

Perspectives of Justice

Restorative Justice and Child Sexual Abuse in India



Counsel to Secure Justice
Centre for Criminology and Victimology
National Law University Delhi
2018



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Foreword

The punitive reliance in the criminal justice system is facing a major critique in most jurisdictions. The current debates are largely focusing instead on the therapeutic value of the criminal process. The extent to which the criminal justice system can resolve human conflict and restore peace and order is seen as the most desirable outcome. It is in this context that restorative justice is gaining ground.

Restorative justice is about repairing the harm done to relationships. It is about holding the offender accountable through dialogue and reconciliation and mobilizing the community to resolve the conflict. Restorative justice techniques have shown tremendous promise in bringing victims and offenders together to resolve the conflict in the most appropriate manner and without coercion. By enabling the victim and the wrongdoer into a dialogue, Restorative justice redefines the meanings of justice to both parties. Conventionally, the connotations of justice were highly restricted and one-sided, leaving the victim without having any say in the criminal process. However, the restorative justice model ensures an all-inclusive approach by providing an opportunity to the victim to seek answers from the wrongdoer.

Does the present legal system repair the harm and meet the needs of crime victims? To what extent can restorative justice be applied to juvenile offending and sexual abuse cases against children in India, especially through the Juvenile Justice Act, 2015 and Protection of Children from Sexual Offences Act, 2012 (POCSO)? These are some of the questions which were successfully dealt with in the present study. Conducted in collaboration with the Centre for Criminology and Victimology, National Law University Delhi, by Counsel to Secure Justice, the present work is special and path-breaking in many respects. Intensively researched and meticulously crafted. The study made intensive interviews and focused group discussions with various stakeholders to understand their openness to restorative justice. The present study, contrary to the popular perceptions, found that the victims had unmet needs and felt that some of them could be addressed through restorative justice like apology and hoping the offenders will acknowledge their wrongdoing.

The findings of the present research have the potential to redefine the approach of criminal justice in India. It has been convincingly shown in the study how this approach can humanize the criminal justice system and provide a useful alternative to address the cases.

I take special pleasure in recounting my association with CSJ. They held a series of conversations with me in the last one year and worked untiringly for this research. I am especially happy as this study is being released as a collaborative exercise between the CSJ and NLU Delhi who have jointly worked on many other projects in the past.

Professor G. S. Bajpai
Chairperson, Centre for Criminology and Victimology
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Methodology

Counsel to Secure Justice (CSJ) conducted a research study on using restorative justice processes in child sexual abuse cases.

The study uses a mixed method for collecting information and data through primary and secondary sources. The research focused on five methods of collecting information: 1) secondary literature review; 2) CSJ client and family interviews and case studies; 3) adult survivor interviews; 4) circle processes and Focus Group Discussions within Delhi communities; and 5) a consultation with local experts on child protection, child sexual abuse and access to justice.

1) Secondary literature review

CSJ conducted a secondary literature review on:

- History of restorative justice processes and similar dispute resolution mechanisms within India
- Restorative justice legislation from other countries like New Zealand, South Africa, Australia, Canada and the U.S.
- Implementing restorative justice processes and practices and established best practices in other countries
 - Programmes that use restorative justice processes in child sexual abuse cases
 - Best practices and key issues to consider when implementing restorative justice processes in child sexual abuse cases

The purpose of the interviews was to understand the impact of the abuse, experience within the criminal justice system, and perspective on restorative justice principles.

Initially, CSJ identified and read books and articles from respected restorative justice experts including Howard Zehr, John Braithwaite, Daniel Van Ness and Tali Gal to better understand the topic. The sources cited in these works were retrieved and catalogued. This process was repeated until we had a solid understanding of available literature outside the Indian context.

Fewer credible resources exist on restorative justice within the Indian context, especially as it relates to child sexual abuse. We read the Little Book of Restorative Justice by Howard Zehr and Ali Gohar adapted for the South Asian context and Restorative Justice in India: Traditional Practice and Contemporary Application by R. Thilagaraj and Jiahong Liu to help understand restorative justice in the Indian context.

CSJ used online scholarly databases, including LexisNexis academic, ProQuest Criminal Justice, HeinOnline, EBSCOhost databases – Family & Society Studies Worldwide, Family Studies Abstract, Social Work Abstracts, Violence & Abuse Abstracts, SocINDEX, and Social Sciences, PubMed, PsychInfo and JSTOR.

CSJ compared and combined its literature review with one compiled by Centre for Child and the Law at the National Law School of India University, Bangalore updated till 2016 end. Each article that related to our Study topics was read, summarised and catalogued in a spreadsheet.

From these literature sources, CSJ compiled a list of the most relevant research studies, project models, legal frameworks, best practices and guidelines for restorative justice and child sexual abuse being used around the world. These sources were analysed and included within the Study, where appropriate.

2) CSJ client and family interviews and case studies

CSJ selected 14 cases we were handling where youth had suffered some form of sexual abuse. From these cases, we examined and conducted semi-structured interviews with the youth and/or their parents. In six cases, only the child was interviewed; in three cases, only a parent was interviewed; and in five cases the child and a parent were interviewed.

In all cases, the child and/or family filed a First Information Report (FIR) with police and had a CSJ social worker and lawyer support them during criminal proceedings.

The purpose of the interviews was to understand the impact of the abuse, their experience within the criminal justice system, and their perspective on restorative justice principles. All interviewees who agreed to the interview knew the nature of the questions beforehand and signed a voluntary participation form.

The interviews took place between May 2016 and August 2016 by a trained social worker who led the interview process. A CSJ social worker who had built rapport with the child provided support and monitored all child interviews. The social worker gave the child breaks or stopped the interview depending on the child's comfort level and state of mind. The interviewers administered a post-interview questionnaire to assess each child and/or parent's experience with the interview process.

The interviews were recorded in Hindi and transcribed in English. Information from the interviews were catalogued in a spreadsheet based on the interview questions and on the topic where they might be included in the Study.

A CSJ researcher also interviewed four adult survivors, from Delhi and Chennai, to understand the long-term impact of abuse, thoughts on the criminal justice system and perspective on restorative justice principles. The adult survivors' interviews were conducted based on the availability and access of people who were comfortable talking about their abuse. Two adult survivors were referred to CSJ by RAHI Foundation and two were personal contacts of CSJ. All the survivors are from middle class and upper middle-class backgrounds. The purpose of the interview was shared with each, and the interviews were recorded with prior permission and then transcribed.

The child/parent interviews were conducted when the criminal justice process was ongoing or recently completed. As such, responses often came from a place of anger. Also, child responses often seemed adult-like, and may have been influenced by their parents or other impacted adults. While we made best efforts to interview youth/adolescents from different types of cases and backgrounds, the sample is not truly representative. Lastly, case studies were used from cases CSJ handled in Delhi District Courts to illustrate the hidden nature of the abuse, delays in reporting, impact of the reporting and stigma of the abuse.

3) Circle processes and Focus Group Discussions within Delhi communities

The purpose of community group interactions was to understand sexual abuse within communities, reasons for disclosing and reporting sexual abuse, perceptions of the criminal justice system, whether communities are open to restorative justice principles and how restorative justice processes might be practically implemented.

CSJ conducted two types of community interactions: a) an extended community group circle process with 14 sessions; and b) Focus Group Discussions consisting of one to two sessions each.

a) Extended Community Group Circle Process

CSJ collaborated with Action Beyond Help and Support (ABHAS) to conduct an extended circle process with women in the community where they work. ABHAS chose nine women from the community who agreed to participate in the circle process. Out of nine participants, six finished all sessions. CSJ and ABHAS staff conducted 14 sessions (three rapport building sessions and 11 topic discussions) that lasted more than three months. Before starting the sessions, we explained the research project and its objectives. For each session, we discussed a topic using a circle process format with talking piece. A CSJ facilitator posed questions and participants passed a talking piece around the circle, responding to a question when they held the talking piece. Before the sessions, participants agreed on values and guidelines. These shared values and guidelines held the participants accountable to each other and the circle process. See Appendix A for details regarding the sessions.

b) Focus Group Discussions

Initially, CSJ planned to conduct three extended community group processes similar to the ABHAS community group discussions. We assumed it would take time to build rapport and trust within the circle so participants felt comfortable to share about sensitive issues.

Practically, it proved difficult to conduct the second and third community group circle processes because completing all sessions took too much time (more than three months with the ABHAS community group). In addition, we learned that the circle process created a safe space and level of trust where participants shared openly about sensitive issues almost immediately.

As such, we changed strategy and decided to conduct Focus Group Discussions (“FGD’s”) that would take 1-2 sessions to complete. CSJ conducted 9 FGD’s for the Study. We worked with community based organisations (CBO’s), which selected participants already benefitting from their community projects. Similar to the ABHAS community group, a CSJ researcher or social worker facilitated the discussions with the circle process so all participants had an equal voice.

Using the FGD format, we could record discussions with more people from different backgrounds (age, gender, caste, location and socio-economic status). The main drawback to FGD’s was that we were unable to ask as many questions or hear more in-depth responses.

All discussions were recorded in Hindi and transcribed in English. Information from the interviews was catalogued in a spreadsheet based on the Study topics. See Appendix B for details regarding FGD sessions.

While best efforts were made to have diverse voices speak, the participants chosen do not make up a true representation of people in Delhi. The selection of participants was limited to low-socio economic background, though some groups with youths were from lower-middle and upper-middle classes. We were limited in our ability to include participants from different castes and religions. Importantly, while some participants in the community group circle process and FGD participants may have suffered sexual abuse, we did not ask about past abuse nor was it a factor in choosing participants.

4) Consultation with local experts on child protection, child sexual abuse and access to justice

On May 20 2017, CSJ and National Law University Delhi hosted a state-level stakeholder dialogue to discuss using restorative justice processes as an alternative to the criminal justice system in child sexual abuse cases. Dialogue participants included psychologists, criminal lawyers, the Special Secretary, District Legal Service Authority, a Child Welfare Committee member, social workers and people in academia.

In the morning session, an educational training was conducted on restorative justice and observations from client interviews and rape trial judgement data in Delhi were discussed. In the afternoon, CSJ conducted a circle process with the Dialogue participants to understand their thoughts on restorative justice before and after the training and how restorative justice might apply in an Indian context. We followed ethical guidelines when conducting interviews and community discussions. All recordings and transcripts of interviews are on file with CSJ.

Terminology

In this study, we use the terms “youth who has been abused” to reference youth (children and adolescents below the age of 18) harmed by sexual abuse. We use the term “adult survivor” to reference adults who have been sexually abused as youth. We use “person harmed” or “victim” interchangeably to refer to those who have been victimized by any crime, not necessarily limited to sexual abuse. The labels “victim” and “survivor” are increasingly being considered as oversimplifying the individual’s experience because they do not account for all subjective experiences of sexual abuse.

We also use “person who committed abuse”, “offending person” or “offender” to refer to those who have sexually abused another person, though the paradigm of restorative justice separates persons’ actions from their identity and prefers the terms “person responsible” or “person who has caused harm”. However, these terms are used in this report for conciseness and ease of understanding. Readers are encouraged to keep these concerns in mind and remember that individuals are much more than a single action or experience. We use “disclosing abuse” to refer to telling another person about the abuse and “reporting abuse” refers to approaching the police and reporting the case of sexual abuse.



Introduction

What do we need to do to keep our children safe from sexual abuse? Nearly one in five children have suffered severe sexual abuse, including rape.¹ Often, society looks to the law and criminal justice system for answers. In fact, high rates of child sexual abuse spurred Parliament to enact the Protection of Children from Sexual Offences Act, 2012 (“POCSO”) in November 2012. POCSO fortified an already expansive framework of laws and procedures meant to increase conviction rates, reduce trauma and help children and youth recover from sexual abuse.

With stronger laws and effective justice systems, we assume:

- 1) Certainty of conviction with harsh punishments deters potential offenders; and
- 2) Swift justice, child friendly processes and access to support services will encourage more victims to report sexual abuse.

Counsel to Secure Justice (“CSJ”) operated under these assumptions when it started in April 2013. As much as possible, CSJ wanted the law to work for our clients. CSJ lawyers and social workers provided

¹ See Ministry of Women and Child Development, Study on Child Abuse: India 2007 74-76 (2007).

support during criminal proceedings to children who had been sexually abused. The goals are to secure rightful convictions, advocate for clients during criminal proceedings and help them access support services—medical care, mental health care, financial compensation and protective shelters—needed to recover from abuse.

Since starting operations, CSJ has provided legal and psychosocial support to more than 180 children in Delhi district courts. Based on our experiences, we found that the criminal justice system often falls short in meeting our clients' needs and repairing harm arising from sexual abuse, even when cases ended in conviction. Furthermore, sexual abuse remains hidden and most children who are sexually abused remain outside the law's protection. Youth often delay disclosing sexual abuse to someone they trust, if they disclose at all. It's even rarer for cases to be reported to police.

Our concerns about the “fruit” the criminal justice system produces and for the children and youth who remain outside the law's protection raised the questions central to this study for which we sought answers:

- 1) What keeps victims and their families from reporting sexual abuse to police?
- 2) What are the needs of victims arising from the sexual abuse?
- 3) Does the criminal justice system meet these needs and give a sense of justice?

CSJ, in conjunction with the Centre for Criminology and Victimology, National Law University Delhi, initiated this study to begin answering these questions and explore whether restorative justice practices might better meet victim needs and give a sense that justice has been done. We listened to CSJ clients, adult survivors, ordinary people living in Delhi communities about the impact of, and their response to, sexual abuse, and their perspectives on justice, the criminal justice system and restorative justice principles. This study is a platform for their perspectives to be heard; stories and quotations from the study participants comprise most of the study's narrative. Pseudonyms are used to protect identities of CSJ clients and adult survivors interviewed for the study.

Rather than argue or recommend specific restorative justice practices to implement, the study is an initial attempt to shift the perspective of justice: away from a narrow, punitive justice focused on punishing offenders, towards healing justice that meets victim needs, repairs harm arising from the sexual abuse, and offers another option that might encourage and empower victims to disclose sexual abuse.



The Problem

Sexual abuse in our communities

“Child sexual abuse is one of the most pervasive social problems faced by our society,” a Delhi High Court judge noted in a 2015 decision. “Its impact is profound because of the sheer frequency with which it occurs and because of the trauma brought to the lives of the children who have experienced this crime.”¹ Empirical evidence corroborates the widespread prevalence of child sexual abuse in India. A 2007 study conducted by the Ministry of Women and Child Development revealed that 53.2 percent of children interviewed had suffered sexual abuse and 20.9 percent of children, severe sexual abuse.² This problem persists across gender lines: more boys disclosed sexual abuse than girls.³

However, across the entire country in 2016, only 19,765 child rape cases under Section 376 of the Indian Penal Code and 36,022 sexual offences under POCSO were registered with police.⁴ In a country of more than 472

¹ Ankush Kumar v State (para 8) Crl. M.C. 4046/2015 & Crl. M.A. Nos. 14412-14413/2015 (Delhi High Court, Sept 30, 2015).

² Ministry of Women and Child Development, Study on Child Abuse: India 2007 74-76 (2007).

³ *Id.* at 74-75. 52.9 percent of the total number of children who had been sexually abused were boys and 47.1 percent were girls. Of the 20.9 percent children who were subjected to severe forms of sexual abuse, 57.3 percent were boys and 42.7 percent were girls.

⁴ National Crime Records Bureau, Ministry of Home Affairs, Crime in India 2016 192 (2017). These cases may overlap; some child rape cases registered under Indian Penal Code Section 376 (1860) may have also been registered under POCSO Section 4 or Section 6 (2012).

million children,⁵ the gap between the number of children abused and the number of cases reported to police indicates that a vast majority of child sexual abuse remains unreported and outside the law's scope. "[I]t can happen with me, you, or anyone," one woman said at the ABHAS community group circles said. "It has become a common thing in Delhi. People don't even spare four or five-year-old children . . . so, what is this? This is a disease."

Sexual abuse is so pervasive that it is normalized in many communities. One city-dwelling adult survivor, Sejal, said her father was so accustomed to seeing sexual abuse that he did not perceive it as harmful. "I realised that this is the sort of stuff which went on all the time in the village that he was brought up in, and it was even considered okay. People believed that 'the boys are growing up, and all the boys do this, it is a given.'" she said. "My father told me that he was so used to seeing all of this around him that he could not imagine that it could be so destructive, that it could destroy somebody's sense of self entirely."

"It has become a common thing in Delhi... This is a disease."

Most of this abuse occurs within the victim's family or community. In 2016, victims knew the offender in 94.6 percent of all rape cases reported to police.⁶ In 37 percent of all rape cases, the offender was a relative or neighbour.⁷ This trend holds true in CSJ's experience: from 2014 to 2016, 86 percent of victims knew the offender and 18 percent of victims were related to the offender. In Delhi, a study conducted by the Centre for Child and the Law (National Law School of India University, Bangalore) found that offenders were known to the victim in 80 percent, and related to the victims in 20 percent of POCSO cases reported from 2013 to 2015.⁸

Children struggle much more to disclose and report sexual abuse when they know the offender, especially intrafamilial child sexual abuse when they must implicate a family member. Often the family is unsupportive of the child's decision to come forward. While parents may raise their voices about child sexual abuse at schools or in other public spaces, they often remain quiet about abuse happening within their own family. "The whole family, everyone knows," Sabita, an adult survivor said. "But nobody will speak up."

As the Ministry of Women and Child Development noted, "[t]he shame, secrecy and denial associated with familial sexual violence against children foster a pervasive culture of silence, where children cannot speak about sexual violence in the home, and where adults do not know what to do or say if they suspect someone they know is sexually abusing a child."⁹

Sabita, an adult survivor abused by her oldest brother until the age of 10, recalled the shame she felt at home that kept her from telling anyone. "There was an immense amount of guilt and shame around it," she said. Sabita suppressed her feelings until she had episodes of depression, self-harm and an emotional

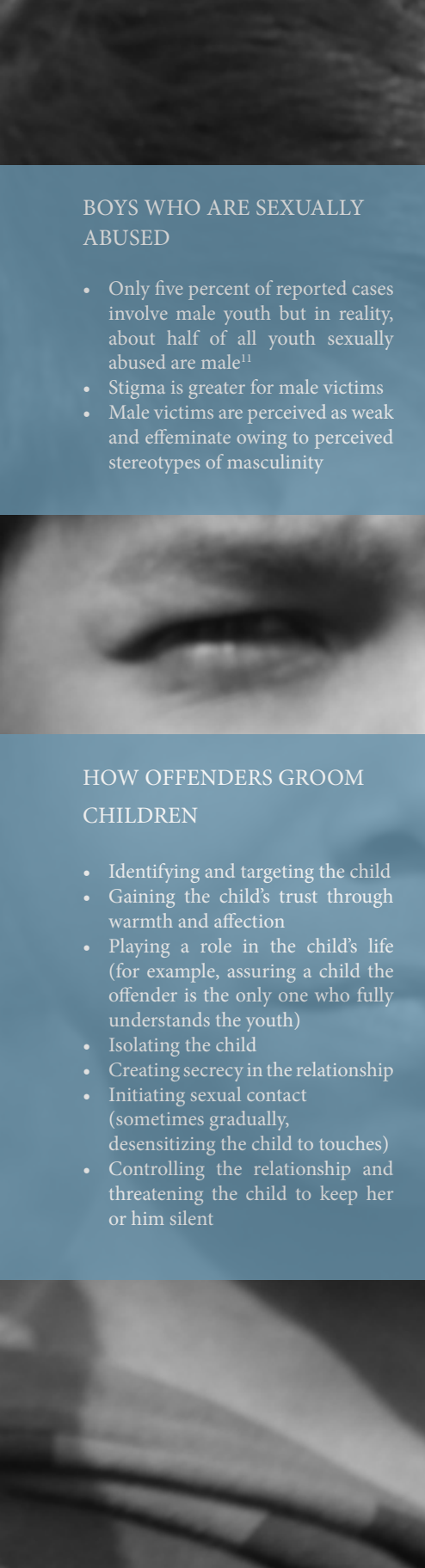
⁵ Office of the Registrar General & Census Commissioner, Ministry of Home Affairs, Census of India (2011).

⁶ National Crime Records Bureau, Ministry of Home Affairs, Crime in India 2016 146 (2017) (these figures include rape of adult women).

⁷ *Id.*

⁸ Centre for Child and the Law, National Law School of India, University, Bangalore, Report of Study on the working of Special Courts under the POCSO Act, 2012 in Delhi 17-18 (2016) (a study of 667 judgments passed by Delhi district court judges from 1 January 2013 till 30 September 2015). Relatives were defined to include those related to the child by blood or through the mother (step-father or mother's boyfriend).

⁹ Centre for Child and the Law, National Law School of India, University, Bangalore, Report of Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi 74 (2016).



BOYS WHO ARE SEXUALLY ABUSED

- Only five percent of reported cases involve male youth but in reality, about half of all youth sexually abused are male¹⁰
- Stigma is greater for male victims
- Male victims are perceived as weak and effeminate owing to perceived stereotypes of masculinity

HOW OFFENDERS GROOM CHILDREN

- Identifying and targeting the child
- Gaining the child's trust through warmth and affection
- Playing a role in the child's life (for example, assuring a child the offender is the only one who fully understands the youth)
- Isolating the child
- Creating secrecy in the relationship
- Initiating sexual contact (sometimes gradually, desensitizing the child to touches)
- Controlling the relationship and threatening the child to keep her or him silent

breakdown at the age of 30. She later learned that another brother knew about the abuse and even told her parents. But as a child, he could not do much to help his sister.

News articles and reports portray sexual abuse victims as cowering with fear while a stranger looms aggressively. While child sexual abuse is sometimes violent, it also regularly occurs without force and aggression. Offenders may use their close relationship to “groom” children.¹⁰ During repeated incidents over months or even years, they establish trust with the child and often with the family. Then they manipulate the child to gradually sexualize the relationship. Sabita, an adult survivor, recalled how her “big protector brother” groomed her. “It was not violent, it was not threatening,” she said. “It was very insidious, in a very charming kind of way . . . he would buy me things . . . building up the ‘favorite brother’ image. But at the same time he was actually abusing me and I couldn’t process it.”

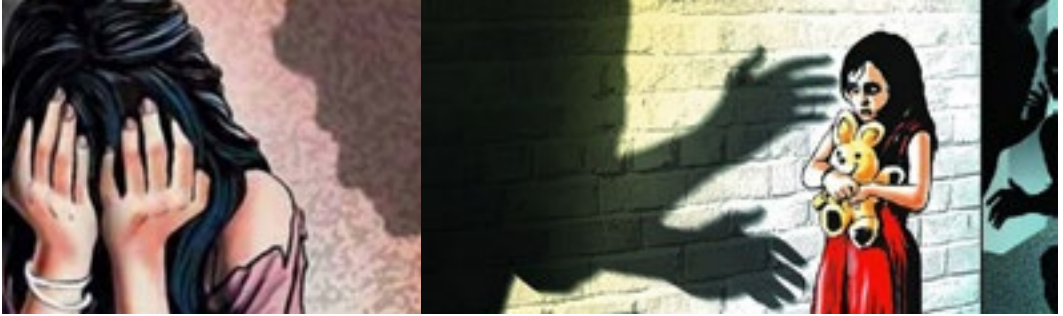
Bani, a CSJ client, was eight years-old when her father began sexually abusing her. He told her the abuse was normal, a common expression of love between fathers and daughters. To keep her silent, he said her mother would not believe her and would love her less if she disclosed the abuse. He abused Bani for more than two years before she gathered the courage to tell her mother. These scenarios compound a survivor’s feeling of guilt and the erroneous view that the abuse was somehow their fault.¹¹

Sejal, an adult survivor, had a similar experience with her cousin. “In the beginning it was about the establishment of trust and a warm relationship . . . It started very subtly, and he would hug me, touch me,” she said. “I was okay with that in the beginning because I did feel a lot of affection for him.” Her cousin gradually intensified the abuse until he raped her when she was six years old. “He said to me ‘this is okay’ and ‘I care about you’ and ‘I love you’ . . . talking to me from a space of comfort, that’s what I remember with terror now.”

Another adult survivor, Naira, said her first memory was her grandfather abusing her when she was about two years old. “He would tell me stories and tell me how beautiful I am,” she said. “During afternoon naps, he would fondle me and then I

¹⁰ See Royal Commission into Institutional Responses to Child Sexual Abuse, *Grooming and Child Sexual Abuse in Institutional Contexts* 7 (2017).

¹¹ Centre for Child and the Law, National Law School of India, University, Bangalore, *Report of Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi* 15 (2016).



