HAQ Centre for Child Rights

CSJ Counsel to Secure Justice

HDF HUMAN DIGNITY FOUNDATION

Protecting Our Children

A Look at Delhi's Implementation of the Protection of Children from Sexual Offences (POCSO) Act, 2012

Analysing 72 child sexual abuse cases in 2015

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Photos on pgs. 42 and 44 provided by Delhi Police. All other photos taken with consent by CSJ. Photos of children are for illustrative purposes only and are not meant to imply they are victims of sexual violence.

All survivors mentioned in this report have been assigned a pseudonym (designated with the "" symbol) to protect their identities and privacy. Further, any identifying information has been left out or changed, including the names of child victims' families, schools, relatives and neighbourhoods. No faces of clients are shown in this report.*

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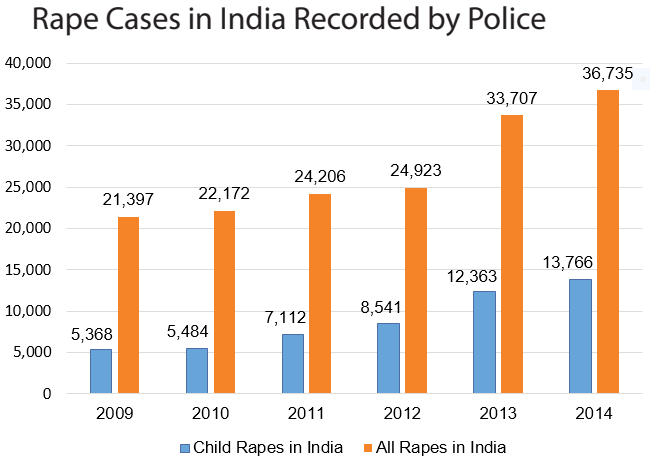
Introduction

Reported cases of sexual violence are steadily growing across India. Between 2012 and 2014, rapes reported to police increased 47.4% (24,923 compared to 36,735 reported rapes).[1] Child rapes increased 61.2%, to a total 13,766 cases nationally. In 2014, a high percentage of reported rapes involved children—37.5%.[2]

In Delhi, the increase is even steeper. In 2014, there were 2,096 rapes reported to police, a 197% increase from 2012.[3] Reported child rapes increased 142% (415 to 1,004) in the same time period.[4] Notably, in 2014, 48% of all police-reported rapes were child rapes, which was much higher than the national average.[5]



1) National Crime Records Bureau, Ministry of Home Affairs, Crime in India 2012 to 2014 reports (The Crime in India 2015 report has not been released). Statistics measure child rape as cases registered under Indian Penal Code, Section 375 Rape/Section 376 Punishment for rape.

2) NCRB, Crime in India 2014.

3) NCRB, Crime in India 2012-14.

4) Id.

5) NCRB, Crime in India, 2014.

Census and survey data point towards child sexual abuse occurring at epidemic proportions in India, but much of it remains hidden. A widely cited Ministry of Women and Child Development study found that 53.2% of children in India have experienced sexual abuse, and 20.9% have experienced severe sexual abuse, which includes rape.[6] These statistics are staggering. If true, it would mean that of the 44.4 crore children in India,[7] 23.6 crore have experienced sexual abuse.

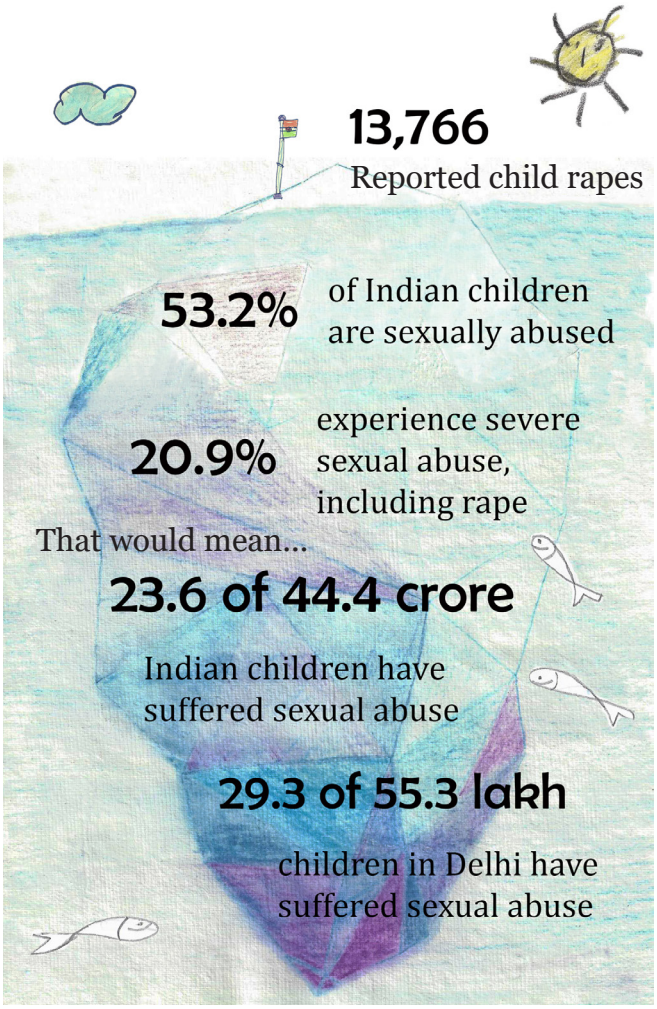
While sexual abuse reported to police is increasing across the country, the vast majority remains unreported. In fact, for society to effectively address sexual violence, more people must speak up and report sexual crimes so victims[8] can secure justice, healing and safety from offenders. Victims must feel comfortable telling police about sexual abuse and have confidence that courts will swiftly and compassionately deliver justice.

As more child sexual abuse cases enter the criminal justice system, law enforcement, judiciary, government authorities and civil society must work together to ensure victims secure an effective and child-friendly response. The Protection of Children from Sexual Offences (POCSO), Act, 2012, spurred in part by the shocking statistics of unreported child sexual abuse, is a landmark legislation that pushes India towards this reality.

POCSO reforms procedures to make courtrooms less daunting to children and provides a support network to assist children and their families during the criminal justice process. It broadens the definition of sexual abuse beyond penal-vaginal penetration and recognises males and females as possible victims. It reinforces the importance of interim compensation to victims and

Reported Child Sexual Abuse is the 'Tip of the Iceberg'

Child rape was reported 13,766 times nationally in 2014, a 60% increase from 2010 and 61% increase from 2012.



to fast-track cases in Special POCSO courts with short timelines to finish child victim testimony and to complete cases.

This study illustrates how POCSO is improving justice delivery for child victims in Delhi. At the same time, because POCSO has not been fully and consistently implemented, the report also addresses limitations in its impact.

In a three-year Project funded by Human Dignity Foundation, HAQ: Centre for Child Rights (HAQ) and Counsel

6) Study on Child Abuse: India 2007, Ministry of Women and Child Development, pg. 74-5, available at http://www.childlineindia.org.in/pdf/MWCD-Child-Abuse-Report.pdf. Severe sexual abuse includes sexual assault (intercourse, incest, rape and sodomy), making the child fondle private parts, making the child exhibit private parts and being photographed in the nude. See Id., pgs. 4, 75.

7) Population Census of India (2011), Office of the Registrar General & Census Commissioner, India, Ministry of Home Affairs, C-13 Tables Single Year Age Data, available at http://www.censusindia.gov.in/2011census/ population_ enumeration.html. The number of children calculated by taking the sum of all persons 0-17 years old.

8) The terms "victim" and "survivor" are used interchangeably in this study.

to Secure Justice (CSJ) aim to improve access to criminal justice and psychosocial services for child sexual abuse survivors and strengthen Delhi's justice systems so children are safer in their communities.

This study analyses and draws learnings from 72 child sexual abuse cases that were handled by HAQ/CSJ in 2015 in Delhi during the Project's first year. The stories of survivors and their families in this study illustrate how POCSO works at the ground level, from reporting abuse at police stations to giving child witness testimony in court to accessing Support Persons who stand with children during the criminal process.

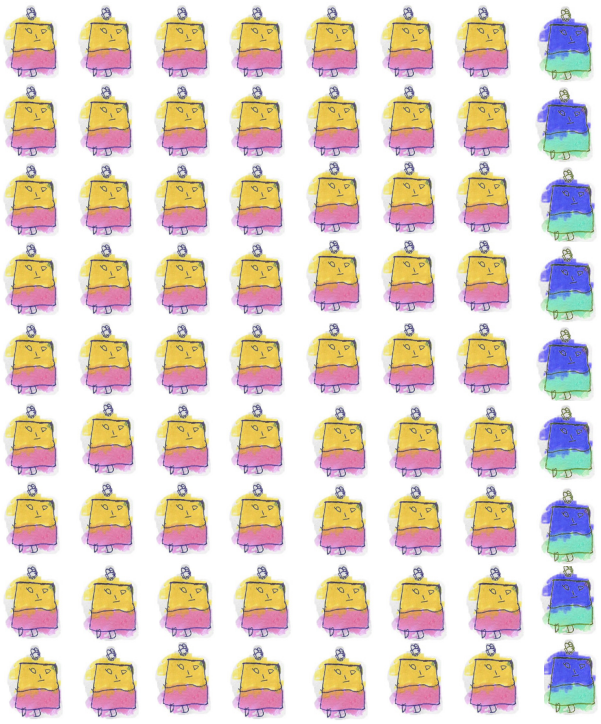
The stories highlight POCSO measures intended to make trials more sensitive and minimise re-victimisation. Judges play an important role in implementing POCSO. They should instil courtroom discipline and proactively push for timely child victim testimony, limit how often children are called to testify and to respect trial time limits. Whenever possible, judges should conduct *in camera*[9] hearings, keep the accused out of sight from victims and ensure sensitive chief and cross examination.

This study also explores the impact strong support networks have on child victims during justice proceedings. It looks at the importance of Support Persons, counsellors and lawyers for victims to secure justice and access restorative care services; how Special Courts and Special Public Prosecutors dedicated to handling POCSO cases can play an important role in implementing POCSO better.

Obstacles that operate outside POCSO's reach also hamper its implementation. For instance, overburdened courts make it difficult for judges to comply with POCSOs one-year time limit for trial. An insensitive police officer might deter victims from filing cases. The vulnerability of victims and their families might mean repeated threats and intimidation by offenders or their relatives, leading to victims abandoning their cases or

9) *In camera* is a Latin term that means "In chambers." It refers to a hearing conducted in the judge's chambers or in the courtroom excluding all spectators besides the parties to the case.

HAQ/CSJ worked with 72 clients in 2015. This graphic, drawn by a child victim, illustrates 63 clients were girls and nine were boys.



retracting their stories in court. In cases of incest, the idea of justice is extremely complicated and requires special attention. Still, as the stories in this study illustrate, POCSO has begun a hopeful new era of justice for child sexual abuse survivors in India.

The Long Road to POCSO

The women's rights movement largely led the change in law relating to sexual violence. Their efforts resulted in the passage of the Criminal Law (Amendment) Act of 1983. The amendment introduced offences like custodial rape, rape committed by those in positions of power or fiduciary relationships and other aggravated forms of rape in the Indian Penal Code (IPC).[10]

This would later influence POCSO when criminalising not only various sexual offences, but also the severity of punishment based on power dynamics. The landmark amendment protected the confidentiality of rape

10) See The Criminal Law (Amendment) Act, 1983.

victims[11] and presumed lack of consent in cases where victims stated sexual intercourse was forced.[12] Significantly, it required *in camera* proceedings for inquiry and trial of rape.[13]

In the 1990s and early 2000s, a more sensitive approach toward child victims and witnesses found a firm footing in Indian law. POCSO's foundation was laid in part by High Court and Supreme Court verdicts that highlighted trauma inflicted upon children when pushed into systems designed for adults. Judgments required trial courts to ensure child witnesses were treated sensitively and lawyers avoided confusing questions during examination.[14] Convictions could stand on victim testimony without corroborating evidence, as long as it was trustworthy.[15] Provisions such as privacy screens and frequent breaks were required.[16] It was recommended that complainants of sexual abuse be provided with consistent, legal representation from someone well acquainted with the criminal justice system to explain the nature of proceedings and provide guidance outside of the courtroom. They should also be eligible for compensation, anonymity, and thorough investigation.[17]

In 2007 the Ministry of Women and Child Development released a disturbing report about the extent of child abuse in India, including child sexual abuse. The report specifically recognized the need for comprehensive legislation for crime against children. Five years later, on 14 November 2012, POCSO came into force.

11) See Indian Penal Code, 1860, Section 228A.

12) See Indian Evidence Act, 1872, Section 114A.

13) See Code of Criminal Procedure, 1973, Section 327(2).

14) See Sudesh Jhaku v KCJ (1998) CriLJ 2428 (Delhi High Court), par. 38.

15) See State of Punjab v Gurmit Singh, (1996) 2 SCC 384, par. 9.

16) See Sakshi v Union of India, AIR 2004 SC 3566, par. 34.

17) See Delhi Domestic Working Women's Forum v Union of India And Others, 1995 (1) SCC 14, par. 16.

"A law to deal with child sexual abuse was much needed. We were not talking about child sexual abuse in this country. When there was a case we would talk about it for the moment, but now it's talked about as an issue with or without a case in the news."

- HAQ Co-Director Bharti Ali

Research Methodology

The study reviews 72 POCSO cases (Project cases) in which HAQ/CSJ provided both legal and pyscho-social support in 2015. The 72 cases were referred at different stages in the criminal process. Below is the number of cases per stage when HAQ/CSJ began representing clients:

First Response: 3 cases
HAQ/CSJ represented children during the initial reporting of crime at police stations and the medico-legal exam (MLC) at hospitals.

Police Investigation: 57 cases
HAQ/CSJ began representing children during police investigation, including the complainant's statement to police (Section 161) and sworn statement before the Magistrate (Section 164).

Pre-trial: 6 cases
HAQ/CSJ began representing children at hearings such as Cognizance, Framing of Charges, bail applications, or other court appearances before prosecution evidence begins.

After trial had started: 6 cases
HAQ/CSJ began representing children during prosecution evidence.

All cases fall within Delhi city but do not equally represent the 12 police districts. Instead the HAQ/CSJ team took cases as referred from the following police districts:

Police District	**2015**
South	35
Southeast	12
East	7
North	0
North east	2
North west	2
Outer	4
West	0
Central	7
South west	0
New Delhi	2
Railways	1
Total	**72**

In all 72 Project cases, CSJ lawyers signed vakaltnamas and entered into formal attorney/client relationships. In 47 cases, Child Welfare Committees (CWC) formally appointed HAQ/CSJ social workers as Support Persons, per POCSO Rule 4(7). In the remaining 25 cases, social workers supported victims and their families with their consent, but without formal government approval.

