RE COURSE FOR
SEXUAL VIOLENCE SURVIVORS
IN TIMES OF CRISIS

Recommendation to National and State Governments,
Civil Society Organizations & Philanthropy
November, 2020

2B, Jangpura B-Block,
Mathura Road, New Delhi: 110014
Tel: 011 - 43628209
Email id: info@jansahasindia.org
www.jansahasindia.org

Authors
Aarya Venugopal and Parvathy J

Inputs from
Amu Vinzuda, Kranti Khode, Amber Fatmi, Mukesh, Prabha, Raju

Special acknowledgement to Shailabh Kumar and Kavita Mangnani from HAQ: Centre for Child Rights for their invaluable contribution to this report.

Design & Layout
Sumit Singh & Yashoda Banduni
INTRODUCTION

COVID-19 has disrupted governance systems and marred economies across the globe. In the past few months, close to 21 million salaried Indians have lost their jobs between April and August, leading to record high rates of unemployment, loss of income and impoverishment. Further, ILO estimates that 400 million people working in the informal economy will be adversely affected and are at the risk of falling into poverty. It is fairly inevitable that economic recovery will be a long and painful one. While there are countless consequences to such a significant disruption in basic governance systems, one crucial aspect that has been neglected is sexual violence. In the long run, disasters, poverty and hunger are factors that fuel child, early and forced marriages, commercial sexual exploitation of children, and trafficking, making more women and children vulnerable to sexual violence.

In such crisis periods, we must assume and anticipate that the rate of sexual violence incidents in the country is bound to shoot up. However, contrary to this expected increase in cases, reporting of sexual assault cases dropped in numerous countries, particularly in the initial days of lockdown/mobility restrictions. In the Indian context, official NCRB data on sexual violence incidents after the onset of COVID-19 is not available in the public domain yet. However, according to the National Commission for Women (NCW) district-wise data, there was a decrease in sexual violence and harassment cases, particularly in districts classified as red zones. According to Delhi Police statistics, there was an 83.4% decrease in reporting of rape cases in the first few weeks of the lockdown.

In the current context of COVID-19 and accompanying mobility restrictions, it is natural to assume that women and children are much safer at home. So why contend for an urgent focus on this issue instead of letting a resource constrained country such as ours leverage its resources for other pressing issues? Let us look at a key fact to understand this better -

In 94% of all rape cases and 96% of POCSO cases, the perpetrators were known to the victims.
This statistic busts two widely prevalent myths in our country. One, that home is a safe haven for women and children, and two, the narrative of ‘stranger fear’- which imposes the belief that women are most at risk of being attacked by strangers. Official data demonstrates that women and children are at threat from - intimate partners, family members, relatives, neighbours, friends, caregivers in alternate care/residential care settings, or employers. Specifically, in the cases of minors, it is found that perpetrators often shared care relationships with the child.

Therefore, the risk of assault has only increased manifold with the current restrictions that curb the mobility of citizens. It is especially concerning in the context of women and children living in residential institutions such as shelter and juvenile justice homes. These are envisioned as spaces that will support those faced with difficult circumstances, particularly for women and children who often enter such institutions as a consequence of violence and abuse.

However, instead of providing them with long term care and rehabilitation, they are again subjected to violence within these institutions. Unfortunately, reporting on institutional sexual abuse is still low. Various reports highlight that even though laws have been established to extend protection and promote welfare of women and children, these institutions fail their mandates, and often become spaces of exploitation. In such a context, considering the poor state of the institutions, the immense power held by authority figures within institutions, and lack of transparency and proper monitoring, it is also not far-fetched to assume that these children are in high risk of violence and re-traumatization.

One example of the dire situation within residential institutions is the Kanpur shelter home case where 57 girls tested positive for COVID-19 out of 117 residents, and 7 out of whom were found to be pregnant. The suspicion of abuse and HIV infection highlights the negligent manner in which the girls are treated by the system. It was seen that due to mobility restrictions functioning of Child Welfare Committees (CWC) - the quasi-judicial body that is entrusted to conduct inquiries, monitor shelter homes and facilitate rehabilitation of children - was initially disrupted and then shifted online. Given the vulnerable situations in which a child enters the system, it is necessary to rethink this shift towards digital counselling, keeping in mind both safety and comfort of these children.

