

## SPECIAL COURTS AND PROTECTION OF CHILDREN FROM SEXUAL OFFENSES IN INDIA

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### Abstract

In India, the incidents of crimes against children, in particular, sexual offenses, are on the increase. The 2016 Crime in India report documents 106,958 offenses against children compared to 89,423 and 94,172 in 2014 and 2015, respectively. These incidents include crimes under the Indian Penal Code (IPC) such as the murder of a child, abetment of suicide of children, kidnapping and abduction, infanticide, trafficking of a child, and compelling children into marriage as well as crimes against children under various Special and Local Laws (SLL). The SLL crimes fall under the Juvenile Justice Act (JJA), Immoral Traffic Act, Child Labor Act, Prohibition of Child Marriage Act, and, more recently, the Protection of Children from Sexual Offenses Act (POCSO, 2012). The article addresses the impact of the POCSO Act, including the creation of special courts to address these crimes. Information was obtained from published sources, data from the southern state of India, and an interview with the judge of the special court to identify the salient features of the POCSO Act, the role of the Mahila (women's) Court, structural barriers for implementation of the Act, as well as risk factors for children becoming victims of child abuse.

### Key words

Cannabis Policy, Regulation, Germany, Police Survey, Police Attitudes

### SPECIAL COURTS AND PROTECTION OF CHILDREN FROM SEXUAL OFFENSES

There is frequent reporting of sexual offenses against children in India. *The Times of India* (2018) cited that a child is a victim of a sexual offense every 15 minutes. The prevalence of child sexual abuse in India revealed that every second child was a victim of sexual abuse at some point in time (Ministry of Women & Child Development, 2007). The non-governmental agency, Child Rights and You (CRY, 2016), noted a 500% increase in crimes against minors between 2006 and 2016. Of those crimes, 50% came from four states—Uttar Pradesh (northern India), Maharashtra (western India), Madhya Pradesh (central India), West Bengal (eastern India)—and Delhi<sup>1</sup> (a union territory).

<sup>1</sup> Delhi is the National Capital Territory (NCT), also a city and union territory of India and contains the capital New Delhi. The union territory is a federal territory, which is governed by the central/federal government of India.

Although India has been a signatory to the United Nations Convention on the Rights of the Child, 1989 (United Nations Treaty Collection, n.d.), until recently the country has primarily relied on the general criminal law, the Indian Penal Code (IPC) of 1860, and Special and Local Laws (SLL) to prosecute offenders for sexual crimes against children. Many child rights advocates argued for better protection for children and stringent punishments for perpetrators of sexual violence against children (Jha, 2017; Human Rights Watch, 2013). They contend that most of the child abuse laws were ineffective in addressing atrocities committed against children. The lack of attention is attributable to the reluctance on the part of the victims or victims' families to come forward due to social stigma, lack of effective legislation that focused on child abuse, and the absence mandatory reporting requirements of child welfare professionals and related agencies (Human Rights Watch, 2013; Carson, Foster, & Tripathi, 2013).

To develop a comprehensive understanding of the nature and extent of child abuse in the country and to formulate policies to control and prevent child abuse effectively, the Ministry of Women and Child Development (2007) conducted a large-scale study, "A Study on Child Abuse: India 2007," involving 12,447 children, 2,324 young adults, and over 2,000 stakeholders. The study covered different types of child abuse (physical abuse, severe forms of abuse, and sexual abuse), as well as children from different environments (e.g., family environment, school, work, streets, and institutional setting). The study noted an alarming trend in child sexual abuse cases. In the study, over 50% of respondents reported being a victim of sexual abuse, and 22% reported being victims of severe forms of sexual abuse (Ministry of Women & Child Development, 2007). The report called for "immediate and appropriate action . . . by families, community, government and civil society organizations" to come forward to protect the nation's children (Mathew, 2017, p. 61). In addition, incidents such as the abduction of 38 children in the nation's capital (who were raped and killed by a serial killer in 2008) have shaken the collective consciousness of the Indian people (Nautiyal & Mal, 2010; Singh, 2015), and prompted the Indian Government to pass the Protection of Children from Sexual Abuse Act (POCSO) in 2012.