Most Project cases are still pending at different stages of criminal proceedings, thus, their outcomes are unknown. This study analyses cases through 15 February, 2016.

The socio-economic profile of the victims is predominantly low income. HAQ/CSJ takes cases based on the following criteria: the survivor is a minor (i.e., younger than 18 years old), the sexual offence involves physical violence or clear coercion, and the survivor cannot afford or does not have access to an lawyer.

All survivors mentioned in this report have been assigned a pseudonym (designated with the "*" symbol) to protect their identities and privacy. Further, any identifying information has been left out or changed, including the names of child victims' families, schools, relatives and neighbourhoods. No faces of survivors of sexual abuse are shown in this report. To further protect child victims' identities, their specific ages have been categorized as follows:

Infant: 0- 1.5 years
Preschool Age: 1.5- 3 years
Young Child: 3 – 5 years
School Age Child: 5 – 12 years
Young Adolescent: 12 – 14 years
Adolescent: 15 – 18 years

All observations are based on the functioning of courts in Delhi, from narratives of support persons, lawyers and case records of HAQ/CSJ. This report also draws on High Court and Supreme Court case laws.

Child survivors of sexual abuse provided the artwork for this report.

Making Courts Child-Friendly

The brisk and chaotic commotion of courts unnerves most children. Lawyers rush in and out. The judge looks down from a high pedestal, using formal and unfamiliar language. Raised platforms isolate the witnesses, and there is a flurry of shuffling as everyone stands when a judge enters. In this intimidating environment, children must share intimate details about events they would rather forget and they risk being re-victimized. Yet, for cases to end in rightful conviction, almost always child victims need to give true and complete testimony about the sexual abuse.

This chapter discusses protections and accommodations in POCSO to ease anxiety of children when they testify. In addition, it emphasises the important role judges play ensuring chief and cross examination are carried out sensitively and pushing to complete victim testimony and trials within swift justice timelines. As these provisions are more consistently implemented across Delhi, the courts are becoming less intimidating.

Ensuring Compliance of POCSO's Provisions

During Child Testimony

Before POCSO, High Court judgments directed protections and accommodations for children in unfriendly and intimidating courtroom environments.[1] The un-

1) See Sudesh Jhaku v. KCJ, 1998 CriLJ 2428 (Delhi High Court), par. 38

derlying principle is to put children at ease so they can testify truthfully and lessen the risk of re-victimisation.

Section 37 of POCSO states that "[t]he Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence."[2]

In Delhi district courts, in camera hearings are normally done inside the courtroom while public spectators remain outside. In addition, courtrooms often have physical barriers to block a child victims' view of the accused.

Section 37 also gives children the right to have a parent or someone they trust physically present with them during testimony.[3] Further, POCSO Rule 4(7) gives the CWC authority to appoint a Support Person "to render assistance to the child through the process of investigation and trial."[4]

(stating judges should provide a screen to separate child victims from the courtroom if it would help child give a full and candid testimony).

2) POCSO, Section 37.

3) See POCSO Act, Section 33(4) (stating that the Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court).

4) Importantly, a "Support Person" as defined in Rule 4(7) and "a person in whom the child has trust and confidence" referenced throughout POCSO, including Section 37, may be separate people.

Sensitive Questioning Secures Conviction

School age Amira* was playing near her home when a man led her away and sodomized her. When the case came to trial, both the judge and Public Prosecutor adhered to POCSO's child-friendly aim by conducting chief and cross examination on the same day, questioning the child with extreme sensitivity, and allowing both the Support Person and child's mother to sit through Amira's testimony. The accused, a juvenile, was convicted. However, he was released upon judgement for having served six months in jail during trial.

A Support Person or someone the child trusts, like a friend, relative or parent, often gives children courage and confidence to share their story in court. In the Project cases, victims were often quiet in court and clung to their parents or Support Persons, relying on their presence throughout proceedings. In addition, though children may not understand court procedures, they would often comfortably obey a trusted person's instructions. The important role of Support Persons is further discussed in Chapter Three.

Finally, Special Courts may issue a commission to examine the child outside the courtroom if determined necessary.[5] This provision is extremely useful where child

5) POCSO, Section 37; see also Code of Criminal Procedure, 1937, Section 284(1)(empowering Magistrates to dispense with attendance of a witness and complete examination in a place other than the courtroom).

victims are in the hospital or suffering from some other challenge. However, in our experience with the Project cases, this provision was not used, even where it would be helpful. For example, see Poornima's* story in the box below.

Special Courts

POCSO, Section 28 requires each district to have a designated Special Court to try POCSO offences. Presumably, Special Courts should exclusively handle POCSO matters with sensitive judges and Public Prosecutors, which would speed up cases and make them more "child-friendly".

Unfortunately, non-POCSO offences are also tried in "Special Courts." Non-POCSO cases further add to Special Court judges' already overburdened caseload and take away their focused attention on POCSO cases. For example, in the Project cases analysed, Special Courts had bail hearings and tried cases under other Acts, such as the Immoral Traffic (Prevention) Act, 1956. They may also hear murder cases or other older cases previously handled by the particular Special Court judge.

"Judges do try and get the child's testimony done as soon as possible, and sometimes that's just hard because of how many cases they have."

- CSJ Social Worker Shohini

Pre-Testimony Court Visits

Another way to make courtrooms less intimidating is for Support Persons to take child victims to court before they testify. In our experience, children who visit court prior to testimony tend to be more comfortable on the

Victim's Testimony Never Heard in Court

Adolescent Poornima* was violently raped by a tantric on the premise of treating her seizures. Following the assault, she went into a coma and was admitted to the hospital. While there, she was held in the Intensive Care Unit, from where the hospital planned to discharge her. The HAQ/CSJ team worked to get a second opinion and continue her treatment till her mother had found a place to live. During this process, Poornima came in and out of consciousness, had multiple surgeries, and was discharged to her home.

As she fought for her life, Poornima could have given a recorded statement about her abuse in a sensitive way, from either the hospital or her home. Sadly, because she died, her testimony was never heard in court. Even after Poornima's death, the accused has wreaked havoc on her family. The trial now continues through Prosecution Evidence with other witnesses. Her mother was uncomfortable as she testified through tears in January 2016, while the accused stood right behind her. Additionally, the accused's grandchildren have twice assaulted Poornima's brother, for which the mother filed complaints. The accused is out on bail as the trial proceeds.

"The Judge Acted Like a Support Person"

Suyyash*, a young child, was sodomized by a helper at his school. He was waiting with a few other boys for their older brothers' class to finish before boarding the bus home. Suyyash's mother knew something was wrong when Suyyash complained of pain while using the washroom. He told her about the assault and she filed a report to police. Suyyash became very fearful and stopped attending school.

CSJ Lawyer Smriti took Suyyash to court before his testimony to introduce him to the judge. The judge gave Suyyash toffees and asked him simple questions to build rapport. On his testimony date, Suyyash easily spoke with the judge because he was familiar after the pre-testimony visit. The judge even let Suyyash use his personal washroom.

"The judge gave him frequent breaks and was not annoyed when the child was creating a ruckus," Smriti said. "The judge acted like a Support Person."

Insensitive versus Sensitive Treatment

Divya*, a young child, was raped by her neighbours. After Divya washed her underwear, she told her mother what had happened and her mother filed a police complaint.

Divya and her parents came to court directly after visiting the hospital, in itself a traumatic experience, and waited two hours to record Divya's S. 164 statement, a sworn statement before a Magistrate. While waiting, the Investigating Officer requested the Magistrate to take the child's statement because Divya was falling asleep. The Magistrate, visibly annoyed, told the IO to come back later if the child was sleepy.

When taking the S. 164 statement, the Magistrate allowed a state counsellor to repeatedly interrupt the child's narration. The mother and HAQ/CSJ social worker were allowed to sit in on the statement. Despite strong objections from HAQ/CSJ, the Magistrate asked Divya to remove her panties and point to where the accused had hurt her.

In contrast, in another case the judge's conduct was extremely sensitive during victim testimony. Before starting the proceedings, the judge chatted with the child about the shelter home where she was staying and made sure the child was comfortable in the court setting. When the defense counsel was late to court, the judge chided him, saying the child was fatigued, having spent the entire day in court. He warned the defence counsel to be on time in the future.

day of their examination and better equipped to tell the truth about their abuse. While pre-testimony court visits should be standard for all child victims, it is especially true for young or differently-abled children.

Ironically, if children are too comfortable when they testify, it could raise suspicions in the judge's mind that they have been tutored. Already defence counsel regularly accuse children of being tutored when they testify. For this reason, Support Persons should ensure presiding judges know about child victims' pre-testimony court visits to diffuse such arguments.

Keeping Victims and Offenders Separate at Court

When child victims appear in court, they should be kept separate from offenders, out of sight and sound, at all times, especially while testifying. Otherwise, offenders could intimidate or verbally abuse them. They could stare at or threaten them, make demeaning comments or use dominating body language.

Special Courts should ensure child victims are not exposed in any way to offenders when giving evidence in court,[6] while at the same time balancing the accused's right to confront witnesses who testify against them.[7] In the Project cases, this provision was followed most of the time during testimony, however seeing the accused in the courtroom at all can be detrimental to the case.

There are three ways child victims may be separated from the accused at the time of recording evidence: 1) physical barriers like screens, single visibility mirrors or curtains; 2) testimony via video conferencing from a separate room; and 3) the Support Person physically guarding the child from the accused.

1. Physical Barriers Like Screens, Curtains and Single Visibility Mirrors

At a minimum, screens, curtains or single visibility mirrors should create a physical barrier that keeps offenders out of sight while children testify. In Project cases, single-visibility mirrors were used most often when available, while curtains were also common. Testifying from a separate room should be prioritised. Screens and curtains should be used as a back-up option.

6) See POCSO, Section 36(1).

7) See POCSO, Section 36(1) (stating that the accused should be in a position to hear the child's statement and communicate with his lawyer).

2. Testimony Via Video Conferencing from a Separate Room

Section 36(2) states that Special Courts may record children's evidence through video conferencing. Conceivably, child victims may testify through video conferencing from any place, whether or not on the court premises. In the Project cases, child victims testified in a separate room at the vulnerable witness courtrooms in Saket and Karkardooma district courts.

3. Support Person and Court Officers Physically Guarding the Child from the Accused

While not specifically stated in POCSO, Support Persons can direct child victims away from the accused so they avoid one another at court. They should be aware of the presence of offenders and unsupportive family members to prevent chances of further traumatizing child victims.

Vulnerable Witness Courtrooms

In 2007 the Delhi High Court required District Courts to create a child-friendly atmosphere with "separate rooms… provided within the Court precincts where the statement of the child victim can be recorded."[8] Though these rooms are invaluable to vulnerable children, at the end of 2015 only two of six courts in Delhi had them (Saket and Karkardooma).[9] Even though these vulnerable witness rooms are available for other courts to use (not just the Special POCSO Courts), their availability to child victims makes a significant difference in their

8) See Court On its Own Motion vs. State and Anr, (2007). 4 JCC 2680, W.P. (Crl.) No. 930/2007 (decided on 14th August 2007), stated under Recording of Statement Before Magistrate, par. 3; see also Virender v. State of NCT of Delhi, 2010 (4) JCC 2721, par. 83 (under IV. Courts (v)) (specifically stating that child victims should be permitted to testify in a place in the court different from where witnesses normally testify).

9) A third vulnerable witness room opened in Delhi's Tis Hazari court complex on 26 April, 2016. Its use is therefore not included in this study.

Victim Testifies Through Video and Vulnerable Witness Room to Avoid Accused

School age Zoha's* father beat and raped her repeatedly, each time causing bleeding. He also beat Zoha's mother and told her that if she reported him, the police would treat her even worse. When Zoha's mother gathered the courage to leave her husband of 11 years, she reported her daughter's sexual abuse. During the lengthy court process, Zoha's father tried to discredit and threaten Zoha and her mother. The judge allowed Zoha to testify in a vulnerable witness room using video conferencing.

Though her chief examination went well, once cross examination began, she burst into tears and called for the HAQ/CSJ Support Person. Although the Support Person tried to comfort Zoha, she refused to speak any further and testimony was delayed to another day. Her father tried contacting and threatening the family between hearing dates. Despite the pressure, when Zoha finished her cross examination, the judge ensured he never interacted with her. She completed her testimony, and while there were a few contradictions, it could have been worse had the judge been less sensitive and she had seen her father in court.

comfort and the quality of testimony.While waiting to testify, victims sometimes played with children from other cases. This provided a sense that they are not alone in an adult atmosphere.

"It makes lots of difference as the child feels relaxed and happy in a vulnerable witness room, as they play there with toys and forget that they are in the court. There is very high rate of children giving testimony successfully as compared to other courts which don't have vulnerable witness rooms."

- HAQ Counsellor Uzma

Victim Sees Accused, Stops Testifying

Kanta*, a young adolescent, was raped by a watchman in her neighbourhood. He threatened to kill her parents if she told anyone, so she didn't, till her mother realized Kanta was pregnant. After a difficult childbirth, Kanta received counselling that helped her speak again after the trauma had silenced her. The date for her testimony arrived. While Kanta sat in the courtroom waiting to testify with her lawyer and Support Person, she turned back and made eye contact with the accused, who was staring at her from the back of the room. She immediately stopped speaking and set down a chocolate bar she had been eating. On HAQ/CSJ's intervention, the constable took the accused behind the screen and remained with him, providing a sense of security. But it was too late: the trauma had already occurred. Kanta kept turning back and was visibly disturbed and restless the remainder of the hearing. Her chocolate bar laid on the table untouched. She was, however, able to complete her testimony and the trial is still underway.

Children sometimes express their apprehension about testimony, think they don't have the courage, or wonder aloud, "how can I give my testimony?" However, Uzma states, "when they reach this [vulnerable witness] court they forget about nervousness and anxiety."

Curtains Help Victim Testify

Kavya*, a young adolescent, was sexually abused by her brother for six months. Since her family did not help her, she ran away and reported the abuse to police. She was then shifted to a shelter home. In her case, several POCSO provisions were well-administered: chief and cross examination of the child were conducted on the same day, the judge was extremely sensitive throughout the entire testimony, and the accused was asked to stand behind the curtains placed at the back of the court room while the child faced the judge so her back was towards the curtain. As a result, Kavya was able to effectively testify without risking the trauma associated with an unfriendly courtroom environment and seeing the accused.

Vulnerable witness rooms do not necessarily make testifying easy for children, but combined with sensitive court staff and dedicated support, they can remove many of the obstacles.

