

Protecting Childhood: *Towards a Safer and Enabling Environment*

Reading Material for

Jharkhand State Level Stakeholders Consultation
on Safeguarding Girl Child

30th August, 2025

Dr. APJ Abdul Kalam Auditorium, Judicial Academy Jharkhand, Ranchi



Organized by

Juvenile Justice-cum-POCSO Committee, High Court of Jharkhand

in collaboration with

Department of Women, Child Development and Social Security, Government of Jharkhand

and

UNICEF, Jharkhand

Compiled by

Judicial Academy Jharkhand

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JUSTICE TARLOK SINGH CHAUHAN

*Chief Justice
High Court of Jharkhand*



Message

It is a matter of immense satisfaction that the reading material, ***“Protecting Childhood: Towards A Safer and Enabling Environment”***, is being released on the occasion of the Jharkhand State Level Stakeholders Consultation on Safeguarding the Girl Child.

The strength of a society is measured by how it treats its children, its most vulnerable and valuable members. The girl child, long subjected to discrimination and neglect, must be safeguarded with dignity, safety, and equal opportunity. This is not only a constitutional mandate but a moral duty, and it is upon us as custodians of justice to make it a lived reality.

While the *Protection of Children from Sexual Offences (POCSO) Act, 2012* and the *Juvenile Justice (Care and Protection of Children) Act, 2015* together form a robust legal architecture, the true strength of these laws lies in their application. Justice for children is not achieved through statutes alone but through the sensitivity of the police officer who records a statement, the diligence of the medical examiner, the compassion of the Magistrate, the care of child welfare authorities, and the vigilance of communities. No stakeholder can work in isolation; coordinated and empathetic action is the only way forward.

This publication is therefore of great significance. The Judicial Academy, Jharkhand has made significant efforts in not only elaborating essential aspects such as determination of age, trial procedures, compensation mechanisms, and judicial precedents, rather also explores broader frameworks. UNICEF, Jharkhand has further provided valuable insights about the prevalence of child marriage in Jharkhand, mental health and psychosocial support systems for children, and government schemes and interventions, the Child Protection Framework in Jharkhand, the *Jharkhand Panchayat Raj Act, 2001*, and the *Bharatiya Nyaya Sanhita, 2023*. The material also includes the victim compensation data provided by JHALSA which shows the tireless institutional efforts being made to uphold constitutional promises through meaningful relief to survivors.

I firmly believe that this work will guide judicial officers, practitioners, administrators, and civil society actors alike, inspiring them to protect with vigilance, prevent with foresight, and deliver justice with sensitivity. Most importantly, it should remind us that the safeguarding of the girl child is not merely the duty of the courts or the government, but a collective responsibility that rests upon every citizen who cherishes equality, dignity, and humanity.

I congratulate all the people involved in the making of this reading material for their dedicated efforts in producing this comprehensive resource. I extend my best wishes for the success of this Consultation and for the meaningful use of this publication in building a safer, stronger, and more enabling environment for every girl child.

A handwritten signature in black ink, appearing to read 'Tarlok Singh Chauhan', written in a cursive style.

Tarlok Singh Chauhan

Hon 'ble Mr. Justice Rajesh Shankar

*Judge High Court of Jharkhand
cum-Chairman, Executive Committee,
Judicial Academy, Jharkhand
and Chairperson,
Juvenile Justice-cum-POCSO Committee*



Message

I am pleased to see the publication of this important material, ***“Protecting Childhood: Towards A Safer and Enabling Environment”***, prepared for the Jharkhand State Level Stakeholders Consultation. This material is not just a collection of laws and judgments; it is a practical tool designed to assist all stakeholders in meeting the real challenges of protecting the girl child.

Protecting children is not a task that ends with the enactment of legislation. *The Protection of Children from Sexual Offences (POCSO) Act, 2012*, and the *Juvenile Justice (Care and Protection of Children) Act, 2015*, have given us strong statutory foundations, but effective protection depends on how these laws are implemented in daily practice. Police officers, prosecutors, magistrates, welfare officials, support persons, and community leaders all play crucial roles. Unless all perform their duty with sensitivity, awareness, and diligence, the purpose of these laws remains unfulfilled.