The article presents official data on crimes against children and various legislations that address offenses against children in India, specifically related to child sexual abuse. Aggregate data on the number of special courts created under the POCSO Act, the jurisdiction of these courts, nature, and type of cases handled by the special courts, the number of cases disposed of, and the outcome of those cases were collected from the southern state of Tamil Nadu. Also, a judge of the special court (Mahila Court or women's court) was interviewed to identify, from the judge's perspective, the salient features of POCSO Act, the role of the Mahila Court, structural barriers (economic, cultural, or other) at various phases of the proceedings, and risk factors for children becoming victims of child abuse.

### **Crimes Against Children: Official and Unofficial Reports**

Crime in India, official crime statistics published by the National Crime Records Bureau (NCRB), shows steep increases in crimes against children, despite legislative reforms. The number of crimes against children reported to the authorities increased by more than 50% between 2006 and 2012 (see Table 1). In 2014, there were 89,423 reported crimes against children, compared to 94,172 and 1,06,958 in 2015 and 2016, respectively (National Crime Records Bureau, 2016). In 2016, kidnapping and abduction of children accounted for 48.9% (n = 52,253) of crimes against children, followed by rape of children (18%, n = 19,765; CRY, 2016).

It is possible that the significant increase in the number of crimes against children may be due to the change in the age of consent for sex in 2013 from 16 years to 18 years of age. Also, an investigation conducted by *The Hindu*, a news media, of about 600 rape cases in Delhi (a national Capital Territory, which is also a city and a Union territory) reported that it is a routine practice where adult women file cases as juveniles so that they could secure arrest for their male partners (Rukmini, 2016). Others have raised concerns about the underreporting of child sexual abuse cases in India (Moirangthem, Kumar, & Math, 2015). A study conducted in the Southwestern state of Kerala revealed that out of 1614 students between the ages of 15 and 19 years, 36% of boys and 35% of girls had been victims of sexual abuse. Most of the incidents involved sexual advances while the students were using public transportation (Krishnakumar, Satheesan, Geeta, & Sureshkumar, 2014).

Until 2013, the NCRB combined crimes against children, except for the rape of female children, along with other crimes, made it impossible to disaggregate child sexual abuse against boys. The 2014 NCRB documented specific offenses against children under sections 376 (rape of girl children), 354 [assault on women (girl children) with intent to outrage the modesty, such as sexual harassment, stalking, and voyeurism], 377 (unnatural offenses against children such as homosexuality), and 509 [insulting the modesty of women (girl children)] of IPC. In 2014, the rate of rape of young children was at 3.1% (incidents = 13,766) per 100,000 children compared to 2.4% (incidents = 10,854) in 2015 (see Table 1 & 2).

**Table 1. Incidence & Rate of Specific Crimes Committed Against Children, 2006–2013**

Year	Incidence	Rate	Murder-other than infanticide	Rape	Kidnapping & Abduction	Selling/ Buying Girls for Prostitution/ Procurement of Minor Girls	Exposure/ Abandonment
2006	18,967	1.7	1,324	4,721	5,102	389	909
2007	20,410	1.8	1,377	5,045	6,377	363	923
2008	22,500	2.0	1,296	5,446	7,650	303	864
2009	24,201	2.1	1,488	5,368	8,945	326	857
2010	26,694	2.3	1,408	5,484	10,670	887	725
2011	33,098	2.7	1,451	7,112	15,284	1,002	700
2012	38,172	8.9	1,597	8,541	18,266	932	821
2013	58,224	13.2	1,657	12,363	28,167	1,330	930
2014	89,423	20.1	1,817	13,766	10,854	2,117	983
2015	94,172	21.1	1,758	37,854	41,893	3,207	885
2016	106,958	24.0	1,640	*31,991	54,723	2,594	811

\*Note: Includes Child Rape and Sexual Assault of Children under IPC and POCSO Act

Source: National Crime Records Bureau (NCRB; 2006–2016).

