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## **ASSESSING BARRIERS IN THE LEGISLATION FOR PROTECTION OF CHILDREN FROM SEXUAL OFFENCES: THE NEED TO DECONSTRUCT VIOLENT MASCULINITIES\***

### **Abstract**

The pervasive problem of Child Sexual Abuse (CSA) has corroded the Indian as well as global development agenda for the protection of children. It is not only a heinous act committed against children in extreme violation of their rights but also a manifestation of entrenched, pervasive and systemic patriarchy. This research paper reviews the legislative developments in the light of the magnitude of the crime of sexual abuse of children. It shall also attempt to explore the linkages between Child Sexual Abuse (CSA) and a culture of gender-based discrimination, violence and power that exist in the Indian society in general and the Indian judicial response mechanism in particular. It is in this context that the paper discusses some of the pertinent factors leading to CSA and how it needs to be addressed by targeted, effective and timely interventions and judicial redressal mechanisms. Towards the end, highlighting the loopholes in the recent Criminal Law (Amendment) Act, 2018, on death penalty for child rape, key recommendations are made aimed at strengthening the institutional and judicial response to CSA.

**Key Words:** Child Sexual Abuse (CSA); child rape; death penalty; gender-based discrimination; Indian judicial response; gender socialization.

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## 1. Introduction

“Child Sexual Abuse (CSA) is a kind of physical or mental violation of a child with sexual intent, usually by a person who is in a position of trust or power vis-à-vis the child” (Kumar et al. 2011). The pervasive problem of Child Sexual Abuse (hereinafter referred as CSA) has corroded the Indian as well as global development agenda for the protection of children. It is not only a heinous act committed against children in extreme violation of their rights but also a manifestation of entrenched, pervasive and systemic patriarchy. Horrific incidences of CSA and child rape cases such as the ones from Unnao <sup>1</sup> and Kathua <sup>2</sup> in 2018, and many more after them, had created nationwide outrage, almost making it a sensation. As a result, the Supreme Court released a slew of directions in response to the massive pendency in CSA cases and the Union Cabinet was made to approve an ordinance that provides for death sentence and imprisonment for life or a minimum sentence of 20 years for the rape of a girl child below the age of 12 years. This, therefore, serves to be a critical window to analyse the factors leading to CSA, the effectiveness of such developments in laws on CSA and eventually catalyse action for prevention, control and complete elimination of CSA.

Several institutional protective measures have been taken up for children but the efforts to combat this particular heinous crime in India stays weak. In addition to redressal mechanisms in India and justice delivery, appropriate preventive actions targeting the root cause of the problem are not being taken up, resulting in continuous perpetuation of CSA.

It is essential to note that about one-third (37%) of the country’s population is children below 18 years of age, and they number 444 million (Census of India, 2011). As per the Census 2011, more than 12 million children were married off before the attainment of legal age of marriage, placing such children at the risk of being sexually exploited. Table 1 highlights the statistics on crimes against children in India during 2012-16.

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<sup>1</sup> <https://timesofindia.indiatimes.com/india/unnao-rape-case-fear-forced-me-to-hide-in-delhi-all-this-while/articleshow/63754632.cms>

<sup>2</sup> <https://timesofindia.indiatimes.com/india/across-india-horror-turns-to-outrage-at-gang-rape-and-murder-of-8-year-old-kathua-girl/articleshow/63738747.cms>

**Table 1. Crimes against Children in India during 2012-16**

Type of Crime	2012	2013	2014	2015	2016
Rape	8,541	12,363	13,766	10,854	19,765
Assault on women (girls children) with intent to outrage their modesty	-	-	11,335	8,390	-
Insult to the modesty of women (girls children)	-	-	444	348	-
Kidnapping & Abduction	18,266	28,167	37,854	41,893	54723
Buying of girls for prostitution	15	6	14	11	7
Selling of girls for prostitution	108	100	82	111	122
Procuration of minor girls	809	1,224	2,020	3087	2465
Protection of Children from Sexual Offences Act			8,904	14,913	36,022

Similarly, according to the Crime in India Report, 2016, the number of crimes against children in India has gone up drastically over the last few years (National Crime Records Bureau, 2016). In the last five years alone (2012-16), the number of incidents of crimes against children has increased by 180% (from 38,172 in 2012 to 1, 06,958 in 2016). Major crime heads during 2016 were Kidnapping and Abduction (52%) followed by cases registered under POCSO Act (34%). In 2016, 36,022 cases of crime against children were registered under POCSO as compared to only 8,904 in 2014 and 14,913 cases in 2015. Although, the increase in reporting over the years could be due to increase in the awareness level of people, better reporting of the crime and filling of charge-

sheets, however even these figures are abysmal when compared to the actual magnitude of the crime as reported often in the leading dailies.

This paper seeks to analyse the effectiveness of the existing laws protecting children from sexual offences, especially in light of the law on death penalty for child rape. Also, it sheds light on the superseding cause for the uncontrolled proliferation of CSA in India. It seeks to discern the extant gender norms and constructs of masculinity and femininity supporting aggressive and hegemonic sexual behavior of the perpetrator.

## **1. Rationale**

The Indian Government in the recent past, has taken serious, drastic and inadvertent cognizance of the need to respond to the crime of CSA in all its dimensions. While there has been research done over the past few years to understand the nature and magnitude of the crime, it is but imperative to target “prevention” as a strategy to control this menace in the country, at this juncture in time. In order to do that, it is vital to unravel the linkages between socialization, gender roles and the promotion of violent masculinities that pervades harmful behavior towards the vulnerable groups such women and children; recurrently subsuming and re-creating the culture of rape in the country.

