

# REHABILITATION & A FAILING JUDICIAL SYSTEM



According to the [data](#) released in December 2019 by India's National Crimes Record Bureau (NCRB), there were 32,608 cases of child sexual offenses in the country registered in 2017. There was about a 22% increase observed in 2018, with 39,827 cases of child sexual offenses. All these cases were reported under the Protection of Children from Sexual Offences (POCSO) Act.

The year 2012 saw the enactment of the POCSO Act (POCSOA), the specific legislation to penalize sexual offenses and exploitation of children in India. Prior to 2012, there was no specific legislation to deal with cases of sexual offenses against children. Such cases were recorded and tried as per the relevant provisions of the penal statute of the country i.e. the Indian Penal Code, 1862. POCSOA redresses the sexual offenses committed or attempted against children. It also safeguards the interest of the child by incorporating child-friendly procedures throughout the process of the criminal justice system.

Criminal laws ensure that victims of crime receive justice and the criminals are penalized for their actions. Often, penal statutes have stringent provisions for crimes committed against children. The State and its government are expected to make special provisions to protect the rights of the child victims, considering their special status. This was embodied in the Universal Declaration of Human Rights-1948, where the United Nations has proclaimed that childhood is entitled to special care and assistance. This was also recalled in the UN Convention on the Rights of the Child 1989, which was ratified by India in 1992. In India, Article 15(3) of the Constitution also allows the State to make special provisions for children.

The criminal justice system in India is very complex, and prosecution is often a long-drawn process. To ensure speedy trials of cases of child sexual abuse, the POCSOA mandates a Court of Session to be designated as a Special Court to try offenses under the Act<sup>1</sup>. In furtherance of the child-friendly system of prosecution, these Special Courts are required to complete the trial within a period of one year, as far as possible.<sup>2</sup> The purpose of creating such special provisions for children in the law is to ensure that the child is not re-traumatized by recalling the details of the incident and instead can focus on processing the traumatic incident and moving forward in one's life. If such provisions are not implemented on the ground, the end-goal of the child's rehabilitation is jeopardized. In this document, we attempt to highlight one such case where the delay in prosecution adversely affected the child's rehabilitation. It also documents the challenges and difficulties the child faced in other aspects of her life post the traumatic incident such as adjusting to life in an institution, managing the strain in her relationship with her family and facing difficulty in school among others. We also hope that the concerns documented in the case would bring forward the issues and challenges that caseworkers and counselors encounter while working with children and help them assess their interventions.

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<sup>1</sup> Section 28 of the POCSO Act

<sup>2</sup> Section 35(2) of the POCSO Act

# BACKGROUND:

In July 2014, Pinky\* was placed at Pehel\* (Prerana's Children's Home for Girls) by the Orders of the Child Welfare Committee (CWC), Raigad, Maharashtra. The child was a victim of sexual abuse and was declared to be a child in need of care and protection by the CWC. Pehel, run by Prerana is registered under the Juvenile Justice (Care and Protection of Children) Act, 2015 as a Children's Home.

Under the Juvenile Justice system, a Children's Home is established to provide a nurturing space for children in need of care and protection for their care, treatment, education, training, development, and rehabilitation.

Pinky was sexually assaulted by three men who lived in her community and were known to her. There were three different instances of sexual assault on her within a span of a week. While working with the child towards her rehabilitation, the social workers at Pehel learned about Pinky's childhood. Pinky's parents had separated when Pinky was three years old. Her mother moved with her two brothers to a relative's house in Mumbai, and Pinky had no information on their whereabouts. She was raised by her father and her paternal grandfather.

During her stay at Pehel, the child was regularly presented before the CWC and periodic updates on her progress were also submitted to the CWC. At Pehel, Pinky was in contact with her father telephonically. Her father wanted her to continue her stay at Pehel, as he feared that Pinky would be at risk in their neighborhood. Considering the threat to Pinky and her safety, the CWC did not restore the child to her family. She continued to live at Pehel as the Committee also found her stay at Pehel conducive for her protection, growth, and development.

During her stay at Pehel, Pinky was encouraged to resume her education and was enrolled in class seven. She began attending regular school from September 2014.

