

## An Analytical Study of Implementation of POCSO Act. 2012: In Special Reference to State of Haryana

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### Abstract

A child is the most important asset of society and has a vital role to play in the development of nation. Children are the future of the country. The future of any country depends on how the children of that country are nurtured and nourished. But child sexual abuse is became threat to their development and development of the nation too. In India, Haryana is one of the state that highly in news because of child sexual abuse. However, Haryana is a progressing state economically but on the social front it is still backward and patriarchal. The Reflection of patriarchy and its effect on society at large are very evident in NCRB data. Moreover, the reported cases are much smaller than the actual number, because brining certain crimes into the notice of authorities will tarnish the image of victims. Though 'The Protection of children from sexual offences act, 2012' is strictly in action now, it possesses a lot of imperfections which challenges its effective implementation. This research article highlights the strengths of the act and at the same time, reflects the ethical and legal dilemmas we usually encounter in our day to day practice in Haryana.

**Keywords:** Child, Child sexual abuse, POCSO act, Challenges, Implementation.

## INTRODUCTION

According to Justice Misra Rangnath, who delivered the order in *Sheela Barse & Others v. Union of India*<sup>1</sup>, "children are regarded national assets, and it is the state's duty to make sure that their personalities develop properly." The development

1 AIR 1986 SC 1773

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of a country is subject to on its children. They require organised care and opportunities for socialisation in order to reach human status. As per the United Nations Convention on the Rights of the Child<sup>2</sup> (UNCRC), "it is the prime duty of the state to provide the basic health care, nutrition, education, protection from maltreatment along with the supportive social welfare system and juvenile justice system without having any responsibility of the family, community or the society at large". In this regard, the families and the community have the educated, informed and empowered, so they can provide care and protection to their children.

Child sexual abuse has been one of the lesser talked about criminal justice issues in India. Indian society's tendency to hide this menace has resulted

2 Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989



in scattered historical discourse around the issue.<sup>3</sup> And the current framework to protect children from sexual abuse and sexual exploitation is covered by the act "The protection of Children from Sexual Offences Act, 2012 (POCSO Act). The Act aims to curb child sexual abuse by increasing penalties for sexual offences against children and creating a sensitive criminal justice system to support child victims. The POCSO Act was amended in 2013 and 2018. More recently, in 2019, concerned with rising cases of sexual offences against children. Despite this the cases of child sexual abuse is still raising.

Section 2(1)(d) of the POSCO Act 2012<sup>4</sup> states that "child implies any individual under the age of eighteen years." This Act fundamentally aims to defend children from sexual offenses and annoyance. However, an important issue that arose soon after the implementation of the POCSO Act concerned the scope of this definition. Did age as referred to in this provision mean biological age or mental age? Thus, it fell to the courts to decide whether a person who has crossed the biological (and not mental) age of 18 years could also be included within the holistic conception of the term 'child' under the POCSO Act. In the case *Eera v State (NCT of Delhi)*<sup>5</sup> supreme court of India held that "the legislature never intended to include the concept of mental age while determining the age of a child for the purpose of the POCSO Act".

However, the implementation of the Act has faced several challenges along the way, some of which have worsened over the years. The need for better implementation of the POCSO Act has been voiced by several High Courts<sup>6</sup> as well as the Supreme Court. There are various factors that take part in the non-implementation of the POCSO Act in the State of Haryana. These are: Patriarchal Society, Culture, Caste, Poverty, Police, consensual relationships between minors etc.

## PATRIARCHAL SOCIETY

Patriarchy is a social system in which positions of dominance and privilege are primarily held by men<sup>7</sup>. Patriarchy is associated with a set of ideas,

3 Jyoti Belur and Brijesh Bahadur Singh, 'Child sexual abuse and the law in India – A Commentary' (2015) *Crime Sci* 4:26 accessed 2 December 2021; Pallavi Nautiyal and Arun Mal, 'Towards Protection of Children against Sexual Abuse: No Child's Play' (2010) 3 *NUJS L. Rev.* 77.

4 "POCSO ACT 2012, Section-2(d), "child implies any individual under the age of eighteen years" (2017) 15 *SCC* 133.

6 *Hanif Ur Rahman v State of Bihar, Criminal Writ Jurisdiction Case No. 160 of 2021 (Pat H.C.)* (unreported).