What makes this publication distinctive is its wide coverage and practical focus. In this publication the Judicial Academy Jharkhand has provided in depth analysis about the offences, procedures, and compensation under *Protection of Children from Sexual Offences (POCSO) Act, 2012*. Further UNICEF, Jharkhand has provided insight on international conventions, marriage registration as a protective tool, the *Jharkhand Panchayat Raj Act, 2001*, and the implications of the *Bharatiya Nyaya Sanhita, 2023*. It also addresses child marriage in Jharkhand, mental health and psychosocial support, support services, and state schemes for children. The inclusion of JHALSA's victim compensation data highlights how law is being translated into real relief, reminding us that justice is measured not only by convictions but by the rehabilitation and dignity of the child.

I am confident that this resource will prove invaluable to police officers, magistrates, child welfare committees, administrators, and civil society organisations working in the field of child protection. By using it as a common reference, stakeholders can coordinate better, respond faster, and ensure that every girl child grows up in safety and dignity.

I commend all the people involved behind the curtains for their initiative in preparing this timely and comprehensive publication. I trust that both the Consultation and this material will contribute significantly to strengthening our systems of prevention, protection, and justice for children.

Rajesh Shankar
Rajesh Shankar

DISCLAIMER

- This book is intended for Private Circulation Only.
- The information contained in this book is intended for information purposes only and should not be construed as legal advice on any subject matter.
- The cases and content provided are for educational purposes and illustrative understanding. For a comprehensive understanding, readers are encouraged to refer to the complete case laws and official sources.
- The government schemes, sections, and rules mentioned in this book are intended solely for professional understanding. For complete and authoritative information, readers are advised to refer to the relevant Bare Acts and official legal documents.

Preface

The reading material “*Childhood Matters: Protection, Prevention and Justice - Safeguarding the Girl Child: Towards a Safer and Enabling Environment for her in India*”, is the outcome of sustained research, academic deliberation, and judicial engagement with one of the most crucial areas of child protection law in India. Since its enactment in 2012, the Protection of Children from Sexual Offences Act has emerged as a cornerstone legislation, embodying India’s constitutional and international commitments to safeguard children from exploitation, abuse, and neglect.

This material brings together the key statutes, including the *Protection of Children from Sexual Offences (POCSO) Act, 2012*, the *Juvenile Justice (Care and Protection of Children) Act, 2015*, the *Prohibition of Child Marriage Act, 2006*, the *Jharkhand Panchayat Raj Act, 2001*, and the *Bharatiya Nyaya Sanhita, 2023*, while also reflecting international standards and conventions on child rights.

A wide range of subjects are addressed within its pages. These include the framework for child protection in Jharkhand, the role of marriage registration in strengthening protection for the girl child, the extent and consequences of child marriage in Jharkhand, and the urgent need for stronger responses to sexual abuse and harassment. Dedicated chapters explore mental health and psychosocial support for children — outlining the scale of the challenge, government policies, intervention models, and future recommendations — alongside sections on support services and state and central schemes for children. Significantly, the work explores contemporary challenges such as digital abuse, child pornography, and the evolving dimensions of sexual offences in virtual environments like the metaverse.

The objective of this book is twofold: *First*, to provide the professionals engaged in child protection such as judicial officers and legal practitioners with a reliable reference tool that aids in interpretation and application of the law; and *Second*, to inspire a broader culture of sensitivity, coordination, and accountability. Judges, prosecutors, police officers, medical professionals, welfare authorities, educators, and community workers will all find within these pages both guidance and direction.

It is our earnest belief that this material will not only enhance legal understanding but also foster a more empathetic and child-sensitive approach among all stakeholders. The safety, dignity, and well-being of children is the true measure of justice in society. We hope that this modest contribution will further the larger cause of creating a safe and enabling environment for every child.

