

PROTECTING CHILDREN: ASSESSING THE PERFORMANCE OF THE POCSO ACT, 2012 USING THE ASARAM BAPU CASE AS A FRAMEWORK

Sarah Sequeira*

ABSTRACT

The Government of India enacted the POCSO Act, 2012 (Protection of Children from Sexual Offences Act, 2012) of India to protect children from sexual abuse and sexual offences. The Act clearly defines a child as any person below the age of 18 years (as per the definition of child as per Section 2 of the Act). According to the gravity of the offence POCSO Act gives punishment. The Act was subsequently revised and updated in 2019 to impose stiffer penalties like the death penalty for committing sexual crimes on children, to discourage the offenders and prevent such crimes against children.¹ The Act acknowledges that both girls and boys can be subject to sexual abuse and that such abuse is a crime irrespective of the gender of the victim. It is also based on the underlying constitutional principle that all children have a right to be protected from sexual abuse and exploitation and that the law should not discriminate based on sex. The Government of India has also notified the POCSO Rules, 2020. Some significant additions in the new rules include provisions for police verification of staff at schools and care homes, the handling and reporting of sexual abuse material (pornography) and in-service training to provide age-appropriate child rights education among others. The rules also provide for the state governments to formulate a child protection policy, on the principle of "zero-tolerance to violence against children" which "shall be adopted by all institutions, organisations or any other agency, working with, or in contact with children."²

Keywords: POCSO, Sexual Abuse, Children.

*ADV. BALASAHEB APTE COLLEGE OF LAW, MUMBAI.

¹'Implementation of POCSO ACT' Press Information Bureau [PIB] [4 August 2023] <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1945850>>

² 'Centre notifies new POCSO rules making law for sexual offences against children more stringent' by *The Economic Times* [13 March 2020] < <https://economictimes.indiatimes.com/news/politics-and-nation/centre-notifies-new-pocso-rules-making-law-for-sexual-offences-against-children-more-stringent/articleshow/74608023.cms?from=mdr>>

INTRODUCTION

India is home to the largest child population in the world, children are the supreme assets of our country. The development of children is the top priority on any country's development agenda, not because they are the most vulnerable but rather because they are our greatest assets and our nation's future human resource³. As children represent the most vulnerable segment of the population, they can become victimised and dealt with as objects of exploitation and abuse, leading to long-term physical, emotional and psychological impairments. This is not just a moral imperative, but also a legal one. Proper care and protection of children facilitate their growth, learning, and development and in many instances, keep them safe and secure.

The Goa's Children's Act, 2003 and Rules, 2004 were the only laws in India that attempted to safeguard children's rights prior to the implementation of the POCSO Act, 2012. Child sexual abuse was considered an offence under Sections 375, 354 and 377 of the Indian Penal Code, 1860. These clauses do not shield masculine youngsters from sexual abuse or preserve their dignity. It was essential to create a statute that specifically addresses the issue of the rising number of child sexual abuse cases in the nation because there was no prior legislation in this area. POCSO was made possible by the work of numerous NGOs, activists, and the Ministry of Women and Child Development.⁴

The POCSO Act acknowledges that sexual abuse of any kind, regardless of the victim's gender, can happen to both boys and girls. This is consistent with the idea that laws should not discriminate against gender and that all children have the right to be shielded from sexual abuse and exploitation. The Act acknowledges that sexual abuse of any kind, regardless of the victim's gender, can happen to both boys and girls. This is consistent with the idea that laws should not discriminate against gender and that all children have the right to be shielded from sexual abuse and exploitation. While data on male and female victims has not been released individually by the National Crime Records Bureau (NCRB), in Chhattisgarh, male child victims made up approximately eight out of every 1,000 POCSO instances (0.8%). It

³ 'I. Introduction' *Official Website of Government of Puducherry* <https://statistics.py.gov.in/sites/default/files/cs-i-introduction.pdf>

⁴ 'POCSO Act: everything you need to know' *iPleaders Blog* [13May 2022] <https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/>

demonstrates that the act addresses the major problem of sexual exploitation of male children, which has gone largely ignored.⁵

The 2013 National Policy for Children serves as a roadmap, guaranteeing that policy and decision-making prioritise the needs and rights of children. Gender equality and child protection are prioritised through programmes like the Integrated Child Protection Scheme (ICPS) and the Beti Bachao, Beti Padhao campaign. India's child protection policies have their roots deep in the legal system. Children are guaranteed special protection and care under Articles 15(3) and 39(e) and (f) of the Indian Constitution. Furthermore, laws such as the Right to Education Act of 2009, the Protection of Children from Sexual Offences (POCSO) Act of 2012; The Juvenile Justice (Care and Protection) Act (2000, amended in 2015); The Prohibition of Child Marriage Act (2006); The Protection of Children from Sexual Offences Act (2012), and The Child Labour (Prohibition and Regulation) Act (1986, amended in 2016) all work together to strengthen the legal protections for children. Yet India has been ranked 112 in the Child Development Index.⁶ Despite several child protection acts, we still witness various forms of child rights violations in our country.