7 "Definition of PATRIARCHY". Merriam-Webster Dictionary

a patriarchal ideology that acts to explain and justify this dominance and attributes it to inherent natural differences between men and women. It is a hegemonic system of power relations based on gender norms, which establish the expected roles of men and women. In this system, women and girls have historically, and overwhelmingly, been oppressed, exploited or otherwise disadvantaged.

Haryana where in each of the 7000-odd villages-150-200 youths above 25 years are unmarried. Preference for son is very strong compelling parents to go for unwanted sex determination test and aborting their foetus. If a girl child is born then she is subjected to other forms of violence like lack of education, she is not given food at home and she denied of her freedom, not allowed to play or speak freely. After this stage she is victims of crime directed specifically at them, sexual assault, kidnapping and abduction, dowry-related crimes, molestation, sexual harassment, eve-teasing, honour killings etc. Women are being trafficked for sex, harassment at workplaces and tortured in family and society.

It was observed that girl has to keep silent, submissiveness is accepted by the community. If she becomes vocal and goes to sarpanch or police station then is believed that she has brought dishonor to the families/communities. Girl is responsible of the family honour as a daughter, wife and mother while man control it. If a girl is sexual assault or gang sexual assault in Haryana, it is believed that she has brought shame and dishonor to the family/community. Thus women's freedom is oppressed by patriarchal orthodox ideologies.

Sexual assault remains highly unreported crime due to fear of retribution from the abusers and societal stigmatization. It also believed that sexual violence and sexual assault men try to exercise their patriarchal power over women to show their domination.

## CULTURE

When girls venturing out of their homes for education, work and sport, developing friendships with boys and seeking to assert themselves, a new trend of "use and throw" seems to have emerged and during friendship they force girl to do some bad act with them. There is also desire at a certain age, but since marriages are still largely determined by considerations of caste endogamy, village exogamy, etc. men look at these women as objects of fun, with no intention of marrying them.

**Caste Endogamy:** Caste are hereditary social

divisions that are distinguished from one another by property ownership, occupation, political position, and, often, ritual status. Men and women are normally bound to marry within their castes of birth to maintain the “purity” of hereditary lines and to enclose affinal alliances and exchanges within group boundaries<sup>8</sup>.

**Village Exogamy:** Exogamy is exactly the opposite of endogamous marriage. The exogamy form of marriage can be defined as the solemnization of marriage outside of the particular community, tribe, social group, etc. The survivors were unable to access any legal remedies due to various factors, including social and community pressure and the culture of silence and stigma around sexual assault, which forced them to stay silent.

## POVERTY

Research shows an undeniable link between poverty and sexual violence. Sexual violence can jeopardize a person’s economic well-being, often leading to homelessness, unemployment, interrupted education and health, mental health, and other daily stressors and struggles. In turn, living without one’s basic needs met can increase a person’s risk for sexual victimization. Perpetrators of sexual violence target individuals who seem vulnerable whether due to gender, age, race, disability, sexual orientation, immigration status, income, or other reason; they exploit victims and survivors caught in situations created by poverty.

Poverty is among the root causes of sexual violence and has a daily presence in the lives of many victims and survivors. Therefore, the thread of economic advocacy must be woven throughout the fabric of all intervention and prevention efforts.

Statistics show that poverty increases people’s vulnerabilities to sexual exploitation in the workplace, schools, and in prostitution, sex trafficking, and the drug trade and that people with the lowest socioeconomic status are at greater risk for violence. For example, poverty plays a role in that of families living in poor socio-economic conditions often do not report child sexual assault

8 [https://www.umanitoba.ca/faculties/arts/anthropology/tutor/marriage/caste\\_endogamy.html](https://www.umanitoba.ca/faculties/arts/anthropology/tutor/marriage/caste_endogamy.html)

because the perpetrator is a bread-winner of buys the silence of the victims’s family.

Moreover, in many cases, the men are unemployed, With nothing to do all day, they gravitate towards alcohol, drug abuse and tend to attack girls who they feel are increasingly competing with them in the job market. Although Haryana is among one of India’s well-off states, its unemployment rate is among the highest in the country at shows Centre for Monitoring Indian Economy data<sup>9</sup>.