***Juvenile Justice-cum-POCSO Committee
High Court of Jharkhand***

CONTENTS

PART 1	1
1. Child Marriage	3
1.1 Key Facts.....	3
1.2 Child Marriage and Its impact of Nutrition, Health, Protection And Development: Some evidence.....	4
1.3 Tabular representation of key indicators and its co-relation with child marriage.....	6
2. Policy Legal Framework for Protection of Girl Child	7
2.1 International Standards and Conventions on Safeguarding the Girl Child	7
2.2 Juvenile Justice (Care and Protection of Children) Act 2015, and Jharkhand JJ Rules, 2017.....	7
2.3 Prohibition of Child Marriage Act 2006.....	8
2.4 Marriage Registration	9
2.5 Protection from sexual abuse and harassment.....	10
2.6 The Bharatiya Nyaya Sanhita, 2023	12
2.7 Jharkhand Panchayat Raj Act, 2001	12
3. Overview of Child Marriage in Jharkhand	13
3.1 Current Situation in Jharkhand	13
3.2 Reasons for the prevalence of child marriages	15
3.3 Measures taken by Government.....	15
4. Violence Against Children	17
5. Improving Emotional Wellbeing and Strengthening Mental Health and Psychosocial Support Outcomes	21
6. Schemes for Adolescents	29
PART II	31
1. Introduction	33
1.1 Indian Scenario.....	34

1.2	Overview of The Protection of Children from Sexual Offences (POCSO) Act, 2012.....	35
1.3	Inefficiency of Existing Laws before the Enactment of POCSO Act.....	36
1.4	Basis of POCSO Act.....	37
1.5	Importance of The POCSO Act, 2012	38
1.6	Understanding The POCSO Act: A Concise Overview	38
2.	Child and Determination of Age Thereof.....	40
2.1.	Definition of Child:	40
2.2.	Determination of Age:	40
2.3.	Important Case Laws on Determination of Age:	46
2.4.	Consensual Sex: A Deformity of the POCSO Act:.....	50
3.	Offences under POCSO Act and Punishment Thereof.....	59
3.1.	Nature of Offences under the POCSO Act:.....	59
3.2.	Mandatory Reporting of Offences (Section 19 & 20):.....	59
3.3.	Various Penal Provisions in Tabular Form:.....	60
3.4.	Cognizable but when Bailable or Non-bailable:.....	62
4.	Meaning of Child Friendly Approach:	63
4.1.	Meaning of Child Friendly Approach:.....	63
4.2.	Recording of Statement of a Child by Magistrate under Section 25 and 26:..	65
4.3.	Medical Examination under Section 27 of the POCSO Act:.....	67
4.4.	Norms of Child-friendly Trial:	71
5.	Trial, Compensation and Disposal under POCSO Act	72
5.1.	Trials of the POCSO Cases:.....	72
5.2.	Compensation under the POCSO Act:	75
5.3.	Disposal of POCSO Case	77
6.	Role of Stakeholders under POCSO Rules, 2020.....	80
6.1.	Role of SJPU or Local Police:	80
6.2.	Role of Child Welfare Committee:	83

6.3.	Role of Support Persons.....	86
6.4.	Role of District Child Protection Unit.....	88
6.5.	Role of Magistrate.....	89
6.6.	Role of Special Court	90
7.	Recent Judgements	91
7.1	In Re: Alarming Rise in the Number of Reported Child Rape Incidents, 2025 SCC OnLine SC 1130	91
7.2.	Ramji Lal Bairwa & Anr. Versus State of Rajasthan & Ors; 2024 INSC 846	94
7.3.	Irfan Ansari v. State of Jharkhand, 2024 SCC OnLineJhar 3245	96
7.4.	Gyanendra Singh @ Raja Singh v. State of U.P., 2025 SCC OnLine SC 517	97
7.5.	State of U.P. v. Sonu Kushwaha, (2023) 7 SCC 475	100
7.6.	Abhishek Ravani v. State of Jharkhand, 2023 SCC OnLineJhar 893	102
8.	Sexual Violence in the Metaverse: A Digital Crisis in a Virtual World....	105
9.	Digital Rape in India: A Misunderstood Concept.....	108
PART III.....		111
1.	Advancing Child-Centric Justice and Inclusive Legal Aid	113
1.1	Introduction	113
1.2	POCSO Victim Compensation: Progress and Commitment	113
1.3.	Juvenile Justice: Strengthening Institutional Support.....	116
1.4	Awareness Initiatives: Building Legal Consciousness.....	116
1.5	Implementation of NALSA and JHALSA Schemes	116
1.6	Institutional Strengths of JHALSA	117
1.7	Broader Judicial Significance	118
1.8	Future Roadmap	118
1.9	Conclusion.....	118

Part I

By UNICEF, Jharkhand

1.CHILD MARRIAGE

Child marriage, defined as a formal marriage or union before the age of 18 for girls and 21 for boys, is a fundamental violation of human rights, threatening the lives, well-being and futures of girls around the world. While child marriage occurs among both boys and girls, the prevalence is about five times higher among girls – reflecting societal values that hold girls in low esteem and deprive them of the agency to chart their own course in life. Child marriage often compromises a girl's healthy transition to adulthood by resulting in early pregnancy, social isolation, interruption of education, limited socio-economic opportunities and increased risk of domestic violence. Moreover, adolescent girls are often married to older men, creating a power dynamic that further disempowers girls and exposes them to greater risks of violence, sexually transmitted diseases and a lack of agency.

