

Children's access to justice and restorative care

Introduction

Here are a set of fact sheets that draw upon the interventions made by HAQ: Centre for Child Rights to support victims of child sexual abuse in navigating the justice system.

HAQ: Centre for Child Rights has been supporting individual cases of child abuse and exploitation since the year 2002. With time, the number of requests for support has only increased.

Over the last three years, HAQ has reached out to 379 child victims of sexual abuse with legal aid and psychosocial support. Psychosocial support provided through the project comprises “restorative care” that is integral to “access to justice”.

Data presented in the fact sheets are based on the evidence derived as part of the action research work undertaken between January 2015 – December 2017.

SDG GOAL 16.

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

- 16.1** significantly reduce all forms of violence and related death rates everywhere
- 16.2** end abuse, exploitation, trafficking and all forms of violence and torture against children
- 16.9** by 2030 provide legal identity for all including free birth registrations

The Context

Violence against children, particularly sexual violence has captured the world stage for quite some time now. India too has witnessed a surge in sexual crimes against children. While treading the path of strengthening its legal and policy framework to address child rights violations, including sexual violence, children’s access to justice, care and protection continues to pose challenges. Measures taken by far range from enactment of the Protection of Children from Sexual Offences (POCSO) Act in 2012 and the amendment to the criminal law in 2013 expanding the definition of ‘rape’, to improving law enforcement, courts and justice delivery process, including training and capacity building of judges, police and other professionals required to implement such laws.

While the POCSO Act and the subsequent amendment to criminal law provide for child-sensitive and victim-sensitive legislation and procedures, much remains to be achieved in terms of implementation. At the same time, several issues have come up while implementing these laws. Some of these stand sorted through practice followed by the trial courts, some stand clarified through judicial interpretation from the higher echelons of judiciary and some others call for an amendment in the law.

What stands out is a need for a clear commitment of infrastructure and resources to address child sexual abuse through a multi-disciplinary approach. Even for the law to become effective and impactful instead of being a mere cosmetic change, it must be backed with adequate support services for children. These are critical components for improving children’s access to justice.

The Profile of the Child Victims

OF THE 379 CHILDREN SUPPORTED BY HAQ BETWEEN JANUARY 2015 AND 31 DECEMBER 2017, 177 HAVE RECEIVED BOTH LEGAL AND PSYCHOSOCIAL SUPPORT. ANOTHER 202 HAVE BEEN PROVIDED ONLY PSYCHOSOCIAL SUPPORT AS THE FAMILY DID NOT NEED LEGAL ASSISTANCE OR THE CHILD WAS REFERRED TO HAQ AT A STAGE WHEN THE CRITICAL HEARINGS IN THE TRIAL COURT WERE OVER.

Of the 379 children supported by HAQ between January 2015 and 31 December 2017, 177 have received both legal and psychosocial support. Another 202 have been provided only psychosocial support as the family did not need legal assistance or the child was referred to HAQ at a stage when the critical hearings in the trial court were over.

The study is based on a sample of 126 cases where both legal and psychosocial support was provided and complete information was available with HAQ for every stage of the legal proceedings. End to end information is not available for all cases due to various reasons:

- The stages at which cases get referred to HAQ vary and hence information pertaining to legal proceedings in the past is difficult to ascertain, particularly the number of hearings and adjournments at each stage of a criminal proceeding.
- Experience with some cases of incest has been that after a point the child's parents do not want any legal support, hence the lawyer has no access to the court proceedings.
- In the initial years, staff in one Special Court would not allow a child's lawyer to have access to the documents pertaining to the case and all daily orders were not available on the court's website.
- When this got corrected, a situation arose where a judge would not accept the vakalatnama signed on behalf of the child by the in-charge of the institution where the child was living. Hence, many hearings were missed by the lawyers in such cases.
- In cases where the accused is a minor, access to

documents from the JJB is almost impossible. And this, despite the Juvenile Justice (Care and Protection of Children) Act of 2015 clarifying that the victim has every right to receive documents pertaining to her case and the POCSO Act too requires every child to be provided a copy of the charge sheet to the extent that it does not cause prejudice to the accused and violate principles of fair hearing.

- In a few cases, the victim was subsequently declared an adult and the case fell outside the purview of HAQ.

Profile of 126 Children and their families

Sexual abuse of children remains shrouded in shame, guilt, family honour and hence is seldom reported. Besides, because of the history of "justice delayed being justice denied" families have very little faith in the legal system.

For children, it is even more difficult to speak out and share as very few have the 'vocabulary' to describe what has happened to them. Besides shame, fear remains a major factor. More often than not the abuser is a known person, whom the child trusts and even loves.

The normalisation of abuse in society has become so endemic that it is only when the abuse is perceived to be gruesome and serious, involving penetration or bodily touch, that both children and families pay attention and speak up or report. This is unfortunately true of not just families, but also caregivers, police and other authorities.

Gender and Age



Girls
119

+



Boys
7

=

Total
126

While over the years, sexual abuse of girls is recognised and spoken about, boys seldom receive even that limited attention as questions relating to the child's masculinity and related apprehensions become a major consideration. Hence, most other studies on the subject show, most cases that were referred to HAQ relate to girls.

Almost 30% of the children (37 out of 126) were aged 12 to 15 years at the time of the offence, followed by 19% each (24 out of 126) in the category of 6 to 10 years and 10 to 12 years.

That little babies, even if it is in 5 cases of the 126, shows how young the victims can get. The youngest child was a girl aged 2 years and 6 months at the time of the incident. Babies who can barely stand or walk continue to be sexually mauled. Three of the 5 cases are registered under Section 6 of the POCSO Act (aggravated penetrative sexual assault or APSA) and 2 under Section 4 of the POCSO Act (penetrative sexual assault or PSA), although the latter too should have been registered under Section 6 given the children's age. One little five - year old girl was even gang raped!

Children with disabilities face double jeopardy - they are even less able to protect themselves and often even unable to explain what happened to them. Four girls in the sample under study have some form of disability. Two of them were aged 6 to 10 years (one a victim of aggravated penetrative sexual assault and other of aggravated sexual assault) and 2 aged 10 to 12 years (one a victim of aggravated penetrative sexual assault and the other of penetrative sexual assault).

The maximum and the minimum age cohort for girls and boys varies. While maximum number of boys were aged 3 to

10 years (4 out of 7 or 57%), in the case of girls, maximum were in the 12 to 15 years' age group (36 out of 119, or 30%), followed by the 10 to 12 years' age group comprising 19% of all girl child victims (23 out of 119).

TABLE 1: GENDER AND AGE DISTRIBUTION OF CHILDREN

| Age Group (in years) | Male | Female | Total | Percentage of Children in different Age Groups |
|--|------|--------|-------|--|
| 0 to 3 | 0 | 5 | 5 | 4% |
| 3 to 6 | 2 | 16 | 18 | 14% |
| 6 to 10 | 2 | 22 | 24 | 19% |
| 10 to 12 | 1 | 23 | 24 | 19% |
| 12 to 15 | 1 | 36 | 37 | 29% |
| 15 to 18 | 1 | 17 | 18 | 14% |
| Total No. of Children | 7 | 119 | 126 | 100% |
| Percentage of Male and Female Children | 6% | 94% | 100% | |

How did the Children and Their Families Reach HAQ?

Mother of a 14 year girl was sitting in the police station to file a complaint about sexual violence against her daughter when she met a neighbour, who was being supported through the project for her daughter's case. The neighbour recommended her to us.

To begin with, in most of these cases, HAQ/CSJ were formally appointed by the Child Welfare Committee (CWC) to provide the services of a support person as per the POCSO

Rules. A few cases were referred by individuals, a few by NGOs (including shelter homes), court staff, police etc. In 3 cases the project team approached the family directly on learning about the child's situation.

TABLE 2: SOURCE OF REFERRAL AND CASE INTAKE

| Source | Total No. of Children |
|-------------------|-----------------------|
| CWC | 87 |
| NGOs/Shelter Home | 22 |
| Court/Court Staff | 5 |
| Family | 4 |
| Police | 3 |
| Suo-moto | 3 |
| Individuals | 2 |
| Total | 126 |

Distribution of the Cases

TABLE 3: CASES REFERRED BY CHILD WELFARE COMMITTEES

| CWC | Total No. of Children |
|----------------------------|-----------------------|
| CWC – VIII, Kalkaji | 35 |
| CWC – II, Lajpat Nagar | 18 |
| CWC – IV, Mayur Vihar | 17 |
| CWC – III, Sewa Kutir | 13 |
| CWC – V, Dilshad Garden | 3 |
| CWC – VI, Avantika, Rohini | 1 |
| Total | 87 |

Although Delhi is a city state, there are now 10 CWCs, the tenth being a very recent addition. 6 CWC have referred cases to HAQ. The maximum number of children have been referred by CWC - VIII located at Kalkaji, followed by CWC - II (Lajpat Nagar), CWC - IV (Mayur Vihar) and CWC - III (Sewa Kutir). To begin with, because of the location of HAQ (and its then partner organisation CSJ) most referrals were from the CWCs in and around South Delhi. It was only in 2017, that HAQ started receiving cases from CWC – III, which is located in North Delhi.

Experience has shown that referrals from CWCs depends a lot on inter-personal relationships and trust between individual Chairpersons and Members of the CWC with the organisations as also their approach and method of functioning. While some CWCs have been proactive in identifying organisations that provide the services of a support person, some have been more reluctant to do so and have chosen to await a list of support persons to be provided by the District Child Protection Units as required under the POCSO Rules.

Police

Although rare, over the years, referrals have been made by individual police persons. By and large the interaction with the police has depended on the referrals from the CWC and the police district they fall under (which is not always the same as an administrative district).

TABLE 4: CASE DISTRIBUTION AS PER POLICE DISTRICTS AND POLICE STATIONS

| Police District | Police Station | No. of Cases |
|-----------------|--------------------|--------------|
| South | Fatehpur Beri | 5 |
| | Hauz Khas | 2 |
| | Kotla Mubarkpur | 2 |
| | Lodhi Colony | 0 |
| | Malviya Nagar | 3 |
| | Mehrauli | 6 |
| | Neb Sarai | 7 |
| | R.K. Puram | 1 |
| | Safdarjung Enclave | 2 |
| | Saket | 1 |

| | | |
|-------------------|-------------------------|----|
| | Sarojini Nagar | 4 |
| | South Campus | 3 |
| | Vasant Kunj North | 1 |
| | Vasant Kunj South | 0 |
| | Vasant Vihar | 1 |
| | South Total | 38 |
| South East | Amar Colony | 0 |
| | Ambedkar Nagar | 4 |
| | Badarpur | 1 |
| | Govindpuri | 6 |
| | Greater Kailash | 0 |
| | Hazrat Nizamuddin | 3 |
| | Jaitpur | 1 |
| | Jamia Nagar | 3 |
| | Kalkaji | 0 |
| | Lajpat Nagar | 1 |
| | New Friends Colony | 0 |
| | Okhla Industrial Estate | 3 |
| | Pul Prahladpur | 3 |
| | Sangam Vihar | 3 |
| | Sarita Vihar | 6 |
| | Sunlight Colony | 1 |
| South East Total | 35 | |
| North West | Adarsh Nagar | 2 |
| | Ashok Vihar | 1 |
| | Bhalswa Dairy | 0 |
| | Bharat Nagar | 2 |
| | Jahangir Puri | 1 |
| | Keshav Puram | 3 |
| | Mahendra Park | 2 |
| | Maurya Enclave | 0 |
| | Model Town | 1 |
| | Mukherji Nagar | 0 |
| | Rani Bagh | 1 |
| | Shalimar Bagh | 0 |
| | Subhash Place | 1 |
| | Swarup Nagar | 0 |
| | North West Total | 14 |
| Central | Anand Parbat | 1 |
| | Chandani Mahal | 1 |
| | I.P. Estate | 1 |
| | Jama Masjid | 0 |
| | Kamla Market | 0 |
| | Nabi Karim | 2 |
| | Paharganj | 1 |
| | Parsad Nagar | 1 |
| | Patel Nagar | 3 |
| | Central Total | 10 |

| | | |
|--------------------|------------------|---|
| North | Burari | 0 |
| | Gulabi Bagh | 0 |
| | Kotwali | 0 |
| | Roop Nagar | 1 |
| | Sadar Bazar | 0 |
| | Sarai Rohilla | 0 |
| | Subzi Mandi | 0 |
| | Timarpur | 0 |
| | North Total | 1 |
| East | Ghazipur | 0 |
| | Kalyanpuri | 1 |
| | Madhu Vihar | 0 |
| | Mandawali | 2 |
| | Mayur Vihar | 3 |
| | Pandav Nagar | 1 |
| | East Total | 7 |
| Outer Delhi | Aman Vihar | 1 |
| | Mangolpuri | 1 |
| | Nangloi | 1 |
| | Nihal Vihar | 0 |
| | Ranhola | 0 |
| | Sultanpuri | 0 |
| | Outer Total | 3 |
| Rohini | Bawana | 0 |
| | Narela | 1 |
| | Prashant Vihar | 3 |
| | Vijay Vihar | 0 |
| | Rohini Total | 4 |
| New Delhi | Chankya Puri | 6 |
| | South Avenue | 1 |
| | New Delhi Total | 7 |
| North East | Gokalpuri | 0 |
| | Karawal Nagar | 1 |
| | Khajuri Khas | 1 |
| | Nand Nagari | 0 |
| | New Usmanpur | 0 |
| | Seelampuri | 1 |
| | Zafabad | 0 |
| | North East Total | 3 |
| Shahdara | Anand Vihar | 1 |
| | Farash Bazar | |
| | Seemapuri | |
| | Shahadra | |
| | Vivek Vihar | 1 |
| | Shahdara Total | 2 |

| | | |
|-------------------|---------------------------|-----|
| South West | Dwarka North | |
| | Kapshera | |
| | Uttam Nagar | 1 |
| | South West Total | 1 |
| West | Kirti Nagar | |
| | West Total | 0 |
| Railways | Old Delhi Railway Station | 1 |
| | Railways Total | 1 |
| Total | | 126 |

Courts

Six District Court Complexes house 16 designated Special Courts to deal with cases under the POCSO Act and are popularly called the POCSO Courts. Given the ever-increasing number of cases and addition of new police districts, in November 2017, the number of Special Courts was also increased from 11 that were initially established. For over four years of enactment of the POCSO Act, these Courts were holding multiple charges, but today they deal with cases under the POCSO Act exclusively. In addition there are 3 JJBs too that deal with cases under the said Act. HAQ has been providing legal support to child victims in 5 courts and in 2 JJBs.