### *Caste-based Sexual Violence:*

The vast majority of sexual violence cases against Dalit women and girls (over 80%) were committed by men from dominant castes<sup>10</sup>. Caste hierarchies are so strong in Haryana that if a girl of a Dalit caste is sexual assault by upper caste boys then it becomes very difficult to register FIR against a upper caste boy.

A Dalit survivor may face threats of retaliation and violence by the dominant caste perpetrators, less support from the wider community and fear of pressure on her family if she speaks out about violence. Such retaliation could include threats of further violence, the loss of home and livelihood and the possibility of imposition of spurious ‘counter’ criminal cases by the perpetrator. Internal patriarchal and sexist cultural understandings within Dalit communities also propel such situations, as survivors who choose to report cases often face stigmatization and ostracization from their families and the community .<sup>11</sup>Official data from the National Crime Records Bureau (NCRB) from 2018 and 2019<sup>12</sup> provides the following data on sexual assault cases in Haryana.

9 <https://timesofindia.indiatimes.com/city/gurgaon/haryanas-unemployment-rate-highest-in-country-report/article-show/94235771.cms>

10 Sofia babu, ‘80% of Haryana’s sexual violence cases against Dalit women committed by upper caste men, reveals study, <https://english.madhyamam.com/india/haryanas-eighty-percent-of-sexual-violence-cases-against-dalit-women-committed-by-upper-caste-men-reveals-study-608481>

11 “PRIA, Addressing Violence Against Dalit Women: Insights based on Field Experiences in Haryana, 2013, [https://www.pria.org/knowledge\\_resource/Addressing\\_Violence\\_Against\\_Dalit\\_Women\\_2.pdf](https://www.pria.org/knowledge_resource/Addressing_Violence_Against_Dalit_Women_2.pdf)”

12 “National Crime Records Bureau, Crime in India (2018), <https://ncrb.gov.in/en/crime-india-2018>; Crime in India (2019), <https://ncrb.gov.in/hi/node/2974>”

	2018		2019	
	All Women & Girls	Dalit Women & Girls	All Women & Girls	Dalit Women & Girls
Sexual assault under section 376, IPC	1296	171	1480	221
Sexual assault cases under POCSO (girl child victims only)	1020	72	1117	101

Though the data shows a fairly low number of sexual assault cases against Dalit women, it must be noted that the data in relation to Dalit women is dependent on the registration of a First Information Report (FIR) under the SC & ST (PoA) Act. Evidence from grassroots groups and lawyers indicates that in many cases of sexual assault against Dalit women and girls, even where the sexual assault case is registered by the police, the FIR does not normally include offences under the SC & ST (POA) Act.

Due to pressure from high-level politicians to clamp down on caste-based atrocities within the state, district-level authorities aim to bring down the number of sexual assault cases registered under the SC & ST (POA) Act.<sup>13</sup> This often has the negative impact of incentivising police inaction and refusal to register cases, as opposed to increasing efforts to prevent such crimes<sup>14</sup>

## COMMUNITY PRESSURE

### *Community role in impeding access to justice:*

Community and social pressure plays a major role in impeding access to justice through pushing or forcing the survivor or her family into compromises or extra-legal settlements (as happened in 57.5% of the cases studied). Unofficial village councils, known as khap panchayats, also attempted to interfere with the justice process in over 80% of the cases, by using their economic, social and political power to threaten, intimidate and coerce the survivor or her family into staying silent or refrain from pursuing the criminal case.

Interference by community groups in sexual assault cases is probably the biggest obstacle to justice for Dalit women and girls in Haryana. Data from the National Family Health Survey indicates that 90% of women and girls who have experienced sexual violence have never sought help.<sup>15</sup> The vast majority of sexual violence cases remain unreported due to the stigma attached to reporting cases of sexual assault.

13 "G.C. Pal, Caste-Gender Intersectionality and Atrocities in Haryana: Emerging Patterns and State Responses (2018), <https://journals.sagepub.com/doi/full/10.1177/2394481118774476>"

14 "Women Against Sexual Violence and State Repression, Speak: The Truth is still alive! Land, Caste and Sexual Violence against Dalit women and girls in Haryana (2014), <https://wssnet.org/2014/07/18/land-caste-and-sexual-violence-against-dalit-girls-and-women-in-haryana-a-report-by-wss/>"

15 National Family Health Survey IV-India, 2016, <http://rchiips.org/NFHS/NFHS-4Reports/India.pdf>

This problem is compounded for Dalit women and girls, particularly when the perpetrator is from a dominant caste. The lack of social, economic and political power on the part of Dalit women and girls makes them particularly vulnerable to coercion and intimidation by dominant caste groups. Stigma and pressure attached to reporting sexual assault cases.