Imagine what this means in the context of ongoing mobility restrictions – we have women and children stuck in the ‘safe’ confines of their homes/communities/residential institutions with their abusers, with no recourse to seek help or timely justice.
Having dealt with the pandemic for over 7 months, it is imperative that we urgently work to allocate additional resources into governance systems and develop a comprehensive framework to address sexual violence cases to ensure that public institutions don’t fail its vulnerable citizens, particularly in a country with a grievous history of sexual violence against women and children (VAW&C).

In an advisory dated 9 October, the Women Safety Division of the Ministry of Home Affairs reminded all the State and UT administrations that they must mandatorily enforce all the rules and guidelines addressing sexual offences, especially the Standard Operating Procedure (SOP) for Investigation and Prosecution of Rape against Women, and further ensure that the police follows the same. The guideline reiterated that police must mandatorily register an FIR and conduct time-bound investigations in case information is received relating to sexual offences against women, and that any lapse in abiding by the guidelines is punishable.

The advisory also reminds the functionaries that all police investigations into sexual assault must be completed within two-months, consensual medical examination must be conducted in such cases and evidence must be collected using Sexual Assault Evidence Collection (SAEC) Kit issued by Bureau of Police Research and Development (BPR&D). However, this advisory merely reiterates provisions mandated by previous guidelines and fails to acknowledge the complexities of ground realities.

While a public health emergency of this scale is unprecedented, we need to identify and learn from the mistakes and mishappenings of the past few months to develop a comprehensive guideline that addresses all public systems and functionaries that respond to sexual violence cases and rectifies the existing flaws of the system while also ensuring better preparedness during future crises.

In order to improve the system, we need to unpack the injustice meted out to survivors and look closely at the functioning of the Criminal Justice System in the recent past.
Criminal Justice System and its Response

Evidence suggests that every crisis and post-crisis period is marked by redirecting of funds and blockade in provision of services that do not directly cater to addressing the crisis at hand. Unfortunately, this has been underway.

The judicial, police and public health services that are first responders to incidents of sexual violence have been over-burdened in the current situation and their resources were diverted to attend to COVID-19 related crisis. While we are beginning to see a return to normalcy due to fewer restrictions, the CJS response is also slowly improving - the police are resuming their investigative functions which were earlier limited due to lockdown related challenges, FIR registrations are increasing, and the judiciary is carrying out hearings online. However, we are still far from ensuring the most vulnerable are provided with access and the right support.
Police

In pre-COVID times, according to NCW data, one woman filed a complaint against policy apathy every two hours. A more disturbing narrative is that although we witnessed a four-fold increase in sexual violence cases in a span of five years, i.e. from close to 9000 POCSO cases in 2014 to over 47,000 in 2019, conviction rates continue to be low. It should be noted here that conviction rate for crimes against Dalit and Adivasi communities is lower than national averages for any offence, in a country where sexual violence cases out-numbers other crimes committed against these communities.

Thus, with sexual violence crimes on the rise (1 rape is reported every 15 minutes), especially against Dalit and Adivasi women, the fall of conviction rates is indicative of inherent prejudices within the system and shoddy police investigations that lead to lack of tangible evidence to convict perpetrators.

With the imposition of the COVID-19 lockdown, the entire police machinery was entrusted with the primary duty of enforcing the lockdown. Combine this with an understaffed and skewed gender ratio (7.28% of police force is women) in the police force, and it is reasonable to assume that this would have led to a de-prioritization of sexual violence cases. Stories from different parts of the country reveals a grim situation where police personnel have been using pandemic protocols to delay and discourage reporting, and deny due services to sexual violence survivors.
In the words of Mukesh, a case worker who assisted survivors during this period, “let alone supporting, they (police) are breaking the will of survivors”.

According to Jan Sahas case workers, police personnel often refused to register cases and instead misinformed survivors and their families that no reporting was taking place during the pandemic. Several families end up believing this to be the case as well, and unfortunately this delayed reporting will essentially work against survivors in the court.