News media often furthers myths about sexual abuse: portraying sexual abuse as violent rape, committed by a stranger. Rather, people who offend often groom youth and the abuse most always occurs by known persons.

would say, ‘No, stop it, stop it.’ And, then he would say, ‘Fine, then I have to stop the story telling also.’ Then, I would say, ‘No, I want to hear the end of the story.’ Then I would let it go on. Then, I started enjoying it.” She remained silent about the abuse until adulthood.

Roop, a CSJ client, was groomed by a neighbour. He gradually gained Roop’s trust and offered her affection, treats and money. He eventually sexualized their relationship and used threats to maintain control and perpetuate the abuse.

Like Bani, Roop and these adult survivors, many children who are sexually abused have been groomed and manipulated to view the abuse as normal. They may realise the harmful nature of the abuse but may feel scared, trapped and helpless. They may also fear they will be blamed for the abuse or disbelieved.

Some children fail to recognize a relationship is abusive. “I didn’t know what was happening. I couldn’t figure it out,” Sabita, an adult survivor, said. “I didn’t even have the knowledge or language to process what was happening, other than knowing in some way that this was not right.”

Sejal, an adult survivor, said youth are taught to say ‘yes,’ particularly to older relatives, which makes them targets for exploitation. “Kids don’t know that they have autonomy over their own bodies; they don’t know that they have a right to say ‘no.’”

“He said to me, ‘This is okay’ and ‘I care about you’ and ‘I love you’.”

When children do disclose abuse, their families often discourage them from pursuing the criminal case to avoid stigma that sexual abuse brings upon the family. Sometimes children who have been abused may fear an unfriendly criminal justice process. An environment focused primarily on meeting victim needs and addressing their fears will encourage them to finally tell their narratives of abuse. “One adult survivor said: “I don’t blame those who have been sexually abused for not speaking up. . . because it’s not easy. They need to be in a situation where they’re enabled to speak up.”



Hidden Nature

The struggle to disclose sexual abuse

Sexual abuse is pervasive in large part because it remains hidden. Youth who have been abused often are unable to disclose until months or even years after the abuse first occurred, if they disclose at all. Child sexual abuse is intertwined in secrecy, helplessness, entrapment and accommodation of the abuse. When youth disclose sexual abuse, they often delay sharing and speak unconvincingly when they do share, often later retracting what they have said.¹

Sexual abuse may come to light when someone notices physical symptoms or pain arising from the abuse. Naini, a CSJ client, remained silent about being abused by a driver in her neighbourhood. Her employer only discovered the abuse when Naini went into labour in the ninth month of her pregnancy. Another CSJ client, Niyati, was sexually abused by her step-father. The abuse came to light when her mother noticed blood on her inner thighs while bathing her. Eventually, a neighbour reported the case.

Some youth disclose abuse after months or years of silence. “I didn’t even know how much it had affected me until I shared about it when I was 23 or 24,” Naira, an adult survivor said. She had been sexually abused throughout childhood beginning at age two.

¹ See Roland C. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 Child Abuse & Neglect 177-93 (1983).

Another adult survivor CSJ interviewed did not come forward until she was married with a young child. “I totally detached myself from what happened to me,” she said. Two decades after the abuse, she heard a radio programme about child sexual abuse while driving. The memories of the abuse came flashing back, forcing her to stop her car in the middle of the road. The flashback caused her to finally tell her husband, brother and parents, decades after the abuse.

If youth who are sexually abused disclose to family or friends, the confidant may discourage them from sharing about the abuse to anyone else. In some cases, police officers dissuade victims from reporting abuse. For example, when Shrishti tried to report her father, who had been abusing her for two years, police officers told her she could not proceed with a case because her father was so influential in the community.

“When I told my sister, she stopped me from talking about it.”

Police officers may also suggest parties “compromise”, or informally settle, a case. For example, after Eshan reported being abused by his teacher, the police encouraged a compromise, since the teacher had told the police that he would not repeat the abuse in future. It was only after the accused repeated the abuse that the police registered a complaint and took action.

Youth are more likely to disclose and report sexual abuse when they have strong support networks.

When Tanvi was abused by her father, she initially kept silent. “I felt like I should not have reported the abuse because my family kept telling me not to,” she said. “When I told my sister, she stopped me from talking about it. I tried to tell my mom but both my sisters stopped me.”

Youth are more likely to disclose and report sexual abuse when they have strong support networks. “When the first report is registered by a woman, she needs courage as she takes steps for herself, and the courage comes from the people like friends and the support persons who encourage us to do that,” one woman said in an FGD. Neetika, a CSJ client, recalled how her uncle supported her to pursue her

case: “He says ‘You’ll get justice. Don’t be scared. You try your best, you’ll get justice,’ he says.” Neha, another CSJ client, recalled “I could speak easily because there were people I know who accompanied me.”

Often, the threat of a younger sibling being abused compels victims of incest to disclose their own abuse, even when disclosing is difficult. In Shrishti’s case, after she endured two years of abuse, her father began touching her younger sister inappropriately. To protect her sister, Shrishti filed a police complaint, despite resistance from the police and her father’s powerful local influence.

Bharti, a CSJ client, expressed the same motivations for reporting. “I was happy that I reported,” she said. “If I didn’t reveal and kept quiet, it would have happened again, and I didn’t want this to happen to my cousins also.”

Reasons for hiding sexual abuse

Multiple reasons dissuade youth and their families from disclosing sexual abuse. Many stem from the way society and the criminal justice system treat youth who have been sexually abused. Youth may fear stigma associated with sexual abuse. Stigma creates an environment where victims feel ashamed and blame themselves for the abuse or for bringing shame upon their families. While some youth overcome shame and stigma to disclose sexual abuse, most likely the case still never will be reported to police because of pressure to keep abuse hidden within the family or from fear and distrust of the criminal justice system.

Stigma

Sexual abuse carries intense social stigma in India. Many CSJ clients reported feeling stigmatized by their communities after disclosing sexual abuse. “Everyone stares at me,” Neha said. “Once when I went to [my neighbourhood in Delhi], a lady was pointing at me judgementally and mumbling. I understood what she meant . . . I still feel sometimes that if my village people come to know this has happened with me, they will say, ‘Look, this girl has gone to Delhi and this has happened to her’...It reminds me about the incident.”

The effects of stigma often extend to the youth’s family, causing them to shift homes, lose jobs, quit school or accept impaired marriage prospects. After Rhea reported abuse by her father, her family lost their primary income, her mother lost her job and the family had to move after they were ostracised by the community. At one point, Rhea’s family struggled to eat one meal a day. The mother of another CSJ client, Richa, recounted the effect of her daughter’s case on the family. Her mother considered selling her home to escape the neighbourhood, her brother no longer socialized in the community, and her sister-in-law

moved away, all because the community negatively reacted to her daughter’s rape. After Ruby was sexually abused by a boy in her community, her family was forced to relocate six times due to hostile landlords and neighbours who learned about her case.

In the ABHAS community group circle processes, the participants spoke about the fear of social judgement if they reported a case to police. Women said reporting would likely bring police officers to their homes, which would draw the attention and scorn of neighbours. One woman feared that if she approached the police, “people would say things like “oh, the police has come to their house; they must have done something wrong.”

Some CSJ clients faced stigma from their own families. Taru’s father took her out of school after she was abused

MYTHS REINFORCED IN COURTS

Myths: how a “typical victim” reacts to sexual abuse

- Resists the attack and endures physical injuries as a result
- Screams for help and draws attention immediately
- Reports the abuse immediately
- ‘Treasures her chastity’
- Believes life after sexual abuse to be a fate worse than death
- Clearly, and chronologically, recalls the abuse and its aftermath

Myths: child sexual abuse

- Sexual abuse is always violent and victims always resist the abuse
- Children lie about being sexually abused
- Only female children are sexually abused
- NGO’s ask children to file false complaints
- Child sexual abuse is perpetrated by strangers and does not occur within the family

FROM THE SUPREME COURT

“A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred; She would be conscious of the danger of being ostracised by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours ... She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered; If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family ... The fear of being taunted by others will always haunt her; She would feel extremely embarrassed in relating the incident to others being over powered by feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo.”²

by a neighbour. While he believed he was protecting Taru by keeping her safe at home, he also denied her important opportunities for educational growth that she needed. Insha's parents took her out of school after she was abused by an acquaintance in his home because they believed social exposure led to her abuse. They believed that if she would stay home, they could keep a check on her and with whom she associated.

Stigma also perpetuates the belief that women and girls who are sexually abused are unfit for marriage. One parent of a CSJ client stated this was the primary reason she hesitated reporting her daughter's rape: “I waited three days before I lodged the FIR, because [my neighbour] said that my daughter's name will be disgraced; that no one will marry her. That is the only reason that I did not file the case on the first day itself.”²

The women in the FGDs echoed this fear and cited marriage stigma as a controlling factor in reporting. “The main reason they [victims, victims' families] don't report is to protect their reputation. They will be insulted, and they think ‘In the future, who will marry our girl?’ ... because of reputation and social image, they don't file the complaint.”

High Court and Supreme Court decisions unintentionally perpetuate this patriarchal mindset in judgements. They have held victim testimony, if trustworthy, is sufficient to establish guilt, even without corroborating evidence. But their reasoning reflects how Indian society stigmatizes sex by a woman outside marriage. These decisions portray the idea that rape is a fate worse than death and nobody would report unless the claims are true.³

“No girl of self-respect and dignity who is conscious of her chastity, having expectations of married life and livelihood would accuse [rape] falsely, sacrificing thereby her chastity and also expose the entire family to shame and at the risk of condemnation and ostracisation by the society”, because of the societal implications for the victim and her family.⁴ These judgements also note that victims of sexual assault who come forward must “brave the whole world.”⁵

² Bharwada Bhoginbhai Hirjibhai v State of Gujarat (para 10) 3 SCC 217 (1983).

³ See, e.g., Bharwada Bhoginbhai Hirjibhai v State of Gujarat 3 SCC 217 (1983).

⁴ State of Himachal Pradesh v Asha Ram (para 12) 13 SCC 766 (2005).

⁵ Bharwada Bhoginbhai Hirjibhai v State of Gujarat (para 10) 3 SCC 217 (1983).

Globally, sexual abuse generally is perceived as a crime committed against women and girls. In India, however, research indicates young boys are sexually abused more than young girls.⁶ Yet, men and boys are much less likely to report sexual abuse because the stigma is greater for males than females. They often confront patriarchal attitudes about manhood that deem male victims weak and effeminate.⁷ Of the Delhi trial courts' judgements that Centre for Child and the Law studied, only about five percent of POCSO cases were filed by male victims.⁸

Boys are abused as often as girls.

A CSJ client, Samar, spoke about how hard it was for him to disclose his abuse. "I wanted to tell my family but I didn't," he said. "I thought they'd feel horrible about it. I didn't tell anyone at home about it, but I used to keep thinking over it in my head. Even during night, I'd keep thinking about the same."

The FGD community discussions reflected this view and its effect on disclosure. "It's more difficult for them [boys and men]," one college-educated woman said. "We think that these things don't happen with men . . . these things can happen with anyone, but our minds have not been trained to think that way. Gender roles have been defined a certain way, and there are problems because of that," she said, noting that male victims may not report because of these gender stereotypes. "Boys speak less," one young man said in another discussion. "They think that if I tell this to anyone, what will he think? 'You are a boy, not a girl, so how did it happen to you,' they will say."

Family honour

As CSJ client and adult survivor interviews illustrate, families may be reluctant to come forward with sexual abuse claims to protect family honour. The stigma attached to sexual activity compounds feelings of intense shame for youth and their families, particularly in incest cases. Sharing private family business, particularly sexual matters, is unthinkable. As a result, families often keep sexual abuse a secret and deal with the problem within the family, if it is dealt with at all.

When CSJ client Jwala was abused by her maternal uncle, her family pressured her parents to keep it within the family. "My family said that this is a family matter and told me not to talk about it to anyone," she said. They said they would take care of it . . . there was no point in going to the court." Sabita, an adult survivor, believed family honour was one of the biggest hurdles to disclosing. "The motivation behind not disclosing is very much about making sure that other people don't get a bad impression of you," she said. "And that's exactly what the problem is here. Everyone is so concerned about keeping the matter within the family, and with maintaining the family's honour. It doesn't translate well into talking about it in public."

In Indian society, sexual abuse is often perceived as a fate worse than death. When CSJ client Rukmini disclosed that she had been sexually abused, her family asked her father to kill her to protect the family's honour. Youth who are sexually abused may fear these repercussions and may be unable to disclose the abuse.

Women in the FGD community discussions spoke about keeping incest hidden to maintain family

⁶ Ministry of Women and Child Development, Study on Child Abuse: India 2007 74-75 (2007).

⁷ Richard Tewksbury, *Effects of Sexual Assaults on Men: Physical, Mental and Sexual Consequences*, 6 International Journal of Men's Health 31 (2007)(male survivors, and those around them, may question their masculinity after sexual assault).

⁸ Centre for Child and the Law, National Law School of India, University, Bangalore, Report of Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi 15 (2016).



relationships. “When the [offending] person is not connected to us, then we don’t hesitate to complain,” one woman said. “But when it happens within the family, the relationships will be affected in the family.”

Girls in particular are taught to maintain peace and suffer in silence if necessary, sacrificing themselves to save their family’s reputation. “The habit of saying yes is hammered into us since the time we learn to speak... if you don’t like a relative, [obey], even if you don’t like somebody, be nice, be good, especially for girls,” one adult survivor of incest said. “You were taught even if you don’t like this, go ahead and be obedient.”

“My family said this is a family matter and not to talk about it to anyone.”

Some youth fear disclosing abuse because it might negatively impact the person who committed the abuse or the family. One woman at an FGD said that she never disclosed the abuse by a cousin to anyone, not even her mother. The relationship with her cousin was important and she felt that if she told anyone about the abuse, it would create discord within the family.

“People don’t want to take legal action also because they want to keep the family structure intact,” said Anuja Gupta, Founder and Executive Director, RAHI Foundation, an organization that works with women survivors of incest and child sexual abuse. “That’s what survivors think: that if the family is falling apart, that’s because they have brought the issue up with the public or with the family.”

Still, reporting incest also fails to give youth who suffer abuse closure. Tanvi, who was abused by her brother, father and grandfather figure, ultimately reported her abuse. But she felt conflicted about her family members being in prison during trial and whether she wanted them convicted. “I want my father to stay in jail for two years, maybe,” she said. “My family wouldn’t want them to go to jail. I would be happy but at the same time I would be sad that it was my family going to jail.” Unfortunately, hiding sexual abuse in family secrecy protects perpetrators: it prevents them from being held accountable and emboldens them to continue the abuse.⁹

Youth who are sexually abused may also feel guilt for disclosing because they feel responsible for bringing shame to the family. They blame themselves for ‘disgrace’ they bring to the family rather than placing

⁹ David Carson, Jennifer Foster & Aparajita Chowdhury, *Sexual Abuse of Youth and Youth in India: An Anthropological Perspective*, 14 *The Oriental Anthropologist* 160 (2014).

PERSONAL SAFETY EDUCATION

Personal safety education doesn't require explicitly acknowledging sexuality or sex and can be taught in an age appropriate way. For example, the NGO Arpan in Mumbai teaches personal safety in two different lesson plans for younger and older children. Younger children are taught to distinguish safe, unsafe and confusing touches, while older children are also taught about wanted and unwanted touches. They teach the UN-recognized child rights, including rights to protection from sexual abuse, neglect and violence, to have access to information, respect and freedom of expression. Children are taught they are "the boss of their own body", to say "NO" to abusers and get away, and that if someone crosses their personal boundaries, it is not the child's fault.

the burden on the person who harmed them. When discussing her decision to pursue a criminal case against the person who abused her, Rubina said, "In a way, what I did was right. But then, it brought quite a lot of disgrace for the family, too." Even Tanvi, whose family remained unsupportive, expressed guilt for pursuing her case. "At times, I would feel that my family was suffering because of me."

Sex is a taboo subject

Others said that sex is a taboo subject in their communities. Sex and sexual abuse are topics many families and schools avoid speaking about. So much so that, while teaching youth names of body parts, there is no reference to genitals. Parents are hesitant to discuss sexual abuse with their children, teachers are reluctant to educate students about the dangers of sexual abuse, and youth who are sexually abused lack the vocabulary to explain their experiences and are ashamed to talk about them. "I had no vocabulary to talk about it [the abuse]," Sejal, an adult survivor, said. This lid on conversations reinforces a culture of silence and victims' feelings of shame. As one adult survivor asked, "If we're not ready to talk about sex, then how do you talk about sexual abuse?"

Victim-blaming and disbelief

Victim-blaming is a common reaction to sexual abuse and a major deterrent to disclosure.¹⁰ Victim-blaming occurs when society holds youth who have been abused wholly or partially responsible for the harm they have endured. This phenomenon is pervasive around the world, including India. Women from Delhi communities consistently cited victim-blaming as an obstacle in dealing with sexual abuse. "The men always blame the women, saying that all the fault is of the woman. 'Why did she need to wear that dress? Why did she behave like that?'" one woman said in an FGD.

Some women thought pervasive victim-blaming explains why sexual abuse remains hidden and under-reported. "They suppress the case because of the social image of the family," one woman said in an FGD. "Sometimes, outsiders gossip and say, 'It is your daughter's fault' . . . this is the way that people and neighbours talk. Maybe this is the reason people don't share incidents with anyone, because they know that they will only blame us." Neetika, a CSJ client, was abused by a neighbour. Her other neighbours refused to believe she was raped. "Instead of realizing that it is the accused's fault, they tell me and my parents that I'm at fault, too," she said.

¹⁰ Courtney E. Ahrens, *Being Silenced: The Impact of Negative Social Reactions on the Disclosure of Rape*, 38 American Journal of Community Psychology 31-34 (2006) (negative reactions received by rape survivors serve as a way to keep them silent).

Youth who are abused might face blame from their family when they initially disclose abuse or from the police, if they try to register a case. “If I went to my father and told him that my uncle has done something to me, my father might not believe me,” one girl said in an FGD. “Or, he would say that I haven’t followed the rules and so I have done something wrong.” When Rimi reported her rape to the police, they initially did not register the complaint. Instead, they accused Rimi of engaging in wrongful activities and blamed her for the assault. “They were saying ‘You must have gone there [to the park] yourself,’” she said. Rimi had gone to the park with her aunt, and was alone only for a short while when she was attacked by a man.

“My mother didn’t believe me when I told her...”

but she was met with disbelief. “I seriously did not want to report it [to the police],” Laxmi said. “My mother didn’t believe me when I told her, so I had to tell the police so that someone would believe me.” Another adult survivor, Sejal, recalled when her aunt doubted her and her sibling’s accounts of abuse: “She said, ‘Who knows if they are telling the truth? Why were they so quiet for so long? How do we know who did it or who did not?’”

Youth also risk being disbelieved at trial if they do come forward, which can cause further trauma.¹¹ When Tanvi finally reported sexual abuse by her father, brother and a grandfather figure after two years, her siblings and mother appeared as defence witnesses against her. They testified that Tanvi had fabricated the abuse, and she was suggestible and naïve. The defence counsel alleged she had a “bad character” because her hymen was torn, and that undermined her credibility. Tanvi’s case resulted in an acquittal.

Fortunately, some youth who have suffered abuse have supportive families to counter the victim-blaming they face. “Everyone used to tell my father that it was his daughter’s fault,” Neetika, a CSJ client, said. “He would say ‘How is it her fault? It’s the fault of the person who did it,’ and that’s why Papa filed the case.”

But family support did not insulate Neetika from blame. Besides being blamed by her community, Neetika also blamed herself for the pain her family endured during the process. “Mummy

The likelihood that a child will be blamed or doubted increases if they wait to report abuse. After CSJ client Rukmini’s parents learned she had been abused for ten months, they blamed her for not coming forward sooner and for allowing the abuse to escalate. In another CSJ case, after enduring sexual abuse by her father, Laxmi fled to safety to her mother’s house,

REASONS VICTIMS AND FAMILY DO NOT REPORT SEXUAL ABUSE

- Not comprehending that it’s abuse
- Lacking vocabulary to express themselves
- Feelings of shame
- Blaming themselves for the abuse
- Fear of not being believed or being blamed
- Fear of bringing shame and stigma to the family
- Knowing the entire family may be impacted (ostracised from the community, lose jobs, friends, homes)
- Perceived stain on victim’s reputation and fear of impaired marriage prospects
- Desire to maintain a relationship with the offender- attachment or loyalty to the offender
- Fear of breaking up the family
- Fear that the offender may take revenge
- Fear of loss of primary income or assets (in cases of incest)
- Lack of faith in the criminal justice system
- Sexuality and sex are taboo topics

¹¹ Roni Berger, Stress, Trauma, and Posttraumatic Growth (2015) (re-traumatization may occur when a report of a traumatic experience is met with disbelief).

ELOPEMENT CASES

- Victims in romantic relationships with the accused turned hostile in 96.07 percent of cases
- In large number of cases of romantic relationships, a missing complaint was filed by the family after which the prosecutrix and the accused were traced and found to have married each other
- The age gap between the victim and the accused was not scrutinized by the court in these cases

Source: Centre for Child and the Law, National Law School of India, University, Bangalore, Report of Study on the working of Special Courts under the POCSO Act, 2012 in Delhi 18 (2016).

MANDATORY REPORTING

- Mandatory reporting may cause the victim to not disclose abuse at all: fearing that person they tell will be bound to report to the police. They may not want to file a police case:
 - Fearing going through criminal proceedings to avoid trauma, time, cost and/or stigma
 - Fearing consequences for the offender
- May deprive them of help they need because they may stay quiet about the abuse

is very upset and anxious because of it,” she said. “The people keep saying it was my fault and then she feels bad and cries. She also doesn’t eat. That’s why I feel bad.”

When society, community members and family fault women and girls for their clothing or behaviour, victims internalize the blame and may hold themselves responsible. One college-educated woman recalled during an FGD how she blamed herself for being sexually harassed. “It was an uncomfortable moment, and I didn’t share it with my parents because I felt that it was my fault because I was studying at night,” she said. “I also blamed myself because my dupatta was not covering me, and I thought that that is why it happened to me. In some way or the other, I have always blamed myself.”

Physical security

Youth may keep silent about sexual abuse to protect themselves or their families from offenders physically harming them. This is particularly worrisome with incest, where offending persons within the family use their roles as authority figures to manipulate and intimidate youth. During the time CSJ client Rhea’s father sexually abused her, he was physically violent toward her mother and brothers. He spared Rhea the physical violence and treated her differently, buying her gifts and giving her money while sexually abusing her behind closed doors. Rhea remained silent about the abuse for two years to avoid her father’s potential violence towards her, and further violence against her mother and siblings.

“For now, I am eating food provided by him... many women think, ‘If he is abusing, just let him abuse.’”

CSJ client Shrishti was also abused by her father, who was physically violent towards everyone in the home. He beat Shrishti’s younger siblings to the point they feared for their lives. The constant threat of physical violence ultimately kept Shrishti from reporting for two years. When she did report, local police

were unwilling to protect her due to her father's influence in the community. Eventually, she pursued a case, but her father would follow her around the courtroom to intimidate her during the proceedings.

Financial security

In addition, incest victims may fear financial repercussions of reporting male family members, especially if they are financially dependent on them. The male family member's income will be lost if they are in prison or they may retaliate and oust victims from the family home. Women in the Delhi community recognized the difficulty in disclosing abuse when victims are financially dependent upon the abuser. "When I go to the police, what should I tell them?" asked one woman in the ABHAS community group circles. "They will think 'He is feeding you, and in return you are complaining about him.' Firstly, I must stand on my own feet . . . only then could I speak up for myself. But for now, I am eating food provided by him . . . many women think 'If he is abusing, just let him abuse.'"

Others in the ABHAS community group circles noted the importance for women to be independent before they report abuse. "If I file a case, they will throw me out of the house and who will look after me then? I am not even financially independent," one woman said. In these cases, victims may choose

to protect the offending person and save their families from emotional and economic hardship.

FACTORS THAT ENCOURAGE REPORTING

- Trust in police to believe victim's story and help
- Strong support system
- A threat of abuse on a victim's relative

Ineffective criminal justice system

Low conviction rates and long delays

Youth and their families decline to report abuse because they distrust the criminal justice system to deliver a just outcome. Despite the prevalence of child sexual abuse in India, most reported cases

end in acquittal. According to the study by Centre for Child and the Law, in Delhi POCSO Courts, the conviction rate for cases filed under POCSO from 2013-2015 was only 16.8 percent.¹² Conviction rates in POCSO court cases were highest when the accused was a stranger, where courts convicted in 31.3 percent of cases.¹³ Of the cases where the accused was the victim's relative, 73.5 percent of victims turned hostile in court and the conviction rate dropped to only 15 percent.¹⁴

Trials often take years to conclude. POCSO mandates that, as far as possible, trials should be completed within one year of the court taking cognizance of a case.¹⁵ However, nearly one-third of these trials took over one year to complete.¹⁶ Of the 112 POCSO cases that ended in conviction, 50 took longer than one year and seven took longer than two years.¹⁷ In CSJ's experience, multiple adjournments and significant delays in receiving forensic results are major causes for delays in completion of trials.