TABLE 5: CASE DISTRIBUTION AS PER COURTS

| District Court Complex | Special Court | No. of Cases |
|-------------------------|-------------------------------|--------------|
| Saket (62 cases) | Court of ASJ - 1 (South East) | 31 |
| | Court of ASJ - 1 (South) | 31 |
| Tis Hazari (13 cases) | Court of ASJ - 1 (West) | 4 |
| | Court of ASJ - 6 (West) | 2 |
| | Court of ASJ - 1 (Central) | 6 |
| | Court of ASJ - 5 (Central) | 1 |
| Patala House (17 cases) | Court of ASJ - 1 (New Delhi) | 17 |
| Karkardooma (11 cases) | Court of ASJ - 1 (Shahdara) | 4 |
| | Court of ASJ - 1 (North East) | 1 |
| | Court of ASJ - 1 (East) | 1 |
| | Court of ASJ - 6 (East) | 5 |
| Rohini (20 cases) | Court of ASJ - 1 (North west) | 12 |
| | Court of ASJ - 1 (North) | 8 |
| JJBs | JJB II | 2 |
| | JJB III | 1 |
| Total | | 126 |

Disclosure of Identity of the Child in Daily orders / Judgements

Section 33 (7) of the POCSO Act requires the Special Court to ensure that the “identity of the child is not disclosed at any time during the course of investigation or trial”, except when, in the opinion of the Special Court, such disclosure is in the interest of the child and the reasons for disclosure are recorded in writing.

The explanation to Section 33 (7) clearly suggests that identity of the child includes identity of the child’s

- Family
- School
- Relatives
- Neighbourhood
- Any other information that reveals the child’s identity

In 22% cases (28 cases), identity of the child was disclosed by the Special Courts in different forms. The total number of daily orders that disclose child’s identity is 65 and the total number of violations is 78. Of these violations, 20% disclose the child’s name, 47% give away the identity of the child by disclosing the mother’s name.

Although tables 6 and 7 suggest a reduction in the number of violations of the requirement for non-disclosure of the child’s identity, it has not been completely eliminated. The positive change is that the child’s name is not being disclosed any more.

TABLE 6: CASES OF CHILD’S IDENTITY DISCLOSED

| Year | Total No. of cases | No. of cases where child’s identity is disclosed | Percentage of cases disclosing child’s identity |
|--------------|--------------------|--|---|
| 2015 | 54 | 24 | 44.4 |
| 2016 | 48 | 3 | 6.3 |
| 2017 | 24 | 1 | 4.2 |
| Total | 126 | 28 | 22.2 |

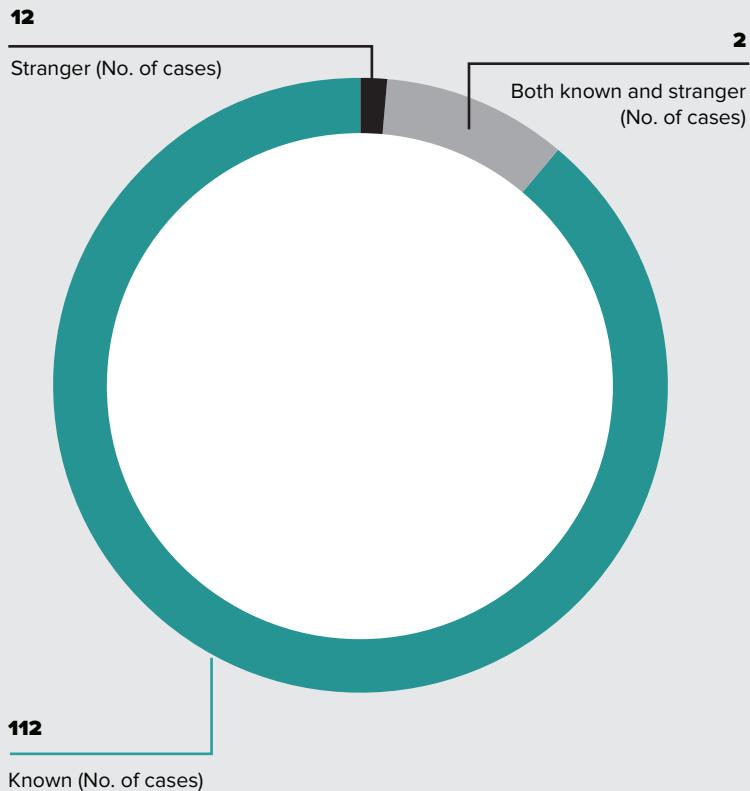
TABLE 7: TYPE OF IDENTITY OF CHILD DISCLOSED

| Type of Identity disclosed | 2015 | 2016 | 2017 | Number of Violations |
|----------------------------|-----------|-----------|-----------|----------------------|
| Child Name | 15 | 01 | -- | 16 |
| Father’s Name | 01 | 05 | 04 | 10 |
| Mother’s Name | 13 | 20 | 04 | 37 |
| Brother’s Name | 01 | -- | -- | 01 |
| Sister’s Name | -- | 02 | -- | 02 |
| Grandparent’s Name | 05 | 01 | -- | 06 |
| Relative’s Name | 01 | -- | -- | 01 |
| School | 02 | 01 | 02 | 05 |
| Total | 38 | 30 | 10 | 78 |

The Profile of the Perpetrators of Child Sexual Abuse

IT IS OFTEN SAID COLLOQUIALLY TO MAKE A POINT –“THE PERPETRATOR OR THE ACCUSED OF CHILD SEXUAL ABUSE DOES NOT COME FROM MARS” - HE AND EVEN SOMETIMES SHE, BELONGS TO THIS VERY WORLD. ACTUALLY, IT IS EVEN CLOSER –THEY MOST OFTEN BELONG TO THE SAME COMMUNITY OR EVEN THE SAME FAMILY. INDEED, THAT IS WHAT MAKES ADDRESSING SEXUAL ABUSE OF CHILDREN SO HARD AND JUSTICE DELIVERY ALMOST IMPOSSIBLE SOMETIMES. THE CHART AND TABLE BELOW TELLS US JUST THAT.

PROXIMITY BETWEEN CHILD AND THE ACCUSED (NO. OF CASES)



NINE OUT OF EVERY TEN CHILDREN ARE ABUSED BY A PERSON THEY KNOW

88.8% children were sexually assaulted by someone they knew.

The hardest cases to address are incest. Almost 16% of all perpetrators are booked for 'incest sexual abuse' and the largest number, 39%, are neighbours.

52% of the incest is by the child's own biological father.

If children are not safe in families or neighbourhoods, where else can they be safe!

TABLE 8: DETAILS OF THE ACCUSED

| Nature of Offence | Total No. of Cases | Total No. of Accused | Known Accused | | Stranger | | Both Known and Stranger | |
|-------------------|--------------------|----------------------|---------------|----------------|--------------|----------------|-------------------------|----------------|
| | | | No. of Cases | No. of Accused | No. of Cases | No. of Accused | No. of Cases | No. of Accused |
| PSA | 26 | 33 | 26 | 33 | 0 | 0 | 0 | 0 |
| APSA | 75 | 93 | 65 | 79 | 8 | 8 | 2 | 6 |
| SA | 16 | 17 | 13 | 13 | 3 | 4 | 0 | 0 |
| ASA | 5 | 5 | 4 | 4 | 1 | 1 | 0 | 0 |
| SH | 3 | 4 | 3 | 4 | 0 | 0 | 0 | 0 |
| 377 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| Total | 126 | 153 | 112 | 134 | 12 | 13 | 2 | 6 |

Offence and Proximity

There are 153 accused in 126 cases of child sexual abuse because 46 cases have more than one accused. As we have seen, a five-year-old girl was gang raped.

Children Are the Most Vulnerable Amongst People They Know

89% of the accused are someone that the child knew and therefore trusted. It is this breach of trust that is the very essence of the anatomy of child sexual abuse. When 18.6 % of the known offenders are 'related' to the child by blood/adoption/marriage, and is thus a case of incest, whom does the child turn to? Further, 45% of the known offenders are neighbours and another 11% are close relatives, in many cases sharing the same household.

The fact that the known offenders include teachers, tutors and 'spiritual leaders' makes the situation just that much more difficult to address.

TABLE 9: PROXIMITY OF ACCUSED WITH THE VICTIM

| Proximity | No. of Cases | No. of Known Accused |
|---|--------------|----------------------|
| Incest (related by blood, adoption or marriage) | 23 | 25 |
| Close Relatives | 10 | 15 |
| Relatives/Friends | 3 | 6 |
| Neighbours | 53 | 60 |
| Friends | 6 | 7 |
| School Staff / Tutor | 6 | 6 |
| Staff of Children's Home | 1 | 1 |
| Employer / Employment Agent | 6 | 8 |
| Co-worker | 1 | 3 |
| Others (Landlord's Driver, Tantrik, Friend's Father-in-Law) | 3 | 3 |
| Total | 112 | 134 |

TABLE 10: AGE-GROUP & CLOSE PROXIMITY BETWEEN CHILD AND THE ACCUSED

| Age-Group of Children (in years) | Number of Cases | | | Total |
|----------------------------------|-----------------|----------------|--------------------------|-----------|
| | Incest | Close Relative | Relative / Family Friend | |
| 0 to 3 | 0 | 1 | 0 | 1 |
| 3 to 6 | 0 | 2 | 0 | 2 |
| 6 to 10 | 4 | 1 | 0 | 5 |
| 10 to 12 | 7 | 2 | 0 | 9 |
| 12 to 15 | 7 | 3 | 2 | 12 |
| 15 to 18 | 5 | 1 | 1 | 7 |
| Total | 23 | 10 | 3 | 36 |

TABLE 11: CLOSE RELATIVES (NUMBER OF ACCUSED AND RELATIONSHIP WITH THE CHILD)

| | |
|---------------------------|-----------|
| Cousin / Cousin's Husband | 5 |
| Paternal Uncle / Aunt | 6 |
| Maternal Uncle / Aunt | 3 |
| Brother-in-Law | 1 |
| Total | 15 |

If we look at the details of who are those that commit incest –

- 84% are those men that the child looks up to as the FATHER!
- 52% are the child's own biological father.

TABLE 12: INCEST (NUMBER OF ACCUSED AND RELATIONSHIP WITH THE CHILD)

| | |
|-------------------|-----------|
| Biological Father | 13 |
| Step Father | 7 |
| Adoptive Father | 1 |
| Brother | 4 |
| Total | 25 |

TABLE 13: RELATIVE / FAMILY FRIEND (NUMBER OF ACCUSED AND RELATIONSHIP WITH THE CHILD)

| | |
|------------------------------|----------|
| Cousin's Son | 3 |
| Cousin (Proximity not known) | 2 |
| Father's Friend | 1 |
| Total | 6 |

Of the 11% (or 15) perpetrators who are close relatives of the child, maximum are paternal uncle or even aunt as we have seen in two cases. In one case, the aunt is booked for abetment under section 16 of the POCSO Act, and in another for not reporting the case despite having knowledge of abuse, under section 21 of the POCSO Act.

39% of the total number of perpetrators and 45% of the known perpetrators are neighbours who fall into the following categories:

TABLE 14: NEIGHBOUR (NUMBER OF ACCUSED AND TYPE OF NEIGHBOUR)

| | |
|------------------------------------|-----------|
| Landlord | 1 |
| Shopkeeper/Service Provider/Vendor | 16 |
| Other Neighbours | 43 |
| Total | 60 |

Age and Gender of the Accused

Majority of the perpetrators are between 18 to 45 years of age, which is also the age when human beings are most sexually active.

POCSO is a gender neutral law- the victims can be girls, boys or others. This is true of the offenders too. While none of the cases have been booked against women for sexual offences, there are 14 females accused for abetment and/or non-reporting.

TABLE 16: GENDER AND AGE PROFILE OF THE ACCUSED

| Age Group (in years) | Male | Female | Total | Percentage of Accused in Different Age Groups |
|----------------------|------------|-----------|------------|---|
| Below 18 | 3 | 0 | 3 | 2.0 |
| 18 to 25 | 44 | 3 | 47 | 30.7 |
| 26 to 35 | 48 | 4 | 52 | 34.0 |
| 36 to 45 | 27 | 5 | 32 | 20.9 |
| 46 to 55 | 8 | 2 | 10 | 6.5 |
| 56 to 65 | 6 | 0 | 6 | 3.9 |
| 66 to 75 | 1 | 0 | 1 | 0.7 |
| 76 to 85 | 2 | 0 | 2 | 1.3 |
| Total | 139 | 14 | 153 | 100 |

Disclosure by children, Information to Police and Formal Complaint

THE FIRST STEP TOWARDS ACCESSING JUSTICE IS DISCLOSURE OF THE ABUSE. WHILE DISCLOSURE OF SEXUAL ABUSE STILL REMAINS SHROUDED IN SILENCE DUE TO A NUMBER OF FACTORS DISCUSSED IN #FACT SHEET 1, IT IS ALSO TRUE THAT OVER THE YEARS, MORE AND MORE CHILDREN AND EVEN FAMILIES ARE FINDING THE COURAGE TO SPEAK UP. HOWEVER, BECAUSE OF THE LACK OF TIMELY AND SENSITIVE RESPONSE FROM THE SYSTEM, CHILDREN AND THEIR FAMILIES FEEL FRUSTRATED AND DISAPPOINTED. MANY EVEN DROP OFF MID-WAY. IT IS IMPORTANT TO ENCOURAGE DISCLOSURE AND REPORTING AND THEREBY GENERATE A DEMAND FOR THE SYSTEM TO RESPOND.

The legal response to a crime starts with making a formal complaint, which is one step beyond reporting the matter to the police as it entails a certain degree of responsibility on the part of the person making such a complaint and pins down a formal role for the complainant in the process of seeking justice for children. It also fixes accountability for the police to respond to a formal complaint.

Under the POCSO Act, anybody can be a complainant, including the victim children. Although there are no written rules, practice carves out an exception for very young children or children with physical or mental disability, who may not have the capacity to communicate and express themselves by virtue of their age or condition.

Who Does the Child Victim Speak to?

In the 126 cases studied for this report, 71% children disclosed sexual abuse to an immediate family member, mothers being on top of the list. The other family members include father, sister, brother, grandparent, aunt or uncle with whom the child was sharing the same household at the time of the incident.

In 10% cases, disclosure depended on the circumstances of the child and hence we find children disclosing abuse even to a stranger who spotted the child, neighbours, their employers or a relative. 6.6% children shared their agony with a friend and 5.8% called the police directly. In another 4% cases the children disclosed to their school teacher or tuition teacher. Only 2.5% called the Childline or shared their agony with the staff of a local NGO.

