

## FROM THE DESK OF THE CHAIRPERSON OF THE J.J. COMMITTEE

It is April 2018, Spring is in the air and as I pen another e-letter, a lot of things have happened since January 2018. Bihu (in Assam), Baisakhi (in Punjab), Poila Baisakh (in Bengal) Vishu (in Kerala), Puthandu (in Tamil Nadu), Vaisakhi (in Bihar) and Songkran (in Thailand) have been celebrated. Easter was also celebrated worldwide. Therefore, I take the opportunity to wish all, from the bottom of my heart and may God always protect you.

In the meantime my brother team members have written their editorials and it gives me great immense to see their enthusiasm in making their contribution to the e-mails.

On 10<sup>th</sup> March 2018, the District level consultation at Port Blair was held. Andaman though a District of West Bengal is peculiar in status as it is a U.T. Its geographical isolation of islands hampers communication and transportation and is difficult to receive information in respect of juveniles, its abuse and neglect. Issues and challenges are enormous but inspite thereof it was a vision I pursued to have the consultation. Our ACJ, Justice Jyotirmoy Bhattacharya

supported us (my team and myself) and it was because of him that the District consultation happened.

On 24<sup>th</sup> March 2018, the Regional consultation at Cuttack (East Zone) happened and there we officially and formally welcomed Justice Deepak Gupta as a Member of the Supreme Court Juvenile Justice Committee. I am sure Arlene and her team have documented the Cuttack proceedings and while the country waits to see it, we in our humble way will try to publish it in the website of Calcutta High Court. At the valedictory session in Cuttack Javier, Chief Child Protection UNICEF, India Country Office, very aptly in his address said that Justice Lokur is a movement. That speaks volumes for any person and it comes not from an Indian but a man of Columbian origin.

Justice Samapti Chatterjee was also inducted as a member of the Juvenile Justice Committee, of our esteemed High Court, so you will be interacting with her too.

After the events introduced to you I would like to talk a little of POCSO Act, 2012, yes juveniles are very

important but for me these children who have been abused, are dearer. Not because of the atrocities at the hand of humankind but keep smiling and having suffered still keep smiling and their innocence is intact.

Sometimes I wonder how the perpetrator could have had the heart to nip them in the bud. Did he not see in her, his sister, Durga, or daughter. It shudders me to think of such atrocities. It is because of this, the April issue is dedicated to POCSO and the lovely children suffered under the 2012 Act.

As I was writing this piece I learnt of the incidents at Unnao, Kathua and Assam. Besides there may be millions of such incidents, kept under wraps, shocks and ashes me. This reinforced and resolved me to write this issue and dedicate to POCSO and the survivors.

My team and myself are strenuously travelling from District to district and sub-division to sub-division sometimes with the ACJ, only with the aim to set-up the Child Friendly Courts (Section 28 of the 2012 Act) as justice may be done earliest as possible to the POCSO victims.



I agree that the events happening around us is not the best to happen but being an optimistic person I cannot let such things push me down. I have to rise above such things like a phoenix and the only song that comes to my mind is sung none less than Louis Armstrong, a black American singing –

### WHAT A WONDERFUL WORLD

If you can spare a thought do google and make all around happy. All the best. Till I talk to you next. As I sign off the Criminal Law (Amendment) Ordinance 2018 has been cleared, will this suffice as without poverty eradicated and education given to all, laws are meaningless.

Adieu

**NADIRA PATHERYA**

**CHAIRPERSON OF THE JUVENILE  
JUSTICE COMMITTEE**

**CALCUTTA HIGH COURT**

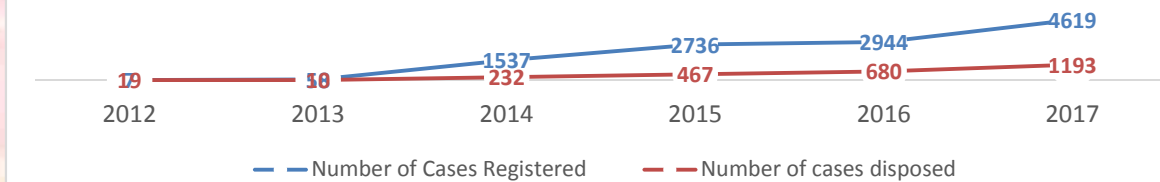
## POCSO ACT AND WEST BENGAL: SNAPSHOT IN NUMBERS

### CASES

#### (i) REGISTRATION

In November 2012 POCSO Act was enacted, and since cases were less but with increased levels of awareness has gone up (Table 1). Initially, the number of cases reported have been registered.

