



**HUMAN RIGHTS STUDIES PROGRAMME  
SCHOOL OF INTERNATIONAL STUDIES  
JAWAHARLAL NEHRU UNIVERSITY**

Organized a Talk On

**ASSESSING THE LAW RELATING TO SEXUAL VIOLENCE AGAINST CHILDREN IN  
INDIA THROUGH THE HUMAN RIGHTS PRISM**

**(WITH SPECIAL REFERENCE TO THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES  
ACT, 2012 AND THE CRIMINAL LAW (AMENDMENT) ACT, 2018)**

**Chair: Professor Rajesh Rajagopalan**

Director

Human Rights Studies Programme  
School of International Studies, JNU

**Speaker**

**Dr. Monica Chaudhary**

Assistant Professor

Faculty of Law

University of Delhi

**Faculty Coordinator**

**Dr. Deepa Kansra**

Assistant Professor

Human Rights Studies Programme  
School of International Studies, JNU

**Date: October 04, 2018 Time: 11.15 a.m.**

**Venue: Room No. 349, SIS- New Building**

Human Rights Studies Programme  
School of International Studies  
Jawaharlal Nehru University

## HUMAN RIGHTS STUDIES PROGRAMME, SIS, JNU

The Human Rights Studies Programme organized a talk on “Assessing the Law Relating to Sexual Violence Against Children in India Through the Human Rights Prism (With Special Reference to The Protection of Children From Sexual Offences Act, 2012 And The Criminal Law (Amendment) Act, 2018) on October 04, 2018.



**Professor Rajesh Rajagopalan**

**Professor Rajesh Rajagopalan**, Director, Human Rights Studies Programme chaired the session. He introduced the Human Rights Programme to the audience which comprised of Faculty members, research scholars, and students from several universities including JNU, University of Delhi, The Indian Law Institute, etc. He expressed the hope that this first talk will pave the way for conducting more academic events and discussions on the subject of human rights in the future.



**Dr. Deepa Kansra**

**Dr. Deepa Kansra**, Faculty Co-Ordinator, Human Rights Studies Programme, initiated the Programme by highlighting the purpose of the talk. She outlined that the talk aimed to bring collective thinking in the area of human rights. She mentioned that the topic of discussion *Sexual Violence against Children* is an important area of concern not only in India but across the world. She also mentioned how statistics show an increase in acts of sexual violence against children, despite stringent laws prescribing punishment for sexual offenders. She expressed that the talk is with the intention of opening for discussion the importance of concepts such as vulnerability, fear, punishment, deterrence, fair trial, the presumption of innocence.

Thereafter, Dr. Kansra introduced the Key Speaker Dr. Monica Chaudhary.



**Dr. Monica Chaudhary**

**Dr. Monica Chaudhary**, Assistant Professor at Faculty of Law, University of Delhi has been teaching Criminal Law for past 13 years. Her other areas of interest are Election Laws and Gender and Law. Her doctoral thesis was on “Legal Control of Trafficking in Women and Children for Commercial Sexual Exploitation: An Indian Perspective”. She has written e-lessons for the Institute of Life Long Learning (ILLL), University of Delhi on Laws relating to Criminal Procedure and Cyber Crimes. Apart from other academic pursuits, she has written and presented papers on legal developments relating to sexual violence against women and children in India at national and international forums. She has been closely following the impact of the recent legal amendments in laws dealing with sexual violence against women and children in India and analysing the lacunae that impact their efficacy.



## HIGHLIGHTS OF THE TALK

The Speaker began her presentation by highlighting the alarming statistics on sexual violence against children, despite a stringent law like the Protection of Children from Sexual Offences (POCSO) Act, 2012, the amendments to Criminal Laws in 2013 in the aftermath of the *Nirbhaya* incident and the even more stringent amendments relating to punishment for rape of girls below 12 and 16 years of age carried out through The Criminal Law (Amendment) Act, 2018. After highlighting the gravity of the problem and the disturbing nature of the crime, she emphasised that it is important for a good criminal justice system to ensure that the human rights of all stakeholders are respected and enforced. This obligation flows from Constitutional guarantees, statutory provisions, and India's membership to key international human rights instruments, which were briefly referred to by the Speaker.