TABLE 17: RELATIONSHIP-WISE DETAILS OF DISCLOSURE, INFORMANT & COMPLAINANT (ALL CASES)

| Relationship | Disclosure | Informant | Complainant |
|---|------------|------------|-------------|
| Mother | 59 | 53 | 46 |
| Father | 9 | 20 | 6 |
| Friend | 8 | 2 | 0 |
| Police | 7 | 0 | 1 |
| Stranger | 5 | 10 | 1 |
| Aunt | 5 | 3 | 0 |
| Sister | 5 | 3 | 0 |
| School Teacher | 4 | 1 | 0 |
| Grandparent | 3 | 3 | 2 |
| Both parents | 3 | 2 | 0 |
| Neighbour | 3 | 1 | 0 |
| Childline | 2 | 2 | 0 |
| Employer | 2 | 1 | 0 |
| Other Relatives - Cousin / Brother-in-law | 2 | 0 | 0 |
| NGO | 1 | 4 | 0 |
| Brother | 1 | 1 | 0 |
| Uncle | 1 | 1 | 0 |
| Tuition Teacher | 1 | 0 | 0 |
| Self | 0 | 14 | 65 |
| Suo moto cognizance by court | 0 | 2 | 2 |
| Doctor | 0 | 2 | 0 |
| CWC | 0 | 1 | 1 |
| Co-victim | 0 | 0 | 2 |
| Child did not disclose to any one | 5 | 0 | 0 |
| Total | 126 | 126 | 126 |

Reporting and Complainant

It is very interesting to see the pattern between who the child discloses to, who reports the matter and who the final complainant is. While there may be cases when all three are the same, and that is mostly the mother, in many others all the three are different. While maximum cases of disclosures are to the mother, it is the children themselves (especially in the case of older children) who become the complainants.

In maximum cases (52%) the children themselves are the complainants, the youngest child complainants being 3 six-year-old children. For children younger than six years, the mothers are usually the complainants, though the father may have been the informant to the police.

In fact, what is interesting is that while men would like to be 'reporting', because they prefer talking to the police

themselves rather than allowing their women to do so, they do not like being the formal complainant. When asked about this, the response given by them, and reiterated by their wives, is that given the lengthy legal cases and the time required to follow that up, they would lose up on work - such as not getting too many leaves, missing out on daily wages. Some even worry that if they are embroiled in legal proceedings, everyone at workplace will come to know of the incident.

In most cases, where in the child discloses to others - a friend or a teacher or a relative, they pass it on to the parents for action - most often the mothers.

Friends become a confidante from the age of 10 onwards, though they do not report to police or become the complainants. Of the 8 cases where children disclosed their abuse to a friend, the friend has informed the child's mother who in turn has informed the police. Only in one case the friend has called the police, but the complaint is the child herself.

Teachers also follow the same pattern as friends and pass on the information shared by the child to the child's parent. Only in 1 of the 4 cases has a school teacher informed the police, though the complainant in this case is the child herself.

In 10 cases complete strangers have reported to the police and in one case of a mentally retarded child, the stranger is also the complainant.

A look at the incest cases involving father or brother provides yet another insight on the attitude of parents when children disclose incest. Though mothers remain their most trusted source or someone they look up to for protection against their father, not all

mothers who come to know about it report it to the police, and even lesser number become the formal complainants against their husband. In most incest cases involving father as the accused (67%), children become the complainants themselves.

The fact that strangers have reached the information about the child to the police is reason enough to keep hopes alive and work on more awareness programmes that motivate people to come to children's assistance, not only when the offence is seemingly gruesome, but also in sexual offences that get trivialised and become acceptable.

TABLE 18: INCEST ABUSE BY FATHER

| Incest - Father | Disclosure | Informant | Complainant |
|------------------------------|------------|-----------|-------------|
| Mother | 12 | 7 | 5 |
| Brother | 1 | 1 | -- |
| Sister | 1 | 1 | -- |
| Aunt | 2 | 2 | -- |
| Police | 1 | -- | -- |
| School Teacher | 1 | 1 | -- |
| Stranger | 1 | 1 | -- |
| Self | -- | 2 | 12 |
| NGO | -- | 2 | -- |
| Suo moto cognizance by court | -- | 2 | 2 |
| Total | 19 | 19 | 19 |

Of the cases where the biological father is the accused, in 61.5%, the children made a disclosure to their mother. In 2 of them, despite having vested faith in their mothers, they had to inform the police themselves, as their mother would not act. Similar is the experience of incest by the brothers, and indeed many a times, other members of the family. Family honour is a very big consideration.

TABLE 19: INCEST ABUSE BY BROTHER

| Incest - Brother | Disclosure | Informant | Complainant |
|------------------|------------|-----------|-------------|
| Self | -- | 2 | 2 |
| Brother-in-law | 1 | -- | -- |
| Friend | 1 | -- | -- |
| Total | 2 | 2 | 2 |

The tragedy of incest cases based on HAQ's experience over the years (those that are part of this study and 62 others which not part of the present study, for which the support provided was largely psycho-social), shows that inaction and lack of support from the mothers is the reason why cases fail to go forward in the justice system.

Incest sexual abuse, even by the biological father, cuts across class - HAQ has addressed cases from slums as well as high end gated apartment blocks. In both cases, the mothers convinced the girls to withdraw from the legal proceedings for the 'larger good of the family'.

The legal provision of mandatory reporting does not necessarily help in such cases as even children do not want their father or brother or grandfather to go to jail. What they want is an assurance that it will not happen again or they simply want the abuser to leave the house and go away.

It certainly leaves us with the question as to whether mandatory should necessarily mean recourse to legal action or could it also mean relief other than legal action. The other related question is whether restorative justice practices can be adopted in such cases of incest sexual abuse where legal action is taken and is India ready for it?

What can be said with certainty at this stage is that if a mother takes the plunge, she must be supported financially to not only sustain the legal battle, but most importantly sustain her family! Linking up such women and their families to government schemes and programmes could go a long way, provided such linking does not label them as victims.

From Charge sheet to Framing of Charges: What Needs to Change

A LARGE PART OF ACCESS TO JUSTICE DEPENDS UPON HOW ALL THOSE WHO ARE PART OF THE JUSTICE SYSTEM INTERPRET THE OFFENCE AND THE APPLICATION OF THE LAW. UNFORTUNATELY, THE VICTIMS AND THEIR FAMILIES ARE AT THE MERCY OF THE DIFFERENT INDIVIDUALS WHO ARE PART OF THE LARGER JUSTICE SYSTEM AND THEIR WISDOM AND KNOWLEDGE, AND THUS OFTEN HAVE LITTLE CONTROL OVER THEIR 'FATE'.

Police and Charge sheet

The first point of contact for the victim child and their family, or whoever else stands up for the victim is the police.

Police investigation is one of the most important steps in a criminal case. Equally important is the issue of time taken to complete the investigation and file a charge sheet.

Charge sheet has been filed in 123 out of 126 cases and charges framed in 108 of the 126 cases. Average number of days taken to file charge sheet in 121 cases from the date of first arrest comes to 69 days, minimum being 6 days and the maximum being 187 days. In two cases there has been no arrest, hence these have not been taken into account.

Out of 71 cases of children below the age of 12 years, as on 31 December 2017, charge sheet was filed and cognizance taken in 70 cases and charges framed in 62. In one case, no arrest has been made.

TABLE 20: TIME TAKEN FOR FILE CHARGE SHEET FROM THE DATE OF FIRST ARREST MADE IN THE CASE

| Number of days | Children < 12 years | Children aged 12 to 18 years | All children |
|---|---------------------|------------------------------|--------------|
| Within 30 days | 10 | 4 | 14 |
| 30 to 60 days | 19 | 13 | 32 |
| 60 to 90 days | 30 | 29 | 59 |
| 90 to 120 days | 8 | 3 | 11 |
| 120 to 150 days | 1 | 3 | 4 |
| 150 to 180 days | 0 | 0 | 0 |
| 180 to 210 days | 1 | 0 | 1 |
| Total | 69 | 52 | 121 |
| Average time taken | 67 | 71 | 69 |
| Charge sheet filed within 90 days of First Arrest (in percent) | 86% | 88% | 87% |

The charge sheeting rate for the 126 cases under study is as high as 97.6. Nationally, as per NCRB's Crime in India 2016, it is 94.2 for cases under the POCSO Act. In 87% cases charge sheet is filed within 90 days from the date of first

arrest made in the case. The problem however lies in how an offence is registered and investigation carried out. This fact sheet focuses on the use of inappropriate provisions of law while in registering certain cases, the fact sheet on bail shows how lapses in police investigation have resulted in the accused getting bail even before the child has testified.

The police continue to make the mistake of overlooking the aggravated nature of sexual offence, especially when it comes to abuse of children below the age of 12 years, in cases of incest or where the accused is a person trusted by the child, despite the law treating them as categories deserving special treatment. We will examine each of these situations in some detail.

Children below the age of 12 years

Even after five years of enforcement of the POCSO Act, the police fail to register cases pertaining to children below the age of 12 years under aggravated penetrative sexual assault and aggravated sexual assault provided for in sections 6 and 10 of the Act respectively. This is evident from the analysis of the cases under study.

In 56% cases (71 of the 126), the children were below the age of 12 years at the time of the incident. However, in as many as 45% of these (32 of the 71 cases), the FIRs are not registered under the appropriate provision of the POCSO Act.

Incest and close relatives

Similarly, in 8 of the 33 cases involving family members and close relatives as the accused, the case has not been registered for the aggravated nature of the assault.

Persons trusted by the child

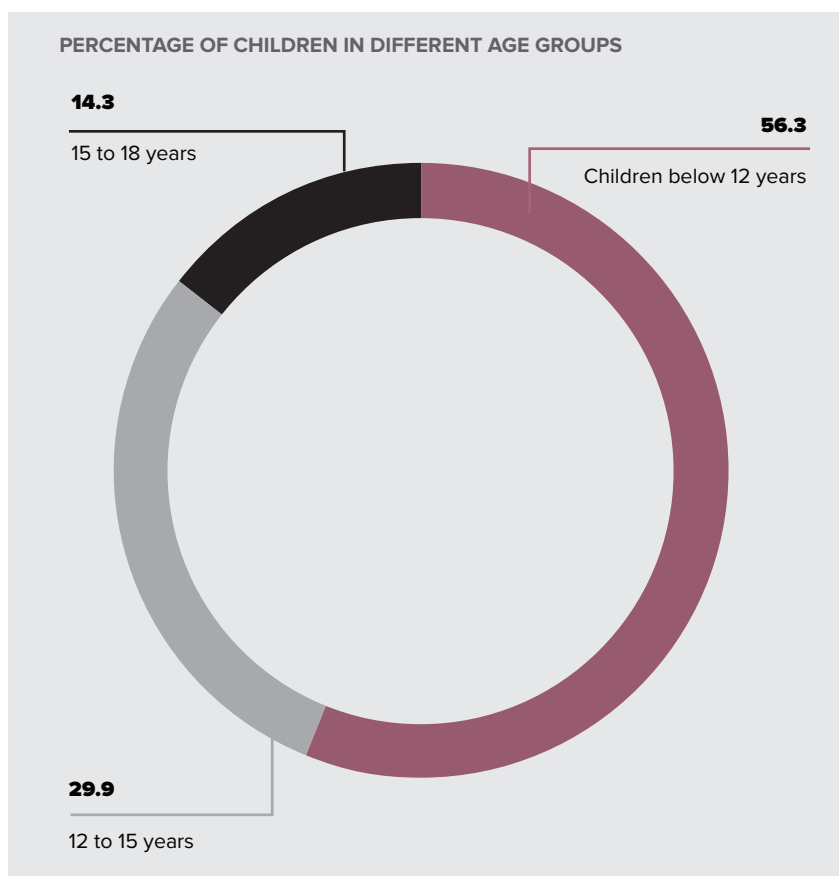
The same applies to the 3 out of 7 cases (43%) where the accused is a person trusted by the child /staff of the institution or school of the child / teacher.

Courts and Framing of Charges

The nature of justice is determined by the manner in which charges are framed, the sections of the law that are recorded and the time taken to do so.

In the 126 cases under study from 1 January 2015 to 31 December 2017, charges have been framed in almost 86% (108) cases.

What is interesting to see is how the recording of the nature of offence has changed between when it is recorded as part of the FIR to filing of charge sheet and from then to the framing of charges.



Out of 123 cases where charge sheet is filed, the nature of offence changed after police investigation in 13 cases on account of child's age. In another 12 cases (6 cases each of penetrative sexual assault and sexual assault) the police failed to charge the accused for aggravated nature of sexual offence even after completing its investigation. Hence, no change was made in the nature of offence in the charge sheet despite these 12 children being below the age of 12 years.

It can be seen that in almost 39% cases (42 of the 108 cases) the nature of offence changed at the stage of framing of charges, of which 23 records pertain to children below the age of 12 years.

CHANGES IN RECORDING OF NATURE OF OFFENCE BETWEEN THE FIR AND FRAMING OF CHARGES

- In 19 cases of children below the age of 12 years, the nature of offence was changed at the time of framing of charges on account of child's age...
 - 9 cases of penetrative sexual assault became cases of aggravated penetrative sexual assault
 - 6 cases of sexual assault became cases of aggravated sexual assault
 - 4 cases of sexual assault became cases of aggravated penetrative sexual assault
- 3 cases of aggravated sexual assault became cases of aggravated penetrative sexual assault and 1 case registered under section 377 of IPC became a case of aggravated penetrative sexual assault considering the nature of offence made out besides the child's age.

TABLE 21: CHANGE IN RECORDING OF NATURE OF OFFENCE

| Nature of Offence | No. of cases (As per FIR) | No. of Cases (At the stage of Framing of Charge) |
|-------------------------|---------------------------|--|
| PSA | 26 | 12 |
| APSA | 75 | 83 |
| SA | 16 | 3 |
| ASA | 5 | 9 |
| SH | 3 | 1 |
| 377 | 1 | 0 |
| Charge yet to be framed | -- | 17 |
| Discharged | -- | 1 |
| Total | 126 | 126 |

Fortunately, the situation in courts of Delhi has improved. In 2015, there were 2 cases where the Special Court did not frame the charges under the provisions relating to aggravated nature of sexual offence, even when that was clearly made out.

Over the last two years, the situation has changed. With training, the Special Courts have become cognizant about such lapses. What is more, they even allow the lawyer of the child to argue on framing of charges.

The Special Public Prosecutors are also now clear about the different factors that make sexual assault aggravated. For both the Special Public Prosecutors and the lawyers representing children, arguing on the appropriate charge is a tough call as this could imply more hearings and delay in the matter. But the delay is a risk worth taking to ensure that there is no wrong decision made, just in case ensuring appropriate charges slips the mind of the judge too.

SOMETIMES THE COURTS MAKE EVERY EFFORT TO ENSURE THAT THE CHILD DOES NOT SUFFER FOR WANT OF PROPER POLICE INVESTIGATION...