The year 2015 proved tough for Pinky, as she lost her parents while she was still staying at Pehel. She also lost her grandmother on the same day that her mother succumbed to a head injury. Pinky's father was also diagnosed with chronic tuberculosis and was hospitalized and he passed away soon thereafter. No one from Pinky's paternal or maternal family was willing to take her custody and look after her well-being. From interactions, the social workers gathered that her aunts and uncles believed that Pinky had 'provoked' the sexual assault. The social workers' attempts to make the family understand that Pinky was the one who was wronged did not bear fruits. After her parents' demise, her family members did not reach out to the social workers to inquire about Pinky's well-being.

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\*Disclaimer: The name of the child and any other information that could disclose the identity of the child have been changed.

Due to Pinky's history of trauma stemming from the sexual assault, separation from her family, and the fear of abandonment, she found it difficult to adjust to Pehel. It was observed that she would frequently have fluctuations in her mood and have serious bouts of anxiety. She was referred to the in-house counselor, who provided trauma-informed counseling. The counselor attempted to stabilize Pinky and assist her in processing the distress associated with her traumatic past.

**Violence and trauma significantly impact the psychological functioning of an individual. According to the Diagnostic Statistical Manual – 5 (DSM - 5), developed by the American Psychiatric Association, exposure to a traumatic event may lead to changes in the individual's behavior and disrupt their daily functioning. The individual may experience recurrent, intrusive, distressing memories associated with the traumatic event, have negative alterations in mood and reactivity among others.** Along the same lines, Pinky also began to experience difficulties in coping with the demands of her schooling. It was noted that Pinky found it difficult to concentrate on her school, was emotionally reactive towards others and quickly startled by any stimulus in her environment. Due to the child's history of trauma, it appeared that she had not learned how to establish appropriate boundaries in non-sexual interactions and interpersonal relationships.

During her time at Pehel, Pinky shared her apprehension regarding her family with Prerana's social workers. She could not appreciate and understand her father's desire to keep her at Pehel. She felt anxious about being separated from her family and feared that they would never reunite. There were instances where the child sought physical touch/contact which may not have been appropriate or comfortable for the other person. The team at Pehel assisted Pinky to understand the concepts of boundaries and safety. The team encouraged her to develop healthier interpersonal relations. Through the effort and support of the team, Pinky began to move away from her past and move towards a positive future.

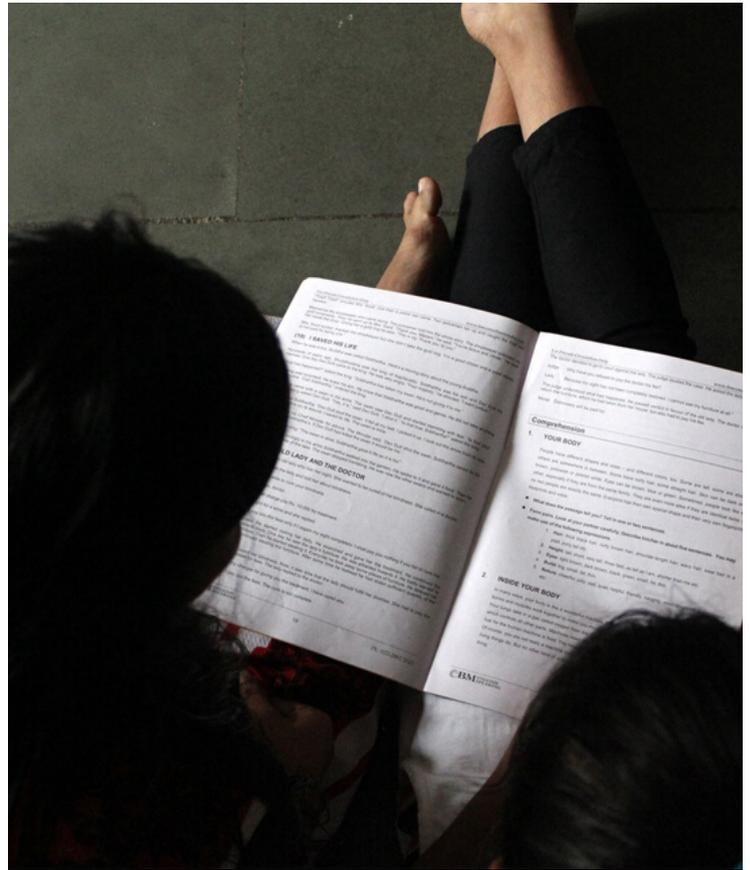
In March 2018 Pinky cleared her SSC examinations. Apart from that, she pursued an MS-CIT course. Although she could not complete it, she did manage to learn basic computer operating skills. During her stay at Pehel, Pinky was interested in the in-house vocational courses and learned how to perform magic and make jewelry. Under Maharashtra State's scheme Manodhairya (a scheme to financially assist the victims of sexual offenses and acid attacks), Pinky got a compensation of INR 3,00,000/-. She also obtained compensation of 1,80,000/- under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. A bank account was created for Pinky in her name, and the money received from both these sources was deposited in the same.