¹² Centre for Child and the Law, National Law School of India, University, Bangalore, Report of Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi 53 (2016) (112 convictions, 555 acquittals).

¹³ *Id.* at 65.

¹⁴ *See Id.* at 18 and 68.

¹⁵ POCSO Section 33(1) (2012)(the police complete the investigation and then submit a final report form (chargesheet) to the court. The judge examines this document and, if suitable, takes cognizance). In CSJ's experience, courts have never refused to take cognizance of a POCSO case. The trial commences from the point the court takes cognizance.

¹⁶ Centre for Child and the Law, National Law School of India, University, Bangalore, Report of Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi 14 (2016).

¹⁷ *Id.*

Victims and their families are mostly disconnected from the justice process. During the trial process, families remain ill-informed about criminal proceedings. With little or no information regarding their case's status from the police or the courts, families are clueless when the trial begins or ends. Their role in criminal proceedings is as witnesses who help establish the accused's guilt. They play little to no role during other parts of criminal proceedings: when charges are framed, other prosecution evidence, defence evidence, closing arguments, when the POCSO Court passes judgement, and if there is a conviction, at sentencing.

Community perceptions of the criminal justice system

Communities perceive the criminal justice system as unable to protect them and meet their needs. They view the system as corrupt, dismissive to the poor, and largely ineffective – a last resort. In the ABHAS community group circle discussions, one woman recalled her own experience with criminal justice proceedings: “After that incident, I thought that getting into such problems is useless, because the one who has money also has a hold over the police, and the court listens to him.”

Sometimes the police turn a blind eye because of the accused's social class or occupation. “Justice is basically that the wrong should be punished, but what do we get?” said one woman in the ABHAS community group circle discussion. “Bribes are given and the issues are suppressed. We deserve justice, but we do not get it.”

***“They only help
the rich people.”***

The mother of Poornima, a CSJ client who died after her rape aggravated her medical condition, was threatened while pursuing a case against her daughter's abuser, a wealthy and influential tantrik in the community. Poornima's mother says the tantrik warned her that “no matter how many times you go to the police, I will bribe them and they'll release me and let me go. What harm do you possibly think the police can inflict on me?”

The same influence that gives the rich special access to the criminal justice system simultaneously keeps the poor outside the law's protection. Members in the ABHAS community group circle discussions repeatedly cited money as a primary reason the system is ineffective for them. One woman said her daughter had been sexually abused by a neighbour, but police would not cooperate with her. “I cannot bear to think of going to a court,” she said. “For a poor man, there is no justice.” Another advised that “going to the police is the worst idea because no one will listen to you; they only help the rich people, and they always avoid the poor ones.”

Women in the ABHAS community group circle discussions said that, while they would generally avoid law enforcement's help unless they had money, they would seek the police's help as a last resort. “Those who are rich, they can give them money and the police will listen to them, but the poor . . . nobody listens to them,” one woman said. “But if someone threatens our lives, we have no other choice and have to take help from the police.”

Many expressed that they deal with problems on their own because they simply do not trust law enforcement's effectiveness. As one woman from the ABHAS community group circles put it: “Only you can help yourself.”

Negative impact on youth and families

Most CSJ clients describe the investigative and trial process as an unfamiliar, confusing and frightening experience.¹⁸ “Giving my testimony, the setting of the court, the lawyers arguing with each other, the judge, all of it was intimidating,” Tanvi, a CSJ client, said. “Because of all the arguing, it was scary. I had never seen this before... The judge kept screaming, which scared me.” Still, some reported

a positive experience. For example, CSJ client Rhea felt validated after testifying in court. She came out smiling after her testimony and said that the judge had encouraged her and told her that she had been very brave throughout the process.

*“The judge kept screaming,
which scared me.”*

Youth may be subject to secondary victimization and re-traumatization during the criminal justice process, especially during chief and cross-examination. In a courtroom, victims are questioned – sometimes harshly – as part of the adversarial process. The goal of cross-examination is to discredit the victim’s testimony and portray them as a liar. The law prohibits defence lawyers from using past sexual history to disparage victims, but this is still a common practice. As a result, child witnesses are unable to maintain control over telling their stories.

Instead, they are doubted, interrupted and manipulated, which leads to re-traumatization.¹⁹ These tactics effectively amount to gaslighting: a form of intimidation or psychological abuse, which makes victims doubt their perceptions, memory and even sanity.²⁰ CSJ client Bhoomi, after testifying in court, asked her social worker why she had been asked harsh questions and why she hadn’t been believed. The defence had asked her questions probing her story and had tried to confuse her in an attempt to get her to contradict herself.

COMMON CAUSES OF VICTIM RE-TRAUMATIZATION

- Challenging or discounting victims’ reports of abuse or other traumatic events
- Failing to show victims patience and empathy
- Failing to provide adequate security and safety to victims
- Limiting victims’ participation in decisions and planning processes
- Minimising, discrediting, or ignoring victims

The judge was sceptical of Tanvi, a CSJ client, when she testified, repeatedly asking her if she was in a relationship, even when she responded she was not. “I wasn’t respected,” she said of her experience with the judge. Neha, another CSJ client, said the defence lawyer was “twisting things” when questioning her on the stand, making it difficult for her to respond. Rubina, a CSJ client, also recounted her uneasiness with the trial process: “I felt a little scared about why I was being asked so many questions. I got nervous . . . I would be answering some question or saying something,

¹⁸ In Delhi, POCSO court judges are required to accommodate for the needs of children and vulnerable witnesses in the courtroom and to have separate and safe waiting areas and passages. The Vulnerable Witness Deposition Complex in four Delhi district courts represents a shift towards making witness testimony easier. However, while they represent a positive beginning, vulnerable witness rooms have been created in only a few courts in the country. Regardless, even in these courtrooms, child victims are subjected to diluted cross questioning, solely to undermine their credibility.

¹⁹ Roni Berger, Stress, Trauma, and Posttraumatic Growth (2015) (re-traumatization may occur when a report of a traumatic experience is met with disbelief).

²⁰ See Gaslight, Oxford Dictionary (2018), <https://en.oxforddictionaries.com/definition/gaslight> (last visited Feb 27, 2018).

and the advocates would start speaking in the middle of my sentences and not let me complete them. They talked very rudely and ruthlessly.”

Youth who have been sexually abused may decide to drop their cases to avoid hostile environments in courtrooms or police stations. Because of the pervasive victim-blaming culture, many youth believe their communities will doubt their claims and hold them responsible for the abuse, and they may expect the same of the criminal justice system. Rumours of negative experiences others have had with the criminal justice system further drives this belief and keeps youth or their families from reporting abuse.

Long criminal justice proceedings also take a toll on the emotional and physical well-being of youth who have been sexually abused. It might interfere with their educational and emotional development, causing even more harm. CSJ client Juhi was abducted, gang raped, held captive and shot by four men. She survived the brutal attack and her case was filed in December 2015. But the court delayed framing charges until March 2017, 15 months later. The court spent an additional six months determining the age of one of the accused. Witness testimony is expected to take at least two more years to complete. Meanwhile, Juhi has been forced to live in a shelter home for her own safety during most of this period, separated from her mother and unable to attend a mainstream school.

Trial delays endanger victims’ safety since the accused may intimidate or threaten them to influence the trial. CSJ client Tanmay and his mother were repeatedly threatened by the accused (his neighbour) during the trial. Upon his release on bail, the accused first tried to bribe Tanmay’s mother into silence and then beat her. Though Tanmay effectively testified in court, his and his mother’s physical and psychological safety had been endangered during the trial.

Many families also make financial sacrifices to support their child during repetitive and time-consuming proceedings. “We find the travelling hard,” Neeta’s mother said. “There have been so many hearings. [Neeta] only testified three or four times after being called to the court . . . the day we don’t earn, we do not have money to pay for our food.” Like Neeta’s mother, Richa’s mother complained about repeated court visits due to defense counsel rescheduling. “It has already been three times we visited court,” she said.

TRAUMATIZATION AND VICTIMIZATION

Secondary traumatization is defined as indirect exposure to trauma through a first-hand account or narrative of a traumatic event.

Re-traumatization occurs when people experience something that makes them feel as though they are undergoing another trauma.

Secondary victimization (also known as post crime victimization or double victimization) relates to further victimization following on from the original victimization. For example, victim blaming, treating victims with scepticism, inappropriate post-assault behaviour or language by medical personnel or other organisations with which the victim has contact further exacerbates the suffering.

Re-victimization refers to a pattern wherein the victim of abuse and/or crime has a statistically higher tendency to be victimized again, either shortly thereafter or much later in adulthood in the case of abuse as a child.

Families may lose income with repeated visits to court, or lose jobs altogether, because of the shame and stigma associated with publicly disclosing sexual abuse. When CSJ client Rhea disclosed to the police that she had been raped by her father for two years, her mother was fired from her job because the employers did not want to interact with the police or have them visit the business.

Even worse, trials in sexual abuse cases most often end in acquittal. “Even after going through all that we did and after all the defamation the family had to go through . . . after having shed so many tear. . . nothing happened. All of it was in vain,” CSJ client Rubina said, as she discussed her case’s outcome.

One man at an FGD summed up a victim’s upward climb to justice this way: “The victim does not tell anyone about this because she is afraid or she thinks that she might be misunderstood. And sometimes the family doesn’t allow them to speak out. Even if they speak, they cannot go to court due to financial constraints, and even if they manage to reach the court, the process of justice takes a long time. We should find a different way to solve these problems.”

“There are way too many emotions,” said Anuja Gupta, Executive Director, RAHI Foundation, about the complicated path through the justice system for survivors. “There is trauma. There is a lack of resources. So many things are required... strength, courage. I wonder why people even think that the legal system should be a natural outcome of abuse having been detected.”

Considering the pervasive problem of sexual abuse and the current system’s inability to address it adequately, many people are asking: is there a different way to solve these problems, a better way? Finding this solution requires a closer look at what youth who have been sexually abused, families and communities truly need from the justice process, and how they define justice for themselves.



Defining Justice

From multiple perspectives

The Indian criminal justice system, along with most criminal justice systems, focuses on establishing the offender's guilt and punishing the offender in the name of justice, fairness, deterrence, and safety.¹ In the contemporary criminal justice paradigm, when offenders commit a crime, punishing them, often through incarceration or fines, resets the moral balance.² Recently, the media narrative has portrayed a drastic shift towards punitive justice, particularly in the context of sexual abuse. Public, political and even judicial opinion call for harsher punishments for individuals who commit sexual abuse, including the death penalty and castration.³ There is a growing call in society and government for sex offender

¹ See Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* 69 (2015).

² *Id.* at 75.

³ See, e.g., The Hindu, *Death penalty for rape of girls aged 12 and below: MP Assembly passes Bill* (Dec 4, 2017) (stating that the Madhya Pradesh Assembly passed a legislative bill prescribing death penalty for the rape of girls younger than 12); FirstPost, *Madras HC recommends castration for child rapists, says it will lead to 'magical' results* (Oct 26, 2015) (the Madras High Court called for a consideration of castration of people convicted for child sex abuse); FirstPost, *Delhi Commission for Women launches satyagraha demanding death penalty for child rapists* (Feb 1, 2018) (stating that, in the wake of a rape of an eight month old baby, a team from Delhi Commission for Women would be going on a 30 day protest demanding death penalty for those who rape youth).

registries to track sex offenders and their activities.⁴

However, this paradigm largely ignores the voice and needs of those most impacted by sexual abuse—the victims. Victims are only spectators in the criminal justice process. They have virtually no decision-making power or platform to raise their voices or express their needs. This chapter steps away from the contemporary system's definition of justice; it explores justice from the perspective of victims, offenders, families, and communities.

Justice according to those impacted by sexual abuse

Victim's perspective of justice

What does justice mean for those most impacted by sexual abuse—for those who are harmed? The concept of justice is complex and highly subjective because people experience justice differently. An outcome that gives one victim a sense of justice may not give a sense of justice to another victim. The criminal justice system defines justice primarily as punishment, satisfied by imprisonment.⁵ But those we interviewed, including those who have experienced sexual abuse, had a more nuanced definition of justice.

Most CSJ clients believed that justice and fairness required punishment, especially imprisonment, to repay the wrong. “If he would have suffered and cried, I would have felt relieved from within,” Tanvi said. “I would have felt comforted to think that he got what he deserved.” When asked what punishment the offending person deserved in her case, Neetika responded, “I want him to get a very strict and harsh punishment. I have read about life imprisonment, so maybe that . . . the accused must be punished as severely as possible.”

Other CSJ clients interviewed expressed a desire to see the offending person publicly shamed as punishment. “I’m thankful to God that at least people know about him now,” Rubina said. “No matter what the court thinks of him, at least people know about him. They don’t even let him enter in their houses. They behave with him in a manner he deserves.”

This desire for punishment remains mostly unfulfilled because few cases end in conviction and result in punishment. Even when cases end in conviction, the criminal justice system often fails to meet other needs of youth who have been sexually abused.⁶ Laxmi’s father was sentenced to life imprisonment for raping her, and she received three lakh rupees compensation. But Laxmi’s mother never believed her. After Laxmi testified, her mother approached her at the court and disowned her, telling her daughter she was dead to her. The criminal justice system delivered Laxmi the best possible recourse law could give, but Laxmi’s need for restoring the relationship with her mother remained unmet. While Laxmi was glad to win her father’s conviction, overall, she was grief-stricken. She had lost relationships with each of her parents.

Victims also want answers from those who committed the sexual abuse, so they can gain emotional

⁴ See, e.g., India Today, *India set to have registry for sex offenders after demands for tough action on predators* (Dec 14, 2016) (stating that the Ministry of Home Affairs was preparing draft guidelines to set up a sex offenders registry in consultation with relevant ministries and organizations).

⁵ Indian Penal Code Section 53 (1860) (prescribes four forms of punishment: death, imprisonment, forfeiture of property and fines; a majority of criminal laws in India prescribe imprisonment as the primary punishment).

⁶ When a case ends in conviction, it might not even result in fulfilling the victims’ need for security. As occurred in Laxmi’s case, a person convicted of an offence can be released on bail pending an appeal to the High Court. On release, he may threaten or harm the victim. If the High Court reverses the conviction, the offending person is free to harm the child again.

closure. Often, they want to ask questions to better understand why the person committed the abuse and why he had targeted them. Some women from the FGDs stated they would want to meet the offender to ask why they had abused them. “I would want to meet the person who has done that to me so that I can know their perspective behind doing it,” one woman said. “I think after meeting him, my inner conflicts will be resolved. I will no longer be thinking ‘why was it done?’ When I ask questions, I will get some answers. That conflict will be resolved, and it will give me peace.”

Others also wanted the opportunity to tell their own stories and to feel better understood. They wanted to share their experiences and express the impact of the abuse. “I felt suicidal,” CSJ client Tanvi said. “Reporting took me out of that situation. I thought if I told someone what was in my heart and what was happening to me, they would give me a way out. I could not bear it (keeping sexual abuse to myself) anymore.” Tanvi said she would ask her father why he did this to her and express her sadness. “Maybe if I tell him, I will feel better,” she said.

“I think after meeting him, my inner conflicts will be resolved.”

Youth who have been abused wanted to hear offenders take responsibility and apologise for the harm they inflicted. After resolving feelings of anger, some victims may come to view an apology as a form of justice. “If that person accepts his mistake, then there is no bigger justice than that,” one woman from the ABHAS community group circle processes said. “Saying sorry and realizing [the harm] would be enough for me, nothing else,” another woman said in the FGDs.

Some felt that offenders acknowledging the harm and sincerely apologising might even satisfy their need for punishment. One member in an FGD said she could meet and forgive an offender who truly felt sorry for his actions. But if he did not feel remorse, then he should be punished.

“An apology for what is done by the abuser and the family for them, that is justice. I have seen that across [cases],” said Anuja Gupta, Executive Director, RAHI Foundation. “There are times when they say ‘I want to punish him,’ but I find that when people say that, it can often be coming out of unresolved anger and rage.”

Rubina recognized that if the person who sexually abused her acknowledged and apologised for the harm, it could have eliminated the need for the criminal justice process: “I want him to realise all the insult his family put me through. Had he apologised, none of this would have happened,” she said. “He would have been happy in his house and I would have been in mine. What did all of this fighting lead to?”

For others, an apology implies justice if the offender also demonstrates he has learned a lesson and will not re-offend. “I think this expectation of saying sorry will remain. But we can’t know if someone has said sorry from his heart . . . it is displayed in his actions,” one woman from an FGD said. “When there has been change, it will be satisfying. . . if there’s change in action, that will be enough for me.”

CSJ client Lubna said she would have wanted the boy who sexually abused her to “learn a lesson” and understand that taking advantage of others is wrong. Similarly, Tanvi said, “I want that they should never do this to anyone else.”

One woman from an FGD viewed an offender's change as a responsibility victims should fulfill through dialogue. "If we don't raise our voice, the same thing may happen with someone else and it is our responsibility to talk to him and know why he perpetrated the abuse," she said.

"What's the use of dialogue when the person does that [again] in the future?" another woman asked. "I would want that the person doesn't repeat his actions in the future and I'd want that he reforms – that is an important expectation."

Victims' perceptions of justice become even more complex when they have a close relationship with the offenders. In these cases, some victims may want offenders to stop the abuse and take responsibility for the harm, but remain connected with the family. "Survivors can actually want to remain connected to their abusers," said Anuja Gupta, Executive Director, RAHI Foundation. "The assumption is that people want to break off, which is very true in a lot of cases. But what I have found a fair amount in incest cases where the relationship is very close . . . what they are looking for is for the abuse to stop, or if it is already stopped, then it must be acknowledged. Girls tell me, 'Anuja, I love my father. I just want the abuse to stop.'"

Offender's perspective of justice

Some aspects of justice for victims, like changing offender mindsets and preventing re-offending, rely on offenders' participation with the justice process. While CSJ only draws from one case of a youth who had committed sexual abuse for this study,⁷ ideas of justice related to the offender were also raised during interviews and community discussions.

Societal attitudes and the current criminal justice system discourage those who commit sexual abuse from expressing guilt. Sexuality is a taboo subject in general, and they would be labeled as 'rapists' or 'molesters'. They may also hesitate to reach out to victims or victims' families to apologise if they believe contact is unwanted or will incite anger. In addition, if individuals admit to committing sexual abuse and apologise, it would most likely lead to a conviction and punishment.

Still, persons who commit sexual abuse may want to acknowledge their wrongdoing and apologise to alleviate their guilt.⁸ Often, their guilt is compounded because sexual abuse, especially against children or family members, is particularly shameful. CSJ staff spoke with Umang, a 17-year-old who had sodomized his six-year-old neighbour. Umang expressed desire to apologise to alleviate his guilt, and eventually he apologised to the victim's family two years after the abuse, long after the Juvenile Justice Board issued its order for the case.

Community members wanted the justice process to help understand the root causes of sexual harm. "They [criminals] are not born, they are made by the society," one woman in an FGD said. "Their experiences are hidden in deep layers. Childhood experiences play a very big role in molding us, and, perhaps, their childhood experiences influenced them." Another woman in the FGD recognized the possibility that some offenders may have been abused themselves, and the justice process could help offenders process their past abuse and help them reform.

⁷ CSJ provides counselling services to youth in conflict with the law.

⁸ Offenders have misdirected intentions if they only apologise to enter a diversion programme and escape harsher punishment. See *infra* Using restorative justice in sexual abuse cases: common concerns and safeguards on p. 69.

Other community members in the FGDs viewed the justice process as a way for persons who commit sexual abuse to reflect upon their mistakes and understand why they acted the way they did. “The person who has committed the crime should be required to introspect on his actions,” one woman said in an FGD. “The person needs to know why he did it . . . I think there’s a hidden reason, and everything will come out through dialogue only, through a conversation.” Another woman said this introspection should result in a “constructive and positive” guilt, which could help the offender “become a better person and even live in a better way” after understanding and ultimately resolving the causes of his actions.

Family’s perspective of justice

Family members suffer extensively when youth in the family are sexually abused. They also require a sense of justice and a platform for their voice to be heard, though their needs may differ from the primary victim. “We consider the victim to be the person who has suffered,” one community woman said, “[but] it affects the people associated to the victim as well: the father, mother and other family members— they are also the victims.”

The family’s perceptions about justice are particularly important as they influence the victim’s decisions about whether to report a case to police or cooperate during criminal proceedings, especially when the victim is young. For example, Bharat’s father wanted to give the accused a second chance and pressurized Bharat not to file a case with police, even though Bharat felt unsafe and wanted the accused to be taken into custody.

In interviews with family members of CSJ clients, parents wanted the person who committed abuse to be punished. Poornima’s mother felt strongly that punishment was the only outcome that would give her justice and heal the harm she had experienced. “People used to visit me and try to persuade me to accept money. . . ‘take two lakhs’ . . . ‘take one lakh’ . . . All I think is that an offender deserves punishment,



[most] of all,” she said. “What is money worth in such cases? All I want is punishment. Even his family members should weep once. They should feel the same pain that I have experienced.”

“The father, the mother and other family members— they are also the victims.”

Some parents wanted the person who committed abuse to be punished and imprisoned to protect other children from similar abuse their own child had suffered. Richa’s mother said the person who abused her daughter should have spent at least two years in prison. She would not feel that justice had been done unless other children in her community were protected. “This should not happen to anyone, not just for my daughter, but for all daughters, I want

safety,” she said. “I want justice . . . only the law knows how to teach these boys a lesson.”

In another interview, Lucy’s mother echoed this desire to prevent re-offending so other youth are not harmed. For her, a just outcome would be that no other child would go through the same abuse. “There are many other girls in this world like my daughter,” she said.

Parents also wanted physical and emotional safety for their children. But lengthy trial processes often prevented children from moving on emotionally. “I just want justice, so that in the future no one can point a finger to [my daughter],” Richa’s mother said. She also wanted a swift trial to minimise the emotional effect on her daughter. “I don’t want her to be called to court again and again . . . as long as the case goes on, she will keep listening to things about the case and these things will stay in her mind. She cannot move on until the case gets over.”

Community’s perspective of justice

Sexual abuse is pervasive in India, and its impact often extends to the community where sexual abuse occurs. As with victim and family perspectives, the definition of justice from the community perspective is multi-faceted and encompasses traditional punishment as well as more nuanced views.

One woman in the ABHAS community group circle process advocated for punishment for persons who commit abuse because she believed it would deter them from re-offending and harming others. “He [the offender] should be punished for whatever he did, and he has to realise that he did a wrong thing and he should never do this to anyone else. . . The incidents of rape are growing day by day. . . it is really important to protect our girls.”

Another person in an FGD noted the community should publicly shame offenders to deter others from committing the same crimes: “The person should get punishment publicly . . . those who are free without getting punishment, it gives encouragement to others as well. They’re thinking, ‘It happened with that person [who committed the abuse] and he went free, so these things don’t matter.’”

Other community members in the FGDs suggested ideas like community service and offender education; that justice may involve more creative, community-led approaches. “In other countries, there are ways to punish besides sending someone to jail,” one woman said. “There’s some productive service that could

benefit the society and cause him [the person who committed the abuse] to realise that he has done something wrong, so it's not only that he's punished and it's over. Some creative punishment should be there, and proper supervision is required to make sure that he's doing it in the right way."

Another woman in an FGD recognized the unique role families and communities play to address sexual abuse within the community. She advocated family and community intervention for the offender. "They should take some steps against the boy," she said. "If he did something wrong, explain to him that this is wrong." One community member in an FGD suggested that "families should educate their sons and everyone ought to be a responsible citizen and speak up against any form of abuse they witness. If everyone takes responsibility for [stopping] sexual abuse, it will probably bring about change. This is our responsibility."

"Justice through the courts is really a very minute part of what we need to do."

Sexual abuse is often rooted in cultural norms prevalent in communities, so understanding the reasons for abuse in individual cases may help understand why sexual abuse happens on a larger scale. "Through a simple dialogue, if I talk and get to know the reasons behind it [the sexual abuse]. . . these reasons could be prevalent on a broader scale," one woman said in the FGD. She noted that understanding the reasons behind criminal behaviour is key to preventing it. Punishing offending persons without attempting to understand their motivations or circumstances does not solve the root causes of sexual abuse.

For Anuja Gupta, Executive Director, RAHI Foundation, true justice is not about retribution, but about stopping the abuse and healing from the harm. "The long-term goal is not punishment, but about seeing that the abuse doesn't happen any longer, and in a way that families and communities can heal from the trauma. Justice through the courts is really a very minute part of what we need to do."

Does the current system repair harm and meet victim needs?