Safeguarding Victims on Court Premises

Section 36 is unclear whether its protections apply only at the time child victims' evidence is being recorded or at all times when on court premises. Practically, it should apply at all times because children risk being re-traumatised regardless when they are exposed to the offender.

In addition, child victims risk trauma and intimidation even if they see the family of the accused. This is especially true when they know each other, which is often the case in incest cases, and when offenders are long-time acquaintances or from the same community. Often when the accused is in custody, court appearances serve as meeting days for families to reunite.

In the Project cases, offenders were previously known to victims 82% of the time. Child victims regularly faced threats, intimidation and re-victimisation from not only the offender, but also the offender's family. This occurred when the parties met in shared spaces in the courts, like in waiting areas. Only two of Delhi's courts

(Saket and Karkardooma) have separate entrances and waiting areas for children.

Judges' Enhanced Role

In a normal courtroom, judges act as outside observers, weighing evidence and arguments. They oversee adversarial proceedings driven by the prosecutor and defence counsel. POCSO clarifies the judge's function by defining both statutory and discretionary roles.

Statutory Role

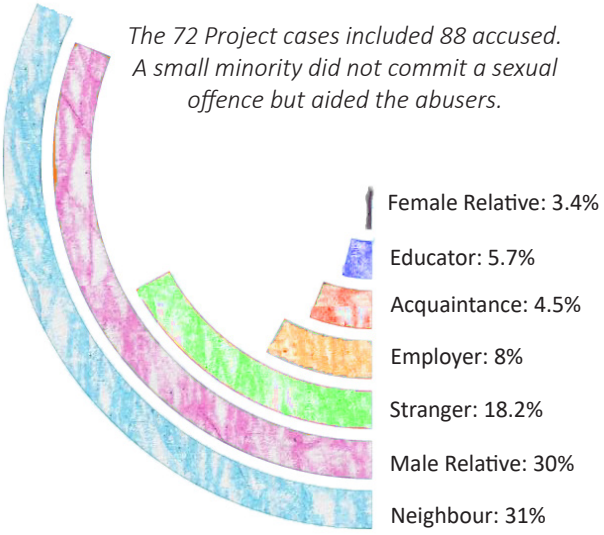
Section 33 gives judges statutory authority to accommodate child victims during testimony to make the process less intimidating and confusing. Judges can: 1) control questioning during recording of evidence; 2) grant frequent breaks and 3) ensure child victims are not called repeatedly to testify.

1. Control Questioning During Recording of Evidence

Section 33(2) requires public prosecutors and defence counsel to direct questions to the judge during child victim testimony. Acting as a filter between counsel and child, judges should put questions across in a concise, simple and non-threatening way. This includes taking questions during examination-in-chief (when the public prosecutor leads examination of the victim), cross

Relation of Accused to Victim

The 72 Project cases included 88 accused. A small minority did not commit a sexual offence but aided the abusers.



Court and Police Restrain Family from Harrassing Victim

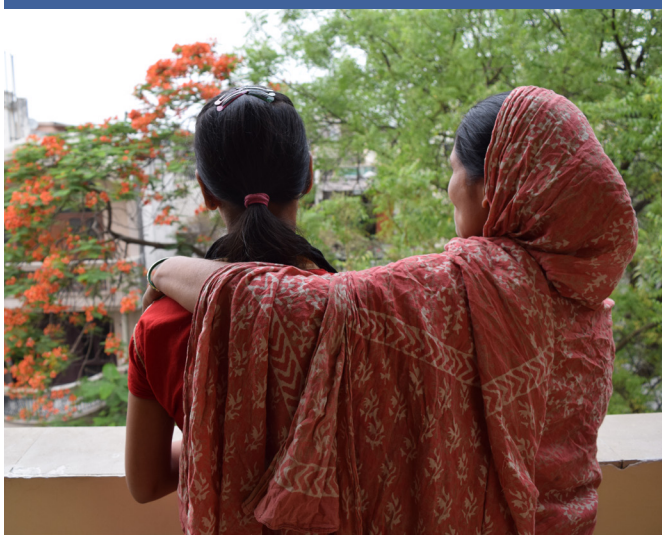
Adolescent Husan* suffered sexual abuse by her brother for eight years. Her family didn't believe her, so she reported the abuse on her own. The CWC passed an order for Husan to stay in a shelter home until the date of her testimony so that she could focus on school and her trial without interference from her family.

After the order the court passed, Husan's mother gathered a crowd outside and refused to let go of Husan's arm. HAQ/CSJ called the police, but the police said that Husan should go with her mother. HAQ/CSJ lawyers explained the CWC's powers and waited hours for the Head Constable from a nearby police station to show.

While waiting, Husan was crying and tired of fighting. "Just let me go with my mother," she said. "She can cut me into pieces or hit me… at least this will stop."

Eventually the Head Constable appeared. His initial reaction was that the mother and the child should be united but after persistent efforts of HAQ/CSJ counsel, including explanation of the law and the CWC's power, he understood. Finally, he told the mother to leave the child and Husan was taken to the shelter home.

At a later court date family members who supported the accused paced around the child. When the Support Person brought this to the court's attention, the court made the family wait outside.



Judge Allows Support Person to Filter Questions

Young adolescent Aarti* was home alone when her neighbour knocked on the door. Aarti's father was drunk on the street, the neighbour said, and he needed help. Aarti trusted the neighbour and went with him. But instead of taking her to his father, he led her to his company's empty warehouse and raped her. Aarti told her mother the next day, and they immediately filed a police complaint.

At Aarti's testimony, the Judge had the Support Person ask questions from the public prosecutor and defence counsel in a simple straightforward way so she could better understand and answer them. The public prosecutor was also very sensitive. He made sure Aarti was comfortable during chief examination and assured her that those in the room wanted to help her.

examination (when the defence counsel questions the victim), and re-examination (when the victim may be recalled for re-examination). In addition, judges should prevent aggressive questioning or character assassination of the child and ensure that the child's dignity is maintained throughout the trial.

In the Project cases, most judges attempted to comply with Section 33(2) requirements. They usually repeated questions asked by public prosecutors and defence counsel and gave children time to answer them, which increased the quality of testimony. However, any hostility or frustration shown towards the child made a larger impact on effectively testifying than it might have had on an adult witness.

When judges fail to comply with Sections 33(2) protections, it not only prevents a child from giving complete and coherent testimony, but it risks further trauma.

2. Grant Frequent Breaks

Section 33(3) gives judges authority to grant children frequent breaks during testimony. They should monitor the child victims' demeanor and state of mind, and grant breaks as needed to minimize stress and reduce trauma when testifying.

In the Project cases, judges often permitted breaks so victims could drink water and use the washroom. The presence of a Support Person was important to alert the judge when breaks were needed, as well as to make victims comfortable to answer question about their abuse.

3. Ensure Child Victims are Not Called Repeatedly to Testify

Section 33(5) requires judges to minimize the number of times victims come to court to give evidence.[10] Ideally, examination in chief and cross examination should be

10) POCSO, Section 33(5).

Judge Allows Victim Support

Adolescent Meena* went with her male friend to a usual hang-out spot, meeting a circle of friends, so she thought. But her friend had lied to her, and when they reached, it was only them. He raped her and threatened to rape her sister too if she told anyone, so Meena kept quiet for two years. Later, the accused used the same threat to pressure Meena to go to a hill station with him, where he raped her for two days. Upon her return, Meena told her father about the prolonged abuse, and he reported it to police.

The day Meena was scheduled to testify, the judge asked her to come into the courtroom, where she would see the accused. When the CSJ lawyer explained that she would be scared in front of the accused, the judge allowed Meena to testify in the vulnerable witness room. Still, Meena cried entering the room and could not speak. The judge then allowed a CSJ social worker to sit in the room, giving Meena the support she needed to complete her testimony.

Judge Confirms Child Understands Hindi

School age Mastoora* came to Delhi from a nearby country when her father remarried and she was sent to live with her elder sister. Mastoora's mother died in childbirth when her brother was born, two years before.

When her brother-in-law raped her, Mastoora told her sister, who beat him and warned him to not repeat the act. However, he continued, so Mastoora left home and found someone to call the police.

Before beginning Mastoora's testimony, the judge first confirmed the child could understand Hindi and made sure she had water. Due to emotional manipulation from her younger sister, Mastoora was at high risk for denying the abuse. However, she testified very well and remains in protective shelter while the prosecution concludes their evidence.

completed at the same hearing. In the Project cases, often victims had to come to court multiple times to complete testimony. Adjournment patterns at trial hearings, including child victim testimony, are further explored later in this chapter.

Judges' Role at Cross-Examination

Cross examination is the defence lawyer's opportunity to create a doubt about the victim's credibility. The most common types of questioning concern: 1) age, to show the victim is an adult, thus not a POCSO case. This is especially true for victims in their late teens; 2) victim's consent to the sexual act, even though consent is irrelevant in establishing an offence under POCSO; and 3) improper motive, that the complaint was filed by parents seeking revenge on the accused in a separate dispute.

Too often, questions posed in cross examination are purposely designed to embarrass or confuse victims, who, weighed down by shame, are more likely to keep details of the crime secret.

In Project cases, at times children were unable to remember stressful events when questioned confrontationally. Sometimes shouted at each other and asked children questions directly, violating POCSO, Section 33 protections. When cross examination is antagonistic, children tend to focus on the person who is asking the questions, rather than the questions themselves. As much as possible, judges should shield child victims from aggressive questioning to elicit truthful testimony and protect children from re-victimization.

"The cross examination is a traumatizing event for the child. Kids come out crying after their cross. They think they are not believed, by the court, by the people, by the defence lawyer. And this has a big impact."

- CSJ Social Worker Neha

Judges should ensure questions posed during child testimony are age appropriate. Young children do not have the same understanding of space and time and cannot measure or articulate actions in adult terms. Questions should be framed keeping in mind the child's socio-economic background, education level, age and capacity.[11] Recalling minor details of an event can be challenging, especially for children.

"If you are a victim, you are suddenly supposed to know which lane you were taken from, to be good with directions, to be articulate in telling a story. No one would expect that from anyone else."

- CSJ Lawyer Smriti

Recalling Child Victims for Re-Examination

Proactive judges can prevent defence counsel's abuse of Code of Criminal Procedure, Section 311 to recall and re-examine child victims. As mentioned, POCSO Section 33(5) requires judges to minimise how often child victims are called to court. Section 311 conflicts with Section 33(5)'s protection; upon application of defence counsel, judges may recall victims for re-examination at any stage of criminal proceedings.

Judges should grant Section 311 applications as an exception, only to prevent injustice being done to the accused. Otherwise, the provision could be misused to mentally harass and unnecessarily bring child victims back to court. Worse, offenders or their families are free to intimidate, threaten or influence victims to turn hostile, knowing if they are successful, child victims can be recalled to the witness stand.

In the Project cases, Section 311 applications were made in only two cases. Both were denied by the Court, upholding POCSO's intention.

11) See State v. Rahul, (2013) ILR III Delhi 1861, par. 57.

Discretionary Role

While POCSO Section 33(6) empowers judges to prevent aggressive questioning and character assassination, it also leaves open broader discretionary powers to ensure the "dignity of the child is maintained at all times during trial."[12]

Judges may intervene as they deem fit to make children feel at ease during testimony. For example, in the Project cases judges would tell child victims to avoid looking at the lawyers and focus on the Support Person or on them when answering questions. Some judges would seat the child next to them and ask questions patiently. In one case, the judge gave a child water and chocolate and instructed the defence to look away while the judge asked the child questions.

12) See POCSO, Section 33(6). Prior jurisprudence also guided judges' conduct. See *Virender v. State of NCT of Delhi, 2010 (4) JCC 2721* (giving specific directions on how to handle child sexual abuse cases at all stages of criminal proceedings); see also Sudesh Jhaku v. KCJ, 1998 CriLJ 2428 (Delhi High Court), par. 38 (requiring judges to "handle the proceedings with considerable sensitivity and ensure that the trial is fairly conducted").

Judge Allows Child to Draw During Testimony

Ruhi* is a young child. While taking her testimony, the judge asked the child to sit next to her. Ruhi had been drawing in a book the Support Person provided for her. To keep the child occupied, the judge asked her to continue drawing. When the defense began the cross examination, the judge was firm and did not allow certain questions. For example, when the defense asked irrelevant questions about the accused and Ruhi's mother having an argument, the judge intervened. Ruhi answered questions about the abuse, free from being harassed or worn down by unnecessary questions.

"Some of the judges are very sensitive. They understand these are the rights of the child and that they need to strike a balance between the victim's right and the accused's right."

- CSJ Lawyer Priyangee

A thoughtful judge not only makes a child comfortable, but also increases the chance of accurate testimony. In many Project cases, judges proactively sought suggestions from Support Persons about the child's wellbeing or how to make the environment child-friendly.

At times, they requested for Support Persons or victim lawyers to intervene when a child testified. These are welcome changes in judicial attitudes, showing a willingness to proactively intervene to make children more comfortable in court.

"Generally, our clients are not subject to accusatory questions in POCSO courts," CSJ Social Worker Ravinder said. "The defence is not allowed to stare at victims or be invasive in their questioning. In regular courts, the defence lawyers intimidate victims with their gestures and body language. Generally, this doesn't happen in POCSO Courts, though there are some exceptions."

Often because judges are overburdened and understaffed, they are forced to make decisions that negatively impact the case. For example, Suyyash*, a young boy sexually assaulted by a helper at his school, had to give his testimony while a woman in another case simultaneously testified in the same courtroom. This meant the judge, despite his best efforts to make Suyyash comfortable, had to pay attention to both cases at the same time. As discussed in the next section, increasing caseloads in POCSO Special Courts means the length of trials is also increasing. Judges are forced to try methods to expedite trials, like in Suyyash's case, which they likely would not do with manageable caseloads.

Granting and Denying Bail

An important function of CSJ lawyers is to oppose bail applications at the trial court and High Court levels. Most judges found POCSO crimes serious and normally denied bail. Of the 72 Project cases, the accused in 51 cases (70.8%) had not been granted bail and remained in custody at least till the victim testified.

Current stage of cases in which accused had not received bail:[13]

Police Investigation:	6 cases
Pre-trial:	14 cases
Trial before victim testimony:	20 cases
Trial after victim testimony:	9 cases
Trial Defence evidence:	1 case
Closing arguments:	1 case

13) This summary represents the status on 15 Feb. 2016. Therefore, if bail was initially denied and then later granted, it is not listed as denied.

Judge Dismisses Bail Application

Young adolescent Aarti* was raped by her neighbour. Once she escaped him, she immediately told her mother who filed an FIR. In court, the defence counsel asked for the accused to be released on bail for two months to help his children in school admission. The public prosecutor argued that two months was not required to simply help his child gain admission to school. The HAQ/CSJ lawyer added that the accused is a close friend of the victim's father. Because the father was scheduled to testify at the next hearing date, there was high chance of tampering with him as witness. The Judge agreed and dismissed the bail application.