In one case, the police filed a closure report after about three and a half months of registration of FIR. The child had withdrawn her allegation against the accused in her statement under section 164 of the CrPC and the accused had not been arrested. During consideration of closure report, the court met and interacted with the child, who informed the court that she had changed her statement under section 164 CrPC under pressure. Declining the closure report, the court directed the police to further investigate and submit a charge sheet, which was filed after another eleven months. The case was however, discharged at the time of framing of charges as no offence was made out.

Bail for the Accused

A PERSON IS INNOCENT UNTIL PROVEN GUILTY AND CANNOT BE DETAINED ARBITRARILY AND UNNECESSARILY. BUT WORKING WITH CHILDREN WHO ARE ABUSED SHOWS THAT THEIR SAFETY AND CAPACITY TO DEPOSE EFFECTIVELY IS HEAVILY IMPACTED BY THE SITUATION OF BAIL OF THE ACCUSED. WHEN OUT ON BAIL, THE ACCUSED ARE FOUND TO INTIMIDATE THE CHILD VICTIMS AND THEIR FAMILIES.

In 25 cases the accused were out on bail prior to the child’s testimony. In 7 of these cases, bail was granted prior to the charge sheet being filed, in another 14, prior to framing of charges but after filing of charge sheet, and in 4 cases between the time of framing of charges and child’s testimony.

TABLE 22: BAIL GRANTED PRIOR TO CHILD’S TESTIMONY

| Age Group of the Child Victim (in years) | Before Filing of Charge sheet | Between Filing of Charge sheet and Framing of Charges | Between Framing of Charges and Child’s Testimony | Total |
|--|-------------------------------|---|--|-----------|
| 0 to 3 | -- | -- | 1 | 1 |
| 3 to 6 | -- | -- | -- | 0 |
| 6 to 10 | 1 | 2 | -- | 3 |
| 10 to 12 | 1 | 3 | -- | 4 |
| 12 to 15 | 3 | 4 | 1 | 8 |
| 15 to 18 | 2 | 5 | 2 | 9 |
| Total | 7 | 14 | 4 | 25 |

In 32% of these cases children are younger than 12 years. They are even more easily frightened and in more vulnerable situation. This vulnerability is compounded when we find that in 23 out of 25 cases, the accused were known to the child. Among the main accused in these cases:

- 7 were neighbours,
- 4 teachers (One drawing teacher involved in three cases and 1 tuition teacher),

- 3 close relatives (2 cousins and one paternal uncle),
- 2 employers,
- 1 step father,
- 3 friends, and
- 1 tantrik being seen by the child for treatment of epilepsy.

Despite recognising that children who are sexually abused are in a vulnerable situation - and hence the provision of Special Courts and Special Public Prosecutors and Right to Legal representation by a lawyer of one’s choice - an analysis of reasons given by the Special courts for granting bail points to the conventional manner in which such matters are dealt. The major grounds that emerge for granting bail are:

- Prolonged custody of accused
- Age/illness of the accused or a family member of the accused
- Lapses on the part of the investigating agency / IO
- Accused being falsely implicated / contradiction in child’s statements
- Forthcoming examination to be taken by the accused

Of course, in the case of adolescents or older children, during the course of the judicial process, what emerges is that the accused and the victim may have been in a romantic relationship.

In cases where anticipatory bail is granted, the first point of contention is regarding the justification of granting anticipatory bail itself, given the nature of offence.

The next issue is regarding the importance placed on delay in registration of an FIR in a case of sexual abuse, knowing that it is not easy for children and their families to report abuse and most families tend to ignore non-penetrative sexual offences as far as possible.

The third disturbing issue arises when a bail hearing is conducted like a trial and a judgement is made about the accused being falsely implicated.

When anticipatory bail is given in a case of sexual assault of a 10 year old by a neighbour, on grounds of a delay of two days in registration of the FIR and the accused being falsely implicated, not only call for a change of judicial mind-set but also a change in the functioning of the criminal justice system when dealing with a special law meant to protect children.

TABLE 23: GROUNDS FOR GRANTING BAIL TO THE ACCUSED

| S. No. | Grounds for Granting Bail | Before Charge sheet | From Charge sheet to Framing of Charges | Framing of Charges to Child's Testimony |
|--|---|---------------------|---|---|
| Anticipatory Bail | | | | |
| 1. | <i>Anticipatory Bail</i> - Considering that the occurrence is alleged to have taken place on 26.11.2015 whereas the FIR was registered on 28.11.2015; accused is about 50 years of age also having grand children; has been falsely implicated in the present case; accused pleads his innocence; and nothing is to be recovered from him. <i>Regular bail</i> - Accused is present on anticipatory bail and has filed bail bond/surety bond along with photocopy of certain documents. | 1 | | |
| 2. | Both the accused persons were granted anticipatory bail by Ld. Predecessor of this court vide order dated 28-10-2016 and 23-12-2016. In view of same, both the accused are admitted to bail. | | 1 | |
| Prolonged custody of the accused, illness of the accused or a family member, and/or age | | | | |
| 3. | Considering facts and circumstances of the case and period of his custody | 2 | 1 | 1 |
| 4. | Considering the age/illness of the accused and the period of his custody | 1 | 3 | 1 |
| 5. | Considering the period of his judicial custody, no involvement in any other criminal case, and his minor son requiring constant medication and care for Frazer's syndrome | | 1 | |
| Lapses on the part of the investigating agency / IO | | | | |
| 6. | IO has failed to mention any ground for arrest of the accused | 1 | | |
| 7. | Considering the facts and circumstances of the case where there is no likelihood of filing of FSL result in near future accused cannot be detained in custody as pre-trial punishment for unlimited period. | | 2 | |
| 8. | Considering several investigation lapses ... <ul style="list-style-type: none"> Photograph of the victim shown to the witness and identified by him is not the part of the charge sheet; IO has not made efforts to enquire from relatives of the victim as to why missing report was not made by them, if the victim who is mentally challenged girl was not found at their home since 17.05.2016; IO has not made efforts to fix identification parade of the recovered articles to establish that the same pertains to the victim; Independent witnesses are being introduced to show that the police is able to solve the case; IO has not collected the PCR form qua the call made to the police at 100 number vide which the facts were brought into the notice of the police that the victim is lying at road in unconscious condition nor has examined any police officer who attended the said call and has not made any efforts to trace out the caller | | 1 | |

| | | | | |
|---|---|--|---|---|
| 9. | In the complaint offender was named as Vishnu Das whereas in the statement recorded under section 164 Cr.P.C offender is named as Tapan. No time and date has been given when the alleged incident was made by the offender with the prosecutrix. Matter requires further investigations to ascertain whether Vishnu Das and Tapan is one person and what was the time and day of incident | | 1 | |
| Accused being falsely implicated / contradiction in child's statements | | | | |
| 10. | Considering the totality of the facts and circumstances of the case and the submissions that the accused/applicants have been falsely implicated by the mother of the prosecutrix cannot be ruled out and giving the benefit of doubt on the case of the complainant the applications are allowed | | 1 | |
| 11. | Bail was allowed on the grounds of contradiction between the child's statement under Section 164 and Section 161 of CrPC as no allegations were made against the accused in the former; the victim and her mother failed to appear for two hearings despite being duly served; and considering the period of custody of the accused | | | 1 |
| Past Acquaintance and/or Romantic Relationship | | | | |
| 12. | Considering the following factors... <ul style="list-style-type: none"> • period of custody of the accused; • statement u/s 164 Cr.P.C. reveals allegation of past offence upon prosecutrix by the accused without disclosing any date of incident; • present FIR has been registered upon allegation of commission of last offence on the date of FIR; • the obscene video clip has not been so far traced; • investigation in the case has been completed and charge sheet has been filed; • applicant/accused is an unmarried man of 25 years of age; prosecutrix was almost at the verge of attaining majority age and is a major at time of hearing this bail application; and • there is material to show past acquaintance between the neighbours/families prior to the alleged incident. | | 1 | |
| 13. | <ul style="list-style-type: none"> • Though prosecutrix has given her statement u/s 164 Cr.P.C. against the accused but letters written by girl show that she is in love with accused. • Accused has been in custody. • Investigation complete and charge sheet been filed. • Case is at the stage of argument on charge. • No purpose would be served by keeping the accused in jail. | | 1 | |
| 14. | Victim happens to be more than 15 years of age; she has maintained that she had herself, of her own, went with the accused; accused did not do anything with her against her wishes or without her consent and that she has already married with the accused ; expressed her desire to live with the accused in her statement under section 164 Cr.P.C, Therefore, considering all these facts and ratio of the judgement / orders relied upon by the Counsel for the complainant, where the underlying observation is that a person who is of certain age, though below 18 years has rationality and discretion at his or her commend, can be expected to give the considered consent. | | 1 | |
| Others | | | | |
| 15. | Grounds for bail (as noted by the counsel during the inspection of file) <ul style="list-style-type: none"> • The accused is a student and he is studying. • The accused himself surrendered before the court. • Accused has no criminal antecedent • The trial will take time for completion | | 1 | |
| 16. | Accused had to appear for Board Exams | | 1 | |
| 17. | The nature of allegations against the applicant/accused arise from the close proximity of residence between the accused and the child victim/ prosecutrix. It is considered that the applicant/accused has undertaken to shift his address. Investigation is complete. Charge sheet has been filed and the accused has also been charge sheeted. The accused cannot be incarcerated indefinitely as trial is likely to take some more time. | | | 1 |

Need for Cognizance of the Danger to Victim While Granting Bail

In a case of aggravated penetrative sexual assault of a 12-year-old by her neighbour, although bail was granted five months prior to the child's testimony, the judge kept in mind child's safety issues and granted bail stating, "The nature of allegations against the applicant/accused arise from the close proximity of residence between the accused and the child victim/prosecutrix. It is considered that the applicant/accused has undertaken to shift his address. Investigation is complete. Charge sheet has been filed and the accused has also been charge sheeted. The accused cannot be incarcerated indefinitely as trial is likely to take some more time".

The condition for bail also required the accused to "shift his residence immediately and make no effort to contact the child prosecutrix or her family members in any manner or hamper with the progress of the case", in addition to "furnishing a bail bond of Rs. 10,000/- and a surety of like amount".

On the other hand, in another case of aggravated penetrative sexual assault of a 15-year-old involving two accused, aged 23 and 25 years, also child's neighbours, the bail hearing concludes on a note that suggests the accused are not guilty. While granting bail, the court relied on the submission made by the Defence Counsel about his clients being falsely implicated. The bail order states, "Considering the totality of the facts and circumstances of the case and the submissions that the accused/applicants have been falsely implicated by the mother of the prosecutrix cannot be ruled out and giving the benefit of doubt on the case of the complainant the applications are allowed".

Conditions of Bail

The conditions of bail vary. The amounts required to be furnished by the accused by way of a personal bail bond range from INR 10,000/- to INR 50,000/-. There is no hard and fast rule to be followed. A bail bond of INR 10,000/- is imposed as a condition for bail both in the case of a neighbour who is a businessman and neighbours who are unemployed, while in a case of romantic relationship, the accused being in a private job, is required to furnish a bond of INR 50,000/-.

Other conditions of bail that may be imposed, depending on the facts and circumstances of the case and include directions to be followed by the accused to the following effect:

- Not to contact or influence the public witnesses.
- Not to hamper the trial / temper with evidence or the prosecution case / overawe the witness / do any act which will tantamount to an interference with the administration of justice.
- Join the investigation as and when required to do so by the IO/SHO.
- Not to make any endeavour to approach, influence or threaten the victim, family or any other public witnesses.
- Move to alternative place of residence till the time prosecutrix and public witnesses are examined.
- Not to jump trial to escape the rigors of law.
- To participate in the progress of the trial regularly and appear on each and every date of hearing.
- Not visit the school without seeking prior permission of this court (in this case the accused is a drawing teacher in a school who was granted bail at the time of framing of charges).

Conditions that impose restrictions on the accused to ensure that the victims are not intimidated deserve appreciation. However, these also need to be communicated to the victims. Children who go unrepresented, perhaps never get to know all this and would seldom report breach of any of these conditions.

To the common man, release on bail implies end of the matter and no justice. But as organisations working on human rights issues, the demand is for ensuring witness protection and not for indefinite incarceration of the accused who are yet to be proven guilty. No innocent should have to suffer, and this maxim can be upheld with some special measures while implementing special laws like the POCSO Act.

Special Laws, Special Courts, Special Systems... Yet the Conventional Approach to Criminal Justice continues to Fail Children

Seventeen-year-old Tulika (name changed) was repeatedly sexually abused by her neighbour in 2015. After the incident, the child was sent to a boarding school. But when she returned home during Diwali vacations she and her family were indirectly intimidated by the accused who had been released on bail. The accused and his brother-in-law started harassing their family friends who were supporting them in the case. The mother's major concern ever since has been Tulika's security when she comes home during vacations.

Fifteen-year-old Suchi (name changed) and her seventeen-year-old cousin Uma (name changed) stay in a rented accommodation in West Delhi with the former's parents. Their landlord and his two friends, physically and sexually assaulted them. The accused were taken into judicial custody, but soon came out on bail. The family was forced to shift their home thrice. The accused would stalk them, verbally abuse, misbehave with them, making it impossible for the girls and their family to step out of their house.

In Ridhi's case (name changed), where a tantrik was the accused and the child had passed away, bail was granted on grounds of the accused's old age and illness. The child's testimony could not be recorded on the first date when it was listed as she was in hospital. By the next date, she was no more. She had been suffering from epilepsy for long and was taken to the tantrik for treatment of the same. Witness protection had to be sought for the child's family twice under the Delhi Witness Protection Scheme as the child's mother and brother were receiving continuous threats from the accused. The problem started soon after the accused was released on bail. None of these circumstances were assessed by the court before granting bail. Neither did the child's lawyer come to know of the bail hearing.

These are not the only such cases where children and their families are having to live under the fear of the accused. In cases of incest they continue to be violated. The psychological trauma is unimaginable. Their situation arises from the fact that the accused in their case are released on bail without giving them an opportunity to be heard. This has been the practice in the criminal justice system, where bail applications are perceived as a matter between the prosecution and the accused and the system fails to see any role of the victims and their special circumstances.

In a circular by the Delhi Police Commissioner dated 15 November 2011 in the context of crimes against women, it was mentioned that "investigation/enquiry officers shall inform the complainant/victim of Crime Against Women cases through any possible means of communication regarding the listing of bail application in order to facilitate them to put their version before the court, if they so desire." Yet children receive no prior intimation about a bail hearing!

