▶ Exhibiting any object with sexual intent
- ▶ Exhibiting any body part with sexual intent
- ▶ Make the child exhibit his or her body part

- ▶ Showing any form of pornographic material to the child
- ▶ Stalking the child physically
- ▶ Stalking the child digitally
- ▶ Threaten to use real/ fabricated media of child depicted in sexual act
- ▶ Entice child for pornographic purposes

From the above mentioned 11 situations, if any single instance occurs it will be construed as sexual harassment according to the POCSO Act.

**Punishment:** For the crime of sexual harassment there is no minimum punishment mentioned, but the maximum punishment has been capped at three (3) years.

# 6.1 - NEW CASES - SEXUAL HARASSMENT

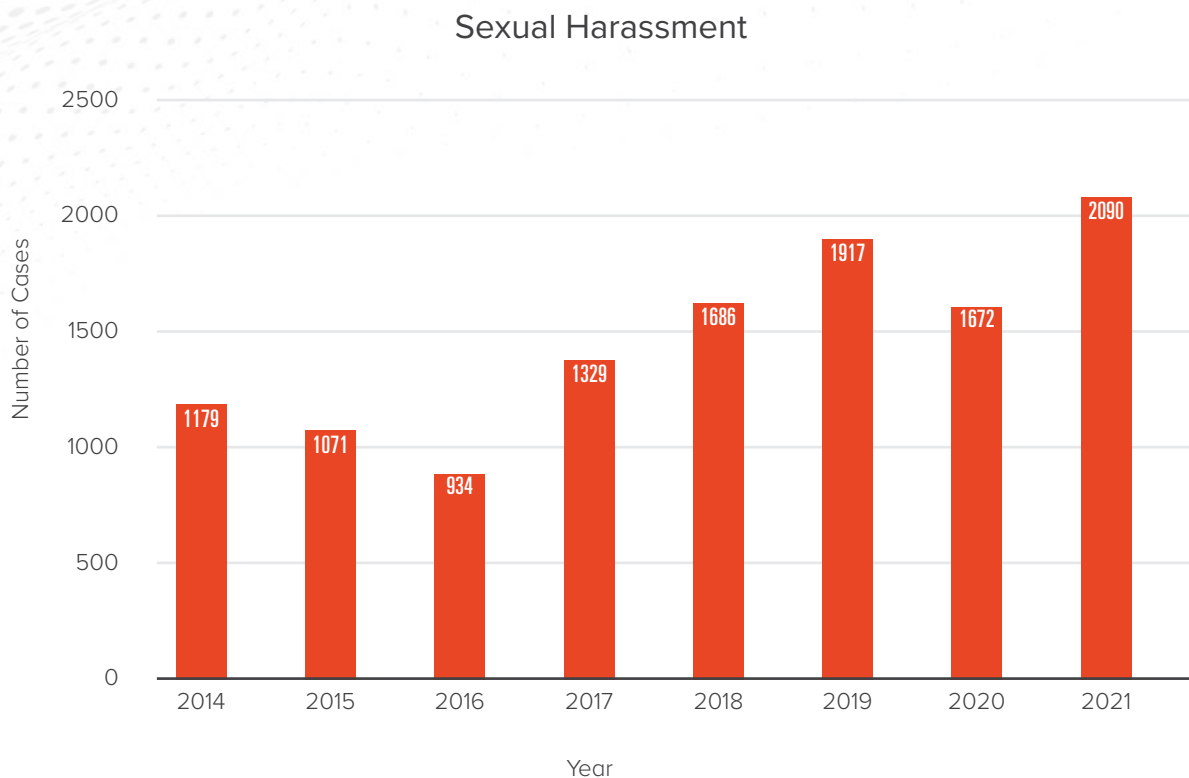


Fig 3.1

Source: NCRB Data

In the category of ‘Sexual Harassment’ cases under POCSO, the number of cases reported on a year on year basis has never been excessively high as is in the case of penetrative sexual assault and sexual assault. But still there has been an upward movement in the number of cases reported yearly. According to fig 3.1, in 2014, the number of reported cases were 1179 whereas in 2021 the

number was 2090. This clearly indicated the doubling of figures though it remained low in absolute numbers. There was a constant dip in sexual harassment cases from 2014 to 2016. The number of reported cases started rising in 2017 and this trend continued till 2019 with a slight dip in the number of cases being reported in 2020.