Beginning in 2014, the NCRB start to include under the crimes against children, incidents under the Immortal Trafficking Act, Juvenile Justice (Care and Protection of Children) Act, the POCSO Act, and unnatural offenses against children. Under the previous categories of selling or buying girls for prostitution had replaced minors in place of girls only. More specific categories of sexual offenses were included in the 2016 statistics.

**Table 2. Incidence & Rate of Specific Crimes Committed Against Children, 2014–2016**

Crimes Under Various Laws	Year		
	2014	2015	2016
	Incidents	Incidents	Incidents
*Assault on women (girl children) with intent to outrage their modesty (IPC)	11,335	10,854	-
*Insult to the modesty of women (girl children) (IPC)	444	348	-
*Immoral Trafficking (P) Act	86	58	56
*Juveniles Justice(C&P of Children) Act	1,315	1,457	2,253
*Protection of Children from Sexual Offences Act	34,449	34,505	36,022
*Unnatural offences (IPC)	795	814	1,247

Note: \* New offenses added in 2014.

Source: NCRB, 2014, 2015, & 2016.

### **POLICE INVESTIGATION STATUS OF CRIMES AGAINST CHILDREN, 2016**

Of all the IPC cases investigated by the police (See Table 3), charges were filed by the police in over 80% of murder cases, abetment<sup>2</sup> of suicide of a child, attempt to commit murder, human trafficking, kidnapping for ransom, and unnatural offenses. The lowest (less than 25%) percentage of charges were filed in kidnapping and abduction cases, followed by infanticide and foeticide. In regards to charges under the POCSO Act, charges were filed in over 80% of cases investigated by the police, which indicates the importance given to these cases. Of the 34,449 cases registered in 2014, trials were completed in 7,487 (21.7%) of cases, compared to 10,498 (30.4%) out of 34,505 cases in 2015 and 10,884 (30%) out of 36,202 cases in 2016 (Dubbudu, 2018).

The conviction rate for offenses such as procurement of minor girls for prostitution under IPC was the lowest with 4.4% conviction rate. The rate of conviction for offenses under the POCSO Act ranged from 44.6% (Other offenses) to 17.4% (sexual harassment). Offenses such as rape, sexual assault of children, use of children for photography, or storing child pornography had less than 30% conviction rate (NCRB, 2017).

<sup>2</sup> According to Section 306 of IPC, any person who assists in the commission of suicide of another person shall receive imprisonment for up to ten years. Under Section 305 of IPC, the punishment for abetment of suicide of a minor or insane person is death or up to 10 years of imprisonment.

Table 3. Reported Crimes against Children: Police Investigation Status, 2016

Crimes Under Specific Legislations	Pending Previous Year	Incidents	Investigated	Insufficient Evidence/ False/ Other	Charge Filed Rate
<b>IPC Crimes</b>					
1. Murder	910	1640	2550	192	88.4
2. Abetting the Suicide of Child	30	41	71	6	83.8
3. Attempt to Commit Suicide	335	213	548	26	87.6
4. Infanticide	42	93	135	48	36.8
5. Foeticide	47	144	191	93	37.2
6. Exposure and Abandonment	445	811	1256	700	10.6
7. Kidnapping & Abduction	26954	54723	81677	29155	40.4
7.1 Kidnapping & Abduction	14998	27534	42532	17829	24.6
7.2 Kidnap & Abduct to Murder	99	222	321	105	51.6
7.3 Kidnap of Ransom	93	166	259	35	77.4
7.4 Kidnap & Abduct for Marriage	6194	16636	22830	6322	59.1
7.5 Procurement of Minor girls	2311	2465	4776	994	60.4
7.6 Importation of girls	1	5	6	2	50.0
7.7 Other Kidnapping	3258	7695	10953	3868	44.2
8. Human Trafficking	89	340	429	31	85.2
9. Selling Minors for Prostitution	170	122	292	23	75.5
10. Buying Minors for Prostitution	41	7	48	4	78.9
11. Unnatural Offenses	284	1247	1531	71	93.5
<b>SLL Crimes</b>					
12. Protection of Children from Sexual Offenses (POCSO)	12038	36022	48060	1835	94.2
12.1 Child Rape (Sec. 4 & 6 POCSO/ Sec. 376 IPC)	7133	19765	26898	924	94.8
12.2 Child Sexual Assault (sec. 8 & 10 POCSO/Sec. 354 IPC)	4088	12226	16314	700	93.8
12.3 Sexual Harassment (Sec. 12 POCSO/Sec. 509 IPC)	176	934	1110	36	94.7
12.4 Use of Child for Pornography/ Storing Child Pornography	22	47	69	6	84.6
12.5 Other Section of POCSO	619	3050	3669	169	92.1
13. Juvenile Justice (Care & Protection of Children) Act	606	2253	2859	122	93.4
14. Immoral Traffic (Prevention) Act	67	56	123	0	100.0
15. Child Labour (Prohibition & Regulation) Act	198	204	402	8	94.6
16. Prohibition of Child Marriage Act	156	326	482	41	84.6
17. Other Crimes (IPC+SLL)	2933	8716	11649	1065	87.0
<b>Total</b>	45345	106958	152303	32924	65.4