Several field reports also mentioned that police personnel who are supposed to facilitate medical examination of survivors were putting the onus on the survivor and their families to arrange for transportation and equipment required for the check-up. On top of bearing the brunt of both the economic costs of a pandemic and systemic marginalization, the survivors belonging to marginalized communities are being forced to waive-off their right to file an MLC and in turn, justice.

The mobility restrictions and consequent lack of support from non-governmental organizations that otherwise used to respond to survivors could have led to serious underreporting of cases during this crisis period. Further, it is also possible that procedural delays will result in denial of justice to several survivors given that conviction in a sexual violence case is heavily dependent on the primary investigation and forensic medical exam.

When 15-year-old Pinki was kidnapped and her family attempted to file a case, the police resisted and asked the family to wait it out to see if their daughter might have merely run away for a few days. They insisted that the family must not interfere with important police time as they had additional responsibilities to enforce during the lockdown, and further ‘advised’ family members that if they don’t stay home, there was a risk of a case being filed against them for unnecessarily disobeying the lockdown. In this Kafkaesque vortex, it took Pinki’s family three visits to the police station just to file the FIR.
Sexual Violence Medical Care:

According to research, the most threatening results of the Ebola outbreak to the lives of women and girls was not the outbreak itself, but the shutdown/repurposing of healthcare services. Sexual violence care is time-sensitive without which it often results in unwanted pregnancies and other sexual and reproductive health issues (SRH) (e.g. access to prophylaxis treatment against HIV infections). Case workers who supported survivors in rural Madhya Pradesh mention in utter dismay the challenge of accompanying pregnant survivors to the hospital for abortions. In many cases, they had to wait for until the lockdown was lifted to help survivors get safe abortions and fortunately in these cases the survivors hadn’t crossed the legal termination limit of 24 weeks.

Another crucial aspect that has been severely impacted is mental health care. Mental health care provision was one of the weakest and neglected features of our public health system even before the pandemic hit. The mobility restrictions have further worsened mental health care access, especially for survivors of violence.

According to Kavita Mangnani, the restrictions of the past 6 months have created an insurmountable barrier between child survivors of violence residing in shelter homes and mental health care services. She remarked that the disruption in the healing process is reversing the progress children were showing in terms of their well-being.

In a situation such as this, where domestic
violence and conflicts were increasing, survivors often found themselves restricted within the four walls, unable to even reach out to their support systems including peers, friends or counsellors. Even the shift to telephone counseling- the only viable alternative- is proving to be ineffective due to lack of privacy within homes, especially in the case of child survivors of violence.

The centrality of One Stop Centres (OSCs) in providing comprehensive assistance to women and children affected by violence makes it another extremely important area of focus. Capacity of already under-resourced OSCs to provide assistance during this crisis period could prove to be a major challenge. Field reports show that although OSCs at some locations were open, survivors were unable to access these care centres either due to mobility restrictions or because they were fearful of contracting COVID-19 in hospitals. This is similar to what is observed in other parts of the world where the number of survivors going without healthcare support has increased. In other cases, according to Amu Vinzuda, Thematic Director of Sexual Violence against Children at Jan Sahas, “OSCs in some districts were closed or functioning in a limited manner as Out-Patient Departments. Some OSCs received instructions from district authorities that unless survivors are tested for COVID-19, they shouldn’t be allowed inside. This is extremely challenging because taking the tests and obtaining results are time-consuming, which has led to delay in providing support. In other cases, various OSCs have been repurposed to isolation wards in hospitals to deal with the overwhelming increase in COVID-19 cases.”
Judiciary

Delays in case proceedings affect survivors who had lodged cases prior and post COVID-19 lockdown.

Quite shockingly, even prior to COVID-19 disruptions, the pendency rate of all rape cases was 89.5% and specifically for POCSO cases the pendency rate was 88.8% (despite the legal mandate that POCSO cases have to be closed in one year). Moreover, the pendency rate of rape cases is much higher than other crimes which shrieks of the ever-widening gender justice gap. Uttar Pradesh, Maharashtra and West Bengal not just top the lists of states with the highest numbers in pending rape cases, but put together these account for almost half of all pending cases.