1.1 KEY FACTS



One in three of the world's child brides live in India. Child brides include girls under 18 who are already married, as well as women of all ages who first married in childhood.



Over half of the girls and women in India who married in childhood live in five states: Uttar Pradesh, Bihar, West Bengal, Maharashtra and Madhya Pradesh. Uttar Pradesh is home to the largest number.



Nearly one in four young women in India (23 per cent) were married or in union before their 18th birthday.



The prevalence of child marriage varies across states and union territories in India. At least 40 per cent of young women were married before turning 18 in West Bengal, Bihar and Tripura, compared to 1 per cent in Lakshadweep.



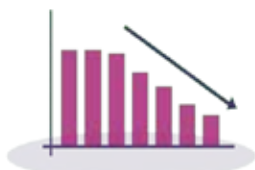
A girl's risk of child marriage depends on certain background characteristics. Girls who live in rural areas or come from poorer households are at greater risk, and a higher proportion of child brides are found among those with little or no education.



The majority of young women who married in childhood gave birth as adolescents.



Child brides face challenges in continuing their education. Fewer than 2 in 10 married girls remain in school.



The practice of child marriage is less common today than in previous generations. Evidence shows accelerating progress over the last 15 years.



India's progress is strong compared to other countries in South Asia. Nonetheless, if child marriage is to be eliminated by 2030 to achieve sustainable development goal 5, additional efforts will be required.

[\(https://data.unicef.org/topic/gender/child-marriage/\)](https://data.unicef.org/topic/gender/child-marriage/).

1.2 Child Marriage and Its impact of Nutrition, Health, Protection And Development: Some evidence

1. Influence of child marriage on nutritional status among their under five children in Bangladesh: Evidence from Bangladesh Demographic and Health Survey data 2011, 2014 and 2017–18 - Khan - 2024 - Reproductive, Female and Child Health - Wiley Online Library

Child marriage contributes adversely to the health and nutritional status of their offspring. The current analysis investigated the association between maternal child marriage and nutritional outcomes including stunting, wasting and underweight children of their under-five children.

Previous studies have shown that child marriage has serious negative impacts on the health and well-being of women and new-borns, it also increases the risk of unfavourable pregnancy and birth outcomes along with malnutrition and iron deficiency. It greatly hampers exclusive breastfeeding (EBF) which is essential for the survival, growth, and development of young infant. A young pregnant woman needs iron for growth, so iron deficiency can increase the risk of stunting of their babies. (Source: Kasjono H, Wijanarko A, Amelia R, Fadillah D, Wijanarko W, Sutaryono. Impact of Early Marriage on Childhood Stunting; 2020). Lack of proper nutrition and iron supplements at early childhood increase the chances of morbidity and mortality.

Moreover, pregnancy complications are more common among child brides. (Source: Lee KH, Chowdhury AI, Rahman QS, et al. Child marriage in rural Bangladesh and impact on obstetric complications and perinatal death: findings from a health and demographic surveillance system. *PLoS One*. 2023). These complications can lead to low birth weight, preterm birth, and adverse birth outcomes, which increase the risk of malnutrition. Finally, proper care is essential for infants' health, growth, and good nutritional status which is usually missing if the mother, the primary caregiver, is a child. The current analysis set out to investigate the association between maternal child marriage and nutritional outcomes of under-five children born to these very young mothers in Bangladesh by using data from three successive nationally representative Bangladesh Demographic and Health Surveys (BDHS).

In this study was included 25,323 ever-married women and their under-five children in different time maternal child marriage frequencies. Overall maternal child marriage was 73% and provided percentage for different surveys from 2011 (76%), 2014 (72%) and 2017/18 (70%). With respect to the outcome indicators among the children aged 0–59 months, women who married before 18 years old had 38% stunted, 13% wasting, and 32% underweight children comparing with women married over or equal 18 years old.