WHO IS ASARAM BAPU?

Asaram Sirumalani was born on April 17, 1941, in Berani village, Nawabshah District, British India now Berani Town in Jam Nawaz Ali Tehsil, Sanghar District, Sindh, Pakistan. He was the son of Menhgiba and Thaumal Sirumalani, belonging to the Sindhi caste. His birth name was Asumal Thaumal Harpalani, also known as Asumal Sirumalani. In 1947, during the turbulent period leading up to the partition of India and Pakistan, a young boy named Asumal Sirumalani Harpalani lived with his family in what was then pre-partition Pakistan. Following the partition, his family relocated to Ahmedabad in the Indian state of Gujarat. They came from humble beginnings; Asumal's father made a living by selling woodsticks and coal, indicating their financial struggles. After the death of Asumal's father, Thaumal Sirumalani, the responsibility of financially supporting the family fell upon Asumal's shoulders. He then moved to Vijapur, a city in the Mehsana district of Gujarat. During investigations into his past, it was revealed that in 1958-59, Asaram worked as a tea seller in front of the Magistrate's office.

⁵'Implementation Issues with the POCSO Act' *Drishiti IAS* [21 January 2023 <<https://www.drishtiias.com/daily-updates/daily-news-editorials/implementation-issues-with-the-pocso-act#:~:text=Courts%20are%20required%20to%20presume,the%20consent%20of%20the%20prosecutrix.>>

⁶ Rashmi Shetty, 'Child Protection Laws in India' by *ActionAid Association India* [22 January 2021] <<https://www.actionaidindia.org/child-protection-laws-in-india/>>

This tea stall, reportedly owned by Asaram's relative Sevak Ram, is still in operation.⁷ Asumal's formal education was limited, only reaching the fourth grade. As a teenager, around the age of 15 or 16, he fell into bad company and became involved in bootlegging, which involved the illegal distribution of liquor. This phase marked a troubled period in his early life. However, a significant transformation occurred when Asumal encountered Guru Leela Shah Maharaj, a well-known spiritual leader in Gujarat. Under the guidance and influence of Guru Leela Shah Maharaj, Asumal began to adopt a spiritual path. He devoted himself to learning and practicing spiritual disciplines, which gradually set him on a different life course.

In 1972, Asumal established his first ashram in a village named Motera, located about 10 kilometres from Ahmedabad. This marked the beginning of his journey as a spiritual leader. Over time, his following grew, and Asumal became widely known as Asaram Bapu, a name given to him by his devotees out of love and respect. Asaram Bapu's popularity soared in the 1980s. His ashrams became major centres of spiritual learning and devotion, attracting some of India's most influential politicians and public figures who attended his sermons and teachings. His influence expanded rapidly; by the peak of his prominence, he had established approximately 425 ashrams across India, 1,700 "Bal Sanskar Kendra" (non-formal education centres), 50 boarding schools, 36 "gurukuls" (residential schools where students live and learn with their teacher), and over 1,400 various associations and centres. These institutions collectively formed a vast empire that covered thousands of acres of land. However, this expansion was not without controversy. Allegations surfaced that much of this land had been acquired illegally and through coercion. The centres themselves were known for their advanced facilities, often segregating VIP guests from regular followers in terms of seating and accommodations.

In addition to the physical infrastructure, there was also a thriving business involving the sale of DVDs and cassettes of Asaram Bapu's sermons and teachings. This commercial aspect added another layer to his already extensive influence. From the establishment of his first ashram in 1972 until around 2008, Asaram Bapu's influence grew exponentially. Over these 36 years, he became one of India's most prominent spiritual leaders, amassing a fortune and a following that surpassed many other religious figures in the country. His empire was believed to be worth

⁷ Preeti Panwar, 'Asaram Bapu's past-from a tea-seller to the spiritual guru', *OneIndia News* [11 April 2014] <<https://www.oneindia.com/amphtml/2013/08/29/asaram-bapus-life-journey-from-a-tea-seller-to-the-spiritual-guru-1294490.html?ampscroll>>

more than 10,000 crore rupees, making him one of the wealthiest and most influential spiritual leaders in India.