Note: Other category includes cases withdrawn by the government, transfer cases, cases not investigated due to insufficient evidence, false accusations, and mistake of fact.

Source: NCRB, 2016.

## RISK FACTORS

Community studies in North American have shown that certain groups of children are more vulnerable to abuse than others. For example, children from a divorced family or single parent household, children living with step-parents, children who experience violence at home, or live in a household where parents have alcohol or drug abuse problem are more likely to experience abuse. Other factors include physical disability or mental retardation or children, inadequate parental supervision, children being subject to extreme punitiveness, and emotionally-deprived children (Finkelhor, 1984; Finkelhor & Baron, 1986). Putnam (2003) identified gender, age, low socioeconomic status, disabilities, and parental dysfunction as risk factors for child sexual abuse. Compared to boys, girls are more prone to sexual abuse (Conklin, 2000; Krug, Mercy, Dahlberg, & Zwi, 2002; Putnam, 2003; Martin & Silverstone, 2013). Also, the risk of child abuse increases with age, and it tends to last longer for girls. Others have not found a link between low socio-economic status and child sexual abuse (Ronan, Canoy, & Burke, 2009). Instead, marital conflict, lack of parental attachment, overprotective parent, and parental alcohol found to increase the risk.

Studies conducted in India of school-aged children, more boys (57.3%) than girls (42.7%) reported being sexually abused (Ministry of Women & Child Development, 2007). Deb and Modak (2010) study found similarities between male and female children regarding the nature of sexual abuse. Both genders reported being inappropriately “touched or looked at their private body parts or asked them or forced them to touch their private body parts” (p. 9) or were made to watch adult pictures. Females children (about 20%) were victims of forced sexual intercourse (Ministry of Women & Child Development, 2007). The primary perpetrators of sexual abuse were mostly relatives. In the case of male children, the perpetrators also included older siblings/cousins and teachers, while female children reported teachers, in addition to relatives. Deb and Modak (2010) study also noted the prevalence of sexual violence in all socioeconomic groups. In India, cultural beliefs and practices also contribute to increased incidents of child sexual abuse. Choudhry et al. (2018) conducted a systematic review of child abuse in India. Using the socio-ecological model, they uncovered that child sexual abuse “is a multifaceted phenomenon grounded in the interplay between individual, family, community, and societal factors” (p. 12). Also, their review found factors such as “negative perception about parents, lower education of mother, and perceived congeniality of family were found to be significantly associated with CSA experience” (Choudhry et al., 2018, p. 12; Deb & Modak 2010).

## Laws about Children in India

Offenses against children, particularly sexual offenses against children, are dealt with both under the provisions of IPC and SLL. Sections 376,<sup>3</sup> 354,<sup>4</sup> and 509<sup>5</sup> of IPC are the most widely used

<sup>3</sup> Sec. 376: Punishment for rape- whoever commits rape shall be punished for a term which shall not be less than 7 years, but which may extend to imprisonment for life, and shall also be liable to fine

<sup>4</sup> Sec. 354: Assault or Criminal force to woman with intent to outrage her modesty- whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, [shall be perceived with imprisonment of either description for a term which shall not be less than one year, but which may extend to five years, and shall also be liable to fine.