Overall in the 72 cases, bail had been applied for 41 times in 32 cases. In the cases where bail was not requested, the defence may not have applied because the accused had not been arrested or the judge had given a strong indication that bail would be denied.

Bail applications submitted:	41
Granted:	15 (36.6%)
Denied:	24 (58.5%)
Awaiting order:	2 (4.9%)

Bail rulings impact more than just the accused. Victims and their families feel less secure, emotionally and physically, if the accused is released on bail.

Courts have discretion to grant bail to the accused, based on factors including likelihood of the accused absconding and tampering with evidence and the seriousness and nature of the offence.[14] Also, the accused has a right to bail if police fail to file a charge sheet within 90 days.[15]

In the Project cases, judges cited the following reasons for granting bail to the accused:

1. The accused committed no prior criminal act
2. The accused held a stable job
3. The accused had a sick dependent, like a child, who needed medical attention at regular intervals
4. The complaint appeared to be filed as a retaliatory measure

In the Project cases, judges denied bail to the accused for the following reasons:

1. Past complaints of similar nature
2. Seriousness of child rape
3. Incomplete investigation
4. Victim testimony not yet completed
5. The accused or his family threatened the victim or her family
6. The accused had a close relationship with the victim (sometimes incest) and there was a likelihood of influencing testimony

"Why Was Judge Uncle Shouting at Me? Did I Do Something Wrong?"

Bindu* was school-aged when she told her teacher that her mother's employer had been sexually abusing her as long as she could remember. Her mother worked as a domestic help and they moved in with the employer after Bindu's father had died. After reporting, Bindu moved to a shelter home where she received counselling, and leading up to her testimony, shared repeated nightmares about seeing the accused.

During Bindu's testimony, the judge initially prevented the Support Person from being present in the room. The defence counsel kept asking unnecessary questions prolonging the cross examination for more than an hour and a half. The judge became annoyed with the defence but also shouted at Bindu to answer the questions properly. Bindu started to cry. The CSJ Support Person was allowed to join Bindu and made her as comfortable as possible so she could endure the unnecessarily difficult cross examination. After her testimony, in tears, Bindu asked, "Why was Judge Uncle shouting at me? Did I do something wrong?"

14) See State v. Captain Jagjit Singh AIR 1962 SC 253, par. 3.

15) Code of Criminal Procedure, S. 167(2)(a)(i) and 173A.

Proactive Judge Protects Child

School age Aparna* was raped by her neighbour. Her mother returned from work to find Aparna crying, with swollen private parts. The judge in Aparna's case was sensitive throughout criminal proceedings. After Aparna's family filed a case, they were immediately threatened by the accused and his family. The judge learned about this and advised the family to file a First Information Report (FIR) against the mother of the accused. He denied the accused bail and ordered interim compensation to help with Aparna's emergency needs. When the public prosecutor was on leave and did not send a substitute, the judge warned he would complain to the High Court and rescheduled dates of hearings in quick succession to speed the trial.

"If the accused is out on bail and the case has not been decided yet, seeing the accused again in the same neighbourhood causes the family to doubt the effectiveness of the court system. For the child, seeing her abuser makes the healing process harder. Overall, it means it's harder for the family to find closure."

- CSJ Social Worker Neha

While defence counsel regularly apply for bail multiple times throughout trial, Delhi district court judges generally deny bail, at least till they understand the dynamics of a case and the likelihood the offender may influence a child's testimony. As mentioned, many times offenders are from the same locality, even the same family, as victims, so they would have easier access to child victims to influence their testimony.

Specific Period for Evidence and Trial

POCSO has two main "swift justice" timelines to protect child victims and the integrity of their testimony. First, child victim testimony should be completed within 30 days from cognizance.[16] If not possible, Courts should record the reasons for delay.[17] Second, the trial must be completed, as far as possible, within one year from cognizance.[18]

The more time that passes between sexual abuse and testimony, the more difficult it is for children to remember crucial details of the event. The defence often uses minor inconsistencies in victim testimony to attack the victim's credibility.[19]

"It is unreasonable to expect a six-year-old to testify two years later and accurately recount facts. Due to delays, victims have to prepare and think about the incident again and again. The system is making them scrape out that memory."

- CSJ Lawyer Smriti

16) Cognizance is when the court takes jurisdiction, i.e. formally takes notice, of a case. See Wharton's Law Lexicon (15th edition, 2009).

17) POCSO Act, Section 35(1).

18) POCSO Act, Section 35(2).

19) In *State of Punjab v. Gurmit Singh*, the Supreme Court stated that trial courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix. State of Punjab v. Gurmit Singh, 1996 (2) SCC 384, par. 22. The Court stated that "[a] victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as 'discrepancies and contradictions' in her evidence." Id., par. 23.

Kanta's Story: New Life After Rape and Pregnancy

When asked to share her story, 12-year-old Kanta* nodded, smiled and looked at her hands folded in her lap. Then she picked up a pen and began to write in Hindi.

"What happened to me is unfortunate," she said. "Let's treat it as a bad dream and start new life from now onwards."

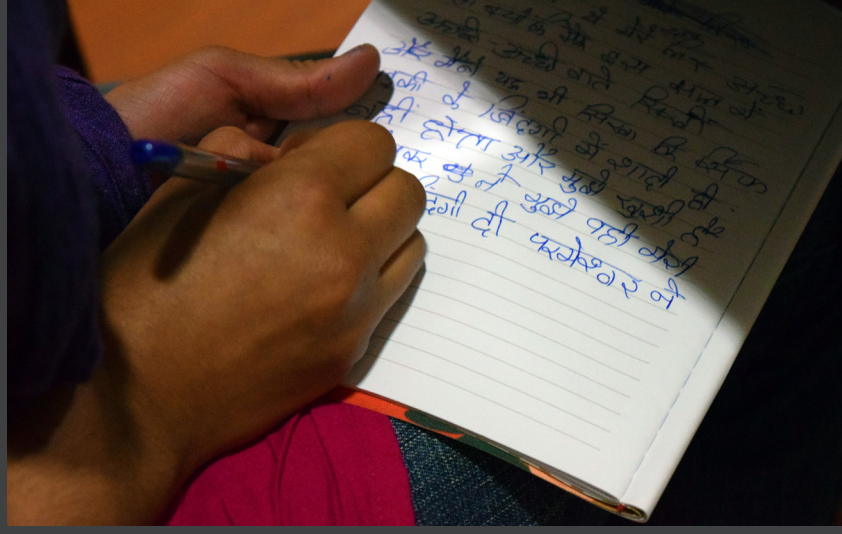
Kanta was 11 when her mother noticed a bulge under her shirt. When the doctor pronounced her six months pregnant in July 2015, she broke the silence about her rape. A security guard near her home had forced her off the road into a house. After raping her, he threatened to kill her parents if she told anyone.

Her parents were shocked to learn of the attack and immediately filed a report to the police, who arrested the accused. The Child Welfare Committee referred the case to CSJ and helped Kanta shift to a private shelter home. Though difficult, Kanta and her parents wanted her to stay there where she received free trauma counselling, bedside care and security from anyone, like the accused's family, who may have pressured her to change her story before testifying.

The first time a CSJ social worker met Kanta, she sat for two hours without speaking. Before introducing Kanta to the idea of testifying, social workers gradually sensitised Kanta to her pregnancy and what that meant to her life.

"She was asking us what was growing in her stomach," CSJ social worker Aisha said. "She didn't understand and thought she would never again be able to play with the other kids."

A top-ranked gynecologist heard about Kanta's risky delivery and offered her services. The birth in September went smoothly, and the baby boy was given for adoption. During the delivery, Kanta caught a glimpse of the baby's head and had a flashback to her rape. Many sexual assault survivors experience nightmares



and flashbacks, but counselling can reduce their frequency.

In a counselling session after the birth, Kanta said she felt a burden lifted and began truly healing. She remained at the shelter home for the next four months completing therapy with other young girls who had survived sexual assaults.

During Kanta's testimony in January, the judge simplified questions directed to her and suggested she look at the female stenographer when narrating her rape. He even intervened when the defence lawyer insisted she specify times and dates, saying that a child her age would not be expected to remember those details.

"I know that because my son is the same age," the judge said in court. "I can quote this from child psychology books also."

Sympathetic to her rehabilitation needs, he passed an order to grant compensation, to be used to enrol Kanta in a private school as soon as the next session begins in July.

Kanta's doctor and parents testified in March, and CSJ lawyers on her case believe the trial will conclude before September, the one-year deadline under POCSO.

Today Kanta is excited to go back to school. Sometimes she still has flashbacks of her rape, but the trauma has subsided. She has found her voice again.

"I am happy that God gave me my life back and that God brought colours in my life," she said.

Delays in Completing Child Testimony

In the Project cases, 20 cases had begun victim testimony. All of them had already surpassed the 30 day mandate for child victims to testify. The average time to start victim testimony was 170 days, or more than five months beyond the 30 day timeline. In two cases, the POCSO one-year mandate to complete the trial had already passed before the child had finished testimony.

In the nine cases where the child finished testifying, it took an average 242 days to complete or more than eight months. In one case, child testimony finished on the same day, another finished at two hearings on consecutive days. In all other cases, child victims had to appear in court multiple times with long delays between hearings. The longest delay was 599 days, nearly a year and eight months after trial started.

"Court dates are often fixed as per the defence counsel's convenience, without keeping in mind the child's schedule....While delays should be shorter, it is understandable when a judge with a tight schedule gives a date six months away because there are no sooner openings. That is why we need dedicated POCSO courts," HAQ Co-Founder Bharti Ali said.

Absent Defence Counsel Delays Trial

Teen Anju* was sexually abused by her father for years. Her mother and other family members did not believe her when she told them. Eventually, the school's principal found out and informed police. Despite immense pressure from her family, Anju pursued the case.

As is common in incest cases, Anju was placed in protective shelter till she testified. While charges against Anju's father were filed rather quickly, Anju's testimony was not scheduled till six months later. At that hearing the defence counsel did not appear so her testimony was adjourned for another three months. All the while Anju was separated from her family for her safety and to keep her family from influencing her testimony.

Counsel On Leave Delays Trial

In adolescent Meena's* case, on the day of her testimony the defence counsel was absent. While the judge allowed her chief examination, the cross examination was delayed. He scheduled a hearing two months later and imposed a Rs. 1,000 fine on the defence counsel.

At the next hearing, the public prosecutor was on leave and cross examination was again delayed another three months. At that next hearing, Meena was cross examined but the defence argued that the stenographer improperly typed the testimony, so cross examination had to be conducted again. Four months later, a total of nine months from when Meena gave her chief examination, she underwent cross examination again and concluded her testimony.

Adjournments and Long Delays Between Hearings

Adjournments and long delays between hearings are the main reason trials are delayed, often with adverse effects on child victims and their families. While POCSO has strict time limits on completing trials, and criminal procedure law states examination of witnesses should proceed day-to-day, in practice judges routinely adjourn hearings for avoidable reasons. As a result they hear evidence piecemeal at multiple hearings that take place weeks or even months apart.

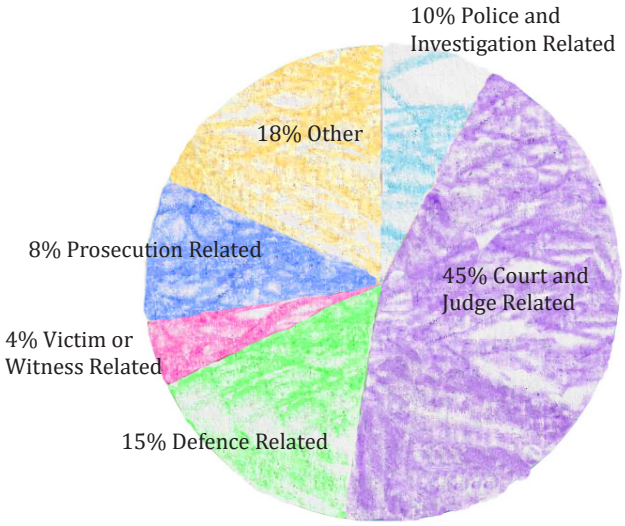
Overall in the 72 Project cases, 156 adjournments had occurred and most cases had not even started victim testimony. Many of these adjournments were avoidable. Some of the reasons hearings were adjourned were:

Prosecution/Defence-related: Prosecution and defence were absent or unprepared for a case. Also, witnesses other than victims (or their parents) who were scheduled to testify failed to appear. These adjournments made up 23.1% of total adjournments. Most were avoidable if lawyers had been better organised or there were consequences if they failed to appear.

In the Special Courts, no public prosecutors or defence counsel are dedicated to POCSO cases. Lawyers often juggle many cases in a week. Sometimes adjournments occur because they take leave with short or no notice. Defence counsel request adjournments for more time to prepare for cases, for conflicts in their schedule or other often avoidable reasons. Also, lawyers or witnesses were rarely held accountable if witnesses failed to appear for their testimony.

Court-related: Judges were often absent because they were sick or at judicial trainings. Another common reasons judge's adjourned hearings was because there was too little time to finish the day's case docket. While a limited sampled, in the Project cases judge-related adjournments were the most common, making up nearly 45% of all adjournments. While some of the adjournments were avoidable, the data also points to overloaded dockets that make it impossible to attend to all cases during the day.

Reasons for Adjournment



Victim-related: Victims failed to appear for hearings, or if they appeared were unable to testify. These adjournments were least likely to occur, making up only 4.5% of the total. Significantly, victim-related adjournments were so low in the Project cases because HAQ/CSJ Support Persons worked with children, conducted pre-testimony visits and accompanied them to their testimony.

Investigation-related: At times, Investigating Officers failed to appear at hearings, especially at Framing of Charges stage. If they appeared, adjournments occurred because they were unprepared, unable to produce key documents, like the charge sheet, or to give compete Forensic Science Laboratory (FSL) reports.

These adjournments made up about 10% of the total. While adjournments for incomplete charge sheets were avoidable in most cases, since Forensic Science Labs are overburdened, often there are long delays in giving FSL reports, which creates a bottleneck in completing police investigations.

External circumstance-related: Circumstances outside the control of parties to criminal proceedings also caused adjournments, such as lawyers' strikes. These made up about 18% of all adjournments, illustrating how common unscheduled disruptions delay hearings.

Supporting Victims

POCSO aims to provide a support network to child victims at every stage of criminal proceedings, from reporting abuse at the police station to court hearings. The law assigns specific roles to different government bodies, including the Special Juvenile Police Unit (SJPU) and the Child Welfare Committee (CWC). There is also scope to provide experts like translators, psychologists, doctors, members of non-government organisations and social workers depending on the needs of victims, as assessed by the judge and CWC.