However, the legacy of Asaram Bapu is marred by numerous allegations and controversies. Despite his spiritual teachings and the respect, he commanded among his followers, the legal and ethical challenges surrounding his empire's expansion and the accusations of illegal activities cast a long shadow over his accomplishments.⁸

OTHER ALLEGATIONS ON ASARAM BAPU

In 2008, Asaram Bapu first found himself embroiled in a significant controversy. In his inaugural ashram in Motera, the bodies of two young girls, aged 10 and 11, were discovered near the Sabarmati River. The Ahmedabad police, upon investigating their deaths, uncovered evidence suggesting the practice of black magic within the ashram. At the time, the Gujarat government was led by the current Prime Minister of India, Narendra Modi. In response to the outcry, Modi's administration established a commission to investigate the matter, appointing Justice D.K. Trivedi to lead the inquiry. Justice Trivedi's investigation ultimately exonerated both Asaram Bapu and his son Narayan Sai, attributing the girls' deaths to the negligence of the ashram's caretakers. Despite this exoneration, it is widely believed that Asaram Bapu has managed to evade accountability in several instances due to his political connections.⁹ The charge sheet filed against Asaram and four others in November detailed allegations of blackmail in exchange for sexual favors. Asaram faced charges under several sections of the Indian Penal Code, including Section 342 (wrongful confinement), Section 376 (rape), Section 506 (criminal intimidation), and Section 509 (insulting the modesty of a woman). Additionally, he was charged under Section 8 of the Protection of Children from Sexual Offences Act (POCSO). During Asaram's imprisonment, several key witnesses in the case were either attacked or disappeared. In June 2014, Asaram's doctor, Amrut Prajapat, was shot in Rajkot, Gujarat. In 2015, his cook, Akhil Gupta, and another crucial witness, Kripal Singh, were shot dead in Uttar Pradesh. Additionally, Mahendra Chawala and Rahul Sachan, two other

⁸ Varun Johri, StudyIQ IAS, 'EP 23: The Real Story of Asaram Bapu\Rape Convict\Ek Banda Kaafi Hai\Timeline' [26 May 2023] <https://youtu.be/-AIHPP44YGM?si=imvOOjIadPdgp-2O>

⁹ Varun Johri, StudyIQ IAS, 'EP 23: The Real Story of Asaram Bapu\Rape Convict\Ek Banda Kaafi Hai\Timeline' [26 May 2023] <https://youtu.be/-AIHPP44YGM?si=imvOOjIadPdgp-2O>

witnesses, were attacked on the premises of the Jodhpur court in 2015. Despite these attacks, they survived and testified against Asaram.¹⁰

In 2013, a former disciple from Surat filed a first information report against Asaram and six others, alleging that they illegally confined her at the Ahmedabad ashram and raped her between 2001 and 2006. In her FIR, she stated that she was raped at Asaram's ashram in Chandkheda. Additionally, her sister filed a case against Asaram Babu's son, Narayan Sai, accusing him of raping and illegally confining her at the Surat ashram during the same period. Sai was convicted in 2019 by a Surat court and sentenced to life imprisonment and a Gandhinagar court handed out a life term to religious preacher Asaram in connection with this case.¹¹

FACTS OF THE CASE & TIMELINE UNDER THE POCSO ACT

In Chhindwara, Madhya Pradesh, Asaram operated a gurukul with approximately 400 students, including 90-95 girls in higher grades (11th and 12th). In 2012, during a sermon in Haridwar attended by these students, Asaram noticed one particular girl who caught his interest. He instructed his disciple to gather information about her. The disciple informed him that the girl was a student at his ashram, and Asaram expressed a predatory interest by telling the disciple to "keep the girl ready for him." The young girl was summoned to meet Asaram and felt honoured, as he was revered as a god-like figure by his followers. Her father, a devout adherent of Asaram, had even taken a loan to build a small ashram-like structure for him in Shahjahanpur, Uttar Pradesh. He had sent two of his children to Asaram's ashrams and regularly donated a portion of his earnings to Asaram's trust funds.

Shilpi, who was in charge of the Haridwar ashram, was transferred to the Chhindwara ashram, where the girl studied. Shilpi's new primary responsibility was to ensure the girl was prepared for Asaram, further highlighting the manipulative and exploitative nature of the situation.