<sup>5</sup> Sec.509: Word, gesture or act intended to insult the modesty of a woman- whoever intending to

sections. However, the law has failed to recognize “child sexual abuse as a distinct criminal offense” (Nautiyal & Mal, 2010, p. 79). For example, in cases of child abuse, the courts tend to apply sexual offenses against women under IPC such as rape or provision of ‘outraging the modesty of women’ as a standard. Also, the law recognized only girl victims under the definition of rape but failed to recognize the molestation of boys. When sexual offenses are committed against boys, the courts categorize such offenses under “unnatural sexual offense’ provision of the law. In addition to IPC, special laws such as Juvenile Justice (Care and Protection of Children) Act, Child Labor (Prohibition and Regulation) Act, Prohibition of Child Marriage Act, and Immoral Traffic (Prevention) Act have been in place to address crimes against children. However, none of these legislations have differentiated between adult and child victims nor have they addressed the gender disparities when it comes to sexual offenses. To address these disparities and to exclusively focus on child sexual abuse (Nautiyal & Mal, 2010), the Government of India had passed the Protection of Children from Sexual Offenses (POCSO) Act in 2012 (National Commission for the Protection of Child Rights, 2016).

### **PROTECTION OF CHILDREN FROM SEXUAL OFFENSES (POCSO ACT OF 2012)**

Unlike the previous legislation, the POCSO Act defines child sexual abuse as a gender-neutral crime and includes penetrative, nonpenetrative, and unwanted touch as categories of abuse. In addition, the Act increases the sanctions based on whether the offense is regular or aggravated in nature; lays out various child-friendly procedures, including the establishment of special courts (i.e., Mahila Courts); sets a time frame to complete the trial (within one year); mandates notification of the Child Welfare Committee within 24 hours of recording the complaint; requires the National and the State Commission for the Protection of Child Rights to monitor the implementation of the Act; and places the burden of proof on the accused (Bajpai, 2015).

### **DEFINITION OF SEXUAL OFFENSES AND PUNISHMENTS**

The penetrative child sexual assault is further classified into sexual assault and aggravated sexual assault. Penetrative sexual assault is committed by the guardians of the child or by anyone who holds a position of trust, and the offender is often known to the child. Aggravated penetrative sexual assault is committed by gangs and institutional officers such as medical officers, police officers, members of the armed forces, public servants, management or staff of a jail, remand home, individuals involved with protection/observation/custody/care, hospital staff, and members of educational and religious institutions. If anyone commits sexual assault on the child who is younger than 12 years, it is considered aggravated sexual assault irrespective of the nature of the offender. Punishment for penetrative sexual assault may range from 7 years to life imprisonment and a fine. The punishment for aggravated penetrative sexual assault is at least ten years and may extend to life imprisonment and a fine (Ministry of Law & Justice,

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insult the modesty of any woman, utters any word, makes any sound or gestures, or exhibits any object, intending that such word shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, (shall be punished with simple imprisonment for a term which may extend to three years, and also with fine).

2012). Nonpenetrative sexual assault includes touching, with sexual intent, any private parts of the child. The punishment can range from 3 to 5 years as well as a fine.

The other offenses covered under the Act include sexual harassment, the use of children for pornographic purposes, and an attempt to commit an offense. Although no minimum punishment was set, imprisonment may extend up to 3 years and a fine. The minimum punishment for using children for pornography and directly participating in the act is 8 to 10 years and a fine. Finally, if the pornographic material involving children is used for commercial purposes, punishment could extend to 3 years and a fine.

## **SPECIAL COURTS**

The Act stipulates that each district (i.e., county) designate a Court of Session<sup>6</sup> to serve as a special court. However, if the Court of Session is designated as a Special Court (or Children's Court) under any other law, then that court will address the cases falling under the POCSO Act. There are no exclusive Children's Courts in most states. However, in some states, such as the southern state of Tamil Nadu, cases involving violation of children's rights, offenses against children under other laws, and sexual offenses against children under the POCSO Act are tried by the Mahila Courts, in addition to crimes against women (i.e., offenses under Dowry Prohibition Act<sup>7</sup> and other social laws). Proceedings in these special courts are required to be child-friendly and do not permit prosecutors to question children in a threatening manner (Ministry of Law & Justice, 2012).