These perspectives illustrate that an important part of justice too often ignored is to repair harm and address victim needs arising from the abuse. The needs of those abused are nuanced: they seek punishment but also want safety and healing from physical and emotional harm, to participate in the justice process, and for the abuse to be acknowledged by the person who committed the harm and those closest to them. They may also seek an explicit apology for the act and the harm caused.

Justice also requires repairing relationships that were broken because family members blamed, disbelieved or failed to support persons harmed. Those who have been sexually abused also seek restitution and support, which, in turn, enables healing and development. Sometimes the justice process is a first step on a journey toward forgiveness. However, because the criminal justice system's primary objective is to punish offenders, it meets these nuanced needs in a limited way.

Safety from physical and emotional harm

A fundamental need of those who have been sexually abused is safety from emotional and physical violence. They need assurance that the harm they have endured will not happen again to them or to

anyone else.⁹ Safety was a primary concern for CSJ clients and their parents and a main reason victims sought punishment. It brings peace of mind and could facilitate the healing process. “I feel that it’s better if he gets punished so that I feel at peace and can feel much more secure,” Bharti said.

For Bharti and other youth, punishment, incarceration or even execution, separates them from the offenders and gives security from further harm. When Jwala, a CSJ client, learned the person who had abused her might be acquitted, she feared he would harm her family. “There is a possibility that he and she would come under the same roof,” Jwala’s mother said, “there would be a fear in her mind, and there would be a suspicion . . . a fear that he would do something wrong again.”

When victims report their case to police, their need for safety may be met, at least temporarily, if offenders are denied bail for the length of the trial and eventually convicted and imprisoned. However, if the accused is released on bail during trial, he may threaten the victim to become uncooperative in the case. The accused may be released on bail without the victim’s and family’s knowledge. For example, the accused in Tulsi’s case was released on bail and her family only learned about it when they saw him near her house.

CSJ client Fauzia recounted the fear she felt when the court released her stepfather on bail, who had sexually abused her. “I am a little scared that he might harm me,” she said. “I have seen him staring at me when I was standing on my house balcony.” While the accused in Poornima’s case was out on bail, he and his family, who lived in the Poornima’s community, repeatedly threatened her mother to drop the case. Poornima’s mother said she would not feel safe even if he were convicted. “I don’t know [if I’ll feel safe] . . . Who knows what his family will do?”

VICTIM NEEDS (VARY BY PERSON)

- Safety from physical and emotional violence
- To not be re-victimized or secondarily victimized
- A chance to speak and be heard fully
- Being believed
- Knowing the harm wasn’t their fault
- Exercising control and choices in the processes that involve them
- Swift trial to avoid prolonging reliving their experience
- Validation from the offender
- Validation from their community of care
- Apology from the offender
- Repair of relationships
- Accountability of offender
- Emotional healing

Victims may also be threatened during trial by the accused’s family or friends, even if the accused is imprisoned. For example, CSJ client Lekha was abused by her father. After she reported the abuse to the police her father was arrested. But his extended family threatened to kill Lekha and her mother, and they kidnapped Lekha’s brother to pressurize Lekha to drop the case.

Even in the case of a conviction, the accused may be released on bail while an appeal is pending. In Laxmi’s case, the accused was convicted by the lower court but released on bail by the High Court pending the appeal. She had been unaware of his release for a significant amount of time. As discussed earlier, most child sexual abuse cases end in acquittal.¹⁰ Because most youth live in the same neighbourhood or home as those who had harmed them, they are again endangered after the offending persons are acquitted and released.¹¹

⁹ Tali Gal, *Child Victims and Restorative Justice* 65 (2011).

¹⁰ See *supra* Low conviction rates and long delays on p. 25.

¹¹ See Centre for Child and the Law, National Law School of India, University, Bangalore, Report of Study on the Working of

Participation in the justice process

Those who have been harmed want to participate and have a voice in the justice process. They want more opportunities to express their emotions arising from the abuse, explain the harm, tell their stories and participate in the justice process's outcome. Youth who have been abused are empowered when they participate in the justice process. It helps them regain a sense of control that was stolen when an abuser violated their body and consent.¹² When those who have been harmed participate in the justice process, especially youth, they feel respected, and it develops their trust in others and increases their self-esteem.¹³ Telling one's story validates their experience and is a powerful tool for healing.¹⁴

Those who have been harmed feel heard and respected when their voice is heard and their input affects outcomes. CSJ client Neetika felt respected during her interview with CSJ because she could speak freely about her abuse. "The way you [CSJ staff] ask questions and listen to us patiently makes us feel liked, and that you are interested and compassionate," she said. "If there is a person to listen to you, you get a lot of strength from it," another woman in the ABHAS community circle discussions said.

However, often victims are disbelieved or their voices are suppressed, which could re-traumatize them. In the ABHAS community group circle processes, women described being silenced as a form of violence. "Ignoring someone's words, to me, is violence," one woman said in the community discussion. "Trying to shove down people's voices, not trying to listen to them, that is violence."

"Judging someone without listening, this is also violence," another woman in the ABHAS community circle process discussions said. "Violence is not listening to my thoughts and shrugging them off, not focusing on them," another said.

Some CSJ clients wanted to express their feelings about the abuse directly to the offending person. Lubna wanted to tell the persons who had abused her how angry she was. CSJ client Bharti wanted to explain how the abuser had hurt her and that his punishment is fair. "I will tell him about the wrong he did to me," she said. "I will say that he won't be able to do this again because now he is behind bars."

Some victims also want the opportunity to ask their abuser questions. When imagining a dialogue with the offender, Bharti said, "I will ask: 'Why did you do it? Why did you harass me? Why did you hit my sister?'" CSJ client Neetika said she would ask the person who harmed her why he bragged to their neighbourhood about the abuse. "I'll ask him why he didn't simply leave when I particularly asked him to do so," she said. "I'll ask him why he talked about me the way he did." CSJ client Tanvi also wanted to know why the offending person hurt her. "I would ask: why did you do this to me?" she said. She noted it might make her feel better to ask the offending person about his motives.

Participating in the justice process can also dispel fear and anxiety the sexual abuse created. One woman in an FGD said that confronting the person who had harmed her would help her overcome her fears and feel at peace. "I think I need to get rid of that fear and I hope something could be done through

Special Courts under the POCSO Act, 2012 in Delhi (2016) (offenders were known to the victims in 80 percent of the cases).

¹² Judah Oudshoorn, Lorraine Stutzman Amstutz & Michelle Jackett, *The Little Book of Restorative Justice for Sexual Abuse* 27 (2015).

¹³ Tali Gal, *Child Victims and Restorative Justice* 44 (2011).

¹⁴ See Harvard Program in Refugee Trauma, *The New H5 Model for Trauma and Recovery: A Summary* 4 (2014) ("sharing these [trauma] stories serves a dual function not only of healing the survivor but also of teaching and guiding the listener – and, by extension, society – in healing and survival").

dialogue, which would help to remove the fear,” she said. “I don’t want to be scared of him . . . I want to know that on a personal level, so that I can have peace and put that fear to rest.”

The right to participate in decision-making processes that affect youth’s lives is widely accepted as a fundamental child right.¹⁵ Arguably, youths’ perspective give more insight into outcomes that best meet their needs than adult perspectives that typically drive decision-making.¹⁶ As child advocate Tali Gal argues, “excluding them from the discussion regarding the outcome of the process that follows their victimization would not only infringe their general right to participate, but would also prevent them from advocating for restoration that fits their needs, possibly resulting in less preferable outcomes for them.”¹⁷

Unfortunately, the criminal justice system offers limited opportunities for youth and family members to participate and be heard. They have the limited role

as witnesses to help establish the guilt of the accused without opportunities to explain impact or ask offenders questions. “I was unable to say everything I wanted,” CSJ client Tanvi said about her testimony. She said talking about the abuse “helped a little.” But she did not feel respected and found the process more intimidating than healing. “Even though I gave my testimony, it did not help me recover from the abuse,” she said.

***“I think I need to get rid of
that fear... I don’t want to
be scared of him.”***

While victims can narrate their experiences when they testify during chief examination, they are limited to testimony relevant to the criminal trial. Some judges allow youth to make additional voluntary statements about the abuse’s impact. Other judges stop youth from testifying about anything beyond the incident itself. As criminal proceedings progress, victims are discouraged from adding new information about the incident because it reduces their credibility. But this ‘rule’ is inconsistent with how many youth process and disclose abuse. During the initial investigation, victims are often unable to narrate their experience comprehensively or chronologically.¹⁸ Often they disclose more information over time, particularly in cases of prolonged abuse.¹⁹ For example, CSJ client Suchi was physically and sexually abused for nine months by her father. “How can she be expected to give each detail of each incident? The written statement would go on for hundreds of pages,” said Suchi’s private advocate from CSJ.

Acknowledgement and apology

Offender taking responsibility

Several people stated they have a strong desire for offenders to admit the harm and understand it was wrong. “I would expect that he has a realization, not just about his fault, but also about my condition,

¹⁵ See, e.g., Juvenile Justice Act Section 3(iii) (2015)(“Principle of participation”) and United Nations Convention on Rights of the Child Article 12 (“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”).

¹⁶ Tali Gal, Child Victims and Restorative Justice 44 (2011).

¹⁷ *Id.*

¹⁸ James Hopper & David Lisak, *Why Rape and Trauma Survivors have Fragmented and Incomplete Memories*, Time (Dec 9, 2014) (traumatic events may affect an individual’s ability to recall or give proper sequence to details, including information that an objective observer (and even the victim) would deem vital and seemingly “unforgettable”).

¹⁹ See Roland C. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 Child Abuse & Neglect 177-93 (1983).

the harm the victim experienced,” one woman said during an FGD. Another woman in the same FGD simply said, “Saying sorry and realizing his mistake would be enough for me.” For Richa, mother of a CSJ client, the offending person acknowledging the harm was the key to securing justice. “The offending person saying that you have been wronged is what needs to be done to make things right.”

Role of apology

A sincere apology is a powerful tool for victims to heal.²⁰ It can validate their experience and counter feelings of self-blame. It also empowers victims: they control whether or not to accept the offender’s apology.²¹ In her interview, Naira, an adult survivor, shared how she sometimes visualizes the offenders apologising to her. While the situation would likely make her feel uncomfortable and she would not want to be present during the interaction, part of her still wants an apology. “Honestly, the apology is what I want,” she said. “It’s not about shaming the other person.”

Conviction as acknowledgement

A criminal case that ends in conviction is a public acknowledgement the accused committed abuse and the victim was wronged. However, convictions may not give victims the same sense of vindication as an apology from the offending person or being believed by those closest to them, especially family. Even when convictions occur, offending persons almost never admit guilt or take responsibility for the harm they caused. Generally, cases do not end with the offending person demonstrating remorse many persons who have been harmed need. Convictions only reflect where the *court* believes responsibility lies.

In fact, the criminal justice process incentivizes offenders to deny guilt and build the strongest case possible to prove their innocence. In CSJ’s experience, even if offending persons want to apologise, they refrain because it would establish their guilt in their criminal case.²²

Acknowledgement from family and community

Individuals who have been sexually abused need to be believed and acknowledged by their families and people within their communities.²³ Often they see themselves as partially or completely at fault for sexual abuse.²⁴ But when relatives and friends believe and acknowledge their experience, it helps resolve this self-blame and is integral to the healing process.²⁵

The absence of social acknowledgement can devastate victims. Laxmi’s mother refused to believe Laxmi when she disclosed the abuse at the hands of her father. Her mother remained unsupportive as Laxmi pursued the case against her father. “When I needed them [mother, aunt, grandmother], they weren’t there for me,” Laxmi said. “In fact, my mother used to keep on pressurizing me to take the case back.”

²⁰ Hershey H Friedman, *The Power of Remorse and Apology*, 7 Journal of College and Character 9 (2006) (genuine apologies heal because they satisfy the psychological needs of the person harmed, including the “restoration of self-respect and dignity,” “assurance that both parties have shared values,” and “reparation for the harm caused by the offense”).

²¹ Charles D Spielberger, Michael Potegal & Gerhard Stemmler, *International Handbook of Anger* 574 (2010).

²² In Juvenile Justice Board cases, where the sentences are shorter (maximum 3 years, though even this punishment is rare), CSJ sees more youth wanting to apologise to those they have harmed.

²³ Tali Gal, *Child Victims and Restorative Justice* 79 (2011) (social acknowledgement is necessary and distinct from social support which includes emotional and practical support).

²⁴ Sarah E. Ullman et al., *Structural Models of the Relations of Assault Severity, Social Support, Avoidance Coping, Self-Blame, and PTSD Among Sexual Assault Survivors*, 31 Psychology of Women Quarterly 23-37 (2007).

²⁵ Tali Gal, *Child Victims and Restorative Justice* 80 (2011).



Laxmi strongly desired validation from her mother that she still hasn't received. She had "a lot of questions" for her mother. "The first and biggest question I have is why she was not with me when I needed her the most. If she was with me, maybe everything would have been fine."

Laxmi still longs to reconcile with her mother. "I want my mother to understand. I especially want to go home, so that I can stay with her. . . because family is important and having their support is important."

Accountability

Victims want the person who caused them harm to be held accountable for the abuse. Within the context of the criminal justice system, this often means conviction and imprisonment. However, most cases end in acquittal: the conviction rate in 2016 for POCSO crimes was 29.6 percent.²⁶

When those who commit abuse are acquitted or released on bail, it confuses victims, invalidates what has happened to them and causes emotional harm. As a CSJ social worker noted, acquittals undermine the narratives of those who have been sexually abused and cause the community to disbelieve them. Disbelief can be extremely harmful for youth traumatized by sexual abuse. In fact, this harm could be more intense than the abuse itself.²⁷

Finally, even when there is a conviction, imprisonment fails to give meaningful accountability because it is unable to address victims' needs stemming from the abuse or underlying causes of the abuse. In fact, prison could increase chances of re-offending. Studies have shown that incarcerated individuals are likely to become more skilled and 'professional' at committing crimes from the influence in prison.²⁸

²⁶ See *supra* Ineffective criminal justice system on p. 25.

²⁷ Vito Zepinic, *The Self and Complex Trauma* 141 (2012).

²⁸ See, e.g., Francis T. Cullen, Cheryl Lero Jonson & Daniel S. Nagin, *Prisons Do Not Reduce Recidivism*, 91 *The Prison Journal* 48S-65S (2011) (the authors conclude that there is at least some evidence to suggest that prisons have a criminogenic effect).

Repairing broken relationships with family

Sexual abuse, particularly within the family, affects not only relationships between victims and offenders, but also affects relationships among family members, especially in incest cases. However, the criminal justice process is not designed to address these broken relationships. Rather, it focuses on the limited question of whether evidence establishes the accused's guilt.

“I’ve been told, ‘It happened a long time ago, can’t you get over it?’”

Sejal, an adult survivor, was abused by a cousin who had also abused her three siblings. She spoke about the family relationships broken as a result. “The relationship between my older sister and my mother just broke,” she said. “Every time there is fight about something, this always comes up . . . you can imagine what it does to a relationship between a parent and a child. There is this innate lack of trust.”

Sejal’s sister blamed her mother for failing to protect them from the abuse. In turn, the mother blamed their father. “She put the blame on him . . . that sort of internal tension crippled any conversation about it.”

The relationships within the extended family also fractured when they confronted the offending cousin’s family. “My mother went on to tell her [my aunt] . . . that caused a huge rift between them, because my aunt was saying ‘who knows if the victim and her siblings are telling the truth?’” Her aunt and parents have apologised, but relationships between the siblings, parents, and extended family remain strained. “What do you do now? How do you bring this up?” she asked. “How do you prove this without disturbing whatever peace you managed to get for yourself?”

Restitution and healing

Sexual abuse adversely impacts youth and families’ physical and mental health, education and employment. Often, they require rehabilitation services and financial compensation to repair these harms.

The severe trauma of sexual abuse can cause mental health issues such as post-traumatic stress disorder, psycho-somatic issues, substance abuse, depression, suicide, and other mental health issues.²⁹ Psychological help, counselling or psychiatric help, both short- and long-term, is an essential need. Sexual abuse also often results in medical needs such as treatment for injuries or sexually transmitted diseases. If sexual abuse results in pregnancy, victims require medical care for gestation, delivery, or alternatively, a safe abortion.

Often, financial compensation awarded by the courts is inadequate to cover these needs. For example, the trauma from sexual abuse aggravated Madhur’s existing mental health issues. Even though she received free counselling from a hospital, her family failed to ensure that she attended counselling sessions. Instead, CSJ social workers had to take her. “I think she’ll need several years of therapy,” the CSJ social worker said. “In that case, I don’t know how compensation could really help a family.” Another CSJ client, Juhi, suffered severe physical injuries related to the sexual abuse and continues to require intensive medical care, two years after the abuse. The compensation she received is not enough to address her ongoing medical needs. Sexual abuse attaches stigma to the family and may also lead to significant negative impacts, including loss of employment for family members or the necessity to shift homes. Rashi’s mother lost her job after

²⁹ Effects of Sexual Violence, RAINN (2018), <https://www.rainn.org/effects-sexual-violence> (last visited Feb 22, 2018).

her daughter's abuse because police visited her workplace and met the employer during the investigation. The employer did not want to be associated with the police or with any criminal case and fired her. Rhea's family had to relocate their home due to the intense social stigma in their community after she reported the abuse by her father. But she only received compensation more than a year after she reported the abuse.

If the accused is a breadwinner in the family, reporting abuse could also result in loss of family income if the accused is denied bail or convicted. Youth who have been sexually abused also need support for their ongoing development as they recover from abuse, such as their education or job and skills training. After Shrishti's father was arrested for abusing her and denied bail, the family lost the income he provided. Shrishti dropped out of school and started working so she could support her mother. While she has started distance-learning courses, she cannot attend formal schooling or take advantage of opportunities the traditional education environment provides. In some cases, resources should extend to family members. Where the abuse results in imprisonment of the family's breadwinner or loss of family members' jobs, family members also need skills and job training or assistance in finding employment.

The effects of child sexual abuse often continue into adulthood, as insights from adult survivors demonstrate. Sabita, an adult survivor, struggled with self-harm and depression years after the abuse. "I've been told, 'it happened a long time ago, can't you get over it?'" she said. "I think that comes from the fact that people don't understand the impact that child sexual abuse can have on a child in the long run."

"The most profound impact it had on me was my relationship with my own body and my sense of self-worth," said another adult survivor, Sejal. She said that her twenties were marked by destructive decisions as a result. "I felt like I was this ugly thing that could only be used," she said. "That incident of being stripped and the violation . . . it just destroyed my sense of self." The abuse prevented her from forming healthy relationships and eventually contributed to the breakdown of her marriage.

Forgiveness

Ultimately, individuals who have been abused need to forgive and release the power the sexual abuse, and even the abuser, has over them, so they can gain emotional closure.³⁰ However, the criminal justice system provides no opportunities for interactions between victims and offending persons that might start the process towards forgiveness.

Victims are more likely to forgive when offending persons express remorse and apologise.³¹ "If he seeks forgiveness and I feel that he is feeling guilty about it and really means it . . . If he accepts his wrong deed and tells me that he has committed a huge mistake and apologises for it, then I can forgive him," said CSJ client Neetika, who had been abused by a family friend. CSJ client Lubna said she would consider forgiving the boy from her community who assaulted her if he "feels guilty, says sorry, apologises, and accepts that he did wrong." CSJ client Rubina also said she would forgive the person who had abused her. "But he must acknowledge his mistake in everybody's presence," she said.

³⁰ See Suzanne R. Freedman & Robert D. Enright, *Forgiveness as an Intervention Goal with Incest Survivors*, 64 *Journal of Consulting and Clinical Psychology* 983-92 (1996). Also see Prakash Gangdev, *Forgiveness: A Note for Psychiatrists*, 51 *Indian Journal of Psychiatry* 153 (2009) (forgiveness is associated with physical and mental health benefits, which has been demonstrated by psychophysiological and neuroimaging studies).

³¹ Mark Umbreit & Marilyn Armour, *The Paradox of Forgiveness in Restorative Justice*, in *Handbook of Forgiveness* (E.L. Worthington 2005) (clear evidence shows that crime victims want apologies and apologies influence whether they choose to forgive the person who committed the crime).

Still, for some individuals who have been abused, forgiveness is not an option. “For me, reconciliation is not a process of forgiveness,” Sabita, an adult survivor, said. “For me, that has an implication that I’m saying it was okay, and that doesn’t work.”

“Forgiveness is about making sense of what happened to me.”

Individuals who choose to forgive may find significant emotional benefits to help them heal from abuse. Forgiveness often allows them to let the harm stop controlling their lives.³² It could reduce anger, depression, vengefulness and anxiety, even for victims of serious trauma.³³ As Sejal, an adult survivor said, “Forgiveness was about making sense of what happened to me. It’s not about the other person anymore.”

³² Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* 53 (2015).

³³ Tali Gal, *Child Victims and Restorative Justice* 76 (2011).



Restorative Justice

A focus on repairing harm

Restorative justice, an alternative approach to justice, has been a practice in the field of criminal justice for 40 years. Several countries use restorative justice practices, some far more extensively than others.¹ The benefits of a restorative approach have led the United Nations and regional intergovernmental organizations to encourage using restorative practices and to provide guidance for how to incorporate them into the criminal justice system.²

Restorative justice is an approach to achieving justice where persons most impacted by a crime collectively determine the harm done, needs that have arisen, and obligations to address those needs in order to

¹ See Yvon Dandurand & Curt Griffiths, *Handbook on Restorative Justice Programmes* 51-52 (2006).

² See, e.g., the ECOSOC (United Nations' Economic and Social Council) Resolution (2000/14 and 2002/12) on the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.

heal and restore relationships as much as possible.³ Restorative justice operates upon the principle that justice requires restoring victims, offenders and communities who have been harmed by the crime, and each stakeholder should be actively involved in the restorative process. Importantly, during restorative justice processes these stakeholders are key participants in the process and not passive bystanders.

Criminal Justice	Restorative Justice
What law has been broken?	Who has been harmed?
Who broke the law?	What are their needs?
What do they deserve?	Who is obligated to repair the harm?

Contemporary adversarial justice models focus on laws that have been broken, the party responsible for breaking them and punishing wrongdoers according to the law.⁴

On the other hand, restorative justice focuses on persons who have been harmed by the offence, specific needs that arise from the harm, and how to address those needs and the underlying cause of the harm.⁵

Fundamental Principles of Restorative Justice

The main principles that form the foundation of restorative justice processes are:⁶

- Crime harms victims, families and the community and they are in need of restoration
- Victims, offenders and the community are key stakeholders in justice
- The justice process belongs in the community
- The needs of victims for information, validation, vindication, restitution, testimony, safety and support are the starting points for justice
- The process of justice maximises opportunities for participation, dialogue and mutual consent between victim and offender
- Offender's obligations are to make things right as much as possible

Restorative justice processes aim to achieve the following outcomes:⁷

- Meaningful accountability for the offender
- Restoration of the victim
- Reformation and rehabilitation of the offender
- A possible outcome is forgiveness and reconciliation

Rather than viewing the justice process as between the state and accused, restorative justice gives victims and community members active roles in the justice process.⁸ Victims remain central to the process. Their needs shape the redress agreement formulated at the end of the process which defines the ways in

³ See Howard Zehr & Ali Gohar, *The Little Book of Restorative Justice* (2003).

⁴ Marie Keenan, *Sexual Trauma and Abuse: Restorative and Transformative Possibilities?* 24 (2014).

⁵ *Id.*

⁶ Howard Zehr & Henry Mica, *Fundamental Concepts of Restorative Justice*, 1 *Contemporary Justice Review* 47-56 (2018).

⁷ *Id.*

⁸ Howard Zehr & Ali Gohar, *The Little Book of Restorative Justice* 84 (2003).

which the offending person will repair the harm (also called the accountability agreement).⁹ By including all impacted persons and addressing the underlying causes of offences, restorative justice transcends punishment to heal and transform all persons involved.

Restorative justice is not possible in all cases. A prerequisite to start restorative justice processes is that offenders admit to the crimes for which they are accused. In addition, all parties, most importantly the victim, must freely participate in restorative justice processes and may withdraw at any point of time.

Restorative justice processes

Practically, restorative justice's core principles are implemented in different forms. Common approaches include victim-offender dialogues, family group conferencing and restorative circles. These models can be blended or several models can be used in a single case.¹⁰ Each one centers on repairing harm, involving all persons impacted by the crime, empowering victims and facilitating dialogue between stakeholders.