Victim Testimony

THE WELL-BEING OF THE VICTIM IN THE JUSTICE PROCESS HAS BEEN A SUBJECT OF CONCERN OVER THE YEARS. OFTEN IT HAS BEEN SAID THAT THE JUSTICE PROCESS AND THE WAY THE VICTIM IS TREATED, THE REPEATED STATEMENTS SHE OR HE IS EXPECTED TO GIVE, FURTHER VICTIMISES THEM. THIS IS EVEN MORE TRAUMATIC WHEN THE VICTIM IS A CHILD. WHILE SO MUCH EFFORT GOES INTO HEALING CHILDREN SO THAT THEY CAN OVERCOME THEIR TRAUMA AND MOVE ON IN LIFE WITH NO LONG TERM CONSEQUENCES, THE FACT IS THAT DELAY IN JUSTICE DELIVERY, INCLUDING THE VICTIM TESTIMONY, FORCES THE CHILD TO RECALL AND RELIVE THE TRAUMA SHE OR HE HAD FACED, SOMETIMES LONG AFTER THE INCIDENT, WHILE THEY MAY HAVE EVEN FORGOTTEN OR COME TO TERMS WITH IT.

Child's testimony is critical to every case. With change in the definition of rape and penetrative sexual assault as well as inclusion of non-contact sexual offences under the POCSO Act, not much reliance can be placed on medical evidence. Over the years both the Supreme Court of India and various High Courts have established the importance of victim's testimony and clearly stated that conviction can be based on a consistent and reliable testimony of a competent witness. It is a well-established principle that if the child's testimony inspires confidence, the child's evidence does not require corroboration from any other evidence.

While change of mind set vis-à-vis medical examination of victims of sexual crimes and reliance to be placed on it will take time to come by, efforts have been made in the recent past to make victim testimony a less traumatic experience for the vulnerable witnesses.

Delhi is one of the first states to have initiated the setting up of Vulnerable Witness Deposition Complexes (VWDC) under the able guidance of a Committee of the Delhi High chaired by Hon'ble Justice Gita Mittal. Gradually other states have also initiated such steps to make the court infrastructure victim-friendly. While the end result of a case depends on several factors ranging from police investigation to evidence on record, it goes without saying that facilities like the VWDCs have helped the victims immensely, particularly children, whose testimonies reflect a marked difference in substance and quality.

- In 61% cases, children came to court only once to get their testimony recorded.

BUT...

- In 99% cases, their testimony was recorded beyond the stipulated period of 30 days from the date of cognizance, extending as far as 874 days or 29 months.

TABLE 24: STATUS OF CHILD'S TESTIMONY IN 126 CASES – AT A GLANCE

| | |
|---|-----|
| No. of cases where child's testimony has been completed | 84 |
| No. of cases where the child's testimony is partially recorded | 9 |
| No. of cases listed for victim testimony but it is yet to commence | 8 |
| No. of cases that have proceeded or have been concluded without child's testimony | 8 |
| No. of cases yet to reach the stage of victim testimony | 17 |
| Total No. of cases | 126 |

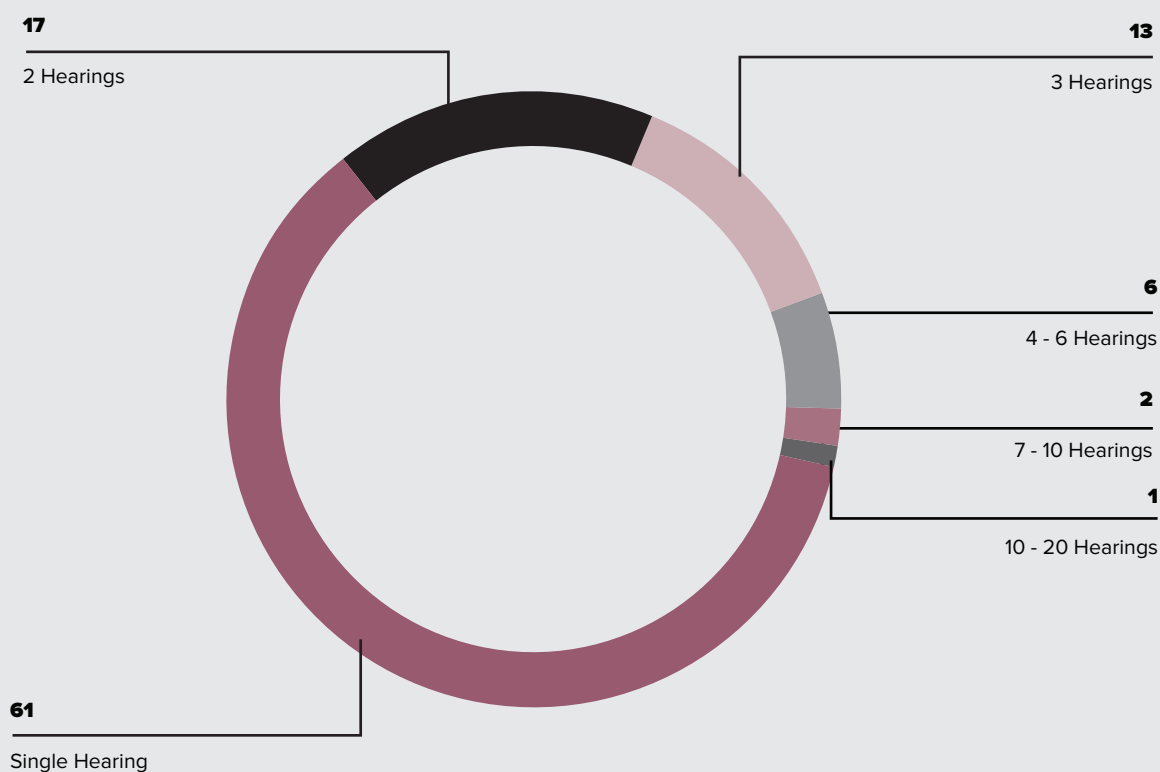
Of 123 cases (from the 126 cases under study), as on 31 December 2017, child's testimony was completed in 84

cases (68.3%). Of these, in 51 cases (61%) it was completed the same day through a single hearing.

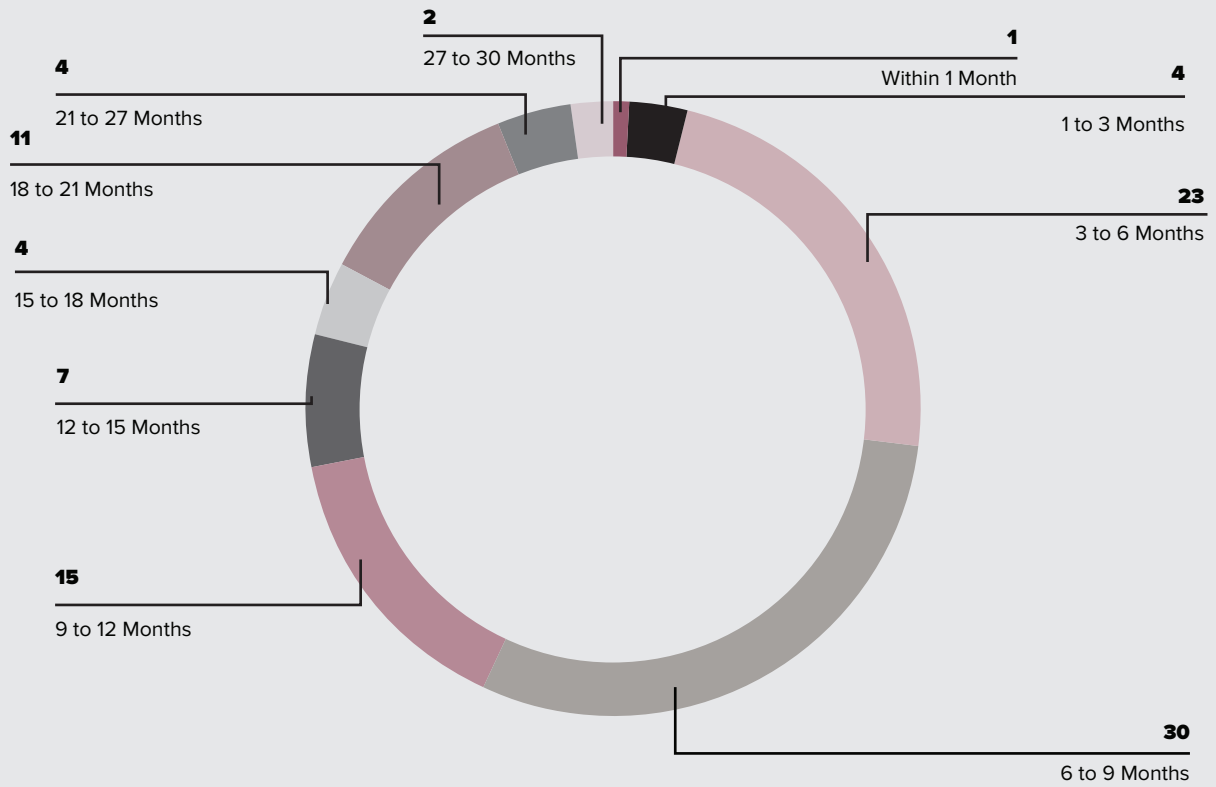
In 75% cases (63 out of 84) there were no adjournments during the child's testimony and both examination-in-chief as well as cross examination of the child were recorded within 1 to 3 hearings, maximum being completed in a single hearing as mentioned above. Only 13% of these cases required two hearings and 6% took three hearings to complete the child's testimony.

17 cases are yet to reach the stage of child's testimony. Another 8 cases have reached the stage of victim testimony and the date of testimony has also been listed, but the child's examination-in-chief has not commenced due to

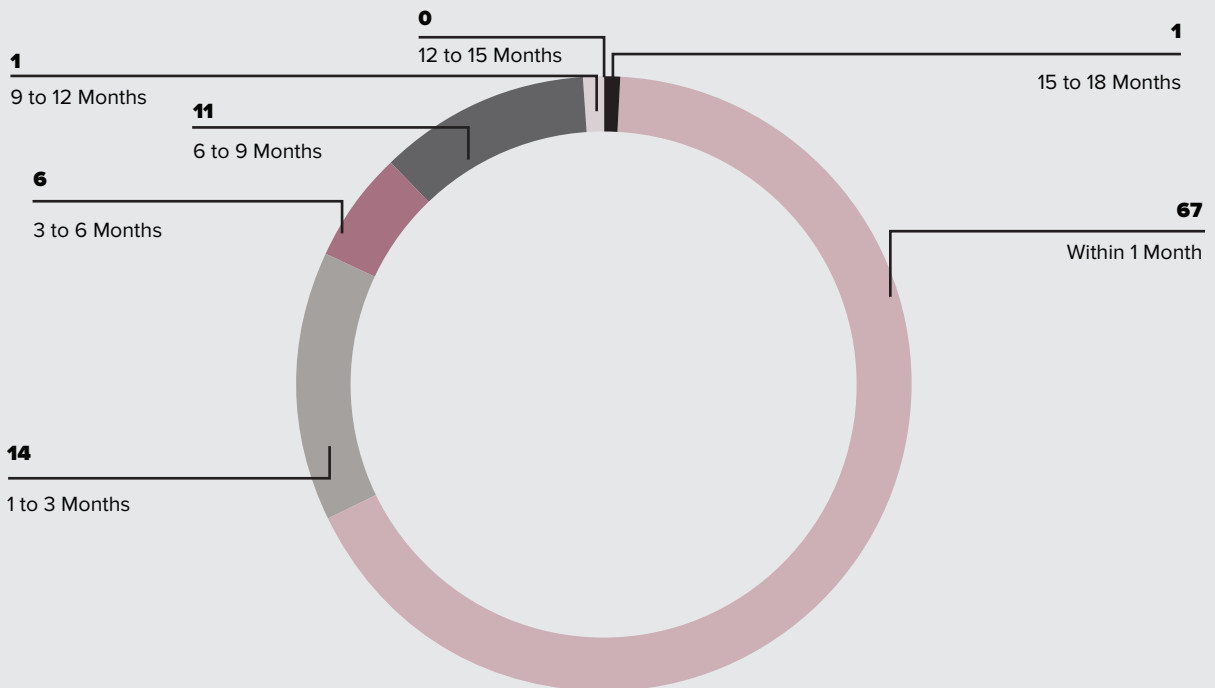
NO. OF HEARINGS FOR RECORDING CHILD'S TESTIMONY FROM START DATE TO END DATE (IN PER CENT)



TIME TAKEN FROM COGNIZANCE TO COMPLETION OF CHILD'S TESTIMONY (IN PER CENT)



TIME TAKEN FOR COMPLETION OF CHILD'S TESTIMONY FROM START DATE TO END DATE (IN PERCENT)



adjournments on various grounds.

Reasons for Child Not Being Able to Testify

8 cases proceeded without the child's testimony for reasons ranging from the child not being a competent witness due to age and/or mental ability of the child or the accused having passed away.

TABLE 25: REASON FOR NO TESTIMONY OF THE CHILD

| Reason | No. of cases |
|--|--------------|
| Child not a competent witness | 4 |
| Child passed away | 2 |
| Accused passed away and matter was abated | 1 |
| Case discharged as no offence was made out under the POCSO Act | 1 |
| Total | 8 |

In 2 of the 4 cases where the child was not listed as a witness, the child is below the age of three years and in 1 case below the age of six years. In the fourth case, the child is mentally challenged.

Reasons for Non Completion of Child's Testimony

In 9 cases the child's testimony has not been completed for various reasons.

Of these, the child's examination-in-chief has been conducted partially in 7 cases and in 2 cases the chief examination is completed but the cross is yet to commence. In one such case, more than 10 months have elapsed since the child's chief examination was completed and in another it has been more than 4 months.

Among the 7 cases where the examination-in-chief is partially conducted, in 2 cases the delay has been due to FSL report not being submitted. In the remaining 5 it is either because of paucity of time or witness unable to depose or could not be present.

While there may be a delay in starting the examination-in-chief, once started, in most cases the courts tend to complete the testimony at the earliest.

Vulnerable Witness Deposition Complex

As on date, there are 16 Special Courts in Delhi. The number increased from 11 Special Courts that were initially established to deal with cases under the POCSO Act. A Vulnerable Witness Deposition Complex is now established in 4 out of the 6 District Court Complexes, catering to 13 out of the 16 Special Courts. The first Vulnerable Witness Deposition Complex (VWDC) was established in the Karkardooma District Court Complex, followed by the Saket District Court Complex, Tis Hazari and then Dwarka District Court Complex. While the set up of all the four VWDCs may not be exactly the same, the functioning is more or less uniform.

