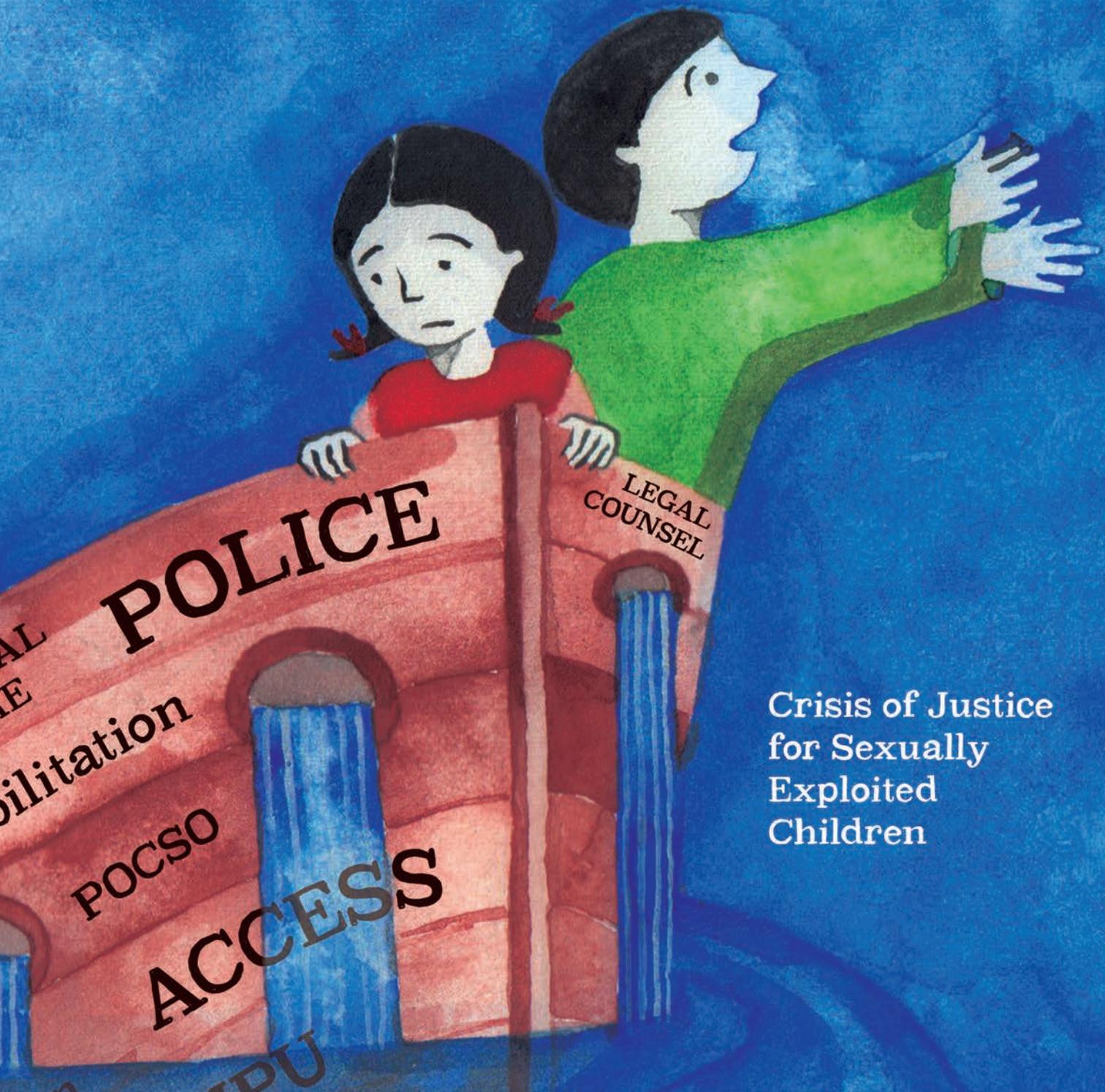


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Crisis of Justice
for Sexually
Exploited
Children

Executive Summary

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

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

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

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

India has introduced comprehensive legislation on sexual violence against children, namely the Protection of Children from Sexual Offences Act

(hereinafter referred to as “POCSO”) in 2014. This is in addition to existing laws on sexual violence. Moreover, Standard Operating Procedures have been developed by the State to respond to instances of sexual violence against children.

Despite these advances, child victims of sexual exploitation continue to struggle to access justice for the crimes against them. Few sexually exploited children enter the criminal justice system, and fewer still, participate in criminal proceedings until their conclusion. Indeed, it is rare for sexually exploited children to receive any legal remedy at all.