## 6.2 - POLICE INVESTIGATION - SEXUAL HARASSMENT

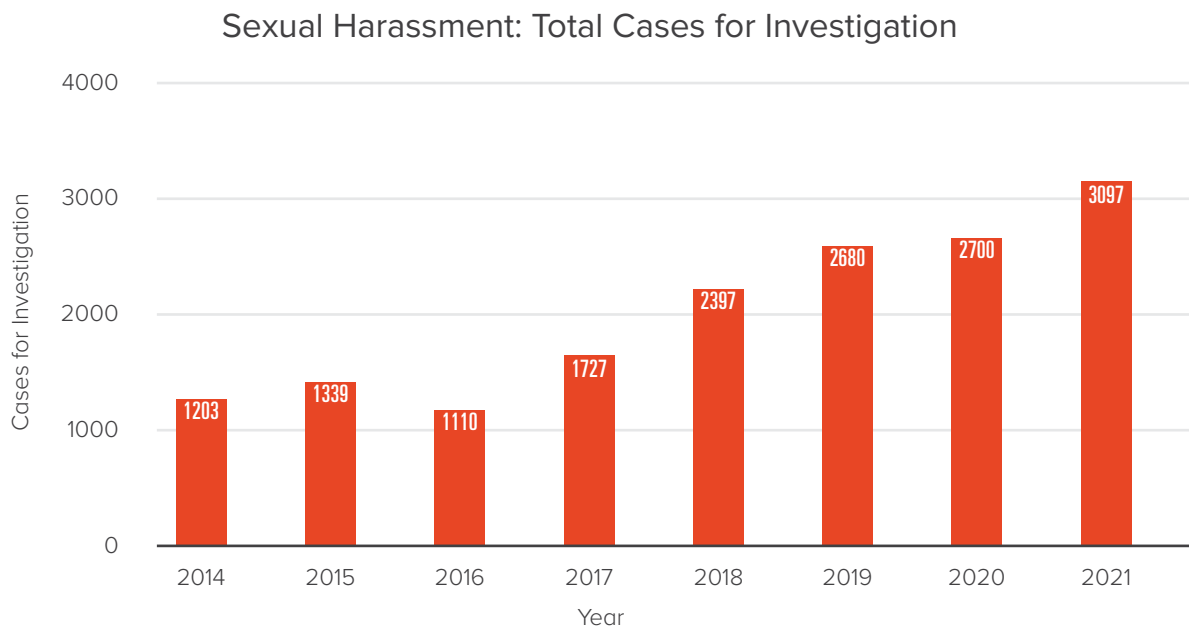


Fig 3.2

Source: NCRB Data

From 2014 to 2021, there has been a continuous increase in reported cases of sexual harassment with a slight dip in 2016. But

as stated earlier, in absolute numbers the cases have not been much higher. Still, the upward trajectory of cases is a cause of concern.

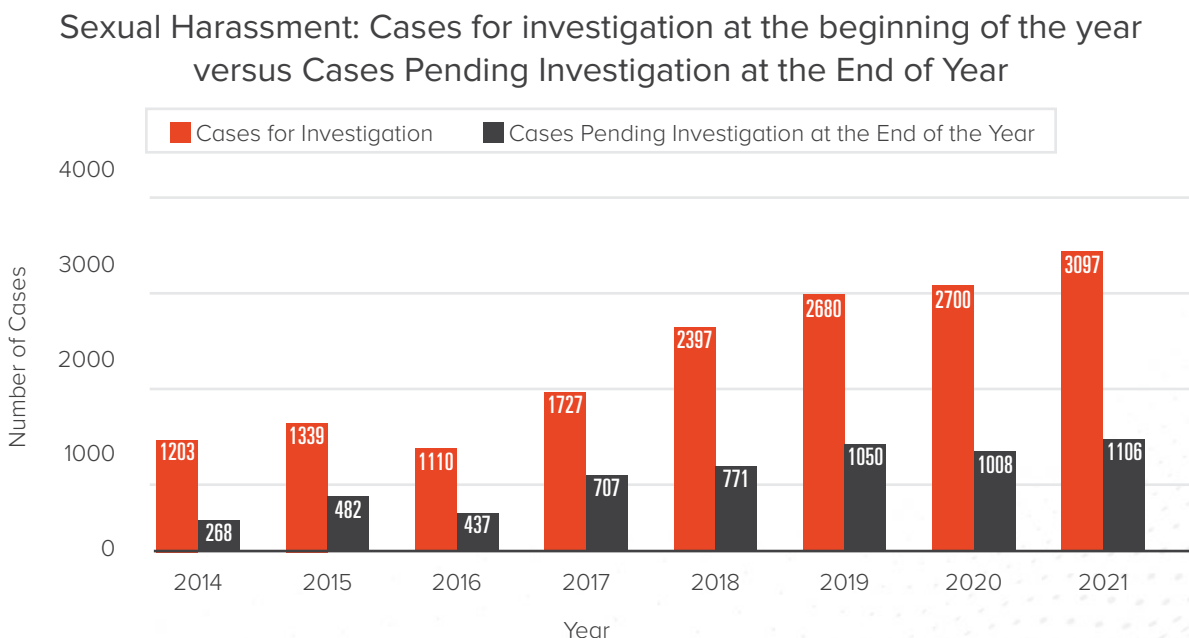


Fig 3.3

Source: NCRB Data

Though the total number of cases has remained low, it is not reflected in the cases pending at the end of the year. In 2021, almost

30% of total cases for investigation remained pending at the end of the year.