In addition, other facilities are also provided that have made it easier for the victims to testify in court. Availability of transport facility to and from the court for those who need it is also a big help and the snacks served are enjoyed by children who have wait long hours. Use of the physical anatomy chart helps smaller children testify without being required to describe body parts and other aspects of the offence as they do not have the language to do so or feel ashamed. Children and their families much appreciate the separate entry to the VWDC and the assurance that the child will not have to face the accused. Such facilities and measures are a great boon in cases of incest, where the worst fear of the child and her mother is that of meeting the accused in court.

Common features of a Vulnerable Witness Deposition Complex (VWDC)

Separate entry to the VWDC – this complies with the requirements of Section 36 of the POCSO Act and the Guidelines of the Delhi High Court for recording of evidence of vulnerable witnesses in criminal matters as it reduces the scope for the child to be exposed to the accused.

Waiting area for children and their family member/ attendant – this is also in line with Section 36 of the POCSO Act. The idea is to keep the child engaged and reduce their fears and scope for intimidation by the accused or their family members. The waiting room is equipped with toys, games, chart paper, black boards, crayons and other colours and such materials that the child can use while waiting for her/his turn.

Court room for in-camera proceedings – this is in compliance with section 37 of the POCSO Act, which provides for the trial to be conducted in-camera. It is a room where the judge conducts the proceedings with the help of a few court staff to assist, and consists of audio-visual equipment and LCD screen to record the child's statement

through video conferencing.

Separate area for the accused – this is an area linked to the in-camera trial court room. It is designed in a way that the accused can see the in-camera proceedings and take part in the same from behind a one-way glass, but the victim cannot see the accused.

Vulnerable Witness Deposition Room (VWDR) – this is yet another facility that meets the requirements of Section 36 of the POCSO Act. It is a room where the child finally makes her statement or is cross-examined. The child is connected to the in-camera proceedings court room through a camera and a mike that the child speaks into. When the child has to identify the accused, the LED screen in the VDWR displays the picture of the accused, who is present in another room/area as mentioned above.

All these facilities are inter-connected. Children are not aware of the presence of any other person in the in-camera court room where the judge is sitting. Unlike other court rooms that are not part of a VWDC, where the child finds several lawyers, court staff and other people she/he may not know, this room gives the child her/his own space, away from the madding crowd.

Courts that do not have a VWDC

Even where such facilities are yet to be established, over time, judges are found to be using creative ways to record children's testimony. Indeed sensitivity of the judges, their approach and attitude makes a lot of difference, irrespective of the court's infrastructure. Even slightest gesture of sensitivity from the judge matters a lot to the child and goes a long way in making the child comfortable without compromising on due process and fair trial.

In courts that do not have VWDC, in-camera trial takes place in the courtroom itself. There is a screen between the child and the accused, who sits right at the back, while the child is on the other side of the curtain/screen sitting next to the Additional Public Prosecutor (APP). The curtain or screen can be manouvered when the child has to identify the accused. In two cases supported by HAQ, the child's lawyer tried to get the testimony recorded in the judge's chamber. However, it could not be possible due to paucity of space in the chamber.

Section 33 (2) of the POCSO Act requires that questions be put to the child through the Judge. This seldom happens in courts that do not have the VWDC facility. It is also because the judge is

sitting at a distance from the child and has to make special efforts to talk to the child directly. Courts then devise other ways to interact with the child. These include talking to the child through the lawyer from the Rape Crisis Cell of the Delhi Commission for Women or child's support person, or the APP.

In one court, which did not have a VWDC until recently, the judge had got a wooden partition installed in the courtroom with a notice on it to keep people away from entering that area.

In a case of a 8-9 year old girl sexually assaulted by her uncle, the conviction was a result of the judge's sensitivity as much as the evidence on record.

Finding the child's statement consistent throughout, the judge decided on the question of child's competency and reliability as a witness.

On the question of competency, the judge observes, "A close scrutiny of this drawing through the spectacles of a 8-9 years old child reveals that she has depicted an abandoned house in gloomy colours, a girl carrying some balloons with intermingled thread and a girl's dress lying



Adjournments

FILM AFTER FILM IN THE BOLLYWOOD PANTHEON OF FILMS DEALING WITH COURTS HAS DRAMATIZED THE TRAUMA OF ADJOURNMENTS. “TAREEKH-PE-TAREEKH” (DATE AFTER DATE) - IS THE MOST FAMOUS DIALOGUE IN HINDI CINEMA. BUT ADJOURNMENTS REMAIN THE BANE OF ALL THOSE WHO DARE TO ENTER THE COURT SYSTEM.

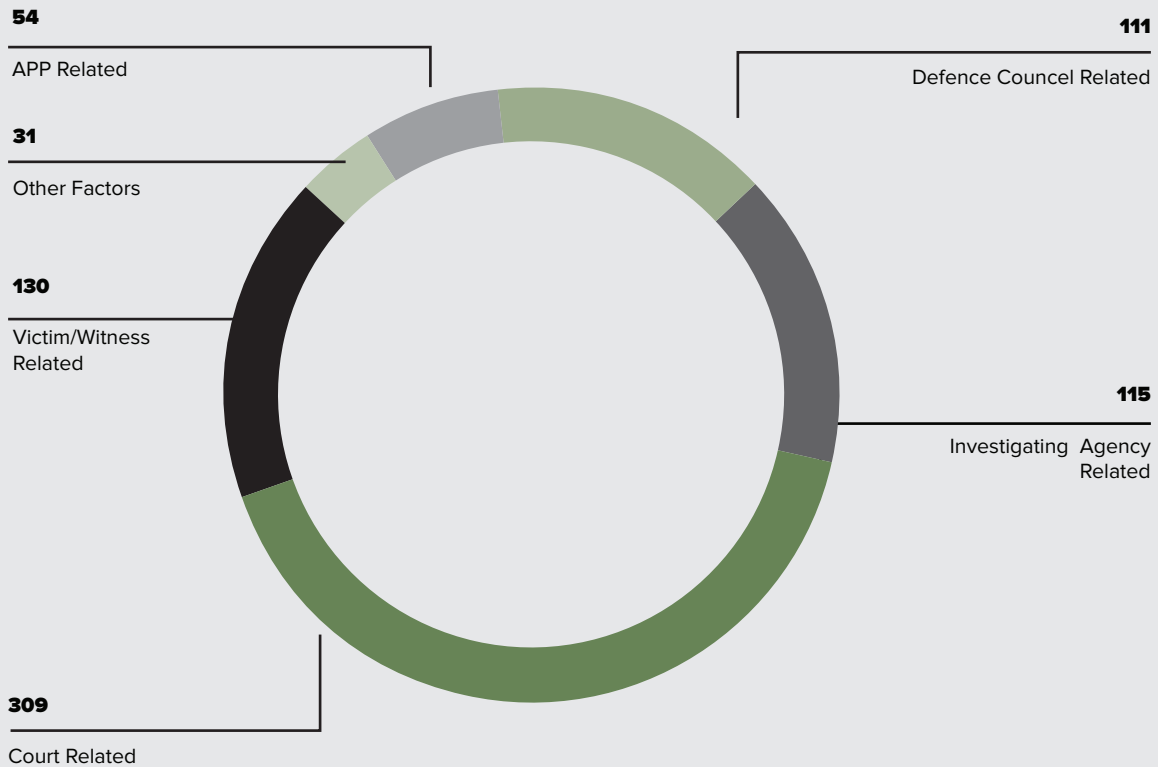
In the 126 cases studied, there are adjournments at every stage of a legal proceeding except where a matter is listed for judgement or order on sentence.

A total of 1960 hearings have been held in 126 cases since cognizance of the case by the Special Courts / Juvenile Justice Boards (JJB). 61.7% of these were effective hearings and 38.2% were adjournments.

TABLE 26: DETAILS OF ADJOURNMENT

| Stage as per Criminal Justice Procedure | Total Hearings | Effective | Adjournment | Effective: Adjournment Ratio | |
|---|----------------|-------------|-------------|------------------------------|-------------|
| | | | | Effective | Adjournment |
| Cognizance | 157 | 147 | 10 | 94 | 6 |
| Preliminary Assessment (JJB) | 6 | 2 | 4 | 33 | 67 |
| Framing of Charges | 595 | 360 | 235 | 61 | 39 |
| PE(VT) | 454 | 268 | 186 | 59 | 41 |
| PE(Post VT) | 672 | 392 | 280 | 58 | 42 |
| Statement of Accused | 30 | 13 | 17 | 43 | 57 |
| Defence Evidence | 8 | 6 | 2 | 75 | 25 |
| Final Argument | 28 | 12 | 16 | 43 | 57 |
| Final Order/Judgement | 6 | 6 | 0 | 100 | 0 |
| Argument on Sentencing | 4 | 4 | 0 | 100 | 0 |
| Total | 1960 | 1210 | 750 | 62 | 38 |

REASONS FOR ADJOURNMENT (NO. OF HEARINGS ADJOURNED)



Reasons for Adjournment

The reasons for adjournment vary and may be attributed to factors relating to the investigating agency, prosecution, defence, court, and the legal system.

TABLE 27: REASONS FOR ADJOURNMENT

| Reasons | No. of Hearings |
|---|-----------------|
| Accused could not be produced due to shortage of police personnel | 14 |
| Accused has no legal representation | 5 |
| APP sought an adjournment | 13 |
| APP was not present | 17 |
| APP was on leave | 24 |
| Both defence counsel and APP not present | 2 |
| Both defence counsel and APP seek adjournment jointly | 6 |
| Case transferred to another court | 1 |
| Court had paucity of time | 68 |
| Court Holiday | 4 |
| Defence counsel sought adjournment | 54 |
| Defence counsel was not present | 49 |
| Documents not complete | 2 |
| FSL report not received | 30 |
| IO sought Adjournment | 5 |
| IO was absent | 37 |

| | |
|--|------------|
| Judge has gone for meeting | 4 |
| Judge has gone for training | 42 |
| Judge was on leave | 183 |
| Lawyer's Strike | 25 |
| No PW was summoned | 4 |
| PW was not in the position to depose | 1 |
| PW was not present | 97 |
| Report was not filed by IO/SHO | 9 |
| Stenographer was on leave | 3 |
| Summon was not served | 14 |
| Support person not present | 1 |
| Victim was absent | 30 |
| Victim was not in a position to depose | 2 |
| VWDR was occupied by another court | 4 |
| Grand Total | 750 |

- Maximum hearings are adjourned due to court related factors, judge being on leave comprising the largest segment within that (24% of the total hearings adjourned). Another 9% hearings were adjourned due to the court's burden resulting in paucity of time.
- 17% of hearings were adjourned because the victim/witness was absent or not in a position to depose, absence of prosecution witnesses other than the victim being the largest contributor. These are largely doctors and police witnesses except the IO.

- Among factors relating to the investigating agency, absence of the IO and delay in FSL reports emerge as significant reasons for adjournment.
- 15% hearings were adjourned either at the request of the Defence Counsel or due to Defence Counsel's absence.
- About 3% adjournments were due to lawyers' strike, which comprises the largest reason for adjournment due to other factors.

One would have thought that in some cases the delay or adjournments could possibly be because of the time taken for age inquiry. For better dispensation of justice age inquiry is an important stage and the Special Courts must satisfy themselves on the victim's age and establish their jurisdiction before proceeding further. However, that is not the practice in Delhi.

It is only at the stage of final argument that the court looks into the matter and concludes on the age of the prosecutrix on the basis of existing evidence. There is also confusion regarding how to determine the age of a victim child.

Although the Supreme Court in *Jarnail Singh vs. State of Haryana* [CRIMINAL APPEAL NO. 1209 OF 2010] clarified that the procedure used for age determination of children in conflict with the law also applied to children in need of care and protection, it relied on Rule 12 of the earlier Juvenile Justice Rules of 2007. With a change in the juvenile justice law in 2015 and the rules made there under, Rule 12, which talked about age determination by the Juvenile Justice Boards, Child Welfare Committees and Courts stands

repealed. Now it's the new Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 that provides for age determination of children, but only by the Juvenile Justice Boards and Child Welfare Committees. Elimination of "Courts" from the provision contained in Section 94 has created a vacuum that needs to be resolved.

Disposal of Cases

THE FINAL DISPOSAL OF CASES DETERMINES THE NATURE OF JUSTICE. WHETHER THE FINAL ORDER RESTORES THE 'SENSE OF JUSTICE' TO THE VICTIM IS OF COURSE A DIFFERENT MATTER. THE FACT IS THAT EVIDENCE FROM ACROSS THE WORLD HAS SHOWN THAT THE QUANTUM OF PUNISHMENT DOES NOT NECESSARILY REDUCE CRIME. INDEED, ON THE CONTRARY, IT IS THE GUARANTEE OR SURETY OF PROSECUTION THAT ACTS AS THE DETERRENT. AND TIMELY PROSECUTION RESTORES THE VICTIM'S SENSE OF JUSTICE.

To guarantee speedy justice the POCSO Act has laid down that the trial must be completed within one year from the date of cognizance by court.

Section 35 (2) of the POCSO Act states...

"The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence"

The average time taken to dispose a case from the date of cognizance comes to 488 days or 1 year and 4 months.

It is not unnatural for children to turn 'hostile' if the trial is prolonged. This is because long periods of trials tire out children and their families and they tend to give up. Moreover, as children grow up, they and their families no longer wish to be reminded of the trauma and need to move on. Besides, the victims often undergo a change of mind when it comes to incest cases because they do not want to see their family member, especially someone in a very close relation, in jail. The child may also get influenced or pressurised by the family to retract.

Under the circumstances, it is indeed a matter of concern that only 7% of the cases (9 out of 126) have been disposed in the last three years. In one case, the FIR was dated November 2013 and in another it was November 2014. In others, the FIR was registered between June and December 2015.

Of the 9 disposed, one was abated as the accused passed away during trial and another was discharged. In the latter, allegations were against a staff of a children's home run by Delhi Government and the police did not arrest him. The FIR was registered at the behest of the Child Welfare Committee. However, the child turned hostile during her statement under Section 164 Cr.P.C. On completing investigation, the police filed a closure report. The Special Court nevertheless summoned the child who informed the court that she had turned hostile under pressure.

Declining the closure report, the Special Court directed the police to conduct further investigation. A charge sheet was subsequently filed making out a case of aggravated sexual assault under section 9/10 of the POCSO Act. However, after hearing the argument on point of charge, the court discharged the accused stating in its order, "I am of the opinion that as per statement of the complainant and her statement u/s 164 Cr.P.C, statement of other witnesses recorded u/s 161 Cr.P.C, prima facie no offence is made out against accused." The APP also did not oppose the decision and in fact wanted to move an application for withdrawal of the case from prosecution.

Of the remaining 7 cases, only 3 ended in conviction – 2 from JJBs and 1 from Special Court.

3 cases were disposed within one year of date of cognizance and another 3 within two years. In one case, where the child's brother was the accused, it took two years and one month before the judgement pronounced acquittal.