However, in HAQ/CSJ's experience the most important people in victim support networks are Support Persons. They shine light on the often confusing and intimidating justice process, provide emotional support and advocate for child victims throughout criminal proceedings.

Functions of Support Persons

The CWC may assign someone to assist victims during investigation and trial termed a "Support Person."[1] In the Project cases, access to trained, sensitive and consistent Support Persons was critical to making the justice process child-friendly and helping victims and their families recover from abuse.

Support Persons helping children and their families play a vital role in navigating an often confusing and intimidating justice system. They keep victims and families updated on case progress, inform and connect them with support services, like victim compensation, and give emotional support throughout proceedings.

1) POCSO, Rule 4(7).

Explain the Criminal Justice Process and What to Expect

Support Persons bring clarity to victims about what to expect during criminal proceedings and how their lives will be impacted. They should explain court proceedings and potential outcomes, educate child victims on their role in the judicial process and brief relevant authorities, like the CWC or Special Court judge, about current circumstances of the child that impact the case.[2]

Support Persons keep victims and their families informed about the process and updated about the legal case: the arrest of the accused, updates about the investigation, the outcome of bail hearings and the verdict from trial.[3]

For example, in adolescent Fauzia*'s case, when her mother learned that her husband had raped Fauzia, she was very nervous to disclose the abuse and afraid of the criminal justice system. She hadn't known about the abuse until Fauzia became pregnant. But even so, she feared the police would arrest her because she had been aware of the ongoing abuse and had not protected her child.

HAQ/CSJ social workers supported the family in filing the complaint, completing the medico-legal exam and identifying the home of the accused. They explained the court process and intervened when Fauzia's rights prescribed in POCSO were not met. This instilled confidence in Fauzia and her mother who are walking the course toward justice with HAQ/CSJ's psychosocial and legal assistance.

"If you people were not there then I would not go further like I do, you provide me strength and courage."

- HAQ/CSJ Client Fauzia

Inform and Connect Victims and their Families with Support Services

Support Persons play a critical role in helping victims and their families access services needed for healing. Support Persons inform victims about available support services, like counselling, financial compensation, protective shelter, medical care, and either advocate for victims to access these services or connect them with someone who can.

Support During Child Testimony

1. Provide Emotional Support

A key role Support Persons play is to give emotional support to children during testimony. Ideally, they

2) See POCSO, Rule 4(8).

3) Id.

should sit with them during chief and cross examination, communicate to the judge about their needs, and protect them from seeing the accused or the accused's family. Importantly, Support Persons should gain the child victim's trust to put them more at ease during criminal proceedings. At the same time, they must be careful not to influence child testimony.[4]

In the Project cases, typically someone supported the child during testimony, whether the Delhi State Legal Services Authority (DSLSA) Support Person, a HAQ/CSJ Support Person or the child victim's mother. Unfortunately, an overlap of services at times had an impact on their effectiveness.

While DSLSA Support Persons gave needed assistance in some cases, especially when children had no other support, generally they met victims for the first time only on the day of testimony. They had neither gained the child's trust nor had a clear understanding of the nuances of a case.

For example, school-aged Mastoora*, an immigrant who suffered incest, testified well despite family pressure. The judge was sensitive and attempted to make her comfortable, however, the assigned DSLSA Support Person was male and unfamiliar to her. Upon Mastoora's hesitancy to speak, the Judge allowed a female substitute from the CWC, which followed POCSO's aim to support child-friendly procedures.

In courts with vulnerable witness rooms (Saket and Karkardooma courts), while CWC-appointed Support Persons accompanied child victims a few times, mostly they were kept outside the room during child testimony. Only DSLSA Support Persons were permitted to sit with the child, despite CWC-appointed Support Persons having greater rapport and trust of the child.

For example, in school age Bindu's case, the CWC-appointed Support Person was initially not allowed to sit with the child. During testimony Bindu had an anxiety attack and in tears she called out to the Support Person. Only then, the judge allowed the Support Person to pacify Bindu so she could effectively complete her testimony.

4) See Virender v. the State of NCT of Delhi, 2010 (4) JCC 2721.

2. Give Child Confidence to Speak About Sexual Abuse

Because of the close relationship, child victims often open up about abuse with Support Persons. Since societal norms teach children it's wrong to speak openly about sex, they are often afraid to talk about their abuse. They may blame themselves for the incident and feel shame or fear about what others might say or do if the incident becomes known.

"Fathers, mothers, grandparents do not want to talk about the abuse, so their stance is that 'nothing has happened with our child,' but when I talk to the child she tells me everything," HAQ Counsellor Uzma said. "But in front of her family she can't say anything."

Often, even with the close relationship, it takes time for victims to feel comfortable testifying about abuse in court. In the Project cases, victims commented that it was the Support Person who gave them strength to testify.

"It is unfortunate that victims talk about sexual violence but cannot say 'he raped me,'" CSJ Lawyer Priyangee said. "They say 'he did bad things to me' and that could mean anything. This is why social workers and lawyers have multiple sessions with families and victims, to make them comfortable in articulating what happened."

3. Give Insight to CWC and POCSO Judges About a Child's Case

Support Persons can give insights about a child or the cases so CWC members and judges can make informed decisions in the best interest of child victims. In the Project cases, Support Persons gave CWCs regular updates for them to make decisions regarding a child's custody or counselling needs.

Support Persons also recommended referrals to other NGOs if children had specific needs, like recovering from being trafficked. In the same way, judges spoke with Support Persons for insight about a child, so they could know how best to support child victims during their testimony.

Kanta* is a 13-year-old girl who was raped and as a result became pregnant. For months she talked to the Support Person about "everything under the sky except the abuse." After five months of consistent interaction, Kanta finally opened up about the rape. During testimony she was able to articulate the abuse and later said to CSJ:

"I owe my life to you now, you give me strength to face the most difficult period of my life."

- HAQ/CSJ Client Kanta

Kanta's mother was also deeply affected by the support and said, "*You people are the real parents of my child.*"

"You Support My Child at Every Stage, Like a Family Member"

Preschool aged Tanu* was brutally raped by a stranger. Her internal organs were so damaged that she required a colostomy surgery, where the intestine is pulled through a hole in the abdomen for stools to pass into a bag.

"She didn't remember what happened to her," said Aisha, the CSJ social worker who was Tana's CWC-appointed Support Person. "She only knows the pain that is still there."

Tanu's doctors advised a second colostomy surgery after two months. During that time, Aisha visited Tanu and her mother and applied for Tanu's interim financial compensation, meant to immediately assist a victim's financial needs while the trial is ongoing. The court authorities awarded Tanu Rs. 1.5 lakh interim compensation to pay for the hospital bills, colostomy bags and other expenses.

Since Tanu's father was an alcoholic and drug addict, Tanu's mother said her only way of strength was Aisha looking after Tanu's needs.

"You support my child at every stage, like a family member. My simple thanks is not enough for your support and efforts."

-Tanu's Mother to Aisha, CSJ Social Worker

When Tanu's mother left Delhi for her native village, to escape her husband's drunken episodes, Aisha arranged for her to stay in a shelter home in Delhi for 10 days to prepare for her testimony.

During her testimony, the judge intervened when the defence counsel asked questions aggressively. He remarked that it must not be easy for Tanu's mother to narrate her daughter's condition after the rape and told the defence to ask questions more clearly and politely.

The judge also ordered for another FSL report, since medical test results were missing from the available report. And even though Tanu had already received interim compensation, the judge asked Aisha to submit a detailed report of Tanu's present medical condition, so that he could order more compensation if needed.

4. Advocate for Child Victims During Criminal Proceedings

Though the POCSO Rules specify only a few duties of Support Persons, the responsibility potentially includes many tasks, depending on the needs of the child. They might advocate for victims throughout criminal proceedings to secure the many rights and protections defined in POCSO. They could also attend to other emergencies, such as unexpected care needs or helping victims file police complaints when threatened by the accused.

The Support Person provision adds an extra layer of accountability and knowledge to the justice system, holding police and courts accountable to handle child victim cases sensitively. Those charged with implementing the law may be unfamiliar with how to administer it. In these instances, Support Persons can advise on the law.

For example, they can ensure a translator is provided, a person the child trusts is present when testifying, and that medical examinations adhere to POCSO rules.

Needs that arise depend on the specific circumstances and vulnerabilities of each child's case. Support Persons should be trained to stand in the gap when unexpected needs arise.

For example, while teen Poornima* was hospitalised in critical condition after being raped by a tantric, CSJ social workers were not appointed Support Persons, but they still advocated for the family. Her widowed mother relied completely on Poornima's brother for financial support and the family's situation was unstable.

HAQ/CSJ was appointed as Support Persons in 65% of cases in this study.

CSJ social workers facilitated the transfer of her birth certificate to the Investigating Officer, worked with Delhi Commission for Women to extend her necessary hospitalisation, consulted with doctors, and assisted the family when the accused was released on bail and issuing threats.

In the Project cases, the accused or their family commonly tried to threaten or intimidate child victims. These threats may compel Support Persons to help victims and their families file a complaint with police and notify the public prosecutor. For an example read Tanmay's* story on the next page.

Support Person Enrols Child in School

When school-aged Aparna*, disclosed that the boy who lives one floor above her house inserted his private part into her private part, her mother reported it to police. After the rape case was filed, HAQ/CSJ got involved and assisted the family in several ways. CSJ Counsellor Rupali met Aparna's local government school principal during her witness testimony and requested admission into the school. The principal was aware of the medical issues of the child and agreed to admit her.

Need for Increased Access to Trained, Sensitised and Consistent Support Persons

A dependable mechanism needs to be created that 1) increases access to trained, sensitised Support Persons during criminal proceedings; and 2) gives child victims and their families access to Support Persons beginning at the police station.

Police are required to report all POCSO cases to the CWC within 24 hours from when the abuse is reported.[5] However, despite the high number of POCSO cases registered with police, based on our observations the CWC appointed Support Persons in only a small percentage of cases.

In our experience, CWC-appointed Support Persons were mostly social workers from non-governmental organisations, like HAQ and CSJ, or from protective shelters. While DSLSA provided Support Persons, their

5) POCSO, Section 19(6). Note, under POCSO police do not need to physically produce all child victims before the CWC. Instead, they only need to produce child victims before the CWC within 24 hours when: 1) the offender is from the same household; 2) the child is living in a child care institution without parental support and 3) the child is found without any home or parental support. See POCSO Rule 4(3).

'If Tomorrow He Kills My Children, What is the Point of Living?' Mother Says About Abuser

Tanmay's* mother called for her school age son one morning, but he didn't answer. He had gone next door to return a bowl to their neighbour, but that had been nearly 20 minutes before.

She walked toward the neighbour's house, calling his name, when he scrambled out the door toward her. Inside their home, Tanmay told his mother what had happened.

The neighbour, in his thirties, had asked Tanmay to watch TV with him, a treat Tanmay didn't have at home. After Tanmay sat next to him, he slid his hand into Tanmay's pants. Tanmay pushed him away. Then the neighbour exposed his private parts and asked Tanmay to perform oral sex. At that moment, Tanmay's mother's voice entered the room through the window, calling his name. The neighbour yelled that he would kill him if he told anyone.

Tanmay's mother immediately filed a police report and the accused was arrested. Within a month, he was released on bail without clear reasons. Shortly after the accused's release from jail, he came with his relatives to Tanmay's mother's house, ransacked their belongings and beat her and her two daughters. The accused's wife even bit Tanmay's mother, threatening her not to pursue the case.

"We have four brothers," the accused said, related by Tanmay's mother, a widow. "You can't do anything."

Then the accused's brother tried to kidnap Tanmay on the way home from school, but he managed to run away. On another occasion, the landlord cut off the family's water supply, even though they had paid him for it. He supported the accused and was pressuring Tanmay's mother to drop the case. When she inquired about her water, the landlord yelled and hit her on the head, knocking her unconscious. Her broken scalp required six stiches.

"As mothers we must fight these cases because if we don't the people committing these crimes will only be encouraged," Tanmay's mother said.

Tanmay's mother rests her hands on her lap as she talks to CSJ social worker Shubham.

Tanmay's mother lost her job as a housemaid because she needed time off to attend court proceedings and became fearful of leaving her children unsupervised. Sometimes when she needed to go out she would lock them inside the house.

When CSJ social worker Shubham became aware of the case, he helped the family enter witness protection. Under the government programme, three local police officers are assigned to check on her daily. CSJ also apprised the Public Prosecutor of the situation so they could better represent the case in court.

CSJ will continue to represent Tanmay until the conclusion of the trial. In the meantime, Tanmay attends counselling sessions and Tanmay's mother tries to create a happy environment for her children. They feel safe, she said, but still scared.

"The only thing I want is for [the accused] to be in jail. I fear [the accused] might try to kill my children. I'm fighting for my children because if tomorrow he kills my children, what is the point of living?"

Judge and Victims Rely on Support Person

School-aged twins Baji* and Banu* were sexually abused by their grandfather. When their mother learned of the abuse, she reported it to police. The judge appointed a HAQ/CSJ social worker as a Support Person. It took months for the Support Person to build rapport with the girls, who had health complications and mental trauma after the abuse. Even the mother confessed that she had lost trust in relationships after the incident and only gradually came to trust the Support Person.

"I lost faith in all relationships after the incidence, but after meeting you and seeing how much my children have trust over you I believe that humanity still remains in this world," Baji and Banu's mother told the Support Person.

The judge showed sensitivity to Baji and Banu. When one twin was too unwell to testify, the judge relied on the Support Person's report of her condition and gave another date for the testimony. Throughout the trial, the judge asked the Support Person how the girls' health was progressing.+

+ In this case, because the family had previously hired a private lawyer, it is not included in our 72 Project cases. Therefore, HAQ/CSJ social workers acted in a purely supportive and pyschosocial role.

support was limited to child testimony hearings. Also, they were not appointed by the CWC as required by POCSO Rule 4(7).

It is unclear where the breakdown in access to Support Persons occurred: whether police failed to report POCSO cases to the CWC; whether the CWC did not appoint Support Persons in cases that were reported; or c) a combination of both. Note, while police are required to report all POCSO cases to the CWC, the CWC has discretion whether to appoint Support Persons to child victims.[6]

6) See POCSO, Rule 4(7) (stating that the CWC may provide a Support Person to assist the child during investigation and trial).

"The CWC is informed only in certain cases," HAQ Counsellor Shahbaz said. "There seems to be an absence of knowledge or misunderstanding which is hampering POCSO's implementation."