### *Role of khap panchayats as informal quasi-judicial bodies*

Another notable feature of communities impeding access to justice is the role of traditional khap panchayats (unofficial village councils) in supporting the accused person(s) and intimidating or coercing the survivor or her family into accepting a compromise.

Khap Panchayat is a male dominated institution and has been there since 6th century BC. In Haryana's history role of Khap Panchayat cannot be ignored. These khap panchayats are caste-based community groups, normally composed of dominant caste members which often act informally as quasi-judicial bodies in settling disputes. These khap panchayats have also been known to decree or encourage 'honour' killings or other atrocities and attempt to prevent inter-caste marriages.

The Supreme Court has held that khap panchayats "take the law into their own hands and amount to kangaroo courts, which are wholly illegal."<sup>16</sup> However, the functioning and influence of khap panchayats remains particularly strong in Haryana.

Since these khap panchayats are usually made up of persons from the dominant caste in a particular village, they often support the perpetrator if he is also from a dominant caste.<sup>17</sup> The enormous social and political power wielded by these khap panchayats allows them to pressure survivors and their families to compromise the case, including through using their social and political power to intimidate or bribe the police officers investigating the case, threats of economic and physical retaliation, social boycott, banishment from the village or other such means.

### *Potential for panchayat members to actively interfere with justice process*

Additionally, a customary practice in Haryana is for the police to appoint the sarpanch (village headman) as the Panch

16 Arumugam Servai v. State of Tamil Nadu (2011) 6 SCC 405.

17 All India Dalit Mahila Adhikar Manch (AIDMAM), Voices Against Caste Impunity; Narratives of Dalit Women in India (2018)

(independent observer or witness) during the on-the-spot investigation of the crime scene in cases of sexual violence.

In sexual assault cases against Dalit women and girls, this official role of the sarpanch provides panchayat members (largely drawn from dominant caste communities) with a greater ability to interfere and obstruct the criminal justice process in sexual assault cases.

## COMPROMISES

The survivor or her family was pressured or forced into accepting an extra-legal settlement or 'compromise' with the accused person(s), whereby they agreed not to pursue the criminal case. Such "compromises" in these cases were brought about by the accused and the general community putting pressure on the survivor or her family through:

- *Filing of spurious counter-cases with the police* (for instance, in one case, the accused attempted to blame the death of a family member on the family of the survivor and filed a criminal complaint of abetment to suicide against the survivor's husband).
- *Threats of physical violence and assault*, including threats to the life of the survivor, her children or her family.
- *Use of political influence* with the police and health care providers to impact the results of the criminal investigation.
- *Societal pressure through social boycott*, or banishing the family from the village (or threatening to do so).
- *Economic retaliation* by threatening loss of jobs of the survivor or her family, particularly when they are dependent on the dominant castes for their livelihood. Such compromises are not permitted under the law and are not supposed to be taken into account by courts when deciding sexual assault cases. Irrespective of such compromise, the justice process does not officially recognise it and will continue until the case is officially closed or disposed of by either the police or the courts.

Supreme Court of India in *Ramphal v. State of Haryana*<sup>18</sup> It is imperative to emphasise that we do not accept such compromise in matters relating to the offence of sexual assault and similar cases of sexual assault. Hence the aforesaid compromise is of no relevance in deciding this matter.

18 2019 Latest Caselaw 1161 SC

## Consensual Relationship between Minors

The POCSO Act 2012, by defining a child as a person below 18 years of age<sup>19</sup>, fixes the age of consent at 18 years. Under POCSO, the consent of a "child" is immaterial and consensual sexual intercourse with or among adolescents is treated on a par with rape. This has resulted in one of the most controversial aspects of the POCSO Act. By rendering teenagers incapable of giving consent to sexual relationships, consensual 'romantic relationships' between teenagers often get criminalised. And it gain the judicial attention in the case of *Arhant Janardan Sunatkari v State of Maharashtra*<sup>20</sup>, the Bombay High Court observed that incidents of consensual sex between minors have been a grey area under the law as a minor's consent is not valid in the eyes of law. CCL-NLSIU report notes that most of the 'romantic cases' were filed by the family of the victim and not the victim herself, thus giving rise to the assumption that these provisions were being misused by families of adolescents to thwart relationships that they did not approve of.<sup>21</sup> And half of POCSO cases are accounted for by the 16-18 age bracket<sup>22</sup>.