It is in this context that this paper attempts to assess the effectiveness of the existing legal frameworks to protect children from sexual offences and the recent amendments in the law to control child rape. As has been mentioned, there is a dire need to focus on preventive aspects of the crime and in the given context it deems most relevant to gauge the efficacy of these laws and policies and the subsequent deterrence they create in the society, especially in terms of its ability to provide long term and sustainable solutions to the crime.

## **2. Study Objectives**

The study objectives of this paper are as follows:

- To study the magnitude of CSA and its institutional response in India
- To explore the linkages between Child Sexual Abuse (CSA) and a culture of gender-based discrimination, violence and power within institutions and the society

- To formulate key recommendations aimed at strengthening the institutional and judicial response to CSA.

### 3. Assessment of the legal framework protecting children from sexual abuse

“Signing up to the United Nations Convention on the Rights of the Child (UNCRC), India promised to protect its children from all forms of sexual exploitation and sexual abuse” (Kumar et al. 2011). **Article 34** of the UNCRC states that –‘States Parties undertake actions to protect the child from all forms of sexual exploitation and sexual abuse’.

- 3.1. In the Indian context the crime of CSA is dealt with under the **Protection of Children from Sexual Offences (hereinafter referred to as POCSO) Act, 2012**, wherein the crime heads have been further categorized into Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault, Aggravated Sexual Assault, Sexual Harassment, Non-reporting of Crime, and Child Pornography.<sup>3</sup> POCSO, 2012, defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. The Act is gender neutral, i.e., provides protection to both girls and boys and provides for stringent punishment graded as per the gravity of the offence and the punishments range from simple to rigorous imprisonment of varying periods. The Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he/she fails to do so, he/she may be punished with ‘six months imprisonment and/or a fine’. The Act mandates the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child at every stage of the judicial process. It

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<sup>3</sup> The Protection of Children from Sexual Offences Act, 2012

- also aims at incorporating child friendly procedures for reporting, recording of evidence, investigation and trial of offences.
- 3.2. The **Immoral Traffic Prevention Act, 1956**, criminalises the procuring, inducing or taking of persons including children for the sake of prostitution. Additionally, Section 354, Section 370, Section 375, Section 376, Section 377, and Section 509 of the Indian Penal Code, 1860 and Section 66 (A) under the Information and Technology Act, 2004 are laws applicable to the crime of CSA.
- 3.3. **Recent Developments in the Legal Framework:** The gang rape and murder of an eight year-old girl in January 2018 in Kathua, Jammu & Kashmir, and the rape of a 17 year old girl in Unnao, Uttar Pradesh in 2017, allegedly by an elected MLA, created nationwide outrage leading to demand for severe punishment for such crimes. Responding to this situation, the Union Cabinet on April 21, 2018, approved an ordinance to the Indian Penal Code (IPC), Indian Evidence Act (IEA), Code of Criminal Procedure (CrPC) and the Protection of Children from Sexual Offences Act (POCSO), allowing for harsher punishments to those committing sexual crimes against women and children. The following Act of Parliament received assent of the President on 11<sup>th</sup> August, 2018, and is now characterized under the Criminal Law (Amendment) Act, 2018<sup>5</sup>. Amongst all the amendments, the Act had, most controversially, introduced the death penalty for rape of a girl below 12 years of age, while also increasing the mandatory minimum sentences for rape.

Some of the salient features of the Act being the minimum punishment for rape increased to at least ten years (Section 376 IPC); the minimum punishment for committing rape on a girl child aged below 16 years is made twenty years (clause (3) added to Section 376); the minimum punishment for committing rape on a girl child aged below 12 years is a minimum of 20 years of rigorous imprisonment to a maximum of death penalty or life imprisonment (Section 376AB) and the minimum punishment for committing gang-rape on a girl child aged below 16 years and 12

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<sup>4</sup> Information and Technology Act, 2000

<sup>5</sup> [https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct\\_14082018\\_0.pdf](https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf)

years respectively is life imprisonment to death penalty (Section 376DA and Section 376DB).

The recent Criminal Law (Amendment) Act, 2018, is aimed at creating deterrence by introducing harsher punishment but the effectiveness of death penalty in creating deterrence is arguable in the first place. There is quite a chance that the new law may overlook pertinent debates and concerns related to that of child rape cases. Firstly, the POCSO Act, 2012, is gender neutral, i.e., it aims at providing protection to both boys and girls below the age of 18 years. The new Act however, has introduced stricter punishment for only 'girls' below the age of 12 years and 16 years, respectively, while completely discounting the issue of sexual abuse of their young male counterparts. Secondly, the logic behind introducing the harshest punishment in the form of death penalty for child rape cases of only girls below the age of 12 years is unclear and unstated. As per POCSO a child is any person below the age of 18 years and here again there is incoherence between the two legal provisions. Thirdly, the introduction of death penalty for those accused of raping a child under 12 years could possibly deter reporting instead of deterring the crime itself. Most of the perpetrators (95% according to NCRB) of child rapes are known to the victim. Families will (in most situations) fear such irreversible legal consequences for family members, which in turn may increase the hesitation of the victim or her family members to report such cases. The result of introducing the death penalty for child rape could be that the law now provides an incentive for the perpetrators to rape and then murder their victim as it eliminates an incriminating and often solitary witness to the crime at no additional cost. Children in any case are often seen as vulnerable and weak targets who in any case would not be able to put up a fight if their life is put in danger thus inflicting bodily harm even with the pursuit to kill them on the spot could be the easier way out for the perpetrator.