# 6.3 - LEGAL TRIAL - SEXUAL HARASSMENT

## Sexual Harassment: Cases Sent for Trial

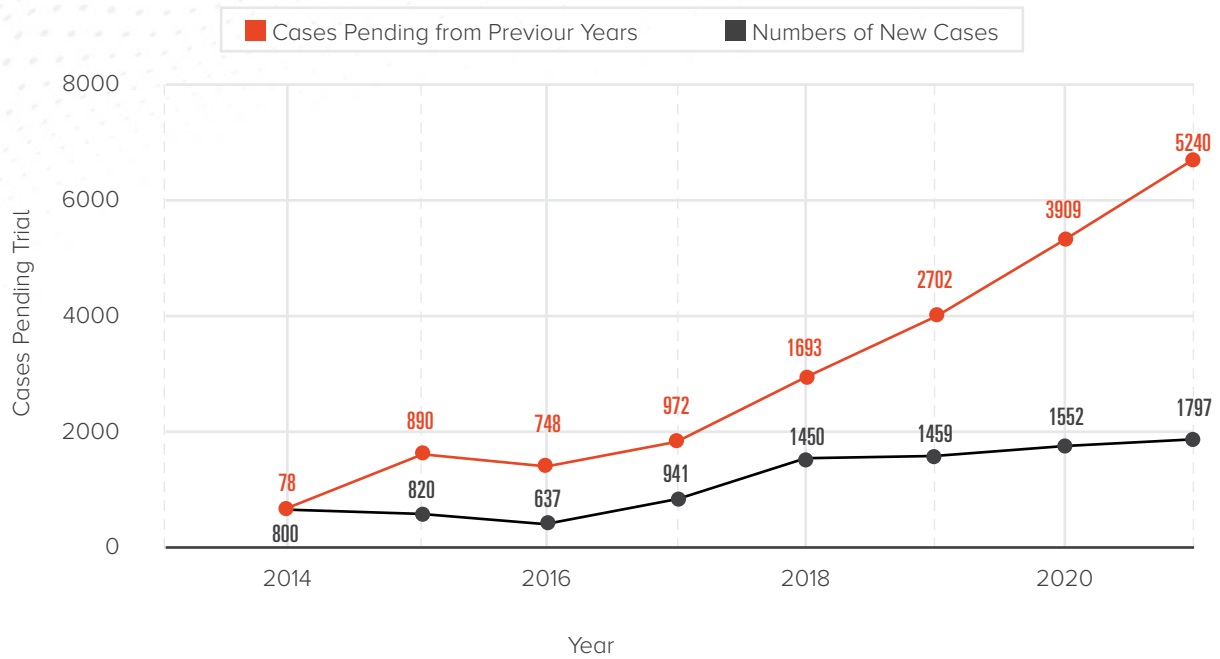


Fig 3.4

Source: NCRB Data

## Sexual Harassment: Cases Pending Trial at the End of Every Year

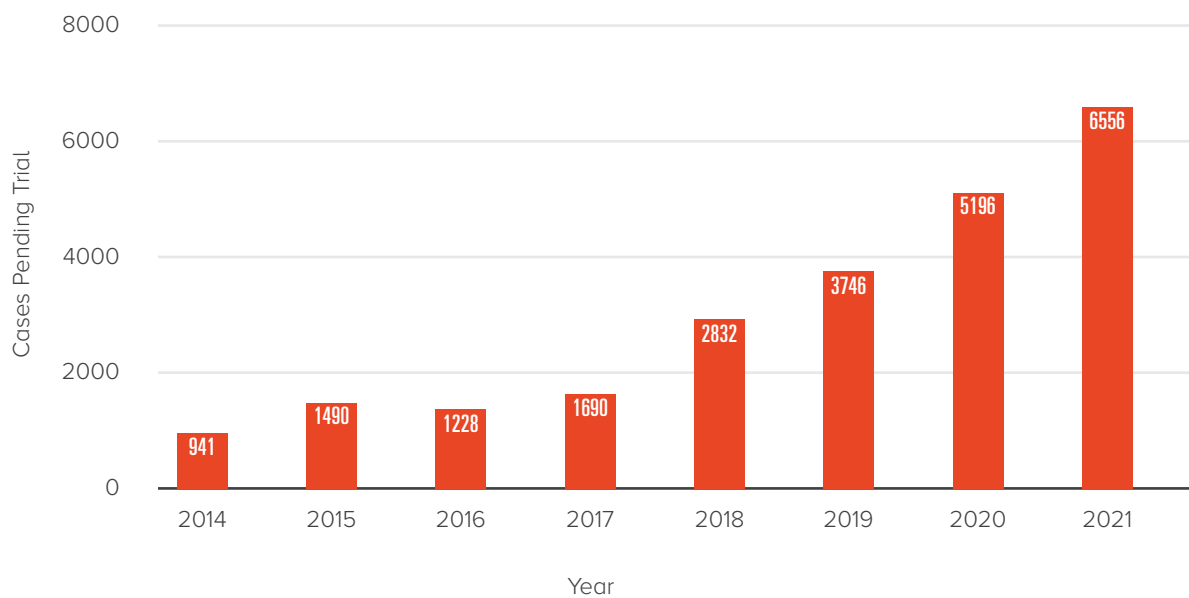


Fig 3.5

Source: NCRB Data

### Sexual Harassment: Conviction Rate

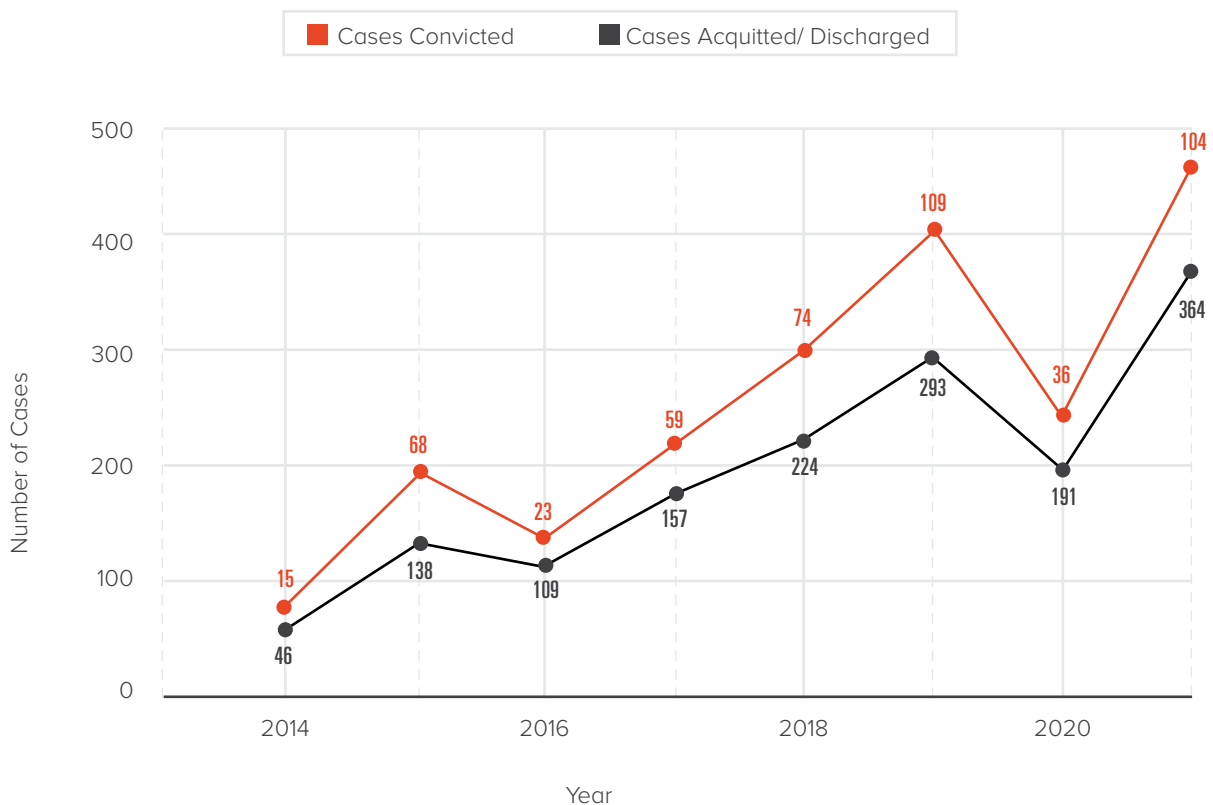


Fig 3.6

Source: NCRB Data

Even though there are lesser cases of sexual harassment when we look at sheer numbers, the pendency of cases has been exponential over the years. Just like in the case of penetrative sexual assault and sexual assault in POCSO, legal pendency has a similar trend in sexual harassment cases in POCSO as well. If we look at fig 3.4 & 3.5 it is clear that the pendency of sexual harassment has increased year after year. The rise in pendency has two (2) factors behind it:

- ▶ Roll over cases from past year
- ▶ Rise in new cases year after year

Despite the constant dip in cases from 2014 to 2016 and minor dip in cases in the year 2020, the judicial system of India was not able to

do away with the backlog of this category of POCSO cases.

As per the latest NCRB data (Fig 3.4), the total number of cases for trial in the year of 2021 are 7037. In comparison to the number of cases for trial in 2014 i.e. 968. **It shows an increase in sexual harassment of children by almost 8 times.**