***Restorative justice
transcends punishment
to heal and transform
all persons involved.***

Victim-offender dialogue

Victim-offender dialogues bring victims and offenders together with one or more facilitators for face-to-face or indirect meetings.¹¹ Facilitators may conduct indirect meetings via telephone, written correspondence, video conferencing, or 'shuttle mediation' where they serve as messengers.¹²

In the preparation stage, facilitators meet victims and offenders separately to determine whether a dialogue is appropriate, establish boundaries for dialogue topics, frame questions, assess expectations and establish safety precautions.¹³ At the dialogue, facilitators enable meaningful discussion and ensure that the space is safe for all parties.¹⁴ The preparation and dialogue process can be repeated as many times as necessary. The victim could get an opportunity to hear why the crime happened, tell the offender how

Victim-Offender Dialogues	Conferencing	Circles
Victim and offender meet to discuss the crime's impact and attempt to reach a resolution to repair the harm.	Victim, offender, and their key supporters (family and friends) come together to discuss the crime's impact on the victim and the other participants, and attempt to reach an agreement to repair the harm.	Participants, including community members, each have a chance to speak in turn, typically in a circle, about the crime to address the crime's underlying cause and decide how to repair the harm.

⁹ *Id.*

¹⁰ Howard Zehr & Ali Gohar, *The Little Book of Restorative Justice* 47 (2003).

¹¹ See, e.g., Victim-Offender Dialogue, Washington State Department of Corrections (2018), <http://www.doc.wa.gov/victims/dialogue.htm> (last visited Mar 1, 2018).

¹² Marie Keenan, *Sexual Trauma and Abuse: Restorative and Transformative Possibilities?* 152 (2014).

¹³ See, e.g., Process for Victim-Offender Dialogue, Department of Corrections, State of Oklahoma (2018), <http://doc.ok.gov/Websites/doc/images/Documents/Policy/090215aa.pdf> (last visited Mar 1, 2018).

¹⁴ See, e.g., RJC Practitioners Handbook, (2016) ("processes and practice aim to ensure the safety of all participants and create a safe space for the expression of feelings and views about harm that has been caused").

it affected them and others, have questions answered and have the offender address the victim's needs.¹⁵

Conferencing

Conferencing widens the participant group and allows more stakeholders to participate, including victim and offender family members, friends, support persons, government officials and other key supporters.¹⁶ Conferencing widens the discussion's scope to include the offence's impact on family members and other participants.¹⁷ Typically, the victim and offender form a redress agreement, which might include financial restitution, symbolic restitution specific to the victims' needs, community service, therapy for the offender, or other agreed-upon obligations to repair harm the offender has caused.

HEALING CIRCLES

Healing circles for a victim: Persons who have been harmed come together with other people impacted by that particular crime, excluding the offending person, to understand the impact, process the harm, understand their needs and conceptualize ways for fulfilling these needs.

Group healing circles for victims: Unrelated victims meet in restorative circles to tell their stories, express emotions, support each other, process the harm and work towards healing.

Group healing circles for families of victims: Unrelated families who have been impacted by a crime (e.g., homicide, child being sexually abused) meet in restorative circles to tell their stories, express emotions, process the harm, support each other and work towards healing.

Circles

Restorative circles bring together impacted stakeholders to speak and listen in turn to one another. Participants sit in a circle and often pass a 'talking piece' to give each person equal voice in the discussion.¹⁸ Circles vary in size and can have different purposes, including:

- **Sentencing circles:** bring together the victim, offender, family and community members to meet representatives of the criminal justice system to give input on the sentence the accused should receive.¹⁹
- **Healing circles:** help victims process harm with one another and collectively arrive at ways to heal.²⁰
- **Reintegration circles/circles of support and accountability:** hold former prisoners accountable within their communities while providing them support to transition into mainstream society and to lead meaningful lives.²¹

¹⁵ See, e.g., *Victim Offender Dialogue*, Vermont Department of Corrections (2018), <http://www.doc.state.vt.us/victim-services/the-victim-services-program-of-the-vermont-department-of-corrections/vodp/vod-faq#why-victim> (last visited Mar 1, 2018).

¹⁶ See Yvon Dandurand & Curt Griffiths, *Handbook on Restorative Justice Programmes* 20 (2006).

¹⁷ *Id.*

¹⁸ Kay Pranis, *Little Book of Circle Processes* (2005).

¹⁹ See, e.g., Heino Lilles, *Circle Sentencing: Part of the Restorative Justice Continuum* International Institute for Restorative Practices (2002).

²⁰ Timothy H. Gailey, *Healing Circles and Restorative Justice: Learning from Non-Anglo American Traditions*, 7 *Anthropology Now* 1-7 (2015).

²¹ See, e.g., Vermont re-entry circles in USA (Circles of Support and Accountability which include the person who is reintegrating into the community and three to four trained citizen volunteers. These circles are conducted for at least the first year of the re-entry to provide emotional and practical support for the participant to help him or her become a productive self-supporting citizen, manage everyday challenges, and be accountable for safe and responsible living). Also see Stacey Hannem & Michael Petrunik, *Circles of Support and Accountability: A Community Justice Initiative for the Reintegration of High Risk Sex Offenders*, 10 *Contemporary Justice Review* 153-71 (2007).



Focus group members pass the talking piece at a discussion.

- **Circles for change:** Circles processes with broad community participation.²² Discussions are often more wide-ranging than in other restorative justice practices. They touch on broader issues that may impact the community and run parallel to the actual offence.²³ Circles for change empower community members to decide how to confront and resolve underlying problems within the community that may have contributed to the harm.

Restorative justice practices on a continuum

Restorative practices are best conceived as lying on a continuum of responses to the range of needs and harms experienced by victims, offenders and the community.²⁴ Restorative justice practices are adaptable and could be used within the criminal justice system, as an alternative to criminal justice processes, or as informal processes outside the criminal justice system.

Pre-trial

After police investigation and before charges are filed, restorative justice programmes can be used to divert cases away from adversarial criminal proceedings. Juvenile diversion programmes are an example of restorative programmes that divert juveniles from formalized court processes. Legislation in New Zealand mandates that youth offenders are diverted to restorative justice programmes as a primary

²² See, e.g., Circles for Social Change, USA (use restorative circles to challenge racism in society and work towards collective liberation).

²³ See Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* 176 (2015).

²⁴ Daniel Van Ness and Karen Strong, *Restoring Justice: An Introduction to Justice* 160 (2015).

See also Howard Zehr & Henry Mica, *Fundamental Concepts of Restorative Justice*, 1 *Contemporary Justice Review* 47-56 (2018).

option.²⁵ The diversionary programme uses family group conferencing, a process which in New Zealand, involves the person who caused harm and the person harmed along with their supporters. Family group conferencing aims towards victim involvement, family empowerment, diversion, accountability, consensus decision-making and due process.²⁶

The conference commences with the offending acknowledging the facts and the victim and other stakeholders discussing the offence's impact.²⁷ At the conference's conclusion, the victim and offender create a plan which typically includes an apology, community work, victim reparation or offender rehabilitation. Research shows that imprisonment rates have decreased in New Zealand since the government started Family Group Conferencing as the primary way to handle juvenile crime.²⁸

Pre-sentencing

At the pre-sentencing phase, a judge may use conferencing to decide upon a sentence or as a substitute for the sentencing process. Sentencing circles in Canada are an example of pre-sentencing diversion programmes where restorative justice processes are used to determine sentencing.²⁹ The case returns to the judge for finalization of sentence.³⁰ When a restorative justice process is used at a pre-sentencing stage, a judge or prosecutor may join the circle to ensure the sentence meets the victim's needs.³¹

Post-sentencing

Victims and community members may participate in restorative circles to address root problems of crime and increase the sense of safety in the community. Peacemaking circles in Canada, for example, believe that it is the responsibility of the community to address crime and that it is important to address not only the presenting criminal problem but also to build community.³² These circles focus on trying to uncover the underlying problems and restore balance where possible. Often, they also explore wider issues of local crime and prevention issues.³³

Post-incarceration

At the post-incarceration stage, restorative justice programmes help former prisoners reintegrate into their communities and support and hold them accountable during their transition.³⁴ Without this support, they might re-offend or take to other crimes. Reintegration programmes bring together former prisoners, community members, and sometimes even victims of similar offences, to establish boundaries and guidelines for offenders and to have routine check-ins to maintain accountability. These community-

²⁵ Youth, Young Persons and Their Families Act Section 245 (1989) (no charging document may be filed without first referring the matter to a Youth Justice Co-ordinator who then convenes a Family Group Conference).

²⁶ Allan MacRae, *Little Book of Family Group Conferences* New Zealand Style (2004).

²⁷ Donald Schmid, *Restorative Justice: A New Paradigm for Criminal Justice Policy*, 34 Victoria University of Wellington Law Review 101-02 (2003).

²⁸ Gabrielle Maxwell & Allison Morris, *Youth Justice in New Zealand: Restorative Justice in Practice?*, 62 Journal of Social Issues 239-58 (2006).

²⁹ See Heino Lilles, *Circle Sentencing: Part of the Restorative Justice Continuum* International Institute for Restorative Practices (2018), <https://www.iirp.edu/eforum-archive/4250-circle-sentencing-part-of-the-restorative-justice-continuum> (last visited Mar 1, 2018).

³⁰ *Id.*

³¹ *Id.*

³² Canadian Resource Centre for Victims of Crime, *Restorative Justice in Canada: What Victims Should Know* (2011).

³³ *Id.*

³⁴ See *supra* Circles at p. 48.

driven programmes reduce stigma and fear regarding a former prisoner's presence in the community.³⁵ They help them successfully reintegrate into the community and reduce the risk of re-offending.³⁶

Independent programmes

Though most restorative justice programmes are connected to the criminal justice system, they can also operate informally, independent of the criminal justice system, irrespective of whether the crime is reported to the police. For example, the restorative justice processes under Project Restore in New Zealand can be accessed: a) without reporting to a criminal justice agency, b) after reporting to the police, c) after charges are framed and a guilty plea has been entered, d) before sentencing of the offender and e) after sentencing, either pre- or post-release of the offender from prison.³⁷

Victim-offender groups

Some restorative justice programmes bring groups of victims and offenders together to discuss the crime where the victims have suffered similar crimes (but not the actual crimes) to those perpetrated by the offenders.³⁸ Community members can also participate in these circles. During these interactions, victims share the crime's impact with the hope that offenders grasp the gravity of their actions and feel remorse. For example, The Sycamore Tree Project operates in more than 30 countries and brings crime victims into prison to meet with unrelated offenders and to give offenders an opportunity to make a symbolic act of restitution.³⁹

Using restorative justice to address sexual abuse

Restorative justice has potential to improve the criminal justice system's response to sexual abuse by better meeting the needs of those who have been abused.⁴⁰ Under the adversarial system, individuals who have been sexually abused are often subject to secondary victimization from medical examinations, police interviews, lengthy trial delays, and scrutinizing questions during cross-examination at trial. Victims must re-live events in a specific way so the evidence can be recorded and their experience can be tested against other evidence during the trial process. As mentioned, often courts fail to validate victims' harm because most cases end in acquittal. As a result, most victims avoid reporting sexual abuse to police and remain outside the law's protection.

By contrast, individuals who have been sexually abused have greater opportunities to participate in restorative justice processes. They have space to voice their thoughts and emotions about the abuse on their own terms and in a safe environment. Further, offending persons must take responsibility for the offence and acknowledge harm they have caused.⁴¹ When they do, victims are more likely to receive affirmation of their experience and their emotions.⁴² A process that gives victims more control and

³⁵ See Gordon Bazemore & Shadd Maruna, *Restorative Justice in the Re-entry Context: Building New Theory and Expanding the Evidence Base*, 4 *Victims & Offenders* 375-384 (2009).

³⁶ *Id.*

³⁷ Project Restore, Rape Prevention Education (2018), <http://rpe.co.nz/advocacy/project-restore/> (last visited Feb 21, 2018).

³⁸ See Marian Liebmann & Stephanie Braithwaite, *Restorative Justice in Custodial Settings* (1999).

³⁹ The act of restitution often includes their public affirmation of their desire to change. See also Simon Feasey & Patrick Williams, *An Evaluation of the Sycamore Tree Programme* (2009).

⁴⁰ Tali Gal, *Child Victims and Restorative Justice* (2011).

⁴¹ See Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* 48 (2015).

⁴² See Judah Oudshoorn, Lorraine Stutzman Amstutz & Michelle Jackett, *The Little Book of Restorative Justice for Sexual Abuse* (2015).

facilitates emotional healing is a more appealing, less daunting avenue for victims.⁴³

Sexual violence that occurs within the family is even more complex owing to the relationship of the offender with other members of the family and social networks. For the most part, the criminal justice system does not have the flexibility required to meet these complex, nuanced needs.

While implementing restorative justice in sexual abuse cases remains relatively uncharted, some programmes have found success using restorative justice practices in this area.

Hollow Water: Community Holistic Circle Healing

In the 1980's, sexual abuse was running rampant in the Canadian indigenous community of Hollow Water.⁴⁴ To address the widespread problem, Hollow Water developed a restorative justice model based on pre-colonization indigenous practices called Community Holistic Circle Healing (CHCH).⁴⁵ CHCH circumvented the punishment-centered model of the Canadian justice system: "The people of Hollow Water do not believe in incarceration. They believe that incarceration means that offenders can hide from, rather than face, their responsibilities for the pain they have caused."⁴⁶

Instead, CHCH focuses on confronting the person who caused harm and healing the victims and the community. The model uses four circle conferences involving the offender, victim, their respective families, and the community. It culminates in a cleansing ceremony for the offender and a sentencing review.⁴⁷ In the more than 10 years CHCH has operated, only two out of 107 offenders have re-offended, making its recidivism rate lower than the recidivism rate of the Canadian criminal justice system (36 percent for all offences and 14 percent for sex offences).⁴⁸ CHCH has saved the Canadian government millions in service programme expenditures and has been lauded as the most mature healing process in Canada.⁴⁹

RESTORE Project, Arizona, U.S.A.

The RESTORE Project, a restorative justice programme in Arizona, U.S.A., used a conferencing model to address prosecutor-referred felony and misdemeanour sexual assault cases.⁵⁰ The programme operated from March, 2003 to August, 2007 and was run by a collaboration of law enforcement, prosecution, sexual assault advocates and public health professionals. Facilitators conducted conferences with victims, offenders, family members and friends. The victim and support persons voiced how the offence had affected them and the offender reflected on his own behaviour.

At the end of the conference, the victim and offender discussed the redress plan. Redress plans included victim-driven and programme-imposed accountability requirements for offenders, such as therapy, meetings with case managers, community service and payment of victim's expenses or reparation. After

⁴³ See Clare McGlynn, Nicole Westmarland & Nikki Godden, 'I Just Wanted Him to Hear Me': Sexual Violence and the Possibilities of Restorative Justice, 39 Journal of Law and Society 213-40 (2012).

⁴⁴ Bonnie Dickie, Hollow Water (2000).

⁴⁵ *Id.*

⁴⁶ Public Safety Canada, The Four Circles of Hollow Water (1997).

⁴⁷ Bonnie Dickie, Hollow Water (2000).

⁴⁸ Native Counselling Services of Alberta, A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Process (2001).

⁴⁹ *Id.*

⁵⁰ Mary P. Koss, *The RESTORE Program of Restorative Justice for Sex Crimes*, 29 Journal of Interpersonal Violence 1623-60 (2013).

the conference, RESTORE personnel and a board consisting of volunteers from the community (the Community Accountability and Reintegration Board) monitored the offender for 12 months while he fulfilled the redress plan requirements.

Ninety-one percent of cases where both parties consented to participate resulted in a completed conference.⁵¹ Two-thirds of felony offenders and nearly all misdemeanour offenders fulfilled the redress plan requirements and successfully exited the RESTORE programme.⁵² In contrast, approximately 75 percent of cases retained in the traditional criminal justice pipeline were closed without any consequences for the offenders.⁵³ More than 90 percent of participants were satisfied with their preparation, the conference, and the redress plan. The most satisfied group were victims who attended their conference.⁵⁴

Project Restore, New Zealand

Inspired by the RESTORE project, researchers in New Zealand began Project Restore to address sexual abuse using restorative justice processes. Project Restore used a conferencing model that expanded upon the RESTORE model to include community experts: a victim specialist and an offender specialist.⁵⁵ Victims and offenders agreed upon redress agreements that included financial restitution, written apologies and community service. Project Restore used a rigorous screening process—victims and offenders voluntarily participated at all phases. As a result, only nine cases out of 29 referrals resulted in a completed conference.

However, Project Restore was successful in that it met victim needs that typically remain unfulfilled by the criminal justice system. It gave victim participants the opportunity to speak openly about the offence and it helped improve their self-image. “As a survivor I felt very supported, and it absolutely took the weight off my shoulders and gave me a break and a breather from something that was weighing me down for many years,” one victim-survivor said. “And having that communication allowing everyone to have a view point was valuable. I got to hear how it impacted everybody individually and as a group . . . I felt like I gained a lot of strength, a lot of clarity.”⁵⁶

Participants shared how the process catapulted them into the journey of recovery. “It hasn’t come to fruition yet but I kind of made a statement to myself that as from that particular date of that face-to-face, my life must, it must turn around, it must get better, I must start living,” one participant said.⁵⁷

Cedar Cottage, New South Wales, Australia

Cedar Cottage was a pre-trial diversion programme that operated from 1989 to 2012 in New South Wales, Australia for first-time adult offenders who had sexually abused children.⁵⁸ The programme required individuals who had sexually abused children to in a two-year intensive, community-based

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Shirley Jülich et al., *Project Restore: An Exploratory Study of Restorative Justice and Sexual abuse* (2010) (the victim specialist is a qualified counsellor with specific expertise and experience in the dynamics of Sexual Abuse. The offender specialist is a qualified therapist working with men and women who sexually offend).

⁵⁶ *Id.* at 47.

⁵⁷ *Id.* at 58.

⁵⁸ Centre for Innovative Justice, *Innovative Justice Responses to Sexual Offending – Pathways to Better Outcomes for Victims, Offenders and the Community* 29 (2014).

treatment programme.⁵⁹ As part of the treatment programme, the offending person was required to write apologetic letters to the victim, and the victim had an opportunity to ask questions to the person who had committed the abuse.⁶⁰ The children who had been abused were not mandated to attend the programme and were provided a range of therapeutic services.⁶¹

The programme aimed to help children and their families resolve the emotional and psychological trauma resulting from the abuse; to help the offending person's family avoid blaming themselves for the his actions; to change the power balance within their family so the offending person was less likely to re-offend; and to stop the person who committed sexual abuse from repeating their offence.⁶²

Research has shown that the programme consistently showed positive results, including a reduction in re-offending.⁶³ Studies showed that the programme sharply reduced the lifetime recidivism of participants and noted there was a connection between offending persons accepting responsibility for their actions and reduced re-offending.⁶⁴

Informal programmes

Globally, informal programmes use restorative justice to address sexual abuse on college campuses, workplaces and communities. College campuses have implemented restorative justice to address sexual misconduct with research showing evidence of safety and justice satisfaction among participants.⁶⁵ Schools have used restorative justice conferences; one school used restorative justice processes to respond to sexual harassment the culture of toxic masculinity prevalent in school.⁶⁶ Workplaces have used restorative justice processes, and this has reduced sexual harassment.⁶⁷

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Jane Bolitho & Karen Freeman, *The Use and Effectiveness of Restorative Justice in Criminal Justice Systems following Child Sexual Abuse or Comparable Harms* 31 (2016).

⁶² *Id.* at 26.

⁶³ *Id.* at 36.

⁶⁴ Goodman-Delahunty, *The NSW Pre-trial Diversion of Offenders (Child Sexual Assault) Program: An Evaluation of Treatment Outcomes* (2009) (observed recidivism rates were higher among offenders who did not accept full responsibility for their abusive behaviour).

⁶⁵ Mary P. Koss, Jay K. Wilgus & Kaaren M. Williamsen, *Campus Sexual Misconduct: Restorative Justice Approaches to Enhance Compliance With Title IX Guidance*, 15 *Trauma, Violence & Abuse* 242-57 (2014).

⁶⁶ John Braithwaite & Kathleen Daly, *Masculinities, Violence and Communitarian Control*, in *Just Boys doing Business?* 189-213 (Tim Newburn & Betsy Stanko 1994).

⁶⁷ John Braithwaite, *Does Restorative Justice Work?*, in *A Restorative Justice Reader: Texts, Sources, Context* 342 (Gerry Johnstone 2003).



Law & Tradition

Restorative justice principles in Indian law and tradition

Restorative justice principles permeate much of Indian law and tradition. Community-centric models of dispute resolution have existed since ancient India. In contemporary Indian law, meeting needs of those who have been harmed and rehabilitating offending persons has an increasing importance in law and procedure, especially in laws protecting women and children. While adversarial and punitive justice systems dominate the legal landscape in India, restorative justice principles are not unfamiliar concepts. Already, they are entwined in laws that protect women and children. A logical next step is to codify restorative justice practices in laws that protect women and children, including from sexual abuse.

Panchayats

Panchayats, traditional village councils, reflect an enduring understanding that communities are key stakeholders in justice and the justice process belongs in the community. Historically, village elders would sit in a panchayat to hear disputes with the entire village present and resolve disputes with community assistance.¹

¹ Shishir Bail, *From Nyaya Panchayats to Gram Nyayalayas: The Indian State and Rural Justice*, 11 Socio-Legal Review (2015).

At the time of India's independence, constitutional provisions enabled the creation of Nyaya Panchayats, community-based dispute resolution mechanisms.² Since then, there has been a push for community-centric justice models that minimise formal legal procedure, including Panchayati Adalats and Gram Nyayalayas. Panchayati Adalats are adjudicating benches that consist of panchayat members from the community and have power to try less serious civil and criminal cases. Gram Nyayalayas are mobile village courts with civil and criminal jurisdiction and relaxed rules of evidence.

Non-statutory dispute resolution mechanisms, such as Khap Panchayats, also reflect the idea that the justice process belongs in the community.³ Khap Panchayats are self-proclaimed, caste-based courts.⁴ While they enjoy full legitimacy among the people of their caste, Khap Panchayats are patriarchal, caste- and class-driven and regularly pass biased and unjust decisions.⁵ In fact, they have been called “kangaroo courts” by the Supreme Court.⁶ Still, they reflect people's preference for decentralized, community-based justice processes.

Mahila Panchayats and Nari Adalats are women-centric bodies that counter male-dominated Panchayats and Khap Panchayats. Mahila Panchayats or women panchayats consist of trained community members who resolve disputes related to bigamy and domestic violence at a community level.⁷ Nari Adalats, or informal women's courts, use mediation, negotiation, conciliation and fines in cases of violence against women as tools to reconcile family relationships.⁸

Customary law

Customary law plays a significant role in dispute resolution in India and manifests the principles that justice processes should be community-centric and corrective. Article 13(3) of the Constitution of India recognizes custom as a source of law. Several tribal communities prefer custom-based justice systems to formal criminal justice systems and only refer exceptional cases to the police or judiciary.⁹ Customary law operates on the idea that the community is impacted by crime and the justice system places collective responsibility of crime on the community, rather than on an individual. For example, tribes in the Garo Hills consider the entire community responsible for an offence, rather than attribute blame to any individual.¹⁰

Justice systems based on customary law aim to reconcile relationships and are more corrective than punitive. For example, the village council in Arunachal Pradesh, called the Kejang, seeks to repair harm

² The Constitution espoused non-enforceable provisions relating to self-governance: Directive Principles of State Policy in Part IV of the Indian Constitution under Articles 39A and 40.

³ These systems are imperfect and influenced by patriarchy, caste, class and economic status.

⁴ Anand Prakash & G.S. Rajpurohit, *Khap Panchayat in India: Legitimacy, Reality and Reforms*, 2 International Journal of Allied Practice, Research and Review (2015).

⁵ Khap panchayats have passed decisions that undermine public confidence in these institutions. For example, a Khap Panchayat in Birbhum district of West Bengal ordered the gangrape of a tribal girl. See, e.g., Hindustan Times, *12 Gang-rape Tribal Woman on Kangaroo Court Order in Bengal's Birbhum District* (Jan 24 2014).

⁶ *Arumugam Servai v State of Tamil Nadu* (para 16) 6 SCC 405 (2011) (the Court made the statement while discussing Khap Panchayats, noting these informal institutions often decree or give formal sanction to honour killings or other atrocities against boys and girls of different castes and religion).

⁷ Mahila Panchayats, Delhi Commission for Women (2018), http://www.delhi.gov.in/wps/wcm/connect/lib_dcw/DCW/Home/Projects/Mahila+Panchayats (last visited Feb 22, 2018).

⁸ Namita Raje, *Nari Adalat: A Beacon for Women in Distress* (2017).

⁹ Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *Synergy between Tribal Justice System and Regular Justice System of the Country* (2016).