Additionally, Asaram instructed another disciple, Shiva, to organize a three-day sermon and program on the 9th, 10th, and 11th of August, 2013. Shiva complied with these instructions.

¹⁰ Supriti David, 'Asaram Convicted In 2013 Rape Case While Serving Life Sentence: 10 Facts' *NDTV News*, [30 Jan 2023] < <https://www.ndtv.com/india-news/asaram-convicted-of-rape-today-heres-a-timeline-of-cases-against-him-3737112>

¹¹ 'Gujarat rape case: Asaram Babu gets life term for rape, abduction of woman', *Hindustan Times* [31 January, 2023] < <https://www.hindustantimes.com/india-news/asaram-gets-life-term-in-sexual-assault-case-in-gujarat-101675163108866.html>>

Concurrently, Asaram exerted constant pressure on Shilpi, his disciple, to bring the girl to him and ensure she was prepared for his advances. Amidst this manipulation, Shilpi informed the girl that she was under an evil spell and needed to see Asaram for her well-being. The girl refused, prompting Shilpi to inform her parents, who were then persuaded to send their daughter to the Jodhpur sermon. Initially hesitant, her father eventually agreed after her mother's insistence, but only on the condition that they accompany their daughter.

The sermon concluded on the 11th of August, but Asaram allegedly awaited the girl's arrival. When the family arrived at the Jodhpur Ashram on the 13th of August, they were taken to Asaram's farmhouse, in a village named Mani¹², located 40 kilometres from Jodhpur, by his followers. On the morning of the 14th, Asaram met with the family and informed the parents that he would treat their daughter the following day, the 15th of August. On the 15th, Asaram's cook informed the family that Asaram was ready to treat the girl. Initially, Asaram performed a few prayers over the girl's head in the presence of her parents, claiming this was to rid her of evil spells. He then insisted that the evil spirits were particularly stubborn and that he needed to treat the girl alone. Despite their initial hesitation, the parents were convinced by the cook and other followers that this was necessary for their daughter's well-being. The minor girl was then led into a small, dark room with Asaram. The room was devoid of light, bulbs, or even a fan, containing only a bed, ostensibly to prevent any potential recording of the incident. In this secluded setting, Asaram began to sexually harass and assault the girl. When she resisted, he threatened her, claiming that he would kill her and her parents and dispose of their bodies if she did not comply. Terrified, the girl remained silent, and Asaram raped her.

After this traumatic incident, the girl and her family returned to their village on the 16th of August. The girl remained silent for two days, unable to speak about the ordeal. On the 18th of August, she broke down and confided in her mother, who then informed her father. They tried to contact Asaram and his followers to confront them directly but received no response. Knowing that Asaram's next sermon was to be held in Delhi at Ramleela Maidan, the family travelled there, hoping to meet him and seek justice. However, despite waiting for hours, they were denied any opportunity to speak with Asaram.

¹² 'Asaram Bapu rape case: Complete timeline of events', *Financial Express India* [updated 25 April 2018] < <https://www.financialexpress.com/india-news/asaram-bapu-rape-case-complete-timeline-of-events/1144731/> >

Desperate and distraught, they went to the Kamla Market Police Station in Delhi, located just 500 meters from Ramleela Maidan, and reported the entire incident to the police on the 20th of August. The police officer listened attentively to the family's account, realizing the gravity of the situation. Recognizing it as a high-profile case, he acknowledged the jurisdictional challenge since the incident occurred in Jodhpur, while the complaint was being lodged in Delhi. Understanding the complexity, the diligent officer sought guidance from the Deputy Commissioner of Police (DCP) in Delhi, especially considering it involved the rape of a minor by individuals of high stature. The DCP advised that although the jurisdiction differed, they could initiate a 'zero FIR' in Delhi.¹³

This administrative step of, Zero FIR helps to register irrespective of the area where the offence is committed. The police in such a case can no longer claim that they have no jurisdiction. Such an FIR is then later transferred to the police station that has the actual jurisdiction so that the investigation can begin. The concept of Zero FIR is a valuable legal mechanism for women across the country to combat crimes such as sexual harassment and rape.¹⁴

