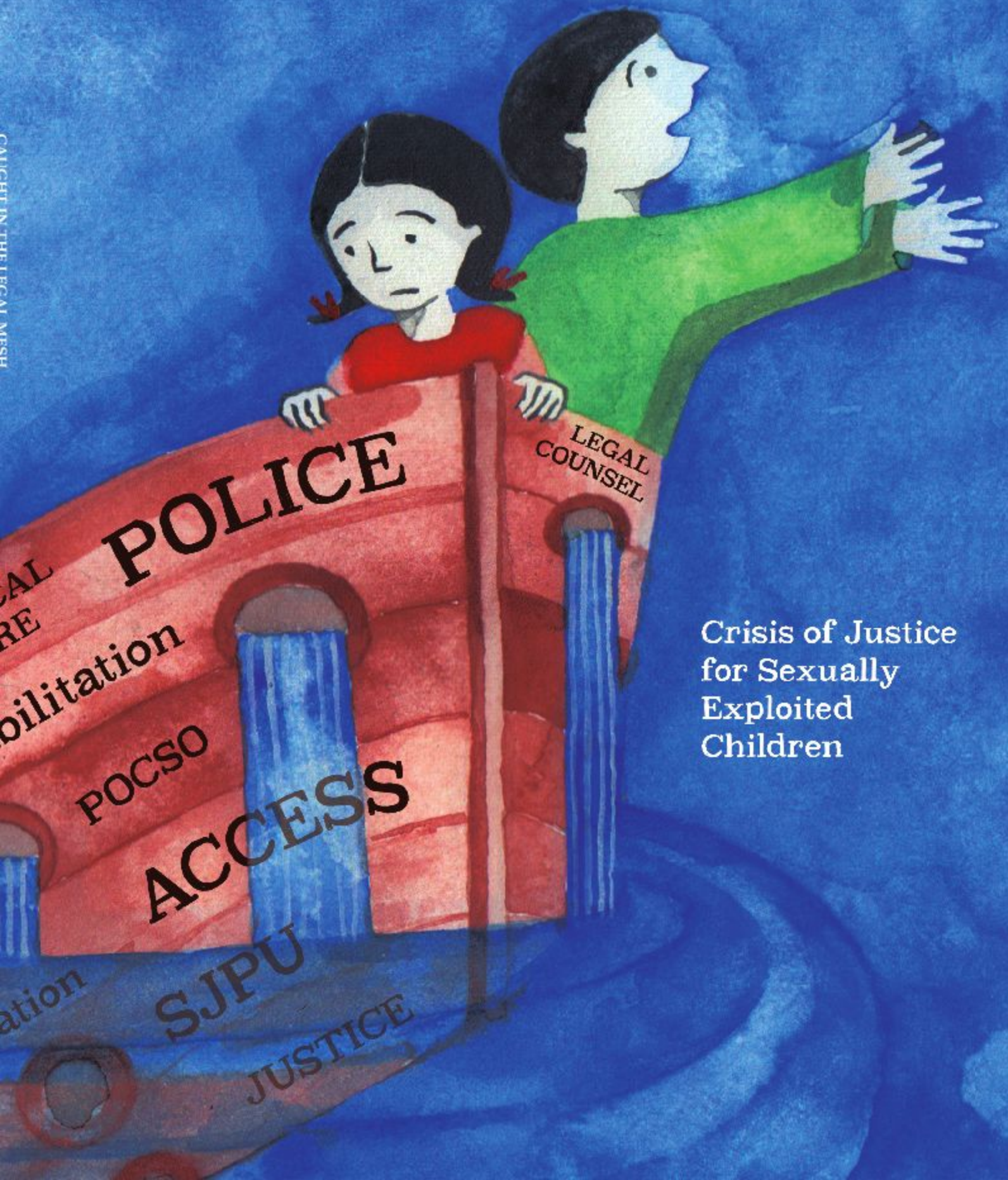


CAUGHT IN THE LEGAL MESH

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Crisis of Justice
for Sexually
Exploited
Children

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CAUGHT IN THE LEGAL MESH
Crisis of Justice for Sexually Exploited Children

Through the Eyes of the Child:
Barriers to Access Justice and Remedies for Child Victims
of Sexual Exploitation

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GLOSSARY OF TERMS

Access to Justice

Pursuant to the 2013 Report on Access to Justice for Children by the UN High Commissioner for Human Rights,¹ “access to justice refers to the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child. It applies to civil, administrative and criminal spheres of national jurisdictions...and covers all relevant judicial proceedings, affecting children without limitation, including children alleged as, accused of, or recognized as having infringed the penal law, victims and witnesses or children coming into contact with the justice system for other reasons, such as regarding their care, custody or protection.” For purposes of this report, “access to justice” refers only to the ability of child victims of sexual exploitation to obtain a just and timely remedy through state criminal justice systems.²

Adolescent

For purposes of this report, adolescent refers to persons under age 18 who are in the process of developing from a child into an adult.³ “Older child” or “teenager” may also be used as a way to distinguish these children from pre-pubescent children.

Age of Consent

The age of consent is the age at which a person is legally competent to engage in sexual intercourse. According to India’s Criminal Law (Amendment) Act of 2013, the age of consent is 18 years.

Best Interests of the Child

Pursuant to Article 3(1) of the CRC, in “all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”⁴ As confirmed by the UN Committee on the Rights of the Child in General Comment No. 14 (2013), the best interests principle is flexible and must be determined on a case-by-case basis, taking into account the each child’s specific characteristics, context, situation and needs, as well as the opinions of the child him/herself.⁵

Child

Article 1 of the CRC defines a child as a “human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” This is the definition adopted by India in Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act of 2015.

Child-Friendly Justice

Pursuant to Article II(c) of the Council of Europe Guidelines on Child-Friendly Justice (2010), “‘child-friendly justice’ refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level ...giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”⁶

¹ Human Rights Council (2013), “Access to justice for children, Report of the United Nations High Commissioner for Human Rights” (hereinafter Access to Justice), UN Doc. A/HRC/25/35, 16th December 2013, para 4.

² See: UN General Assembly (1985), “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”, UN Doc. A/RES/40/34, 29 November 1985, para. 4 (victims of crime are “entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered”); UN General Assembly (2006), “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, UN Doc. A/RES/60/147, 21 March 2006, para. 12 (“victims of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law”).

³ Interagency Working Group on sexual exploitation of children (2016), “Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse” (hereinafter Luxembourg Guidelines), adopted on 28th January 2016, accessed 30th June 2016.

⁴ UN General Assembly (1989), “Convention on the Rights of the Child” (herein after CRC), Res. 44/25 of 20th November 1989.

⁵ Committee on the Rights of the Child (2013), “General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1)”, UN Doc. CRC/C/GC/14, 29th May 2013, para. 32.

⁶ Council of Europe (2010), “Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice”, adopted by the Committee of Ministers of the Council of Europe on 17th November 2010, Art. II (c).

Child Pornography/Child Sexual Abuse Materials
Pursuant to Article 2(c) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC), child pornography means “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.” According to Article 3(1)(c), “each State party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law...producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the [purpose of sexual exploitation of the child] child pornography.”

According to the 2016 Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (Luxembourg Guidelines), “the term ‘child pornography’ is still used when addressing legal issues and contexts, in particular when reference is made to international and domestic legal treaties that explicitly include this term. However this term should be avoided to the extent possible, in particular when referring to non-legal contexts. In such contexts, ‘child sexual abuse material’ or ‘child sexual exploitation material’ should be the terms of choice.”⁷

Child Prostitution

According to Article 2(b) of the OPSC, child prostitution means “the use of a child in sexual activities for remuneration or any other form of consideration.” According to Article 3(1)(b), each State Party shall ensure that, at a minimum, the following acts are fully covered under its criminal or penal law...”offering, obtaining, procuring, or providing a child for child prostitution.”

Although the term “child prostitution” is defined under international law, according to the Luxembourg Guidelines, “it may arguably be interpreted in a manner to imply that the

phenomenon represents a legitimate form of sex work or that the child has given her/his informed consent to prostitute her/himself.” Therefore, “in order to avoid the risk of stigmatising children exploited in/for prostitution, or of inadvertently legitimising such practices,” it is preferable to use terms such as “exploitation in prostitution” or “exploitation for prostitution”.⁸

Child-Sensitive

Pursuant to paragraph 9(d) of the UN Economic and Social Council’s Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (UN Guidelines on Child Victims and Witnesses)⁹, “child-sensitive” denotes an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views.” In this paper, it is used interchangeably with “child-friendly”.

Compensation

Article 9(4) of the OPSC states that “State parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.” The Basic Principles on the Right to Remedy and Reparation define compensation as “any economically assessable damage, as appropriate and proportional to the gravity of violation and the circumstances of each case,” including compensation for lost opportunities, including employment, education and social opportunities, material damages such as loss of earning potential, moral damage, and costs required for legal or expert assistance, medicine and medical services, and psychological and social services.¹⁰

Criminal Justice Process

As defined by paragraph 9(c) of the UN Guidelines on Child Victims and Witnesses, the criminal “justice process” encompasses “detection of the

⁷ Interagency Working Group on sexual exploitation of children, Luxembourg Guidelines, p. 40. The Guidelines point out that “pornography is a term primarily used for adults engaging in consensual sexual acts distributed (often legally) to the general public for their sexual pleasure. Criticism of this term in relation to children comes from the fact that ‘pornography’ is increasingly normalised and may (inadvertently or not) contribute to diminishing the gravity of, trivialising, or even legitimising what is actually sexual abuse and/or sexual exploitation of children. Furthermore the term ‘child pornography’ risks insinuating that the acts are carried out with the consent of the child, and represent legitimate sexual material.”

⁸ *Ibid*, p. 30.

⁹ UN Economic and Social Council (2005), “Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime”, UN Doc. E/RES/2005/20, 22nd July 2005, para. 9(d).

¹⁰ UN General Assembly, Basic Principles on the Right to a Remedy and Reparations, para. 20.

crime, making of the complaint, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice.”

Criminal Justice System

For purposes of this paper, the criminal justice system refers to the official justice system of the State, including the police, prosecution, judiciary and penal systems, as well as any professionals or agencies that provide services to victim-witnesses during criminal cases.¹¹

ECPAT (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes)

ECPAT International is a global network of civil society organizations dedicated to ending the sexual exploitation of children. As of July 2016, ECPAT International consisted of 90 member groups in 82 countries around the world.¹²

Exploiter

For purposes of this paper, “exploiter” is used interchangeably with “offender” and “perpetrator,” and refers to individuals who receive the benefits of a child’s sexual exploitation. These individuals include facilitators, such as pimps, traffickers and other intermediaries, and users, sometimes referred to as clients, customers or johns.¹³

Professionals

Pursuant to Article 9(b) of the UN Guidelines on Child Victims and Witnesses, “professionals refers to persons who, within the context of their work, are in contact with child victims and witnesses of crime or are responsible for addressing the needs of children in the justice system...This includes, but is not limited to, the following: child and victim advocates and support persons; child protection service practitioners; child welfare agency staff; prosecutors and, where appropriate, defense lawyers; diplomatic and consular staff; domestic

violence programme staff; judges; court staff; law enforcement officials; medical and mental health professionals; and social workers.”

Recovery and Reintegration

Article 39 of the CRC states that “State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse.” Article 9(3) of the OPSC states that “State parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.” This assistance can include physical health services, psychosocial support and assistance with reintegration where children have been removed from their families or communities.

Remedies

Article 19 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Declaration on Justice for Victims of Crime) states that crime victims have a right to legal remedies, which include reparation in the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. According to the UN Guidelines on Child Victims and Witnesses, “child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive. Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed.”¹⁴

¹¹ See: Oxford Dictionary (2016), “Definition of criminal justice system”, accessed 12th June 2016, (defining criminal justice system as “the system of law enforcement that is directly involved in apprehending, prosecuting, defending, sentencing, and punishing those who are suspected or convicted of criminal offenses”).

¹² ECPAT International, “About us,” *ECPAT International website*, accessed 4th July 2016.

¹³ See: Interagency Working Group on sexual exploitation of children, Luxembourg Guidelines, p. 90 (advising against the use of the terms “client,” “customers,” and “johns” in favour of the terms “child sex offender,” “perpetrator of child sex offences,” or “child abuser,” which are terms that underline the criminal nature of exploited children through prostitution).

¹⁴ UN Economic and Social Council, Guidelines on Child Victims and Witnesses, paras. 35 and 37.

Respondents

Respondents refers to individuals interviewed for this study, including victims and survivors of child sexual exploitation, criminal justice professionals, and social service providers.

Restitution

According to Article 8 of the Declaration on Justice for Victims of Crime, “offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.” Article 9 further provides that “governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.”

Sale of Children

According to Article 2(a) of the OPSC, the sale of children means “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.” Article 3(1)(a)(i) directs State parties to criminalize the sale of children for the purposes of sexual exploitation, forced labour and the transfer of organs.

Service Providers

The term “service providers” refers to individuals who provide direct assistance and services to survivors. These may include government and non-government professionals, including social workers, outreach workers, case managers, mental health professionals, such as psychologists or counsellors, and shelter staff, including house parents.¹⁵

Sexual Exploitation of Children (SEC)

A child is a victim of sexual exploitation when the child takes part in a sexual activity in exchange for something (a monetary or non-monetary gain or benefit or even the promise of such), which is received by a third party, the perpetrator, or by the child him/herself. The notion of an exchange is what distinguishes SEC from other forms of sexual violence and abuse of children. ECPAT International recognizes four primary and interrelated forms of SEC: prostitution, pornography, trafficking for sexual purposes and sexual exploitation in travel and tourism.¹⁶

Sexual Exploitation of Children in Travel and Tourism (SECTT)

According to the 2016 Global Study on Sexual Exploitation of Children in Travel and Tourism, SECTT is defined as “acts of sexual exploitation of children embedded in the context of travel, tourism or both.” This definition includes tourists, business travelers, expatriates, voluntourists or pseudo-caregivers abroad. It focuses not only on Western offenders, but includes local and regional travellers and tourists as well.¹⁷

Survivor

For the purposes of this paper, the term “survivor” is used interchangeably with “victim” and refers to an individual who experiences sexual exploitation when he/she is under the age of 18. In the criminal justice context, survivors are referred to as “victim-witnesses” when they participate in a criminal case. It should be recognised that “whether a child moves or not from victim to survivor status will depend on the measures and services provided to her/him to address and overcome the consequences of her/his victimisation. ‘Victim’ and ‘survivor’ would then distinguish between situations where there has been an (effective) process and situations where

¹⁵ Brunovskis, Anette and Surtees, Rebecca (2012), “A Fuller Picture: Addressing Trafficking-Related Assistance Needs and Socio-Economic Vulnerabilities”, accessed 25th July 2016.

¹⁶ The term “commercial sexual exploitation of children” or SEC is often used interchangeably with the term “sexual exploitation of children” or SEC. SEC, however, tends to refer to the sexual abuse of a child in exchange for money, while SEC tends to refer more broadly to the sexual abuse of a child in exchange for both monetary and non-monetary benefits. See: Interagency Working Group on sexual exploitation of children, Luxembourg Guidelines, p. 41-42.

¹⁷ See: Hawke, Angela and Raphael, Alison (2016), “Offenders on the Move: Global Study on sexual exploitation of children in travel and tourism” (hereinafter Global Study on SECTT), Bangkok: ECPAT International and Defence for Children-ECPAT Netherlands, p. 106.

no such process has taken place.”¹⁸ Any distinction made between “victims” and “survivors” is an evolving process and cannot be rigidly defined; it depends upon individual contexts including, for example, how the child sees themselves.

Trafficking

According to Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol), trafficking “shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” Article 3(c) further states that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth” above.

Victim

Pursuant to Article 1 of the Declaration on Justice for Victims of Crime, “victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.” According to the UN Guidelines on child victims and witnesses of crime, “Child victims and witnesses’ denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders.”¹⁹ For purposes of this paper, “victim” refers to anyone who suffered from sexual exploitation as a child.

¹⁸ Interagency Working Group on sexual exploitation of children, Luxembourg Guidelines, p. 80.

¹⁹ UN Economic and Social Council, Guidelines on Child Victims and Witnesses, para. 9(a).

ACRONYMS

<u>Art(s)</u> Article(s)	<u>MoU</u> Memorandum of Understanding
<u>ASEAN</u> Association of South East Asian Nations	<u>MWCD</u> Ministry of Women and Child Development
<u>AtJ</u> Access to Justice	<u>NCPCR</u> National Commission for Protection of Child Rights
<u>CoE</u> Council of Europe	<u>NGO</u> Non-governmental Organisations
<u>CRC / UNCRC</u> United Nations Convention on the Rights of the Child	<u>OHCHR</u> Office of the United Nations High Commissioner for Human Rights
<u>CrPC</u> Code of Criminal Procedure	<u>OPSC</u> Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
<u>CWC</u> Child Welfare Committee	<u>POCSO</u> Protection of Children from Sexual Offences Act, 2014
<u>DCPU</u> District Child Protection Unit	<u>SAARC</u> South Asian Association for Regional Cooperation
<u>DLSA</u> District Legal Services Authority	<u>SEC</u> Sexual Exploitation of Children
<u>ECOSOC</u> United Nations Economic and Social Council	<u>SECO</u> Sexual Exploitation of Children Online
<u>ECPAT</u> End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes	<u>SECTT</u> Sexual Exploitation of Children in Travel and Tourism
<u>ICT</u> Information and Communications Technology	<u>SJPU</u> Special Juvenile Police Unit
<u>IEA</u> Indian Evidence Act, 1872	<u>TIP</u> Trafficking in Persons
<u>IPC</u> Indian Penal Code, 1860	<u>UN</u> United Nations
<u>ITPA</u> Immoral Traffic Prevention Act, 1956	<u>UNICEF</u> United Nations Children's Emergency Fund
<u>ILO</u> International Labour Organisation	<u>UNODC</u> United Nations Office on Drugs and Crime
<u>JJB</u> Juvenile Justice Board	
<u>MDT</u> Multidisciplinary Teams	

EXECUTIVE SUMMARY



Children have a right under Article 34 of the *Convention on the Rights of the Child* to live a life free of sexual abuse and exploitation and to access justice when this right is violated.

Access to justice for children is defined as the “the ability to obtain a just and timely remedy for violations of rights” under international law. For sexually exploited children, the criminal justice system is an important way to secure legal remedies, including the compensation and services they need to recover and return to healthy lives. Indeed, participating in a criminal case against their offender is sometimes their only avenue for redress, as it can be costly and impractical to seek damages through separate civil lawsuits, and aid from state compensation funds, when available, is usually minimal.

To secure remedies for the violation of their rights, sexually exploited children must be able to engage effectively with the criminal justice system. States have a duty under international law and standards to help child victims participate in criminal cases against their offenders without being exposed to additional harm in the process, such as threats to their safety, privacy, health, or well-being. This “child-friendly” approach to justice recognizes the rights of child victims and witnesses and balances them against those of accused offenders.

In recent years, States around the world, including India, have put in place a wide range of child-friendly measures to make their criminal justice systems more accessible and hospitable to children.

India has introduced comprehensive legislation on sexual violence against children, namely the Protection of Children from Sexual Offences Act (hereinafter referred to as “POCSO”) in 2014. This is in addition to existing laws on sexual violence. Moreover, Standard Operating Procedures have been developed by the State to respond to instances of sexual violence against children.

Despite these advances, child victims of sexual exploitation continue to struggle to access justice for the crimes against them. Few sexually exploited children enter the criminal justice system, and

fewer still, participate in criminal proceedings until their conclusion. Indeed, it is rare for sexually exploited children to receive any legal remedy at all.

As the only global network dedicated to protecting children from all forms of sexual exploitation, ECPAT International conceptualized the study to understand the experience of sexually exploited children in the criminal justice system and to identify the special challenges they face when seeking access to justice and remedies. Organisations involved in this study include, Adhar Khajuraho, Hifazat Coalition for Child Protection, M.P Institute of Social Science Research, Vikas Samvad Samiti (Madhya Pradesh), Sanlaap (West Bengal), Alternative Law Forum and EQUATIONS (Karnataka).

Methodology

The Access to Justice study was conducted in 2016 to assess the ability of sexually exploited children to access the criminal judicial process in India.

A key priority of the study was to listen to the voices of SEC survivors²⁰ and learn from their experiences in the justice system. The research team conducted thirty access-to-justice interviews with young people, aged 7 to 18, all of whom had suffered sexual exploitation and were contemplating, or participating in, criminal actions against their exploiters. The research team is grateful to the courage of these young people and proud to share their views in this report.

The research team also interviewed eighteen criminal justice and social service professionals who work with SEC survivors in criminal cases, including police, prosecutors, judges and civil society actors. Desk research was conducted into relevant international and national laws to provide background and context.

Data from the field and desk research was collated and reviewed for common themes. In this way, the study was able to identify unique access-to-justice barriers that sexually exploited children continue to face in India and around the world.

²⁰ For purposes of this paper, “survivors” refers to individuals who experienced commercial sexual exploitation when they were under the age of 18.

Research Limitations

The study provides a unique look at the criminal justice process through the eyes of sexually exploited children. It is not a comprehensive analysis of the Study Countries' efforts to incorporate international access-to-justice standards or to implement child-sensitive procedures. Rather, it is intended to provide unique insight into the child's experience of these justice systems and highlight aspects of the justice process that merit additional attention.

The study is also not a complete mapping of the SEC survivor's experience at every stage of the criminal justice process. The study relied on loosely-structured interviews and open-ended questions to encourage participants to speak freely. The study, therefore, reflects the access-to-justice issues that were most important to the survivors and professionals interviewed.