In 2015, the Centre for Child and the Law of the National Law School of India University conducted a study on special courts in Delhi. The study examined the extent to which Special Courts are following child-friendly procedures during the trial, any structural and procedural compliance issues, the conviction rate, factors affecting convictions and acquittals, and gaps and challenges in the functioning of the Special Courts. The results showed that the Special Courts were operating in all districts in Delhi. However, many courts did not have special public prosecutors who exclusively tried cases falling under the POCSO Act. Also, many of the facilities were ill-equipped and lacked a separate room for recording evidence from child witnesses, a waiting room for children and their families, or a separate entrance for children to enter the courtroom. Although the Act prohibits the prosecutor or the defense attorney from questioning the child in a threatening manner, in many instances, attorneys did not follow the mandate, and the questions were not age or developmentally appropriate.

The study further noted that the conviction rate was 16.8% (n = 112), and the remaining (83.2%; n = 555) cases ended in acquittals. In some cases, judges sentenced defendants to less than the minimum sentence, and some defendants received probation. Some of the challenges identified include the determination of age. The study reported "the allegation of age regarding the age of a child vary anywhere from 11–12 years and sometimes extends till even 27 or 28 years. This in turn has resulted in ad hoc age determination processes especially in borderline cases. . ." (Centre for Child & the Law, 2016, p. 21). Some of the recommendations included

<sup>6</sup> Sessions court is the highest court at the district (county) level.

<sup>7</sup> The Dowry Prohibition Act of 1961 prohibits giving money, property, or goods by the bride's family to the groom's family or making demands by the groom's family is a punishable offense.



designating additional Special Courts in areas with a high number of cases, issuing guidelines for Special Courts “on core minimum measures . . . to ensure compliance with the child-friendly procedures. . .” (p. 125), educating court staff on sensitivity training for handling traumatized children, and including an age determination component in judicial academy training.

A more recent study conducted in Andhra Pradesh (a southeastern state) by the Centre for Child and the Law (2017) showed that the majority of the accused persons (74.45%,  $n = 446$ ) were between the ages of 18 and 30, followed by 31 and 45 years old (13.68%,  $n = 82$ ). Fewer than 10% (9.18%,  $n = 55$ ) were between 46 and 60 years. Only 1.66% ( $n = 10$ ) were above 60 years of age. In contrast, an overwhelming majority of victims were aged 18 and under. Only five victims were above 18 years. Girls between the ages of 13 and 15 represented 30.12% ( $n = 158$ ) followed by 16- and 18-year-old victims (26.57%,  $n = 139$ ). Those 12 years old and younger accounted for 21.02% ( $n = 110$ ). In addition, a vast majority of accused (93.7%,  $n = 625$ ) and victims ( $n = 99.8\%$ ,  $n = 508$ ) were males (Centre for Child & the Law, 2017).

## METHODOLOGY

The current study gathered an aggregate data from the Registrar General of the High Court of Madras, Tamil Nadu, following approval from the university institutional review board. The data included:

- The number of Mahila Courts in Tamil Nadu.
- The number of cases under the POCSO Act.
- The number of cases (under POCSO Act) disposed of in a year.
- The number of cases (under POCSO Act) pending in a year.

In addition to collecting the aggregate data, an interview was conducted with a Mahila Court judge. The topics covered include the salient features of the acts, the role of the Mahila Court in trying POCSO Act cases, structural barriers at various phases of the proceedings, and risk factors for children becoming victims of child sexual abuse.

## RESULTS

In Tamil Nadu, there are 43 different Mahila Courts—10 Mahila Courts, 22 Fast Track Mahila Courts, and 11 Additional Mahila Courts. The Mahila Courts and Fast Track Mahila Courts are headed by female district judges, whereas Additional Mahila Courts are headed by female Judicial Magistrates.<sup>8</sup> Of those 43 courts, the Mahila Courts and the Fast Track Mahila Courts are designated as Special Courts under Section 25 of the Commissions for Protection of Child Rights Act, 2005 (CPCR 2005), and these are the only courts that have the jurisdiction to deal with cases that fall under the Child Marriage and POCSO Acts.