Therefore, it is essential that the new Act be reviewed in the light of the socio-political fabric and cultural context of India while keeping in mind these relevant debates and linkages. The question of death penalty is not free from subjective influence. In a study conducted by NLU, Delhi, it was found that a large number of judges believed that the deterrent value of death penalty flows from a general aversion to punishment and not any particular deterrent value attached to the death penalty (National Law University Delhi, 2017).

It would not be incorrect to assume that the new Act was a knee-jerk response of the government which may be ignorant of the socio-political and cultural context of the country and does not aim at addressing the root-cause of the problem. Sensitising communities and relevant stakeholders at all stages of the justice delivery system and other critical aspects discussed above are not considered by the Act and therefore cannot be considered as a long term or sustainable solution.

#### **4. Findings and Discussions**

##### **4.1. Illustrations of Biased Judgments in POCSO Cases**

The enforcement of laws do not exist in isolation to the socio-political context of any society and more often than not prevalent patriarchal prejudices and biases creep in even while making key judgments in the cases of CSA. Despite the formulation and implementation of such laws protecting children from sexual offences, the behavior and attitude of stakeholders involved in implementing the laws and procedures remains questionable. Below mentioned are such illustrations of cases wherein justice was denied to the child victims due to erroneous and pre-conceived notions of the judges who were handling the case.

In one of the CSA cases, the Bombay High Court granted bail to a man accused of sexually assaulting his step-daughter. The reason given for the bail order was rather unusual<sup>6</sup>—

“She has admitted that she used to do all dirty things. It appears that she was inherently abnormal and had sexual instincts right from her childhood, in all probabilities, because of the environment and atmosphere where she lived and the conduct of her deceased mother.”

The above observations were made by the Justice Sadhana Jadhav while hearing a bail application filed by a man charged of offences under Section 354 (Assault or criminal force to woman with intent to outrage her modesty) of the Indian Penal Code and Section 8(Punishment for Sexual Assault) of the POCSO Act. The order further states that the girl had not disclosed the “act” of the applicant for a “considerable amount of time”.

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<sup>6</sup> <http://www.livelaw.in/bombay-hc-blames-victim-grants-bail-adoptive-father-accused-raping-read-order/>



“The statement of the victim on the basis of which crime is registered, does not appear to be truthful and therefore, does not inspire confidence of this Court. The applicant has been in jail for almost 15 months. The investigation is completed and charge sheet is filed. Hence, the applicant deserves to be enlarged on bail”, states the Order.

The observations made by Justice Jadhav were quite contradictory to the rules laid down by the POCSO Act which and were rather insensitive to the child victim’s case. As per legal provisions, it is presumed that there is an absence of consent once it is medically proved that intercourse has taken place.<sup>7</sup> Also, as per the POCSO Act, the Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.<sup>8</sup>

In yet another case by the Bombay HC, Justice Badar said<sup>9</sup>:

“The basic principle, that there is presumption of innocence of accused unless and until guilt is proved against him, applies in full force warranting his pre-trial detention totally unjustified.”

This directly stands in contravention to the POCSO Act, 2012 which places the burden of proof on the accused and not the victim of such a heinous crime.<sup>10</sup>

In another case in Ahmedabad, a special POCSO Court judge H J Joshi pointed to the shastras to justify the decision to acquit a man accused of raping a minor. The judge drew inspiration from the concept that opposites attract each other and that childhood (shaishav) and adulthood (pukht) are complementary to each other.<sup>11</sup> The fact that POCSO and other legal provisions deem the consent of a child as immaterial was completely ignored. Also, standards of child-friendliness in the courtroom were not adhered to.<sup>12</sup>

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<sup>7</sup> Section 114- A, IEA

<sup>8</sup> Section 33 (6), POCSO Act, 2012

<sup>9</sup> <http://indianexpress.com/article/cities/mumbai/bombay-high-court-grants-bail-to-accused-in-rape-case-4908266/>

<sup>10</sup> Section 29, POCSO Act, 2012

<sup>11</sup> <https://timesofindia.indiatimes.com/city/ahmedabad/pocso-court-cites-shastras-to-justify-acquittal-in-rape-cases/articleshow/57418730.cms>