Finally, although the study was able to draw on accounts from a number of key respondents in India, the respondents are a non-random sample of SEC survivors and professionals, and the study's findings should not be seen as representative of the larger population. Instead, they should be considered useful points of entry into policy recommendations.

Findings

The study confirmed that India, like many countries around the world today, has strong legislation in place to protect children from sexual exploitation and help them participate in criminal cases against offenders to obtain much-needed remedies. Yet, the study also revealed that child-friendly legislation and procedures in India have not translated into child-friendly practices for sexually exploited children. Instead, these children continue to face unique and powerful barriers that prevent them from accessing justice for the crimes against them.

A key finding of the study is that where children were provided information about the justice system and made to feel as participants in the process, they retained enthusiasm about trial and bringing the perpetrators to justice. Where children were not

informed of the status of their case, and where their welfare was treated as only incidental to the justice process, children quickly became alienated from the entire process, and lost interest in seeking justice for themselves.

Cross-Cutting Themes

Certain cross-cutting themes emerged from the Study, which are at the root of the problems that sexually exploited children experience in today's justice systems. All reflect the States' failure to institutionalize the four core principles of child-friendly justice: (1) to treat all child victims with dignity and compassion; (2) to protect them from discrimination; (3) to give primary consideration to their best interests during criminal cases; and (4) to enable them to participate in cases to the full extent that their age, intellectual maturity and evolving capacity allows.²¹

Elusive Nature of the Child's Best Interests in SEC Cases

In criminal cases involving child victims, police, prosecutors and judges have a special duty under international law: to give primary consideration to the child's best interests when making decisions that affect them. SEC cases are generally heard in criminal courts where the best interests principle is less familiar than in child-specialized courts and the best interests of SEC victim-witnesses are not considered in any systematic way.

In India, relevant laws either fail to mention the "best interests" duty or provide little guidance about how and when to make a determination in a SEC case. Child victim-witnesses are not provided a lawyer, guardian ad litem, or other dedicated support person who can advocate for their interests during proceedings. As a result, inadequate attention is paid to the special needs of children in SEC cases, exposing them to unnecessary hardships at all stages of the proceedings and making it more difficult for them to access justice through the criminal process.

Few Opportunities for Meaningful Participation

Although justice officials also have a duty to inform and seek the views of sexually exploited children during cases against their offenders, the study

²¹ Art. III, ECOSOC 2005/20.

revealed that legal actors in India regularly failed to inform survivors about what transpired in their cases or to consult with them on key decisions. For example, despite the great risks that the children face when acting as witnesses against exploiters, there is no requirement in Indian law or policy that they be fully informed before making the decision to file a criminal complaint and participate in a case against their offender.

If a SEC survivor chooses to become involved in the criminal system, Indian law authorizes courts to appoint a support person to keep the child engaged in the proceedings. However, an appointment is not mandatory, and in many cases, no support person is appointed. As a result, most of the survivors interviewed for the study were very much in the dark about their cases, having had no news for months or even years, and feeling the pain of unexplained delays acutely.

One-Size-Fits-All Approach to Child-Friendly Justice

While the growth of child-friendly procedures in State justice systems is welcome and overdue, there is still little attempt to assess the individual needs and desires of each child victim before applying these procedures. The failure to create mechanisms that allow justice actors to consider the best interests and opinions of each child has led to a one-size-fits-all approach to child-friendly justice, which does not meet the unique needs of sexually exploited children.

Child-Dependent, rather than Child-Supportive Prosecutions

Adding to the hardship of participating in SEC cases is the fact that most prosecutions are child-dependent, rather than child-supportive. In India, as elsewhere, SEC prosecutions rely almost entirely on the child's testimony, with little corroborating physical evidence or witness testimony. For example, forensic medical examinations are often conducted much after the last incident of sexual abuse, thereby reducing the chances of obtaining corroborating physical evidence. Moreover, the absence of effective witness protection measures means that once repatriated to their families, children often face threats from the perpetrator, and as a result, turn hostile to the prosecution.

Myth of the “Willing” Victim

A common theme arising out of the study is the failure of adults in the justice system to see the injured child beneath the image of a victim. The belief that the child is a willing participant in the sex trade is a unique and incredibly powerful barrier to the ability of sexually exploited children to access justice, negatively impacting the child's experience at every stage of the process, from the initial contact with police, to the investigation and trial, to the final judgement and award of remedies. Many of the children interviewed have spoken of being shamed and humiliated by medical professionals during examination and by the police, who would insinuate and accuse the children of willingly participating in sex work. This has not only caused great emotional distress to the children, but has also resulted in children feeling alienated and victimized in the criminal justice process.

Discrimination against the Most Vulnerable Children

Children from vulnerable groups are particularly vulnerable to sexual exploitation. In India, children from Dalit and Adivasi communities are often particularly vulnerable to sexual exploitation. For example, several of the children interviewed in Madhya Pradesh are from the Banchhada community, which is a Scheduled Tribe community. Children from the Banchhada community are not only vulnerable to sexual exploitation, but are also at the risk of secondary victimization by the police and other stakeholders. These barriers prevent them from pursuing criminal cases against their exploiters and securing the services they need to recover and rebuild their lives.

Unique Barriers at Each Stage of the Criminal Justice Process

The study also identified a number of special barriers that SEC victims face during each stage of the criminal justice process:

Barriers to Entering the Justice System

- Fear of police: Children lack confidence in the police, and feel afraid to approach law enforcement officials to complain about sexual exploitation.

- Refusal by police: Police refuse to record cases under the appropriate law that was formulated in order to effectively address the heinous crimes of sexual abuse and sexual exploitation of children in India.
- Fear of institutionalisation: Moreover, children who were rescued from brothels are often told by brothel owners that if the police find them, they will be taken to the shelter home where they will be detained in shelter homes for long periods of time
- Family pressure: Children also face pressure from families to remain silent or settle privately with offender, instead of filing complaints.
- Fear of reprisal: Children are often reluctant to disclose sexual exploitation because of feelings of shame or guilt, and the fear of reprisal from the perpetrator. This is especially true where the perpetrator is known to the child. Even in cases where children have been brought before Child Welfare Committee, reluctance on part of the child, coupled with absence of effective counselling, has made it difficult for children to disclose their experiences.

Barriers to Securing Justice Once in the System

- Lack of information of justice process: Children are rarely informed of their rights in the justice process, such as the right to legal aid and to compensation. These rights are essential to the effective participation of a child in the justice process.
- Pressure from families to turn hostile during prosecution: Even if children file complaints, pressure from families to turn hostile continues during prosecution as well.
- Absence of effective witness protection measures: Children often face threats from the accused and his associates during prosecution, and the lack of effective witness protection measures leaves children who choose to prosecute vulnerable to reprisal
- Absence of effective rehabilitation schemes for children: the justice process is almost entirely

prosecution-driven, and parallel processes for the recovery and rehabilitation of the child are often inadequate.

While recognizing the progress has been made to create a more “child-friendly” criminal justice process in India, the Access to Justice study has identified certain areas for improvement. The research team offers the following recommendations for change:

- Improved inter-agency co-ordination
- Improved supportive role of police and all other actors in the justice system
- Better communication and enabling informed-decision making for the survivor
- Improved access to support services, including access to legal counsel, medical care and counselling
- Improved witness protection programmes for survivors
- Providing access to compensation, especially interim compensation
- Ensuring a comprehensive rehabilitation programme that extends beyond the prosecution stage
- Improved accountability of stakeholders
- Improved state monitoring guidelines & training for district level bodies



1. INTRODUCTION



I.1. The Sexual Exploitation of Children

Children fall victim to sexual exploitation in many different ways: they are used in prostitution, featured in pornography, trafficked across and inside borders for sexual purposes, and offered as sexual favors in travel and tourism.²²

Definition of Sexual Exploitation of Children (SEC)

A child is a victim of sexual exploitation when he/she takes part in a sexual activity in exchange for something (e.g. gain or benefit, or even the promise of such) received by a third party, the perpetrator, or by the child him/herself. A distinction can be made between “sexual exploitation” and “commercial sexual exploitation” with the latter being a form of sexual exploitation where the focus is specifically on monetary benefit.²³

I.2. The International Legal Framework

Under Article 34 of the *United Nations Convention on the Rights of the Child* (CRC), the sexual exploitation of children – wherever and however it occurs – is a violation of a child’s human rights. The *Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography* (OPSC) specifies that States must take steps to protect children from exploitation through prostitution and pornography, and to impose appropriate criminal penalties on the offenders which taken into account the “grave nature” of these offences.²⁴

²² ECPAT International defines four primary and interrelated forms of sexual exploitation of children: prostitution, pornography, trafficking for sexual purposes, and sexual exploitation of children in travel and tourism. ECPAT International, see: ECPAT International, “Questions and Answers About the Commercial Sexual Exploitation of Children, accessed 14th July 2016.

²³ Interagency Working Group on sexual exploitation of children, Luxembourg Guidelines, p. 39-41.

²⁴ See: UN General Assembly (2000), “Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)”, A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002, Art.3 (The Optional Protocol also prohibits other offences, including the sale of children for purposes of transferring their organs, using them in forced labour, or effecting an illegal adoption. Forced child marriage, which is prevalent in certain parts of Nepal, can constitute another type of sale or exploitation. These types of exploitation are not addressed by this study).

²⁵ UN General Assembly (2000), “United Nations Convention against Transnational Organised Crime, Annex 2: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime”, (hereinafter Palermo Protocol), Res. 55/25 of 15 November 2000, Art. 5.

²⁶ ILO (1999), “Convention No. 182 on the Worst Forms of Child Labour”, Art. 6.

States are also obligated to protect children from all forms of trafficking, including the trafficking of a child within or across national borders for sexual purposes, pursuant to Article 35 of the CRC, as well as the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (“Palermo Protocol”).²⁵

The *International Labour Organization Convention No. 182 on the Worst Forms of Child Labour* also requires State Parties to “eliminate as a priority the worst forms of child labour,” the prostitution, pornography and trafficking of children.²⁶

THE CHILD’S RIGHT TO LIVE FREE FROM SEXUAL EXPLOITATION: Article 34 of the *Convention on the Rights of the Child*

“States Parties [shall] undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.”

The Right of Sexually Exploited Children to Legal Remedy

A child who is subjected to sexual exploitation is entitled to seek and obtain a remedy for that violation under international law. Put simply by the Committee on the Rights of the Child, “for rights to have meaning, effective remedies must be available to redress violations”.²⁷

The right of children to legal remedy for human rights violations is well-established in international law. As the Committee notes, it is “implicit in the Convention [on the Rights of the Child] and consistently referred to in the other six major international human rights treaties”.²⁸ Legal remedies can include, among other things, restitution, compensation, and rehabilitation.²⁹

One way that victims of SEC can obtain remedies is by reporting the crimes against them to the police and participating in a criminal case against their exploiter. If the offender is convicted, the criminal court may order him or her to pay restitution to the child to compensate for the harms the offender caused.³⁰

For many sexually exploited children, the criminal process is the only avenue for adequate compensation. State-managed victim compensation

programmes offer limited funds that are not sufficient to ensure the full compensation and rehabilitation of every victim. Civil actions for damages are often a costly and impractical option, especially for child victims who lack legal capacity and require the cooperation and financial support of their parents or guardians.³¹

International standards also establish a right to the remedy of rehabilitation.³² This remedy may include compensation in an amount sufficient to pay for the child’s rehabilitation, or it may include rehabilitation services, themselves.³³ Rehabilitation services have been defined to include the medical, psychological, social and legal services that victims need to return to healthy lives.³⁴

The Right of Sexually Exploited Children to Access Justice

In order to secure remedies, sexually exploited children must be able to access the justice systems entrusted to uphold and enforce these rights. In 2013, the United Nations Office of the High Commissioner for Human Rights produced a report on *Access to Justice for Children*³⁵ and in 2014 convened a full-day meeting of the Human Rights Council on this subject.³⁶

²⁷ Committee on the Rights of the Child, “General measures of implementation of the Convention on the Rights of the Child”, General Comment No. 5, UN Doc. CRC/GC/2003/5, para 24.

²⁸ *Ibid.* For international treaties and standards providing a right to remedy for human rights violations, see e.g. UN General Assembly (1948), “Universal Declaration of Human Rights”, Art. 8; UN General Assembly (1966), “International Covenant on Civil and Political Rights”, Art. 2; UN General Assembly, Basic Principles of Justice for Victims of Crime and Abuse of Power, Arts. 4-7; UN General Assembly, Basic Principles the Right to a Remedy and Reparation, Arts. 18-23.

²⁹ UN General Assembly, Basic Principles on the Right to a Remedy and Reparation, Art. 18. See also: ECPAT International, “Compensation Study for Child Victims of Sexual Exploitation”, Bangkok: ECPAT International (publication forthcoming).

³⁰ UN General Assembly, Declaration of Basic Principles for Justice.

³¹ Other ways that a sexually exploited child could obtain remedies include a quasi-judicial proceeding before a specialized “ombudsman,” an informal mediation outside of official state systems, and in some countries, a private prosecution of offenders, in which the victim rather than the state pursues the criminal case. This study focuses only on the ability of SEC survivors to obtain remedies in connection with their participation in the criminal justice system, as discussed more fully in Section 11 of this report. For information about other avenues of access to justice, see: Child Rights International Network (2016), “Rights, Remedies and Representation: Global Report on Access to Justice for Children”, January 2016, accessed 27 September 2016.

³² UN General Assembly, Basic Principles on the Right to Remedy and Reparation, Art. 20; See also: UN General Assembly, Basic Principles of Justice for Victims of Crime and Abuse of Power, para. 14; UN General Assembly (1984), “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, Res. 39/46 of 10 December 1984, Art.14.

³³ It is not entirely clear how States are to provide victims with the remedy of rehabilitation – whether they should ensure that victims receive compensation in an amount covering the costs of their rehabilitation, or provide rehabilitation services directly, or both. For more, see: Villalba, Clara (2009), “Rehabilitation as a Form of Reparation under International Law”, December 2009, accessed 27th September 2016, p. 58-59.

³⁴ UN General Assembly, Basic Principles on the Right to a Remedy and Reparation, Art. 20.

³⁵ Human Rights Council, Access to Justice, para. 3.

³⁶ Office of the High Commissioner for Human Rights (2014), “Summary of the full-day meeting on the rights of the child”, UN Doc. A/HRC/27/25, 18 June 2014, para 5.

The *Access to Justice for Children Report* emphasizes that the ability of a child to access justice is a “fundamental right in itself and an essential prerequisite for protection of all other human rights.”³⁷ It defines access to justice as “the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the *Convention on the Rights of the Child*.”³⁸ Thus, children used in prostitution and pornography have a right to access justice for violations of their right against sexual exploitation under Article 34 of the CRC.

As explained by the Report, the right to access justice applies to “civil, administrative and criminal spheres of national jurisdiction” and covers “all relevant judicial proceedings...without limitation”.³⁹ It applies to child victims and witnesses,⁴⁰ defined as “children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders.”⁴¹

While the concept of access to justice is sometimes misunderstood to apply only to children in conflict with the law, guaranteeing them fair treatment during criminal proceedings against them, the High Commissioner’s report makes clear that it applies to child victims, as well. This understanding is confirmed by multiple international treaties and standards, which give victims of human rights violations the right to access justice and obtain remedies for the violations committed against them.⁴²

For purposes of this report, “access to justice” refers to the ability of sexually exploited children to obtain a just and timely remedy through state criminal justice systems, including their ability to secure compensation and services needed to recover and rebuild their lives.

ACCESS TO JUSTICE FOR CHILDREN:
Report of the UN High Commissioner for Human Rights, 2013

“Access to justice refers to the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child. It applies to civil, administrative and criminal spheres of national jurisdiction...and it covers all relevant judicial proceedings, affecting children without limitation, including children alleged as, accused of, or recognized as having infringed the penal law, victims and witnesses, or children coming into contact with the justice system for other reasons, such as regarding their care, custody or protection”.⁴³

The Obligation to Provide Sexually Exploited Children with Access to Justice

Child victims of sexual exploitation face unique challenges when they try to access justice and secure remedies.⁴⁴ As observed by the UN Economic and Social Council in the *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime* (UN Guidelines on Child

³⁷ Human Rights Council, Access to Justice, para 3.

³⁸ *Ibid*, para 4.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

⁴¹ *Ibid.*, footnote 5. See also: *Ibid.*, para. 6 (confirming that “juvenile justice” is distinct from “access to justice” because the former provides legal rights and protections only to children in conflict with the law who engage in the criminal process, while the latter applies to child victims and witnesses as well.)

⁴² See e.g. UN General Assembly (2012), “Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels”, UN Doc. A/67/L.1*, 19 September 2012, paras. 14 and 17 (emphasising the “the right of equal access to justice for all, including members of vulnerable groups”); UN Economic and Social Council, Guidelines on Child Victims and Witnesses, paras. 7, 8 and 15 (stating that child victims and witnesses should have access to the justice process without discrimination and urging States to ensure “justice for child victims and witnesses of crime” even while safeguarding the rights of the accused.); UN General Assembly, Basic Principles on the Right to a Remedy and Reparation, Art. 12 (a “victim of a gross violation of international human rights law...shall have equal access to an effective judicial remedy as provided for under international law.”); UN General Assembly, Basic Principles of Justice for Victims of Crime and Abuse of Power, Art. 4 (victims are “entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.”)

⁴³ Human Rights Council, Access to justice, para 4.

⁴⁴ Committee on the Rights of the Child, General Comment No. 5, para. 24.

Victims and Witnesses), there are “serious physical, psychological and emotional consequences of crime and victimization for child victims and witnesses, in particular, in cases involving sexual exploitation.”⁴⁵ Because child victims of crime are particularly vulnerable, they “need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process.”⁴⁶

The Committee on the Rights of the Child elaborated in its General Comment on *General Measures of Implementation of the Convention on the Rights of the Child* that “children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights [and] States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives.”⁴⁷

For these reasons, the “concept of access to justice requires the legal empowerment of all children.”⁴⁸ As explained by the UN High Commissioner, if children are to be able to obtain the remedies they deserve, they need to be “enabled” to participate in judicial proceedings through “legal and other services, education, counselling, advice and support from knowledgeable adults.”⁴⁹

Enabling child victim-witnesses to navigate safely and effectively through criminal proceedings is sometimes referred to as providing “child-friendly justice”. It is an approach to justice that balances the rights of child victims and witnesses with those of the accused offenders, and takes into account the child’s individual needs and views.⁵⁰

CHILD-FRIENDLY JUSTICE

“‘Child-friendly justice’ refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level...giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”

Article II, Council of Europe Guidelines on Child-Friendly Justice (2010)

There can be a tension between the right of child victims to access justice through the criminal system and the right of the accused offenders to receive a fair trial. State actors have a duty under the OPSC and other legal authorities to ensure that child-friendly justice procedures do not strip the defendant of fair trial rights,⁵¹ but they also have a duty to ensure that child victims are able to access remedies for the harms they have suffered without being re-victimised in the process. The challenge, as noted in the UN Guidelines on Child Victims and Witnesses, is to find a balance that is respectful of the rights of both.⁵²

⁴⁵ UN Economic and Social Council, Guidelines on Child Victims and Witnesses, Preamble.

⁴⁶ *Ibid.*

⁴⁷ Committee on the Rights of the Child, General Comment No. 5, para. 24.

⁴⁸ Human Rights Council, Access to Justice, para 5.

⁴⁹ *Ibid.*

⁵⁰ UN Economic and Social Council, Guidelines on Child Victims and Witnesses, para 9(d).

⁵¹ OPSC, Art. 8(6). See also: UN General Assembly, Basic Principles on the Right to a Remedy and Reparation, Art. 27; UN General Assembly, Basic Principles of Justice for Victims of Crime and Abuse of Power, Art. 6(b); UN Economic and Social Council, Guidelines on Child Victims and Witnesses, para. 7(j); COE, Guidelines on child-friendly Justice, Art. I (3).

⁵² While this report acknowledges the difficulty of balancing the competing legal rights of child victims and accused offenders, a full legal analysis is beyond the scope of the study.

The State's duty to provide child-friendly justice to children and enable them to access justice through criminal proceedings arises from multiple international and regional legal instruments and standards, the most significant of which are outlined below:⁵³

Table 1: Child-Friendly Justice Procedures in International and Regional Instruments

Treaty Obligations
U.N. Convention on the Rights of the Child, 1989
ILO Worst Forms of Child Labour Convention (No. 182), 1999
U.N. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000
U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Palermo Protocol), 2000
SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002
SAARC Convention on Regional Arrangements for the Promotion of Child Welfare, 2002
International Norms and Standards
U.N. OHCHR Recommended Principles & Guidelines on Human Rights and Human Trafficking 2002
U.N. ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005
UN. Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 2014

Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child is the core legal instrument establishing children's rights under international law.⁵⁴ Under Article 1 of the Convention, a child is any human being under the age of 18.⁵⁵ States must ensure that the child's "best interests" are a "primary consideration" in all legal actions that concern them.⁵⁶ During judicial and

administrative proceedings, the State must provide children with an opportunity to express their views and have them taken into account,⁵⁷ and protect against all forms of discrimination.⁵⁸ States must also promote the child's "physical and psychological recovery and social integration" in an "environment which fosters the [child's] health, self-respect and dignity."⁵⁹

⁵³ Other relevant international instruments and standards include UN General Assembly, Palermo Protocol, Arts. 24 and 25; Human Rights Council, Access to justice; UNODC (2013), "United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems"; UN Special Procedures (2012), "Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children", A/HRC/20/18; UN General Assembly (2014), "Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons, Annex II: Basic principles on the right to an effective remedy for victims of trafficking in persons Special Rapporteur on Trafficking in Persons (Draft)", UN Doc. A/HRC/26/18, 2 May 2014 (hereinafter Trafficking Guidelines); COE, Guidelines on Child-Friendly Justice; UNODC (2009), "Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law".