ROAD TO JUSTICE

Asaram Babu was apprehended by the Jodhpur Police in Indore and has remained incarcerated since then. He was transported to Jodhpur from his ashram in Indore.¹⁵ The midnight operation followed the Rajasthan police's intervention earlier that evening, halting his sermons and bringing him in for questioning.¹⁶ After being detained, Asaram Babu is questioned by the authorities. He passed a potency test at SN Medical College, proving his ability to carry out sexual acts. Asaram is charged together with four other people by the Jodhpur police: Sanchita, also known as Shilpi, Prakash, Shiva, also known as Sava Ram Hethvadiya, and Sharad Chandra, also known as Sharat Chandra. He is charged under the Protection of Children from Sexual Offences Act (POCSO) Section 8 as well as Sections 342, 376, 506, and 509 of the

¹³ Varun Johri, StudyIQ IAS, 'EP 23: The Real Story of Asaram Babu/Rape Convict/Ek Banda Kaafi Hai/Timeline' [26 May 2023] <https://youtu.be/-AIHPP44YGM?si=imvOQjIadPdgp-2O>

¹⁴ Syed Aatif, Legal Service India, E-journal, 'Zero Fir' < <https://www.legalserviceindia.com/legal/article-4370-zero-fir.html> >

¹⁵ 'Asaram Babu rape case: Complete timeline of events,' *Financial Express India* [updated 25 April 2018] < <https://www.financialexpress.com/india-news/asaram-babu-rape-case-complete-timeline-of-events/1144731/> >

¹⁶ Venugopal Pillai & Ashish Gaur, 'Asaram Babu arrested from his Indore ashram', *Times of India* [Updated 01 September 2013] <<https://timesofindia.indiatimes.com/india/asaram-babu-arrested-from-his-indore-ashram/articleshow/22194700.cms> >

Indian Penal Code.¹⁷ Many witnesses in the trial were attacked throughout the proceedings, with some even being killed, by Asaram's followers allegedly on his directions.

On April 7, 2018, the final arguments in the case against Asaram Bapu concluded in the court of SC/ST Cases Special Judge Madhusudan Sharma. The court then reserved its verdict for April 25, 2018. Due to security concerns and the potential for public disorder caused by Asaram's followers, the Rajasthan High Court, upon a plea filed by the police, directed the trial court to deliver its judgment within the confines of Jodhpur Central Jail. This measure aimed to prevent any breach of law and order in the city, given the notorious difficulty in maintaining discipline and ensuring security when large numbers of Asaram's devotees gathered. On April 25, 2018, Asaram Bapu, 77, was convicted by the trial court. Special Judge Madhusudan Sharma delivered the verdict in a makeshift court set up within Jodhpur Central Jail. Asaram had been incarcerated there since 2013, following his arrest on charges of sexual assault.¹⁸

In Sessions Case No.116/2016 (152/2013) (NCV No.129/2016), the learned Judge of the Special Court, POCSO Act Cases, Jodhpur, found Asharam, guilty and punished him in a judgement dated April 25, 2018:¹⁹

Offences	Sentences	Fine	Fine Sentences	Default
Section 370(4) IPC	10 Years' R.I.	Rs.1,00,000/-	1 Year's R.I.	
Section 342 IPC	1 Year's R.I.	Rs.1,000/-	1 Month's R.I.	
Section 506 IPC	1 Year's R.I.	Rs.1,000/-	1 Month's R.I.	
Section 376(2)(f) IPC	Life Imprisonment (The remainder of the Natural Life of the Accused)	Rs.1,00,000	1 Year's R.I.	

¹⁷ 'Asaram Bapu rape case verdict: Timeline of events upto his conviction by Jodhpur court' *The Indian Express*, [25 April 2018]< <https://indianexpress.com/article/india/asaram-bapu-rape-case-verdict-timeline-of-events-upto-his-conviction-by-jodhpur-court-5150961/> >

¹⁸ 'Asaram Bapu rape case verdict: Timeline of events upto his conviction by Jodhpur court' *The Indian Express*, [25 April 2018]< <https://indianexpress.com/article/india/asaram-bapu-rape-case-verdict-timeline-of-events-upto-his-conviction-by-jodhpur-court-5150961/> >

¹⁹ *Shilpi vs State of Rajasthan* [2022]

Section 376D IPC	Life Imprisonment (The remainder of the Natural Life of the Accused)	Rs.1,00,000	1 Year's R.I.
------------------	---	-------------	---------------

