

Schools as Safe Spaces - Where Do We Stand

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Introduction

Public discourse and policy on universalisation of education has primarily focussed on improving access to schools, and ensuring retention and participation of children in schools. The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) and flagship programmes of *Sarva Shiksha Abhiyan* (SSA) mainly focus on providing right to education by guaranteeing admission in government/neighbourhood schools and right to schools with prescribed infrastructure and teachers. However, the RTE Act and SSA give scant attention to rights within education. However, provisions related to protecting children's rights *within* schools and ensuring that schools become safe spaces can be found in various other legislation, government notifications, programmes, and schemes formulated by central and state governments. In this article, we discuss these provisions and present what we know is happening in practice.

Provisions and Implementation

Legislations pertaining to children address corporal punishment, sexual offences against children and cruelty in schools. In the policy realm, the triggers for formulation of circulars, guidelines, and advisories have been cases of violations or abuse that were reported by the media. For instance, in 2010, a 13-year-old boy in a premier school in Kolkata.¹ committed suicide after being caned by his teacher. This led to an inquiry by the National Commission for Protection of Child Rights (NCPCR) and the formulation of Guidelines on Corporal Punishment,² which were adopted by the Ministry of Human Resource and Development (MHRD).³

Corporal punishment

Section 17(1), Right of Children to Free and Compulsory Education Act, 2009, prohibits subjecting a child to physical punishment or harassment, although neither of these terms is defined in the Act. The Delhi High Court held that provisions of the Delhi Education Rules, which permitted corporal punishment, violated Articles 14 and 21 of the Constitution and struck them down.⁴ It also directed the 'State to ensure that children are not subjected to corporal punishment in schools and they receive education in an environment of freedom and dignity, free from fear.'

An Advisory for Eliminating Corporal Punishment in Schools under Section 35(1) of the RTE Act, 2009 (based on the NCPCR guidelines) by the Ministry of Human Resource Development (MHRD) offers guidance on the prevention of corporal punishment and redressal mechanisms.⁵ It unpacks corporal punishment into (a) physical punishment, (b) mental harassment and (c) discrimination, and requires schools to have a clear protocol to guide teachers on tackling troublesome behaviour (eg., disturbing other children in class, lying, stealing, etc.) and offensive behaviour, causing hurt or injury to others (eg., bullying, aggression towards peers, stealing, violating others' rights, vandalising, etc.).⁶ The Advisory requires the school management to conduct regular training programmes for teachers so as to facilitate a shift to a rights-based approach to education, abolition of corporal punishment, and positive engagement with children.

¹"NCPCR wants states to follow guidelines on corporal punishment", *The Economic Times*, 17 July 2010, <https://economictimes.indiatimes.com/news/politics-and-nation/ncpcr-wants-states-to-follow-guidelines-on-corporal-punishment/articleshow/6178764.cms>

²NCPCR, *Guidelines for Eliminating Corporal Punishment in Schools*, http://www.ncpcr.gov.in/view_file.php?fid=108

³MHRD, *Advisory for Eliminating Corporal Punishment in Schools under Section 35 (1) of the RTE Act, 2009*. available at <http://www.education.goa.gov.in/MHRD%20Advisory%20for%20Eliminating%20Corporal%20Punishment%20in%20Schools.pdf>

⁴*Parents Forum for Meaningful Education v. Union of India*, AIR 2001 Delhi 212

⁵Available at <http://www.education.goa.gov.in/MHRD%20Advisory%20for%20Eliminating%20Corporal%20Punishment%20in%20Schools.pdf>

⁶*Advisory for Eliminating Corporal Punishment in Schools under Section 35(1) of the RTE Act, 2009, Paras 7.1.13-14*

However, there is no mechanism instituted by the MHRD or the state governments to monitor the implementation of this Advisory and schools are not mandatorily required to provide this data to the government.