After the incident, the child was sent to a shelter home. On completion of her testimony she was restored back to her family and the accused was granted bail. Thereafter, she underwent a change of mind and wanted her brother released and the case to be closed. The child even wanted to file an Affidavit in court defying her own statement. She also started accompanying her brother to the court hearings to show that she was fine and did not wish any action against her brother. After the child's testimony, the support person in this case had informed the court that the child is likely to be restored to her family and granting bail to the accused may put her under threat and pressure. This is not the only case to have met such fate. It epitomizes what happens in most cases involving a family member as the accused.

While the sample size of cases disposed by way of conviction or acquittal is too small to draw any substantial inference, it is worth looking at the cases that ended in acquittal and reasons therefor.

Interestingly, in all the 4 cases that ended in acquittal the accused was known to the child and within close proximity to the child.

TABLE 28: REASONS FOR ACQUITTAL OF ACCUSED

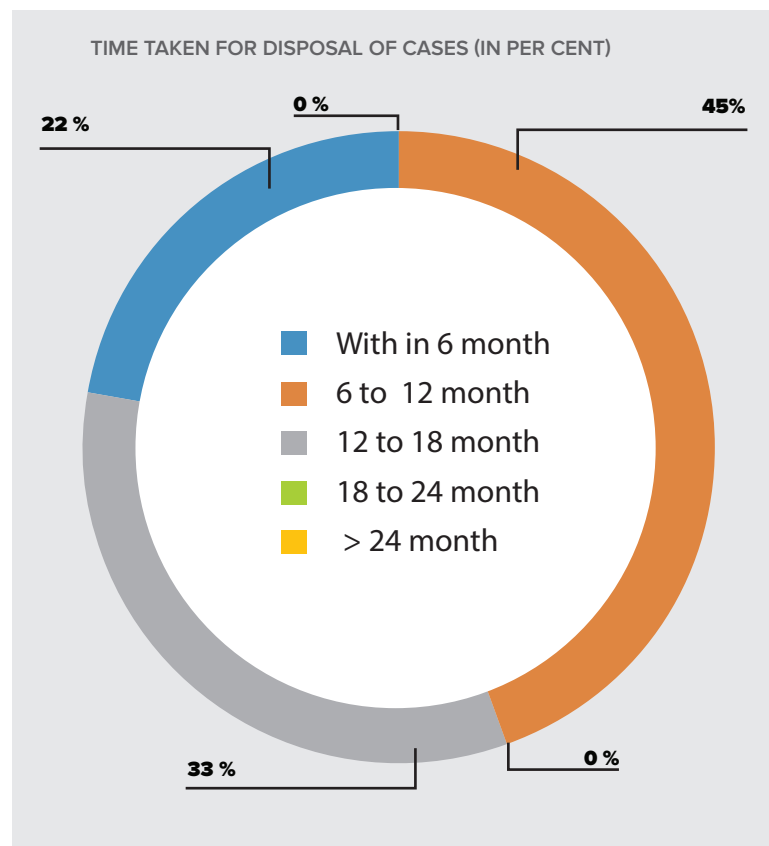
| Reasons for Acquittal | Age of the Child | Age of the Accused | Relationship between the Child and the Accused |
|--|------------------|--------------------|--|
| The court disbelieved the child's version as allegation of the child contradicted the MLC and DNA of the foetus also did not match | 15 | 30 | Maternal Uncle |
| The court discarded the statement of child as not being credible and reliable | 14 | 29 | Brother |
| Child turned hostile and did not support the allegations against the accused | 11 | 35 | Employer |
| Child turned hostile and did not support the allegations against the accused | 11 | 45 | Father |

Average time taken for disposal of 9 cases comes to 493 days.

Maximum cases (44%) have been disposed within a year from the date of cognizance. Another 33% took 1 to 1.5 years and 22% took more than 2 years.

Among the three convictions, 2 related to children in conflict with the law. The only adult conviction has happened in a case of aggravated sexual assault of a six-year-old child by her paternal uncle who was sentenced to rigorous imprisonment for a period of 5 years, which is the minimum prescribed in law for such offence. In addition a fine of INR 10,000/- was imposed, which on default of payment, would result in a further simple imprisonment for a period of 3 months. In this case, the child had lost her mother and her father had deserted the family. She was living with her paternal aunt and uncle. The sentence was pronounced in May 2017. By the time the accused completes his sentence, the child will be around 14 years. Clearly, there has to be an individual care plan for this child.

The connect between the POCSO Act and the Juvenile Justice Act is critical to restoring children's sense of justice.



Victim Compensation

THE COMPENSATION IS AVAILABLE TO VICTIMS AT TWO STAGES- INTERIM AND FINAL. AMOUNTS DIFFER FROM STATE TO STATE IN THE COUNTRY. FOR A LONG TIME THERE HAS BEEN NO ONE RULE ON HOW THE INTERIM COMPENSATION IS TO BE DISBURSED AND USED BY THE CHILD. IN THE PAST, THE SPECIAL COURTS HAVE NOT BEEN VERY FORTHCOMING ON INTERIM COMPENSATION AND WAITED UNTIL THE CHILD'S TESTIMONY IS COMPLETED.

Often the Delhi State Legal services Authority (DLSA) does not have requisite funds to disburse compensation. The delay is caused by the state government, which is the sanctioning authority for victim compensation fund.

Only recently, since the second half of 2017, the Special Courts have stopped the practice of ordering a certain percentage of interim compensation to be kept in a fixed deposit. The District Legal Services Authorities (DLSAs) however, continue with this practice. This is also because the child's lawyers from HAQ have argued against fixed deposits in individual cases, whereas in case of applications that reach DLSA for disposal, the child's lawyer has no role to play.

The police do not understand the victim compensation provisions under the POCSO Act. They continue to follow the practice of forwarding a copy of the FIR to the concerned DLSA and filing application for interim compensation with the DLSA. It is imperative to mention at this point that even the child's lawyer from HAQ has followed this practice in cases where the Special Court has not been sensitive on the issue, and possibility of getting relief from court has been very low. Besides, the tendency of some Special Courts to allow applications for interim compensation only after the child has testified causes delay, while the child's need is immediate.

Although the procedure for final compensation is far more streamlined there still remain areas of concern, the most

important of them being huge delays in giving orders of compensation and its transfer and receipt.

Even as this trend is changing, delays in processing victim compensation are a cause for concern.

It is imperative that every organisation engaging in providing support services should identify the different sources from where the needs of the child and her/his family can be met and establish necessary linkages. A case-worker must have a list of government schemes that can be used to benefit the family. Organisations also have to be prepared to meet an immediate financial need of a family till such time other forms of support can be garnered. Such a financial needs assessment provides the case-worker the window to look at victim compensation as a means of financial support to the victims. Case-workers appointed as support persons can also assist the courts in determining the real needs of the child and the family and provide follow-up reports on how the compensation is being used.

As soon as a case of abuse is referred, as part of the psychosocial support provided by HAQ, a needs assessment is carried out, of which one part is the assessment of the immediate financial requirement for the child. Financial needs includes addressing both immediate and long term need for financial support that may be required by the child and her family. For example, in a case of incest, if the accused is the main or only earning member and sent to jail, the family needs immediate means of sustenance. HAQ supported one such mother by getting her enrolled for a short-term certificate in stitching and tailoring recognised

by the government so that she could start a business of her own from her house itself.

Financial needs were identified in 78 out of 126 cases. Interim compensation has been processed in 40% cases (32 out of these 78) cases and final compensation in 2 cases (one where the child also received interim compensation).

The effort to help children gain their legitimate compensation is on in another 36 cases.

Interim Compensation

The amount of interim compensation awarded ranges between INR 20,000/- to INR 2,00,000/-. In one case the child was initially granted INR 25,000/-, which was later revised to INR 50,000/- on an application filed by the child's lawyer after the child's testimony on the grounds that in the course of the proceedings the child lost her schooling and her father also lost his work.

In many cases, even where only INR 20,000/- is granted as interim compensation, both Special Court and DLSA order that 80% of the amount be kept in fixed deposit (FD). In one case, where the amount awarded by the Special Court was INR 25,000/- the entire amount was ordered to be kept in a fixed deposit with permission to withdraw interest generated on the FD quarterly.

Due to HAQ's involvement in assessment and presenting it to the courts, 31 children (25%) have been granted interim compensation, of whom 27 have finally received the money in their bank and 4 children are yet to receive the bank transfer. What is clear is that in maximum cases, it takes between three to six months to receive the interim compensation, which is actually for meeting the most immediate needs. It is easy to imagine what happens to children and their poor families if the child needs immediate medical attention, such as a surgery or a colostomy. Often there is an immediate change of residence is needed as victims and their families are under life threats.

TABLE 29: INTERIM COMPENSATION

| Year of FIR | No. of cases | Year of Grant | | | | Total |
|--------------|--------------|---------------|----------|-----------|-----------|-----------|
| | | 2014 | 2015 | 2016 | 2017 | |
| 2013 | 4 | 1 | 0 | 1 | 0 | 2 |
| 2014 | 8 | 0 | 0 | 1 | 3 | 4 |
| 2015 | 61 | 0 | 6 | 4 | 3 | 13 |
| 2016 | 39 | 0 | 0 | 8 | 5 | 13 |
| 2017 | 14 | 0 | 0 | 0 | 1 | 1 |
| Total | 126 | 1 | 6 | 14 | 12 | 33 |

The second road block is the time taken to receive the compensation even after the grant order has been made.

In case of 4 children who are yet to receive the amount in their bank account, average number of days elapsed since the grant of interim compensation comes to 211 days. In 3 of these cases it has been more than six months since the interim compensation was granted and in 1 case more than four months.

TABLE 30: TIME TAKEN FOR GRANT OF INTERIM COMPENSATION FROM DATE OF FIR

| Time Taken (in months) | No. of Cases |
|------------------------|--------------|
| Within 1 month | 1 |
| 1 to 3 months | 3 |
| 3 to 6 months | 11 |
| 6 to 9 months | 7 |
| 9 to 12 months | 0 |
| 12 to 15 months | 1 |
| 15 to 18 months | 1 |
| 18 to 21 months | 4 |
| 24 to 36 months | 3 |
| Total | 31 |

In the 3 cases where amount of interim compensation is yet to be deposited in bank, the FIR was registered in 2015, 2 being cases of aggravated penetrative sexual assault and one a case of penetrative sexual assault.

TABLE 31: NO. OF DAYS ELAPSED SINCE GRANT OF INTERIM COMPENSATION

| Time Taken (in months) | No. of Children |
|------------------------|-----------------|
| 3 to 6 months | 1 |
| 6 to 9 months | 3 |

Reasons for delay have been:

- Child's bank account opened recently and DLSA is yet to receive details of the same
- DLSA did not receive copy of the interim compensation order
- Delay in disbursement due to lack of funds with DLSA
- Child's bank account is yet to be opened. Also, DLSA has not received any order of interim compensation from the court.

Although these are cases of sexual abuse against children, the victim compensation provisions of the POCSO Act are still not being used 100% for granting interim compensation.

Of the 31 children who have been granted interim compensation, 11 (35.5%) were under section 357A of the CrPC and 20 (64.5%) under the relevant provisions of the POCSO Act / Rules. Even while filing for interim compensation under the provisions of the POCSO Act / Rules, decision on the issue was passed on to the concerned DLSA in 8 cases.

TABLE 32: GRANTING INTERIM COMPENSATION: THE LAW AND THE PROCESS

| Interim Compensation | Filed before the Special Court + Granted by the Special Court + Amount of compensation also decided by the Special Court | Filed before the Special Court + Special Court forwarded to DLSA for further action (to decide on whether to grant or not as well the amount) | Filed before DLSA + Awarded by DLSA |
|--|--|---|-------------------------------------|
| u/s 357A CrPC | 0 | 8 | 3 |
| u/s 33(8) POCSO Act / Rule 7 POCSO Rules | 20 | 0 | 0 |

Final Compensation

Out of 9 disposed cases, 3 resulted in a conviction (two from the JJB and one from a Special Court). However, only two children have been granted final compensation. These are cases that ended in conviction and the amount granted was to the tune of INR 3,00,000/- each. In a third case, the accused filed an appeal in the Sessions Court and was acquitted. A revision petition has been filed in the High Court. Until then, the child gets no relief!

One case was discharged at the stage of framing of charges as no offence under the POCSO Act was made out. In another case, the matter stands abated due to death of the accused in the course of trial. Since the case is closed by the Special Court, HAQ has been trying to get the court to open it up for deciding the issue of final compensation as the fact of sexual abuse of the child cannot be denied. The Special Court is not inclined to do the needful.

Receipt of final compensation is also notional

Neither of the two children awarded final compensation have received the amount in their bank despite the order of compensation being passed in the month of October 2016 in one case that was registered in 2015, and May 2017 in another case registered in 2014.

Reasons for delay in receiving final compensation:

- The child does not have a bank account as she does not have valid documents. She is presently staying in a shelter home.
- Delay in disbursement due to lack of funds with DLSA

Many people, including NGOs are not aware that DLSA also helps in opening the bank accounts in such cases, irrespective of availability of certain documents. Such good measures taken by the Delhi State and District Legal

Services Authorities need to be publicised.

Till 2016, boys were treated as ineligible for victim

Compensation for a boy child

Delhi is the first state to have settled the confusion regarding victim compensation in cases under the POCSO Act. Since the law refers to Section 357 A of the CrPC, for a long time the Special Courts and Juvenile Justice Boards hearing matters under the POCSO Act were forwarding all applications for interim compensation to the DLSA/ DLSA instead of using their powers under section 33 (8) of the POCSO Act and deciding the compensation as per provisions of Rule 7 of the POCSO Rules. Even when the Special Courts started exercising their powers to grant compensation under the POCSO Act and Rules, they were confining their decision on the amount to the scheme prescribed under the Delhi Victim Compensation Scheme. The matter was settled through [THE MINOR THROUGH GUARDIAN ZAREEN vs. STATE (GOVT OF NCT OF DELHI)] decided on 21 March 2016. It was a case supported by HAQ, where the victim was a boy, otherwise not covered under the Delhi Victim Compensation Scheme which overlooked sexual abuse of boys. While the concerned JJB compensated the child for physical abuse, that was provided for in the Delhi scheme, it raised the issue of how victim compensation (both interim and final) is to be

compensation as there was confusion in interpretation of the law. Although, this is now settled, there are other issues that remain unsettled. One of these is regarding who is to maintain the child's account when the child is placed in a shelter home?