The Speaker gave a brief overview of the POCSO Act, 2012 and the amendments to the Criminal Laws in 2013 and 2018. In light of the above, the Speaker identified three main issues for consideration and discussion.

**Issue 1: What is the likelihood of capital punishment acting as a deterrent for child rapists, in the absence of strengthened investigation and trial processes and an enabling environment for the victims and witnesses?**

**Issue 2: What is the effect of the provision for capital punishment on the reporting of child rape cases, especially when the offender is closely related to the victim?**

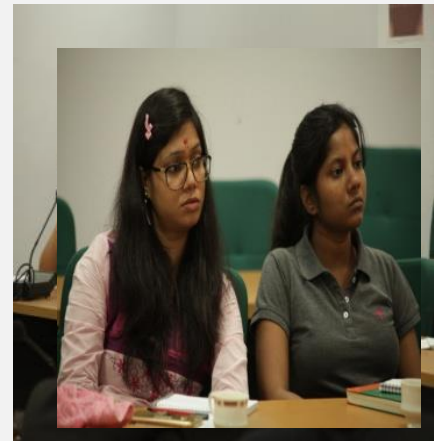
**Issue 3: What are the implications of the shift from the presumption of innocence to a presumption of guilt under the POCSO Act?**

On the first issue, the Speaker used data from various governmental and non-governmental reports to highlight the weaknesses in the enforcement machinery that can affect the efficacy of the amended laws. She pointed out that many states have not set up special courts in every district, as required by the POCSO Act, 2012. She



used data from various Reports to highlight how it will take decades to dispose of the cases relating to sexual offences against children that are pending in the courts. The very high pendency figures relating to investigation and trials were also discussed. The abysmal rate of conviction and the major reasons for the acquittal of the accused in such cases were also discussed. Other challenges like lack of forensic laboratories and medical experts, lady police officers, lady judges and the infrastructure required for speedy investigation and trial of such cases was also highlighted.

The problem of hostile witnesses that requires steps like witness protection programmes and setting up of vulnerable witness courtrooms for the trial of such cases was also pointed out. Recent directions given by the Supreme Court of India regarding setting up of Committee of Judges to monitor the progress of the trials under the POCSO Act and for DGPs of states to constitute a Special Task Force which shall ensure that the investigation is properly conducted, and witnesses are produced on the dates fixed before the trial courts were also discussed.



The Speaker then discussed the judicial trends regarding sentencing in cases of child sexual abuse. The judgments reveal an unpredictable and inconsistent approach in sentencing in such cases. The requirement to prove that the case falls in the “rarest of rare” category poses its own challenges in light of the absence of clear sentencing guidelines. It was pointed out that even if the Courts give capital punishment in such cases, there is invariably a long delay in execution due to delay in disposal of mercy petitions or delay at the appellate stage. Such delay can lead to the/a commutation of the death sentence by the Court on the ground of delay.



So, prescribing Capital punishment may not be very effective in controlling the crime without first strengthening investigation and trial processes and creating an enabling environment for the victims and witnesses.

### **Issue 2: Effect of the provision for capital punishment on the reporting of child rape cases, especially when the offender is closely related to the victim.**

The Speaker discussed how reporting of sexual



offences has improved after the passage of the POCSO Act, 2012 and the amendments to the

Criminal Laws in the year 2013. She cited official statistics from 'Crime in India, 2016' that reveal that in almost 95% percent of the rape cases, the offender is known to the victim. Drawing a connection between the two, she expressed the apprehension that the increased punishment under the amended provisions, especially the provision for capital punishment, may adversely affect the reporting of cases, especially

where the offender is a close relative or family member. The victim and the witnesses may also face a lot of pressure in such cases from persons close to them and the offenders. This may affect the already poor conviction rate even further.