In 2019 in the case of *Sabari v Inspector of Police*,<sup>23</sup> it recommended that the definition of 'child' under Section 2(d) of the POCSO Act should be 16 and not 18 years and consensual relationships after the age of 16 years should be excluded from rigorous punishments under the Act.

## Police attitudes, inaction

In many of the cases which are dropped during the police investigation during itself - either by the police declaring the case as false, or by citing reason of insufficient evidence and so failing to file a charge sheet. The police themselves had actively impeded access to justice, including by pressuring and intimidating the survivor and her family to drop the case, and sometimes even colluding with the perpetrators. The various issues faced by survivors of sexual violence while dealing with the police are discussed below.

19 The Protection of Children from Sexual Offences Act 2012, Section 2(d).

20 *Arhant Janardan Sunatkari v State of Maharashtra*, 2021 SCC OnLine Bom 136

21 Centre for Child and the Law, National Law School of India University, Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues (National Printing Press, Bengaluru, February 2018).

22 <https://timesofindia.indiatimes.com/blogs/toi-editorials/pocso-at-ten-the-law-gave-sexual-offences-against-children-the-focus-it-deserved-but-consider-lowering-age-of-consent-from-18/>

23 *Sabari v Inspector of Police*, 2019 (3) MLJ CrI 110.

### ***Police refusal to register sexual assault***

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Despite the fact that it is a criminal offence for police officers to refuse to register an FIR in cases of sexual assault,<sup>24</sup> survivors of sexual violence, particularly girls, routinely face difficulties in ensuring that the police register cases of sexual assault. Police officers often pressure the survivor to drop the complaint or delay registration of the FIR. Such delays in registration of the FIR often has a direct impact on the success of the case, as they can affect the quality of medical evidence and give perpetrators and community members more time to pressure survivors to drop the case among other consequences.

### ***Police failure to inform***

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Even in cases where the FIR was eventually filed, the police officers often do not provide the survivor with a copy of the FIR, even though the complainant has the right to receive this under the law.<sup>25</sup> Most survivors are unaware of their rights under the law and in many cases, the police either refuse, or inordinately delay providing a copy of the FIR. This becomes a particular problem in tracking the case.

### ***Police reluctance to register caste discrimination***

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The difficulty of getting cases filed under the SC & ST (PoA) Act has been widely documented. The accused was from a dominant caste community, and the police failed to register an FIR under the SC & ST (PoA) Act. Even in the remaining cases, the police registered cases under the SC & ST (PoA) Act only after repeated visits and representations by activists though they are supposed to do so based on the information contained in the complaint. In cases without outside intervention by media, courts or activists, the police is extremely reluctant to file cases of caste atrocities against Dalit women and girls.<sup>26</sup>

### ***Sexual assault survivors turned away from police stations***

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In an effort to address the issues relating to police attitudes and lack of sensitivity, the 2013 criminal law amendments made it mandatory

for information in cases of sexual violence to be recorded by a female police officer.<sup>27</sup> One of the means by which the 2013 amendments were implemented was through setting up all-women police stations.

Police officers in other stations often turn away sexual assault survivors and ask them to approach the all-women police stations, even though it is not legally required for sexual assault cases to be registered only in all-women police stations. Haryana has set up only 34 all women police stations,<sup>28</sup> so in many districts there is only one all-women police station for the entire district. Requiring sexual assault survivors to travel further away, sometimes over long distances, to file complaints at these specific all-women police stations often adds to their distress, as opposed to benefiting them; it makes the process of pursuing justice practically more difficult and more costly.<sup>29</sup>

### ***Police lack training and also discriminate***

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Requiring sexual violence complaints to be registered by women police officers has not resulted in the expected improvement in the treatment meted out to sexual assault survivors, as female police officers lack training and are also often insensitive towards sexual assault survivors. Further, when the survivor is from the Dalit community, police officers (whether male or female) most of whom are from dominant caste communities, also discriminate on the basis of caste and are therefore prone to disbelieving the survivors due to their caste and are influenced by the political and economic power often held by the dominant caste perpetrators.