Consistency Throughout Investigation and Trial

It is critical for the same person to support child victims throughout investigation and trial rather than multiple people giving support at different stages. Support Persons are liaisons between victims and the justice system. As such, when they are the main point of contact for children and their families, it minimises confusion, miscommunication and possible re-victimisation that might occur when multiple people are involved.

In addition, when Support Persons are appointed at the beginning of a case and remain consistent throughout, they better understand the child and the case's nuances. This familiarity allows them to more effectively advocate for the child's best interests.

Access to Support Persons at the Police Station

Child victims need access to Support Persons at the police station when they report abuse and go to the hospital for medico-legal examinations. In these initial

Support Person Holds Police and Doctor Accountable to POCSO

Young adolescent Shaista* was raped by her step-father since age 10. Eventually, she became pregnant and shared about her abuse. At first, her mother was very reluctant to file a complaint. The accused was the family's primary bread-winner. Shaista, however, was very firm with HAQ/CSJ social workers that she wanted to pursue the case immediately.

At the police station the officers followed the POCSO provision that requires a female officer to record the statement. But the officer was harsh and critical of Shaista, violating POCSO's mandate to keep procedures child-friendly. While recording the statement, the officer asked Shaista if her bulging belly was a result of sleeping four months or consenting to sex.

The officer did not realise the HAQ/CSJ social worker present was accompanying Shaista. Upon that realisation, she became polite and more proactive. The social worker encouraged the victim and her mother but also held the police accountable to uphold their duties under POCSO.

Still, it took 10 hours to register an First Information Report and conduct a medico-legal exam in a government hospital. Shaista began crying when the doctor asked her to remove her clothes. When the doctor tried to take a vaginal swab, Shaista resisted and complained about the pain. The doctor then shouted at Shaista, accusing her of having consensual sex and then coming into her office complaining of pain.

stages, victims and their families are most vulnerable. The problem is that POCSO requires police to report cases to the CWC within 24 hours, only after these initial stages occur.[7]

In the Project cases, HAQ/CSJ was appointed as a Support Person in 47 cases. Each time, social workers were appointed as Support Person after the FIR was registered and the medico-legal examination was conducted. In almost all cases, a Magistrate had already recorded the child victim's sworn S.164 statement.

Dedicated Lawyers

POCSO requires state governments to appoint a Special Public Prosecutor to every Special Court for conducting cases only under the provisions of the Act.[8] Appointed lawyers must have a minimum of seven years' experience. Unfortunately, Delhi's Special Courts have yet to implement this provision.[9]

POCSO also recognises the right of child victims and their families/guardians to legal counsel of their choice.[10] This provision allows victims greater access to lawyers, from non-government organizations for example, and also assists overburdened public prosecutors. Like Support Persons, dedicated lawyers who represent cases soon after investigation are more accessible to child victims than public prosecutors. They can be more consistent, familiar to the child, and gain more information about clients, their families, and the abuse. Also, victim lawyers function as a bridge between victims

7) See POCSO, Section 19(6).

8) POCSO, Section 32.

9) POCSO, Section 32(2).

10) POCSO, Section 40.

Trained Social Workers as Support Persons Give Added Value

- Assess client psychosocial needs
- Conduct counselling sessions for survivors and their families that cover safety, coping, resilience and dealing with trauma from sexual abuse
- Connect clients and their families with services they need for a stable living environment, including medical care, clinical psychological and psychiatric care, protective shelter and education

and public prosecutors. Because they are intimately familiar with the legal case and its facts, they can discuss a case's background, strategy and the child victim's desires with public prosecutors. Further, victim lawyers can submit written closing arguments to advocate for a rightful conviction.[11] As with Support Persons, victim lawyers can advocate for POCSO's provisions to be implemented in law and spirit.

Recent policy changes in Delhi have assigned DCW lawyers to attend hearings in all courts for POCSO and rape cases. Their presence is welcome, as it can provide a trained and supportive network for victims and shows that courts are taking these cases seriously. However, multiple lawyers with different levels of understanding about a child and the case can disrupt a child's trust, damage the case and possibly re-victimise the child.

Therefore, HAQ/CSJ is working with these agencies to exchange case information and smooth the transition process as these lawyers step in to handle parts of the case. Judges are becoming accustomed to DCW's presence and call for these assigned lawyers if a child is set to testify. This is especially positive in cases which lack other support, for example when not represented by CSJ or a private lawyer.

Translators, Special Educators, Psychologists and Other Experts

POCSO gives opportunities for child victims to connect with experts or skilled professionals who might provide needed support to help them recover from the sexual abuse or effectively depose about the abuse in court. As prescribed in the law, POCSO judges may order support from translators, psychologists, social workers, doctors and special educators during criminal proceedings.

But experts' involvement is largely up to the judge's discretion and whether there are qualified people who are accessible. HAQ/CSJ staff have occasionally been asked to smooth proceedings for children based on their known languages or counseling experience, but formal court-appointed experts remain rare. Still, in our experience, the courts recognize the need for specialized expertise when handling CSA cases; it's only that access to trusted professionals and experts is lacking.

"Prior to POCSO, only survivors who could afford counselling were talking about it, but the law changed that."

- CSJ Social Worker Deborah

11) See POCSO, Section 40, read with Code of Criminal Procedure, Section 301(2).

Other Obstacles to Justice

This chapter explores the factors discouraging victims and families from initially pursuing or continuing to pursue justice. Some of those factors include silence due to shame, police disbelieving a victim's story, police failure to file a First Information Report or conduct an effective investigation, threats and coercion from the accused to compromise, and in incest cases, unsupportive and manipulative family members.

Impact of Sexual Abuse and Legal Proceedings on Children and Families

When sexual abuse occurs, it turns the lives of children and their families upside down. In the Project cases, parents were compelled to enrol their children in different schools or shift homes. Child victims often became extremely fearful and stopped playing or withdrew from others. They were unable to follow their normal, daily routines. Sexual abuse impacted the victims' siblings as well. The family became scared, so they were overly vigilant with their other children.

"In most of the cases, the child's behaviour is different after sexual abuse. Some children after the incident become fearless and disturbed and violent. But other children become isolated; they don't like to talk to or play with siblings. And if the child is young, they think, 'It's because of me that my family is suffering.'"

- HAQ Counsellor Uzma

Victims also report sleep disorders, food disorders, and psychosomatic symptoms.

Hesitancy to Report Sexual Abuse

POCSO requires anyone who believes sexual abuse has been or will be committed to report the abuse to police.[1] While a full discussion of this mandatory reporting provision goes beyond the Study's scope, two issues are raised based on our experiences: 1) a gap exists between when children initially disclose sexual abuse and when it's in their best interest to report abuse to police; 2) the capacity of the criminal justice system, which is already overburdened with cases, needs to increase to practically implement the provision.

The Gap Between Initial Disclosure and Reporting to Police

The dynamics of sexual abuse, especially when committed by those known to the victim, keep children from disclosing, sometimes for years. In the Project cases, victims delayed reporting abuse because of shame, confusion, or not being believed by a trusted adult. When incest occurs within shared households, long-term consistent abuse is the norm.

When children disclose or there are warning signs of sexual abuse, parents or family members must acknowledge the abuse and act to protect them. In some Project cases, children complained about sexual abuse to family or authority figures like a teacher in school. However, no concrete steps were taken to address the abuse. Such inaction violates POCSO's mandatory reporting provision and might lead to more serious crimes being committed against the victim or other children in the community.

For example, school-aged Mannat* was sexually abused by her drawing teacher, a 57-year-old man. He would ask the boys in the class to put their heads down. Then he would touch Mannat and other girls' hair and heads and slide his hand up and down their backs. The school administration had received past complaints about the teacher for at least 15 years, but took no serious action against him, nor did they inform the police, as mandated by POCSO. When Mannat's mother along with the other girls' parents reported the abuse to the school, again the administration failed to take the complaints seriously. Finally, they suspended the teacher, but still allowed him to visit the school premises. A few months after Mannat and the other girls' abuse was reported to police, the accused was arrested and now faces trial. The children have yet to testify and some families have decided not to pursue the matter.

"It is difficult for a child to overcome such trauma. The impact of sexual abuse could be very long, and coping with such traumas without any psychosocial help is again very difficult. Children generally do not get any space to share their concerns and emotions with anyone which could result in severe depression or behavioural change."

- CSJ Social Worker Shubham

Even before the criminal abuse, signs of danger are sometimes present and should be taken seriously.

1) See POCSO, S. 19(1).

Scene of the Crime

Accused's Home: 29%

Victim and Accused Shared Home: 29%

School: 7%

Park/road: 8%

Victim's Home: 11%

Cab/train: 3%

Isolated Building: 3%

Woods: 4%

Other: 6%

Unreported Abuse Fosters More Abuse

The first time school-aged Riya* was raped by her father he was at home and unemployed. One day Riya's mother went to work and her father stopped Riya from going to school. Riya wanted her brother to stay home from school, so she wouldn't be alone, but her father forcefully sent him away. Riya's father forced her to take a nap with him and then touched her inappropriately. He then unbuttoned her jeans and raped her. She cried and later told her mother what had happened.

Riya's mother confronted her father politely, but he scolded her, so out of fear she kept the abuse secret. Sadly, Riya's father forcefully raped his daughter again. The sexual abuse finally came to light a month later after Riya's father badly beat up her mother. Riya, her mother and brother ran to the police station for safety and told police all that had happened. The sexual abuse case was filed, trial began, and Riya has testified. The remaining witnesses have yet to testify.

Adolescent Meena* who was raped by a friend for two years had shared warning signs. She had been stalked for months by the accused on her way to tuitions and complained to friends and family. While she was being stalked, the accused told Meena he wanted to be her friend, and she eventually accepted his friendship. Later he lied to Meena so they were alone together and then raped her. After a forced overnight trip with the abuser, Meena opened up to her father about the abuse, and her parents made a police complaint.

Families sometimes do not trust the authorities to help if they report the abuse, so they keep quiet. Police, judges, CWC members and those charged with supporting children must become sensitised about sexual abuse and familiar with POCSO, so more victims overcome the stigma towards rape victims prevalent in society and disclose abuse.

"Many people are unaware about the shift in the law and they still function based on their biases, not believing victims or blaming them for what happened," CSJ Counsellor Rupali said. 'Many government officials do not have biases. But some do and that hampers implementation of the law."

However, while every effort must be made to protect child sexual abuse victims, in reality, reporting abuse to police, at least immediately upon disclosure, is often not in the child's best interests.[2] A gap exists between when child victims initially disclose sexual abuse to when emotionally they are ready to report to police. Children often need counselling and someone to stand with them during criminal proceedings. Otherwise, they risk re-victimisation from the justice system and further stigma if the abuse becomes widely known within the community.

Shame and stigma not only keep families from sharing about sexual abuse but also from attending legal proceedings.

Madhur*, a school age girl, was raped and sodomized for more than two years by her neighbour. Eventually Madhur's mother discovered the abuse. Her mother is a widow with minimal support from their extended family, so while Madhur's mother helped her daughter make a complaint to police, she insisted on hiding the incident from their family. Madhur's testimony was scheduled during a time they had planned to visit their native village for a festival. Rather than explain a change of plan to their family, Madhur and her mother failed to appear in court to testify. The Support Person explained their absence to the court and the testimony was rescheduled.

The Capacity of the Criminal Justice System Must Increase

To practically implement POCSO's mandatory reporting provision, the capacity of the criminal justice system must increase. POCSO courts are already overburdened with cases. As discussed in Chapter Two, long delays

2) While POCSO requires people who learn about or suspect child sexual abuse to register a complaint with police, the Act is unclear whether abuse should be reported immediately and does not give a time limit for when abuse should be reported. See POCSO, Section 19(1).

are the norm. These delays emotionally weigh on child victims and their families. If the law requires mandatory reporting in all circumstances, at a minimum the State also has a duty to increase the justice system's capacity to handle more cases and identify effective, swift and sensitive ways to investigate and dispose cases.

Victim and Family Still Waiting for Conclusion of Trial Three Years Later

Naina*, a young child, was raped by the family's landlord. The accused asked Naina to stay home on the pretext of playing with her. He inserted his fingers into her private parts, forced her to perform oral sex and raped her. Fortunately, Naina's father came home early from work and rescued her.

More than two years after the offence, the case reached only the testimony stage. Long dates between adjournments delayed the case. To date of this study, interim compensation had also not yet been awarded for Naina's welfare. Because the accused died of natural causes, Naina's family is now only waiting for final compensation.

Experience at Police Stations

POCSO requires police to record sexual offence complaints in writing and register a First Information Report (FIR).[3] At times though, complainants struggled to have police register an accurate and complete FIR, if one was registered at all.

Many times this is a complainant's first time reporting an offence to police, so they are dependent on police to know and follow POCSO procedures and protections. An insensitive or unaware police official could negatively impact the quality of evidence, re-victimise the child or worse, put the child in danger.

Police Disbelieving Victims

Another obstacle in reporting sexual abuse is that police might not believe the victim or doubt the authenticity of a case. Often police attitudes simply reflect societal attitudes when doubting complaints of sexual abuse. Disbelief is often evident in the police official's

3) See POCSO, Section 19(2) and POCSO Rule 4(2)(a). POCSO, Section 19(2) requires police to record a Daily Diary entry and Rule 4(2) requires police to record and register a First Information Report. The text of Rule 4(2) requires police to register a complaint "where applicable" which arguably gives scope not to file an FIR.

demeanor, if not words. In one Project case, when trying to file an FIR, parents of a teenage girl were told she must have consented to sex.

"If the child is 14, 15 or 16 years old, the police often suspect it was consensual. They tell the family that the child must have had a relationship, must have gone with the accused willingly," CSJ Lawyer Neetu said.

Police Believing Incest Cases are Motivated by Marital Discord

At times, in the Project cases that involve incest, where the child is abused by the father, the police suspect that the mother is using the child to get back at her husband, either for domestic violence or an argument. However, there are welcome exceptions to this mind-set.

"The officer believing the child and the mother and not dismissing it as a case of domestic violence was a big sign of hope for us."

- CSJ Social Worker Neha said.

Failure to Register an FIR

Often complainants are unaware that only a Daily Diary Entry has been made by the police, which is merely a record of the incident that police are not required to act upon. Unless an FIR is filed, the complainant would receive no record of what police registered.[4]

POCSO requires police to record a Daily Diary entry and generally to file an FIR.[5] POCSO Rule 4(2) seems to give some discretion not to file an FIR, stating police shall register an FIR "where applicable." But non-filing of an FIR should be an exception, and never when the complaint on its face is a POCSO offence. Reasonableness or credibility of the complaint is not a condition for police to register an FIR.[6]

In *Lalita Kumari v. State of U.P.* the Supreme Court has taken a hard stance against non-filing of FIRs stating: "[t]he police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must

4) POCSO, Rule 4(2)(a) and Code of Criminal Procedure, Section 154(2) require police to give a copy of the FIR to the complainant, but no requirement exists for Daily Diary entries.