As of December 31, 2017, 1,724 cases were pending in the 32 Mahila Courts. From January 1 through July 31, 2018, 1,185 new cases were included for trial. Of the cases, 546 cases had been disposed of as of July 2018, resulting in 2,363 pending cases (see Table 4). The large percentage of pending cases (81.2%) indicates problems in the timely processing of the cases

<sup>8</sup> Unlike judges, magistrates have limited law enforcement and administrative powers.

under the POCSO Act. Reasons cited for a large number of cases awaiting disposition included a delay in filing complaints from victims' families due to social stigma, a lack of understating of the processes by stakeholders, and lapses in investigation and prosecution (Sivaraman, 2018).

Table 4.  
Reported Crimes against Children: Police Investigation Status, 2016

Status of Cases	Number of Cases
Pending cases as on December 31, 2017	1,724
Number of new cases for trial between January 1 and July 31, 2018	1,185
Total cases as of July 31, 2018	2,909
Number of cases disposed of up to July 31, 2018	546 (-)
Number of pending cases as of July 31, 2018	2,363

### THE INTERVIEW OF THE JUDGE OF THE MAHILA COURT

The qualitative interview provided information on the nuances of the POCSO Act, barriers to effective implementation, risk factors, as well as recommendations for improvement. The following are responses from the interview regarding the salient features of the Act:

#### *Salient features of the POCSO Act*

- Generally, in criminal cases, the law presumes that the accused is innocent until proven guilty but under POCSO Act it is presumed that the accused is guilty until proven innocent.
- The Act is a model for dealing with sexual offenses against children in a way that victims are entitled to free legal aid apart, and the State is bound to provide free legal aid.
- Victims are also entitled to pretrial compensation. If the offenses fall under both IPC and POCSO Act, whichever has the highest punishment shall be imposed.
- Under Section 19(1) of the Act, if anyone with knowledge of the occurrence of the offense fails to report or to register the child sexual abuse case, he/she shall be punished. However, under Section 21(3), a child cannot be punished for not reporting the occurrence of the offense.
- According to Section 35(1) of the Act, the evidence of the child shall be recorded within 30 days, and the special court shall complete the trial within one year from the date of taking cognizance of the offense.

#### *Role of the Mahila courts*

When asked about the role of the Mahila Court, the judge stated:

- Mahila Courts were constituted in 2002, and they deal with cases where the victim is a woman. Because there are no exclusive Children Courts to deal with sexual offenses against children in the State, Mahila Courts handle cases related to the POCSO Act. If the victim is younger than 18 years in a nonsexual offense case, it is dealt with like any other criminal case. However, if it is a sexual offense, it is tried under the POCSO Act.

- Mahila Courts have facilities including child-friendly rooms where the child victim will not see the accused in the trial process. The rationale is to help the child avoid the trauma of attending a courtroom scenario. The judge will talk to the child victim through a monitor rather than in person, and the judge will act as a mediator between advocates (i.e., attorneys) and the child [Section 36 (2)].

#### *Barriers in the proceedings of the case*

When asked about the barriers to implementation of the Act, the judge highlighting the lack of specialized children's courts and budgetary constraints. The following are the comments from the judge:

- Barriers at various phases of the proceedings can be ascribed to the lack of specific Children Courts in the state. As a result, cases registered under the POCSO Act are tried in the Mahila Court along with the cases involving crimes against women.
- Because Mahila Courts deal with cases of victimization of women, it is not possible to try most of the cases under the POCSO Act within the stipulated time as mandated by the Act.
- Health and protection of children remain the most under-resourced sectors. Funding allocation for child protection in 2015–2016 was 26.57%, while in 2016–2017, the funding was reduced to 14.39%. The decrease is alarming because of the increase in the number of crimes against children as well as a number of children coming into conflict with the law (i.e., involved in crime). Due to a decreasing budgetary allocation for the protection of children, various child-related schemes, including establishing specific children courts throughout the country, have been affected.