⁵⁴ United Nations Convention on the Rights of the Child ("CRC") (1990) (currently ratified by every State in the world except the United States).

⁵⁵ Art. 1, CRC ("For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier", such as by marriage.)

⁵⁶ Art. 3, Crc.

⁵⁷ Art. 12, CRC.

⁵⁸ Art. 2, CRC.

⁵⁹ Art. 39, CRC.

ILO Worst Forms of Child Labour Convention (No. 182), 1999

The ILO Worst Forms of Child Labour Convention calls attention to child sexual exploitation as one of the worst forms of child labour. Article 7 requires States to act proactively to rescue children from prostitution and pornography, giving special attention to girls and other children at high risk. State must also provide necessary and appropriate assistance for the recovery and social integration of sexually exploited children, including access to education and vocational training.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000 (“The Optional Protocol”)

The Optional Protocol establishes an obligation on State parties to take specific measures to prevent and prohibit sexual exploitation of children; it elaborates upon provisions set out in the Convention on the Rights of the Child. It is open to any State who is a party to the Convention or any State who has signed the Convention. Under Article 8 of the Protocol, States must adopt child-sensitive justice procedures tailored to the special needs of sexually exploited children and ensure that their best interests are paramount in SEC cases. Articles 8 and 9 contain a list of specific obligations, including the duty to keep children informed; consider their views; protect their privacy and safety; provide witness support services, ensure appropriate care for their “full social reintegration and their full physical and psychological recovery,” give access to compensation, and avoid unnecessary delays.

The Optional Protocol also directs States to “ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.”⁶⁰

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 (“The Palermo Protocol”)

The Palermo Protocol supplements the UN Convention on Transnational Organized Crime, prescribing special protections for trafficking victims, including child victims of sex trafficking, during cases against their traffickers.⁶¹ It obligates States to protect victims’ privacy and safety; provide information and opportunity to be heard; ensure access to recovery and reintegration services, including housing, legal counseling, medical care, material assistance, education, and vocational training; offer immigration assistance, such as temporary stays of deportation and safe repatriation; and provide access to compensation. It specifies that States must consider the age, gender and special needs of child victims when providing services. The Palermo Protocol is open to any State who is a party to the UN Convention on Transnational Organized Crime or any State who has signed the UN Convention.

SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

The *SAARC Convention on Trafficking in Women and Children for Prostitution* seeks to promote co-operation among Member States of the South Asian Association for Regional Cooperation (India, Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka) in the fight against the trafficking of women and children. The Convention obligates Member States to provide a range of victim services. Under Article 2, they must maintain the confidentiality of child and women victims and provide appropriate counselling and legal assistance. Under Article 9, they must also make suitable provisions for the care, treatment, rehabilitation and repatriation of victims, including the establishment of protective shelters and the granting of legal advice, job training, and health care services.

⁶⁰ Art. 8(2); Note that Article 8 recognizes that special protections for child victims must be consistent with the rights of the accused to a fair and impartial trial. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (“Optional Protocol”), 2002.

⁶¹ Art. 6, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, (“Palermo Protocol”), 2000 (also defining a child as “any person under eighteen years of age”).

SAARC Convention on Regional Arrangements for the Promotion of Child Welfare, 2002

The SAARC Convention on Promotion of Child Welfare commits Member States, including India, to the protection of child welfare, in accordance with the CRC. Article IV(3) of the Convention requires States to protect children from any form of exploitation. Article IV(4) encourages judicial systems to provide opportunities for children to seek and receive information; to express their views and have their views considered in accordance with their age and maturity; and to participate fully in legal proceedings without hindrance or discrimination.

Memorandum of Understanding between Bangladesh and India on Bilateral Co-operation for Prevention of Human Trafficking Especially Trafficking in Women and Children; Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking

The Government of India and Bangladesh have signed a memorandum of understanding (hereinafter referred to as “MoU”) in 2015 to address concerns of trafficking.⁶² The MoU enjoins upon the states a commitment to take measures towards prevention of trafficking, protection of victims of trafficking, repatriation of victims of cross-border trafficking to their respective countries at the earliest, re-integration of victims, as well as the establishment of a Joint Task Force consisting of representatives from both State’s governments, to initiate steps towards and review the implementation of the MoU.

United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Economic and Social Council Resolution 2005/20 (“ECOSOC Guidelines”)

The most thorough guidance for States on how to accommodate children in their justice systems is found in a set of international Guidelines issued by the United Nations Economic and Social Council (ECOSOC) under Resolution 2005/20.⁶³

The Guidelines identify four core principles that govern every aspect of a child’s engagement in State justice systems:⁶⁴

The Right to be Treated with Dignity and Compassion

“Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.”

The Right to be Protected from Discrimination

Every child has the right “to be treated fairly and equally,” regardless of “race, ethnicity, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.” Neither the child’s age nor the child’s involvement in sexual crimes should result in discrimination that blocks access to justice.

The Right to Have Best Interests Given Primary Consideration

States must ensure that the best interests of every child victim are given “primary consideration” throughout the proceedings. When managing a criminal case, police, prosecutors, judges and court staff must always consider how best to protect the child from any additional hardship, neglect, or abuse and allow the child to continue to develop physically, psychologically, spiritually, morally and socially.

⁶² In 2015, India and Bangladesh entered into a Memorandum of Understanding between Bangladesh and India on Bilateral Co-operation for Prevention of Human Trafficking Especially Trafficking in Women and Children; Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking. The Memorandum commits the States to take measures to prevent trafficking and to protect, repatriate and reintegrate victims. See: Memorandum of Understanding Between the People’s Republic of Bangladesh and the Government of the Republic of India on Bilateral Co-operation for Prevention of Human Trafficking Especially Trafficking in Women and Children; Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking, (2015), accessed 7th October 2016.

⁶³ Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20, (“ECOSOC Guidelines”), accessed 8th October 2016.

⁶⁴ Art. 8, ECOSOC Guidelines

The Right to Participation

“Every child has . . . the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.”

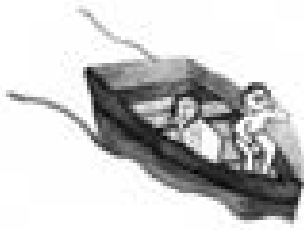
These four principles must be applied “throughout the justice process,” from initial contact with the justice system to the final resolution of the case and the child’s reintegration into the community.⁶⁵

9 Essential Elements of Access to Justice for Child Victims of Crime⁶⁶

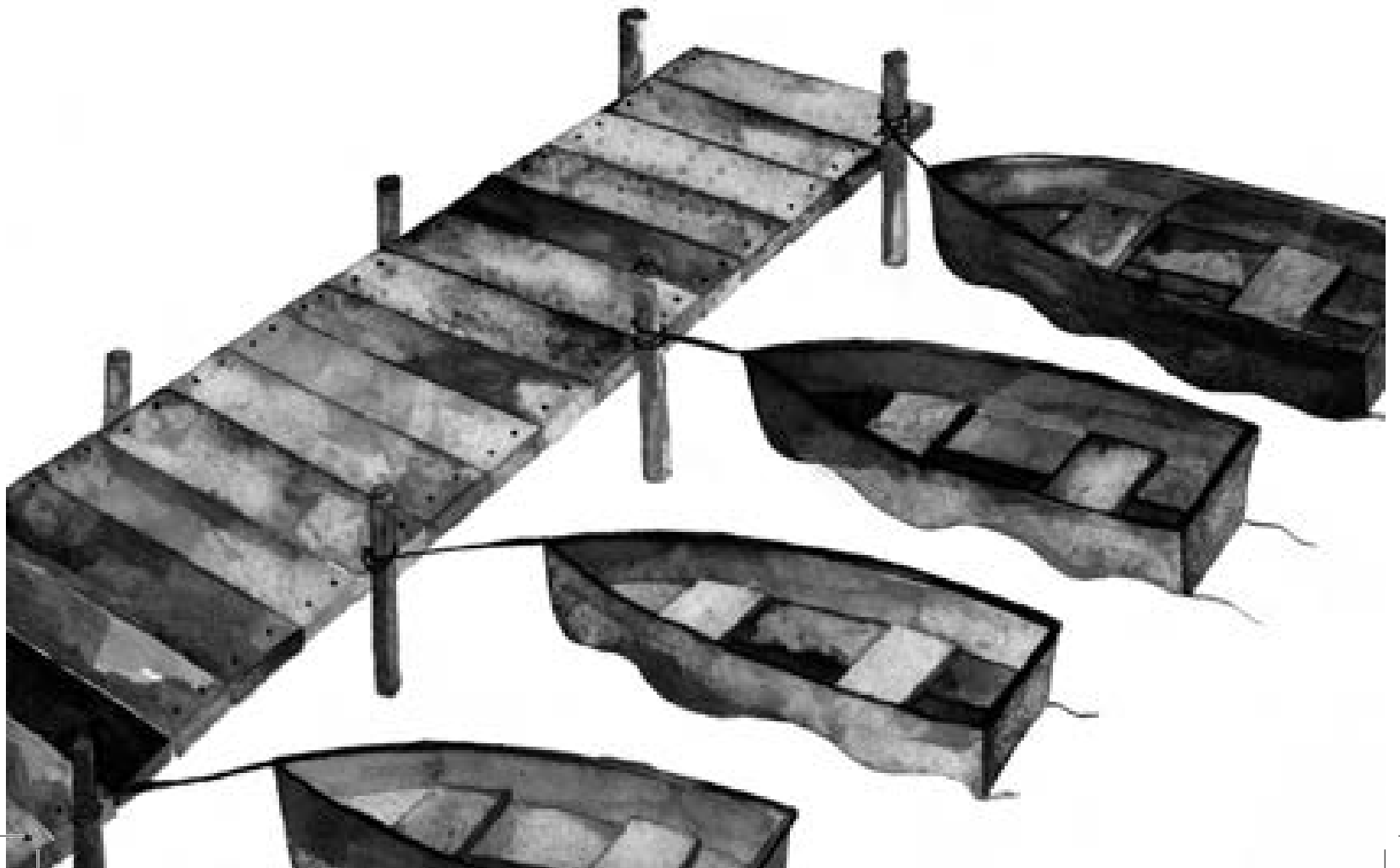
1. The right to be treated with dignity and compassion
2. The right to be protected from discrimination
3. The right to be informed
4. The right to be heard and express views and concerns
5. The right to effective assistance, such as victim-witness specialists, lawyers, translators, and care and recovery providers
6. The right to privacy
7. The right to be protected from hardship during the justice process, including unnecessary delays
8. The right to safety
9. The right to reparation

⁶⁵ *Ibid.* para. 29 (“Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are respected.”); see also: paras. 10, 15, 19, 21, 24, 33 (noting that the rights of child victim-witnesses begin at first contact with the justice system and continue until the end of the case or longer, where needed, including the right to be treated with care and dignity, to access justice systems without discrimination, to be informed, to express views, to have effective support and assistance, to be protected from hardship, and to be kept safe.)

⁶⁶ *Ibid.*, ¶ V – XIII.



2. METHODOLOGY



As the only global network dedicated to protecting children from all forms of sexual exploitation, this study was conducted to gain a better understanding of the experience of sexually exploited children in the criminal justice system and identify the special challenges they face when seeking access to justice and remedies.

2.1. Method

In 2015 and 2016, members of the research team conducted an in-depth qualitative study that focused on the experience of SEC survivors in the criminal justice systems in two Indian states, Madhya Pradesh and West Bengal and the survivors' ability to access justice and remedies in those states. The study incorporated desk research and interviews with a variety of stakeholders, including justice sector providers (judges, lawyers, police, child protection agencies), child care workers (NGO and shelter workers), and child and young adult survivors of child sexual exploitation.

2.1.1. Desk Research

The Access to Justice study began with desk research into the international norms and standards that relate to the States' obligation to provide child-friendly justice systems. Researchers then developed

a detailed Access to Justice research tool to guide additional desk research into relevant national laws, policies and practices in India.

Recognizing that many sexually exploited children never engage with the justice system at all, the research tool sought information on the barriers that prevent victims from entering the system, as well as those that prevent them from achieving a just result after entering. It looked at each stage of a SEC case in chronological order.

2.1.2. Interviews with SEC Survivors and Other Stakeholders

A key priority of the study was to listen to the voices of SEC survivors and learn from their experiences in the justice system. Research team conducted more than twenty access-to-justice interviews with young people, aged 7 through 18, all of whom had suffered sexual exploitation and were contemplating, or participating in, criminal actions against their exploiters.

Research team also interviewed fourteen criminal justice and social service professionals who work with SEC survivors in criminal cases, including police, prosecutors, judges and civil society actors. The following table provides an overview of the interviews taken over the course of this study.

Table 2: Access to Justice Interviews from Madhya Pradesh

MADHYA PRADESH			
Place	Number of survivors interviewed	Case Status	Number and Designation of Stakeholders interviewed
Ujjain	One	Trial ongoing	5 Stakeholders <ul style="list-style-type: none"> • CWC Member • Member of Childline • SJPU • JJB Member • Principal Magistrate JJB
Mandsaur	One	Trial ongoing	2 Stakeholders <ul style="list-style-type: none"> • SJPU • CWC Member
Jaora	Three	Under investigation	2 Stakeholders <ul style="list-style-type: none"> • JJB Member • CWC Member
Neemuch	Three	Under Investigation	---

Chattarpur (Khajuraho)	Three	Trial ongoing	2 Stakeholders • Thana Incharge (TI), Khajuraho • ICPS, Chattarpur
Bhopal	Five	FIR not filed	3 Stakeholders • SJPU • CWC Member • District Judge
Katni	One	Under Investigation Just Filed FIR	---
Total in Madhya Pradesh	Seventeen Survivors		Fourteen Stakeholders

Table 3: Access to Justice Interviews from West Bengal

West Bengal			
Place	Number of survivors interviewed	Case Status	Number and Designation of Stakeholders interviewed
Kolkata	Thirteen	Trial ongoing for ten of the cases. Convictions have been obtained in three cases.	4 Stakeholders • Sessions Judge • Magistrate • SJPU Member • CWC member
Total in West Bengal	Thirteen Survivors		Four Stakeholders

2.1.3. Data Analysis

All of the research was reviewed for common themes. Data from survivors, adult professionals, and desk research were collated into relevant categories and organized chronologically according to the usual timeline of SEC proceedings, from the discovery of the child victim to the resolution of the case. This organization allowed the study's author to identify key access-to-justice barriers at each stage of the proceedings, as well as a number of important cross-cutting issues. It also allowed the author to strengthen the analysis by comparing data from the desk research and field research, as well as from adult and child respondents; and state actors and non-state actors.

2.2. Scope and Challenges of the Study

2.2.1. Scope

The Access to Justice study sought to understand the experience of SEC survivors in the criminal justice system by interviewing selected survivors,

criminal justice professionals and service providers, and conducting desk research to provide useful background and context. The study is not a comprehensive analysis of the study Countries' efforts to incorporate international standards into their justice systems or implement child-sensitive procedures. Rather, it is intended to provide insight into the child's experience of these justice systems and highlight aspects of the justice process that merit additional attention.

The study is also not a complete mapping of the SEC survivor's experience at every stage of the criminal justice process. The study relied on loosely-structured interviews and open-ended questions to encourage participants to speak freely. The study reflects the access-to-justice issues that were most important to the survivors and the adult professionals interviewed.

2.2.2. Sample Size and Representativeness

Although the research team was able to engage a large number of key informants in India, the informants are a non-random sample of survivors

and professionals in India. As a result, the findings of the Access to Justice study cannot and should not be seen as representative of the larger population. However, while this is not a representative study, the issues articulated by survivors provides some reasonable insight into the challenges in access to justice, and can therefore be considered as relevant points of entry into policy recommendations.

2.2.2.1. SEC Victims and Survivors

The research team in India identified SEC victims and survivors who were living in shelters or who visited drop-in centers and were able and willing to participate in the study. The sample was not balanced by gender, caste, age, place of origin, or type of exploitation, and the interviewees presented at various stages in the criminal justice process. The research team did not conduct any independent outreach or street work.

2.2.2.2. Criminal Justice and Social Service Professionals

The research team identified select criminal justice informants and key social service informants from government and non-governmental children's organizations. Although the informants were selected based on their experience working with SEC victims, the value of the interviews varied depending on the informant's level of expertise and willingness to speak openly.

The research team sought to interview a balance of government and non-government informants, and informants from each category—police, prosecutors, judges, social workers and caregivers and legal advocates. However, it proved to be somewhat more difficult to speak with judges and public prosecutors than with other professionals.

2.2.3. Challenges of the Study

Over the course of this study, several challenges were encountered. These included the challenge of working with a changing legal landscape, uneven application of the law, problems of accessing children, and issues pertaining to accessing stakeholders.

2.2.3.1. Challenge of Working with Different Laws

The legal landscape with respect to commercial child sexual exploitation has seen a sea-change in the last decade, with multiple laws being amended, and entirely new legislations introduced. This has created a multiplicity of penal provisions that can

potentially be invoked in a single SEC case. While that is not a problem by itself, legal actors are often unaware of or lack training in new legislations, and as a result, similar fact-situations may have a wide disparity in terms of laws being invoked. This means in many cases interviewees have not been able to provide sufficient information about the operation of certain laws.

2.2.3.2. Difficulties in Accessing Children

All the survivor children interviewed were interviewed in shelter homes. However, many shelter homes were reluctant to allow interviewers access to children, and permission was forthcoming only with great reluctance.

2.2.3.3. Difficulties in Accessing Stakeholders

Many stakeholders were reluctant to speak to interviewers on record, and it was difficult to get appointments with them. This was especially true of judicial officers, such as Magistrates and Sessions Court Judges. Even in interviews, many stakeholders were reluctant to be forthcoming with information about the issues they have faced in their respective areas of operation. This reluctance can be attributed to a possible fear of being misrepresented, and a hesitation towards being openly critical of a system they are a part of.

2.2.3.4. Ethical Considerations of Interviewing Young SEC Survivors

Interviews with SEC survivors can potentially trigger re-traumatization. On this basis, the research team employed a child psychologist specializing in sexual exploitation to conduct the interviews in accordance with the child's best interests.

The research team drafted survivor-specialized informed consent forms for the survivor interviews. Before each interview, the interviewer explained the nature and goals of the study and advised each participant that he or she had a right to refuse to answer any question or terminate the interview whenever desired. The interviews also followed a trauma-informed protocol.

Confidentiality was also a paramount concern: Confidentiality agreements were executed before each interview. The survivors' identities were protected through use of a coding system.



3. NATIONAL LEGAL FRAMEWORK FOR ACCESS TO JUSTICE IN INDIA

There are multiple legislations constituting the framework of access to justice for survivors of SEC in India. These legislations include (i) criminal laws governing various offences of sexual violence and trafficking against children, as well as rights of children during investigation and trial in SEC cases, and (ii) laws governing the institutional structures responsible for the care and protection of survivors of SEC

3.1. Criminal Laws Governing SEC cases

Before the advent of the POCSO Act of 2014, the primary criminal legislations governing SEC were the Indian Penal Code, 1860, and the Immoral Traffic Prevention Act of 1956.

The Indian Penal Code is the primary criminal code covering all substantive aspects of criminal law. Chapter XVI of the IPC deals with offences against the body, and includes penalties against sexual violence. Till 2013, the IPC defined rape primarily as non-consensual peno-vaginal intercourse. Moreover, because rape was defined as an offence by a man against a woman, sexual offences under minor boys could only be addressed as an “unnatural sexual offence” under Section 377 of the IPC, which is also used to criminalise homosexuality in India.

The Criminal Law Amendment Act, 2013, expanded the definition of rape in the IPC to include other forms of penetrative assault as well, and also recognized non-penetrative sexual assault as a serious offence.⁶⁷ Subsequently, the POCSO Act was passed in 2014, recognizing all forms of penetrative and non-penetrative sexual violence against minors, irrespective of their gender. The Act also put in place designated Special Courts to adjudicate over cases of sexual offences against children. In addition, the POCSO Act introduced a number of safeguards to protect children during investigation and trial.

In addition to the IPC and the POCSO Act, the Immoral Traffic Prevention Act 1956, or the ITPA, is

also invoked in SEC cases. The ITPA deals with sex work and sex trafficking in India, and while it does not criminalise sex work per se, the Act criminalises the commercial and exploitative aspects of sex work, namely keeping of brothels, trafficking into sex work, public solicitation, keeping of minors in brothels and living off the earnings of a sex worker.

3.2. Institutional Framework for the Care and Protection of Survivors of SEC

In addition to the above mentioned criminal legislations, the Juvenile Justice (Care and Protection) Act of 2016 is the primary legislation governing the institutional framework for the care and protection of survivors of SEC.

3.2.1 State Child Protection Societies

State Child Protection Societies (SCPS) are established under the Integrated Child Protection Scheme (ICPS). The SCPS functions primarily as a monitoring and fund-disbursement authority. The SCPS is also supposed to liaison with the Ministry of Women and Child Development, and SCPS’ of other states. Crucially, the SCPS is supposed to provide training support to all actors within the child protection system, and carry out relevant research and documentation at the state level.

3.2.2. Child Welfare Committees

According to Section 2(14) of the Juvenile Justice Act, survivors of SEC, and children vulnerable to sexual exploitation, are considered children in need of care and protection. Child Welfare Committees are established under the JJ Act to take steps towards ensuring the welfare of children in need of care and protection. These duties include the finding of suitable placement for a child who is a survivor of, or is vulnerable to, sexual exploitation, and the appointment of a support person to the child for assistance, through prosecution and rehabilitation.

