

Guaranteeing children with disabilities the right to be heard

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Following their [analysis](#) of the 2012 Protection of Children from Sexual Offences Act **Srishti Agnihotri** and **Minakshi Das** consider the specific challenges associated with ending the sexual abuse of children with disabilities. They write that more needs to be done to ensure abuse is reported and addressed, as well as to guarantee their right to be heard.

The United Nations [Convention on the Rights of the Child](#) was enacted in 1989. Article 12 of this Convention guarantees to all children, who are capable of forming their own views, the right to freely express those views in all matters that concern the child. The Article also guarantees the child the right to be heard in a judicial or administrative proceeding that affects them. Implementing this right has been a real challenge, and the non-implementation of this right has very real implications on children who are victims of child sexual abuse.

Societies or countries like India that do not have a culture of children speaking up on their own behalf make it [harder](#) for victims to report instances of sexual abuse. Furthermore, the taboo around talking about sex may place additional hurdles on children reporting sexual abuse, therefore making them more vulnerable. This is because the children may not simply know the language to articulate what happened to them. In fact the stigma attached to sex may make the child, incorrectly, feel guilty about 'allowing' the abuse to happen to them.

It is thus incumbent on all stakeholders to create a culture that respects the right of children to be heard (not only in judicial proceedings), and maintains a healthy level of awareness and transparency about sexuality. To this end, [comprehensive sexuality education](#) may be an empowering tool for children, as it is "an age appropriate, culturally relevant approach to teaching about sex and relationships by providing scientifically accurate, realistic, non-judgmental information'. Among other things, this will allow children to articulate sexual abuse, if they are exposed to it, and enable them to speak about it without fear of stigma.

Children with disabilities face an additional hurdle in the complete realisation of their right to be heard. [Article 7](#) of the United Nations Convention of the Rights of Persons with Disabilities, reiterates that 'children with disabilities must be able to exercise their rights to express views and have them taken seriously on an equal basis with others.' The convention also mandates that age and disability-appropriate assistance must be provided by governments. This continues to remain a challenge in the Indian context, where persons with disabilities often live without access to some very basic infrastructure let alone more substantive assistance.

Individuals with disabilities are more frequently [victims of violent crime](#). Perpetrators are aware that crimes against children with disabilities often go unreported, and hence they have been known to actively seek out employment opportunities that put them in [contact with children with disabilities](#). If a child has a speech impairment he or she may have difficulty articulating the incident or identity of the perpetrator. The possibility of incest or abuse of a relationship of trust cannot be ruled out, so investigating authorities have to be particular about not allowing the child's statements to be influenced by his or her caregivers, and collecting DNA samples (where necessary) from all persons who had the opportunity to commit the sexual abuse. All of this has to be done in a manner that is respectful of the autonomy and wishes of the child.

In our experience of working with children with disabilities who have faced sexual assault, the abuse is sometimes discovered only when a young girl is found to be pregnant. However it is quite possible that the abuse goes undetected for long periods. It is imperative that the care givers and family members of the child must keep an eye out for [red flags](#) and behavioural patterns that indicate the possibility of sexual abuse, such as acting in inappropriate sexual ways with toys, sudden personality changes, unaccounted for fear of some places or people (although it goes without saying that no such symptom conclusively means that the child has been abused). The key to the child's wellbeing is to maintain open channels of communication.

Keeping this in mind, Section 26(3) of the [Protection of Children from Sexual Offences Act](#) (POSCO), permits the Magistrate or the police officer recording the statement of a child to seek the assistance of a special educator, or a person familiar with the child's manner of communication. The Ministry of Women and Child Development has issued [model guidelines](#) under Section 39 of the POCSO Act, wherein, it deals extensively with the best way to interview a Child with Special Needs about an incident of sexual abuse. These guidelines are clear in asking the interviewer to respect the wishes of a child to have or not have a carer, family member or friends present while giving the statement, while ensuring that such a statement is not influenced by people who are used to speaking on behalf of the child. These guidelines also note that children with disability are often victimised repeatedly by the same offender and that such an offender may be from among her or his close circle. This is consistent with our experience as well.

In this situation, an investigation into the kind of support children with disability received in their interaction with the criminal justice system is needed. This investigation should not only be limited to the availability of special educators, it must also include a qualitative assessment of the interaction the child has with the courts, the police, and at the hospital. There should also be an assessment of the kind of infrastructure that is made available to the child including toilets that are disability friendly, proper sitting or waiting areas and access to ramps and lifts.

It is unfortunate that culturally we still don't think of looking at persons with disability as independent agents, able and willing to take decisions that will have a fundamental impact on their lives. Children speaking up for themselves is also not really a norm in India, and as a result there is no introspection on the best manner in which we should acquaint children with disability with fundamental concepts like sexuality, reproduction, and the possibility of sexual desire. School curricula need to address this, so that children with disabilities can understand and articulate experiences of sexual abuse if they take place, and also grow up to be adults who are empowered to have healthy fulfilling relationships.

We need a national strategy for ending the sexual abuse of children with disabilities, which recognises their particular needs that emerge due to the overlapping of their identities as children and persons with disability. Though there has been a growing momentum in India with respect to child sexual abuse, there hasn't been sufficient deliberation on how the intersection of children's identities can compound the trauma of the abuse, and make access to justice more difficult. This national strategy will necessarily involve engaging with stakeholders within and outside of the legal community, medical community, persons with disability, special educators, policy makers, legislators, government agencies, non-governmental organisations and family members of disabled children.

Adequate quantitative and qualitative research is necessary and strict protocols need to be put in place in schools and other institutions. The first step in making any national policy work is listening to children with disabilities and not dismissing their perspectives. Any policy and practice, to combat sexual abuse of children with disabilities must not presume to speak for them, but speak with them to make sure their voices are heard.

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