5) See POCSO, Section 19(2) and POCSO, Rule 4(2).

6) Lalita Kumari v. Govt. of U.P, (2014) 2 SCC 1, par. 32.

be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence."[7] In fact, when police fail to register an FIR, they may face criminal prosecution and imprisonment.[8]

Failure to Conduct Effective Investigations

Police work long hours and are often overburdened with work, which impacts their ability to effectively investigate cases. But failure to conduct a comprehensive, impartial and timely investigation ultimately compromises the justice process. If evidence in the charge sheet is either incorrect or incomplete, it will later contradict victim testimony, making the child's story appear to be false or inaccurate.[9]

7) Lalita Kumari v. Govt. of U.P. (2014) 2 SCC 1, par. 111.

8) POCSO, Section 21(1) states failure to report an offence under POCSO, Section 19(2) may be punished with imprisonment up to six months. Indian Penal Code S.166A is even wider in scope and applies to all public servants, including police officials. It states that failure to conduct investigation per law or record an FIR for offences like rape, is punishable with imprisonment between six months and two years and fine.

9) State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 (observing that the victim is not responsible for an investigating officer's negligence in conducting an investigation, thus, a poor investigation should not affect the credibility of the victim's statement).

Timely filing of charge sheets quickens the justice process and protects a trial's integrity since there is less time between the abuse and child testimony, thus less time for the child's memory to fade or be influenced. Police showed urgency in timely filing chargesheets. In all the Project cases police conducted timely investigations and submitted charge sheets within the 90-day time period required before accused have a right to bail.[10]

Problems Recording the Victim's Statement

Taboo and stigma make reporting sexual abuse to police hard. It is even more difficult because police stations are intimidating and officials might be insensitive or unreceptive to complaints. In this environment victims need to share about sexual abuse with sufficient, sometimes even intimate, details. At the same time, police need to accurately record complaints in clear, simple terms the child can understand.[11] Otherwise, the victim's case is weakened from the start.

In the Project cases, many FIRs were recorded well, but some issues arose, such as FIRs that were handwritten or contained vague terms describing the offence, and interpreters or special educators who could assist victims in recording the statement were unavailable.

10) Code of Criminal Procedure, Sections 167(2)(a)(i) and 173(1A).

11) POCSO, Section 19(3)(i).

Investigating Officer Shows Sensitivity

Zoha*, a school age girl, was repeatedly abused by her father for two months. He beat her with belts, inserted his fingers into her private parts and raped her three times. When her mother reported the abuse to police, the Investigating Officer sensitively responded to Zoha and her mother and acted on the complaint. He talked to Zoha and quickly arrested her father. He cooperated with the Support Person working on the case and helped the family deal with threats from the accused.

For example, young adolescent Neetika* was sexually assaulted twice by a trusted family friend who lived in the same building. A female neighbour helped the abuser trap Neetika alone in a room. The abuser threatened to kill Neetika's parents if she told. But after she was abused a second time, Neetika opened up to her parents, and they filed a police complaint.

Rather than type the charge sheet per protocol so it was clear and easy to read, the Investigating Officer submitted a handwritten charge sheet. The judge refused to accept the charge sheet, held a hearing for the IO to explain her actions, and had the IO redo it. It was resubmitted a few weeks later, which unnecessarily delayed the case. The charges have yet to be framed.

Using Specific Language that Establishes the Offence

FIRs and victim statements need to contain specific details that establish the offence. In the Project cases, at times victims and police referred to rape as 'ganda kaam' meaning bad deed, which does not give specific enough information about the act. Often, judges need specific details to help establish ingredients of the offence.

For children with disabilities or who speak a different language, police should arrange for a translator, interpreter or special educator to help record a complete and accurate statement.[12] However, this can only happen if these professionals are accessible and police know about them and their services.

For example, Ravi* is a school-aged boy who had trouble hearing since falling off a roof. One day he came home crying and bleeding. A teen boy in the neighbourhood had sodomized Ravi in a bathroom. When the Investigating Officer recorded the FIR, he failed to arrange a special educator to help Ravi give a complete and accurate statement of the abuse. Because there was no record of Ravi's hearing impairment, the same problem occurred later with the Metropolitan Magistrate, who was to take the child's S.164 statement.

As a result, Ravi was confused when narrating his story, which caused inconsistencies between the police statement and the S.164 statement. Though HAQ/CSJ was able to procure a disability certificate from a special educator for court records, Ravi had no interpreter to help tell his story during testimony. As a result, the case resulted in acquittal.

12) See POCSO, Sections 19(4) and 26(2)-(3).

Interactions Between Victims and Accused at Police Stations

POCSO, Section 24(3) requires police to keep victims separate from the accused at all times when taking statements. HAQ Social Worker Shahbaz points out that there is a need for safe spaces at police stations for victims.

"In a police station, typically there is no private, safe place for children. The accused and his family are often there, which can intimidate the child," HAQ Social Worker Shahbaz said.

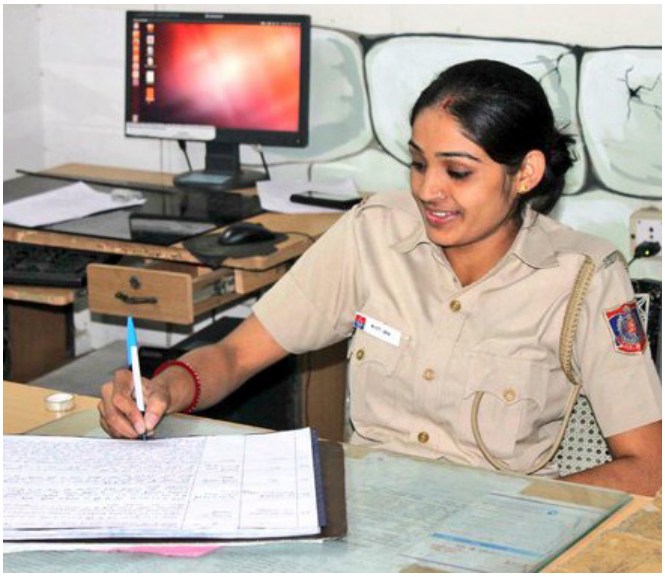
Besides its already intimidating environment, if the accused are present at the police station they might influence or threaten victims and their families.

In some Project cases, police responded to reported abuse thoroughly and quickly. In cases of severe physical trauma, this means immediate safety for victims and a stronger legal case.

The Accused Often Try to Influence Victims

Neetika*, a young adolescent, was sexually assaulted twice by her neighbour, a trusted friend of the family. The accused threatened to kill Neetika's parents if she told anyone about the abuse. But after the second incident she told her family anyway, and they reported the abuse to police. First, the accused apologized and begged for forgiveness. Then when Neetika still pursued the case, the accused offered money to her family to compromise and drop the case. But Neetika's family rejected his offer and was determined to see the case through to judgment.

Neetika's story is not unusual. In the Project cases, most of the accused contacted the child or the family at nearly every stage of proceedings. If the accused was in custody, he often contacted the victim indirectly, for example, by sharing the victim's contact number or passing a message through another inmate soon to be released from jail.



For example, teen Athar* woke up in her own home with her hands and feet bound with rope and her uncle on top of her. Her cousins were forced to sit on the other cot and watch as the uncle put his fingers inside Athar. When he went to the bathroom, Athar's sister untied her and they escaped. Later that evening, they told their aunt. Athar's aunt filed a report with the police that evening, and police arrested the accused. The Investigating Officer filed the charge sheet with the court in less than 20 days, much quicker than the deadline of 90 days for filing the FIR mandated by law. The trial has yet to begin.

Threats, Coercion and Compromise

A key factor impacting a case's integrity is pressure or threats that child victims and their families face to turn hostile, i.e. retract their stories about sexual abuse. Common forms of pressure include physical threats and harassment. Pressure to give up a case occurs at all stages, regardless if the accused is denied bail. If the accused is denied bail, the pressure comes from family or friends of the accused.

"If the accused is a neighbour, even though you put the accused in jail, his family is going to be around," CSJ Lawyer Smriti said.

Additionally, communities, landlords or school principals might turn against, isolate or shun victims and their families. The offenders' relatives might file false

police complaints against the victim's family members to intimidate and harass them. Another common trend is offenders capturing images or video with their mobile phones during the abuse and threatening to circulate the images to emotionally manipulate victims to turn hostile.

While many police carry out their duties responsibly and with sensitivity, in a handful of Project cases, victims or their families stated that police tried to negotiate a compromise, an extrajudicial financial settlement, between the victim's family and the accused so the victim would become uncooperative in a case.

"We have clients where the police and the accused want them to compromise the case. Before filing the charge sheet, the police officer might tell the family, 'Your case is still in the police station and therefore things are in our hands. Once it goes to court, we can't do anything. You still have time to take back the case,'" CSJ Social Worker Aisha said.

Child victims and their families often face extreme pressure to compromise a case. When victims and their families are poor, the choice is difficult: quickly and quietly settle the matter and receive money to help with real needs, or cooperate fully during the investigation and at trial to secure justice. As discussed, the latter option long delays and risks re-victimisation with no guarantee of the case ending in conviction.

In the Project cases, some victims and their families reported that they were approached to compromise a case. At times, they succumbed to the pressure and the victims turned hostile. In other cases, they stood firm and pursued justice. Often, the support of a lawyer helped them remain resolute in a case.

This happened in Shabeena's* case. Shabeena, a young adolescent, was leaving home to buy something when her neighbour called out to her. When she reached him, he pulled her inside his room, where he had covered the windows and loud music was playing, and raped her. Shabeena told her family that evening, and her parents filed a complaint. Sadly, when they visited the police station, the constable and other police conveyed an offer from the accused to settle the case outside of court and advised them to accept it. Shabeena's father immediately refused, at any price. Shabeena has been attending counselling with her family's support and is set to testify at the next hearing.

Sometimes the temptation to compromise is amplified by anxiety that the court process is difficult.

Police Arrest Accused Within 24 Hours

Tanu*, a preschool aged girl, was violently raped by a stranger and left near her home. Her parents immediately took her to the hospital and the police was notified. The proactive police official registered the FIR and started the investigation immediately. Despite Tanu's young age and difficulty in identifying her assaulter, the accused was arrested within 24 hours. Police informed HAQ/CSJ about the case, so we could provide immediate support. The MLC was done quickly, and the charge sheet was filed within 90 days.

School age Tanmay* comes from a poor family and was sexually abused by his neighbour. After it was reported, the police suggested they take Rs. 1,50,000 to reach a compromise in the case, because it would be better than going through the court process. Rather than take the money, the family continued fighting the case, which has led to violence from the family of the accused. Even so, Tanmay's mother will stop at nothing to pursue justice for her son.

Incest Cases and the Course to Justice

Incest cases are a disturbing subset of child sexual abuse cases that contain dynamics not present in other cases.[13] When incest is exposed, it tears apart the family. The offenders are regularly denied bail till the end of trial, and the family loses the emotional and financial support they may have provided. Child victims are often removed from their homes and have limited access to their families, at least temporarily.

In the Project cases, 22 of 72 cases were incest cases, or 31%, where the father, step-father, cousin, brother, brother-in-law, or uncle committed the abuse. This abuse occurred in the home of the victim or another family member, which complicates a child's idea of safety.

These cases highlight two important questions for discussion: 1) what factors lead to incest cases failing in court (i.e. resulting in acquittal)? and 2) even if the case ends in conviction, is this the best outcome for the child?

13) POCSO, Sections 5(n) and 9(n) implies a broad definition of incest based on whether the abuser is "a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child…[.]"

Unsupportive Family Pressures Child to Retract Her Story

School-aged Sabra* lived in her native village in another state with her father, mother and six siblings. Her father raped her and her sisters. When her mother became aware of this, she relocated to Delhi along with her three elder daughters severing all ties with her husband.

When Sabra's mother remarried in Delhi, within a few months, her stepfather started making inappropriate gestures to Sabra and showed her pornography. He offered her money and asked her not to tell anyone about the abuse. But Sabra immediately told her mother when she came home that evening. Her mother was extremely concerned, angry and had a private argument with her husband. Sadly, after the argument with her husband, Sabra's mother took Sabra inside the house, put on the loudspeaker and beat her. She said that Sabra was lying and did not believe her.

The stepfather continued to sexually abused Sabra with digital penetration. Sabra dropped out of school and started working as domestic help. During this time, she confided with her elder sister about the abuse. Her sister started crying; her stepfather had abused her too.

Later, Sabra went home to celebrate her youngest sister's birthday. Her mother asked her youngest sister to massage her stepfather's feet, but she was very reluctant. Later, she too told Sabra that the stepfather had touched her inappropriately and it had caused her stomach to hurt.

The abuse of her sisters was too much. Sabra finally decided to go to the police. While at work, she snuck away, went to the police station and reported the abuse. Her mother remained adamant that Sabra was lying. To date, the mother and other family members ask Sabra to retract her story. Her mother is emotionally blackmailing her, telling Sabra she will kill herself if anything happens to the step-father. The case is ongoing and Sabra has yet to testify.

Factors That Lead to Incest Cases Failing in Court

In the Project cases, two key factors played an important role in whether an incest case would fail: 1) whether a family member, especially the mother, supports the child during criminal proceedings; and 2) if not, whether the child is protected from the family's pressure to turn hostile.

Whether Family, Especially the Mother, Supports the Child

Sadly, families often blame child victims for breaking up and bringing shame to the family or for the offending family member being imprisoned. Sometimes the family rejects the child outright. However, if someone in the family supports the victim, especially the mother, there is a greater likelihood the child will remain strong during criminal proceedings.

"The incest cases, when it comes to the legal side of it, the case will go on if the family is supportive and the mother is financially strong, or has financial support from her family. In cases where the mother is unsupportive, sometimes it is not because she doesn't believe, but because she is financially dependent, the case will not proceed. But if the mother is supportive and strong, the child feels that she can go on," CSJ Social Worker Neha said.

In the Project's 22 incest cases, only 6 had supportive family members, 5 of which were mothers. The remaining 16 children had no supportive family.

Protecting the Child From the Family's Pressure to Turn Hostile

Most often, Child Welfare Committees (CWCs) place child incest victims in protective shelters till they understand the case better.[14] The question becomes: when, if ever, should these children be restored to their families. The CWC must strike a careful balance between the child's right and desire to return home, the child's short-term and long-term safety and the course of justice.

"Children have a right to be with their family, so they are often restored to their homes after abuse. When this happens without any preventative protective plan, it is dangerous for children."