3.2.3. Special Juvenile Police Unit

The Juvenile Justice Act provides for creation of “Special Juvenile Police Units” in each district and

⁶⁷ The Criminal Law (Amendment) Act, 2013 (No. 13 of 2013).

⁶⁸ Juvenile Justice Act 2015, Section 107.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

city. The SJPU consists of police officers and two social workers with expertise in child welfare, one of whom shall be a woman. Police officers in the SJPU receive special training to enable them to perform their functions effectively.⁶⁸ At every police station there shall be at least one officer designated as the “child welfare police officer”.⁶⁹ The Child Welfare police officer deals exclusively with children in need of care and protection and in conflict with the law, in coordination with the police and NGOs. The SJPU also includes railway police dealing with children.⁷⁰

3.2.4. District Child Protection Unit

DCPUs are established to facilitate the functioning of the JJ Act. Their functions include maintaining a register with names, addresses and contact details of translators, interpreters and special educators, to be used by support persons and Child Welfare Committees in providing support to SEC survivors. The DCPU also administers the fund from which the payment to these individuals is disbursed.

3.3. Monitoring of Institutional and Legal frameworks

In addition to the above institutions, there are institutional mechanisms in place to monitor their functioning and make recommendations for the same.

3.3.1. National Commission for Protection of Child Rights

The NCPCR is empowered to inquire into the violation of child rights, including the non-implementation of laws and policy decisions aimed at the welfare of children. The Commission is also empowered to undertake research on child rights, including international legal instruments on child rights and India’s compliance with the same.

3.3.2. State Commission for Protection of Child Rights

The functions of the SCPCR are similar to that of the NCPCR, except that their jurisdiction is limited to the State in which they are constituted.

The following table highlights some of the specific legal provisions with respect to SEC cases in India:

Table 4: List of Legal Provisions governing SEC offences in India

Age of Consent and Criminal Responsibility	Legislations on Age of Consent and Criminal Responsibility	Substantive Provisions on Age of Consent and Criminal Responsibility
Age of a child	The Juvenile Justice (Care and Protection) Act of 2016 (JJ Act)	Section 2(35) of the JJ Act defines a juvenile as a person aged below 18 years.
Age of sexual consent	Indian Penal Code, 1860, The Protection of Children against Sexual Offences Act, 2012 (POCSO Act)	Section 2(d) of the POCSO Act defines a child as person below 18 years of age. The Act criminalises all sexual conduct involving a child, irrespective of consent.

Age of criminal responsibility	The Indian Penal Code, 1860 (IPC) and the Juvenile Justice (Care and Protection) Act of 2015	<p>Section 82 of the IPC states that nothing is an offence which is done by a child under seven years of age. Section 83 of the IPC states that nothing is an offence when done by a child between seven and twelve years of age, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct.</p> <p>Section 2(35) of the JJ Act states a juvenile is a person aged below 18 years. Sections 15, 18 and 19 of the JJ Act state that in cases of children between the ages of 16 and 18 accused of committing heinous offences (carrying punishment of seven years imprisonment or above) may be tried as adults.</p>
Classification of Forms of Sexual Violence against Children	Legislations Criminalising Sexual Exploitation of Children	Substantive Provisions
Non-penetrative sexual assault of children	The Protection of Children from Sexual Offences Act, 2012, Indian Penal Code 1860	Sections 7 and 8 deal with sexual assault of children. Sections 9 and 10 deal with aggravated sexual assault of children.
Penetrative sexual assault of children	The Protection of Children from Sexual Offences Act, 2012, Indian Penal Code, 1860	<p>Sections 3 and 4 of the POCSO Act deal with penetrative sexual assault of children. Sections 5 and 6 of the POCSO Act deal with aggravated penetrative sexual assault of children.</p> <p>Sections 376, 376A, 376B, 376C, 376D and 376E of the Indian Penal Code criminalise rape.</p>
Trafficking of children for sexual exploitation	Indian Penal Code, 1860, Immoral Traffic Prevention Act, 1956	Section 366A deals with procurement of minor girls to force them into sexual intercourse. Section 370 of the IPC deals with trafficking of persons.

Trial of Offences of Sexual Exploitation of Children	Legislations Governing Trial of Offences of Sexual Exploitation of Children	Substantive Provisions
Provision of Special Courts	The Protection of Children from Sexual Offences Act, 2012	Section 28 of the POCSO Act states that a Special Court shall be designated in every district to try offences under this Act.
In-camera trial	Code of Criminal Procedure, 1973, The Protection of Children from Sexual Offences Act, 2012	Section 327(2) of the CrPC states that trial of offences of sexual violence (Sections 376, 376A, 376B, 376C, 376D, and 376E of IPC) shall be conducted in-camera Section 37 of the POCSO Act states that the Special Court shall try all cases in-camera, and in the presence of parents or guardian of the child or any other person in whom the child has trust and confidence.
Time-bound trial process	The Protection of Children from Sexual Offences Act, 2012	Section 35 of POCSO states that the evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence, and the trial shall be concluded within a period of one year of the same.
Compensation	Legislations on Compensation	Substantive Provisions
Victims' Compensation	Code of Criminal Procedure, 1973	Section 357A of the CrPC states that every state government shall create a scheme for providing compensation to victims of crimes. This includes final compensation as well as interim relief.
Compensation for Dalit and Adivasi children	Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1990	Under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1990, the Central government has formulated a scheme for the provision of compensation to Dalit and Adivasi victims of atrocities.



4. BARRIERS TO ENTERING THE JUSTICE SYSTEM



There are multiple barriers that exist for survivors of SEC to enter the justice system. Family pressure, the fear of stigma and ostracisation, and the fear of being separated from family members are some of the reasons why children fear reporting sexual abuse. Most cases of child sexual abuse are not reported out of fear of social stigma.⁷¹

It is also not uncommon for children to slip through the cracks of institutional mechanisms. While the focus of this study has primarily been on the experiences of children once they enter the justice system, interviews with stakeholders have also revealed some of the institutional barriers to entering the justice system. For example, interviews with members of CWCs in Madhya Pradesh have revealed that children rescued from abusive environments may take time to disclose sexual exploitation. In many cases, despite children being brought before child care institutions, lack of proper counseling and support services for the child has meant that the sexual exploitation of the child never even came to light. The absence of support services and witness protection programmes can also deter survivors from making complaints.

4.1. How can a SEC case be reported?

SEC cases are initiated by reporting the offence to the local police by the child victim himself/herself or any other person who has knowledge of the commission of the offence.⁷² The police must register a First Information Report (“FIR”) after receiving information about the commission of the offence.⁷³

⁷¹ Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of India. UN Doc. CRC/C/IND/CO/3-4, 7th July 2014, p. 49.

⁷² POCSO Act, Section 19 (“any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, shall provide such information to (a) the Special Juvenile Police Unit; or (b) the local police”). See also, CrPC, Section 154, (“(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing . . . signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer. . . .”)

⁷³ CrPC, Section 154. See also, IPC, Section 166A (Police who refuse to file an FIR in cases involving sexual offenses shall be punished with imprisonment for not less than six months but which may extend to two years and a fine.); See also *Lalita Kumari v. Government of U.P. and Other*, AIR 2012 SC 1515.

⁷⁴ A “cognizable offence” is an offence for which a police officer may initiate an investigation and arrest a person without having to first obtain a warrant from a Magistrate. (CrPC, Section 2(c)).

⁷⁵ Section 370, IPC

⁷⁶ Section 370A, IPC

⁷⁷ Sections 376, 376A, 376B, 376C and 376D, IPC

⁷⁸ According to a 2013 Report of Human Rights Watch, Childline 1098 had received 21 million calls between its launch in 1996 and March 2011. It doubled its coverage area in the 3 years preceding the report. See: Human Rights Watch (2013) “Breaking the Silence”, p. 67

⁷⁹ Report of Justice Usha Mehra (Retd.), 2nd February 2013.

An FIR can be lodged by the victim himself/herself or by anyone who has knowledge about the commission of a cognizable offence.⁷⁴ Most SEC crimes are cognizable offenses, including sex offenses against children under the POCSO, trafficking offenses under the ITPA, and related offense under the Penal Code, such as trafficking,⁷⁵ exploitation of a trafficked child⁷⁶ and non-marital rape.⁷⁷

4.1.1. Self-Reporting

Children may themselves report exploitation at local police stations, or call helplines, such as Childline, operated nationally by Childline India Foundation on behalf of the India Ministry of Women and Child Development. Children can access the helpline by dialing 1098. Childline links the child victim to emergency and long term care and rehabilitation services.⁷⁸

4.1.2. NGO Care Providers (drop-in centers, outreach programmes)

There are also NGO care providers active throughout that help identify SEC victims and connect them to state authorities. NGO representatives are also often part of raid and rescue teams themselves.

After the horrific Delhi gang-rape case of December 2012, the Government of India set up the Justice (Retd.) Usha Mehra Commission to look into measures to improve women’s safety. The Commission recommended the establishment of one-stop centres at hospitals to assist victims of sexual violence.⁷⁹ These One-Stop Crisis Centre are designated to provide medical assistance, psycho-

social counseling, legal aid and counseling, shelter for victims, provision for video-conferencing, and assistance for victims in filing complaints. However, while initially One Stop Crisis Centres were imagined one in each district, that has been subsequently scaled down to one per State. In the course of our study, we encountered a single One Stop Crisis Centre, established at the J.P. Hospital at Bhopal. The centre, named Gauravi, is the first of its kind in India. No such centre has been established in West Bengal.

4.1.3. Police

SEC victims may also be identified by police during the regular course of work.⁸⁰ Under the ITPA, “special police officers” or “trafficking police officers⁸¹ may conduct raid rescue operations based on receipt of information or reasonable suspicion that persons are being forced to carry on prostitution in any premises.⁸²

When police find a child victim of sexual assault or pornography, they have a duty to report the child to the Child Welfare Committee and Special Court within 24 hours.⁸³ They must also report any child who appears or claims to be abandoned or lost within twenty-four hours to Childline services, a Child Welfare Committee, District Child Protection Unit, or registered child care institution.⁸⁴ It is not mandatory to physically produce a child before the CWC, however the police are also supposed to make an assessment of whether a survivor is also a child in need of care and protection and thus needs to be brought to the Committee.

Failure by the police to register FIRs in cases of child sexual abuse is punishable under Section 21(t) of the POCSO Act with imprisonment up to six months, or with a fine, or both. Section 166A of the Indian Penal Code penalizes failure to register an FIR for offences of sexual violence, with imprisonment upto two years.

4.1.4. Child Welfare Committees

SEC victims may also be brought to the attention of any Child Welfare Committee by individuals other than police, including officers of the District Child Protection Unit, labor inspectors, public servants, child welfare officers, probation officer, social workers, “public spirited” citizens, NGOs, child helpline professionals, or any nurse, doctor or management of a hospital.⁸⁵

Established in 2000 by the Juvenile Justice (Care and Protection of Children) Act, the CWCs are funded by the state governments. They are among the most important child protection mechanisms currently in place in India. They are envisaged to be powerful quasi-judicial bodies of experts that oversee the government’s welfare officers and the police, and inspect children’s residential care facilities.

CWCs perform key functions in relation to children in need of care and protection under the Juvenile Justice Act. Under the Act, children who are victims of sexual exploitation are considered children in need of care and protection.⁸⁶ The CWC may take *suo motu* cognizance of cases and reach out to children in need of care and protection who are not produced before the Committee. This decision must be taken by at least three members of the Committee.⁸⁷

⁸⁰ Section 149, CrPC (police have a duty to “interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.”)

⁸¹ Special police officers and trafficking police officers are officers appointed by the State Governments and the Central Government respectively to exclusively investigate and handle cases under the ITPA.

⁸² Section 16, ITPA

⁸³ Section 19, POCSO Act

⁸⁴ Section 32, JJ Act

⁸⁵ Section 31, JJ Act

⁸⁶ Under Section 2(14) of the JJ Act, 2015, a child in need of care and protection includes a child who is being or likely to be grossly abused, tortured or exploited for the purpose of sexual abuse and a child who is found vulnerable to trafficking.

⁸⁷ Section 30(xii), JJ Act

However, although they are supposed to exist in each district, a survey by the Childline India Foundation showed that, by early 2012, fewer than half of India's 640 districts had their own committee and many are plagued by lack of resources and trained personnel.⁸⁸

4.1.5. District Child Protection Societies under Integrated Child Protection Scheme

In 2009, the Ministry of Women and Child Development, in 2009, launched the largest ever initiative to improve child protection measures in India, the Integrated Child Protection Scheme (ICPS). Its goal was to strengthen existing institutions and programs and introduce new ones. The most ambitious of these was a plan to appoint social workers and establish committees in every district of the country to specifically look after the rights of children.

However, according to a 2013 report of Human Rights Watch, the ICPS is an ambitious federal initiative that has "hardly gotten off the ground," due in part to lack of cooperation by the states. Under the Integrated Child Protection Scheme ("ICPS") established by the Indian Government in 2009,⁸⁹ District Child Protection societies were set up in each district for to identify children at risk and in need of care and protection and link them to necessary support services. The child protection societies engage in networking with NGOs in the area.

4.1.6. Mandatory Reporting

The POCSO Act makes it mandatory for any person who knows or suspects that child is a victim of sexual assault, harassment, pornography or trafficking for those purposes to provide this information to the local police or to the Special Juvenile Police Unit.⁹² Personnel of media, studios and photographic facilities, hotels and lodges are specifically under an obligation to report any sexually exploitative pornographic material or obscene representation of children that they come across to the police.⁹³ Failure to report such information shall be punished with up to six months' imprisonment and/ or fine.⁹⁴ This penalty does not apply to a child who fails to report such information.⁹⁵

Any individual who finds or takes charge of a child who appears to separated from his/her guardians also has a mandatory duty to report to the Childline Services or the nearest police station, Child Welfare Committee, District Child Protection Unit or registered child care institution.⁹⁶ Section 357C of the Code of Criminal Procedure Code makes it mandatory for hospitals where victims of sexual offences are treated to report sexual offences.⁹⁷

In Goa, Section 8(14) of the Goa Children's Act also makes it mandatory for a developer of photographs or films if he finds that the photos/ films developed by him contain sexual/obscene depictions of children, to report this to the Officer-in-Charge of the nearest police station.

⁸⁸ See: Human Rights Watch (2013) "Breaking the Silence" p. 7 (noting several weaknesses in the CWC system, including the poor facilities in some districts, poorly trained committee members, failure of law enforcement authorities to follow up on committee's recommendations, and committee cover-ups and failure to act to help children.)

⁸⁹ The Integrated Child Protection Scheme (ICPS) is a centrally sponsored scheme aimed at providing a safe and secure environment for children particularly those in difficult circumstances and reducing vulnerability of children to abuse, exploitation, neglect. The ICPS brings under its umbrella several existing child protection programmes such as the Juvenile Justice Programme, Integrated Street Children Programme, among others.

⁹⁰ Human Rights Watch, 2013, p. 67.

⁹¹ Integrated Child Protection Scheme, accessed 5th August 2016, p. 27.

⁹² Section 19, POCSO Act

⁹³ --- Section 19.

⁹⁴ --- Section 21.

⁹⁵ --- Section 21(3).

⁹⁶ Section 32, JJ Act.

⁹⁷ Section 357C, CrPC (All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Section 326A, 376, 376A-E of the Indian Penal Code and shall immediately inform the police of such incident).

4.2. Barriers to Reporting SEC Cases

There are multiple barriers to reporting SEC cases—both institutional as well as societal. Some of these barriers as observed in the study are highlighted below.

4.2.1. Threat to Survivor's security

While victims sometimes manage to escape from the sexual exploitation and report their situation to the police, studies show that this happens very rarely.⁹⁸ Threat to personal security and the fear of backlash often deter survivors from making complaints. Most of the SEC survivors interviewed had been exploited by family members or personal acquaintances. In many cases the exploiter either shares the residence with the survivor, or lives nearby. Most of the children interviewed mentioned that they did not feel safe, or that they and their families were at risk of being attacked if they complained to the police. Often families themselves intimidate children and threaten them into not making complaints.

4.2.2. Pressure from the Community

Six of the survivors interviewed were pushed into prostitution by their families. Five of them were from the Bachda community in Madhya Pradesh, and one child was from the Marwari community. In cases where families and communities are involved in the sexual exploitation of a child, there is often immense pressure to not prosecute, as children are forced to go against the family and community institutions that they have grown up in. For example, members of the CWC at

Ratlam mentioned in the course of interviews that in cases involving children from the Bachda community, leaders and family members are usually instrumental in coercing the child into withdrawing her complaint. The Bachda community is a tribe in Madhya Pradesh, and the community has the reputation of pushing young girls into prostitution. CWC members also reported that families from the Bachda community often have the backing of political leaders, who exert pressure on CWC members to release children back to their families without registering criminal cases.

4.2.3. The impact of discrimination and historical prejudice

It is important, however, to understand that especially in the cases of tribal communities, state neglect and entrenched prejudices contribute to the continued sexual exploitation of children in the community. For example, the Bachda community is a Denotified Tribe.⁹⁹ Denotified Tribes are tribes that were once notified under the now-repealed Criminal Tribes Act¹⁰⁰. Certain tribes were understood as habitually criminal and notified under this law. Denotified Tribes continue to face immense discrimination even after the repeal of the concerned legislations¹⁰¹. Some histories of the Bachda community suggest that the sexual exploitation of young girls started relatively recently in the history of the Bachda community, and only as a result systemic discrimination that continued well after denotification.¹⁰² Therefore, the concerns of access to justice for survivors of SEC in the Bachda community cannot be understood independent of the historical disadvantages faced by the community as a whole.

⁹⁸ UNODC (2007), "Standard Operating Procedures (SOP) on Investigating Crimes of Trafficking for Commercial Sexual Exploitation", accessed 20th August 2016, p 12. See also the Ministry of Women and Child Development, 'Study on Child Abuse: India 2007' which pointed to the gross under-reporting of child sexual abuse cases and crimes against children in general. According to the report, majority of children subjected to sexual assault (72.1%) did not report the incident. Among those who reported, the majority of children shared the incident with their parents followed by their siblings (6.7%). Only 3.4% of children reported the matter to the police. (The report defines child sexual abuse as including sexual assault and showing of pornography to children).

⁹⁹ National Commission for Denotified, Nomadic and Semi-Nomadic Tribes, (2016), "Draft List of Denotified Tribes, Nomadic Tribes and Semi-Nomadic Tribes of India" accessed 10th November 2016. <http://socialjustice.nic.in/writereaddata/UploadFile/Draft%20List%20of%20Denotified%20Tribes%20for%20Mail.pdf>

¹⁰⁰ The Criminal Tribes Act of 1871 introduced the idea of a criminal tribe as "addicted to the systematic commission of non-bailable offences". The legislation placed restrictions on the movement of members of notified tribes, and they were subjected to indiscriminate detention if found outside of prescribed areas. See more Solanki, Aakash Mohan (2014), "The Criminal Tribes Act: Classifying Criminals in British India (1871-1927)", *University of Chicago*, accessed 10th November 2016. https://www.academia.edu/10977178/The_Criminal_Tribes_Act_Classifying_Criminals_in_British_India_1871-1927_

¹⁰¹ "Colonial Act still haunts denotified tribes: Expert" *The Hindu*, March 27, 2008, accessed 10th November 2016, <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/article227400.ece>

¹⁰² Bose, Pratim Ranjan (July 9, 2000) "Future Uncertain", *The Hindu*, accessed 10th November 2016, <http://www.thehindu.com/thehindu/2000/07/09/stories/13090329.htm>

4.2.4. Socialised into acceptance

In addition to pressure from families and communities, children themselves are often socialized into accepting their exploitation. For example, according to a survivor child from West Bengal, prostitution was like a family business for them, and when she joined prostitution at the age of 10, she did not have a clear idea of what she was getting into, but was socialized into accepting prostitution as a way of life.

As a result of such socialization, children may not report cases of sexual exploitation, as they do not know that what is happening to them is illegal. Moreover, this creates the myth of the willing participant, where even stakeholders such as members of CWCs and police officers may overlook the vulnerability and exploitation of such children, especially in cases when they come from groups such as the Bachda community.

4.2.5. Pressure from Families and Fear of Social Stigma

Most cases of child sexual abuse are not reported out of fear of social stigma.¹⁰³ One survivor from West Bengal stated that if people come to know what has happened to her then no one in her society will want to socialize with her or marry her, and she will be branded as a “bad” girl.

In cases where family members themselves are implicated in the SEC case, the pressure to not file complaints is immense. One survivor in Madhya Pradesh, who had filed an FIR against her mother, revealed that she was under immense pressure from her mother to not file the complaint. As mentioned above, this is particularly true in cases where children have been driven into prostitution by their communities, as in the case of the Bachda Community in Madhya Pradesh.

4.2.6. Fear of Police

SEC survivors interviewed in the course of this study also spoke of being afraid of the police. According to one survivor:

“I was told by many, when I was in hotels and in brothel, that police is bad. That I should never cooperate with police, else they will harm me. So I was under pressure not to reveal details to the police.”

Children are therefore conditioned to not complain to the police. This fear of police violence is unfortunately not without basis, as many children have also spoken of being harassed, abused and treated badly during rescue operations.