Although not part of the 126 cases analysed for this report,

While awarding an amount of INR 3,00,000/- as final compensation for a child living in a shelter home, the Special Court ordered "The said amount shall be used for her welfare and rehabilitation. The said amount shall be kept in an FDR in the name of child victim till she attains majority, subject to the condition that if during the interregnum, some amount is needed for the benefit of child victim, then the same should be made available to her subject to the orders passed in this regard by CWC."

In another case, even though the child is living in a shelter home, the amount of interim compensation granted by DLSA was deposited in an existing account of the child's uncle (phoophu) since the IO had submitted uncle's account details to the authority. In this case the child is an orphan and was living with her uncle and aunt prior to the incident. Meanwhile the shelter home has been voicing concern regarding the extra expenditure they have to incur over the child's well-being and upkeep.

As a rule the CWC receives a copy of all interim compensation orders in the case of children placed in shelter homes.

HAQ once received a call from a father of a child who had been restored to her family in a village in West Bengal. The child had turned major and needed to withdraw the

compensation money that was deposited in her account and kept in an FD, which was to mature when she turned 18 years. The father's anxiety resulted from the bank refusing to allow the child to withdraw money from one of its branches closer to their residence. He was also worried that he would have to take a loan to bring his daughter to Delhi. On approaching the bank, HAQ's social worker was also informed that the child will have to physically come all the way from West Bengal to verify her identity and then withdraw the money. When assistance was sought from the government run children's home in Nirmal Chhaya, who were the custodian of the account till the child was restored,

the concerned Welfare Officer was also of the opinion that the child has to come down to Delhi to verify her identity. The District Child Protection Officer in West Bengal also tried to help, but all in vain. In this day and age, when people can withdraw money from their account from anywhere in the country, the rule for victim compensation accounts seem to be different or the caution being applied is unnecessary, causing harassment to the victim and adding to their woes. The identity of the account holder can be verified by a branch of the same bank anywhere in the country. All it requires is convergence and a will.

Psychosocial Impact and Support

AS VOICES FOR “DEATH PENALTY” BECOME SHRILLER DAY BY DAY AND STATES AND ITS INSTITUTIONS SET DOWN TO CHANGE THE LAW IN THE NAME OF “JUSTICE AND CHILD PROTECTION”, THE REAL JUSTICE REMAINS A FAR CRY...

Child victims and their families face several types of psychosocial challenges as a result of the abuse that they faced. There are other needs too that get overlooked since the existing law is almost silent on rehabilitation of victims. While some of these cannot be monetised, other services and support are covered through the only related provision of victim compensation, which comes with its own procedural problems.

As if the abuse itself was not traumatic enough, 20% (25 of the 126) of the children had to relocate their residence after the incident due to various reasons. The largest matter of concern in this is that 60% of them had to move because of safety reasons. They are threatened by the accused and their families and the fact that landlords ask them to vacate the houses because there are visits by the police, makes their situation even more vulnerable.

At HAQ we work to provide support to meet the medical, education, shelter/protection, financial and paralegal needs of the family.

Emotional support includes primary psychosocial care and ensuring completion of counselling sessions or emotional stability of the child/family.

Medical support includes providing moral and physical support to the child and family for hospital visits, lab tests, surgery, procurement of expensive medicines etc. and ensuring follow-up on medical treatment as prescribed, including helping the family meet the child’s nutritional intake requirements when the child is under treatment. It also includes ensuring that the child’s routine is stable.

Shelter/protection includes short/long-term shelter in a shelter home or restoration to the family; support at the time of relocation if required; and support in times of threats faced by victims/witnesses, including accessing benefits of the Delhi Witness Protection Scheme if required.

Educational support is any identified education need, usually admission/enrolment into a course/school/tuition/vocational training programme.

Financial support is victim compensation as well as financial assistance in terms of linking the family to government schemes such as widow pension.

Paralegal support is where support persons assist families in accessing documents from the police or assisting families with police complaints or seeking police cooperation. This is done by the social workers and hence referred to as paralegal support.

General support to family is where support is provided to meet general needs of a family on a case to case basis, keeping in mind that a dependence is not created on the project. Some cases are very compelling where lack of support to the family in meeting certain general needs could render the child vulnerable to further abuse. For instance, in one case, the accused, who is the victim’s father is absconding and if declared a proclaimed offender, their house could be attached, rendering them vulnerable to homelessness. In such cases, HAQ provides necessary legal support in terms of talking to the police officials or linking the family to legal aid services or seeking assistance from other organisations. Ipobono has been one such partner that has supported some of the legal battles in the higher courts.

TABLE 33: FAMILIES THAT RELOCATED AFTER THE INCIDENT

| Reasons for relocation | No. of Cases |
|--|--------------|
| Safety | 15 |
| Landlord asked them to vacate or Landlord was related to the accused and forced the family out in different ways | 5 |
| Threats from the accused/ accused's family or friends | 3 |
| Shame | 2 |
| Total | 25 |

Medical Support

Different kinds of health and medical care needs resulting from the incident were identified for 20 children. While treatment of victims of sexual crimes is free in government hospitals, often enough the families have to shell out money for tests that cannot be conducted in government hospitals as there is a long waitlist or because there is no equipment. Cost of medicines too has to be borne by the families. Children who undergo colostomy surgery need to frequently change the plastic bag that is attached to the artificial opening created for passing urine and stool. Many parents have to forgo their daily wages to bring the child to the hospital.

Mental health services are very inadequate and when available, it is incredibly expensive. The government mental health services are overloaded and often tardy. Nevertheless, given the huge need for mental health support, HAQ has a tie-up with the Department of Psychiatry at the All India Institute of Medical Sciences (AIIMS), which takes care of children who require more than psychotherapy. Emotional and psychological healing is yet to be seen as part of medical expenses.

Much of treatment, care and related costs are seldom provided for and the victim compensation, if received, arrives too late, while the need is immediate and urgent.

In addition, there are many needs to be met at times of medical emergency or in the course of treatment where support is required. For example, in a case where the child

Over the years, HAQ has been fortunate to enter into formal and informal tie-ups with hospitals and NGOs that can support children in need. These include not just the Department of Psychiatry at AIIMS, but also hospitals like Neptune and Jamia Hamdard and NGOs like Médecins Sans Frontières (Doctors Across Borders) for medical treatment and counselling at their Ummeed Ki Kiran centre located in Jahangirpuri, Society for Promotion of Youth and Masses (SPYM) for de-addiction treatment and Children First for psychotherapy.

is undergoing psychiatric treatment, the support person's role is just to ensure that the child does not miss her hospital visit dates and follows the doctor's prescription. In another case, the support person had to arrange blood for the child's surgery. Then there are times when a second opinion is required.

TABLE 34: MEDICAL NEEDS IDENTIFIED AND SUPPORT PROVIDED

| Medical Support Required | No. of Cases |
|--|--------------|
| Psychiatric treatment | 1 |
| Colostomy related surgery and post-operative care and follow-up | 4 |
| Treatment for epilepsy. The child was epileptic for a long time. Her situation worsened after the incident, but the doctors did not see a direct relation between epilepsy and the incident. The child had to be hospitalised a couple of times before she died. | 1 |
| Assistance throughout her pregnancy and for safe delivery | 4 |
| Treatment for continuous pain in the abdomen and infection | 3 |
| Emotional support and assistance for MTP | 2 |
| De-addiction treatment and rehabilitation | 1 |
| Treatment for pain in private parts, Drug de-addiction treatment and rehabilitation, HIV/AIDS testing and treatment for STI | 1 |
| Surgery due to injuries in private parts | 1 |
| Treatment for pain in private parts | 2 |
| Total | 20 |

There are cases where medical support is provided even if the medical need is not directly linked to the incident, as for example, hospitalisation of a child victim suffering from epilepsy. Another example is that of a child who had lost sight in one eye and was soon going to lose it in other one too, while she was yet to identify the accused in the court.

Abida's Story

Sexually abused by her stepfather for several years, Abida (name changed) and her mother have had to go through many sufferings. They have been under continuous pressure from the accused and his relatives to withdraw the case. The accused in this case was arrested much later and the arrest was triggered by a strange incident. Taking advantage of the situation, accused's business rivals shot at Abida's mother to make the police believe that the accused was responsible for it, so that his arrest could be expedited. As if Abida's pregnancy was not enough to deal with. Not only was she pregnant as a result of abuse, but also severely anaemic. She needed support to steer through her pregnancy as her mother, who works as a domestic help, was not in a position to take her for regular check-ups and provide her the nutrition she required. The government hospital was too far for them. Fortunately, HAQ could tie-up with a private hospital nearby to ensure pre-natal and post-natal care as well as safe delivery. The hospital was not aware of the incident till the day she was taken to the hospital for delivery. It was only when the doctor on duty overheard an argument between Abida and her mother regarding surrender of the new born child for adoption that they got to know the story. Every effort was made by the hospital to avoid the delivery thereafter. After a few hours of waiting, HAQ's support person was asked to shift the child to Safdarjung Hospital on the grounds that Abida was severely anaemic and her delivery had complications that the hospital was not equipped to handle. This despite Abida being a regular patient at the hospital through a tie-up between HAQ and the hospital. Since Abida and her mother had fought over the new born's custody and adoption, the doctor's next question was who would take care of Abida and the new born once she is discharged. Abida had turned 18 years by this time and was no longer under the jurisdiction of CWC. HAQ's team immediately contacted a shelter home for women and asked if they could give a letter saying that Abida could live in their shelter. When they agreed, the hospital wanted a letter from the CWC saying that Abida has turned 18 and can be sent to the said shelter home. Being a Sunday, the CWC was closed. Phone calls were made to the Members and the Chairperson of the CWC and they were convinced to give that letter. The support person then rushed to meet one of the CWC Members at her relative's house, where she had come for a family function. When the letter arrived, the doctor wanted to know who would bear the cost of delivery. This is when the HAQ team decided to send a lawyer to the hospital to speak to the authorities and tell them that the law requires all hospitals, government or private, to provide free of cost treatment for rape victims and child delivery resulting from rape can safely be argued to be part of it. Finally they understood only the language of a lawyer, and too because the lawyer knew people in the Management of the Hospital.

Today Abida is safe and happy at the shelter home. Although she had to give up her education mid-way, she is keen to continue. A care plan is being prepared to ensure her transition from the shelter home back into her family, while HAQ continues to support her medical and health care needs post-delivery.

Educational Support

As per the Right to Education Act, 2009, education is a fundamental right of every child in the age group of 6 to 14 years in the country and for others it still remains an essential part of the Right to Life guaranteed under Article 21 of the Indian Constitution. Right to Education assumes much more importance in the context of children who have gone through the traumatic experience of sexual violence at an early age. It is high time we mainstream these children and ensure their basic rights before our "demographic dividend" turns into a serious and irrecoverable "demographic loss".

While there is much discussion on the laws, the legal procedures and to an extent the counselling support, denial of basic right to education of abused children is rarely discussed.

While socio-economic reasons and existing gender inequalities keep our girls away from school, sexual abuse and even the threat of it, widens the divide. Distance between the school and the house is a reason for girls dropping out of mainstream formal education system. Security concerns of the parents lead to girls being withdrawn from school. This is not to say that boys do not face similar issues and are not at the risk of being sexually abused.

Child sexual abuse directly impacts the education of survivors...

Varsha's (name changed) mother works as a security guard while her father is employed as a labourer in a factory. The mother leaves home at 8.30 am and returns at 9.30 pm. Her father and paternal uncle also work during the day, leaving the child alone at home. Varsha was sexually assaulted and stopped going to school. According to her mother, the child was too scared to move out of the house alone and therefore stopped her schooling.

Sixteen-year-old Zubeda was pregnant as a result of her abuse and was unable to abort in time. She was forced to carry the child to full term and had to move to a shelter home. As a result of the pregnancy, she was unable to attend school. She delivered the baby in June 2017 and was looking forward to continuing her education.

Padma had studied till class nine in her village school and moved to Delhi. Following her abuse, when Padma and her family approached HAQ: Centre for Child Rights, the child was extremely unhappy and required counselling. Over a period of time, she was slowly recovering from her trauma but did not want to go to school. Her neighbours' taunts hurt her and she would hardly leave her home. She loved to play badminton in school and missed it a lot.

Varsha, Zubeda and Padma had all experienced abuse at a young age and as a result of the trauma were denied their basic right to education and development, for no fault of theirs.

Sustainable Development Goal 4 ...

“inclusive and quality education for all and promote lifelong learning..”

In as many as 26% cases (33 cases), children discontinued education. The highest number of dropouts was from 9th standard i.e. 42% of 14 girls dropped out from school due to the incident.

The Central Board of Secondary Education (CBSE) in a circular issued in 2015 mentions:

“All children have an equal right to access education in an environment that is safe, protective and conducive to the overall development. The challenges of gender inequality, eve teasing and sexual abuse in school environment call for increased awareness and creating synergy among parents, teachers and schools.” To ensure compliance of the POCSO Act, the Board listed out initiatives and action for creating awareness about sexual exploitation among school children. This included the need for creating awareness among teachers, management and all employees of the institutions and their “duty to report instance of child abuse”. However, the ground realities are quite different.

At a training programme for Investigating Officers (IO) on child protection and the POCSO Act, organised by HAQ: Centre for Child Rights in 2017, a woman officer mentioned the challenges they faced in approaching schools to seek the child’s age proof. The authorities refuse to provide relevant documents for fear of negative publicity and do not cooperate.

School Managements have been found harassing parents for filing cases and even pressurising them to withdraw their child from the institution. All for the fear of attracting negative publicity, and certainly not in the best interest of the child as they suggest to the child and her family.

In all cases where children dropout from school, parents and children are encouraged and motivated to continue their education. Sending the child back to regular school is always the first option but in case this does not work out, options like NIOS, NFE or vocational courses are explored with the child and the family.

Mostly it is regular follow up, counselling and encouragement to resume studies, which works in such situations. At times, meeting the School Principal becomes important to ensure that they get necessary permission from the Education Directorate to allow the child to be re-admitted, especially if it’s mid-year or there has been a long gap since the child’s last schooling.

TABLE 35: DETAILS OF CHILDREN WHO DROPPED OUT OF SCHOOL FOLLOWING CSA - SUPPORT FROM HAQ

| Current status of children who dropped out of school due to the incident | 33 Children (All Girls who were attending regular school prior to the incident) |
|--|--|
| Resumed studies | 25 Children 9 have enrolled in NIOS instead of regular schooling (all for classes 8, 9 and 10) 3 have enrolled for vocational training (including one who is enrolled in NIOS) 14 are back into a regular school |
| Not resumed studies | 8 Children (All Girls who were attending regular school prior to the incident) 3 girls will be taking admission into a regular school with effect from the ensuing academic year 1 girl was married off as soon as she turned 18 3 girls did not resume their studies despite efforts 1 girl is undergoing therapy sessions for intellectual disability |