<sup>12</sup> Section 33 (4), POCSO Act, 2012

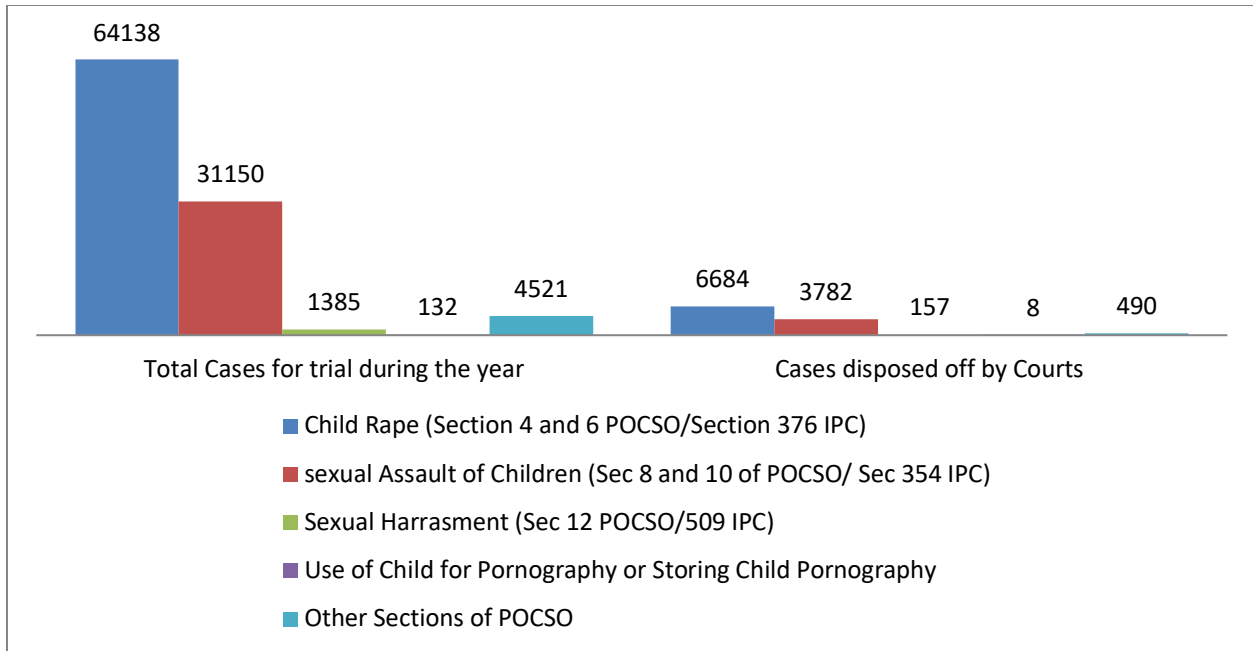
Therefore, the recent amendments in the law which introduces stricter punishment will be rather ineffective in cases where the underlining contextual issues, patriarchal mindset and the “culture of victim-blaming” or the “culture of compromise” is unaddressed.

The biases and irrationalities are reflected in the above mentioned judgments. This not only shows or highlights the procedural errors in the way special courts function but also manifests a multitude of insensitivity, lack of knowledge and awareness on structural violence and blatantly reveals the manner in which subjective pre-conceptions (societal norms) crawls in cases of CSA.

It is to be highlighted here that unless all members of LEAs, Support Groups, Learned Councils, Judges, Special Public Prosecutors, and other child care institutions are sensitized on aspects of structural violence against women and children in a patriarchal society such as ours, then all protective and preventive efforts to tackle CSA will go in vain.

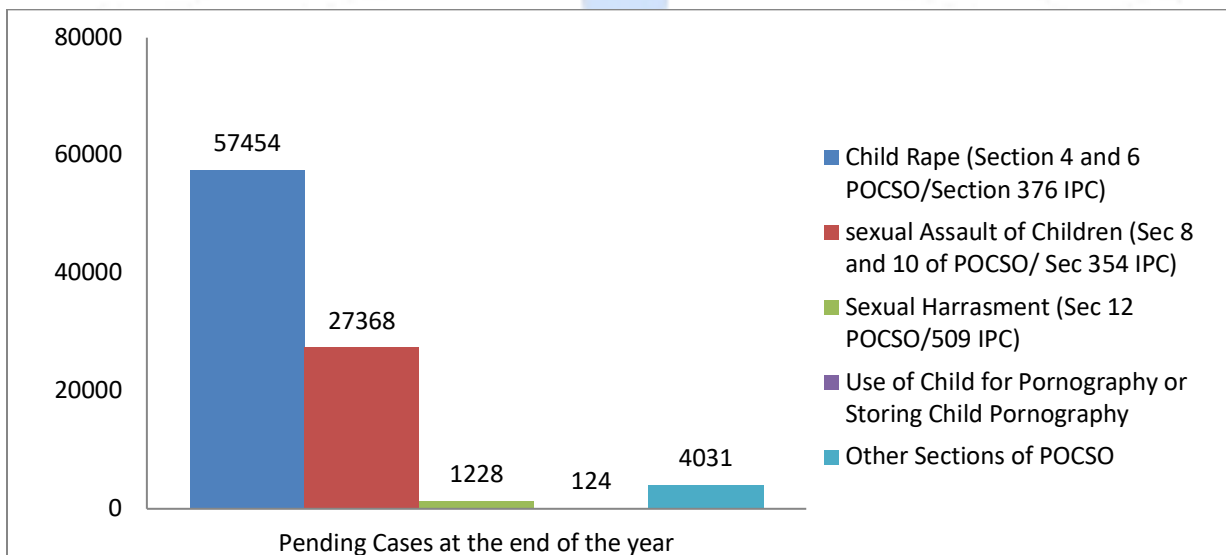
#### **4.2. The Magnitude of Crime in India**

Even though CSA and/or sexual exploitation of children remain one of the gravest forms of offences against children, the crime is treated as a taboo in the society, thereby adding to the ambiguity and ineffectiveness of its treatment by the law. The magnitude of the crime and its response is evident from statistics. The total cases sent for trial during the year (which includes cases pending from previous year and this year) totaled at 1, 01,326. Figure 1 reveals the comparison between the number of cases sent for trial and the number of cases in which trials have been completed. As can be observed, under child rape, only 6,684 out of 64,138 cases (about 10.8%) were the ones in which trials were completed. The situation was similar for other crime heads of POCSO. For sexual assault, in 3,782 out of 31,150 cases (6.1%), Sexual Harassment, in 157 out of 1,385 (11.3%), use of child for pornography or storing child pornography, in 8 out of 132 ( 12.1%), the cases were disposed off by courts. The disposal rate of all POCSO cases averaged at a meager 11% for the year 2015-16.