Sexual assault

Under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) the commission of penetrative sexual assault or sexual assault by a person on the management or staff of an educational institution constitutes an aggravated offence which attracts a higher punishment.⁷ The POCSO Act also casts an obligation to report to the police if anyone has the apprehension of the likely commission or knowledge about the commission of a sexual offence.⁸ Failure to report the commission of a sexual offence is an offence punishable with imprisonment which may extend to six months, or a fine, or both.⁹ If a person-in-charge of an institution fails to report the commission of an offence by a subordinate under his control, the person can be punished with imprisonment for a term which may extend to one year and a fine.¹⁰ In some cases of sexual violence within schools, this provision has been invoked against Principals and trustees of schools for their failure to report to the police. There has been legal controversy about when a case can be registered against a person for failure to report. In one case against a school principal, the Chhattisgarh High Court held that the primary offence should be proved beyond reasonable doubt before a prosecution is launched against a person for failure to report.¹¹ However, this reasoning was rejected by the Bombay High Court in a case in which the Director of the Trust running the school asked the victim and her relatives to settle the matter with the person who had allegedly raped

the victim.¹² The Bombay High Court held that the interpretation adopted by the Chhattisgarh High Court would defeat the objectives of the POCSO Act to protect children from sexual offences.

State Governments are still struggling with the effective implementation of the POCSO Act. Although the Act prescribes exclusive Public Prosecutors, no such appointments have been made. Regular prosecutors and Sessions Courts are dealing with these cases alongside other criminal matters.¹³ These courts are not child-friendly in their design or accessible to persons with disabilities. A panel of support persons to assist the child through investigation and trial is not available in all districts.¹⁴ In the absence of a Victim and Witness Protection System, children and their families face pressures and intimidation from the accused which results in them retracting their statements in court. For instance, a study on the working of Special Courts under the POCSO Act, 2012 in Delhi reveals that of the eight cases in which the accused was a teacher, and in six cases, the child turned hostile.¹⁵ A similar study in Assam cites a case in which two students of Class II had alleged that a teacher had touched their private parts. In court, however, the students said that the teacher showed affection to all children and had not sexually abused them.¹⁶ Teachers constituted 3% of accused persons in a study of 1330 judgments of POCSO Special Courts in Maharashtra and in 53% of these cases the child victim turned hostile.¹⁷ Cases such as these in which the accused is in a position of authority over the child demonstrate the need for strong support systems within the school as well outside to enable the child and the families to participate in the trial without fear and coercion.

⁷POCSO Act, Sections 5(f), 7, 9(f), and 10.

⁸POCSO Act, Section 19(1).

⁹POCSO Act, Section 21(1).

¹⁰POCSO Act, Section 21(2).

¹¹Kamal Prasad Patade v. State of Chhattisgarh, Writ Petition (Cr.) No. 8 of 2016.

¹²Balasaheb @ Suryakant Yashwantrao Mane v. State of Maharashtra, Criminal Revision Application No. 69 of 2017 decided on 22 March 2017.

¹³Sonia Pereira & Swagata Raha, *Structural Compliance of Special Courts with the POCSO Act, 2012, Chapter 1, pp.1-10 in CCL-NLSIU, Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues (2018)* available at <https://www.nls.ac.in/ccl/jjdocuments/posco2012spscours.pdf>

¹⁴Sonia Pereira & Swagata Raha, *Procedural Compliance of Special Courts with the POCSO Act, 2012, Chapter 2, pp.11-29 in CCL-NLSIU, Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues (2018)* available at <https://www.nls.ac.in/ccl/jjdocuments/posco2012spscours.pdf>

¹⁵CCL-NLSIU, *Report of Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi, 29 January 2016, p.68* available at <https://www.nls.ac.in/ccl/jjdocuments/specialcourtPOSCOAct2012.pdf>

¹⁶CCL-NLSIU, *Study on the Working of Special Courts under the POCSO Act, 2012 in Assam, 13 February 2017, p.51* available at <https://www.nls.ac.in/ccl/jjdocuments/studyspecialcourtassamPOSCOAct2012.pdf>

¹⁷CCL-NLSIU, *Study on the Working of Special Courts under the POCSO Act, 2012 in Maharashtra, 7 September 2017, pp.67, 69* available at <https://www.nls.ac.in/ccl/jjdocuments/POSCOMaharashtrasummary.pdf>