### **Issue 3: The shift from the presumption of innocence to a presumption of guilt under the POCSO Act.**

The Speaker discussed how Sections 29 and 30 of the POCSO Act mark a shift from the basic principle of Criminal Law, according to which, an accused is presumed to be innocent till proven guilty by the prosecution, beyond a reasonable doubt. The same principle also safeguarded under various international human rights instruments. Sections 29 and 30 of the POCSO Act incorporate the presumption of guilt and presumption of culpable mental state respectively. These provisions were



meant to ease the burden of proof on the prosecution and prevent harassment of child witnesses during an examination in court. However, a study of the judgments on the provisions reveals a difference in their application by the trial courts. Some Courts have convicted the accused after invoking these provisions, whereas others have insisted on clear proof of the foundational facts, in which case the presumptions have limited relevance because the basic difficulties in proving the foundational facts as discussed in Issue 1 will still exist and affect the trial. The Speaker referred to Supreme Court judgments on similar provisions under other Acts like the Narcotic Drugs and Psychotropic Substances Act, 1985 and expressed the view that in the absence of authoritative judgments from the Constitutional Courts on the presumptions under the POCSO Act, the confusion is likely to continue in the trial courts which may affect the rights of the accused in many cases.

### **Concluding Remarks by Dr. Chaudhary**

After the detailed discussion on the three main issues, the Speaker briefly mentioned the following themes that also need to be debated and explored in the context of sexual violence against children in India, which has multiple human rights concerns involved therein:

- The use of a restorative justice approach in cases of sexual violence
- The pros and cons of having a sex offenders' registry in India
- Recognising a "close in age exception" in elopement and marriage cases, especially in light of the problem of hostile witnesses in such cases, as revealed in various studies on the functioning of the POCSO Courts
- Alternative punishments like chemical castration and the experience in countries that have invoked such punishment for child sexual offenders and the Indian judiciary's views on it so far.

The Speaker concluded her presentation by thanking Prof. Rajagopalan, Dr. Kansra and other members of their team for inviting her to speak on such an important area.

## INTERACTION SESSION

The presentation was followed by an interactive session which included the following questions raised by the audience:

1. What are the human rights implications in cases related to sexual offences both for the victim and the offender?
2. How significant is the need for including cultural specificity while dealing with sexual offenses related to teenagers?
3. What is the resource for parents when the boy and girl are teenagers? How will the law take this up?
4. A number of FIRs are being withdrawn? What are the causes and implications?
5. Victims are entitled to compensation, but practically it is not always possible. Why?
6. How is sexual violence defined in relation to non-penetrative acts?
7. How many cases have been registered for refusal of FIRs?
8. How is enhanced punishment not deterrence in sexual violence cases?
9. Can we have a better way of dealing with such cases than related to age?
10. How important is the role of mediators with regard to cases of sexual violence?







## VOTE OF THANKS

Mr. Vishnu Prasad, Research Scholar, Human Rights Studies Programme proposed the vote of thanks. After special thanks to the Key Speaker and the participants which included faculty and students from JNU (School of International Studies, School of Social Sciences, Centre for the Study of Law and Governance); Faculty of Law, University of Delhi; The Indian Law Institute, Delhi and Vivekananda Institute of Professional Studies (VIPS), Delhi.

A special thanks was also given to the Student Volunteers including the following:

Ms. Ram Dulari Patel (Research Scholar, HRSP, JNU) – Student Coordinator  
 Ms. Yashaswani (MA, SIS, JNU) and Mr. Ashok Kumar (MA, SSS, JNU)-  
 Rapporteurs.

Mr. Noushad (Research Scholar, JNU)- Photography

Ms. Moumita Mandal (Research Scholar, CILS, SIS, JNU)- Preparation of Report

Mr. Ravi Prakash, Ms. Neetu, Ms. Reetika, Ms. Kiran, Ms. Shweta, Ms. Manisha  
 (MA, SIS)- Logistics



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