**TABLE 1 : NUMBER OF POCSO CASES REGISTERED & DISPOSED OFF IN WEST BENGAL**

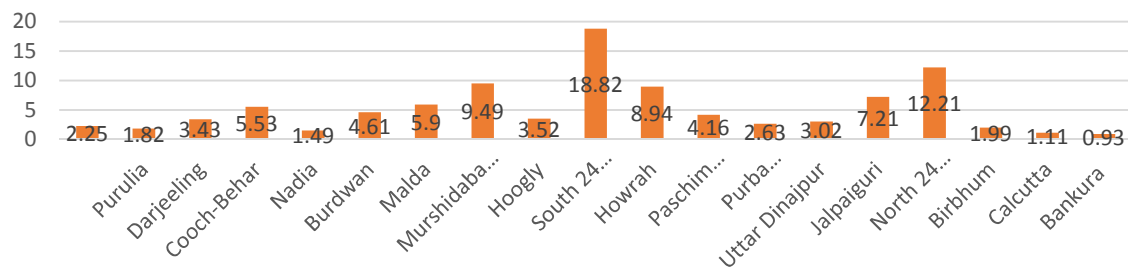


(Calcutta High Court, 2018)

Between 2012 and 31<sup>st</sup> December 2017, the no. of cases registered is **7282** under the POCSO Act. It is also interesting to take a look at the distribution of these cases across the districts of West Bengal (Table 2). From the graph a significant number of cases (18%) have been registered in South 24 Paraganas, North 24 Paraganas(12%) and

Murshidabad (10%) closely tags behind. Adding Jalpaiguri 8% to this list makes up 48% (i.e. nearly half) of all the POCSO cases registered in West Bengal. It is notable that North & South 24 Paraganas make up the most populous districts of Bengal, and Murshidabad is the third most populous district.

**Table 2 : District-wise break up of cases pending (in percentage)**

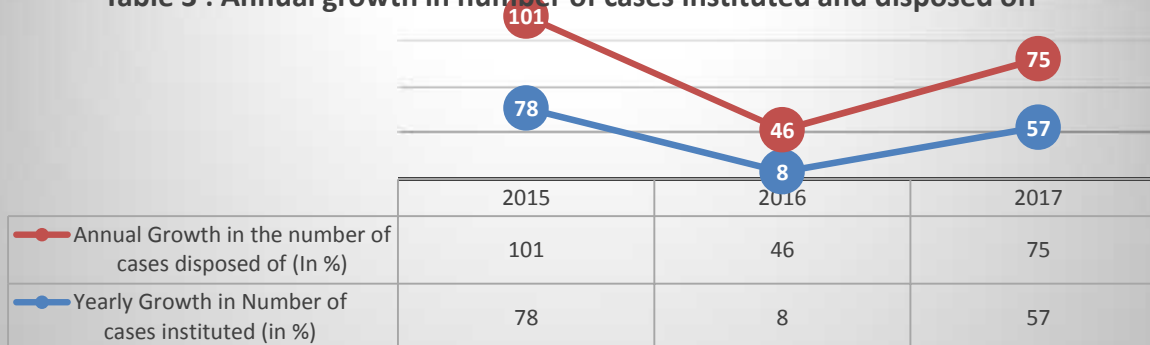


#### (ii) DISPOSAL & PENDENCY BY THE SPECIAL COURTS

The rate of disposal of these cases has, however, not matched the pace of the number of cases being registered. Even as the rate of disposal is going up every year, in the last five years only a total of 2601 cases have been disposed of (i.e. only about 21.8% of the cases instituted till date). Table 3 charts the growth in the number of cases instituted or disposed of in the last three years, when compared to the

previous years. Although there has been a steady improvement in the number of cases being disposed off and the rate at which the number of filings have increased over the past three years are similar (See Table 3), it is clear that to dispose off more than 9580 cases that are pending, the rate of disposal will have to considerably improve.