Asaram Bapu was convicted under multiple sections of the Indian Penal Code (IPC), resulting in varying sentences and fines. Under Section 370(4) IPC, he received 10 years of rigorous imprisonment (R.I.) and a fine of Rs.1,00,000/-, with a default sentence of 1 year R.I. For the offence under Section 342 IPC, he was sentenced to 1 year R.I. and a fine of Rs.1,000/-, with a default sentence of 1 month R.I. Similarly, under Section 506 IPC, he received 1 year R.I. and a fine of Rs.1,000/-, with a default sentence of 1 month R.I. The most severe punishments were under Sections 376(2)(f) IPC and 376D IPC, where he was sentenced to life imprisonment for the remainder of his natural life for each offence, along with a fine of Rs.1,00,000/- for each, and a default sentence of 1 year R.I. for each fine. Asharam has also been convicted for offences under Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, and Sections 5(f)/6, 5(g)/6, and 8 of the POCSO Act.²⁰

ASSESSING THE PERFORMANCE OF THE POCSO ACT THROUGH THE ASARAM BAPU CASE

The Protection of Children from Sexual Offences (POCSO) Act, 2012 enacted by Govt of India provides safeguards for children against sexual abuse. The POCSO Act 2012 provides for the establishment of Special Courts for the purpose of ensuring speedy trial.²¹

Whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution²² shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death. The fine imposed shall be just

²⁰ *State Of Rajasthan vs Asharam* [2023]

²¹ 'Special Courts Under POCSO Act' Press Information Bureau, Government of India, Ministry of Women and Child Development [30 July 2021] <<https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1740738>>

²² The Protection of Children from Sexual Offences Act, 2012 s5[f]

and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.²³

The Protection of Children from Sexual Offences Act (POCSO), enacted in 2012, was specifically designed to protect minors, who are among the most vulnerable members of society. This separate legislation was necessary in addition to Section 376 of the Indian Penal Code (IPC) to address the unique vulnerabilities of children. Due to their inherent weakness and inability to defend themselves, children can easily be manipulated, threatened, and exploited, necessitating additional protective measures. Crimes against young children are not only punishable by law but are also regarded as profoundly reprehensible by society. The POCSO Act defines a 'child' as any person below the age of eighteen years, ensuring a clear and comprehensive legal framework for the protection of minors from sexual offences.²⁴ In the Asaram Bapu case, after the FIR was filed at the Kamla Nagar Police Station in Delhi, immediate and meticulous actions were taken. Recognizing the high-profile nature of the case, the police acted swiftly. As the case fell under the Protection of Children from Sexual Offences (POCSO) Act, involving the rape of a minor, the investigation needed to be both prompt and efficient. Asaram Bapu was apprehended by the police in Indore and transported to Jodhpur, where he has remained incarcerated since his arrest. Consequently, the self-styled godman had requested bail twelve times so far: six times in the trial court, three times in the Rajasthan High Court, and three times in the Supreme Court. All of his bail requests, nevertheless, have been denied even though he is being defended by prominent attorneys nationwide.²⁵ Asaram was never granted bail and remained in prison until his final conviction. The POCSO Act served as both a protective measure and a pressing factor, ensuring the investigation was conducted with the utmost integrity and speed.

The POCSO Act has streamlined the procedure to be both easy and child-friendly, ensuring that children are not intimidated during the legal process. Under this Act, officers are required to keep the victim's identity confidential unless disclosure is permitted by a special court. Additionally, the Act mandates that the officer must ensure the child does not come into contact with the accused during the examination, among other protective measures.²⁶

²³ The Protection of Children from Sexual Offences Act, 2012 s6

²⁴ The Protection of Children from Sexual Offences Act, 2012 s2[d]

²⁵ 'Asaram Bapu Sentenced to Life Imprisonment in 2013 Rape Case', *The Wire* [25 April 2018]

< <https://m.thewire.in/article/law/asaram-bapu-2013-rape-case/amp> >

²⁶ The Protection of Children from Sexual Offences Act, 2012 s33[7], s36

AUTHOR'S OPINION

India has made significant progress in various fields such as science, law, and social reform. However, atrocities against women continue to escalate. Despite the government's extensive efforts in implementing policies aimed at protecting women and young girls, the prevalence of rape and sexual violence shows no signs of abating. According to the Sexual Violence in South Asia, report: Legal and Other Barriers to Justice for Survivors discovered that there are still many barriers that survivors must overcome in order to get justice, especially if they come from marginalised communities based on caste, class, or ethnicity. These barriers include:

- law enforcement officials' corruption,
- the police's inability to record cases of sexual violence,
- the two-finger test's ongoing use,
- the challenges survivors face in accessing support services such as compensation and witness and victim protection,
- the pressure from families, the community, and panchayat members to make unofficial settlements, and many other issues.²⁷