SEC victims may also be identified by police during the regular course of their work.¹⁰⁴ Under the ITPA, “special police officers” or “trafficking police officers”¹⁰⁵ may conduct rescue operations based on receipt of information or reasonable suspicion that persons are being forced to carry on prostitution in any premises.¹⁰⁶

Moreover, protecting the child’s privacy and confidentiality is a foremost duty of the police. The police are also supposed to make an assessment of whether a survivor is also a child in need of care and protection who should be produced before the Child Welfare Committee.

4.2.7. Fear of Institutionalisation

Many of the survivors of SEC we spoke to mentioned that they were afraid that if they spoke up about their abuse, then they would be separated from their families and put away in shelter homes for a long time. The fear of institutionalization is pernicious among children, even as they wish to be rescued from such circumstances. Moreover, children are often convinced by traffickers and brothel owners that shelter homes detain children indefinitely, and they are advised to not reveal their real age, as doing so will get them detained in shelter homes for long periods of time.

¹⁰³ Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of India. UN Doc. CRC/C/IND/CO/3-4, 7 July 2014, p. 49.

¹⁰⁴ Section 149, CrPC (police have a duty to “interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.”)

¹⁰⁵ Special police officers and trafficking police officers are officers appointed by the State Governments and the Central Government respectively to exclusively investigate and handle cases under the ITPA.

¹⁰⁶ Section 16, ITPA

This fear of prolonged stay in a shelter home is not without basis. In subsequent sections we shall see how children are often made to stay in shelter homes for long periods of time, in order to ensure their co-operation with the prosecution. This is often very traumatizing for survivors, and they are adversely impacted because of such prolonged separation from their families.

4.2.8. Refusal by Police to file Complaints

Interviews with some of the identified stakeholders reveals a curious reluctance on the part of the police to register complaints, despite there being mandatory reporting requirements enshrined in the POCSO act. The CWC at Bhopal spoke of how the police are often reluctant to file cases, and children are pressurized to settle cases at the police station itself.

The Supreme Court of India, in the case of *Lalita Kumari v State of Uttar Pradesh*¹⁰⁷ has held that FIRs must be compulsorily registered by the police upon disclosure of a cognizable offence, and failure to do so by a police officer will attract penalty against the erring officers. Only in certain categories of cases, namely cases of medical negligence, commercial offences, matrimonial disputes and commercial cases are the police authorized to conduct a preliminary inquiry on the basis of the information received before registering a First Information Report. The refusal of the police to register complaints in cases of child sexual abuse is patently illegal and violative of the directions of the Supreme Court of India.

According to one police official in West Bengal, one of the reasons why police are reluctant to file complaints is because of the stringent procedural requirements under the POCSO Act. An example cited was how POCSO mandates that children's statement be taken by a police officer in plainclothes, but raid and rescue missions have

to be conducted by police officials in uniform. Therefore, according to police officials find it difficult to conduct a raid and then change into plain clothes to take the child's statement. Our interviews with members of different Child Welfare Committees also illuminated some of the reasons why police are often reluctant to register FIRs. According to CWC members in Bhopal, police often perceive allegations of child sexual abuse made by a parent as done in furtherance of a matrimonial dispute. Many police officials believe that mothers use their children to make allegations of sexual abuse against their fathers in order to harass their husbands, and are thus reluctant to record complaints.

Law enforcement officials have also been reported to collude with traffickers and exploiters. Corrupt officials shield traffickers and brothel owners, take bribes from them, and tip off brothel owners about raids and rescue operations.¹⁰⁸

4.2.9. Child Welfare Committees' Failure to Provide Adequate Support

None of the Child Welfare Committees interviewed were being informed by the local police of cases being registered under POCSO, or of complaints of sexual exploitation of children. As a result, CWCs are unable to intervene and provide support in all cases where children are unsure of whether they want to file complaints, or where children are facing pressure and threats. Moreover, most survivors of SEC often come from socially and economically disadvantaged backgrounds, and are trafficked and exploited by family members and/or close acquaintances. In many cases children are in need of comprehensive support from a child care institution, and the failure of the police to produce such children before the CWC means that children lack the necessary support services that would assist them in their rehabilitation.

¹⁰⁷ 2014 (2) SCC 1.

¹⁰⁸ United States Department of State (2015) "Trafficking in Persons Report" accessed 5th August 2016.

4.2.10. Delayed Disclosure

While the absence of psychosocial support is most keenly felt in cases children are already involved with prosecution of SEC cases. Children who are rescued from situations of abuse may have experienced a wide range of abusive and exploitative behaviour. In many cases, such children find it difficult to speak of sexual abuse, and are only able to disclose it after sustained counseling. In one of the interviews conducted with a social worker who runs a shelter in Madhya Pradesh, it was revealed that in many cases children who come to her shelter disclose the fact of sexual abuse only after they develop gynaecological complications and are taken for medical treatment. This was corroborated in interviews with CWC members who stated that in several cases, it takes children many months to start speaking about their experience of sexual abuse. In such circumstances, because of the delayed disclosure in filing complaints, and the paucity of medical evidence, criminal prosecution, if initiated, often fails.



**5. BARRIERS TO SECURING JUSTICE
ONCE IN THE SYSTEM**

A child's first encounter with the criminal justice system is rarely free of trauma and distress. Many survivors interviewed spoke of having been trafficked and exploited by family members. In all cases, survivors mentioned that while they did not want to go back to a life of exploitation, the manner of rescue and subsequent engagement with the justice system caused them additional trauma. Absence of consent, denial of privacy, victim-blaming, and lack of information all contribute to alienating the child from a justice system that is ostensibly aimed at her own recovery.

5.1. Absence of a Comprehensive First Response Mechanism

A comprehensive first response mechanism is crucial in all SEC cases. This is because children rescued in SEC cases are often in urgent need of psychological counseling and medical assistance. Instead of plunging a rescued child headlong into the criminal justice process, a first response intervention which prioritises the best interests of the child, including the child's right to health, dignity and privacy, is beneficial not only to the child herself, but also to a prosecution that will gain from the informed and enthusiastic participation of the child.

The UNODC along with the Government of India has developed a Manual on Psychosocial Intervention for victims of trafficking. According to the manual, the first response to a victim of trafficking is a psychosocial response, and focuses

on the safety and dignity of the individual. Moreover, while law enforcement officials often lead the first response team, they by themselves are not equipped to adequately provide the first response. Therefore, the first response to the victim of trafficking should ideally be a multi-disciplinary one.

However, in practice, multi-disciplinary teams are not assembled to meet the medical, social and legal needs of each child victim during SEC cases.¹⁰⁹ Instead, India relies on Special Juvenile Police Units, with specially trained police officers and social workers on site, to handle criminal cases with child victims, including SEC victims. The Juvenile Justice Act requires SJPU to be constituted in every district and city. There must be a police officer in every police station who is trained as a juvenile or child welfare officer.¹¹⁰ Under the Integrated Child Protection Scheme, each SJPU should also have two supporting paid social workers. The District Child Protection Society is responsible for appointing the social workers. Of the social workers at least one should be a woman.¹¹¹

While the law mandates the appointment of a child welfare officer in every police station, in practice, in many cases child welfare officers do not receive adequate training, and are often transferred frequently between police stations and between posts. As a result, even in cases where police stations have child welfare officers, child-friendly procedures are rarely put into operation because of the absence of dedicated and trained officers, and an institutional culture that aims at protecting the best interest of the child.¹¹²

¹⁰⁹ Under the Juvenile Justice Act and the POSCO Act, sexually exploited children are children in need of care and protection and entitled to child welfare services. Once the child comes to the attention of authorities, a child welfare committee should conduct an investigation and find a suitable placement for the child. The institution will develop an individual care plan, coordinating the child's care, protection and rehabilitation. Under the POSCO Act, sexual abuse victims are also assigned a support person who formulates a "child protection plan," supplementing any individual care plan the child may already have.

¹¹⁰ Section 107, JJ Act- (1) In every police station, at least one officer, not below the rank of assistant sub-inspector, with aptitude, appropriate training and orientation may be designated as the child welfare police officer to exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and non-governmental organisations. (2) To co-ordinate all functions of police related to children, the State Government shall constitute Special Juvenile Police Units in each district and city, headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consisting of all police officers designated under sub-section (1) and two social workers having experience of working in the field of child welfare, of whom one shall be a woman. (3) All police officers of the Special Juvenile Police Units shall be provided special training, especially at induction as child welfare police officer, to enable them to perform their functions more effectively.")

¹¹¹ Integrated Child Protection Scheme, p. 22.

¹¹² In this context, it is also important to note that the budgetary allocation for one stop crisis centres, which were also supposed to function as comprehensive first response mechanisms in each district, has been reduced to a single centre per state. See: Dasgupta, Ananya, "Rape Centres cut, 660 to 36" *The Telegraph*, 24th February 2015, accessed 15th November 2016, http://www.telegraphindia.com/1150225/jsp/nation/story_5414.jsp#.WC8MPJ97IU

Moreover, while SJPU are mandated in every district, most of the survivors interviewed for this study only spoke of having interacted with the police, and not with counselors, immediately after their rescue.

5.1.1. The Invasive Nature of Raid and Rescue Operations

Most of the survivors interviewed were either rescued by the police, often as part of “raid and rescue” operations, conducted under the Immoral Traffic Prevention Act, or were otherwise brought to the police station by family members. In many cases, law enforcement officials dominate the first response, and it is only after the child is taken to an institution of protective custody such as a shelter home that the child receives any psychosocial intervention. Moreover, children have spoken of feeling harassed or targeted during the rescue process, and at the time of filing of complaint.

Raid and rescue operations conducted under the Immoral Traffic Prevention Act can often be extremely traumatic for survivors, as they can be sudden, violent and disruptive. Because of the violent nature of the operation, survivors are often left feeling traumatised. One survivor from West Bengal stated that she did not understand what was going on, and she felt that she was being pushed and shoved around. According to her:

“There was no time to react. I blankly went with the flow and followed instructions. There were a lot of persons thrown into one police van. It was very cramped and I did not like it.”

Children have also described how they are made to feel like criminals during a raid and rescue operation. According to one survivor:

“At the time of rescue, the police speak very rudely and ask uncomfortable questions. It makes the child feel uneasy and intimidated. The police should change their behaviour and attitude towards the rescued survivor who are anyway traumatised post rescue (sic.)”

This experience with the police during the rescue also contributes to a sense of distrust. Several children interviewed spoke of their distrust of the police and other authorities, partly because of the manner in which rescue operations were conducted.

5.1.2. Harassment and Violation of Privacy Inside the Police Station

After a child is rescued, the police station is often the first place she is brought to, along with the accused. This means that from the very initiation of the SEC case, the child feels as if she is also accused or guilty of some experience. The manner in which children are treated in the police station do little to assuage these feelings. Children have expressed that they feel scared and threatened in police stations. All the children interviewed have stated that there are no child-friendly rooms in police stations. According to one survivor from Bangladesh, who was forced into sex work at Sonagachi by her brother-in-law:

“When a victim is taken to the police station or the court, everyone around stares at her. It is a very intimidating and humiliating feeling to meet the glares of the public. It feels as if I, myself, have committed some crime, or worse still, it makes me feel I have committed something shameful and degrading.”

Survivors of CCSE have stated that they are not informed by the police of their rights. They feel intimidated in the police station, and feel that they are being judged for what has happened to them.

Survivors have repeatedly spoken about the experience of being asked personal questions openly in a police station, in front of everyone. According to one survivor:

“In the police station, I felt that everyone knew that I was rescued from the brothel. I did not like the stares.”

According to another survivor, when she was asked whether her trust and confidentiality were upheld in any way:

“Neither trust nor confidentiality were upheld in any way. The police asked questions openly, in front of all the others present in the police station.”

Child survivors have spoken of the immense guilt and stigma that they experience once they are rescued and brought to the police station. They feel as if they are the ones who are guilty of some crime and have been brought to the police station to be punished. Many survivors, despite being trafficked into sex work, spoke of feeling guilty for having been associated with sex work.

5.1.3. Victim Identification

Most children who had been rescued from brothels spoke of how they had been tutored by brothel owners to not disclose their real age, and to say that they were above eighteen years of age. The children believe that if they say they are eighteen years of age, then they will not be taken to shelter homes, and the police will not harass them.

Many children believe that poverty and lack of education prevents children from knowing their actual age.

5.1.4. Physical abuse and being forced to stay in police lock-ups

In some horrifying narratives, survivors from Madhya Pradesh spoke of being forced to stay in police lock-ups, and being subjected to verbal and physical abuse at the police station itself. According to one survivor:

“Police took us to police station from our homes. There were 5-6 girls along with me who were rescued. One whole night we were kept in police station. We were beaten very badly by police. Then in the morning we were taken to hospital for forensic medical examination and from there we were sent to children’s home in Neemuch. I was very uncomfortable.”

Another survivor spoke of being slapped by a female constable inside the police station. These instances of physical abuse have left a huge impact on the child, and she is unable to forget the beatings by the police. However, no action was taken against the female constable responsible. Even now, she feels scared and ashamed when she goes to the police station. This child’s account was confirmed by a member of the Child Welfare Committee at Ujjain, who spoke of how the survivor was physically assaulted by the police after she was rescued.

According to another survivor, when asked whether she would recommend that any other child go through the same process, said:

“No I will not because I do not trust police they beat us. Police had put my parents and old grandparents into jail without any fault. So I will never suggest anyone to go to police.”

According to Section 160 of the Criminal Procedure Code, no woman shall be summoned to the police station as witness, and she will be attended to at her residence. Moreover, the statement of the child shall be recorded at the residence/ Protective home/ where the child is lodged and by a woman police officer.¹¹³ The statement of the child shall not be recorded in the police station under any circumstances.¹¹⁴ The police should ensure that the child is not detained in the police station at night for any reason.¹¹⁵ In respect of victims rescued under the ITPA, they must be interviewed only in the presence of a woman police officer or a woman from an NGO.¹¹⁶

It is important to note that for children who are rescued, the police is their first point of contact with the legal justice mechanism. At this stage, it is important to convince a child that she is not complicit in the crime, and that she is deserving of reparation and rehabilitation. However, when a raid and rescue operation takes place, the focus of this operation is merely on removing the child from the conditions of exploitation, and initiating arrest of the perpetrators. The child’s best interests is treated as incidental to this entire process. This has a tremendous impact on their subsequent participation in the justice mechanism, as the constant feeling of guilt and stigma often persists throughout the trial process.

5.1.5. Children’s right to informed consent and participation in a SEC case

Criminal cases in India are filed by the State against the accused, with the victim in these cases acting as the de facto complainant and witness. However, as we have seen in the section on legal aid, it is especially important in cases of sexual violence that the voice of the victim be heard through the proceedings. One crucial aspect which

¹¹³ Section 24(1), POCSO Act.; Proviso to Section 157 Code of Criminal Procedure, Proviso to Section 160(1) CrPC; See also UNODC Standard Operating Procedures, p. 31

¹¹⁴ Monitoring Guidelines for NCPCR/SCPCR for Roles and Functions of Various Stakeholders: Police, Special Courts and Special Prosecutors, p. 33.

¹¹⁵ Monitoring Guidelines for NCPCR/SCPCR for Roles and Functions of Various Stakeholders: Police, Special Courts and Special Prosecutors, p. 34.

¹¹⁶ Section 15(6A), ITPA

is often ignored is the informed participation of the survivor in prosecution. The consent of a victim is technically not necessary to proceed with prosecution in a SEC case. In the case of adult victims of sexual violence, police usually take into their desire to press formal charges. However, children rescued in SEC cases are rarely ever consulted about their desire to prosecute, and they are pushed headlong into the criminal justice process with very little to no information about what it entails. On the other hand, children have also reported that even when they want to file complaints, they have been pushed into compromise by guardians and the police.

5.1.5.1. Right of a SEC Survivor to Information

A discussion about the right of a child to choose to prosecute cannot be seen in isolation from the child's right to information. This includes information relevant to their case, and information about the protection and exercise of their rights. The right to information must exist alongside the right to a recovery period immediately after rescue, which grants the child a period in which to recover from her trauma and reflect on her options moving forward. Unfortunately, in India there is no statutory provision authorizing a "recovery and reflection" period.¹¹⁷

At the time of initiation of a SEC case, it is imperative that the survivor be provided all the information that she needs to assist her in participating in the trial process. The POCSO Act and Rules make it amply clear that the role of the police in a SEC case is not merely limited to investigative functions, but also extends to providing care and protection to a child. The role of the police in providing care and protection is laid out in the following provisions:

- (i) Rule 4 of the POCSO Rules
- (ii) Rule 19 of POCSO Act

According to the Rule 4(2)(e) and (f) of the POCSO rules, when a case of child sexual abuse is brought to the attention of the police, in addition to providing a copy of the FIR free of cost, the police have a duty to provide information to the child and

his or her parents or any other person in whom the child has trust and confidence with respect to the following:

- the availability of support services, including counseling, and assisting them in contacting persons responsible for providing these services
- the child's right to legal advice and counsel and the right to be represented by a lawyer, in accordance with Section 40 the POCSO act.
- the availability of victim's compensation services.

5.1.5.2. Lack of Information and its Impact on the Child

Testimonies reveal that none of the children we spoke to had been provided any of the above information, or spoke of the police performing any of their duties of care and protection as envisaged in Rule 4 of the POCSO Rules. In most cases, children were sent to protective custody immediately after a case was registered, and in no case was a survivor informed of her right to counselling, support services, legal aid and compensation.

Moreover, many survivors have mentioned how they were never informed that a case has been registered by the police, or that they will have to be involved in the prosecution of the case. It is often only when a child is taken to the Magistrate for her statement under Section 164 of the Code of Criminal Procedure that a child finds out that a case has been registered against her traffickers. According to a survivor:

"There is no information shared on the processes involved once a child has been rescued from sexual exploitation. We, the survivors, have no idea about what comprises a case. To be a part of a case seems frightening and feels that we have committed some crime for which we will be punished. We are suddenly informed that we are a part of the case, not knowing, in advance, what we are expected to do."

Survivors often feel tricked or pushed into a prosecution whose consequences they do not understand. Subsequently, they feel as if they have been forced to go along with the criminal

¹¹⁷ The UNODC Standard Operating Procedures (SOP) on Investigating Crimes of Trafficking for Commercial Sexual Exploitation recommends providing counseling to the victim through a trained counselor so that she is ready and willing to speak to the police. It urges the investigating officer to ensure that the victim gets adequate time before she is called to give her statement. See UNODC Standard Operating Procedures, p. 40

prosecution. This is especially painful for survivors who are kept in detention homes for the duration of the trial, as they feel that they are being punished for their role in the case.

It is important to note here that POCSO cases can be initiated suo-moto by the police, i.e. in the absence of a formal complaint by the child or any other complainant, police officials themselves can be complainants. The Act, and criminal jurisprudence in general, does not account for the informed participation of the survivor in the initiation of an SEC complaint.

The right to be informed is an essential element of access to justice for child victims of crime. Denial of this right divests a child of her sense of being an equal stakeholder in the justice process. Moreover, by not providing children crucial information about support services, children are being offered a very limited form of justice, one that prioritises retribution over rehabilitation.

5.1.6. Pressure to not Prosecute SEC cases

Survivors also spoke of the pressure experienced to not register complaints. Survivors experience pressure to withdraw their complaints or turn hostile as witnesses throughout all stages of the criminal justice process. This is experienced especially in cases where children were trafficked and exploited by family members. According to one ten-year old survivor, whose aunt took her to boys in their neighbourhood and permitted them to sexually exploit the child in exchange of money, she was asked by the perpetrator boys to withdraw her complaint, and she did. While older survivors may be able to resist the pressure for withdrawal, younger children may find separation from their families more difficult, and therefore be overcome by family pressure more easily.

Another reason cited for police reluctance to file complaints is how many cases are often resolved at the police station level itself. Police officials state that complaints are often resolved by a compromise between parties. This is a common narrative among

police officers and Child Welfare Committee members. However, this can also mean that police officers often push complainants towards compromise, even when they clearly want to file formal complaints.

Police routinely encourage the compromise of cases, even when children themselves want to file complaints. According to one survivor:

“My family did not allow me file a case against the perpetrator. But I believe that we should complain and get a case register against these bad people. But police also do not help us by registering the case easily...Children should be given the right to file a case themselves against the perpetrator. Police should hear the voice of children and register case on the basis of their statement”.

It is clear that at the time of registration of the complaint, the voice of the survivor is ignored the most, and either her desire to prosecute and seek justice is overruled, or her consent and participation is considered immaterial.

5.2. Initiation of an SEC case and a Child’s Right to Legal Aid, Compensation, Care and Protection

As mentioned above, none of the survivors interviewed were informed of their rights to support services. These rights include the right to independent legal counsel, the right to medical care and the right to care and protection.

5.2.1. Survivor’s Right to Independent Legal Counsel

Under the Legal Services Authorities Act, 1987, every child who has to file or defend a case shall be entitled to legal services.¹¹⁸ The POCSO Act entitles the child to free legal aid under Section 40, to be provided by the District Legal Services Authority.¹¹⁹

¹¹⁸ Section 12(c), “ Legal Services Authorities Act, 1987.

¹¹⁹ A Legal Services Authority is constituted in every District to implement the Legal Services Programmes in the District. It is usually situated in the District Court complex in every District.

While the Special Public Prosecutor appointed by the State Government conducts the trial in cases under POCSO¹²⁰, the legal aid lawyer of the child plays a vital role in protecting the child's interests.¹²¹ This right operates from the point of filing of the complaint itself. According to Rule 4 of the POCSO rules, when the police or SJPJ are intimated of an offence under POCSO, then they shall inform the child or his parents or guardian or any person in whom the child has trust and confidence of the right of the child to legal aid under Section 40 of the Act.