Cruelty

Section 75, Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) criminalises the assault, abandonment, abuse, exposure or wilful neglect of a child in a manner likely to cause the child unnecessary mental or physical suffering by those having the actual charge of, or control over, a child. A higher punishment is attracted if the offence is committed by a person employed by or managing an organisation vested with the care and protection of the child, such as a school. While corporal punishment under the RTE Act, 2009, does not attract any punishment, this provision under the JJ Act can be applied along with other relevant provisions under the Indian Penal Code in cases of corporal punishment in schools. However, in practice, some of the challenges faced in implementing provisions regarding corporal punishment as well as any offence against children is the long-drawn-out nature of the proceedings, and the absence of support for the child and the child's family to navigate through the criminal justice system.

The most comprehensive guidelines on safety and security of children in schools, including the prevention mechanisms and redress procedures, is the MHRD D.O of 2014¹⁸ which states that 'a safe and secure environment, free of corporal punishment and abuse, with preventive mechanisms to ensure physical and socio-psychological safety of children, should be stipulated as one of the conditions for giving recognition/no-objection certificate (NOC) to a school by the State Government and also as one of the conditions for giving affiliation to a school by the State Board.' The D.O. is fairly specific on aspects such as the boundary wall, banning of the sale of objectionable materials, approach road, colour of buses, building safety audits, reducing structural vulnerabilities of existing buildings, and putting in place a Disaster Preparedness and Response Plan in every school, verification of antecedents of teachers and staff, their continuous education on child rights under the purview of physical safety. Under health and hygiene, the guidelines stipulate the source of drinking water, its storage and purification, separate and functional toilets for boys and girls, regular monitoring of general hygiene in

the school premises and of the children, training cooks and helpers on safe and nutritious cooking of mid-day meals, preventive efforts and vigilance by teachers to detect diseases, deficiencies and substance and drug abuse. With respect to sexual abuse, the guidelines mandate that children are taught the difference between 'good' touch and 'bad' touch, are encouraged to speak up and that the School Management Committee makes the school environment conducive for children to report abuse.

Some state governments have adopted specific legislation to protect children's safety in schools. For instance, in May 2014 the Delhi Commission for Protection of Child Rights issued guidelines for prevention of child abuse in schools.¹⁹ It specifies principles, guidelines for recruitment, training and capacity building, child protection safeguards within schools which include a Child Protection Policy and complaints mechanism. The Guidelines also provide for therapeutic interventions such as counselling services and recommend the designation of counselling centres within the institution. However, these guidelines are not binding. In the backdrop of cases of sexual harassment of children in schools, in 2016, the Karnataka Police (Amendment) Act, 2016²⁰ was passed to empower the police to effectively monitor and regulate the activities of the school. Section 31(1), which empowers the Commissioner of Police and District Magistrate to pass orders for preservation of order in public places, was amended to include clause (za) which empowered them to pass orders for 'regulating, controlling and monitoring of safety and security of children'. While school safety is not specifically mentioned in any Central legislation, the Karnataka Education Act, 1983, was amended in 2017 to include provisions for safety and security of students, penal sanctions and the District Education Regulatory Authority was empowered to recommend to the competent a withdrawal of recognition or affiliation of institutions found to be contravening the above mentioned provisions. The constitutionality of the above amendments have, however, been challenged by the Associated Managements of Government Recognised English Medium Schools in Karnataka before the Karnataka

¹⁸D.O. No. 10-11/2014-EE.4 dated 9 October 2014.

¹⁹Available at <http://delhi.gov.in/wps/wcm/connect/983d42804f4cf70fb7e3bf1e0288d2b8/DCPCR+guidelines+14052014.pdf?MOD=AJPERES&lmod=301782569>

²⁰Available at [http://dpal.kar.nic.in/ao2016/22%20of%202016%20\(E\).pdf](http://dpal.kar.nic.in/ao2016/22%20of%202016%20(E).pdf)

High Court on the grounds that it overrides Central Laws such as the POCSO Act and the Commissions for Protection of Child Rights Act, 2005²¹ and brings within its fold unaided private schools in violation of the Supreme Court's verdict.²² The applicability of these provisions is, therefore, in question as the matter is pending before the High Court. Concerns have also been raised about the authority given to the police to regulate school safety as the multiplicity of authorities and their guidelines can be confusing for schools.