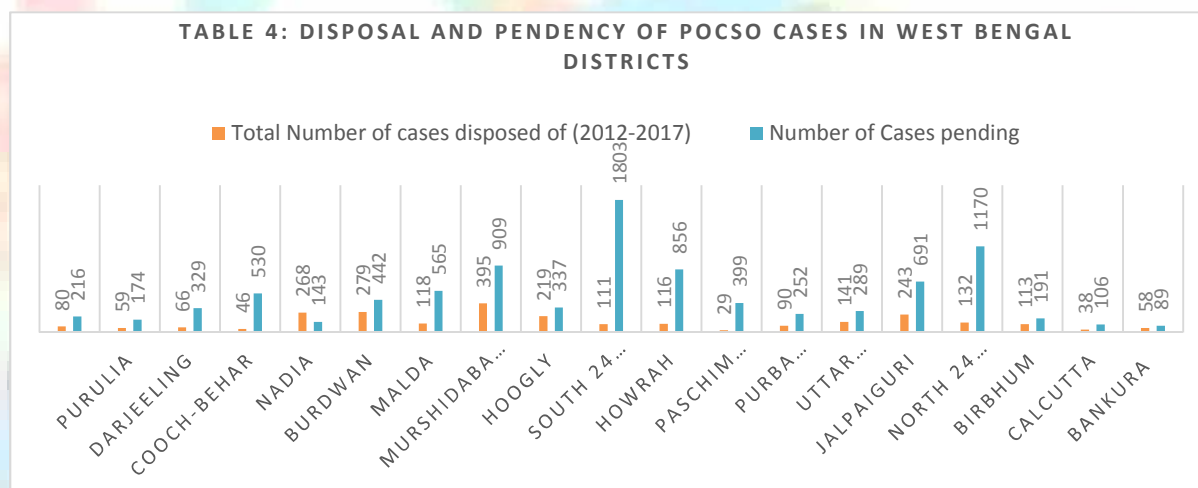
**Table 3 : Annual growth in number of cases instituted and disposed off**



(Calcutta High Court, 2018)

The district-wise pendency figures also require some consideration. Table 4 plots the number of cases pending in each district. Table 4 reflects that cases from South 24 Paraganas (19%), North 24 Paraganas (12%), Murshidabad (10%) and Jalpaiguri (7%) and Howrah (8%) make up 56% of all the pending cases under the POCSO Act in West Bengal.

**TABLE 4: DISPOSAL AND PENDENCY OF POCSO CASES IN WEST BENGAL DISTRICTS**



While the POCSO Act envisages the establishment of a ‘special court’, Child Friendly Court to specially deal with POCSO cases in each district, the fact remains that no additional stand alone courts have been set up in the state to deal with POCSO cases only. Till 2017 September, the Second Additional District Court has functioned as the Special Court under the POCSO Act. It is to be noted here that the Court of the Second Additional District Judge has also carried out the role of the Special Court under the NDPS and Electricity Acts. In addition, many of these Courts also entertain Civil Cases too. As a result of this, the Courts have not been functioning as “special courts” in the true sense of the word – they are not dedicated special courts, but only designated ones. Thus, there have been only 19 judges in all hearing cases under the POCSO Act in the districts.<sup>1</sup>

It is evident from the available data that on an average, a POCSO judge has disposed off about 28 cases in a year and in the last three years, an average of about 3433 cases have been instituted (High Court, 2018). In terms of the method suggested (by the Law Commission, 2014) if these figures are considered, 122 judges would have to decide and dispose off cases, to break even (i.e. to ensure that all new additional cases are disposed off without any backlogs, if about 3400 new cases are instituted every year, in future)

<sup>1</sup>The scenario is changing with Special Courts being designated at the Sub-divisional levels too. Thus, there has been a significant increase in the number of judges assigned to hear POCSO cases. However, it is to be noted that these are also not dedicated special courts, but only designated ones. The process for setting up child friendly courts is also in the pipeline and pilot project in Kolkata District has been initiated.

### (iii) TIME TAKEN FOR DISPOSAL

Section 35 (2) of the Act mandates the Special Courts to complete the trial of cases within one year of taking cognisance of the same, as far as it is possible to do so.

The Centre for Child Rights, WBNUJS supported by UNICEF has researched on the 2012 Act in Bengal. Based on analysis of 531 disposed of cases from 10 sample districts, it is seen that Section 35 (2) was being complied with only in 36% of cases (Table 5).<sup>2</sup> However, majority of cases are indeed being disposed off in less than two years' time.