### ***Lack of effective victim witness protection***

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The lack of effective victim and witness protection at the ground level leaves sexual assault survivors and their families vulnerable to threats, retaliation, coercion and intimidation from perpetrators and their families, including through use of physical violence, as a result of which survivors are often coerced into changing their testimony and refusing to co-operate with the investigative or judicial process.<sup>30</sup>

24 Code of Criminal Procedure, 1973 as inserted by the Criminal Law (Amendment) Act, 2013, Section 166A

25 Code of Criminal Procedure Code 1973, Section 154(2)

26 See Women Against Sexual Violence and State Repression, Speak: The Truth is still alive! Land, Caste and Sexual Violence against Dalit women and girls in Haryana (2014), available at <https://wssnet.org/2014/07/18/land-caste-and-sexual-violence-against-dalit-girls-and-women-in-haryana-a-report-by-wss/>

27 "Section 154 of the Code of Criminal Procedure, 1973 as amended by the Criminal Law (Amendment) Act, 2013"

28 Office of the Chief Minister of Haryana, Press Release, 10 January 2020, <https://haryanacmoffice.gov.in/index.php/10-january-2020>

29 See Nirvirkar Jassal, Gender, Law Enforcement, and Access to Justice: Evidence from All-Women Police Stations in India, American Political Science Review, 11 August 2020.

30 "Human Rights Watch, Everyone Blames Me: Barriers to Justice and Support Services for Sexual Assault Survivors in India (2017),

### ***Police protection difficult to obtain***

The national Witness Protection Scheme 2018 has been endorsed by the Supreme Court,<sup>31</sup> but it has yet to be effectively implemented by most state governments, including Haryana. The Haryana government posted the legal notification of the state-level Haryana Witness Protection Scheme in the official gazette in September 2020, almost two years after the central scheme was approved by the Supreme Court.<sup>32</sup> At the ground level, it still remains difficult to obtain police protection for survivors and witnesses, despite repeated complaints to the authorities. The police often claim unavailability of police officers for provision of protection. It remains to be seen how effectively the Haryana Witness Protection Scheme will be implemented.

### ***Protection obtained inadequate and short-lived***

Another major obstacle to effective victim and witness protection is the lack of cooperation by the police.<sup>33</sup> It is seen that even in the few cases where police officers are assigned to protect the survivor, they often sympathise with, or are alleged to take bribes from, the accused persons and therefore do not provide adequate protection or turn a blind eye to acts of the accused persons and their accomplices. Also there are limitations on the amount of time for which the protection is provided - it is usually withdrawn after a few months. In most cases, protection is not provided after the judgment by the trial court has passed, even though the survivor may still be at risk of reprisal from the family or community members of the accused.

### ***Problems relating to the medico-legal examination.***

*Poor implementation of national guidelines on medico-legal care*

In 2014, the Ministry of Health and Family Welfare issued guidelines on medico-legal care for survivors/ victims of sexual violence (the 2014 Guidelines). These guidelines require healthcare providers who carry out the forensic examinations to provide psychosocial support to girls who

disclose sexual violence, or to refer them to another healthcare provider for such services. They also include protocols for conduct of the forensic examination of the sexual assault survivor to ensure that the privacy, dignity and autonomy of the survivor is respected. However, these guidelines are poorly implemented in many hospitals in Haryana.

## **ISSUES RELATED TO THE JUDICIAL PROCESS**

### ***Delays in conducting trials***

The Code of Criminal Procedure was amended in 2018 to mandate a time limit of two months for the completion of investigation of sexual assault cases by the police. Prior to the 2018 amendment, the law required the completion of police investigation within three months in cases of child sexual assault only.<sup>34</sup> In addition, the trial must be completed within two months of filing of the charge sheet.<sup>35</sup> As such, the police investigation and trial together are now required to be completed within four months of filing the FIR.