It appears that there has been a rise in the number of sexual crimes against women and young girls. Even young girls who are not yet aware of the dangers and atrocities of the outside world have fallen prey to such heinous crimes. Children are particularly vulnerable and often fall prey to such vicious crimes. As evidenced by the aforementioned case, the girl held the man in high regard, viewing him as a deity. Her family and she collectively venerated the man, unaware of the profound impact his actions would have on their lives. The victim's father stated, "I felt so strongly about Asaram that I would not have believed my own daughter if I had not seen her that night."²⁸In India, religion is a deeply held belief, and many people are known to be devoted followers. Unfortunately, there are individuals and religious leaders who exploit this passion and blind faith for their own gain. As a nation, India is currently striving to emerge from such circumstances. However, a significant proportion of the population in rural areas continues to be vulnerable to similar situations.

²⁷ 'Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors' *Equality Now* [20 April 2021] < <https://equalitynow.org/resource/sexualviolencesouthasia/> >

²⁸ Priyanka Dubey, 'Crisis of Faith the nightmarish struggle to bring Asaram to justice' *The Caravan* [01 April 2017] < <https://caravanmagazine.in/reportage/asaram-nightmarish-struggle-bring-justice> >

Despite the ongoing case of the self-styled godman Asaram for raping a minor girl, on 3 January 2014, the Madhya Pradesh BJP MLA Usha Thakur performed aarti of Asaram Babu's photograph²⁹. This exemplifies the profound influence these fake babas exert on the masses and even political leaders who have been elected to serve the public good. It is simply unacceptable for a political leader to engage in religious rituals like aarti for someone who has been accused of sexual violence against a minor girl and has been imprisoned since the FIR was filed. This is especially true when the leader in question holds a position of public trust and responsibility. This act is a betrayal of the very principles of justice and protection that she is supposed to uphold. It demonstrates a shocking lack of empathy for the victim and her family, as well as a disregard for the societal need to condemn and deter such heinous acts.

It has been widely reported that his followers have created disturbances and delays in the justice process for the victim. As previously observed, the final decision/hearing was to be transferred by the Rajasthan High Court, at the request of the police, from the trial court to deliver its judgment within the confines of Jodhpur Central Jail.³⁰ This measure was implemented with the intention of preventing any breaches of law and order in the city, given the notoriously challenging circumstances in maintaining discipline and ensuring security when large numbers of Asaram's devotees gathered. In a bid to prevent any untoward incidents before the self-styled godman Asaram Babu's rape case verdict on 25 April, the Jodhpur Police announced that they would impose Section 144 until 30 April 2018.³¹ It is evident that the followers of Asaram have unquestioning faith in him. They are indifferent to the allegations against him and the fact that he has been incarcerated or imprisoned since the first information report (FIR) was filed and the court denied him bail on 15 occasions.³² It appears that they have been under his spell, and they believe that they should do whatever he says or whatever is for his good. Following Asaram's arrest in Indore in July 2013, nine witnesses were subsequently attacked over the following four years. Three of these witnesses died as a result of their injuries.³³ Rahul K

²⁹ 'Asaram Babu rape case: Complete timeline of events,' *Financial Express India* [updated 25 April 2018] < <https://www.financialexpress.com/india-news/asaram-babu-rape-case-complete-timeline-of-events/1144731/>>

³⁰ 'Asaram Babu rape case verdict: Timeline of events upto his conviction by Jodhpur court' *The Indian Express*, [25 April 2018] < <https://indianexpress.com/article/india/asaram-babu-rape-case-verdict-timeline-of-events-upto-his-conviction-by-jodhpur-court-5150961/>>

³¹ 'Asaram rape case: Jodhpur Police to impose Section 144 ahead of verdict, judgment to be pronounced from inside jail' *The Indian Express* [21 April 2018] < <https://indianexpress.com/article/india/asaram-rape-case-jodhpur-police-to-impose-section-144-ahead-of-verdict-judgment-to-be-pronounced-from-inside-jail-5146034/>>

³² 'Asaram Babu's Bail Plea Rejected 15th Time As SC Refuses To Entertain His Petition In 2013 Minor's Rape Case' *Times Now* [updated 12 September 2023] < <https://www.timesnownews.com/india/asaram-babus-bail-plea-rejected-15th-time-as-sc-refuses-to-entertain-his-petition-in-2013-minors-rape-case-article-103607158>>