¹⁰ *Id.*

caused by offences rather than deter offenders.¹¹

Civil cases

Civil dispute resolution models exist in India and strive to maximise opportunities for stakeholder participation, dialogue and mutual consent. Lok Adalats, or “people’s courts”, provide timely access to justice in civil cases and compoundable criminal cases.¹² These courts emphasize participation and dialogue between the parties involved in the dispute and seek compromise, mediation and settlement. The National Commission for Women created Parivarik Mahila Lok Adalats, or familial women’s Lok Adalats, to empower women so they participate in justice delivery mechanisms and resolve family disputes. They hear cases of matrimonial disputes, bigamy and other civil and compoundable criminal cases.¹³

Family courts were set up under the Family Courts Act, 1984 to decide matters of judicial separation, divorce, validity of marriage and restitution of conjugal rights. These courts encourage dialogue between the parties and to resolve disputes amicably without the presence of legal professionals or the limitations of evidence rules.¹⁴

Statutory laws for arbitration, mediation and conciliation enable impacted parties to participate in the resolution process and settle matters with mutual consent. The Arbitration and Conciliation Act of 1996 prescribes simplified rules of evidence and is increasingly used for contract and partnership disputes. Courts throughout the country are setting up mediation centres to reduce pendency of cases in courts and speed resolutions by helping parties reach their own solutions to disputes.¹⁵

Criminal cases

In limited circumstances, criminal and procedural law permit victims and offenders to actively participate in the justice process, including in some cases to reach mutual agreements to settle disputes. For example, in “compoundable offences,” with the informed consent of the person harmed, the offending person and the person harmed may settle criminal offences such as theft, wrongful confinement, assault, cheating, adultery and defamation.¹⁶ The accused is acquitted as a result of the process.

Compounding (Section 320 of the CrPC)	Plea Bargaining (Sections 265A-L of the CrPC)
Results in acquittal	Results in conviction and lesser punishment
Applicable for only those offences which are mentioned under Section 320 specifically	Applicable for a wider range of offences (cases with sentences up to 7 years but excluding socio economic offences and offences related to women and children)
No monetary element is involved	Compensation is mandatory
Only the accused benefits	Both the victim and the accused benefit

In plea bargaining, the offending person acknowledges the offence and participates in the crime redressal process.¹⁷ The offending person and the person harmed reach a mutually satisfactory solution that could

¹¹ *Id.*

¹² See National Legal Services Authority Act Chapter VI (1987).

¹³ National Commission for Women, Parivarik Mahila Lok Adalats (2018).

¹⁴ Family Courts Act Section 9 (1984). However, in practice the implementation and functioning of family courts has been criticized. See National Commission for Women, Working of Family Courts in India (2018).

¹⁵ See Code of Civil Procedure Section 89 (1908).

¹⁶ Code of Criminal Procedure Section 320 (1973).

¹⁷ Code of Criminal Procedure Sections 265A-L (1973).

include compensation for the person harmed and reduced punishment for the offending person. Under exceptional circumstances, High Courts may quash non-compoundable criminal matters and instead recognize the agency of persons harmed and offending persons to settle matters between themselves.¹⁸ Finally, complainants may withdraw a criminal complaint against the accused if they convince the judge sufficient grounds exist.¹⁹ As a result, the judge acquits the accused and the parties may agree upon an out of court settlement.

Domestic violence and sexual offences

Certain Indian legislation recognizes the importance of meeting victim needs, especially in the context of domestic violence and sexual offences. It recognizes compensation, restitution, rehabilitation, repairing relationships, safety and support as fundamental needs of persons harmed.

The Indian legal system is evolving to understand that justice requires repairing harm inflicted upon victims.²⁰ Monetary compensation is one way to repair harm. Indian law gives victims access to compensation for loss or injury from crime.²¹ In addition, state governments have established funds to compensate victims for harm caused by criminal offences. Courts also may order offenders to pay victims restitution, including in cases of rape, domestic violence and sexual harassment.²²

The legal system also recognizes other needs of persons harmed to help them cope with sexual abuse, including psychological counselling, medical care and legal support. The government has created schemes to provide medical aid, police assistance, legal counselling, court case management, psychosocial counselling and temporary shelter to women impacted by violence, although these initiatives have been implemented inconsistently or not at all.²³

Finally, the legal system acknowledges the need for safety and protection and attempts to protect persons harmed from secondary victimization. Statutory acts and corresponding rules accommodate and protect victims during investigation, testimony, evidence, protection of identity and police protection, as reflected in the adjacent table.

¹⁸ *Rakhi Mishra v State of Bihar*, CrI. Appeal 1499/2017 (Supreme Court, Aug 24, 2017). *See, e.g.*, in *Surinder Kumar & Ors v State & Anr*, CrI.M.C. 5148/2015 (Delhi High Court, Apr 19, 2016) (the Delhi High Court quashed a case of cruelty noting the dispute was essentially matrimonial and had been mutually and amicably settled between the parties. It observed that continuance of proceedings would be an exercise in futility). *But see* *Rakhi Mishra v State of Bihar*, CrI. Appeal 1499/2017 (Supreme Court, Aug. 24, 2017) (the Supreme Court reiterated the legal proposition that the High Court can exercise its inherent powers under Section 482 of the Code of Criminal Procedure to quash cases in exceptional circumstances only).

¹⁹ Code of Criminal Procedure Section 257 (1973) (applicable to a case for which punishment does not exceed two years or death).

²⁰ *See, e.g.*, *Ratan Singh v State of Punjab*, 4 SCC 719 (para 6) (1980) (“It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependents of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the Legislature. We can only draw attention in this matter.”).

²¹ *See* Code of Criminal Procedure Section 357A (1973) (Section 357A was introduced in 2008 to affect a Victim Compensation Scheme to compensate victims or their dependents who have been a part of the loss caused due to the crime and need rehabilitation).

²² *See* Code of Criminal Procedure Section 357 (1973).

²³ *See, e.g.*, One Stop Centre Scheme, Ministry of Women & Child Development (2018), <http://wcd.nic.in/schemes/one-stop-centre-scheme-1> (last visited Mar 1, 2018).

Restorative Justice Principles in Laws Protecting Women and Children

	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	The Protection of Women from Domestic Violence Act, 2005	Protection of Children from Sexual Offences Act, 2012
Compensation and Rehabilitation	Harasser required to financially compensate victim for mental trauma, suffering and emotional distress, loss of career opportunities and medical	<ul style="list-style-type: none"> Judge can order respondent to pay damages and compensation for inflicting emotional distress and mental torture stemming from domestic violence. Victims entitled to medical aid and may be directed to attend counselling sessions, either individually or with offender. 	<ul style="list-style-type: none"> Interim compensation can be granted to victims before completion of trial. Final compensation can be granted upon trial conclusion regardless if case ends in conviction, as long as courts finds evidence of loss or injury from the offence. Interim and final compensation are based on factors like severity of injuries and cost of treatment, loss of employment and loss of educational opportunity due to the assault. Victims of child sexual abuse are entitled to medical aid and may be referred to psychological counselling.
Repairing Relationships	Women who have been sexually harassed at workplace may request processes of conciliation.	Conciliation services are provided before the state machinery is set in motion.	
Safety and Protection	During the pendency of inquiry, victims of sexual harassment at the workplace can be transferred to another workplace or granted leave for three months.	Victims of domestic violence are entitled to remedies to prevent further harm, including protection orders, residence orders and restraining orders.	Victims of child sexual abuse can avail the protection of shelter homes.
Support		Protection officers ensure victim is provided legal aid, is medically examined and is provided a shelter home, if needed.	Support persons appointed for child victims support child through investigation and trial process.

Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 (the “JJ Act”) is a robust legislation that imbibes restorative justice principles of diversion, offender accountability and reform and rehabilitation for youth who offend. Admittedly, JJ Act provisions that protect and rehabilitate youth have yet to be fully implemented on the ground. Still, they are an important step towards seeing law and justice beyond punishment.

Diversion and non-institutionalization

The principle of diversion²⁴ is a guiding principle in the JJ Act that states judicial proceedings should be avoided when responding to crimes committed by youth.²⁵ The JJ Act recognizes institutionalization as a last resort and provides multiple ways to hold youth accountable, including community service.²⁶

Accountability

The JJ Act encourages youth to reflect on the harmful consequences of their actions. It provides counselling to help youth introspect and realise how their actions have impacted themselves, others and the community.²⁷

Rehabilitation and reintegration

The JJ Act encourages rehabilitation and reintegration into society of youth who have committed harm.²⁸ The law provides for after-care when youth are released from institutions to aid their rehabilitation and reintegration into society.²⁹

Participation

The JJ Act recognizes the rights of youth to be heard and participate in all processes and decisions that affect their interests.³⁰

²⁴ India has ratified the United Nations Convention on the Rights of the Child in 1992 which recognizes the importance of diversion for young offenders from the formal processes of the criminal justice system.

²⁵ Juvenile Justice (Care and Protection of Children) Act Section 3(xv) (2015).

²⁶ Juvenile Justice (Care and Protection of Children) Act Section 3(xii) (2015).

²⁷ Juvenile Justice (Care and Protection of Children) Act Section 18(a) (2015).

²⁸ See Juvenile Justice (Care and Protection of Children) Act Section 3(xiii) (2015).

²⁹ See Juvenile Justice (Care and Protection of Children) Act Chapter VII (2015).

³⁰ Juvenile Justice (Care and Protection of Children) Act Section 3(iii) (2015).



Possibilities

Restorative justice processes in child sexual abuse cases in India

For Sabita, an adult survivor, the idea of restorative justice triggered a memory. “I found a baby photo of us, the three of us,” she said. In the childhood photos, she sat with her two brothers. One had sexually abused her. “It’s surprising because I’ve deleted photos I have of him; I couldn’t bear seeing photos of him at all.”

Sabita thought about cropping him out of the photo, but decided to keep it as it was. “I didn’t feel like doing it. And I think it was because that was the brother I knew from before . . . the one who carried me around and looked after me,” she said. “Somehow, in my head, I think reconciliation is possible somewhere.”

Now Sabita is open to speaking with her brother, though his temper and their volatile relationship makes her cautious. “I can totally see myself, now, sitting down with my brother and talking to him,” she said. “At some level, I also have this belief that there is good in everybody.”

While restorative justice principles permeate Indian law and tradition, restorative justice as a response to crime is relatively unknown in Indian communities. Still, some women community members expressed a willingness to meet those who had harmed them because they recognized the benefits of a conversation between victims and offending persons. “I think I would want to meet the person,” said one woman at an FGD. “I would want to sit and talk with the person who had done this to me, if we were in a safe atmosphere.” She noted that people’s life experiences influence their actions and dialogue could bring deep-seated issues to light. “When we are in direct contact, we can talk and those issues may be resolved, or at least my personal conflicts would be resolved,” she said.

Another person at an FGD spoke about the benefits of dialogue for offending persons who were victimized as youth. “I would like to know: what was the reason that made you [the offender] take that step? Did someone say something or did something happen?”

Some people believed restorative justice processes could stop people from re-offending in the future. A dialogue may uncover motives behind a crime and help communities understand how to prevent future crime. “Knowing the reason why he did it is important, and after that we will get to know how we can rectify it,” one woman said in an FGD. “The way we [victims] were affected, someone else may be affected as well.” Another woman agreed. “I would like to meet with someone if they committed a crime to learn the reason,” she said. “People should know the reason to learn from it, so that another criminal is not made that way.”

***“What if restorative justice
for me means to be able to
say goodbye?”***

Criminal psychologist Anuja Kapur spoke about the potential healing benefits restorative justice processes could bring victims. “My perspective of restorative justice is bringing peace with the past, bringing the closure to your own problems,” she said. “I think restorative justice is a very good mode to understand and rediscover yourself . . . you have a potential to move forward and understand the feelings of the others.”

“I think it is very powerful,” said Sylvia Derby, a human rights professional. “I think it’s a way for people to re-engage in very meaningful conversation. It creates a sense of openness where people who have been harmed can talk about what has been done to them . . . it’s a way for healing.”

Some adult survivors believed that restorative justice, at its core, was for their benefit. Sabita could not envision a dialogue between herself, her siblings and the brother who had abused them. But she found great value in speaking about her abuse to others. “Every single time I talk about it [the abuse], I feel like I’m making something come together,” she said. “It brings me internal clarity . . . for me and in my own capacity, it is some sort of restorative justice.” Another adult survivor experienced restorative justice as a path to closure and freedom: “What if restorative justice for me means to be able to say goodbye?”

Other community members were sceptical about restorative justice processes, particularly in the FGDs: “What will we get by meeting that person? They should get punishment,” said one woman who preferred a punitive approach.

Some community members were open to restorative justice processes, but only for nonviolent offences. “If he is a thief, then I would like to talk to him and ask why he did this. But if he is a rapist, then there

is no purpose in talking to him . . . what if he did the same thing again and again?” another woman in an FGD said.

“I would really like to talk to the person, as long as it is not a case of rape or murder,” another woman in an FGD qualified. Even so, she believed dialogue would be “better than the court or the lawyers” to understand an offending person’s motives.

Some discussed how restorative justice and criminal justice could work together. “The criminal should be punished,” one woman said in an FGD. “But there’s no harm in meeting the person as well, because we will learn their reasons.”

They recognized how restorative justice could help understand offending persons’ mindsets and the systemic causes of crime. “If someone has committed and accepted his crime, I would meet the person, not making the punishment any less,” another woman said in an FGD. “I would like to meet because he is also a human, though he’s a criminal today, maybe he did these things due to a certain pressure,” she said. She believed that allowing the offending person to go through the system without investigating these societal factors could lead to a “bigger problem in society.”

Others believed that restorative justice would be more effective than criminal justice in finding solutions to root problems of crime. One woman from an FGD said “dialogue is necessary if we want to bring about change. Sending him to prison will not induce the same amount of change as involving him in a dialogue could . . . there’s a hidden reason and everything comes out only through a dialogue, though a conversation.”

Another woman in an FGD drew a similar comparison between restorative justice and criminal justice. “There is a requirement to stop these events [sexual abuse] at a bigger level, and that can happen when we are able to know the deep-rooted reasons, not just criminalize this person and send him to jail. Then, we will never understand the reasons and such cases will keep on happening.”

NEGATIVE IMPACTS OF IMPRISONMENT

Criminalization:

- Does not address underlying causes of behaviour
- Could increase chances of re-offending since offender needs (treatment, therapy, meaningful accountability) are not met
- Equips individuals for committing other offences through exposure to a “criminal” culture in prison

Marginalization:

- Psychological impact can render them incapable of merging into mainstream life
- Stigma experienced on release could prevent them from earning a livelihood or getting housing
- Could break ties with the family and leave them isolated
- Increases chances of person entering a cycle of crime, substance misuse, or other unwelcome behaviour

“Human beings, all human beings, have the innate potential to change,” a child psychiatrist noted during the restorative justice dialogue at NLU Delhi. “Rather than imposing something on them, it could be up to them to take responsibility and become agents of change themselves,” he said, adding that restorative justice has potential to address root causes of sexual abuse.

“I’m not saying that abusers should not be accountable for what they have done. But how do they pay?” asked

Anuja Gupta, Executive Director, RAHI Foundation. “How is it empowering for the victim and for the family and not something that becomes destructive?” In cases of intra-familial abuse, she asserted that healing the family, including the abuser, is the answer. “This is a family-based problem, and ultimately we have to find the solution within families and communities.”

***“An eye for an eye
will make the whole
world blind.”***

Another person reminded the group of Gandhi’s words: “An eye for an eye will make the whole world blind,” he said, identifying what he believed is a fundamental flaw in the criminal justice system. “We have to see how the concept of restorative justice can give justice to everyone, rather than just incarcerating people, as the criminal justice system does. It is very punitive, and someone else decides for the victim, not the victim himself or herself.”

For many in the community, their openness to restorative justice stems from defects they see in the criminal justice system: the unanswered questions, the low conviction rate, the lack of meaningful accountability and self-reflection for offending persons, the marginalization and re-traumatization of victims, and the failure to understand the root problems of sexual abuse within society. Restorative justice seeks to cure these defects, placing offender accountability and, most importantly, victim needs at the forefront of the justice process.

How restorative justice meets victim needs

Restorative justice asks what each person impacted by the harm needs after the crime and aims to meet those needs to help them heal.¹ Justice, then, is best understood as meeting the needs of victims, offenders, and communities toward the purpose of healing.² These needs are complex and vary based on the individual. However, as discussed in the previous chapters, several themes arose from CSJ’s research: those who have been harmed need safety, participation, acknowledgement of their harm, accountability, relationship repair, restitution and healing.

Safety from physical and emotional harm

The most fundamental need for those who have been sexually abused is for the abuse to stop and to feel secure from future harm. The criminal justice system only restrains offending persons while they are incarcerated; it makes no effort to ensure safety once they are released on bail or acquitted. Rather than simply separating those who have caused harm from the community, restorative justice strives to make the whole community safe. It aims to help offending persons change their views and behaviour so they are no longer dangerous.

During restorative justice processes, those who have been harmed must feel physically and emotionally safe for the dialogue to be effective and not re-victimize them. Facilitators meet those who have been harmed extensively before a dialogue takes place to assess their emotional suitability for the process, ensure their participation is voluntary and fully-informed and to understand and manage expectations.³

In many instances, unequal power dynamics between offending persons and victims could threaten the

¹ Judah Oudshoorn, Lorraine Stutzman Amstutz & Michelle Jackett, *The Little Book of Restorative Justice for Sexual Abuse* 26 (2015).

² *Id.*

³ *Id.* at 27.

victim's physical and emotional safety. These risks can be minimised by involving victim support persons and community members with expertise in the field of sexual abuse. Restorative justice processes can also be modified so victims never directly meet offending persons. Victims can communicate via telephone, written correspondence, video conferencing, or 'shuttle mediation' through facilitators.

Regardless of the format, in sexual abuse cases, facilitators are specifically trained to understand and address trauma arising from sexual assaults. Restorative justice practices operate through a trauma-informed lens, so facilitators carefully consider how trauma has impacted those who have been harmed and, if appropriate, offending persons.⁴ Restorative processes enable victims to exercise choice and control, which are contributing factors to healing and also help to avoid re-traumatization or secondary victimization.⁵

Sexual abuse creates a sense of fear and insecurity. Restorative justice processes can help reduce victims' fear of offending persons. Those who have been abused can ask questions, express impact and begin to see offenders as persons.⁶ Restorative justice practices are therapeutic; those who have been harmed work through their emotions as they prepare for and participate in dialogues.⁷ Family members, especially parents, fear for their child's emotional and physical safety, so they also benefit from participating in restorative justice processes.

Redress agreements can create ways to make victims physically and emotionally safe, such as requiring the person who offended to stay away from victims and their family. They can also look at ways to strip power or authority from offending persons so they have fewer opportunities to take advantage of their authority to abuse. Redress agreements can include ongoing mental health care for those who have been harmed and their family to reduce fear and give a sense of emotional safety.

Participation in the justice process

Restorative justice gives those who have been harmed opportunities to actively participate in the justice process. They exercise control in decisions about the process: whether they meet offending persons directly, and who else and to what extent others will participate. Before the formal dialogue or conference takes place, facilitators consult victims and help them craft questions or topics for discussion. Those who have been harmed are also directly involved in voicing their needs and defining the expected outcomes to repair harm from the abuse.⁸

In contrast to criminal trials where victims only respond to lawyers or judges' questions, restorative justice processes allow victims to fully express their narrative and feelings about the offence on their own terms. Facilitators take precautions to ensure victims and offending persons feel safe during the process. An attitude of respect for all participants permeates restorative justice processes, including respect for offending persons and their supporters. In preparing victims to participate in restorative processes, facilitators help victims find ways to express themselves without attacking or shaming the offending persons.

⁴ *Id.* at 79.

⁵ See Melanie Randall & Lori Haskell, *Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping*, Dalhousie Law Journal 522-24 (2013).

⁶ Lawrence Sherman & Heather Strang, *Restorative Justice: The Evidence* 40-42 (2007).

⁷ See Caroline M. Angel et al., *Short-Term Effects of Restorative Justice Conferences on Post-Traumatic Stress Symptoms Among Robbery and Burglary Victims: A Randomized Controlled Trial*, 10 *Journal of Experimental Criminology* 291-307 (2014).

⁸ While victims are not the sole arbiters of the redress agreement or outcome, they are integral participants in the decision-making process and may give significant input.

Persons harmed can ask offending persons questions during restorative justice processes, a privilege typically reserved for lawyers in the criminal justice process. They may directly ask their abuser why they committed the offence, why they chose to victimize them, how they have changed since the offence and other questions they may deem important.⁹

The opportunity to ask questions is integral to meeting victims' need for closure. CSJ clients and women in community discussions repeatedly expressed a desire to know why offending persons had harmed them. Research confirms that this is an important need for those who have been harmed.¹⁰ "For me, the idea of restorative justice is to speak up," one woman at the restorative justice dialogue at NLU Delhi said. "The person who did wrong, he was convicted, but the victim is still thinking inside: 'Why did you do this to me?' . . . [even if] they are convicted . . . something would still be lacking."

Judith Neihoihkim, who works with young survivors of sexual abuse, recognized the need to ask these questions. "I've seen some of them after they testify in court," she said. "At some point, they are ready to face the offender because they have a lot of questions in their hearts, they are unsettled in their hearts." She proposed that judiciary and other stakeholders create an environment where victims who are ready and willing have the chance to ask offending persons questions and share how the abuse has impacted their lives.

Another woman at the restorative justice dialogue at NLU Delhi articulated the need this way: "The offender may be punished, but sometimes we feel that we've failed. Maybe that punishment wasn't enough. Maybe I need to ask him questions."

Acknowledgement and apology

Restorative justice requires offending persons to admit abuse and acknowledge what they did was wrong, fulfilling an important victim need that remains unmet in adversarial proceedings. Offending persons can only participate in restorative justice processes if they do not deny their actions at the outset and

"At some point they are ready to face the offender because they have a lot of questions in their hearts... they are unsettled in their hearts."



⁹ See e.g., Restorative Justice, Victim Care and Advice Service, United Kingdom (2018), <http://victimcareandadvice.service.uk/restorative-justice/> (last visited Feb 22, 2018).

¹⁰ Antony Pemberton, Frans Winkel & Mark Groenhuijsen, *Evaluating Victims Experiences in Restorative Justice*, 6 British Journal of Community Justice (2008) 98-109 (better understanding the causes of crime can release victims from the burden of ruminating about 'what if' questions).

“Maybe that punishment wasn’t enough. Maybe I need to ask him questions.”

are open to work towards taking full responsibility for the harm caused before face-to-face meetings with victims.

Restorative justice processes give opportunities for offending persons to apologise for their actions. During trials, offending persons may enter a guilty plea or the court may convict them, but rarely do they genuinely admit guilt or apologise. In contrast, during restorative justice processes, as offending persons

prepare for and participate in dialogues, they must reflect on their actions, the impact, and how they might make amends. During the dialogue, they listen to the harm their actions caused, either directly or indirectly, and then have an opportunity to apologise. Research has shown that apologies influence whether forgiveness occurs.¹¹

Family members of victims and offending persons as well as impacted community members may be present, and depending on the format, play an active role in the process. This gives them opportunities to acknowledge and affirm the victim’s harm, which is crucial to the healing process for victims and to rebuilding broken relationships after abuse.¹²

Accountability

Offender accountability is an essential component of restorative justice. Accountability is based on the needs and sense of justice of the person harmed rather than imposing a blanket punishment on all offending persons. Offending persons actively participate in making amends for the harm they have caused. The process also provides offending persons the support necessary to address root problems that caused the harm in the first place. Community members support and monitor offending persons to ensure they follow through with commitments made in the redress agreement. Restorative justice processes intend to promote genuine understanding of the impact of the offence, ensure meaningful accountability and catalyse genuine behavioural change.

Accountability is based on the victims’ needs and sense of justice.

Repairing broken relationships with family

Restorative justice can help repair relationships within a family broken by sexual abuse. It can repair harm between family members and those who victims may see as accomplices in the offence because they did not believe them, blamed them, or knew about the abuse, but did nothing. Family conferencing and community circle models explore these relationship dynamics. Restorative justice provides a safe and structured environment for victims and offending persons to honestly express themselves to family

¹¹ Mark Umbreit & Marilyn Armour, *The Paradox of Forgiveness in Restorative Justice*, in Handbook of Forgiveness (E.L. Worthington 2005) (clear evidence shows that crime victims want apologies and apologies influence whether they choose to forgive the person who committed the crime).

¹² Clare McGlynn, Nicole Westmarland & Nikki Godden, ‘I Just Wanted Him to Hear Me’: Sexual Violence and the Possibilities of Restorative Justice, 39 Journal of Law and Society 213-40 (2012).

members, and for family members to express their own perspectives about the harm caused.

Adversarial justice proceedings often divide families and pit victims against unsupportive family members. Those who have been harmed are often physically separated from their families during criminal proceedings until they testify or sometimes longer. In contrast, restorative justice processes bring impacted family members together and addresses broken relationships that may be essential to a the sense of justice and healing of the person harmed.