NGOs, family members and the general public may approach the Legal Aid Cell of the District Legal Services Authority on behalf of the child victim and receive legal advice regarding the legal rights of the child and the means for accessing those rights. The Cell also assists in making a decision regarding options available to pursue the case and drafting of complaints and petitions.¹²²

The Supreme Court, in the case of *Delhi Domestic Working Women's Forum v Union of India*¹²³, has described the role of a victim's advocate as follows:

"The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case... The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained."

The Supreme Court has further stated that the victim should be informed of their right to legal counsel at the police station, and each police station should have a list of advocates willing to assist victims in such cases.

The role of a victim's legal advocate is thus limited to guiding the victim through various steps of the criminal justice system, and also to assist the prosecution under Section 301 read with Section 24(8) of the Code of Criminal Procedure. This enables the victim's advocate to provide assistance to the public prosecutor in matters of research, as well as make independent submissions at the time of closing arguments.

5.2.1.1. Absence of Independent Legal Counsel

However, in most cases, neither the police nor the Child Welfare Committee informed the survivor of her right to legal aid. According to the District Judge in Bhopal, in only two of the cases before the Special Court in Bhopal do children even have separate legal representation. It is important to note that most of the survivors interviewed had very little information about the status of the prosecution and their own role in it.

While none of the children interviewed were informed of their right to legal counsel, all of the children interviewed in West Bengal had independent legal counsel representing them in court, whereas none of the children interviewed in Madhya Pradesh had such assistance.

The role of NGOs is crucial in this regard. For example, lawyers from International Justice Mission, an organisation that works on providing legal assistance to survivors of human trafficking, represented all of the children interviewed in West Bengal. Lawyers from IJM are involved right from the process of rescue, to the filing of the complaint, where they ensure that the right sections are used in the complaint. They ensure that evidence is collected, that girls sign their statements. In courts, they oppose bail on behalf of the victim, and assist the Public Prosecutor in the case. According to International Justice Mission, they update their clients regularly, and inform them of the developments in their cases.

IJM is therefore fulfilling the crucial imperative of legal aid for victims of commercial child sexual exploitation. IJM works closely with Sanlaap, with Sanlaap providing shelter, education and psycho-social rehabilitation, and IJM providing

¹²⁰ Section 32, POCSO Act- "(1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act..."

¹²¹ MWCD Model Guidelines, p 69.

¹²² *Ibid*, p 66.

¹²³ (1995) 1 SCC 14.

legal assistance. Similar to IJM, Gauravi in Bhopal performs a similar function of providing legal support to victims. They operate a One-Stop-Crisis Centre at Jai Prakash Hospital in Bhopal, providing medical, legal and counseling support to victims.

This was also possible because all of the children were interviewed in shelters in Kolkata, and their cases were being heard in courts in and around Kolkata. Urban areas offer greater concentration and access to support services, and the shelters in which most children were residing were well connected to IJM lawyers. In contrast, children interviewed in Madhya Pradesh, with the exception of those in Bhopal, were residing in shelters in rural areas. District courts where cases are being heard are often located far away from the shelter home, and presence of NGOs is far less.

However, it is important to note here that while in some areas NGOs are offering crucial services in legal aid, the responsibility of providing legal aid ultimately lies with the District Legal Services Authority and the State Legal Services Authority. Guidelines issued by the National Commission for Protection on Child Rights on the role of various stakeholders in cases of child sexual abuse recommend that the State Legal Services Authority should maintain a list of lawyers with the necessary legal background who can be appointed as support persons in cases of child sexual abuse. However, no effort has been made by the State Legal Services Authority in West Bengal and Madhya Pradesh have created any such list.

5.2.2. Forensic Medical Examination and Care

It is the duty of the police/SJPU to take a child for forensic medical examination within 24 hours from the time the case was reported.¹²⁴ Moreover, Section 15A of the ITPA empowers the Magistrate to refer any person produced before him for forensic medical examination. Forensic medical examination must be conducted by a registered medical practitioner. According to guidelines issued by the Ministry of Women and Child Development¹²⁵ (hereinafter referred to as MWCD) as well as the POCSO Act, if the child victim is

a girl, the forensic medical examination must be conducted by a woman doctor. In the absence of a female doctor, the forensic medical examination may be conducted by a male doctor, but in the presence of a female attendant. Forensic medical examination must be conducted in the presence of the parents or guardian of the child, or in the presence of any person in whom the child reposes confidence. In the absence of any such person, the examination shall be conducted in the presence of a woman nominated by the head of the institution. Registration of an FIR is not mandatory before conducting forensic medical examination.

According to the MWCD guidelines, doctors facilitating the forensic medical examination of a child must take her consent in writing. Essential to informed consent is information, comprehensive and voluntariness. Moreover, doctors must conduct the examination in a sensitive manner, using the children's words to describe sexual acts and organs, and making the use of pictures as much as possible. Patient privacy is of the utmost importance, and the examination must not take place in a setting which can be traumatizing for children, for example, a labour room.¹²⁷

5.2.2.1. Invasive and Violative Forensic Medical Examination

Most children have spoken of forensic forensic medical examination as a very traumatizing experience. Almost all children in West Bengal mentioned that they were examined by male doctors. Many reported the presence of multiple men in the room during the forensic medical examination. According to a survivor:

"I was treated very badly during the forensic medical examination. They said offensive things. They undressed me for examination, in the presence of three-four other people, who were mostly men and just one female assistant doctor."

Almost all the survivors in West Bengal mentioned that male doctors spoke to them in an offensive way during the examination. Moreover, doctors would speak about the case among themselves in

¹²⁴ NCPCR, "Monitoring Guidelines for NCPCR/SCPCR for Roles and Functions of Various Stakeholders", accessed 8th September 2016. <http://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=406&lid=84>

¹²⁵ Section 27, POCSO Act, r/w Section 164A, CrPC.

¹²⁶ Ministry of Women and Child Development, (2013) "Model Guidelines Under Section 39 of the Protection of Children from Sexual Offences Act, 2012", accessed 8th October 2016, p. 21. <http://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>

¹²⁷ *Ibid*, p. 27.

front of the survivor. The presence of multiple men in the room is inexplicable, given that the MWCD guidelines and the POCSO Act not only repeatedly stress upon the requirement that women doctors conduct forensic medical examination, but also emphasise the right of a survivor to privacy and sensitive examination. Survivors felt that they were being ridiculed by the doctors. According to one survivor:

“They touch in inappropriate ways, ask humiliating and inappropriate questions, ridicule and laugh amongst themselves. This experience is extremely humiliating.”

Survivors have also spoken of painful and invasive examination. One survivor mentioned that a senior doctor used a very large speculum and inserted it roughly inside of her. Many of them had no idea what was going to happen till they were asked to undress by a male doctor. One must keep in mind that these are girls who have been rescued from circumstances of commercial child sexual exploitation, where they have been forced into sexual acts by men significantly older than them. For a rescued child survivor to be then sent to a room where a male figure of authority tells her to undress can only traumatise her further.

While all survivors have emphasized the need for women doctors to conduct forensic forensic medical examination, even with women doctors one may experience insensitivity. For example, an employee of Gauravi, which is a one-stop crisis centre for victims of sexual violence in Bhopal, Madhya Pradesh, mentioned that survivors find forensic medical examinations extremely uncomfortable, and they often squirm and struggle while being examined. Instead of attempting to calm the survivor, or taking steps to ensure that the survivor does not feel uncomfortable, doctors have been heard to comment *“if you had struggled this much at that time (of being raped) then this would not have happened to you”*. Such statements from medical practitioners, who are one of the first points of contact that the child has with the criminal justice system, reinforce a survivor’s sense of guilt and shame, and cause significant damage to a child’s psychological well-being.

Employees of Gauravi also mentioned that forensic medical examinations in Bhopal routinely take place in the labour room, in defiance of the MWCD guidelines. This can be extremely traumatizing for survivors, as they have to witness the sights and sounds of child delivery while being examined.

Delayed forensic medical examination is also a problem. Often, children are first produced before the Child Welfare Committee by the police, and then referred to for forensic medical examination. Firstly, this indicates that the police are either unaware of their duty to refer a child for forensic medical examination, or are unwilling to do so. Secondly, this often means that weeks could go by before a child even sees a doctor, whether it be for forensic medical examination, or medical care. For example, we were informed by Gaurvi that in many cases it is only when a child exhibits gynecological problems, such as white discharge, that she is referred to a doctor for examination. In one case concerning the Child Welfare Committee at Ratlam, we were informed that the children had not been referred for forensic medical examination for over a month. This meant that any possibility of finding crucial medical evidence was already nil. When we spoke to a member of the Ratlam CWC about the reasons behind such delay, she informed us that it was because the children had initially admitted being sexually assaulted, but later denied it.

This illustrates a crucial gap in the understanding of the role of forensic medical examination, and of emergency medical care. While forensic medical examination is conducted to establish the fact of assault, emergency medical care can also *uncover* the fact of assault when it has not come to light. The duty to report on part of doctors means that when a child is referred for medical care, and the subsequent examination by the doctor reveals the possibility of assault, she then must report the same to the police for it to be registered as a complaint. Moreover, if facts and circumstances of the child’s rescue suggest sexual assault, then even if the child denies it, she can still be medically examined, subject to her informed consent.

¹²⁸ Rule 5, POCSO Rules.

5.2.2.2. Denial of Emergency Medical Care

Children who are victims of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault and aggravated sexual assault shall be referred for emergency medical care. In cases of children who are victims of offences other than the ones above, the office of the SJP or the local police, if it is satisfied that a child is in urgent need of medical care, shall refer the child to the nearest medical care facility within 24 hours of the incident being reported.¹²⁸

It is important to note that the POCSO act does not specify that a child has to be taken to a government hospital- it only states that a child must be taken to the nearest hospital. Under Section 357C of CRPC, all hospitals have a duty to provide first aid or medical treatment to any victim of an offence under 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code.

Rule 5 of POCSO rules specifically forbids hospitals from demanding any magisterial or legal requisition or any documentation as a prerequisite to medical care. The rule further states that medical care shall be provided respecting the privacy of the child, and in the presence of the child's parents or guardian, or any other person in whom the child has confidence. The components of medical care include not only treatment of injuries and testing for sexual transmittable diseases, but also informing the child about the possibility of pregnancy and the option of emergency contraceptives, and referring the child for mental and psychological health and other counseling.

Survivors have repeatedly stated how their interaction with doctors was extremely traumatizing and abusive. Moreover, forensic medical examination often recreates the abuse that a child has gone through, and therefore, it is important to keep invasive forensic medical examination/treatment to a minimum, and to conduct it with the utmost sensitivity. At the same time, it is important to understand that medical care and forensic medical examination are two entirely different procedures. Ideally, the medical practitioner providing emergency medical care, and the one conducting the forensic medical examination should be different. This is because the doctor giving emergency medical care

is performing a primarily therapeutic function, and her principle duty of care is to the survivor herself, the doctor performing the forensic medical examination is essentially performing a forensic function.¹²⁹ Conflating of these duties can result in a conflict in obligations. However, both medical care and examination are essential steps towards the recovery of a child and her journey towards justice.

Most of the survivors we spoke to had been medically examined by doctors in a government hospital. However, the medical care was often facilitated by private doctors through the organisations that were involved in their care and protection. In many cases, survivors when asked about medical care, responded by saying that they were medically examined. This seems to suggest that there is a conflation between the two processes, and it is unclear whether the children who are victims of any form of sexual assault, are even mandatorily referred to for emergency medical care. The role of NGOs has become crucial in facilitating emergency medical care for children. Our interview with Gaurvi revealed that children are often not tested for STDs or pregnancy.

5.2.2.3. Absence of Post-Rescue Counseling

POCSO rules mandate that the police shall inform the child of counseling facilities immediately upon receiving information of the commission of an offence under POCSO.¹³⁰ In reality, such information is rarely forthcoming, and most children reported having access to counseling, if at all, only after they were sent to a shelter home. Psychological counseling, while an essential service, seems to be entirely missing from the conception of emergency medical care. Survivors repeatedly spoke of the trauma and fear that they experienced during their abuse, as well as during and immediately after their rescue. Many survivors continued to speak of a sense of helplessness and despair. However, the psychological impact of CSE is rarely explored or addressed, and children often find themselves without adequate psychological, and more importantly, psychiatric support. For example, according to the counselor at the shelter home run by Apna Ghar in Mandasaur, the nearest psychiatrist is in Indore, at a distance of over a hundred kilometres. This is not surprising given the dearth of quality and accessible mental health services in the country in general.

¹²⁹ Centre for Child and Law, National Law School of India University (2015), "Law on Child Sexual Abuse in India", Bangalore

¹³⁰ Rule 4, POCSO Rules.



**6. NEED FOR A MULTI-DISCIPLINARY APPROACH
IN AN SEC CASE**

All of the survivor children interviewed come from social and economic deprivation, which rendered them vulnerable to trafficking and exploitation. As victims of sexual exploitation, their education is interrupted, and they are often in immediate need of medical assistance and psychological counseling. Moreover, as mentioned above, legal aid is crucial to the informed participation of a child in criminal prosecution. All of these factors together make it imperative that children who are rescued from commercial sexual exploitation are provided quality and accessible support services. These services include medical care, psychological counseling, legal aid, and educational support. Moreover, in many cases of commercial child sexual exploitation, family members are complicit in the exploitation of the child, and even after registration of a police complaint, the child may remain at risk of being trafficked and exploited again. Lastly, in order to ensure the safety and rehabilitation of a survivor, as well as her continued participation in the prosecution, witness protection programmes and access to independent legal aid and timely legal intervention is crucial, especially in cases where bail is granted to the accused.

6.1. Role of Child Welfare Committees and Support Persons

The Juvenile Justice (Care and Protection) Act of 2016 states that a child who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts is to be considered as a child in need of care and protection, and produced before the CWC. Not all children who are victims of child sexual abuse need be produced before the CWC. However, most victims of commercial child exploitation are also often vulnerable children in need of care and protection. POCSO Rule 4(3) delineates the situations under which a child victim of sexual violence should be produced before the CWC.¹³¹

The fact of sexual exploitation can also come to light after a child is produced before the CWC. In such circumstances, it is the CWC's duty to report the case to the police and direct them to register a First Information Report for the same.

Even if a child is not produced before the CWC, the SJPU or the local police shall, within 24 hours of reporting of an offence, file a report of the same with the Child Welfare Committee.

The CWC is empowered to direct the police to register an FIR under the POCSO Act, and also to add provisions to the FIR and chargesheet.

Once a child is produced before the CWC, there are several functions that the CWC is empowered to perform:

- Placement of a child - Rule 4(4) of the POCSO rules mandates that the CWC must determine the placement of a child within 3 days of production under Rule 4(3).
- Under section 37(1)(g) of the JJ Act, the CWC is also empowered to pass directions to persons/ facilities/organisations in whose care the child is placed, with respect to services such as medical attention, psychiatric and psychological support, skill training, educational services and legal aid.
- Rule 4(3) of the POCSO rules also state that the CWC may appoint a support person to render assistance to the child through the process of investigation and trial.
- While Rule 4(3) of the POCSO rules are only indicative of the functions that the CWC is expected to perform in cases of child sexual exploitation, NCPDR guidelines make it clear that the role of the CWC in such cases is to be construed to provide the "widest possible support in bringing the perpetrator to justice and securing medical and legal assistance for the child"¹³²
- The role of the CWC in the investigation and trial of an offence under POCSO is performed primarily by appointing a support person and by ensuring that the support person provides all the necessary

¹³¹ Rule 4(3), POCSO Rules: "Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC."

¹³² NCPDR guidelines, p. 28.

services/support to a child. CWC's are advised to keep a list of organisations/individuals who can be appointed as support persons. The NCPCR recommends that such support persons can be drawn from the State Legal Services Authority.¹³³

6.1.1. Role of Support Persons

The role of the support person is crucial in this regard. While the role of a victim's advocate is to provide her assistance in all prosecution-related processes, and in obtaining compensation, the support person's function is to not only co-ordinate with the victim's advocate and provide them with all necessary assistance, but to function as a single point of contact for access to support services,

protection and information for the child. In any case of commercial child sexual exploitation, there are multiple agencies, who either perform the function of investigation and prosecution, or provide the child with care and protection, which includes shelter, nutrition, education, rehabilitation, reparations and repatriation. It is the role of the support person to assist a child through all of these processes, and inform the child about her rights as well as the developments in criminal prosecution. In light of the NCPCR's recommendation of "widest possible support",¹³⁴ it is imperative that support persons be appointed in each SEC case, and any case of child sexual abuse where the child is in need of care and protection.

Table 5: Functions of a Support Person

- The support person should accompany the child for the medical examination
- The support person should accompany the child for recording of FIR
- The support person shall create a report of the child's case noting the details of the crime as well as the child's personal information
- The support person shall record compensation and / or rehabilitation requirements and forward the same to the State Legal Service Authority
- The support person should provide the child with immediate requirements, such as, food, clothing or medicines etc
- The support person is required to intimate the lawyer associated with the court about the case and forward all the documents including the medical examination report, FIR, and other relevant documents
- The Investigating Officer (IO) conducting the investigation will be required to update the support person about the progress of investigation at least once a week
- Witness Protection: The support person will be responsible for communicating and coordinating with the police, lawyer and the public prosecutor to ensure that the child and all the other witnesses are safe and assist the survivor in filing a fresh FIR in case of threats as well as coordinating with other agencies to ensure alternative custodial arrangements
- Child Protection Plan: After the support person has had an opportunity to interact with the child, she / he should formulate a Child Protection Plan in respect of the child. This plan will be submitted to the CWC and can serve as a working tool that should enable the family and professionals to understand what is expected of them and what they can expect of others. The aims of the plan are: To keep the child safe; to care for the child and promote his welfare; and to support his / her family.
- The support person will coordinate with the concerned police official to ensure that the Police report under section 19 is sent to the Special Court for grant of interim compensation, if required.

Source: NCPCR Guidelines, P. 42

¹³³ *Ibid.*

¹³⁴ *Ibid*, 28.

6.1.2. Experiences of Children

Despite the comprehensive scope of legislative measures, most children continue to lack access to support services. During the course of the study, CWCs in five different districts were interviewed. Some of the issues that emerge are as follows:

6.1.2.1. Not Informed of POCSO Cases

With the exception of the CWC at North 24 Parganas District in West Bengal, all other CWCs stated that they are not informed of cases filed under POCSO within 24 hours. Moreover, in many cases, children are simply produced before the CWC for shelter without FIRs even being filed. In such cases often the initial interview with the child may not have revealed sexual assault, and the child is simply taken into shelter or repatriated with her parents.

6.1.2.2. No Follow-up of Criminal Cases

CWCs are perceived, and perceive themselves, solely as institutions of care and protection, which does not include any follow-up of the criminal prosecution. Therefore, in most cases, CWCs themselves did not have any record of the status of criminal cases, and were unable to provide any information to us, or, more importantly, to the child herself, about the developments in her case. The CWC in most cases depends entirely on updates from the police.

6.1.2.3. Absence of Support Persons

In most cases, CWCs did not appoint support persons. Where there was an active involvement by an NGO, NGO workers either were formally appointed as support persons, or acted as de facto support persons for the children. But in most cases, no such support person was available. In some cases, such as in Khajuraho, Child line officials perform some of the functions of a support person, such as co-ordinating with the police to remain updated about case developments. In all interviews, CWC members complained that there was no established system of follow-up with children. However, there are established protocols to address these issues. The failure of CWCs to implement these protocols calls into question the training and skills available to them.

6.1.2.4. Political Interference

CWC members in Ratlam stated that there is significant political interference with their work, especially when children from the Bachda community are involved. Politicians have repeatedly approached them for the release of children to their parents, even when it is evident that it is the family itself that has pushed the child into sex work.

6.1.2.5. Denial of Information

CWCs do not inform children of their right to compensation or legal aid. In some cases, members themselves are uninformed of these rights, and of their duty to inform the child of the same.

Most of the organisations interviewed felt that the appointment of individual support persons was unfeasible as there simply are not enough individuals working in such capacities with the Child Welfare Committees. However, the absence of individual support persons also contributes to another problem- the prolonged detention of survivors in protective homes. The following section will examine some of those questions.

6.2. Accused are Granted Bail Easily

Most interviews indicate that accused persons find it relatively easy to obtain bail. SEC offences are non-bailable, i.e., the granting of bail to the accused is left to the discretion of the judge.¹³⁵ The right to bail is an intrinsic part of the right to due process. However, once accused are released on bail, they often attempt to dissuade the survivor from going ahead with the case by harassing her and her family members. While bail orders regularly state as a condition of bail that the accused shall not interfere with the prosecution in any manner, there is hardly any protection available to survivors, especially if they are living with their families. The right to bail in cases of child sexual exploitation therefore must be understood vis-à-vis the best interests of the child, particularly the right of a child against further victimization.

¹³⁵ Section 437, CrPC deals with the procedure to be followed for bail in the case of non-bailable offences.

Investigative ineptitude is another reason why accused are often released on bail. According to Section 167 of the Criminal Procedure Code, in case of non-bailable offences, accused are entitled to bail as a matter of right if the charge sheet is not filed by the police within 90 days of registration of the FIR.

On the other hand, access to legal aid and independent legal representation for the survivor can make a huge difference in matters of bail. For example, lawyers from International Justice Mission who represent SEC survivors regularly oppose bail applications by accused offenders in courts, and in case bail is granted, apply to the High Court for cancellation of bail under Section 439 of CrPC. According to lawyers from International Justice Mission, the presence of a victim's advocate in court ensures that the impact of granting of bail on the victim is understood by the judicial officer.