In September 2019, the Indian government, following directions of the Supreme Court, proposed to set up 1023 fast-track special courts (FTSC) across the country. However, the implementation of these directives is yet to gain momentum. As of August 2020, 597 FTSCs were set up across the country, the functionality of which is yet to be understood.

Another pertinent aspect that needs to be highlighted within the ambit of delayed legal proceedings is the delay in disbursal of the interim compensation for child victims. It is seen that provision of interim compensation, a sum which is a crucial aid that enables survivors to access rehabilitative care, is often not provided or is delayed for months altogether.

However, according to HAQ, the disbursal process in their intervention area has been expedited due to intervention of an officer right before the pandemic. This ensured
timely disbursal of the compensation even during the period of lockdown and continues to be so. Hence it is clear that such delay is completely avoidable, and highlights the scope for effective interventions in supporting survivors.

Another critical issue is that several state courts granted interim bail as a measure to decongest prisons to prevent the spread of infection. In the past few months, courts have been undertaking only urgent cases and bail hearings, and in several cases the accused and their lawyers are attempting to take advantage of this situation.

Moreover, while current efforts towards digitalisation of judicial processes (e-filing, video-conferencing, etc.) is an excellent tool to adequately tackle the pandemic, it will prove disadvantageous for women and children without providing for mechanisms to close the pre-existing digital gap. Complainants are currently expected to provide all information in writing and send it to the official court by email, and this digitalization process has been a deeply painful one for survivors, particularly those who are from marginalized communities and rural areas. Let’s take the case of Asma – she struggled during the bail hearing as she couldn’t make sense of the video conferencing system and was confused about how to conduct herself in front of a camera. She required an extra support system just to get through the hearing.

During a public health emergency, such prolonged court battles are deeply distressing for survivors, and there is an increasing risk of the accused laying

One reported case is that of Pratibha, a minor rape survivor from Chhatarpur district of Madhya Pradesh. When the survivor’s family received information that the accused had applied for bail in the Jabalpur High Court, her father panicked and called their case worker at Jan Sahas. There was no way they could make the overnight journey to Jabalpur without public transportation to file objection to the bail. Through liaising with high court lawyers at Jabalpur, the case worker managed to file for objection without the presence of the survivor, and fortunately the bail was rejected. However, for Pratibha who was still recovering from 25-30 blade slashes and cuts to her cheek and neck, and her family, this was a seriously traumatic moment to imagine her rapist walking free in their village during a countrywide lockdown.
pressure on survivors to compromise through constant harassment. Furthermore, in the absence of any form of witness protection mechanism, these procedural aspects can also pose severe threat to the lives of survivors and their families in cases where the perpetrator belongs to dominant caste communities. The current crises will undoubtedly lead to further delay in trials with a swelling case pendency rate, resulting in a higher number of survivors forced to drop-out of the legal system.
Recommendations

Even though a pandemic at this scale is unprecedented in recent times, it is well established that disasters worsen gender inequities and power hierarchies, and with response efforts focused on containing the outbreak, the mechanisms that respond to sexual violence have effectively broken down. Most importantly, we need to understand the long-lasting impact of such a massive crisis. Collective work towards remedying and course-correcting the gigantic systemic failures, in the next few months and probably years before life is restored to its ‘normalcy’, will decisively determine whether survivors will get justice. This demands innovative ideas to design and enable safe pathways/systems for them to report incidents of sexual violence, and further ensure the normal functioning of the criminal justice system that already exhibits a serious gender justice gap.

Any guidelines developed should consider the following:

**Mobilize women’s collectives and networks:** It is seen that the most effective means to address sexual violence against women and children is to involve women’s collectives and survivors themselves in developing and delivering the services. NGOs have been working closely to empower survivors and their family members to enable them in becoming survivor leaders and barefoot lawyers (paralegal) in their communities. It is critical to also leverage community-based models such as barefoot counselors (mental health caregivers), groups such as whisper and safety circles run by community-based child protection volunteers (Aangan Trust), ‘Balika Panchayats’
(village councils for girls formed by CSOs) – to identify and help report cases, provide emergency relief support such as information on next steps, offer psychological first aid, etc.