And due to passage of time, the child/victim who has undergone the sexual trauma, may not be able to recall the incident vividly, that giving an undue advantage to the accused. There are cases where the child/victims evidence is not recorded for years and thus it leads clear violation of the Protection of Children from Sexual Offences (POCSO) Act.<sup>36</sup>

### ***Difficulty in obtaining convictions***

The only cases in which convictions were obtained against all accused persons involved either sexual assault and murder together, or were committed against very young girls (under the age of 6). It remains exceptionally difficult to obtain convictions in cases other than those deemed to be the most extreme violations such that adolescent girls and adult women struggle to obtain justice.

Victims subjected to offensive cross examination - Sexual assault stereotypes and myths remain common in the judicial process, particularly in relation to the sexual history of the victim. The defence lawyers, during the trials, ask offensive, insensitive and hostile questions which are often irrelevant. Such questioning is often an attack

<https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>"

31 Mahender Chawla &Ors. v Union of India &Ors. [Writ Petition (Criminal) No. 156 of 2016]."

32 Haryana Witness Protection Scheme, 2020,<http://homeharyana.gov.in/pdfs/1600429632WPS.pdf>"

33 Human Rights Watch, Everyone Blames Me: Barriers to Justice and Support Services for Sexual Assault Survivors in India (2017), <https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>"

34 Code of Criminal Procedure, 197, Section 173

35 Code of Criminal Procedure 1973, Section 309

36 The POCSO Act 2012,Section 35

on a woman's dignity and is used deliberately to undermine her and her case. Though the Supreme Court has prescribed numerous safeguards to protect the survivors from offensive questions during cross-examination,<sup>37</sup> these are not usually followed in practice.

#### Difficulties in obtaining compensation

Section 357-A of the Code of Criminal Procedure, 1973, requires every state to set up a victim compensation fund for payment of compensation to victims of crimes. The payment of compensation is not dependent on conviction and the survivor is entitled to claim a portion of the compensation immediately after filing the police complaint. In 2018, noting the disparity in amounts of compensation awarded under various state compensation schemes, the Supreme Court ordered that all states should abide by the compensation scheme developed by the National Legal Services Authority, under which the minimum compensation payable should be INR 4,00,000 (~USD 4500) for sexual assault victims and INR 5,00,000 (~USD 6800) for gang sexual assault victims.<sup>38</sup>

#### Problem with Scheme Implementation to end violence against women

The "Nirbhaya Fund" has been set up by the Government of India for implementation of initiatives aimed at enhancing the safety and security of girl in the country. These funds are allocated to state governments for various purposes, including setting up of one-stop service centres, safe city projects, funding of the Central Victim Compensation Fund and the like. However, data released by the central government in November 2019 shows that the Haryana government has utilised only around 36% of the

total amount allocated to it under the Nirbhaya Fund.<sup>39</sup>

#### Problems with functioning of One-Stop Centres -

A large portion of the money allocated under the Nirbhaya Fund is set aside for the setting up of One Stop Centres (OSCs). These OSCs were intended to provide integrated support and assistance under one roof to women affected by violence, as well as to facilitate immediate, emergency and non-emergency access to a range of services including medical, legal, psychological and counselling support in one place to fight against any forms of violence against women.<sup>40</sup>

### **CONCLUSION**

Child sexual abuse is becoming threat to their development and development of the nation too. Haryana State is a progressing state economically but on the social front it is still backward and patriarchal. The Reflection of patriarchy and its effect on society at large are very evident in NCRB data. Moreover, the reported cases are much smaller than the actual number, because bringing certain crimes into the notice of authorities will tarnish the image of victims. The Protection of children from sexual offences act, 2012 possesses a lot of imperfections which challenges its effective implementation. There is a need to handle ethical and legal dilemmas of the Act to encounter such offences in Haryana.

37 Sakshi v Union of India 2004 Supp(2) SCR 723

38 Nipun Saxena v. Union of India, W.P. (c) No. 565/2012, Order dated 11 May 2018

39 Press Information Bureau, Government of India, Ministry of Women and Child Development, Nirbhaya Fund, 29 November 2019, <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1594221>

40 Ministry of Women and Child Development, One Stop Centre Scheme: Implementation Guidelines for State Governments/UT Administrations, December 2017, [https://wcd.nic.in/sites/default/files/OSC\\_G.pdf](https://wcd.nic.in/sites/default/files/OSC_G.pdf)