At the end of 2021, the number of pending cases rose up to 6556 (Fig 3.5). At the end of 2014, the number of cases pending trial was 941. So there has been almost a 6 fold increase in year end pending cases as well. Of all the cases that completed trial, it is important to note the conviction rate of the crime. Fig 3.6 clearly indicates that acquittal

in sexual harassment cases has been highest in comparison to penetrative sexual assault and sexual assault. The chart below reflects that conviction rate of sexual harassment has always hovered between 15-33%. The level

of case completion in sexual assault cases is very miniscule compared to the pending cases, given the fact that there is less number of cases in absolute terms.

Year	Case Acquitted/ Discharged	Case Convicted	Conviction Rate
2014	46	15	24.60%
2015	138	68	33.00%
2016	109	23	17.40%
2017	157	59	27.30%
2018	224	74	24.80%
2019	293	109	27.10%
2020	191	36	15.90%
2021	364	104	22.20%

Source: NCRB Data

# 7 - POSCO - GENDER BASED DATA OF CHILD SEXUAL ABUSE

Since 2017, NCRB has started releasing data on the basis of gender as well. It helps in understanding at what level children of both genders face assault/ harassment.

Protsahan has specifically spotlighted NCRB's gender data on POCSO, as the conversation

around it, is still severely lacking in the sector of child protection. When analysing NCRB data, trends clearly indicate much higher sexual crimes against girl children as compared to boys. A gendered analysis helps understand the intersectionalities and vulnerabilities which further helps in strengthening policy.