- CSJ Social Worker Ravinder

"The goal of 'providing a safe environment' fails when a child is sent back to the same family where incest occurred and there is violence at home and the child has no support system," HAQ Social Worker Shahbaz said. "In many cases, the motive behind wanting custody of

14) CWCs may remove children in need of care and protection from their home and place them in protective shelter. See Juvenile Justice (Care and Protection of Children) Act, 2015, Section 37(1). Factors to be used when making this decision include, a) the child's opinion; b) the parent's capacity to provide care, protection and counselling; c) the child's need to remain in the family's care; d) the child's age, maturity, gender and social and economic background; e) whether the child has a disability or chronic illness; and f) history of family violence. See POCSO, Rule 4(5).

Victim and Family Pressured to Compromise

Adolescent Kanika* was on her way to use the washroom in the early morning when a neighbourhood boy put a knife to her wrist, led her away, and sexually abused her. The next morning, her father found her unconscious near a shop and immediately called the police. After the FIR was lodged, Kanika and her family were pressured to become uncooperative in the case. Kanika was taken to her village, where she was pressurized by the accused's family. Her father also reported that someone from the accused's family had physically assaulted him. Kanika's parents succumbed to the pressure and compromised the case. They were tired of running around between courts, and felt justice was done because the accused was shamed in the village. They felt there was no point in continuing since they had settled the dispute within the family. HAQ/CSJ denied the family's request to mediate the settlement and the parents formally withdrew from services.

the child was not to provide a supportive environment but to influence her to backtrack her statement to save the family member."

As regards a case's outcome, if CWCs keep child victims in protective shelter till they testify, there is a better chance they will be protected from unsupportive family who might pressure them to change their story. However, this could mean keeping victims separate from their families for months. And even when children complete their testimony, once restored to their families, the defence counsel can recall and re-examine them, giving their families more time to pressure them to change their story.

"When a child gets restored to her home, she is within the influence zone of her family, which is also the perpetrator's family. Then she gets emotionally and psychologically pressured to lie in court and not pursue the case," CSJ Lawyer Priyangee said. "At the 11th hour, after putting in so much time on preparation, to see the case collapse is devastating."

In the Project's 22 incest cases, 13 children are in protective shelter or staying away from family. Two children were restored to their family only after completing testimony. In the remaining seven cases, CWC restored child victims to their families if they stated they wanted to go home and if the mothers stated they would stay away from the accused. It can be good for children to be close to family, but the family needs to maintain support for the child and not influence their testimony.

For example, adolescent Fauzia* was repeatedly raped by her stepfather over a period of time. It finally came to light when she found out she was pregnant. With help from her mother, Fauzia reported the history of rape to police and was placed in a shelter home so she could medically recuperate. After about two months, Fauzia was permanently restored to her mother while the accused remained in judicial custody. Her mother remains supportive and Fauzia is feeling emotionally healthy. The case has yet to go to trial, but Fauzia told CSJ, "Just because of you people I get a new life, now I can live in my own house without the fear that my father is yet to come."

Even if an Incest Case Ends in Conviction, is this the Best Outcome for the Child?

Even if an incest case ends in conviction, it is unclear whether "justice is done" and this is the best outcome for the child. In Project cases, when child victims are asked the desired outcome, most often they want the abuse to be acknowledged and to stop, an apology and to be separated from the offending family member.

Victim Accepts Apology from Accused and Wants to Stop Criminal Case

Ujala*, an adolescent orphan, lived with her paternal uncle's family. Her two male cousins sexually abused her for three years. When she complained to her aunt and sister-in-law, they took no action. Finally, the case was lodged with police with the help of a boy with whom she had formed a relationship. Ujala decided to visit Tihar jail where her cousins who had sexually abused her were in custody, denied bail. Both of them apologised. Ujala told the Support Person that the apology was enough and she doesn't want to continue with the criminal case. Her testimony is scheduled later in 2016.

Generally they do not want their father, uncle or brother to go to prison.

If offenders are convicted, child victims might blame themselves, especially since their testimony is key to the judges' ruling. Likely, they will never have relationships with their family again. No matter how broken the family dynamic, this still could negatively impact the child's long-term development.

For example, adolescent Husan, who was abused by her brother for about 8 years, has faced an extreme amount of stress from her family. The family had fallen into debt as they took a loan to pay the defence lawyer. They were forced to sell their home and are now renting. Husan blamed herself for the hardships with the family flowing form the abuse, including the ongoing legal proceedings. She has had suicidal thoughts and the family continues to pressure her about the case.

These dynamics suggest that different approaches should be considered when handling incest cases. First, incest victims and supportive family members need access to services, like counselling and financial compensation, to address hardships arising from the abuse. Furthermore, children should have a greater voice about the "justice" they want to secure, especially since the case's burden overwhelmingly falls on them.

When children have no desire to pursue a case against offending family members, a less divisive alternative to the criminal justice system should be available, one possibility being restorative justice processes.

"Families understand that they cannot pressurize the child using physical deterrents, but what they do is blackmail the child emotionally, pleading for forgiveness, crying... so these are the things which makes the child very weak from inside, so they decide not to fight against the accused."

- CSJ Social Worker Ravinder

Recommendations

As Children Prepare to Testify

Standardize a system where child victims visit the courtroom before they testify to meet the Judge and other actors during the visit, including Public Prosecutors, DCW advocates, DSLSA Support Persons and court clerks.

• Ensure the accused and child victim are separated at all times at victim testimony, including while waiting to testify and going to/from the court

• Ensure all courtrooms in Delhi have separate waiting areas and entrances for the accused and child victims

• Child victims should be kept separate from family members of the accused who might intimidate them

• In incest cases, child victims should be kept separate from family members who are unsupportive or hostile

During Child Testimony

Set up vulnerable witness courtrooms, such as those in Karkardooma, Saket and Tis Hazare courts in the remaining Delhi courts. Until all courts have vulnerable witness courtrooms, Judges should:

• Conduct child testimony hearings *in camera*, per POCSO, Section 37

• Avoid having other witnesses testifying in other parts of the courtroom when the child is testifying

• Keep the accused out of sight of child victims while testifying by screens; curtains provide inadequate protection for child victims

Judges should proactively ensure child victims' rights and protections in POCSO are implemented during testimony to elicit truthful statements and protect children from further trauma, including:

• Defence counsel and public prosecutors should give questions to the judges who then relay the question to child victims in a simple straightforward way

• Give child victims frequent breaks

• Make sure defence counsel questions are relevant; shield victims from aggressive questioning or questions meant to harass, confuse, assassinate character or otherwise demean the child

Judges should proactively cancel bail when there is evidence of threats, intimidation or pressure by the accused that might influence the cooperation of child victims or their families during investigation or trial.

Limit Times Children Share their Story and Visit Court

Limit the number of times children share about sexual abuse to different stakeholders. Consider provisions where child testimony is recorded using audio/video means, including Independent Commissions per Code of Criminal Procedure, Section 284 that examine child victims outside the courtroom.

Ensure child victims complete their testimony on the same day of the first hearing and there is minimal waiting time when child victims are at court before they are called to testify.

Limit recalling child victims for re-examination per Code of Criminal Procedure, Section 311 unless it's an exceptional case when injustice would be done to the accused.

Reduce Delays of Criminal Proceedings

Judges should administer proceedings where as many witnesses in a case can be examined day-to-day, per Code of Criminal Procedure, Section 309.

Judges should establish a culture of greater accountability in the courtroom by:

• Limiting hearing adjournments to unavoidable circumstances

• Imposing sanctions on advocates who make unwarranted requests

• Canceling bail if the accused is out on bail and fails to appear for a hearing without good reason

When hearings are adjourned, delays between hearings should be minimized; ideally, next hearing dates should take place the next working day, especially when child victims or other key witnesses are scheduled to testify.

Better Access to Trained, Sensitised and Consistent Support Persons

Establish a dependable mechanism to appoint Support Persons to victims when sexual abuse is reported.

• CWC should be the primary institution to appoint Support Persons to child victims

• The same Support Persons should assist victims throughout investigation and trial, especially when the child testifies

• During victim testimony, the child should have the choice of the person present when they testify to assist them, including the CWC-appointed Support Person

• Support Persons should be introduced and well-acquainted with the child and the case well before the day of the victim testimony hearing

Strengthen the Support Person network to increase the number of trained and sensitised people to stand with and advocate for child victims during criminal proceedings and connect them to support services.

Support Persons should have a greater voice during criminal proceedings. They should be consulted on decisions in the child's best interests about:

• Psychosocial needs – give input on decisions on victim compensation, counseling, medical needs and educational needs

• Custody issues – conduct home inquiries and advise on custody issues

• Child testimony – advise on the child's needs when testifying, such as needs for experts, translators when testifying or when a child needs a break

• Bail hearings – give input on whether there are threats, intimidation or pressure on child victims and their families

Investigating Officers should keep child victims updated on their case either directly or through the CWC-appointed Support Person, especially when bail hearings are scheduled.

The Court should appoint guardians *ad litem* where child victims do not have the support of the family, for example when they are in protective shelters.

Courts should legally recognize vakalatnamas between advocates and child victims' legal guardians, including protective shelters, so advocates have *locus standi* to appear for child victims.

Improved and Coordinated Access to Legal Representation

Develop, implement and monitor mechanisms to give child victims access to legal counsel, ideally starting at the police station.

If advocates are unavailable at the police station, social workers should be available who are trained on the law to ensure children's interests are protected.

Legal Counsel Should Remain Consistent Throughout Criminal Proceedings

Legal counsel should have access to charge sheets and all legal documents, even if proceedings are occurring at the Juvenile Justice Board, so they can effectively represent victims and assist public prosecutors in court.

DCW lawyers, DSLSA lawyers, private lawyers and NGO lawyers should coordinate and work with one another to ensure all child victims have access to effective legal representation during investigation and trial.

Better Access to Support Services to Address Psychosocial Needs

Establish a board of qualified psychologists or counselors who provide trauma counseling and other mental health care services to child victims and their families when they report sexual abuse.

District Child Protection Units should proactively identify and maintain a list of POCSO experts, such as translators, doctors and special educators, who can be called upon to assist children during criminal proceedings.

In incest cases, supportive family members should have immediate access to services, like counselling and financial compensation, to address hardships arising from the abuse.

Continue Building Capacity of Police Officials to Effectively Handle Child Sexual Abuse Cases

Have more specific trainings on POCSO law and procedure, including how to interview and record child statements and eliminating bias that leads to blaming or disbelieving victims.

Establish a programme that publicly recognizes police officials who sensitively and effectively investigate child sexual abuse cases.

Create/authorise an institution to monitor and hold support systems accountable for providing timely and quality services to children in their families, including legal services, support person services and counseling.

Strengthen and Expand POCSO Infrastructure

Special Courts should handle only POCSO offences; cases where there are no POCSO offences charged should be shifted to other courts.

Courtrooms and police stations should have equipment and resources to record child victim statements using audio/visual means.

Enhance the criminal justice system's capacity to handle the increasing number of child sexual abuse cases being reported, especially in light of POCSO's mandatory reporting provision, including increasing the number of POCSO Special Courts, the number of POCSO judges, starting multiple courtroom shifts or exploring alternative dispute resolution mechanisms like Restorative Justice, where appropriate.

Conduct research on feasibility and impact of using alternative dispute resolution processes, including restorative justice, in certain child sexual abuse cases, which includes proposed legislation to make these processes possible.

Modify Mandatory Reporting Provision to Better Respond to Practical Realities of Reporting Sexual Abuse Cases to Police

Review mandatory reporting provision so there is greater clarity and flexibility in how and when to report sexual abuse cases.

Establish a waiting period between when the abuse is initially disclosed and when it is reported to police. Consider an alternative body to report the abuse, like the CWC.

• During this waiting period, the child should receive direct services like counseling, protective shelter and interim financial compensation, as necessary

• Child victims and their families should understand the consequences of reporting their case to police, the criminal justice process, and the impact it might have if the case gets known in the community

• If initial disclosure occurs soon after the sexual abuse and there is physical injury or other medical evidence, report the case to police immediately for forensics and medico-legal examination

There should be greater discretion on how quickly to report cases to police based on the severity of the abuse, how recently the abuse occurred, and whether it is in the best interests of the child to report the abuse

For example, there could be distinctions between consensual sex among minors where power dynamics are absent, sexual abuse where no physical evidence exists and sexual abuse that recently occurred.

Conclusion

On 14 November 2012 the Protection of Children from Sexual Offences Act, 2012 came into effect. While the law is good, more important is its implementation on the ground. This Study illustrates how POCSO is being implemented through the experiences of advocates, social workers and counselors handling child sexual abuse cases in Delhi's justice system. The stories shared within the study tell about the realities of sexual abuse, the struggle for justice and the impact POCSO has had on individual lives.

The Study illustrates the overwhelming positive impact the law could have if fully implemented. Sprinkled throughout are stories that show how Delhi is moving towards this reality: child friendly courtrooms, proactive and sensitive judges, police, and support persons to help children testify truthfully and protect them from re-victimization.

Already children face what seems an insurmountable obstacle of overcoming shame and social stigma to report sexual abuse to the police. That's why it is crucial to build robust support networks for children when they report sexual abuse and for police to sensitively handle the complaints.

Probably the greatest factor impacting a child victim's experience is whether they have a support person who advocates for them during criminal proceedings. When children have access to trained, sensitive and consistent Support Persons, they are much more likely to secure child-friendly justice, obtain support services needed for healing and be shielded from re-victimization.

Finally, something must be done to reduce the pending POCSO caseload that burdens police and judges. Police are overworked and long trial delays are the norm. If POCSO's mandatory reporting provision is implemented in spirit, these problems will only get worse. Serious steps must be taken to increase the justice system's capacity to handle more cases, and to identify effective, swift and sensitive ways to investigate and dispose cases.

About HAQ: Centre for Child Rights

Established in 1999, HAQ is dedicated to the recognition, promotion and protection of all rights for all children. HAQ provide justice to children through advocacy-based research, direct legal support, counselling, and when needed, long-term rehabilitation support, so India's justice systems are responsive, sensitive and accountable.

About Counsel to Secure Justice

Counsel to Secure Justice (CSJ) is a non-profit organization in New Delhi, India that gives free legal and pyschosocial support to survivors of sexual violence during criminal proceedings and advocates for an effective and compassionate criminal justice system. CSJ advocates for clients throughout criminal proceedings, from when they report abuse to police till judgment.

About Human Dignity Foundation

Human Dignity Foundation (HDF) is a private, Swiss foundation established in 2004. Guided by its vision, HDF gives grants to not-for-profit organisations in Africa and Asia that have a shared approach to working with children to expand protection and life opportunities.

HAQ Centre for Child Rights

CSJ Counsel to Secure Justice

HDF HUMAN DIGNITY FOUNDATION