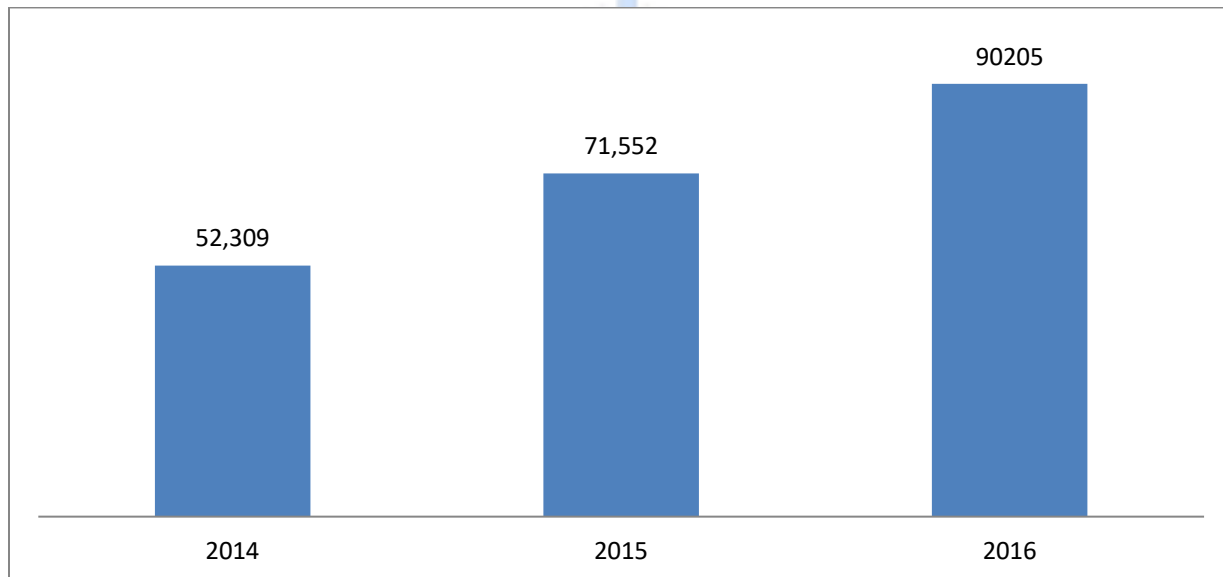
**Figure 1. Total Number of Cases sent for trial and Cases disposed off by courts during 2015-16**

In the year 2016 itself, at the end of year NCRB recorded 90,205 cases pending. The pending percentage at almost 90% speaks volumes of the delay in justice delivery especially in POCSO cases. Figure 2 shows the number of cases by crime head under POCSO that are pending.



**Figure 2. Number of pending cases by crime head under POCSO Act in 2015-16**

Figure 3 highlights the number of POCSO cases which were pending at the end of each year. Upon analyzing it an increasing trend is observed. The number of cases pending is only increasing at the end of each year. While the number of pending cases during 2015 increased by 37% from 2014, a 26% increase in pending cases was observed during 2016 from 2015.



**Figure 3. POCSO cases pending at the end of each year**

In terms of convictions, the situation is similar. Even in the meager percent of cases where trials were completed, the conviction rate of all POCSO cases averaged at an almost 30%. The trend has been similar in the last three years. The table below reveals the conviction rate of various sections under PCOSO Act during 2015-16. The conviction rate is the lowest in the case of sexual harassment which only constitute about 3 % of total POCSO cases registered.

**Table 2: Conviction Rate under different Crime Heads**

Sections under POCSO Act	Conviction Rate
Child Rape Section 4 and 6 POCSO and Section 376 IPC	28.2
Sexual Assault of Children Sec 8 and 10 of POCSO and Sec 354 IPC	30.7
Sexual Harassment Sec 12 POCSO and 509 IPC	17.4

<b>Use of Child for Pornography or Storing Child Pornography</b>	25
<b>Other Sections of POCSO</b>	44.6
<b>Total</b>	29.6

Despite the enactment of POCSO, these statistics highlight that rate of CSA in India is rising and the institutional response is grossly inadequate. Another very important aspect of this is high acquittals of such crimes. This is mainly because of the fact that the newly designed Special Courts do not have physical infrastructure that is child-friendly and accessible to all children and the key provisions and procedures under the POCSO Act are not followed uniformly.

It is also important to mention here that due to fallacies and biases in judgment, and improper implementation of law and procedures of POCSO Act, the acquittal is quite high in POCSO cases. A report by the National Law School Bangalore analysed 667 judgments between 2013 and 2015. It revealed that the alleged victims turned hostile in 67.5% cases, and testified against the accused in only 26.7% cases.

#### **4.3. Adding Gender Socialisation to the Equation**

In addition to being one of the biggest violations of child rights, CSA is also at the center of many ideological/academic debates, bringing together as it does matters of sex, sexuality and the family; yet, the debates seldom address why child sexual abuse occurs.