(Aggravated) Penetrative Sexual Assault - Yearly New Cases - Gendered

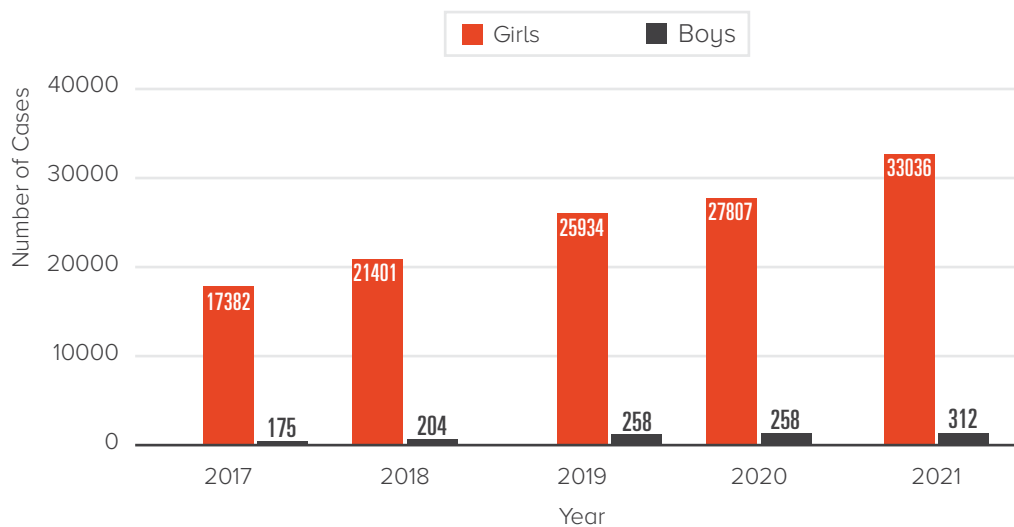


Fig 4.1

Source: NCRB Data

(Aggravated) Sexual Assault - Yearly New Cases - Gendered

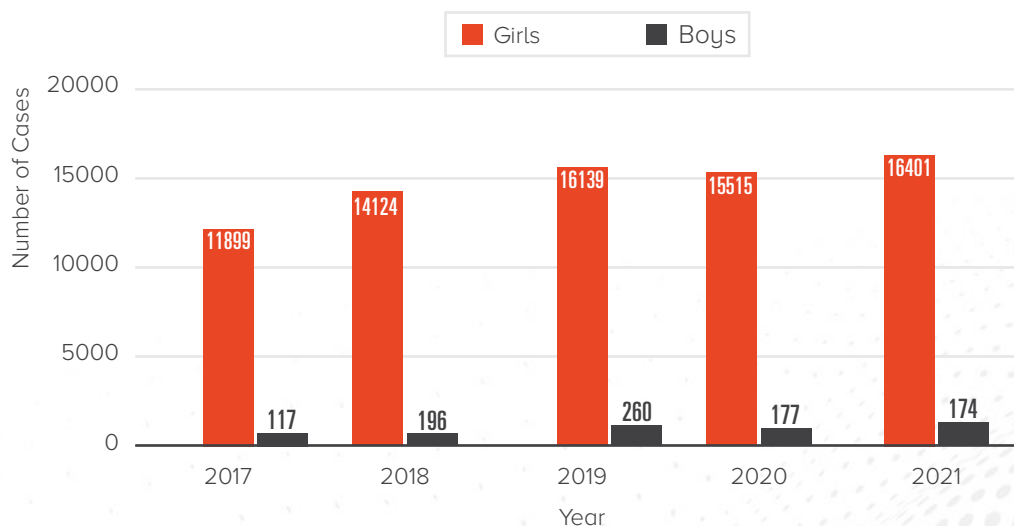


Fig 4.2

Source: NCRB Data

### Sexual Harasment - Yearly New Cases - Gendered

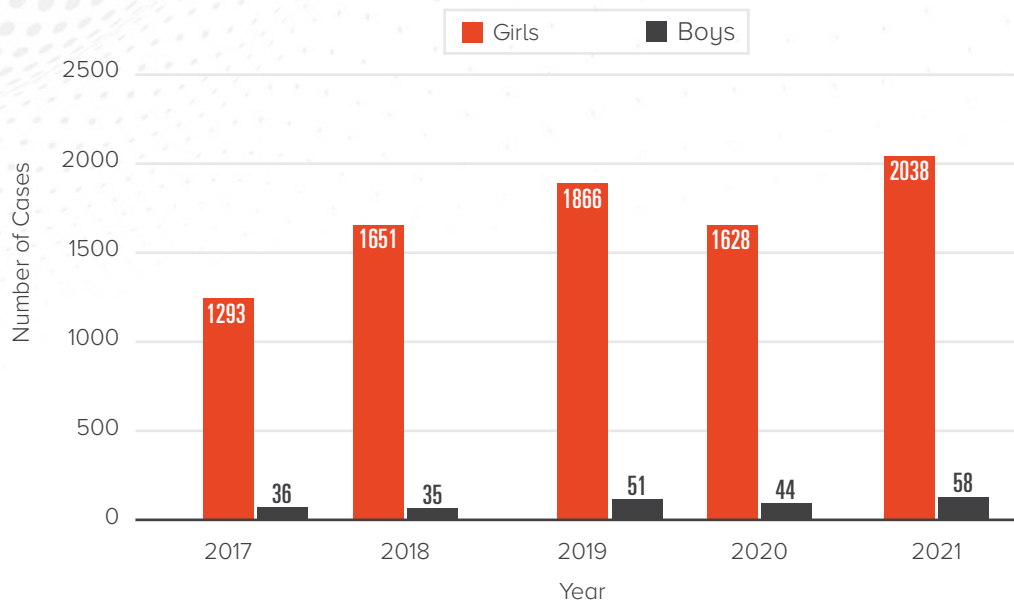


Fig 4.3

Source: NCRB Data

The data in all the above mentioned graphs (Fig. 4.1, 4.2, 4.3) clearly indicates much higher sexual victimisation of girls in comparison to boys. As per fig. 4.1, **99% of all (aggravated) penetrative sexual assault (rape) cases that were reported, involved girl victims.** Some of the crimes against boys may be non reported or get covered under sec 377 of IPC (469 cases involving boys in the year 2021 as per NCRB data), but still girls are the main victims of sexual crimes committed under POCSO.