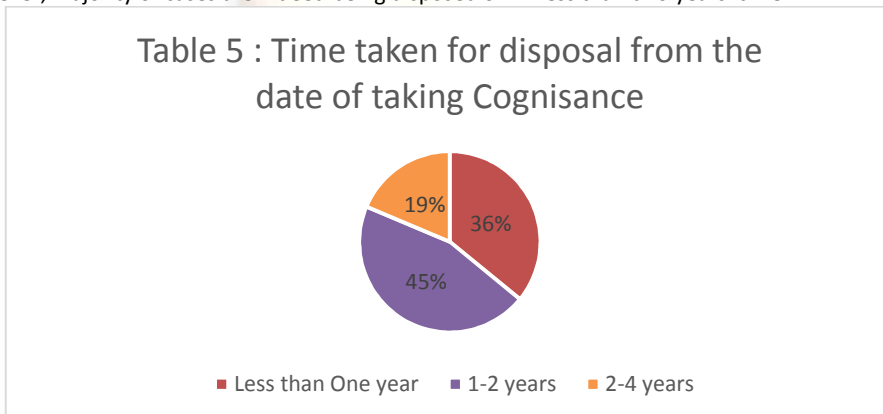


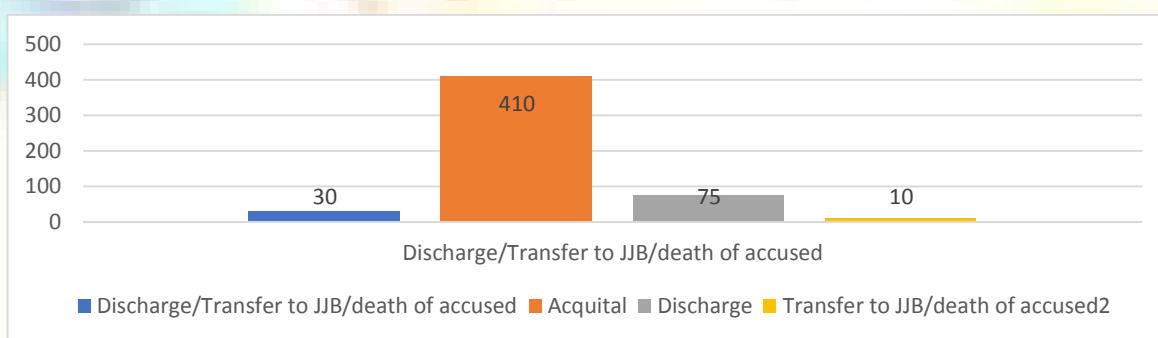
Table 6 reflects that in a vast majority of cases, the completion of investigation and submission of charge-sheet takes anything between more than 90 days to one year.



### (iv) RESULT OF PROSECUTIONS

Table 7 deals with the manner of disposal. As is evident from the graph vast majority of cases have resulted in acquittals. It is only about 5% of cases that have resulted in convictions.

The national figures, between 2014 and 2017 out of the **34,869** persons who were tried for POCSO offences all over India, only **9412** (or 26%) of them were convicted. The corresponding figure for West Bengal is 14% (MHA,2017). That Conviction rates remain low is a matter of concern.



The criminal trial process has elements that are not entirely within the control of the judge who hears the case. The outcome of the case and the time that it takes to arrive at that outcome consists of factors that are beyond the control of the court that conducts the trial. While there has been an increasing in awareness about the Act and more and more cases are being registered, it remains a matter of concern that the trial process is slow and convictions are few in numbers.

### REFERENCES:

Calcutta High Court. 2018. *Number of Cases Instituted & Disposed of Under the POCSO Act.*, Data Compiled at the State JJ Consultation held on 7<sup>th</sup> & 8<sup>th</sup> of March, 2018 at the Calcutta High Court.  
MHA. 2017. *Number of POCSO Cases registered and disposed of.* Government of India. Available at: <<http://mha1.nic.in/par2013/par2017-pdfs/ls-01082017-English/2544.pdf>>  
Law Commission. 2014. *Arrears & Backlog: Creating Additional Judicial (wo)manpower.* 245h Report of the Law Commission of India, available at <<http://lawcommissionofindia.nic.in/reports/report245.pdf>>

<sup>2</sup>The disposed of cases from Jalpaiguri, Uttar Dinajpur, Murshidabad, North 24 Paraganas, Malda, South 24 Paraganas, Burdwan, Purulia, Kolkata & Darjeeling were considered for this study. Not all disposed off cases have been considered. Only those files that were available at the courts were subjected to analysis. Those case files which were not available as they were sent up to the High Court for appeal purposes have been excluded. The final report of this research is expected to be prepared by the end of May and that will provide us with deeper insights into the nature and reasons for delay.