**The Juvenile Justice (Care and Protection of Children) Act, 2015 mandates the preparation of an Individual Care Plan (ICP) to structure the child's rehabilitation. The Plan should be prepared keeping in mind the child's interests and should be made with his/her active participation. At Pehel, the social workers regularly have meetings where the Individual Care Plan is discussed, and regularly reviewed to suit the child's needs.**

In these meetings, Pinky had expressed the desire to pursue a career in the hospitality sector. As social workers who implement the ICP of a child for her rehabilitation, it is important that the child is linked with opportunities that are in line with her interests.

Thus, after Pinky completed her SSC examinations, Prerana's social workers approached a hospitality business that runs a chain of hotels in a district 200 kilometers away from Raigad to explore the possibility of Pinky joining their Learning, Innovation & Forward Education (LIFE) program. The hotel's LIFE program incorporates grooming the individual, providing on the job, cross-departmental training and also providing them free education, making them employable and economically independent.

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Pinky gave an interview for the LIFE program and was selected in April 2019. The LIFE program coordinators were also willing to sponsor her education for HSC and the subsequent graduation degree. This would give her the opportunity to obtain a degree in Bachelor of Tourism Studies, affiliated to Indira Gandhi National Open University (IGNOU). Pinky also had the opportunity of being a full-time employee after completion of her graduation, subject to her performance. She would also be remunerated for the same as per the salary scale applicable at the time. On completion of her graduation degree, she would be entitled to apply for the Management Training programs, based on merit and the internal selection criterion. Pinky seemed to be responding well to the plans charted out in her Individual Care Plan. She successfully cleared her SSC examination and began to show progress in regulating her emotions. Her subsequent association with the LIFE program proved to be the first step towards achieving her goal of making a career in the hospitality industry.

During her stay at Pehel from July 2014 to April 2019, the social workers worked towards the child's rehabilitation and assisted her in overcoming her trauma. The social workers tried to follow-up on the status of all the three cases in the court. In two of the three cases, the evidence was only partly heard by the courts. In the third case, the court had not started to hear evidence yet.

# AT PRESENT:

It had been about 10 weeks since Pinky had started the LIFE program, on her way to accomplishing a goal she was so passionate about when the social workers received a call. The call was from the police station where one of her cases was registered. The police officer informed the social workers that her case has come up for hearing in the court, in the Raigad district and Pinky's presence was essential. A couple of days later, the social workers receive a call from the second police station, informing them about another hearing in a different court in the same district. This hearing is against a different accused, and Pinky's presence is required for the same as well.

On being summoned by the court, Pinky had to come back from her LIFE training program to Raigad on the required date for the hearing. To appear in the court, she covered a journey of 231 kilometers (7-8 hours one way). And on 13th May 2019, she appeared in the court for one such hearing. The hearing was taking place after five years of the incident, and Pinky had difficulties in accurately remembering the details of the incident of assault. **In cases of sexual abuse, the victim's testimony is subjected to grueling scrutiny by the defense counsel in an attempt to discredit it.** There are high chances of the same happening in this case, which could result in her perpetrators getting acquitted.

On one hand, rehabilitation of the child demands the healing of the victim by not remembering the vivid and traumatizing details of the incident. On the other hand, prosecution being a long-drawn process expects the victim to hold onto those traumatizing details to be able to provide an accurate description of the incident<sup>3</sup>. The complexity of the court hearing is intimidating. In Pinky's case, there were multiple hearings (that are still ongoing) in not just different courtrooms, but also different court premises. In her discussions with the social workers, Pinky has confided in the social worker that she does not want to appear for the court hearings after such a long delay. For each hearing, due to the physical distance, Pinky has to miss out on at least two days of her training. She does not want anyone at her workplace to get to know about the sexual assault in her past. She also does not know how to explain her frequent absence and the reason for coming back to Raigad so often. With the LIFE program, she has started a new chapter in her life.