Socialization is a kind of training of individuals to fit them into the society, without any deviance. This training is not a formal process of learning with a structured approach, instead, is an informal process of internalization of behaviours, often translated through a series of interactions amongst social actors. It stems from different agents/ forces which have been institutionalized in the society, for example, family, media, religion, education and so on. Socialization perpetuates culture or the status quo and is used as a process to diffuse a set of ideas, traditions, norms and values from one generation to the other. Since gender is one of the major aspects of identities, establishing different roles and expectations for men and women is one of the key aspects of socialization in most societies. In contrast to what Margaret Mead believed, while pointing out that this sexual division does not occur in every society gender, in fact, is a common element across regions to stratify

societies today (Mead M. 1959). This may have been different in an era where a lot of emphasis had not been put on privatization, domestication and individualism, however, today some form of discrimination on the basis of gender operates in most societies.

The way different roles and expectations are defined and performed almost always positions men in an oppressive role and women and children in a submissive role. In India, besides other forms of oppression such as those stemming from caste, class or religion, the way in which girls and boys are brought up and expected to fit into the society, creates a hierarchy wherein women and children are at the receiving end of the spectrum.

Here, it is important to club women and children in the same bracket and treat oppression against them as a form of patriarchy because patriarchy is not just domination of men over women but a system of male-dominance and male-preference and corresponding inequalities that exercises power over the powerless. Children, in addition to women, in this sense are also viewed as powerless.

#### **4.3.1. Family as an Agent of Socialisation**

Various representations of manhood/ masculinity are internalised and socialized into children through primary and secondary social groups such as families, peers, schools and community spaces (Cooley CH. 1909). From the point when the child enters this world, gender-based expectations from parents, relatives and communities creep in. Culture acts as an objective external “social reality”; children are born into languages, values, ideas and beliefs that socialization transforms into an inner reality (Berger and Luckmann. 1967).

Imitation is one of the first tools that children adopt for internalizing gender-based behaviours. Girls tend to copy their mothers and sons their fathers in order to obtain a reaction/ acceptance from their parents. A positive reaction from parents would mean that it's an accepted behavior and a negative reaction would mean that it's an unaccepted behavior. Children, in their early years, through these hit and miss interactions with their parents, internalize gender norms.

Girls and boys are often dressed differently and there are different rules about what boys and girls are allowed to do. An Indian girl's is often limited to the private realms with her mother although she longed to be running out- side with her brothers. In the early years of childhood (2 to 3 years

of age), through selection of toys, the gender difference is demarcated. These gender stereotypes persist throughout childhood, with parents advising, inculcating, and rewarding, certain gender specific stereotypical activities for their children. Girls are brought up to be soft-spoken, shy, fragile, homely, and so on. Boys, on the other hand, are brought up to be strong, confident, insensitive, and aggressive. Many other such attributes are attached to the idea of becoming a “woman” or a “man”, these might be contextual in translation, however, some of the attributes remain uniform across regions and income-groups. And this process of acceptability and non-acceptability help children to internalize key aspects of gender in the form of stereotypes, norms and behaviours to an extent where they think they are their own.

The process of socialisation is incomplete if it's not fully accepted by those internalizing these social norms or values. Women as well as men incorporate certain ideas and feelings of what it is to be a “natural man” or “natural woman” into their personalities. As a result, men start ascribing to a one-dimensional idea of masculinity, Since men believe that their ‘masculine’ qualities are natural and cannot or should not be challenged, they in turn bring up their own sons to display the same qualities.

#### **4.3.2. Media's role in Socialisation**

Another very strong mediator of socialization is mass media which translates these gender-based expectations into roles, behaviours and attitudes through media, films, magazines, literature, television and advertisement. As has been stated widely, media is representation of culture and vis-a-versa, media actually becomes one of the most influential agents that is celebrated and vastly accepted. This usually is reflected in the images of women portrayed in films, and advertisements (usually as very submissive, docile women or as housewives and mothers) or may be as sexualized objects of consumption. Television in India is a particularly powerful medium which is accessible to all kinds of people, ranging from rural to urban, children to the elderly, and so on. The portrayal of men and women in daily soaps, exaggerating femininity and masculinity, tends to reinforce existing gender stereotypes. Watching and listening to different stereotyped behaviours of men and women such as stalking leading to romance, insignificance given to consent of women, sexualisation of women in item numbers and advertisements, and so on, set standards for the rest of the society to follow. In general the media is used to maintain the status quo, including pervasive gender stereotypes.

### **4.3.3. The Aggressive/ violent Masculinity**

As a result of this socialisation process, violence and/ or sexual violence is normalized, promulgating a toxic environment that enables abuse and limits any preventive action. In our society, violent and aggressive masculinity is glamorized and accepted as a private family matter, and regularly encouraged through “egging” others on. Against the wider context, while condoning sexual abuse is certainly not the norm, however, there are an overarching set of norms that insidiously encourage abuse and inhibit people from speaking out against it. We must acknowledge these norms and change them if we are to make major strides in preventing violence (Prevention Institute. 2009). In order to address this aggressive masculinity, it is relevant here to theorise how it is defined and realized.

Connell defines hegemonic masculinity as "the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women" (p. 77) (Connell R. W. 1995).

Characteristics of culturally sanctioned masculinity include aggression, rejection of “feminine” characteristics, stoicism, preoccupation with sex, being an economic provider, sexuality, and being the protector of home and family (O’Neil, J. M. 1990). This also demolishes mushrooming of other masculinities across the spectrum and hence, men are normalized into expressing their masculinity through only one approach.

### **4.3.4. Linking Patriarchy and Masculinity with Child Sexual Abuse**

In order to aim for long-term solutions and focus on a preventive strategy, there is a need to look at CSA within the context of a range of male-perpetrated abuses against women and children, and explore the hierarchical structure of gender relations in a patriarchal society; where attention is drawn to the power of men over women and children. In other words, systemic violence against children and women is indeed culture- and gender-bound in its expression( Brienes and Gordon. 1984).