**Creation and mobilization of local networks:** It is critical to explore alternate referral pathways in close collaboration between community gatekeepers such as Panchayats, health workers such as ASHA/Anganwadi workers, relevant government authorities, CSOs, etc. The key is to leverage these existing resources not just to respond ex post facto, but enable them to change community norms around VAW&C. According to WHO guidelines, health workers specifically need to be trained to identify and offer care to victims. Other public spaces often accessible to women like pharmacies or grocery shops would be important to use as spaces to encourage reporting, considering the negative impact social distancing measures have on ability to officially report cases.

**Use of Technology:** Given the current turn to online education, it must be ensured that sessions about consent and abuse are provided to children via online classes as a violence prevention strategy. Further, equip frontline workers with technology-based materials that can be used to help women and children gain access to crucial information. This is also true in the digitalization of legal processes, and in these cases, steps must be taken to ensure access and comfort of survivors while implementing these changes. However, most response strategies that are heavily dependent on technology are unlikely to be effective given the gender digital divide. Hence, it needs to be understood that although technology might be a tool for communication and advocacy purposes for prevention, it cannot replace the actual response systems.

**Strict and increased monitoring:** The functioning of relevant authorities, such as CWC and DCPU services, must be considered essential and should not be disrupted or suspended. They must continue to operate like earlier, support children in need, and actively monitor the homes while following safety protocols. Further, it should be ensured that the use of digital medium for counselling and interactions with children do not replace the face-to-face sittings and must take into account the comfort of the children. The CWC, DCPUs and Women and Child Departments must strengthen monitoring mechanisms and increase surveillance, and scrutinize specific aspects such as the availability and access to working phones, large posters in local language with child and women helpline numbers displayed in various locations within the home, interact directly with residents without the presence of institutional authority, etc. The key to focus at this point is that such services should be considered paramount and should only be suspended in extreme cases of emergency - this pandemic should not
be treated as one.

**Implementation of POSH Act as non-negotiable:** Another aspect that needs immediate attention is strengthening of labour laws and promotion of decent work conditions to prevent sexual violence at workplace. Employers must allocate resources to ensure implementation of POSH Act across their various sites of operations- offices, work sites, factories etc. For private companies this would mandatorily involve taking active measures to bring all workers in its value chain, regardless of their position and nature of contract, into the ambit of the legislation, setting up internal complaints committees and advocating for setting up of Local committees where required, supporting employees facing violence and providing requisite information and generating awareness among all stakeholders involved in collaboration with CSOs or NGOs, if required.

**A public health crisis:** Consider sexual violence as a **public health issue** and design interventions from this vantage point. This would essentially mean that we acknowledge it is a significant social and health problem that affects a majority of citizens. At a practical level, such an approach would involve collaborative action between sectors -education, health, law & order, judiciary, NGOs - to work on both prevention and provision of care to survivors of violence. The **Dilaasa model** initiated by CEHAT in hospitals of Maharashtra is a scalable intervention that has proved the effectiveness of a public health approach to tackle the issue of sexual violence in a low-income country setting. This recommendation would hold value if and when there is an increase in public health allocation, without which such a move would be nothing but a symbolic gesture.

**Immediate constitution of a high-level independent national commission:** An in-depth inquiry into the functioning of the criminal justice systems, during COVID-19 lockdown and after, must be immediately carried out to provide precise recommendations on the way forward.

- Must be formed in the next 3 months. An interim report with its findings and recommendations for actionable steps should be provided in 6 months and a detailed report within 1 year.
- Must be representative and include survivor leaders, civil society activists, lawyers and judges, police, etc. It should be ensured that members belonging to different marginalized caste and minority communities are part of the committee.
• The commission should further put forth its recommendations for the formulation of a national policy and standard operating procedures for all service providers that respond to cases of sexual violence.
  
  o The detailed guidelines should be informed of the shortcomings of the current system and provide immediate measures to tackle them as we move towards a “new normal”.
  
  o Further, the commission should also formulate comprehensive guidelines on how to respond to sexual violence during crisis periods, to prioritize prevention of sexual violence and protection of survivors in case of future national/state disaster or emergency situations.