³³ 'For Murdered Witnesses In Asaram Case, Wait For Justice Continues' *NDTV* [updated 25 April 2018] < <https://www.ndtv.com/india-news/for-murdered-witnesses-in-asaram-case-wait-for-justice-continues-1842870>>

Sachan, an Ayurvedic practitioner and Asaram's former physician is a key witness in the rape cases against the self-styled godman and Narayan Sai. He was stabbed by an alleged follower of Asaram in the Jodhpur sessions court when he was about to testify. In 2016, the Central Bureau of Investigation filed a case of abduction against an unidentified individual following the disappearance of Rahul K Sachan from his residence in Lucknow in November 2015. Sudha Pathak, a witness, recanted her testimony and informed the Jodhpur sessions court that she was unaware of Asaram's activities at his ashram. Kripal Singh, a witness in the Jodhpur rape case, died a day after he was shot at in the Shahjehanpur district of Uttar Pradesh. In a statement made before his death, Singh alleged that three followers of Asaram had approached him in a Jodhpur court and had offered him money.³⁴ The blind loyalty of these followers, which may sometimes transcend rational thought and moral boundaries, illustrates a grave societal issue. It reflects a disturbing prioritisation of misguided faith over justice and humanity. The murder of witnesses not only obstructs the course of justice but also sends a chilling message to potential witnesses in similar cases, which may significantly undermine the legal system's ability to hold perpetrators accountable. This heinous act serves to highlight the pressing need for a comprehensive review of our witness protection programmes, with a view to ensuring that justice is served and that those brave enough to testify against powerful and influential figures are safeguarded against such retaliation.

Lastly, those of a higher socioeconomic status and their associated powers exert considerable influence over criminal activities. As observed previously, Asaram and his son were able to evade accountability for a considerable period due to their political connections. They believe they are able to control and manipulate society in accordance with their own agendas, thereby perpetuating injustice upon the general public and the economically disadvantaged. Asaram was able to afford and engage the services of India's most prominent advocates and lawyers for his case, including Mr. Ram Jethmalani and Subramanian Swamy. Mr. Ram Jethmalani, a prominent figure in Indian legal circles, has been the subject of criticism for his purported remarks about the victim, which suggested that the girl was mentally unstable and afflicted with a chronic disease that drives women to men. In a televised interview with Arnab Goswami on Times Now, Ram Jethmalani's anger was evident when he was questioned about the defamation of the victim. Goswami's questioning highlighted the questionable logic behind Jethmalani's assertion that labelling the victim mentally unstable was the only way to defend

³⁴ 'Asaram Bapu rape case: Complete timeline of events', *Financial Express India* [updated 25 April 2018] < <https://www.financialexpress.com/india-news/asaram-bapu-rape-case-complete-timeline-of-events/1144731/> >

Asaram. However, Ram Jhetmalani has stated that his original statement was misunderstood and that the result of poor reporting. He has also refused to disclose his original statement against the victim.³⁵

This evidence demonstrates the challenges faced by victims and their families in seeking justice, a fundamental right enshrined in the Constitution. For the poor, seeking justice against the rich is an incredible challenge. The wealthy have the advantage of influential positions in society, which gives them access to extensive legal resources, high-profile attorneys, and the means to manipulate legal proceedings in their favour. The poor, on the other hand, have the opportunity to fight back with limited financial resources, which allows them to seek out competent legal representation. They also have the chance to challenge systemic biases and bureaucratic hurdles, which can help them to achieve justice. In an interview, the father of the victim describes the difficulties his daughter faces in leaving the house and the instances of her leaving the house in the past three years due to the ongoing legal proceedings and the threats she has faced. The father of the victim describes how his successful transport business has been negatively impacted by the continuous legal expenses associated with the case. He also outlines the numerous challenges the family has faced in their pursuit of justice.³⁶ Despite these difficulties, the family ultimately achieved their goal of securing a conviction. Despite the involvement of India's most celebrated lawyers, the accused was unable to be released, and the truth was ultimately revealed.

Journal of Legal Research and Juridical Sciences

³⁵ 'The Newshour Debate: Defends Asaram, attacks media' *Times Now* [17 September 2013]

<https://youtu.be/zcn9AKk1zhw?si=VC72_SmdOO_SVQgh>

³⁶Priyanka Dubey, 'Crisis of Faith the nightmarish struggle to bring Asaram to justice' *The Caravan* [01 April 2017] <<https://caravanmagazine.in/reportage/asaram-nightmarish-struggle-bring-justice>>