Restrictive social norms about gender and sexuality also contribute to violence and discrimination against boys, men and individuals with diverse gender identity, gender expression and sexual characteristics, including lesbian, gay, bisexual, transgender, queer or questioning and intersex (LGBTQI+) children and adolescents. As a result, both researchers and international agreements

have called for violence prevention and response efforts to take a gender-transformative approach, meaning one that addresses the causes of gender-based inequalities and works to transform harmful gender roles, norms and power imbalances. We acknowledge that gender is just one of many factors that may increase vulnerability to violence against children and adolescents. As noted in a UNICEF report, “vulnerability may be heightened for children living with disabilities, in institutional care and deprived of liberty; those living in extreme poverty, unaccompanied or separated from family; children on the move (migrants, refugees, asylum seekers and internally displaced children); and children living with HIV, facing discrimination for their sexual orientation or gender identity, belonging to marginalized social or ethnic groups, and those living with other social and economic disadvantages.”

## 8 - INFERENCES FROM THE REPORT

### HIGH PENDING RATE DUE TO LACK OF INFRASTRUCTURE:

According to the Press Information Bureau, Andaman & Nicobar, Arunachal Pradesh, Goa & West Bengal have zero (0) POCSO Special Courts. According to the Crime in India 2021 report these 4 states cumulatively have 2601 POCSO cases without any Special Court to deal with them. In such a scenario, these cases go to the Sessions Court which itself is burdened with a plethora of other criminal cases.

The Department of Justice Under the Ministry of Law and Justice started a centrally sponsored scheme in 2019 for setting up of 1023 Fast Track Special Court (FTSCs) with 389 exclusive POCSO Courts (ePOCSO). 700 FTSCs (68%) including 383 e-POCSO courts have been made operational in 27 States/UTs upto December 2021.

It must be noted here that proper functioning Special Court's does help in lowering of cases pending trial. In 2019, when Uttar Pradesh did not have any Special Court, it amounted to 25% of all POCSO cases of the nation, whereas of in 2021, Uttar Pradesh now has 292 fast track courts built under the centrally sponsored scheme and its load of all POCSO cases nationwide has reduced from 25% to 10%.

### DILEMMA ON AGE OF CONSENT:

Before the commencement of POCSO

Act, age of consent for consensual sexual relationship was 16 years. With the coming of POCSO, the age for consent was pushed to 18. As POCSO is a gender neutral law, this applies to both boys and girls. This age barrier completely disregards the normal adolescent behaviour and curiosity that occurs before the age of 18.

*In the Vijayalakshmi case, the Madras High Court suggested a change in the definition of children under sec-2(d) of the POCSO Act to anyone below the age of 16 instead of 18. The rationale behind the suggestion was to make room for consensual relationship between two (2) consenting adolescents.*

Another aspect of this is other important cases being put on the back burner for dealing with the grey area of age of consent issues. Madras High Court in Sabari V Inspector of Police (2019) case observed the following:

*“From our records, the analysis shows that majority of the cases are elopement cases registered under POCSO...Due to this, the actual cases of minor rape victims are not prioritised, resulting in delays in rendering justice for the minor victim of rape. ...If the boy and girl belong to the same community, then the whole village supports the child marriage, and no case is filed against them, but in the case of different communities, case is made out against the boys which end up with communal unrest. In case the boy and girl below 18 years elope, only the boy is punished, which is detrimental against the natural justice for the boy.”*

## **PRESUMPTION OF GUILT:**

In criminal cases, usually the burden of proof lies with the prosecution i.e. the party which files the case, and the guilt must be proved beyond reasonable doubt. Under POCSO, however, there is a presumption that a person who is prosecuted for an offence has actually committed the offence, unless the contrary is proved under sec-29. Instead of “innocent until proven guilty”, the court assumes that the accused is guilty once the prosecution lays the foundation of the case. POCSO Act also presumes that the accused person had a sexual intent when touching the child under sec-30.

While these presumptions can go a long way in simplifying the burden of the prosecution, according to a [report](#) published by NLSIU, Bangalore in 2016 it is seen that their application is less than satisfactory. One of the reasons for this, is the lack of guidance provided by the higher judiciary in the understanding of this concept. Normally whenever a difficult concept, like ‘presumption of guilt’ comes into the picture during a case, the lower courts generally depend on the reasoning provided by the High Courts and the Supreme Court. This lack of nuanced reasoning creates confusion and leads to delay in cases, creating a backlog.

## **HIGH ACQUITTAL RATE:**

Keeping aside the high pendency rate, the cases that do get disposed of, mostly end in acquittal for various reasons.

Witness hostility is one major issue leading to acquittal. A [report](#) published by the National Law School of India University (NLSIU) Bangalore in 2016, analysed 667 judgments between 2013 and 2015. It shed light on the phenomena of witness hostility. It stated that alleged victims turned hostile in “67.5% cases, and testified against accused in only 26.7% of the cases”.

Apart from hostility a major reason behind acquittal is ‘consensual sexual relations between adolescents’. A Principal judge at a family court in Delhi, who has dealt with POCSO cases and used to be a member secretary with the Delhi State Legal Services Authority, explains the reasons behind the low conviction rate, and the problems around it:

*“There are many Romeo and Juliet-like love story cases, where there is experimentation but no exploitation. It is simple love and infatuation. What is the point of conviction in such cases?”*

## **DEATH PENALTY:**

The POCSO (Amendment) Act, 2019, introduced death penalty as the maximum penalty for aggravated penetrative sexual assault.

*In the case of Bishnu Deo Shaw V State of West bengal, it was opined by the court that there is no concrete evidence to prove that death penalty has actually led to fall in the crime rate.*

It is important to recognise that deterrence needs to be appropriately backed by a strong bunch of exhaustive procedures which entails a much needed refurbishment of the criminal justice administration system. Therefore, in order to lessen the crime rate in the country, there must be special emphasis on the efficient implementation of

the prevailing directions under the POCSO Act. Better conviction rates and reduction of pendency of cases as opposed to the death penalty would act as a better deterrent. Age appropriate sex education coupled with personal safety education can go a long for preventing such crimes.