Finally, when asked about the risk factors for child sexual victimization, the judge provided the following response:

- The risk factors for children becoming victims of child sexual abuse include the environment in which the child lives, a lack of parent-child interaction, a lack of awareness of sexual abuse, an unwillingness of schools and families to educate children about being aware of their surroundings, absence of a guardian with regard to orphans, and development of interest in sexual activity as a result of prior victimization.

## **CONCLUSION AND DISCUSSION**

India is known for having the world's largest percentage of sexually abused children. Poverty, lack of basic education, nutrition, health care (International Institute of Population Sciences, 2015-2016), and lack of awareness of the problem are some of the contributing factors for child victimization. For example, over 40% of children drop out before they complete elementary level education, and about 11.8% engage in some form of child labor.

Although both boys and girls are victims of sexual abuse, the lack of adequate data undermines the severity of the problem. A compounding problem is the conservative nature of the Indian family structure and fear of community shaming prevent children from discussing abuse with family members. Also, traditional cultural and social practices such as child marriages (about 45% of marrying before the age 18 [CRY,2013]), and barring marriages when the female is

not a virgin (Beinart, 2011), and *Devadasi*<sup>9</sup> tradition, dissuade victims from coming forward (Mathew, 2017). According to the National Commission for Women, there are about 48,358 *Devadasis* engaged in commercial sex (Kidron, 2011). Girls are often recruited from a *Devadasi* network to work in brothels (Banandur et al., 2012; Kidron, 2011; Ramanaiik et al., 2018).

To understand the nature and extent of child sexual abuse, the Ministry of Women and Child Development (2007) conducted a comprehensive study covering over 13 states and a sample size of 12,446 children between the ages of 5 and 18. The study found that over 50% of children in India were victims of sexual abuse. Most of the perpetrators were family members, relatives, or family friends. The results, along with the growing number of victims speaking out about their victimizations, led the Indian government to pass or amend several legislations (Beinart, 2011). The POCSO Act is one of the most comprehensive national laws aimed at addressing child sexual abuse in India. As mentioned by the judge of the Mahila Court, the legislation provides a clear definition of sexual offenses and lays out punishments. Also, the law acknowledges that boys can also be victims of sexual abuse.

There are areas where there is a lack of clarity—for example, girls as young as 15 can “enter into sexual relationships within marriage, and enter into sexual relationships without marriage after the age of 18 . . .” whereas for boys the age of consent within marriage is 21, and without marriage is 18 (Mathew, 2017, p. 279). Mathew recommended that the law should introduce “close-in-age” exceptions where consensual sexual acts between adolescents close in age should not be penalized (p. 281). However, she is skeptical about the introduction of this concept in legislation because Indian society considers discussion about sexuality a taboo subject.

Despite the POCSO Act, the incidences of child rapes have not declined. To counter the problem, the Criminal Law Amendment Ordinance, which enhanced punishments for child rape was passed in 2018. The Ordinance amends IPC, Criminal Procedure Code, Indian Evidence Act, and the POCSO Act. Under IPC section 376(3), the minimum punishment for the rape of a girl under 16 years is 20 years. If the age of the child victim is younger than 12, the perpetrator may receive a capital sentence. Likewise, the death penalty is prescribed for those who gang rape a girl under 12 years of age. Also, under the amendment to the POCSO Act and the Evidence Act, the character or previous sexual experience of the victim is not relevant in certain proceedings (Ashok, 2018).

Despite legislative reforms, the country is grappling with a large number of pending cases in special courts. In Tamil Nadu alone, some cases are taking more than three years when the law stipulates that the verdict must be rendered within one year. The backlog of cases is not unique to Tamil Nadu; the problem seems to be widespread. To further complicate the problem, the conviction rate is also a serious concern. It is time for the government to allocate sufficient resources to establish an appropriate number of special courts; train personnel; and increase awareness among the public, teachers, medical professionals, counselors, and juvenile justice personnel.

<sup>9</sup> Although the *Devadasi* practice was made illegal in 1988, some regions in India still follow the tradition. It involves dedication of young girls from the scheduled caste (lower caste), to a Goddess through a marriage ceremony. In the name of religion, the young girl provides sexual services to priests and upper caste men.

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