Former Child Welfare Committee chairperson Vaidehi Subramani recalled an incest case where the daughter, who was sexually abused, was unwillingly separated from her family. She was shifted to a shelter home and prevented from seeing her mother, a painful situation that restorative justice may prevent. Ms. Vaidehi spoke about how, depending on the circumstances, restorative justice does not require separating the child from the family. “Restorative justice can be a way ahead,” she said.

Restitution and healing

As previously discussed, sexual abuse may create different needs for those who have been harmed and their families. Many needs go beyond monetary loss, such as safety, health (physical or mental) and educational needs. After the trial concludes, the criminal justice system often gives little support to those who have been harmed . Their well-being and development post-trial are peripheral matters.

Restorative justice recognizes that needs of those who have been harmed vary and cannot be met with a single, often monetary, compensation scheme. Restorative justice processes allow people who have been harmed to identify their needs and help determine how to meet them. Redress agreements are tailored to the needs of each case.¹³ Moreover, they are often reached with input from multiple stakeholders who are impacted by the crime: the victim, the offending person, their families, and the community.¹⁴

Services required for the healing of those who have been harmed, such as counselling and support

RESTORATIVE JUSTICE FOR MINOR CRIMES

Restorative justice is also helpful for minor offences because it can prevent them from escalating into more severe crimes. In the context of sexual abuse, this means addressing harassment (or eve-teasing) through dialogue with offenders. “If someone is eve-teasing, at that time, some action should be taken,” one woman suggested during a community discussion. She spoke about the tendency for families to instead ignore this behaviour or shift blame rather than address it. “They initially ignore all of this, and then as a result, it turns into a big menace.” Another woman agreed: “We tend to ignore these matters until the time that prosecution should happen . . . only if we take steps in the beginning, then such things won’t happen,” she said. “If this is not tackled properly, the problem [of sexual abuse] then extends and becomes bigger.” Regardless of the crime’s severity, all participants benefit when victims’ needs are central to the justice process and offenders are encouraged to self-reflect and reform.

¹³ See, e.g., Lawrence Sherman & Heather Strang, *Restorative Justice: The Evidence* 41 (2007).

¹⁴ *Id.*

services, may also be incorporated as part of the redress agreement. Those who have been harmed have needs relating to empowerment (through education or skills training, employment, land ownership, counselling, etc.) which can be reflected in the redress agreement. These services can be paid for by the offending person or through existing government schemes.

After restorative justice processes end, facilitators or social workers follow up with victims to ensure they are on a path toward healing. Because restorative justice is victim-centered, their well-being and post-abuse development are primary concerns. Restorative processes have therapeutic value and can help victims progress towards emotional healing.¹⁵ Redress agreements are not only truer to victim needs, they reflect the needs of everyone the abuse has impacted to achieve broader healing for offending persons, families, and communities.

Using restorative justice in sexual abuse cases: common concerns and safeguards

Community discussions revealed concerns about restorative justice processes, particularly whether they should be used for serious offences like rape and whether it would reduce recidivism.

Serious crime as a responsibility of the State

It is usually easier to gain community support for restorative justice programs that address “minor” crimes rather than serious offences like rape or sexual abuse.¹⁶ It is believed that addressing crime, especially serious crime, is a responsibility of the State in order to redress imbalances and to achieve crime prevention and crime reduction.¹⁷ There is a risk that engagement in informal processes may reflect a re-privatization of violence, and outcomes may be perceived as being too lenient to the community and to those who caused harm.¹⁸

However, rather than exonerate persons who offend, restorative justice holds them directly accountable to repair harms specific to victims and other parties impacted by the abuse.¹⁹ Further, restorative justice does not replace the criminal justice system. Rather, it gives victims another choice when pursuing justice that better meets their needs. It gives those truly affected by the crime to play a pivotal role in the way the harm is addressed.²⁰ It recognizes that “justice is bigger and more complex than ‘legal justice’ and includes a set of values in addition to those commonly associated with legal justice.”²¹

Restorative justice and serious offences

During community discussions, some women were hesitant about using restorative justice processes in rape cases because they believed the offence was too serious or the risk of re-offending was high. Some

¹⁵ Lawrence W. Sherman et al., *Effects of Face-to-Face Restorative Justice on Victims of Crime in Four Randomized, Controlled Trials*, 2 *Journal of Experimental Criminology* 407 (2006).

¹⁶ Howard Zehr & Ali Gohar, *The Little Book of Restorative Justice* 9 (2003).

¹⁷ See Kathleen Daly, *Aims of the Criminal Justice System*, in *Crime and Justice: A Guide to Criminology* (Marinella Marmo, Willem de Lint & Darren Palmer 4 ed. 2012).

¹⁸ Gitana Proietti-Scifoni & Kathleen Daly, *Gendered Violence and Restorative Justice: The Views of New Zealand Opinion Leaders*, 14 *Contemporary Justice Review* 272 (2011).

¹⁹ Janine Natalya Clark, *Youth Violence in South Africa: The Case for a Restorative Justice Response*, 15 *Contemporary Justice Review* 89 (2012).

²⁰ See Nils Christie, *Conflicts as Property*, 17 *The British Journal of Criminology* 1-15 (1977).

²¹ *Id.*

women were initially open to the idea of victim-offender dialogues. But the tone changed when they discussed the death sentences the Supreme Court had recently given the accused men in Jyoti Singh's gang-rape case.²² One woman in the ABHAS community group circle discussions complained how the juvenile accused in this case had only been sentenced to three years in a Special home. "He should be punished for that and age doesn't matter," she said.

"If someone raped anyone, even if it's my father or brother, he should be hanged immediately no matter what," another woman in the ABHAS community group circles said. As the conversation concluded, another woman in the circle said she would want to meet the offending person, "as long as it is not a case of rape or murder."

However, research indicates restorative justice processes can significantly benefit those impacted by severe offences.²³ Restorative justice meets needs that arise from harm that crime causes, needs that are arguably greatest for victims of serious trauma. While safeguards are necessary to implement restorative justice programs for severe crimes, victims and offending persons could greatly benefit from them.

Facilitators aim to create an environment where victims feel safe and can fully express themselves, and where offending persons do not feel attacked. As Dr. Savita Duomai of Shalom Foundation noted, "we want an environment that doesn't increase the anger and resentment, but an environment that causes restoration and healing of relationships."

JYOTI SINGH'S GANG RAPE

- South Delhi at 9:30 pm, December 2012
- 23-year-old Jyoti boarded a bus with her male friend
- Six men on board beat the male unconscious and raped Jyoti repeatedly and brutally before dumping the couple from the moving bus
- She suffered serious injuries to her abdomen, genitals and intestines from the rape and penetration with a rusty, iron rod and died from her injuries
- Four men and a youth were arrested and tried for the gangrape and murder; the youth was tried by the Juvenile Justice Board
- Public protests erupted across the country demanding strict laws against rape
- An amendment was introduced to rape laws in India
- The four adult accused were convicted of rape, murder and other charges and sentenced to the death penalty, upheld by the Supreme Court in May 2017
- The juvenile accused was also convicted of rape and murder and served the maximum three years in a reform facility
- After the juvenile was released in December 2015, and amidst public outrage at the minimal punishment, Parliament passed the new JJ Act with a provision to give discretion to transfer juveniles who commit heinous offences, like rape, to adult court

Preventing persons who offend from committing future harm

Concerns arose during community discussions about restorative justice's ability to prevent future harm if persons who previously had offended are released into the community. "But what if he did the same thing again and again? Then from my point of view, there should not be any reason to forgive him and he should be punished," one woman said in an FGD.

²² See *Mukesh and Anr. v State of NCT of Delhi and Ors*, Crl. Appeal 607-610/2017 (Supreme Court, May 5, 2017).

²³ Masahiro Suzuki & William R Wood, *Is Restorative Justice Conferencing Appropriate for Youth Offenders?*, *Criminology & Criminal Justice* 18 (2017).

A primary purpose of the criminal justice system is to reduce crime through deterrence: punishing those who have offended incapacitates them (in the case of death penalty and imprisonment) and arguably deters them and other potential offenders from committing offences in the future. When the risk of punishment is low, as is evident from how few cases are reported to police and low conviction rates, potential offenders are not deterred. Moreover, research has shown that there is no correlation between the threat of punishment and preventing future crime.²⁴

While lowering re-offending rates is not one of restorative justice's primary goals, that is often an outcome: some evidence suggests restorative justice processes reduce the frequency of re-offending.²⁵ This is not surprising because restorative justice brings abuse into the open and focuses on true accountability: if offending persons reflect upon the offence, acknowledge its wrongfulness, understand its impact and take responsibility for their actions, they are more likely to change their behaviour in the future.²⁶

Psychological safety for victims

Psychological and emotional safety, particularly for victims, is a common concern when assessing the feasibility of restorative justice, especially when there are direct victim-offender interactions. Generally, there are power dynamics inherent in all forms of sexual abuse. They may be re-enacted in face-to-face interactions and victims could experience re-traumatization.²⁷ To further compound matters, offending persons may manipulate the process or intimidate victims.²⁸ Offending persons could deflect guilt or trivialise the harm victims experienced, which could cause further trauma.

"I would want to know that the place is safe for me," said one woman in an FGD about meeting an offending person. "The psychological impact would be great. Mentally, a victim may not be prepared; they may be scared."

Facilitators and counsellors working with victims have comprehensive training in trauma-informed restorative justice processes.²⁹ They understand the impact of trauma, identify trauma triggers and are aware of the unique dynamics between traumatized victims, offending persons and families.³⁰

Potential power imbalances and the likelihood of re-victimization can be reduced through preparatory work by facilitators.³¹ Facilitators or other experts screen victims to ensure they are psychologically

²⁴ Mosumi Dutta & Zakir Hussain, *Determinants of Crime Rates: Crime Deterrence and Growth in Post-Liberalized India* (2009).

²⁵ See Lawrence W. Sherman et al., *Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review*, 31 *Journal of Quantitative Criminology* 1-24 (2014). See also Sujatha Baliga, Georgia Valentine & Sia Henry, *Restorative Community Conferencing A study of Community Works West's Restorative Justice Youth Diversion Program in Alameda County* (2017) (findings revealed that, of 102 young people who completed the RCC program, after 12 months only 18.4 percent of the RCC youth were subsequently adjudicated delinquent—compared to 32.1 percent of the control group).

²⁶ Goodman-Delahunty, *The NSW Pre-trial Diversion of Offenders (Child Sexual Assault) Program: An Evaluation of Treatment Outcomes* (2009) (observed recidivism rates were higher among offenders who did not accept full responsibility for their abusive behaviour).

²⁷ Jane Bolitho & Karen Freeman, *The Use and Effectiveness of Restorative Justice in Criminal Justice Systems following Child Sexual Abuse or Comparable Harms* (2016).

²⁸ Yvon Dandurand & Curt Griffiths, *Handbook on Restorative Justice Programmes* 70 (2006).

²⁹ See Melanie Randall & Lori Haskell, *Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping*, *Dalhousie Law Journal* (2013) (discussing the importance of trauma-informed restorative justice).

³⁰ Center for Substance Abuse Treatment, *Trauma-Informed Care in Behavioural Health Services* (2018) (describing trauma-informed care in behavioural health contexts).

³¹ Yvon Dandurand & Curt Griffiths, *Handbook on Restorative Justice Programmes* 70 (2006).

ready to engage in restorative justice processes.³² Victims are comprehensively prepared, counselled and fully informed about the process and its objectives before they agree to participate.³³ At the preparation stage, facilitators help prepare participants so surprises are minimised.³⁴ Facilitators discuss expectations with all parties and help them develop realistic expectations.³⁵ They form a list of issues to discuss and questions victims will ask before, so neither victims nor offenders are caught off-guard.³⁶

Facilitators also carefully screen offending persons to make sure they pose no physical or emotional danger to victims and have sincere motives for engaging in the process. Facilitators carefully balance the number of other participants and the dynamics they bring to the process.³⁷ They are also trained to understand when offending persons subtly manipulate and intimidate victims prior to, during and following restorative processes.³⁸

Alternatively, victims may participate in restorative processes with family and community members without the presence of offending persons. This gives victims space to tell their stories and receive social acknowledgement and validation without risking re-victimization by the offending persons.

Importantly, victims have a voice in choosing the restorative justice process format so they can feel physically and psychologically safe.³⁹ They can meet offending persons directly or indirectly. Facilitators or victims may decide it is inappropriate for them to meet at all.⁴⁰ They may also communicate with offenders through shuttle dialogues that the facilitator mediates.⁴¹ Finally, participants or facilitators can end the process at any time, if they feel the need.⁴²

Voluntariness and agency

Victims must genuinely choose to participate in restorative justice processes, free from outside pressure from family or society.⁴³ Unfortunately, family, societal or even internal pressure may compel victims to choose restorative justice processes or accept a redress agreement.⁴⁴ They may even feel forced to forgive.⁴⁵ Power imbalances caused by gender, age, caste and socioeconomic dynamics pose heightened risks in child sexual abuse cases. Power imbalances may pressure victims – particularly youth – to accept the offending person's apology, even if they believe it is insincere.⁴⁶

Facilitators are trained to screen victims to minimise these risks, ensure victims voluntarily participate

³² *Id.* at 59-60.

³³ *Id.* at 34.

³⁴ See RJC Practitioners Handbook, 19 (2016).

³⁵ *Id.*

³⁶ See, e.g., Marie Keenan, Sexual Trauma and Abuse: Restorative and Transformative Possibilities? 148 (2014).

³⁷ Yvon Dandurand & Curt Griffiths, Handbook on Restorative Justice Programmes 70 (2006).

³⁸ *Id.*

³⁹ See, e.g., Canadian Resource Centre for Victims of Crime, Restorative Justice in Canada: What Victims Should Know (2011)

⁴⁰ See, e.g., Yvon Dandurand & Curt Griffiths, Handbook on Restorative Justice Programmes 59-61 (2006).

⁴¹ Marie Keenan, Sexual Trauma and Abuse: Restorative and Transformative Possibilities? 152 (2014).

⁴² *Id.*

⁴³ See RJC Practitioners Handbook, 19 (2016).

⁴⁴ Gitana Proietti-Scifoni & Kathleen Daly, *Gendered Violence and Restorative Justice: The Views of New Zealand Opinion Leaders* 14 Contemporary Justice Review 272 (2011).

⁴⁵ Kathleen Daly, *Restorative Justice and Sexual Assault*, 46 The British Journal of Criminology 340 (2005).

⁴⁶ Tali Gal, Child Victims and Restorative Justice 77 (2011) (children may be put in a position where they are implicitly required to forgive, counterbalancing the benefits of the apology).

throughout the process.⁴⁷ Facilitators and counsellors are also trained to understand family or community pressures that may influence the victim's choice or suppress the victim's voice during dialogues. Facilitators can account for different power dynamics, so the process does not become a "room full of adults" who dominate the dialogue.⁴⁸

With proper safeguards in place, restorative justice processes offer victims significant benefits. When those with power or authority participate in a dialogue, answer victims' questions, listen to their stories and acknowledge harm, it "represent[s] an articulation of respect for the young victim – an attitude that is particularly cherished."⁴⁹

Offender participation

Offender motives

An expert in child sexual abuse at the restorative justice dialogue at NLU Delhi noted she was "excited" about the prospect of restorative justice, but recognized "inherent challenges in the implementation . . . in terms of getting abusers and victims to talk to each other." It raises concerns about whether offending persons would acknowledge wrongdoing, which is a fundamental requirement to participate in restorative justice processes. If offending persons do acknowledge wrongdoing, concerns arise regarding whether they do so for the right reasons: because they genuinely take responsibility for their wrongdoing.

Practically, offending persons may be more eager to participate in restorative justice processes if there is a high certainty of conviction and they want to avoid imprisonment. They may also want to participate to absolve themselves of guilt by acknowledging and apologising for harm they have caused. Regardless, impure motives should not exclude offending persons from participating in restorative justice processes because the processes could still benefit victims and offending persons: offending persons must acknowledge harm they have caused, listen to the impact of their actions, answer victims' questions, agree to a redress agreement and follow through with its terms.

In addition, during the preparation phase, trained facilitators can discern whether offending persons are, before the actual process, taking full responsibility for their actions without justifying, shifting blame or minimising harm.⁵⁰ They also determine whether the offending persons pose other safety risks to the victim or the community, for example, in cases of paedophiles or repeat offenders.⁵¹ If facilitators sense the risks are too great, victims can still move forward with restorative justice processes with surrogate offenders.⁵²

Risk for the offender: shaming

At the same time, offending persons may refuse to participate because they fear being publicly shamed during the process.⁵³ A woman from the restorative justice dialogue at NLU Delhi stated that offending

⁴⁷ See RJC Practitioners Handbook, (2016). Also the United Nations' Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters state that restorative justice processes should be used only with the free and voluntary consent of the victim and further, that the victim should be able to withdraw such consent at any time during the process.

⁴⁸ Tali Gal, Child Victims and Restorative Justice 154 (2011).

⁴⁹ *Id.* at 78.

⁵⁰ See Canadian Resource Centre for Victims of Crime, Restorative Justice in Canada: What Victims Should Know (2011) ("Does the perpetrator get the clear message, "What you did was solely your responsibility and it was not okay to do that"?").

⁵¹ See, e.g., Best Practice Guidance for Restorative Practice, 22 (2011). Restorative justice programs generally exclude repeat sexual offenders. E.g., Cedar Cottage, Project RESTORE.

⁵² See Chad C. Breckenridge, Violent Offenders and Their Victims: Restorative Justice through Mediation 96 (2018).

⁵³ David R. Karp et al., *Reluctant Participants in Restorative Justice? Youthful Offenders and their Parents*, 7 Contemporary Justice Review 201 (2004).

persons would be reluctant to talk about the offence in front of other people. “If they are made accountable in front of others, they may feel like the more people present, the more humiliated they will be,” she said. “What if this doesn’t break the silence or help them take responsibility? But what if it makes it worse for them and they repeat the harm again?”

India’s cultural context could discourage offending persons from acknowledging wrongdoing. India is a hierarchical, stratified, and shame-based society.⁵⁴ Shame-based societies are driven by the individual’s need to be perceived as morally superior.⁵⁵

However, facilitators are trained to ensure offenders are not shamed overtly and the process effectively discharges their shame.⁵⁶ They help participants diffuse anger they might have toward offenders so they are able to avoid repetitively blaming or shaming offenders.⁵⁷

Restorative justice processes are designed to create a safe space for all participants. The goal is to condemn the offending person’s actions but not the offender as a person.⁵⁸ During the process, facilitators can carefully monitor the process, and support persons can protect the offending person’s interests so dialogue does not break down and an environment exists to safely feel and express remorse.⁵⁹

Risks for the offender: confidentiality

When offending persons participate in restorative justice processes, it raises concerns whether information they share or even their mere participation will remain confidential. Stigma towards persons who have committed sexual offences could generate hostility within their community or expose them to public shaming. Also, if offending persons admit guilt within restorative justice processes, they risk their admissions being used against them in criminal proceedings.⁶⁰

Many restorative justice programs have clearly established confidentiality rules for participants. Most hold that anything said during the process is confidential. Both victims and offenders should agree to confidentiality protections before beginning restorative justice processes. If there are limits to the extent confidentiality protections apply, participants should be clearly informed about those limits.

⁵⁴ Leighton Hazlehurst, *Multiple Status Hierarchies in Northern India*, 2 Contributions to Indian Sociology (1968).

⁵⁵ See Berna Gercek Swing, *Honor and Shame in Honor and Dignity Cultures: How Can You Re-affirm Your Own Honor Once it is Tarnished?*, 2012. Also factors outside culture, such as the ability to feel empathic-concern and offender’s age and maturity level could influence offenders to admitting wrongdoing during restorative justice processes. Importantly, restorative justice processes allow good-standing to be re-conferred to offending persons since they strive to make right the wrongs. Redemption through self-effort is lauded.

⁵⁶ Suzanne Retzinger & Thomas Scheff, *Shame and Shaming in Restorative Justice*, 8 The Red Feather Journal of Postmodern Criminology (2000).

⁵⁷ *Id.*

⁵⁸ See June P. Tangney, Jeff Stuewig & Logaina Hafez, *Shame, Guilt, and Remorse: Implications for Offender Populations*, 22 Journal of Forensic Psychiatry & Psychology 706-23 (2011) (“Restorative Justice approaches eschew practices aimed at shaming offenders, ascribing bad behaviours to a bad defective self. Restorative Justice interventions are consistent with . . . psychologists’ self vs. behaviour distinction”).

⁵⁹ Braithwaite John, *Restorative Justice: Theories and Worries* 52-53 (2004).

⁶⁰ Marie Keenan, *Sexual Trauma and Abuse: Restorative and Transformative Possibilities?* 153 (2014).

Youth participants

Youth participants' emotional and cognitive maturity levels raise risks they may involuntarily participate in restorative justice processes out of perceived coercion or fear.⁶¹ Research from the New Zealand model shows that in practice professionals play a significant role in decision making, leading to the risk that youth's decisions regarding outcomes are not truly voluntary.⁶²

Young offenders are especially at risk to agree upon a decision without fully understanding the consequences.⁶³ Adults might influence youth to make certain statements during the restorative justice process to apologise or to enter into agreements out of obedience, fear or confusion. Facilitators must ensure the offending youth's participation is voluntary and informed.

Young offenders or young victims may also lack communication skills and emotional maturity to effectively articulate their thoughts and meaningfully participate in dialogues. When screening youth to participate in restorative justice processes, facilitators should apply stringent eligibility criteria to assess emotional and cognitive maturity, verbal skills and communication skills.⁶⁴

"As a child, you are already going through trauma," Sabita, an adult survivor said. "It's violent, it's threatening. . . [t]here's guilt, there's shame. And on top of that, you need to sit as a child and face this person and talk about this . . . if I look back at it, I wouldn't have wanted to do it at that stage."

Self-expression is essential in restorative justice, but youth often are unable to adequately express their emotions. As a result, victims may not fully express the harm caused and youth who have offended may not fully take responsibility. In addition, some young offenders may not have the emotional maturity necessary to empathize with victims.⁶⁵ They may lack capacities of personal insight, guilt and remorse that are imperative for restorative justice approaches to be effective.⁶⁶ Youth who have offended may react negatively, deny or mitigate responsibility, or deflect shame while apologising.⁶⁷

⁶¹ See Masahiro Suzuki & William R Wood, *Is Restorative Justice Conferencing Appropriate for Youth Offenders?*, *Criminology & Criminal Justice* 8 (2017).

⁶² Gabrielle Maxwell & Allison Morris, *Youth Justice in New Zealand: Restorative Justice in Practice?*, 62 *Journal of Social Issues* 253 (2006).

⁶³ Nessa Lynch, *Restorative Justice through a Children's Rights Lens*, 18 *The International Journal of Youth's Rights* 161-83 (2010).

⁶⁴ *Id.*

⁶⁵ Masahiro Suzuki & William R Wood, *Is Restorative Justice Conferencing Appropriate for Youth Offenders?*, *Criminology & Criminal Justice* 11 (2017).

⁶⁶ Nessa Lynch, *Restorative Justice through a Children's Rights Lens*, 18 *The International Journal of Youth's Rights* 174 (2010).

⁶⁷ Masahiro Suzuki & William R Wood, *Is Restorative Justice Conferencing Appropriate for Youth Offenders?*, *Criminology & Criminal Justice* 12-13 (2017).



Next Steps

Rather than recommend specific restorative justice practices and policy to implement, the study attempts to shift the perspective of justice towards a healing justice that meets victims' needs, repairs harm arising from the sexual abuse, and offers options that encourage and empower victims to disclose sexual abuse.

This final section creates a framework to discuss how restorative justice might be implemented in the Indian context. The goals are twofold:

- 1) Stakeholders identify restorative justice practices to implement within their areas of influence and concern;
- 2) Stakeholders come together and build consensus on how restorative justice processes should be incorporated in law and policy.

Discussion framework for next steps

A. Statutory gaps and roadblocks. Child protection laws have gaps that prevent restorative practices from being implemented.

Juvenile Justice (Care and Protection) Act, 2015. While Section 18 outcomes are restorative in nature, no provision explicitly permits restorative justice in offences committed by children. Adding provisions in the Act or Rules could permit restorative justice practices.

Indian Penal Code. Penalties upon criminal convictions are limited to death, imprisonment, fine and forfeiture. Alternative outcomes could meet victim needs and hold offenders accountable.

- *Victim-focused:* Trial outcomes could include measures to reduce shame and stigma, provide rehabilitation and restitution (financial or symbolic), and educate and empower victims.
- *Offender-focused:* Trial outcomes could include measures that encourage offenders to take responsibility, make amends for harm caused, and, if required, counselling and mental health care.