6.3. Prolonged Custody for Victim

The use of protective custody to ensure the participation of survivors' in the trial process is a common practice. More importantly, it is significant how in this system, survivors are seen as passive participants in the criminal justice system. It is primarily through the intervention of NGOs and support persons that children become more aware of the criminal justice system and its implications for their lives.

6.3.1 Classification of Homes

There are various kinds of shelter homes authorized under the law to provide shelter for children.

6.3.1.1 Children's Homes

The Children Act, 1960, authorizes the creation of Children's Homes to care for neglected children. These homes may be run by state governments or NGOs. Under the Juvenile Justice Act, they must provide care, treatment, education, training, development and rehabilitation.¹³⁶

Under Section 17 of the ITPA, when a child (under age 16) is rescued from sexual exploitation, the magistrate may place him/her in a Children's Home for safe custody for up to three weeks, pending a decision on a final placement.¹³⁷ If victims are rescued at night and there are no shelters available, the police should ensure the victims are lodged in a nearby hotel or other place of safe custody for the interim period.¹³⁸

Under Section 19 of the POCSO Act, when a child victim of sex crime is in "need of care and protection,"¹³⁹ the Special Juvenile Police Unit must produce the child before the Child Welfare Committee within 24 hours,¹⁴⁰ and the Committee, not the magistrate, determines whether the child needs to be placed in a Children's Home.¹⁴¹ The CWC is entrusted with taking action for rehabilitation of sexually abused children.¹⁴²

Although Children's Homes are subject to regular inspection by state authorities, there have been reports that homes are not well-regulated, resulting in some homes that are dangerously inadequate, or worse, abusive.¹⁴³

¹³⁶ Section 50, JJ Act.

¹³⁷ Section 17, ITPA.

¹³⁸ UNODC Standard Operating Procedures, p. 16.

¹³⁹ According to Rule 4(3), POCSO Rules, a child in need of care and protection means a child who lives in the same/shared household as the accused or a child under institutional care or a child without parental support.

¹⁴⁰ Section 19(6), POCSO Act read with Rule 4(3), POCSO Rules.

¹⁴¹ Rule 4(4), POCSO Rules 2012.

¹⁴² Section 30, JJ Act.

¹⁴³ Human Rights Watch (2013), p. 1 (Reporting on dire conditions in a residential care facility for orphans and other vulnerable children in the northern Indian town of Rohtak in Haryana state. The National Commission for the Protection of Child Rights (NCPCR) visited the facility to investigate the girls' allegations of abuse. The head of the team later described the scene as "insane, unbelievable." Girls of all ages reported being prostituted, molested and beaten. The abuse occurred in facility that was regularly inspected by government officials. According to the NCPCR, the abuse revealed a "systemic failure."); see also, Ammu Kannampilly, 'Culture of abuse' at India's children's care homes," The National, 15th July 2012 (reporting on series of sex abuse scandals at orphanages and shelters), accessed 5 May 2016, <http://www.thenational.ae/news/world/south-asia/culture-of-abuse-at-indias-childrens-care-homes>.

6.3.1.2 Protective Homes

The ITPA also authorizes magistrates to “detain” rescued SEC victims in “protective homes.” Under Section 17, when a child is rescued from exploitation, the magistrate will order an inquiry and if satisfied that the rescued child is in need of care and protection, he will order that the child be “detained for such period, being not less than one year and not more than three” in a “protective home, or such other custody, as he shall, for reasons to be recorded in writing, consider suitable.”¹⁴⁴ The magistrate may not return a child rescued from exploitation to his/her parent or guardian unless child welfare authorities conduct an investigation and the magistrate is satisfied as to the parent or guardian’s “capacity” and “genuineness.”¹⁴⁵

A “protective home” is defined as “an institution . . . in which persons who are in need of care and protection may be kept . . . and where appropriate technically qualified persons, equipment and other facilities have been provided.”¹⁴⁶

6.3.2. Prolonged custody in Shelter Homes

While shelter homes are supposed to facilitate the rehabilitation of survivors, reports suggest that these homes are more punitive than rehabilitative. According to a recent report by an independent researcher:

Women rescued from the sex trade, ostensibly as victims, are then placed in institutions from which they are forbidden to leave until released by a court. The Immoral Traffic (Prevention) Act (ITPA) of 1956 prescribes state protective custody for them until the suitability of their families or guardians to take charge of them is verified.

Rescued women are confined to the protective home during a court-ordered verification process, which can take up to three weeks. In Mumbai, women usually remain there beyond this period, either because some courts delay sending the necessary release orders, or because the required police escort is not available to repatriate them to

their families after the release orders have been issued. For Bangladeshi women, there are much longer delays in their paperwork being processed from across the border.

After verification, courts can either order their release to a suitable guardian’s custody, or commit them to be detained in the protective home for one to three years for care and protection. To appeal against detention orders, women must approach an appellate court, for which they seldom have the resources.¹⁴⁷ As explained in more detail above, it is also possible for a magistrate to detain children as prostitution offenders in a corrective institution under the ITPA.

As mentioned previously, the right to bail is an important right of an accused in a criminal trial. However, from the point of view of the survivor, granting of bail to the accused can seem like cruel irony, as she continues to remain in custody, while the accused roams freely. Especially in cases of child sexual exploitation, when survivors are taken into protective custody, the impact of prolonged litigation can be particularly damaging to children who feel that they are being denied their freedom for no fault of their own. According to one survivor:

“I was scared that I would be stuck in the shelter home forever, if my perpetrators were never convicted.”

This can also lead to a feeling of guilt and shame as the child feels that she must have done something wrong to deserve such prolonged detention. Especially in the case of survivors from Bangladesh, who are victims of cross-border trafficking, prolonged detention and separation from family members can feel traumatizing.

Similarly, a survivor from Mandasaur in Madhya Pradesh has been in the shelter home for six years. Her father has passed away, and her mother is extremely unwell. She wants to leave the shelter home and take care of her mother, but her case is

¹⁴⁴ Section 17, ITPA.

¹⁴⁵ --- Section 17A.

¹⁴⁶ --- Section 2(g).

¹⁴⁷ Ramachandran, Vibhuti (2015), “Rescued But Not Released: The ‘Protective Custody’ Of Sex Workers In India,” Accessed 5th May 2016, <https://www.opendemocracy.net/author/vibhuti-ramachandran>. See also, Lawyers Collective, Factsheet On The Immoral Traffic (Prevention) Act, (“Police can remove any person found in premises where sex work is carried out regardless of age & consent. Rehabilitation is synonymous with detention in state run homes for indefinite periods. Viable economic alternatives are either nonexistent or unavailable to sex workers on account of stigma”), accessed 5th May 2016 at <http://www.lawyerscollective.org/files/itpa%20fact%20sheet.pdf>

still going on before the District Court and she is not allowed to leave the shelter home. When we spoke to her and asked her about her interests, she said that she was not interested in anything, and that she only wanted to be reunited with her family.

Protective custody of victims can be important especially in cases where families are involved in the trafficking of children. However, the period for which a child is kept in shelter homes should depend on the rehabilitative needs of the child, and not on the time taken for prosecution. The principles of best interests include the right of a child to be with his or her family, and any curbs on the same must be rooted in the needs of the child. It is often observed, for example, that Survivors are not always aware of the purpose for which they are being lodged in a home, even after staying there for a considerable period.¹⁴⁸

Moreover, the prolonged detention of children in shelter homes is a poor substitute for the individualized care and protection that survivors need. As mentioned in the previous section, support persons are supposed to perform many of the functions currently discharged by shelter home staff. It is the absence of personnel suitable to be trained as support staff, as well as the absence of a comprehensive witness-protection programme, which necessitates the prolonged detention of children. Most children interviewed spoke of their desire to leave the shelter home. Also, the composition of most children's shelters clearly betrays a class bias, with only children from economically deprived backgrounds being sent to the same.

Even when survivors have no complaints from conditions of living in the homes, long periods of detention can be upsetting. Survivors repeatedly spoke of their desire to be reunited with their families, and that being separated from families for long periods of time often prompts children to run away from the shelter home.

It is also important to note that in almost all cases where the child was reunited with her family, she refused to further co-operate with prosecution. Therefore, protective shelter is often felt necessary to sustain a child's participation in the trial process.

However, while the POCSO Act mandates a time-bound trial, laws like the ITPA do not have similar provisions. Many of the cases documented in this study were filed, not under POCSO, but under the ITPA. Children in such cases are then forced to stay in shelter homes for a long period of time.

Therefore, while protective custody can be essential in some cases, its desirability as a matter of rule must be questioned.

6.3.3. Conditions in Shelter Homes

As mentioned above, protective custody is seen as essential to maintain a child's participation in criminal prosecution. However, the mere purpose of keeping children in shelter homes cannot be to simply ensure their participation. Rehabilitation of the child should be the principle focus of protective custody.

Section 53 of the Juvenile Justice Act states the recovery services that should be provided in children's homes. These services include:

- (i) basic requirements such as food, shelter, clothing and medical attention as per the prescribed standards;
- (ii) equipment such as wheel-chairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances as required, for children with special needs;
- (iii) appropriate education, including supplementary education, special education, and appropriate education for children with special needs: Provided that for children between the age of six to fourteen years, the provisions of the Right of Children to Free and Compulsory Education Act, 2009 shall apply;
- (iv) skill development;
- (v) occupational therapy and life skill education;
- (vi) mental health interventions, including counseling specific to the need of the child;
- (vii) recreational activities including sports and cultural activities;
- (viii) legal aid where required;
- (ix) referral services for education, vocational training, de-addiction, treatment of diseases where required;¹⁴⁹
- (x) case management including preparation and follow up of individual care plan;

¹⁴⁸ Nair, P.M. (2004), "A Report on Trafficking in Women and Children in India 2002-2003", Vol. I (2004).

¹⁴⁹ Section 93, JJ Act - The CWC may transfer a child who is mentally ill or addicted to drugs to a from a Children's Home to a psychiatric hospital or psychiatric nursing home.

- (xi) birth registration;
- (xii) assistance for obtaining the proof of identity, where required; and
- (xiii) any other service that may reasonably be provided in order to ensure the well-being of the child, either directly by the State Government, registered or fit individuals or institutions or through referral services.¹⁵⁰

However, in reality, conditions of stay in shelter homes are often sub-standard, and only contribute to the distress of the child.

Some survivors have spoken about being beaten in shelter homes. According to one survivor who was initially sheltered at a home in Kolkata:

“Initially I had little hope, and I had planned on running away. The aunts at (name of organisation) are very ill-tempered. The “moti” (fat) aunty would beat us a lot. Everyone had to bathe stark naked.”

Survivors also spoke of children fighting among themselves in shelter homes, and poor living conditions, including bad food. All of these contribute to making shelter homes an inhospitable place for survivors. The impact of poor living conditions cannot be under-estimated, as they can immensely demoralize survivors and discourage them from participating in the trial process.

According to one survivor:

“The first Shelter Home...where I was put up, was not very good. There was no proper place to sleep and the staff behaviour towards the girls was also not good. It is important that the shelter care provision for the survivors is good. At times I felt like running away from there. Many children also think like this. If the Home is not good how can we agree to stay on there and participate in all these processes?”

Survivors who were transferred through multiple homes spoke of how they felt demoralized and discouraged when the homes they were staying in did not provide good conditions of living. When survivors moved to better homes, where they were counseled, they felt more hopeful about the criminal justice system. Many survivors have spoken

of the positive role played by shelter home staff in motivating them to seek justice. According to one survivor:

“It took many rounds of interaction with the shelter staff and counsellors to finally understand my rights... the shelter staff were very supportive throughout the Court process. I found a lot of strength and motivation to fight from their counseling”

However, not all survivors have received quality support services. There is a wide variation in the availability of support services for children in shelter homes. On one hand, many children staying in shelter homes in Kolkata spoke positively about access to support services such as legal aid and counseling at the homes. Survivors also appreciated the vocational training that they received in many homes, as they felt this enabled them to earn money. On the other hand, most of the survivors interviewed in Madhya Pradesh stated that they had not received any legal aid in the shelter homes. Counseling services were also rudimentary, with the nearest trained psychiatrist to the shelter home in Mandsaur, Madhya Pradesh being more than a hundred kilometers away at Indore.

As mentioned above, many survivors, when they first come to the shelter home, have no knowledge of the duration or nature of prosecution. The information and support received from shelter homes is thus invaluable in helping survivors navigate the criminal justice system.

6.3.4. Proximity and access to support services

In this context, it is important to note that the geographical location of shelter homes is also a factor that determines access to support services. For example, quality psychiatric services are difficult to come by in rural areas, as evidenced in Mandsaur, Neemuch and Jaora in Madhya Pradesh. This is a function of the overall inaccessibility of quality mental health facilities to rural India.¹⁵¹ The question of access to counseling and mental health services for young girls in shelter homes is thus in many cases tied closely to the idea of access to mental health services for rural India. Similarly, in the case of legal aid, while the shelter homes run

¹⁵⁰ Section 53, JJ Act.

¹⁵¹ 72% of India's population lives in rural areas, with access to only 25% of overall mental health facilities. Source: Kumar, Anant, (2011) “Mental Health Services in rural India: Challenges and Prospects” Health, 3, No. 12 (2011), p. 757-761

by Sanlaap in West Bengal are located in urban areas, and therefore in close proximity to courts and lawyers, many shelter homes in rural districts find themselves scores of kilometres away from the district courts, and any form of legal assistance.

Survivors spoke of wanting to run away from shelter homes, the reasons which include poor conditions of the homes, wanting to be reunited with families, and fear of possible repercussions of participating in the trial. According to one survivor:

“...they know that even if the perpetrator is jailed, after they come out of jail, they could harm them and their families. Perpetrators and criminals are often much more powerful.”

Survivors also spoke of distrust for the police as a reason why they ran away. One of the survivors spoke of how children feel bothered and disturbed by the police and the legal system, which is why they often try to run away from shelters.

6.4. Lack of Witness Protection Programmes

The use of protective shelter to ensure survivors' continued participation in criminal prosecution is also indicative of the complete absence of adequate state witness protection measures. In trafficking cases the survivor is often the main witness upon whose testimony the entire case rests. Repatriating children to their families without providing them with adequate protection often puts them at risk of being harassed and threatened into withdrawing their cases. The United Nations Office on Drugs and Crime, in its Response to Human Trafficking in Bangladesh, Nepal and Sri Lanka, recommends witness protection measures as an essential component of protection, and fundamental to creating an atmosphere free of fear within which a victim can testify.¹⁵² Section 195A of Indian Penal Code penalizes the act of threatening any person to give false evidence. However, most survivors are unaware of the possibility of invoking this section to seek protection. However, apart from the above mentioned section, most provisions on witness protection focus on protective measures during the

trial process, and there is a huge legislative lacunae in the area of vulnerable witnesses, especially women and children. The 198th Law Commission Report on Witness Protection Programmes delineates two aspects of witness protection- witness identity protection and witness protection programmes.

6.4.1 Witness Identity Protection

Section 23 of the POCSO act makes the publication of any information pertaining to the identity of a survivor a punishable offence. Section 37 of the POCSO act mandates that trials under the act shall be conducted *in-camera*. Therefore, the POCSO Act provides for witness identity protection, in the media as well as for the duration of the trial process.

However, testimonies from survivors reveal that many did not feel confident that their identity would be protected during investigation and trial. Survivors spoke of the police openly discussing their case details in the police station. Moreover, in many cases, court proceedings were conducted in open court, leaving little room for maintaining confidentiality about the victim's identity.

6.4.2. Witness Protection Programme

India lacks a comprehensive witness protection programme which extends beyond court proceedings. The 198th Law Commission report makes recommendations on the establishment of a witness protection programme, but does not dwell upon whether such a system would be feasible for children.¹⁵³

In addition to a witness protection programme, counseling of family members is essential to securing the child's participation in the trial. Seeing their children go through a prolonged trial can be traumatizing for family members, and, especially in cases where traffickers are known to the family members, they stand at risk of being harassed and threatened by traffickers. Survivors have also spoken of family members dissuading them from giving evidence in court. One girl spoke of how she saw her sister sit in court with her infant child, and make gestures at the survivor to keep quiet. Counselling and protection services can therefore go a long way in securing the family's support for the child's quest for justice.

¹⁵² UNODC, (2011), “Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka, accessed 5th August 2016, p. 24 http://www.unodc.org/documents/human-trafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf

¹⁵³ Law Commission of India (2006), “198th Report on Witness Identity Protection and Witness Protection Programmes”, accessed 5th October 2016. <http://lawcommissionofindia.nic.in/reports/rep198.pdf>



**7. PARTICIPATION AS A VICTIM-WITNESS
DURING THE SEC CASE**

7.I. Role of Judges

There are two stages when a child survivor of SEC has to come into contact with judges. Firstly, immediately after the FIR is lodged, the child is produced before a Magistrate to record a statement under Section 164 of CrPC (“the 164 statement”). Under Section 164, the statement is recorded before the commencement of a trial. Therefore, the statement in this case is not taken before the Special Court, but usually by the jurisdictional magistrate.¹⁵⁴

The child later is also required to give evidence before the Special Court constituted under the POCSO Act.

7.I.I. Special Courts and the Trial Process

Prior to the advent of the POCSO Act, the Supreme Court in *Sakshi v Union of India*¹⁵⁵ laid down guidelines to be followed in cases of trials of child sexual abuse. These guidelines have been incorporated in the POCSO Act. Some of these guidelines are as follows:

- Conducting a trial in-camera
- Ensuring the maintenance of a child friendly atmosphere in court
- Ensuring that the child is able to participate effectively in the trial
- Ensuring that the child is not put to hardship in the course of the trial including preventing the accused from coming into direct contact with the child, ensuring that the child is not asked uncomfortable, invasive, rude questions
- Ensuring that child is not asked to come repeatedly to testify
- Inform the child of his/her right to take assistance of legal practitioner.
- Record evidence within 30 days and complete trial within 1 year
- Order interim or final compensation

7.I.2. Experiences of Children

7.I.2.1. The Trauma of Coming to Court

Many spoke of being brought to the court premises in police vans, and they mentioned feeling embarrassed and stigmatized at having to step out of a police van. According to one survivor:

“It would be better if they did not take the rescued children in a police car, and rather arrange for some other car. Everybody stares at the children who alight from a police van as if they have committed some crime. It feels uncomfortable. The others who have travelled with me, also feel the same. Only criminals are taken away in those cars, and we are not criminals.”

One survivor spoke of how, as she was getting down from the police van, she would hear lawyers and the public make offensive remarks about her. Survivors have complained about the public staring and pointing at them and making them feel embarrassed.

7.I.2.2. Coming Face to Face with the Accused

Survivors have spoken about how they have found themselves face-to-face with the accused inside courtrooms. One survivor spoke of threatening gestures being made by the brothel owner in court. One girl mentioned how she was made to sit right beside the accused, and he rubbed itching powder all over her, causing her great physical discomfort.

It is important to note that POCSO and CrPC contain various safeguards to prevent the survivor from coming into direct contact with the Accused. While the accused has a right to cross-examine the complainant, Section 273 of CrPC states that this right is fulfilled even in the absence of the accused as long as the accused’s pleader is present. Moreover, Section 36(1) of the POCSO Act obligates the Special court to ensure that the child does not come into contact with the accused. Most children are not aware that they have the right to be seated separately from the accused inside court premises. Presence of support persons in such cases can go a long way in making the child feel secure. However, survivors have mentioned how the presence of a single support person is not enough to make them feel protected.

¹⁵⁴ The Supreme Court, in the case of *State of Karnataka v Shivanna* has held that in POCSO cases it is mandatory to record the statement of a child under Section 164, and it should preferably be recorded before a Lady Magistrate. 2014 (8) SCC 913.

¹⁵⁵ AIR 2004 SC 3566.

7.1.2.3. Children's Experiences in In-camera Trials

In all cases where trial had commenced, children spoke of trials taking place in open court. Section 37 of the POCSO Act mandates that all trials shall be conducted by the Special court through in-camera proceedings. Section 327(2) of the Code of Criminal Procedure mandates in-camera trials for rape and allied offences. This section was introduced vide the Criminal Law Amendment Act of 2012. The requirement of in-camera trials in fact precedes POCSO and the Criminal Law Amendment Act. As mentioned above, the Supreme Court in 2004 has held in the case of *Sakshi v Union of India* that in-camera trials should be conducted in all cases of child sexual abuse.

Despite these requirements, in all of the interviews, the victims spoke of trials being conducted in open court. While many of the cases pre-date POCSO, and even the Criminal Law Amendment Act of 2013, the requirement of in-camera trials predates both these laws. It is pertinent to note that this protection of *in-camera* trials is not extended to ITPA cases, with victims in ITPA cases regularly deposing in open court. Moreover, in many courts, prosecutors have to apply to the court for proceedings to be held in-camera, and the absence of vigilant prosecution means that victim is forced to depose in open court.

7.1.2.4. Rude and Invasive Questioning

Survivors have also spoken of rude and invasive questioning, both during examination-in-chief and during cross-examination. According to one survivor:

"My PP spoke to me in a way that made me feel like I was guilty of some crime. I had been given three names, I was subject to offensive remarks about that. It would help if this aspect could be improved."

Survivors also experienced very offensive and demeaning questioning from defence lawyers. According to one survivor:

"The defence lawyers speak about the victim in a very foul language. This completely de-motives and humiliates the victim. There are times when I wanted to discontinue this fight for my justice because I did not want to directly confront the defence side and face this humiliation and constant name-calling by the defence lawyer and the accused party."