As the only global network dedicated to protecting children from all forms of sexual exploitation, ECPAT International conceptualized the study to understand the experience of sexually exploited children in the criminal justice system and to identify the special challenges they face when seeking access to justice and remedies. The study was conducted by a team of organisations from across India, namely MPISSR (Madhya Pradesh Institute of Social Research, Ujjain, Madhya Pradesh), Vikas Samvad (Bhopal, Madhya Pradesh), Hifazat (Khajuraho, Madhya Pradesh, Adhar (Khajuraho, Madhya Pradesh), Sanlaap (West Bengal), EQUATIONS (Equitable Tourism Options, Bengaluru, Karnataka), and Alternative Law Forum (Bengaluru Karnataka)

Methodology

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

A key priority of the Study was to listen to the voices of SEC survivors¹ and learn from their experiences in the justice system. The research team conducted more than twenty access-to-justice interviews

¹ For purposes of this paper, “survivors” refers to individuals who experienced commercial sexual exploitation when they were under the age of 18.



with young people, aged 7 to 18, all of whom had suffered sexual exploitation and were contemplating, or participating in, criminal actions against their exploiters. **The research team is grateful to the courage of these young people and proud to share their views in this report.**

The research team also interviewed fourteen criminal justice and social service professionals who work with SEC survivors in criminal cases, including police, prosecutors, judges and civil society actors. In total, ECPAT conducted fifty four interviews with survivors and individuals on the front lines of the effort to provide sexually exploited children with access to justice and remedies in India. Desk research was conducted into relevant international and national laws to provide background and context.

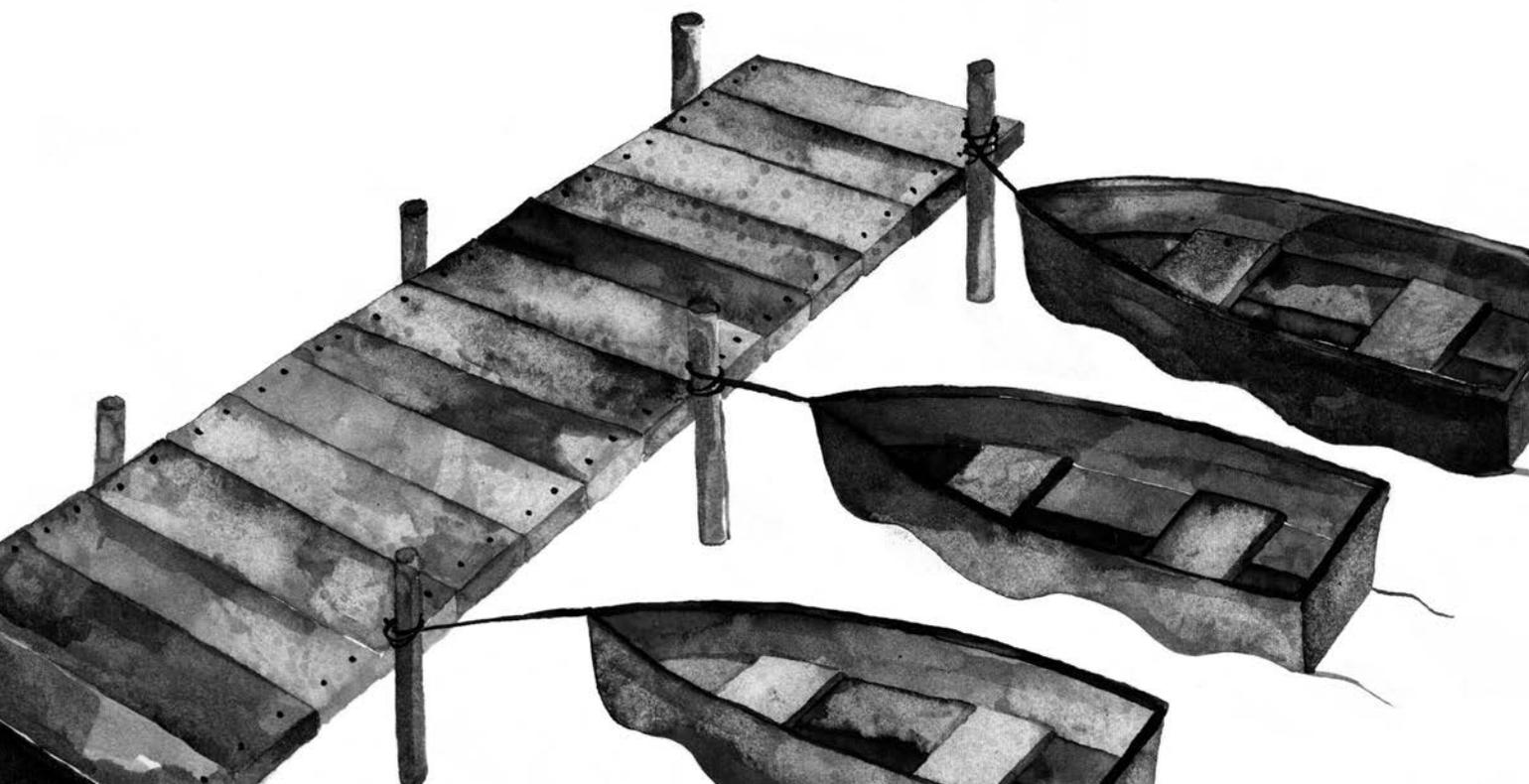
Data from the field and desk research was collated and reviewed for common themes. In this way, the Study was able to identify unique access-to-justice barriers that sexually exploited children continue to face in India and around the world.