She wants to undergo a training program and be economically independent. She wants to put the incident past her, and focus on her future. But the constant reminders in the form of multiple court hearings after such a long time prevent her from doing so. All these things threaten the very spirit of the *Principle of right to privacy and confidentiality*<sup>4</sup> and the *Principle of a fresh start*<sup>5</sup> as envisaged in the Juvenile Justice (Care and Protection of Children) Act, 2015.

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<sup>3</sup> Dr. Pravin Patkar, Women Trafficking- Realities & Solutions, 2019, Drishti Stree Adhyayan Prabodhan Kendra, Pg. 132

<sup>4</sup> Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

<sup>5</sup> All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

# EDGING FORWARD:

Trips to court premises and other unfamiliar places disrupt the child's routine and can be frightening. Court procedures themselves may also intimidate the child. Lack of adequate information for the child makes testifying/evidence recording much more difficult. In the present case, the social workers were informed of the court dates at the last minute. Since the child is undergoing a residential training program located in a district that is over 200 kilometers away, the social workers had very little time to orient the child about the trial process -> especially regarding things that would be expected of her at the stage of evidence hearing. It was also difficult to facilitate a prior discussion between the child and the Public Prosecutor, which is usually advisable to make the child familiar with the courtroom setup. Not to mention that in this case, there were three different cases lodged against the three accused at two different police stations. This resulted in separate cases in different courtrooms. The fear of missing out on her training program, coupled with her general anxiety about testifying in court and fear of seeing the alleged offender, all placed additional stress on the child.

In October 2019, Prerana created a best practice document titled *Best Practice Guide for Case Workers - Providing Assistance in Legal and Court Proceedings to a Child Rescued from Sex Trafficking - In the best interest of the child.* As victims of commercial sexual exploitation and sexual abuse, both attract provisions of the POCSOA – the document is also useful for assisting a child victim of a sexual offense. The document highlighted the need for the child to be provided with an experienced and strong support system to ensure a smooth navigating within the complex criminal justice system. This ordeal of the child can be minimized if the stakeholders involved in the case approach it with sensitivity, considering the fragile and traumatized mental state of the child. Keeping this in mind, when the case of a victim who is currently residing at Pehel or was previously residing at Pehel comes up for hearing, the social workers orient the child with the criminal justice system and follow certain practices to assist the child through the legal proceedings. This is a part of the ongoing social casework counseling provided to a child who, due to the nature of the offense, is likely to be called for testimony during the trial. This procedure was followed by Pinky during the initial casework counseling, but the social workers did not have the time to revise the same with the child once again.

As caregivers working with children in need of care and protection, we must always strive to make our interventions victim-friendly. When Pinky shared her feelings about missing her training program and how it affected her, it raised questions on the sensitivity of the system towards victims of trauma. There were multiple discussions within the team to explore if there were ways in which her ordeal could have been reduced. Would it have helped if the cases were tried in the same court premises, considering how the victim-witness was a child? Or if they would have been tried in the same courtroom? Maybe, she would have felt at ease if she found the courtroom premises to be familiar.

The nervousness and fear of a new and unsettling environment could have been avoided (by the time the case went to trial, Pinky had completed 18 years, and was now a young woman). Was Pinky's physical presence required for all the cases, or could her testimony have been recorded through video-conferencing? Is it not the victim's right to have access to a victim-witness - friendly system that allows her to be a part of the criminal trial in an organic manner without negatively affecting her environment?

Moreover, the POCSOA has made provisions for evidence of the child to be recorded within a period of thirty days<sup>6</sup> but the same is rarely observed on the ground. This provision was included to expedite a speedy trial so that victims can move forward with their lives and not have to continuously relive the trauma by having to remember the incidence for the sake of prosecution or to delay their rehabilitation. All Pinky wanted to do was to move on with her life, but the delay in the criminal justice system denied her the opportunity to do so. This case proves the often-quoted legal maxim, "justice delayed is justice denied". It should serve as a reminder that criminal trials should never affect the rehabilitation process of the child.

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<sup>6</sup> Section 35 of the POCSO Act

This document is based on Prerana's on-ground experience of working with minor victims of sexual abuse and exploitation, very often they are young adults (children above the age of 18) by the time the trial begins. We hope this document reaches to individuals from different educational background like social work, counselling, and law, whether already working or likely to work in this field. It would help people in understanding what transpires while working with such victims at the coalface.

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\*Images used are for representational purposes only.

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