The interview of the district judge at Bhopal revealed the manner in which she ensured that children were not exposed to the Accused. She stated that she would ask children to turn towards her and speak. Defense lawyers would be told to submit questions to her during cross examination, and she would decide which questions were relevant and ask the same to the child directly in a simple and non-confrontational manner.

She also spoke of a need for cameras where witnesses sit, to observe possible threats to witnesses. She has seen cases where court staff often mislead children and their guardians into thinking that their case is not listed for that day, and as a result the child leaves the court without giving evidence.

Judges interviewed have also expressed the need for liaison staff between shelter homes and courts, and the need for DLSA to provide legal aid to each shelter home, so that children are aware of judicial proceedings and the status of their cases.

7.1.2.5. Long and Uncomfortable Waits in Court

The lack of infrastructure such seating arrangements and toilet facilities inside court premises also contributes to the child's discomfort. The MWCD guidelines recommend establishment of child-friendly waiting rooms in courts. However, such waiting rooms are yet to be established in most court premises. Many survivors have spoken about the lack of seating arrangements, which forces them to stand for long periods of time. According to one survivor:

"There is no water to drink or even a toilet inside the court, and the surrounding filth is repulsive. It's difficult to wait there. Cleaning up the court surrounding is essential."

Moreover, it is established procedure in most courts that evidence is recorded only after lunch timings. Therefore, asking a child to be present in court from the morning only subjects her to undue harassment.



8. RESOLUTION OF THE SEC CASE AND POST-TRIAL REMEDIES

The resolution of an SEC case is not limited to conviction, but must encompass a range of remedies aimed at providing some measure of restitution for the survivor. While restitution has several components, this study focused primarily on compensation, as it is one of the few measures aimed towards restitution of victims that has been implemented in the Indian legal framework.

8.1. Compensation

Under the Section 33(8) of the POCSO Act, read with Rule 7 of the POCSO rules, the Special Court can award compensation under the following grounds:

- (i) When there is loss or injury caused to the child
- (ii) For any physical trauma undergone by the child because of the offence
- (iii) To meet immediate needs of the child, eg, urgent medical care
- (iv) For rehabilitation of the child

Section 357A of the CrPC enjoins upon state governments to notify Victims' Compensation Schemes for the purpose of providing compensation to a victim or his dependents who have suffered loss or injury because of the crime and as a result require rehabilitation. Such compensation may be given even in cases where the case results in acquittal, or where the offender is not traced or identified, but the victim is identified.

The Supreme Court of India, in the case of *Suresh v State of Haryana*¹⁵⁶, directed India's states to provide victims' compensation schemes. The Court further stressed the importance of interim compensation to be paid to victims before the criminal case concludes. The Supreme Court stated as follows:

We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to

final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.

Such compensation can be awarded even in the absence of a victim's compensation scheme. In practice, the Victim's Compensation Scheme is operationalized through the DLSA. In the absence of such a scheme, the Special Court need not only refer to the DLSA for the determination of the quantum of compensation.

Children are also entitled to compensation under the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, if they belong to a caste notified as a Scheduled Caste or a tribe notified as a Scheduled Tribe under the Constitution of India.

8.1.1. Experiences of Children

One of the primary problems in compensation is the fact that victims have to apply for it, which means that they have to be aware of their right to compensation. However, without access to legal aid and a separate legal counsel, it is nearly impossible for victims to have any access to compensation.

None of the survivors interviewed had received any compensation. Most of them were not even aware that they had the right to receive compensation. Both Madhya Pradesh and West Bengal have victims' compensation schemes established. The West Bengal Victim Compensation Scheme was established in 2012, and it authorizes a compensation of Rs. 30,000 for rape of a minor. The Madhya Pradesh Victim Compensation Scheme was established in 2015. The scheme specifies compensation of up to Rs. 2 lakhs for sexual crime with minors.

¹⁵⁶ 2014(8) Supreme 289.

8.1.1.1 Experiences of Children in West Bengal

The West Bengal Victim's Compensation was established shortly after the advent of the POCSO Act.¹⁵⁷ Seven out of the thirteen cases studied were filed after the notification of the scheme. However, in only one case was compensation of Rs. 10,000 awarded by the court. Most of the survivors did not know about the possibility of getting compensation.

Case study: In July 2016, the High Court at Calcutta passed an order directing the State Legal Services Authority to disburse compensation of Rs. 30,000 to a victim of trafficking. The case was filed in appeal by International Justice Mission against an order of the lower court which, while convicting the accused, denied granting of compensation to the victim. According to Sanlaap, this is one of the first cases of compensation being awarded by the High Court at Calcutta.

8.1.1.2 Experiences of Children in Madhya Pradesh

None of the victims in Madhya Pradesh had received any compensation, or were even informed of their right to the same. In fact, conversations with Child Welfare Committees revealed an abject lack of understanding about compensation frameworks. For example, a member of the Child Welfare Committee at Ratlam was not even aware of the possibility of children receiving compensation.

The Madhya Pradesh Victim Compensation Scheme was notified in March 2015.¹⁵⁸ While the compensation amounts prescribed in the scheme are higher than that in the West Bengal scheme, there are certain questionable provisions that would make it difficult for children to access compensation. The scheme disqualifies victims from seeking compensation on the following grounds:- (a) the applicant fails to inform the police of the crime without reasonable delay (b) the applicant fails to co-operate with the police officer or other authority to bring the accused to justice (c) the applicant fails to provide all reasonable assistance to the DLSA or other related

authorities in connection with the application for compensation, and (d) if the facts and circumstances do not support the eligibility of the applicant for compensation.¹⁵⁹

While all of these grounds are problematic and can potentially act as barriers to compensation, grounds (a) and (b) are particularly problematic as they disqualify victims on the grounds of delay in filing complaints and not co-operating with prosecution. Given that victims of trafficking and commercial child sexual exploitation face immense pressure from traffickers and often their own family members in their pursuit for justice, denial of compensation can only further derail their quest for justice. This is particularly problematic in light of the absence of witness protection schemes in India. Victims may feel pressurized to not co-operate because of threats to the personal safety of family members or their own selves. The appropriate response of the state to non-cooperation of the survivor should be protection and counseling, and not the denial of compensation which could be essential to her recovery.

Delays in filing complaints are common in cases where the exploiter is a family member, and moreover, a delay does not prima facie establish mala fide intentions on part of the complainant. The Supreme Court of India, has stated that delay in filing of rape complaints is not fatal to the complaint, and various circumstances, including societal pressure, can be responsible for delay. Moreover, whether or not delay in filing a rape complaint is of relevance is to be adjudicated upon by the court in question. The addition of this provision leaves it open for the possibility of an application being rejected even if the court does not consider the delay as fatal to prosecution.

One of the primary problems in compensation is the fact that victims have to apply for it, which means that they have to be aware of their right to compensation. However, without access to legal aid and a separate legal counsel, it is nearly impossible for victims to have any access to compensation.

¹⁵⁷ The West Bengal Victim Compensation Scheme, 2012, accessed 17th September 2016. http://www.wbja.nic.in/wbja_admin/files/imp%20information.pdf

¹⁵⁸ Madhya Pradesh Crime Victim Compensation Scheme, 2015, accessed 17th September 2016. <http://www.mplaw.nic.in/documents/477471/11754235/pidit%20pratkar%20yojna%202015.pdf>

While compensation at the conclusion of the case is crucial, interim compensation can be even more essential to meet the survivor's immediate needs, including the right to medical aid and the right to legal counsel. Moreover, the Supreme Court in *Suresh v State of Haryana* has clearly stated that courts have a duty to grant interim compensation. However, interviews with judges and CWC members reveals that courts are reluctant to grant interim compensation to victims.

8.2. Pendency and Conclusion of Trial

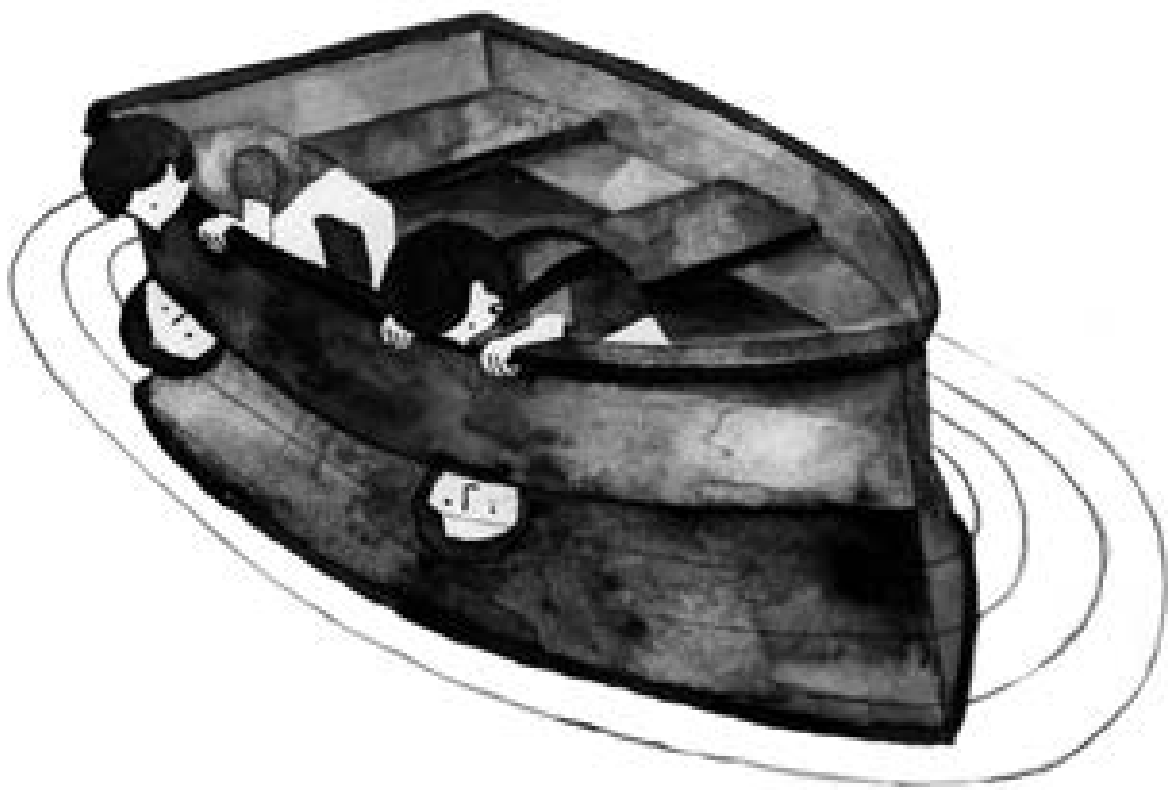
Trials of cases under POCSO should be completed as far as possible within 1 year from the date of taking cognizance of the offence as per the POCSO Act.¹⁶⁰

It is unclear how long Courts take to dispose of SEC cases in practice, as the latest data on pendency of cases is from 2014, when the POCSO Act was introduced.

Among the cases examined in this study, two out of thirteen cases examined in West Bengal had concluded and resulted in convictions, while none of the cases examined in Madhya Pradesh had even concluded.

¹⁵⁹ Ibid, Clause 8.

¹⁶⁰ Section 35(2), POCSO Act, Section 35(2).



9. RECOMMENDATIONS FOR CHANGE

While recognizing that great progress has been made to create “child-friendly” justice systems in India and other countries around the world, the Access to Justice study has revealed many gaps that continue to keep sexually exploited children from accessing justice. Evidence shows that sexually exploited children still struggle to hold their offenders accountable and obtain the compensation and services they need to rebuild their lives.

The Research Team proposes a number of concrete steps to ensure that sexually exploited children are at the center of prosecutions against their exploiters and have every opportunity to secure the justice they deserve. The recommendations address the barriers that keep children from entering the justice system, as well as those that prevent them from navigating through the justice system to a successful conclusion.

Key Recommendations Include:

1. Develop specialized outreach programs for sexually exploited children and those at risk of sexual exploitation, including joint partnerships between specialized police and NGOs.
2. Empower the District Child Protection Unit (DCPU) to provide support services to victims in co-ordination with the Child Welfare Committee. The DCPU’s role is particularly important in the provision of counselling services to victims.
3. Provide victims with the opportunity for a recovery and reflection period after rescue to help them heal and understand their exploitation before deciding whether to participate in a criminal case against the exploiter.
4. Provide information to victims at the outset of the SEC case to help them make an informed decision about filing a criminal complaint against the exploiter, including information about their rights, their expected role in the criminal process, and the risk and benefits of participation.
5. Ensure that any informal or mediated settlement of SEC cases takes place only when it is in the best interests of the child, and does not involve harmful practices, such as forced marriage.
6. Assign a support person to every child victim-witness to help them navigate safely and effectively through the criminal proceedings in SEC case
7. Ensure that appropriate medical care and psychological counseling is provided to SEC victims from the first point of contact and throughout the criminal justice process. Ensure that shelter care is a last resort. Address gaps in government-run residential facilities housing SEC victims and develop SEC-specialized non-residential care and protection programs.
8. Ensure that free legal aid is available to SEC victims at the first point of contact, irrespective of whether the child chooses to file a criminal complaint or not. Lawyers from the District Legal Services Authority (DLSA) should be available at all Child Welfare Committees and in shelter homes that house SEC victims. One of the ways in which this can be done is for the DLSA to create a district-level panel of lawyers, who will assist SEC survivors. Each lawyer on the panel can be assigned to a specific number of shelter homes where survivors are staying, thus allowing for better co-ordination between shelter homes and lawyers.
9. Each police station should have displayed a list of service providers, including lawyers, medical practitioners, and counselors, who may be called upon when a child is rescued.
10. Create a legal presumption in favour of pre-trial detention of accused SEC offenders, and when bail is granted, impose appropriate conditions, such as no-contact orders, that protect the safety of the child victims.
11. Implement comprehensive witness protection programmes, with an emphasis on security within the community, and in public areas in and around courthouses. This should include the following:
 - (a) Children should not be brought to courthouses in police vans. Their anonymity should be protected even at the time of arriving at the court premises.
 - (b) Stricter monitoring of court proceedings, including the installation of CCTV cameras, and ensuring that survivors do not come into contact with the Accused under any circumstances.

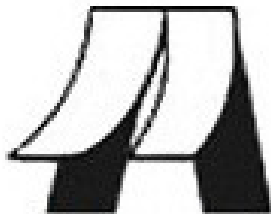
- (c) Steps should be taken to ensure that survivors can immediately pursue criminal action against accused and his/her family if they threaten the survivor and/or her family.
12. Institute a formal “best interests” assessment process for SEC cases in accord with the Convention on the Rights of the Child and related guidance.- child-friendly techniques to convey information in a timely manner, and in a manner that is sensitive to the child’s capacity to comprehend.
13. Expedite SEC cases through priority tracking, continuous hearings or other methods and approve delays only after considering the child’s views and best interests. While the POCSO Act, Rules and allied protocols provide comprehensive child-friendly procedures, their implementation is lacking, and should be strengthened.
14. Adopt a law enforcement strategy of “child-supportive” SEC cases, rather than “child-dependent” cases, corroborating the child’s testimony with physical evidence and witness testimony, introducing evidence to combat negative stereotypes against SEC victims, and making use of special evidentiary rules.
15. Ensure a comprehensive continuum of care and support that includes closely-monitored, post-trial reintegration services, including for foreign-born victims.
16. The operation of Child Welfare Committees must be monitored by a State-level Monitoring Committee. Such a committee must be established under the chairmanship of a High Court judge, with representation from CWCs, Police, Department of Women and Child Welfare, among others.
17. Members of Child Welfare Committees must undergo periodic and mandatory training on child laws and child-friendly protocols. The Child Welfare Committee must mandatorily have representation from lawyers trained in laws relating to children, including relevant criminal and labour laws. The State Child Protection Society is responsible and must coordinate these trainings.
18. Inter-dependent co-operation between different agencies must be strengthened, especially in SEC cases registered in rural districts, and for first-response mechanisms. In larger districts, multiple Child Welfare Committees must be established in different parts of a district to allow for better monitoring of SEC cases and victims’ rehabilitation. The role of DCPU is vital in such areas for co-ordination between the CWC and other agencies.
19. While most states have initiated victims’ compensation schemes of their own, the implementation of such schemes is lacking, and interim compensation is rarely granted. CWCs must ensure that each SEC survivor has competent legal counsel who is able to assist the survivor in gaining compensation. Judicial officers must be trained in various aspects of granting compensation, including granting of interim compensation.
20. Provide SEC-specialized training to criminal justice professionals, including police, prosecutors, judges and legal aid lawyers, as well as medical professionals who engage with SEC victims during the criminal justice process. The training should cover the POSCO Act and related procedures and highlight the unique challenges faced by children from poor and minority communities, including Dalit and Adivasi children.
21. Police must inform CWCs of every case of child sexual abuse within 24 hours of its registration, and every child suspected to be a victim of SEC must be produced without delay before the CWC.

About the Organisations



ADHAR Khajuraho

ADHAR is a not-for-profit, non-political, secular organization. The organisation was initiated by self-motivated youths and has been working relentlessly since 1992 to ensure the holistic development of underprivileged children in Odisha and Madhya Pradesh by empowering them, including their families and communities. ADHAR emphasizes on action research, creation of replicable development model and evidence based advocacy that salvage children from abject poverty, protect them from abuse, exploitation & carelessness; and ensure their access to health care, nourishment, quality education and a favourable environment to grow. ADHAR started its operation in Bundelkhand region of Madhya Pradesh in November 2012 looking at the misery of children at Khajuraho, a tourism destination.



Alternative Law Forum

The Alternative Law Forum is a collective of lawyers invested in an alternative practice of law. ALF has a commitment to respond, through litigation and research, to issues of social and economic injustice.



Children's Rights in Goa

Children's Rights in Goa (CRG) is actively involved in advocacy to strengthen child protection mechanisms in Goa. CRG's advocacy and campaigns on the ground resulted in specific provisions to tackle tourism-related child sexual abuse being incorporated into the Goa Children's Act 2003. In June 2006 CRG's interaction with the tourism sector resulted in the Travel and Tourism Association of Goa adopting a Child Friendly Tourism Code. CRG is keen to join hands with individuals and organisations towards the prevention of child abuse.



Caritas - Goa

Caritas - Goa was established in 1962 with a mission 'to love and serve the needy in action'. Through the various projects and programs it expresses in action the love and care of God towards the needy, oppressed and the victims of natural calamities and man made disasters securing them freedom for integral development. Caritas - Goa is a dynamic expression of the Church's option for the poor, the destitute, the ailing and the marginalized. It works to alleviate human sufferings and uplift those challenged in any way, especially women and children whether physically, mentally or economically.



Centre for Responsible Tourism

The Centre for Responsible Tourism is formally operational since 2007. The Centre seeks to be the rallying base for uniting citizens and stakeholders in tourism in Goa to foster patterns of responsible tourism including justice and human rights in tourism, cultural education and awareness for travellers, increased benefits for host communities especially the small and medium sectors, a child protective atmosphere, the protection of women and children, and an ecologically sensitive context for tourism policy and practice.



Hifazat Coalition on Child Protection

Hifazat is a multidisciplinary coalition of children's rights in Madhya Pradesh which has been working towards strengthening and improving the child protection systems and enabling a protective environment for children in the state since 2010.



EQUATIONS

EQUATIONS is a research, campaign and advocacy organisation since 1985. It studies the social, cultural, economic and environmental impact of tourism from the perspective of local communities. We believe that tourism should be just, non-exploitative, equitable and sustainable. A question that has been central to our work and directs much of it is 'Who Really Benefits from Tourism?'



M.P. Institute of Social Science Research

M.P. Institute of Social Science Research is an autonomous, multidisciplinary centre for research and training located in Ujjain, Madhya Pradesh. The institute receives its core grants from the Indian Council of Social Science Research (ICSSR), New Delhi and Ministry of Higher Education, Government of Madhya Pradesh. Research activities of MPISRR are concerned with issues relating to social, economic, educational, political, cultural, administrative and civic aspects of Madhya Pradesh and adjoining states. MPISRR has been working in the areas of Panchayati Raj and Rural Development; Education; Gender; Caste and Tribe; Development and Deprivation; Issues relating to children; Social Justice; Information Technology and Society and Environment since last two decades.



Sanlaap

Sanlaap is an Indian feminist non-governmental organisation, established in 1987 in Kolkata. The group aims to protect the human rights of women and girls. Sanlaap is a developmental organisation that works towards correction of social imbalances, which present themselves as gender injustice and violence against women and children. The primary work is focussed against trafficking of women and children for commercial sexual exploitation, sexual abuse and forced prostitution. As part of its work, the group starts shops to train girls to make a living and foster their independence.



Vikas Samvad Samiti

Vikas Samvad Samiti works towards mainstreaming of different critical issues of development. Its efforts are centred towards strengthening the ongoing struggles on establishing equitable society and people-centric sustainable development. Vikas Samvad works on the issues of Agriculture, Children, Differently Aabled, Drinking Water, Environment & Forests, Health & Family Welfare, Human Rights, Labour & Employment, Nutrition, Panchayati Raj, Right to Information & Advocacy, Women's Development & Empowerment.



Children have a right under Article 34 of the Convention on the Rights of the Child to live a life free of sexual abuse and exploitation and to access justice when this right is violated. For children who have been sexually exploited, the criminal justice system is an important way to secure legal remedies, including the compensation and services that they need to recover and return to healthy lives. The study based on findings from Madhya Pradesh and West Bengal, provides insights into the child's experience of the justice system as well as on the justice process. While India, like many countries around the world today, has strong legislation in place to protect children from sexual exploitation, this has however, not translated into child-friendly practices for accessing justice. Instead, these children continue to face unique and powerful barriers that prevent them from accessing justice for the crimes committed against them.