Protection of Children from Sexual Offence Act, 2012 and Rules. Broaden mandatory reporting provision so youth victims and their families have more options on how they report sexual abuse, i.e., they are not forced to report cases to police. More options would encourage reporting and allow children and their families to seek and receive help to recover from abuse.

Code of Criminal Procedure. Modify to explicitly include provisions for restorative justice practices (conferencing/sentencing circles) before sentencing so victims and their families have greater opportunities to confront the accused and voice in the sentencing process.

B. Opportunities to implement restorative justice practices without legislative reform

Interweave restorative justice practices into already existing community-based/participatory dispute resolution mechanisms. While these mechanisms are substantially different and have characteristics that might prevent fair outcomes, they could integrate restorative justice processes to reduce bias and discrimination and improve how they function to better protect victims and repair harm.

Mahila Panchayats and panchayats. Incorporate restorative justice practices in informal panchayats that exist throughout India.

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Rules. Section 10 (Conciliation) brings together the person harassed and the person who committed the harassment.

Protection of Women from Domestic Violence Act, 2005 and Rules. The Act contains provisions that are restorative in nature, including Section 14 and Rule 14 (counselling of aggrieved women and the offending person). Specifically, restorative justice practices could be used in the Crimes Against Women police cells and other mechanisms that provide counselling and reconciliation services for families.

Code of Criminal Procedure Code. Incorporating restorative justice processes in Compoundable cases (Section 320) and plea bargaining (Sections 265A-L) in appropriate cases.

C. Restorative justice processes that supplement criminal justice system

During imprisonment. Restorative justice processes can help prisoners understand the impact of sexual abuse. Surrogate victims meet convicted offenders to explain impact of abuse.

Reintegration into communities and families. Restorative justice programmes to reintegrate former prisoners and victims with their families.

- *Offender-focused*
 - Restorative justice processes assist and support undertrial prisoners and former prisoners to reintegrate into their families and communities
 - Circles of Support and Accountability (COSA). Rather than implementing sex offender registries that exclude and stigmatize offenders, COSA programmes are initiatives where community volunteers support and hold sex offenders accountable as they reintegrate into the community
- *Victim-focused*
 - Restorative justice processes assist victims who were staying in protective homes during criminal proceedings when they are restored and reintegrated into their families

D. Informal processes between victims and offenders

Adult survivors of child sexual abuse. Restorative justice processes can be used when adult survivors of child sexual abuse are ready to confront the person who committed the abuse.

Persons who have been sexually abused meet surrogate offenders. Persons who have been sexually abused can use restorative justice processes when meeting offenders unrelated to their sexual abuse so they can explain impact and ask questions.

E. Informal processes for victims, parents and offenders

Healing circles for those who have been harmed and their families. Persons who have been sexually abused use restorative justice processes with a support person and other people impacted by abuse, including non-offending family members.

These circles might be applicable in “elopement” cases where youth elope and parents file a police complaint for kidnapping and sexual abuse charges.

Group healing circles for victims. Unrelated victims of sexual abuse meet in restorative circles to heal from abuse.

Group healing circles for parents. Unrelated parents whose children have been sexually abused meet in restorative circles to heal from trauma caused by the abuse.

Offender support circles. Unrelated persons who have committed sexual abuse meet in restorative circles to understand reasons they abuse, address these reasons and find support systems that hold them accountable as they reform.

F. Informal processes within the community

Community healing circles. Circle process can be used at a community level to understand and address structural violence, including sexual abuse and domestic violence, within the community.

Violence and sexual harassment within schools and universities.

- *Youth (younger than 18 years-old).* Restorative justice programmes can be used in schools with youth younger than 18 years old in non-sexual offences, such as discipline concerns and bullying.
- *College campuses (at least 18 years-old).* Restorative justice programmes can be used to address sexual harassment on college campuses and between students, college professors and staff).

G. Raising awareness and building capacity

Public dialogue on sexual abuse. Programmes that raise awareness and educate the public on restorative justice principles, processes and practices

Train restorative justice facilitators. Formal or informal training programmes that equip individuals and organisations to conduct restorative justice processes in their areas of influence.

Best practices. Develop best practices to guide implementation and execution of formal and informal restorative justice programmes

Prevention and child safety programmes

- *Personal safety education for children.* Empower children within schools and other community institutions with knowledge and skills to understand, prevent or stop sexual abuse.
- *Awareness about indicators of child sexual abuse.* Train parents, teachers, medical practitioners and others in community-based institution to understand and identify indicators of child sexual abuse and equip them to prevent and stop sexual abuse.

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Survivor Stories

These are the stories of CSJ clients, child sexual abuse survivors to whom CSJ provided psycho-social and legal services. CSJ interviewed each individually. Their responses informed this study.

Bani

Bani's father began abusing her at age eight, telling her this is the way fathers love their daughters. He would touch her breasts, kiss her, undress her, show her porn, touch his genitals on hers and force her to perform oral sex. Bani wanted to tell her mother but was scared her father would take revenge. After two and half years of abuse, Bani gathered the courage to write a letter to her mother, stating her father did wrong things with her. Still, Bani could not bring herself to hand it over. Bani's sister found the letter stored and gave it to their mother.

Bharat

Bharat, 14, was living at his school hostel when a senior offered to accompany him home after exams. The senior took him to a forest instead and sexually abused him in a prayer room with a knife and a wooden stick. Bharat managed to escape on the pretext of drinking water. He then boarded a bus and reached home, where he disclosed the incident to his father. Since the accused was a child, Bharat's father did not want to pursue the case.

Bharti

One afternoon, Bharti, 11, woke up with her hands, legs and mouth tied. Her uncle had taken off his pants and laid on top of her. Bharti's younger brother sat on an adjacent cot, and her sister pled with their uncle to stop. He put his fingers inside Bharti and threatened to beat up the children if they told. Afterward, Bharti's sister untied her, and they waited for their aunt to come home. That evening, the girls told their aunt what happened, and she took them to the police station.

Bhoomi

After a fight with her step mother, Bhoomi decided to run away with her boyfriend. Her boyfriend asked her to wait at his friend's house till he arrived. During the night, while everyone was sleeping, the friend forced himself on Bhoomi and raped her. He threatened her to keep her quiet. Ridden with guilt and shame, Bhoomi told the police she had passed out while she was being raped. After many days struggling with her guilt and shame, Bhoomi testified in court about what had happened.

Eshan

Eshan lived and studied in a religious boarding school. One night while sleeping, one of the teachers came and abused him. The threatened him that he would be thrown out of school if he lodged a complaint. Eshan still went to the police, but they refused to register a complaint. Instead they called the teacher and tried to get them to informally settle the case. It was only after he was abused a second time that a case was lodged, after a local residents welfare association intervened. Because the school supports the accused with political and monetary influence, he continues to work and reside in the school, leaving other children vulnerable to abuse.

Fauzia

Fauzia was sexually abused for six years by her stepfather. He threatened to kill her brothers if she told anyone, so she kept quiet. He often became drunk and sometimes beat Fauzia and her mother. The abuse only came to light when Fauzia became pregnant and her mother questioned how.

Insha

Insha, 15, developed a friendship with a boy and talked to him only on his friend's phone. Sometimes, his friend would answer instead, and one day, he offered to take Insha to meet the other friend. He took Insha to his house, telling her to rest and wait for her friend to arrive. He fed her and drugged her, and Insha fell in and out of consciousness throughout the night. She woke up without her clothes on, bleeding and in a lot of pain. When Insha left his house, she thought about killing herself. Fortunately, she returned home and told her uncle everything that happened.

Juhi

Juhi, 14, was walking to retrieve milk when four men in an SUV abducted her from South Delhi. They took her to an isolated place and gang-raped her over a two-week period. At one point, they locked her in an empty store house with three corpses: a man, woman and child. After a few days in the shed, the men told Juhi they would take her home. Instead, they again raped her in the car, then hit her on the head, shot her and dumped her in a well. Amazingly, Juhi survived the impact and wounds. When she regained consciousness, she shouted for help and a passer-by called the police.

Jwala

Jwala, 15, was raped by her visiting uncle. The first time he raped her, Jwala had stayed home from school while her parents and brothers worked outside. The uncle threatened her not to tell anyone and again abused her a few days later. Jwala only disclosed her rape after her mother noticed her stomach swelling from pregnancy. Her parents lodged a complaint with the police against the uncle.

Lekha

One night, while ten-year-old Lekha was sleeping, her father forced himself on her. She woke up and screamed for help. Her mother woke up and slapped him, and in the morning she took Lekha to the police and reported the abuse. The father was arrested and the family lost the father's income. Since then Lekha testified in court, but the mother's support has been inconsistent because she is faced with the reality of not being able to provide for her children.

Laxmi

Laxmi, when 17, came to live with her father in Delhi to attend coaching classes for the medical entrance exam. One night when Laxmi had fallen weak with fever, her father stuffed a towel in her mouth and raped her. He threatened to stop paying for Laxmi and her sister's education if she told anyone, so she kept quiet. The abuse continued for three months until Laxmi ran away to her mother and told her about the abuse, but her mother refused to believe her and blamed Laxmi for hardships caused to the family. Meanwhile, her father filed a missing complaint, which brought her back to Delhi where she lived in a shelter home. Nearly two years after the abuse, her father was sentenced to life in prison and Laxmi received three lakh rupees compensation. In court Laxmi's mother threw ashes at her daughter, telling Laxmi she is as good as dead to her.

Lubna

Lubna, 12, was on her way to school with her girl friend when two boys convinced them to skip school and go with them. The girls thought they would hang out in Delhi, but the boys then threatened the girls and brought them to a hotel in Rajasthan, where Lubna was sexually assaulted. Her father filed a missing person report, and when she was found, Lubna told her mother, aunt and the police about the abuse.

Lucy

Lucy, eight, was playing with her cousin when her father asked her to come into his room. He then switched on the TV and began molesting her and removing her clothes. He pulled a blanket over them and digitally penetrated Lucy, telling her she looked like her mother. Lucy's mother then returned home and saw her husband and daughter under the blanket. Lucy was naked and crying. The father ran from the house, and Lucy's mother called the police.

Madhur

From age nine to eleven, Madhur's neighbour raped and sodomized her. The abuse traumatized Madhur so much that she couldn't speak when the police asked her about the abuse. The Section 164 statement (pre-trial sworn statement before a magistrate) had to rely on Madhur's mother's narration. Though Madhur's mother, a widow, supported her, many of her relatives blamed Madhur for the rape.

Naini

Naini, 19, worked as a domestic helper and stayed home alone for most of the day. The driver next door befriended her and began coming to the house. Slowly he began to force himself on her and told her that if she told anyone they would both go to prison. The abuse only came to light when she went into labour pain and was rushed to the hospital. A case was registered and she was shifted to a shelter home.

Navni

Navni, 18 and mentally challenged, was entering a washroom when a boy forced his way inside and locked the door. She tried shouting but he pressed his hand against her mouth, raped her and ran away. The accused, a youth, pled guilty and was sentenced to six months by the Juvenile Justice Board, which he completed. Navni received compensation and enrolled in a school for children with disabilities to continue her education.

Neeta

Neeta, 11, was retrieving her niece from school when a man on the street lured her. He promised Neeta Rs. 100 then took her to a room and started removing both their clothes. A lady in the neighbourhood saw through the window, screamed for help, and opened the door.

Neetika

Neetika, 14, was sexually abused twice by a neighbour who was a close family friend. A female friend helped him abuse her. First, he threatened to kill Neetika's parents if she told anyone. Then, he bragged publicly in the neighbourhood about his sexual acts with Neetika. He told her he will keep abusing her and asked her confidently how she could do anything to stop him. Both the accused were arrested. Neetika's parents, older sister and other relatives support her. Her parents iron clothes for income and depend on the older sister, who is a college graduate, for advice.

Neha

Neha, 14, left her family in Mizoram to work as a domestic help in South Delhi. One evening, she went to the market. The accused noticed Neha then dragged her to an empty room and brutally raped her. Neha managed to escape when he opened the door to throw away his cigarette. She hid in a juice shop until an acquaintance saw her and told her aunt what happened. During the proceedings of the case, Neha was required to go to court multiple times. Each court visit traumatized her. She didn't understand why the same questions were repeatedly asked and why her case is taking so long in court. To Neha, the facts of her case are obvious.

Niyati

Niyati, six, was taken by her stepfather to his workplace, where he raped her. When she started bleeding, he wiped her with her panties and threw them away. When she tried to shout for help, he slapped her. Niyati wore the same clothes back home and while bathing the next day, told her mother that she had pain in her vagina. Niyati's aunt reported the abuse by calling the DCW.

Poornima

After suffering stomach pain and seizures for three years and not having much relief from the treatment, Poornima, 16, visited a tantrik. The tantrik raped Poornima while her mother waited outside. When Poornima screamed, her mother tried to enter the room, but she was told the tantrik was driving out demons. Poornima disclosed the abuse to her mother, when she was asked to go back to him the next day. A week after the abuse, Poornima went into a severe epileptic attack and fell into a coma. For the next six months, Poornima battled

with her life and finally passed away in November 2015. The long delay in the trial has seen not just the death of the child but also the accused getting bail because of his old age (about 75). The accused lives nearby and often threatens the mother. The mother has also gone into huge debt to treat Poornima. She lost her job since she was at the hospital for six months and could not go to work.

Rashmi

Rashmi was 13 years old when her neighbour, who was a government official, entered her house and tried to rape her. Rashmi was able to escape from him when her mother knocked on the door and distracted the accused. The accused had managed to threaten the child even after he was arrested and taken into custody.

Rhea

Thirteen-year-old Rhea's father started abusing her when she was eight and used to sleep with her parents on the floor to stay cool in summers. He raped Rhea for two years, threatening to kill her and her mother if either of them told anyone. One day, Rhea fought him off and told her tuition teacher about the abuse.

Richa

Richa, five, was sexually abused by a teenage neighbour. Richa told her mother the next day, and she called the police. The accused's family harassed Richa's mother and tried to pressure their family into accepting money to drop the case.

Rimi

Thirteen-year-old Rimi went to a park to bicycle with her aunt. After a few laps, Rimi sat down to rest and her aunt took the bicycle for a ride. Then a neighbour boy watching gagged Rimi and dragged her into some woods, where he raped her. He threatened her not to tell anyone or he would kill her parents. In the morning, he released her. Once home, Rimi's father noticed her behaviour seemed off and questioned her persistently. Rimi then told her father about the abuse, and he reported to the police.

Roop

Roop 15, began being groomed by a much older man in the neighbourhood. He would give her money and buy her food. Slowly this turned into money for time spent with him. Then one day, he covered Roop's mouth with a handkerchief and caused her to pass out. Roop woke without her clothes and at first didn't tell anyone. One day Roop finally told an NGO worker, her tutor, the full story of the abuse. She said at first, she didn't tell anyone because she was scared and didn't wanted to create a commotion about it.

Rubina

One day when 16-year-old Rubina's father was sick in the hospital, her mother went to visit him, leaving Rubina home alone. Rubina heard a knock at the door and opened it for the youth who delivered gas cylinders. Then he forced himself inside and raped her. Since the rape, Rubina's father died from cancer, and the accused's family continually threatens Rubina and her mother. The case was heard in the Juvenile Justice Board and the case ended in an acquittal.

Ruby

Ruby, 14, left home after a fight with her mother and headed to her grandmother's house. On her way, a boy she recognized offered her a ride. She hesitated, but he persisted, so she accepted. But the boy then drove Ruby to an isolated house, where he raped her. Her parents filed a missing person case and found Ruby after three days of abuse.

Rukmini

Fourteen-year-old Rukmini's friend had recently married, so when her friend's father-in-law said her friend was calling her over, she didn't hesitate to visit. But when she arrived, only the father-in-law was home. He forced himself on Rukmini and raped her. He also recorded the act on video for blackmail, threatening to kill

her family if she told anyone. The abuse continued for eight months, until the man also threatened Rukmini's siblings. Rukmini's brother then complained to their mother, and Rukmini told her what happened.

Samar

Samar had been under the influence of substances and became estranged from his family. When he was 15, he was sodomised by a man who lived in the same neighbourhood and was also an addict. A week after he was sodomised, he noticed the accused taking away another child and followed them. He saw the accused sodomise and murder this child. Samar was put in a deaddiction centre and made great progress. He was able to testify in court and also reunite and live with his family.

Shrishti

From ages 14 to 16, Shrishti's father abused her. He also frequently beat Shrishti, her siblings, and her mother. So when Shrishti told her mother about the sexual abuse, though her mother confronted the father, the abuse continued until Shrishti reported to the police. After his arrest, Shrishti arranged for her younger siblings to live in an SOS village and continued her studies while living with her mother.

Suchi

Suchi, 15, was sexually abused by her father for nine months. He wouldn't let her sleep alone and beat her if she resisted his sexual advances. She eventually ran away and slept in a railway station, where a passer-by noticed her and called the police.

Tanmay

Tanmay, a nine-year-old boy, was sexually abused by his neighbour. He had gone to give a bowl back and the man invited him inside to watch TV, a luxury Tanmay's family did not have. The man digitally penetrated Tanmay and tried to force him to perform oral sex. When Tanmay's mother shouted for him, he ran out of the room and told her what happened. Tanmay's mother supported him even after enduring physical abuse by the accused's family.

Tanvi

Tanvi was sexually abused by her father, younger brother and a grandfather figure. At age 11, her father touched her breasts, tried to insert his penis into her mouth and raped her. For two years, Tanvi's younger brother touched her breasts and the man she considered her grandfather also raped her. Tanvi told her mother, but her mother did not believe her. Eventually Tanvi told a supportive social worker from a local organization. Tanvi's family refused to support her and tried to manipulate her to drop the cases. Her brother was acquitted from a children's court [the Juvenile Justice Board]. The cases against her uncle and father also ended in acquittal.

Taru

Taru, 14, was raped by a neighbour. He had called out to her as she passed by, and when she reached his house, pulled her inside and shut the door. With loud music and covered windows hiding them, he forced Taru to take off her clothes. When Taru screamed for help, he told her he would kill her family if she resisted. Taru walked home bleeding. She told her mother she had started her period, but told her sister the truth about the rape. Taru's sister told her mother, and her father filed an FIR.

Tulsi

Tulsi was 11 years old when she was raped by a man in the neighbourhood. Her parents had gone to their village leaving the children under the care of the elder brother. The brother was looking after their fruit stall when the incident took place.

Adult Survivors

Naira

Naira's first abuse began at age two by her grandfather, who would fondle her vagina during naps and stop telling stories she enjoyed unless she let him touch her. At first she would stop him, then she began enjoying it, without understanding sex or abuse. Throughout her childhood and even her first year in college, a driver also abused her, as well as several other relatives visiting during weddings. Naira realized she was sexually abused as a child for the first time at age 22 when she attended a conference by an NGO working on child sexual abuse. Even then, she didn't immediately trace the abuse back to her grandfather, because she still loved him. Yet she struggled with seeing every man as bad. She married a man who had been abused by female caretakers.

Sabita

Sabita was abused by her older brother, from age seven to ten. She remembers being uncomfortable around her brother, especially when he tried to touch her, but she suppressed the abuse through her teen years. Sabita couldn't reconcile her feelings of guilt and shame with the way her brother bought her gifts and built a warm relationship with her. At age 19, she realized what happened but didn't talk about it for another 10 years. She had episodes of depression and self-harm, and even an emotional breakdown that put her in a hospital and on medication. While teaching, Sabita recognized signs of abuse in a young girl and then disclosed her own abuse. She later realized in counselling that her poor mental health stemmed from her abuse.

Sejal

Sejal was six when her cousin, then 15, abused her. In the beginning, he established a warm, affectionate relationship with her, then escalated the touching to rape. She didn't begin understanding that she was abused until puberty, and didn't talk about the abuse for many years. She later learned that all three of her siblings were also abused by the same cousin. It took many years after hearing of the abuse for her parents to cut the cousin off from the family. Though Sejal wasn't sexually abused did not continue after age six, the abuse impacted many areas of her life for decades, from challenges in intimate relationships, low self-esteem and body image, a suicide attempt and anger.

Shreya

Shreya was abused as a three-year-old, and struggled through depression and suicide attempts while still a child. A maid once saw the abuse but blamed Shreya. She once told her grandmother about the abuse, but her grandmother told her it's just her uncle and it's okay. Shreya didn't talk about the abuse until she was married with a three-year-old daughter, when different issues came into perspective, like her insomnia, nightmares and problems connecting with her husband during sex. When she told other mothers about her abuse, trying to help them protect their children, they largely shamed her, and Shreya again became suicidal. Through yoga and therapy, Shreya has been regaining her sense of self and healing from her trauma.

Appendices

Appendix A: Circle Process Sessions with Women in ABHAS

Sessions	Topic of Discussion	Outcomes
Pre-Circle	Rapport building	Participants shared background and interest in participating in the circles
Pre- Circle	Rapport building	Participants discussed family situation, including violence within the family
Pre- Circle	Rapport building and consent form	Consent forms were explained and signed by the participants
Session 1	Values and guidelines	Participants decided values and guidelines to adhere to during all circle process sessions
Session 2	Violence	Participants discussed their understanding of physical, emotional and sexual violence
Session 3	Mapping of fears	Participants spoke about fear of violence within their family, community, from strangers
Session 4	Sexual abuse	Participants spoke generally about sexual abuse within their community, especially with children, and about abuse within their family
Session 5	Sexual abuse in family and neighbourhood	Participants spoke about stigma attached to abuse
Session 6	Sexual abuse and disclosure	Participants shared their personal experience with regards to abuse
Session 7	Disclosure and Criminal Justice System	Participant shared their distrust in the criminal justice system and especially the police. It was seen as the last resort when all the other sources were exhausted
Session 8	Casual interaction and recap	Participants spoke about their experience in the circle
Session 9	Disclosure and RJ introduction	Participants spoke about distrust in reporting, however, would approach police if the lives of their children were in danger
Session 10	Criminal Justice System	Participants narrated their personal experience with police and hesitancy to report cases involving family matters
Session 11	Criminal Justice System and RJ	Participants discussed punishment and possibility of meeting the offender

Appendix B: Focus Group Discussions

Number of FGDs	Organization	Groups	No. of Members
1	Khoj	Youth-females	6 participants
2	Nav Srishti	Women's group	9 participants
3	Empower Pragati	Youth-females	9 participants
4	Empower Pragati	Youth-males	9 participants
5	Srijanmat Manushi Sanstha (SMS)	Women's groups	10 participants
6	Nav Srishti	Adolescent group	8 participants
7	Nav Srishti	Women's group	9 participants
8	Empower Pragati	Youth-females	6 participants
9	Empower Pragati	Youth-males	11 participants

Appendix C: CSJ Clients and Parents Interviewed

No.	Age at incident	M/F	Interview	Stage of trial	Relationship to Accused	Offence type
1	17	F	Mother	Post-victim testimony	Local healer	Penetrative assault
2	14	F	Child	Pre-victim testimony	Neighbours	Sexual harassment
3	11	F	Child	Post-victim testimony	Neighbour	Attempt to sexual assault
4 a	15	F	Child	JJB case - acquittal	Neighbour	Penetrative assault
4 b	15	F	Mother	JJB case - acquittal	Neighbour	Penetrative assault
5 a	15	M	Child	Pre-victim testimony	Local drug dealer	Penetrative assault
5 b	15	M	Child	Pre-victim testimony	Local drug dealer	Penetrative assault
6	12	F	Mother	Post-victim testimony	Acquaintance	Penetrative assault
7	6	F	Mother	Post-victim testimony	Neighbour	Penetrative assault
8	16	F	Child	Pre-trial	Step father	Penetrative assault/ prolonged

9 a	8	F	Child	Ongoing victim testimony	Father	Digital penetration
9 b	8	F	Mother	Ongoing victim testimony	Father	Digital penetration
10	5	F	Mother & Father	Pre-victim testimony	Neighbour	Digital penetration
11	13	F	Child	Post-victim testimony	Neighbour	Penetrative assault
12 a	15	F	Child	Post-victim testimony	Maternal Uncle/incest	Penetrative assault/prolonged
12 b	15	F	Mother	Post-victim testimony	Maternal Uncle/incest	Penetrative assault/prolonged
13	14	F	Child	Defence evidence	Uncle (Adoptive father)	Digital penetration
14	17	F	Child	Judgment passed-Convicted	Father	Penetrative assault

Appendix D: Adult Survivor Interviews

No	Age at incident	M/F	Relationship to Accused	Offence type
1	2 at the time of first assault	F	Grandfather; Other family (uncles, cousins), driver, U.S. missionary	Sexual abuse
2	3 ½ at the time of first assault	F	Mother's brother, Father's sister's husband, Father's brother's son	Sexual abuse
3	7	F	Older brother	Sexual abuse
4	6 1/2	F	Older cousin	Sexual abuse