Research Limitations

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

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

Finally, although the Study was able to draw on accounts from a large number of key informants in India, the informants are a non-random sample



of SEC survivors and professionals, and the Study's findings should not be seen as representative of the larger population. Instead, they should be considered useful points of entry into policy recommendations.

Findings

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

A key finding of the Study is that where children were provided information about the justice system and made to feel as participants in the process, they retained enthusiasm about trial and bringing the perpetrators to justice. Where children were not informed of the status of their case, and where their welfare was treated as only incidental to the justice process, children quickly became alienated from the entire process, and lost interest in seeking justice for themselves.

Cross-Cutting Themes

Certain cross-cutting themes emerged from the Study, which are at the root of the problems that sexually exploited children experience in today's justice systems. All reflect the States' failure to institutionalize the four core principles of child-friendly justice: (1) to treat all child victims with dignity and compassion; (2) to protect them from discrimination; (3) to give primary consideration to



their best interests during criminal cases; and (4) to enable them to participate in cases to the full extent that their age, intellectual maturity and evolving capacity allows.²

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

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

In India, relevant laws either fail to mention the "best interests" duty or provide little guidance about how and when to make a determination in a SEC case. Child victim-witnesses are not provided a

² Art. III, ECOSOC 2005/20.

lawyer, guardian ad litem, or other dedicated support person who can advocate for their interests during proceedings. As a result, inadequate attention is paid to the special needs of children in SEC cases, exposing them to unnecessary hardships at all stages of the proceedings and making it more difficult for them to access justice through the criminal process.

Few Opportunities for Meaningful Participation

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

If a SEC survivor chooses to become involved in the criminal system, Indian law authorizes courts to appoint a support person to keep the child engaged

in the proceedings. However, an appointment is not mandatory, and in many cases, no support person is appointed. As a result, most of the survivors interviewed for the Study were very much in the dark about their cases, having had no news for months or even years, and feeling the pain of unexplained delays acutely.

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

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

Child-Dependent, Rather Than Child-Supportive Prosecutions

Adding to the hardship of participating in SEC cases is the fact that most prosecutions are child-dependent, rather than child-supportive. In India, as elsewhere,



SEC prosecutions rely almost entirely on the child's testimony, with little corroborating physical evidence or witness testimony. For example, forensic medical examinations are often conducted much after the last incident of sexual abuse, thereby reducing the chances of obtaining corroborating physical evidence. Moreover, the absence of effective witness protection measures means that once repatriated to their families, children often face threats from the perpetrator, and as a result, turn hostile to the prosecution.

The Myth of the "Willing" Victim

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

Discrimination Against the Most Vulnerable Children

Children from vulnerable groups are particularly vulnerable to sexual exploitation. In India, children from Dalit and Adivasi communities are often particularly vulnerable to sexual exploitation. For example, several of the children interviewed in Madhya Pradesh are from the Banchhada community, which is a Scheduled Tribe community. Children from the Banchhada community are not only vulnerable to sexual exploitation, but are also at the risk of secondary victimization by the police and

other stakeholders. These barriers prevent them from pursuing criminal cases against their exploiters and securing the services they need to recover and rebuild their lives.

Unique Barriers at Each Stage of the Criminal Justice Process

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

Barriers to Entering the Justice System

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

Barriers to Securing Justice Once in the System

- **Lack of information of justice process:** Children are rarely informed of their rights in the justice process, such as the right to legal aid and to compensation.

These rights are essential to the effective participation of a child in the justice process.

- Pressure from families to turn hostile during prosecution- Even if children file complaints, pressure from families to turn hostile continues during prosecution as well.
- Absence of effective witness protection measures- Children often face threats from the accused and his associates during prosecution, and the lack of effective witness protection measures leaves children who choose to prosecute vulnerable to reprisal
- Absence of effective rehabilitation schemes for children- the justice process is almost entirely prosecution-driven, and parallel processes for the recovery and rehabilitation of the child are often inadequate.

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

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



This research is part of our work on 'Reducing Violence Against Children, on sexual exploitation of children, done in collaboration with Adhar Khajuraho, Caritas-Goa, Centre for Responsible Tourism, Children's Rights in Goa, EQUATIONS, Hifazat Coalition for Child Protection, M.P Institute of Social Science Research and Vikas Samvad Samiti. For this study we also collaborated with Alternative Law Forum and Sanlaap. This work has been supported by ECPAT International and ECPAT Nederland.

Copies of the full report are available online at www.altlawforum.org / www.equitabletourism.org / www.mpissr.org / www.sanlaapindia.org / www.vikassamvad.org / www.mediaforrights.org.

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

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