Figure 1 explains the vicious cycle of patriarchy that is being entrenched generation after generation, leading to violence against children and women. It explains how a child who is born

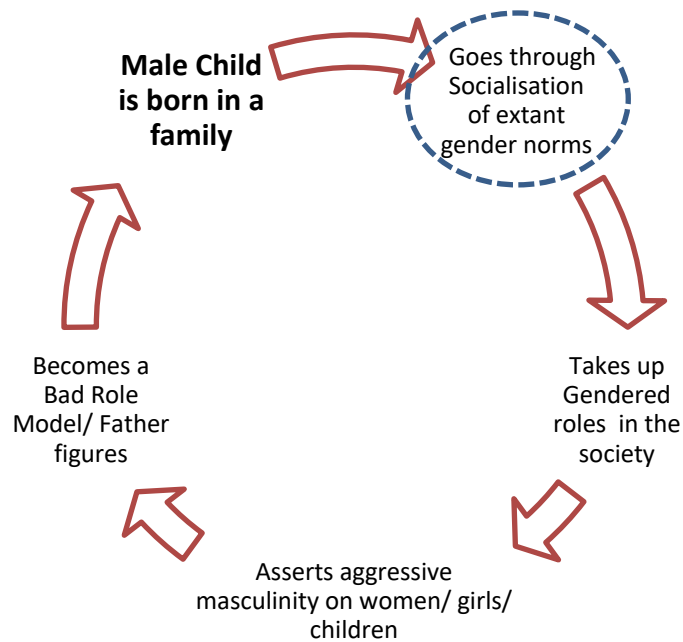


in a family goes through the process of socialization wherein he is trained on a series of accepted norms, ideas, values and behaviours which must be internalized to an extent where it becomes his own. Thereafter he takes up these gender roles and becomes a “man” and parts of being a man includes asserting and reinforcing your aggressive/violent or negative masculinity on persons of other genders and those who they think are weaker to them. Upon bearing children, these individuals are again in a process of rearing their sons on the same lines by being a bad role model and a negative father figure- someone who doesn’t treat his wife with equal respect, asserts his authority in the family, uses force to “set things right”, and is insensitive to the issues of children and women.

As a result of this cycle, too many women and children have been and are being abused within the allegedly safe boundaries of their homes by men they know and trust (Cowburn, M. and Dominelli, L.. 2001). Moreover, preventive approaches adopted by child care institutions, and government and non-government organisations ignore the relevance of gendered power relations in sexual violence as they fail to address these nuances in the social structure.

The introduction of the aspect of gender in understanding the cause and solution of CSA is fundamental for creating a preventive approach around the discourse. Gender in this sense as stated by J. Butler is, a stylized repetition of acts, a constructed identity, a performative accomplishment which the mundane social audience, including the actors themselves, come to believe and to perform in the mode of belief (Butler J. 1990). Therefore, interventions targeting behavior-change to deconstruct these gender identities are critical to preventing child sexual abuse and exploitation.

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**Figure 4 The vicious cycle of patriarchy**

Within the context of patriarchy, in childhood, as has been discussed so far, boys are made aware of certain “macho” or hyper-masculine characteristics through parents, communities, teachers, media and so on. Some of these harmful characteristics include being assertive and patronizing the other gender, being violent, emotionless and aggressive and so on.

The deprivation of women's bodily sovereignty, in particular, male control over the sexual and reproductive uses of women's bodies, is a central defining element of patriarchy (Whisnant, R. 2007). As a result, violence is one of multiple forms of men's gender expression that work in concert to maintain and reinforce women's and children's oppression. The inequality in distribution of power and resources between men and women are the main root causes of violence against women and children<sup>13</sup>. CSA is a crime which manifests the unequal distribution of power between the perpetrator and children. A child's bodily sovereignty and freedom is also questioned by this heinous crime and in the process a series of children's rights are violated, leaving the child oppressed.

<sup>13</sup> Women and children are both treated, for the purpose of this paper, to be victims of patriarchy, burdened by the pressure and expectations of the society to be an ideal man or a woman

#### **4.3.5. What is the solution?**

Attitudes, norms and beliefs that justify violence catalyse the continuation of CSA in India. They also create barriers in effective implementation of prevention and response mechanism. The biases in the judgments of learned judges, the lethargy in lodging of FIRs and filing of charge sheets, the inefficiency of Special Courts in complying to the POCSO Act and the high acquittals stemming from lousy investigations, societal pressure on the victim's family and the lack of will as well as insensitivity among Special Public Prosecutors, clearly indicate that the stakeholders are not sensitized on the principle aspects of child friendly atmosphere and gender equality. Gender sensitization is important also because contrary to popular beliefs, often men and boys are silent victims of misplaced societal expectations of masculinity and gender norms, which drive them towards abusive behavior and a sexually violent perception of women (Barker, E. 2010.).

The vicious cycle of patriarchy, as shown in Figure 1, depicts the continuation of oppression against women and children, generation after generation. If preventive measures are to be carried out to prevent CSA from taking place, there is a need to break this cycle by intervening at the level of "socialization". Programmatic interventions may include awareness generation on different aspects of gender, inculcating positive aspects of masculinity in boys and men, creating good male role models and father figures, challenging the gender stereotypes being exaggerated in the mass media and so on.