# APPENDIX I

## SPECIAL FEATURES OF THE LAW

- 1. Gender Neutral:** Before the enforcement of POCSO, IPC was used to curb CSA. IPC did not protect male victims from abuse. Hence, one of POCSO's principal ideas is to be gender neutral and applicable equally to everyone below the age of 18.
- 2. Comprehensive Definition of Child Sexual Abuse:** Before POCSO, comprehensive listing of child sexual abuse was not available. For constitution of rape, under IPC, definition of rape is limited to "traditional" intercourse. Also, the IPC does not provide a clear definition of what constitutes an 'unnatural offense'. POCSO provided a list of crimes with clear definitions to remove the ambiguity as much as possible.
- 3. Child Friendly Approach:** Before POSCO, laws which were designed for adults were being applied to victims below the age of 18. This created a blindspot towards the special needs of children, once they enter the system for justice. POCSO Act has made sure, that at every stage the child's best interest is taken care of and the entire process puts the least stress possible on the child.
- 4. Special Courts:** For expediting the delivery of justice, the Act has mandated creation of Special Courts in every district of the country, to deal exclusively with POCSO cases. A Court of Session is designated as a 'Special Court' under sec- 28 of the Act exclusively to deal with POCSO cases. Any other Special Court designated for similar purposes can be designated as a 'Special Court' under POCSO.
- 5. Guilty Until Proven Innocent:** Going away from the norm, POCSO follows the unusual principle of 'guilty until proven innocent'. Usually, in criminal cases, the burden of proof lies on the prosecution, and the guilt must be proved beyond reasonable doubt. Under POCSO, however, there is a presumption that a person who is prosecuted for an offence has actually committed the offense, unless the contrary is proved.
- 6. Mandatory Reporting:** With the intention of providing justice to every victim of child sexual abuse, the law has made reporting of all child sexual abuse cases mandatory. The Act also provides for mandatory reporting in a situation where, an offence might occur if not reported to the authorities.
- 7. Role of National Commission for Protection of Child Rights & State Commission for Protection of Child Rights:** To monitor the implementation of the Act, the National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority under sec-44 of the POCSO Act.

## APPENDIX II

# IMPORTANT CASE LAWS - POCSO

### ATTORNEY GENERAL OF INDIA V SATISH & ANOTHER (2021)

Take away: Mischief rule of statutory interpretation shall be applied while interpreting various sections under POCSO as it would lead to fulfillment of legislators intention for the proper

Facts:

- ▶ Nagpur Bench of Bombay's High Court rules in Satish Ragde V State of Maharashtra case rules that grabbing a child's breast without 'skin to skin contact' does not constitute a crime under sec- 7 i.e. sexual assault under POCSO Act 2012.
- ▶ When the matter went to the Supreme Court, the bench observed that sec-7 covers both direct and indirect touch. The Supreme Court also highlighted that the High Court, through its judgment, legitimised a whole spectrum of undesirable behaviour which undermines a child's dignity and autonomy, through unwelcome behaviour.
- ▶ The Court opined, in this case, **'mischief rule' of statutory interpretation must be applied. Mischief Rule is one of four (4) rules of statutory interpretation under which a judge uses more discretion, to effectively decide on the Parliament's intent behind enacting the legislation.** As POCSO's main intent is 'protection of children', then every section must be read in a broader way which leads to protection of children from any form of sexual harm.

### VIJAYLAKSHMI & ANOTHERS V STATE (2019)

Madras High Court in its judgement passed in April 2019 gave two (2), very significant suggestion regarding age of consent and age gap under POCSO:

- ▶ The definition of 'child' under sec- 2(d) of POCSO Act may be redefined as 16-year-old instead of 18-year-old.
- ▶ Any consensual intimacy after the age of 16 may be excluded from the rigorous provisions of the POCSO Act.

Justice V Parthiban, who presided over the case, directed the government authorities to explore whether the suggestions made by this Court are acceptable to all stakeholders or not.

### ALAKH ALOK SHRIVASTAVA V UOI & OTHERS (2018)

Take away: Directions for completion of POCSO cases in one (1) year despite knowing that Sec 35(2) says cases must be completed within one (1) year, 'as far as possible'.

Facts:

- ▶ In this judgement the Supreme Court gave guidelines which could aid in completion of cases within one (1) year of the commission of the crime as stipulated under sec- 35 of the POCSO Act.
- ▶ The directions are as follows:
  - The High Courts of the states are responsible for ensuring that cases filed under POCSO are heard and adjudicated upon by the Special Courts while ensuring that the presiding officer of the case is trained in child protection and psychological reaction.
  - If any place does not have a Special Court to preside over POCSO cases, it must be constituted for the same.
  - Superfluous adjournments should not be granted. This will aid in the completion of cases in a time bound manner.
  - The Chief Justice of the High Courts have been asked to form a three-judge committee to control and supervise the progress of POCSO cases. In High Courts where three judges are not available the Chief Justice will form a single Judge Committee.
  - A Special Task Force will be formed by the Director-General of Police or a Statutory authority of comparable rank to guarantee that the investigation is properly handled and witnesses are presented on the dates set before the court.
  - High Courts must take appropriate efforts to create a child friendly environment in Special Courts, keeping in mind the requirements of the POCSO Act, to ensure that the spirit of Act is upheld.