Based on the foregoing discussion on provisions on school safety and implementation, we see that the legislative framework is only punitive, while the overall policy framework focuses on prevention as well as a system to redress violations. There is, however, an absence of a monitoring system to systematically assess and ensure compliance with the policy framework as well as a lack of clarity on the consequences of non-compliance with the mandatory requirements under the various circulars and policies.

Issues

a) Firstly, despite a plethora of newly adopted legislation, policies and guidelines, there is still lack of clarity about : the nature of shared responsibility among teachers, staff, management and who is liable for what, who is liable for the safety of children when they are in transit to/from schools, and most importantly the core requirements that schools need to put in place in terms of preventive and protective measures, background checks of employees, channels of oversight and reporting and the consequences of the failure to do so. Given that these are issued as advisories and guidelines, schools tend to not see these as mandatory and nor do they see any imminent threat if these are not complied with. Since most of the provisions would require not only a change in mindset, approaches and how schools are organised, a number of them also have cost implications. Furthermore, would these specifications change if it was a government school or a private one, a special training centre or a special school, an *ashramshala* or an international school? In other words, not only are these fundamental issues unaddressed, but the fact remains unacknowledged that these need to

be specifically tailored to different institutional settings where children study

Secondly, even though schools receive government notifications and guidelines, there is a lack of awareness among parents in general and Parent-Teacher Associations, School Management Committees in particular about the existence of these policy provisions. As a result, these key stakeholders are unable to hold the school accountable and monitor the compliance to these guidelines.

Thirdly, it is important to recognise that schools as institutions that place high premium on respect to hierarchy, obedience and silence require a much more nuanced approach to implementation of the above mentioned provisions. An offence such as sexual assault of a child happening within school is different from when it happens outside. When those in positions of trust and authority vis-a-vis the child are themselves the perpetrators or when abuse or violence takes place when the children are in school, under their charge as in *loco parentis* rule, there is aggravated liability. However, it is this very hierarchical relationship and the culture of silence in schools that makes it difficult to implement the provisions effectively. The Ministry of Women and Child Development, Government of India produced a report on child abuse by interviewing 12,447 children in 13 States (Karnataka was not included) belonging to five categories - children in the family environment, children in schools, children in institutions, children at work and street children. According to this report, 52.94% boys and 47.06% girls admitted to having faced some form of sexual abuse and half of the children going to schools were sexually abused and most of them had not filed any complaint (MWCD, Government of India, 2007, p.75).

However, even this report does not tell us much about the prevalence of abuse and violence while children are in schools. The question that then arises is : why do we not know enough about abuse and violence within schools? This leads us to question the transparency, accountability and channels of visibility in abuse and violence in schools. Given the culture of hierarchy, obedience and silence in schools, how do we know if there is any offence

²¹WP 33161/2017; *Schools challenge amendment to Karnataka Education Act*, Deccan Herald, 26 July 2017, <https://www.deccanherald.com/content/624719/schools-challenge-amendment-karnataka-education.html>

²²HC notice to State on amended Karnataka Education Act, The Hindu, 25 July 2017, <http://www.thehindu.com/news/national/karnataka/hc-notice-to-state-on-amended-karnataka-education-act/article19360210.ece>



committed against a child during school? When we review cases reported by the media in recent times, we find that the cases have only come to light when the child has reported the matter to the parents or other trusted adults or the parents noticed injuries and/or behavioural changes.

In conclusion, we find that while the legal and policy frameworks on the subject of protection of children within schools is slowly emerging, there

needs to be greater clarity about the implications of non-compliance for schools and greater awareness among parents and SMCs. Even though governmental regulation of schools in ensuring compliance of stipulated norms is required, there is need to mobilise grass-root level monitoring by activating SMCs and parents to play a proactive role in ensuring protection of children in schools.

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