As has been understood, harmful behavior while expressing male gender identity is embedded in the comprehension of masculinity. This perpetuates rape-culture and violence. It is an imperative in this context, to create or hold on to a set of behaviours, attitudes and practices that perpetuate gender equality in order to uproot these harmful hegemonic masculinities that exist in the society.

#### **5. Key Recommendations**

In this paper an attempt has been made to coherently understand the leitmotifs of legal provisions and proceedings that govern CSA cases in India. After gauging the current legal environment with respect to child rape cases and on the basis of the above discussion in various sections of the paper, key recommendations are made in lieu of death penalty and to arrive at informed approaches of addressing and combatting the crime of sexual abuse of children. The following recommendations

are based on preventive, protective and rehabilitative measures which are divided as per the prime responsibilities of the key government departments:

### **Department of School Education and Literacy**

- Design and implement age appropriate curriculum on 'Sex Education' and gender sensitivity
- Train teachers to recognize and intervene in cases of child sexual abuse. Ensure and empower all teachers in every grade as 'First Point of Contact' to identify and report all cases of child sexual violence through analyzing the behavioral change in a child and immediately reporting the same to the appropriate authorities.
- Background Check of all staffs and teachers to be conducted for any record of crime against children.
- Empower Parent Teachers Associations and School Management Committee members to ensure parental capacity-building and family support through regular workshops and parent-teachers meetings.

### **State Legal Services Authority**

- Set up legal aid camps in every district every three months for combatting the crime of CSA.
- Empanel top lawyers as Special Prosecutors representing the child survivor of sexual violence.
- Ensure timely allocation of both interim and long term compensation to the child through District Legal Services Authority in coordination with the assigned Child Welfare Police Officer of the assigned case.
- Ensure setting up of a Victim/Witness Protection Scheme and Victim Compensation Fund for compensation to be provided in all cases of CSA in coordination with the Police.

### **Department of Health and Family Welfare**

- Provide free long term psychological support to a child survivor of rape through any private/public hospital or Public Health Groups. All PHCS to have a special 'Trauma Support Scheme' to provide free and immediate mental health care services for survivors

of child sexual abuse till the child wishes to voluntarily withdraw. This has to be undertaken in coordination with WCD.

- Set up a medical panel in all hospitals and clinics for survivors of sexual abuse, for immediate and long term response/ support. The panel will consist of a counselor, paediatrician, a gynecologist, a psychiatrist and a general physician.

### **Department of Women and Child Development**

- Conduct workshop and training for the established Village Child Protection Committees on child sexual abuse
- Establish a 'Peer Support Group Program' for families and victims of child sexual abuse with regular and scheduled village and block level meetings.
- Formulate child safety policies for all child care institutions to identify and regulate cases of child sexual abuse followed by all staff and management in all such CCIs.
- Capacity building and training programs (along with gender sensitization) for police, public prosecutors, teachers, medical professionals, counselors, Support Persons and district judges on provisions of POCSO.
- Introduce a special scheme to impart long term life skill and skill education for employment program for survivors of child sexual abuse.

### **Department of Police**

- Ensure enhanced police patrolling and setting up of CCTV cameras for increased surveillance in construction sites, dimly lit lanes and parks, parking lots, etc.
- Complete investigation of all cases of Child Rape within 2 months of filing of FIR
- Extend Police Protection for the Victim/Witness of child sexual violence.

### **Department of Panchayati Raj and Rural Development**

- Allocation of a fraction of State Panchayati Raj Institutions (PRIs) Budget specifically for training of members of the PRIs on issues of child rights and its violations, gender, sexual abuse and child marriage.

- Creation of Village Level Child Protection Committee to review CSA incidences in their jurisdiction regularly. Participation of Mahila Mandals (women's groups), Yuva Mandals (youth groups) and Bal Panchayat (children's councils) to be ensured in the same.

### **Information and Public Relations Department**

- Public Announcements on television, radio and in print media on the issue of CSA to be conducted in coordination with Information and Public Relations Department.
- Public messages by celebrities/public figures/influencers/religious leaders in local language on the crime of CSA and promoting child rights.

### **6. Conclusion**

The need to involve both boys and girls within schools, homes and communities, Child Care Institutions, Law Enforcement Agencies and the judiciary in a dialogue on gender sensitivity, is pertinent. It has been established that there is an inherent imbalance in power as regards gender because of which CSA still mushrooms and unless that is addressed the long-term solution and elimination of CSA will be a far-fetched dream.

These inequalities embedded in gender norms can be overcome only when there is equal participation of all stakeholders of the society, with children being the most powerful agents of this change. Change can be achieved by creating open and equal spaces which enable children's agency and participation (Nolas SM. 2010). The subjectivities of these spaces have the potential to transform both the participant, and their context. The paper aimed to suggest that these spaces must be identified within schools, where children and those responsible for their education and development can actively be engaged in the dialogue and practice of gender-sensitivity. Gender sensitivity trainings and actions enabling deconstruction of aggressive masculinities that supplement rape-culture are to be used as tools to bring down the pendency of CSA cases, increase the number of reporting of CSA, decrease acquittals, and improve the implementation of judicial procedures involved. This may be achieved by a host of efforts by the state and civil society such as introduction of child-rights based curriculum in schools aimed at gender sensitization; training, capacity building and sensitization of representatives of LEAs; community based interventions

focusing on making the youth, especially men, responsible agents of change; and the like. Most importantly these steps will aim at targeting the root-cause of CSA and focus on complete prevention and elimination of this crime.



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