### **HARI DEV ACHARYA @ PRANAVANAND & OTHERS V STATE (2021)**

Take away: Various charges under POCSO can be clubbed together if they happen in the same transaction.

Fact:

- ▶ Victim was sexually assaulted twice by the perpetrator in the course of one (1) month.
- ▶ After the first incident, the mother of the victim knew about it but did not report it and entered into a compromise.
- ▶ After the 2nd incident took place, the case was reported.
- ▶ The case in front of the Court was to ascertain whether the following cases can be clubbed together or not:
  - 1st sexual assault of the victim
  - Non reporting of the 1st sexual assault by the victim's mother
  - 2nd sexual assault of the victim
- ▶ POCSO is silent on clubbing of charges & according to sec- 31 of POCSO, Code of Criminal Procedure (CrPC) shall be applied for various proceeding unless otherwise mentioned in POCSO.

- ▶ Sec- 223(d) of CrPC, provides that charges can be clubbed together if offenses committed by persons happen in the same transaction.
- ▶ In this case all the three offenses i.e. two (2) of assault & one (1) of non reporting happened in the same transaction.

### **GAYA PRASAD PAL @ MUKESH V STATE (2016)**

Take away: Protection for double jeopardy- A person who has been convicted under POCSO for a crime, cannot be convicted for the same crime under a different charge.

Facts:

- ▶ A father raped his stepdaughter and initially he was convicted for penetrative sexual assault under section-4 of the POCSO Act.
- ▶ Later the court realised that the man committed a crime of aggravated penetrative sexual assault under section-6 of the POCSO Act and issued a separate punishment for the same.
- ▶ The High Court of Delhi in the present case, the father was neither put to trial nor was held guilty nor convicted for the offense under sec-6 of the POCSO Act. Hence it was wholly wrong, rather illegal to punish the father under sec- 6.
- ▶ The subsequent order is also a violation of Art- 20(2) of the Constitution under which no person can be convicted for the same offense twice.

### **BALAJI SARJERAO KAMBLE V STATE OF MAHARASHTRA (2017)**

Take away: Victim's inability to remember the date of the crime does not disregard the entire evidence provided by them.

Facts:

- ▶ A girl child of roughly 6-8 years old was raped by a family friend who frequently visited their home.
- ▶ During the proceeding the girl child was unable to remember the date of the incident.
- ▶ The Court held that this detail is inconsequential and such discrepancy cannot touch the core of the prosecution case which is in respect to the commission of penetrative sexual assault.
- ▶ The age of the victim is kept in mind. The victim is not expected to have chronometric sense at such a tender age.
- ▶ Merely because the date of incident is not stated by the victim, her evidence cannot be doubted.

## **NIPUN SAXENA V UOI (2019)**

Take away: Non disclosure of the name and identity of a victim falling within the purview of POCSO and directions therein.

Facts:

- ▶ In this case the Supreme Court gave guidelines with regards to Sec-23 of the POCSO Act which outlines the roles and responsibilities of the media with regards to identity and identification of the child.
- ▶ The guidelines are as follows:
  - No one may broadcast the victim's name in print, electronic, or social media, or even in a distant way divulge any details that might lead to the victim's identification and should make her identity known to the general public.
  - In cases where the victim is deceased or mentally ill, the victim's name or identity should not be revealed, even with the consent of the next of kin, unless circumstances justifying the disclosure of her identity exist, which must be decided by the competent authority, which in the present case is the Sessions Judge.
  - FIRs for offences under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB, or 376-E of the IPC, as well as violations under POCSO, are not to be made public.
  - If a victim files an appeal under Section 372 CrPC, the victim is not required to reveal his or her identity, and the appeal will be handled according to the law.
  - All papers in which the victim's identity is exposed should be kept in a sealed cover as much as possible, and these documents should be replaced with similar documents in which the victim's name is deleted from all records that may be scrutinized in the public domain.
  - All authorities to whom the victim's name is provided by the investigating agency or the Court are likewise obligated to keep the victim's name and identity secret and not to divulge it in any way except in the report, which should be delivered to the investigating agency or the Court in a sealed envelope.
  - An application by the next of kin to authorize the disclosure of the identity of a dead victim or of a victim of unsound mind under Section 228-A(2)(c) IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228-A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organizations.
  - In the case of juvenile victims under the POCSO Act, 2012, the Special Court can only allow their identity to be revealed if it is in the child's best interests.

- All the States and Union Territories are requested to set up at least one ‘One-Stop Centre’ in every district within one year from the date of the judgment of the present case.

## **X V PRINCIPAL SECRETARY (2022)**

Take away: Doctor need not disclose the identity of minor girls seeking abortion to the Police.

Facts:

- ▶ If there is an insistence on the disclosure of the name of the minor in the report under Section 19(1) of POCSO, minors may be less likely to seek out registered medical professional (RMP) for safe termination of their pregnancies under the Medical Termination of Pregnancy (MTP) Act
- ▶ The court opined that it was necessary to harmonise the provisions of the MTP and POCSO laws to enable minors to approach an RMP for abortion without the fear of getting exposed.
- ▶ It would also protect the statutory obligation of the RMP to report the offence under the POCSO Act and the rights of privacy and reproductive autonomy of the minor under Article 21 of the Constitution.



Protsahan<sup>TM</sup>  
India Foundation

Email: [info@protsahan.co.in](mailto:info@protsahan.co.in)  
Website: [www.protsahan.co.in](http://www.protsahan.co.in)