2. Impact of child marriage on nutritional status and anaemia of children under 5 years of age: empirical evidence from India - ScienceDirect

Despite several international commitments and national policies to eliminate the practice of girl child marriage, it remains pervasive in India. the objective of the study, was to examine the association between child marriage and nutritional status and anaemia in children aged below 5 years.

About 58% of sample women were married before 18 years of age. The prevalence of children's stunting, wasting and underweight were 37%, 23% and 36%, respectively. More than half of the sample children (62%) were anaemic. Regression analysis revealed that child marriage (<18 years) was significantly associated with increased likelihood of stunting (adjusted odds ratio [AOR] = 1.06, 95% confidence interval [CI] = 1.02–1.10) and underweight (AOR = 1.04, 95% CI = 1.00–1.08) even after controlling for relevant confounding variables. Child marriage had no significant association with children being wasted and anaemic in crude analyses. However, it is found that child marriage significantly increases the risk of childhood anaemia in adjusted analyses.

The linkages through which child marriage affects children's health and nutrition are manifold. For instance, girls marrying during adolescence increases the risk of complications during pregnancy, which may lead to adverse birth outcomes such as preterm birth and low birth weight of babies. Preterm birth and low birth weight children are at increased risk of malnourishment and early childhood mortality. In this study, we aimed to investigate whether child marriage has significant associations with nutritional outcomes anaemia in children aged below 5 years using a nationally representative large-scale database in India.

3. Child marriage perpetuates **malnutrition and neonatal deaths** as risk of giving birth to low-birth-weight babies is 25% more (Lancet, 2011)

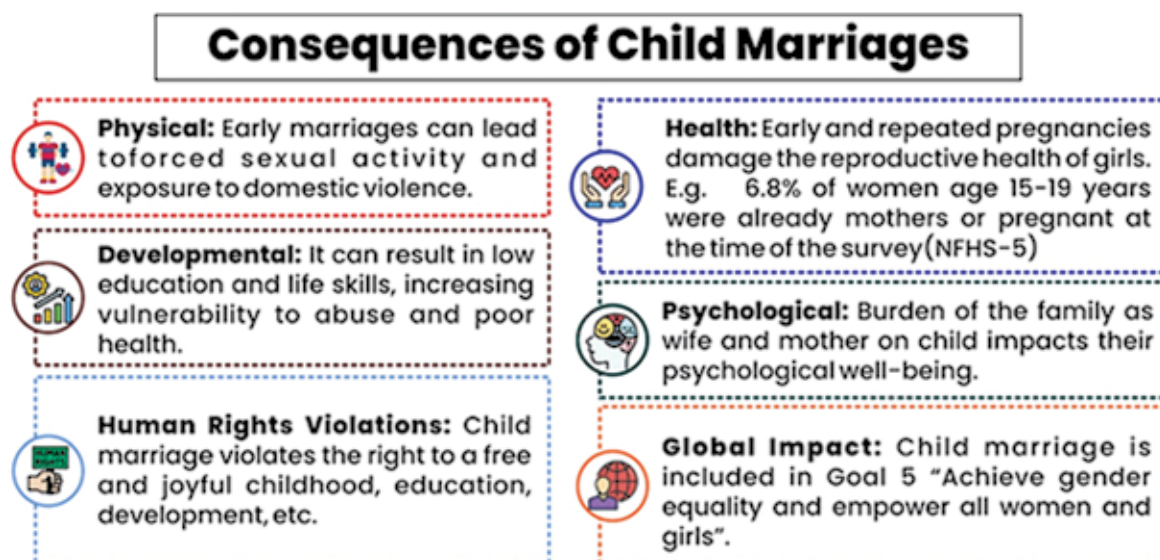
4. Key Highlights from *Economic Impact of Child Marriage: Global Synthesis Report, 2017*

- Depending on the age at marriage, child marriage increases total fertility for women by 17% to 26%.
- Being born of a mother younger than 18 increases the risk of under-five mortality by 3.5 percentage points.
- On average, three in 100 deaths among children under five are directly attributable to early childbirths.
- Being born of a mother younger than 18 increases the risk of under-five stunting by 6.3 percentage points.
- On average, one in 100 stunted children under five are stunted directly because of early childbirths.

- Marrying very early in some countries has a statistically significant direct impact on intimate partner violence. There may also be indirect impacts through lower educational attainment.

1.3 Tabular representation of key indicators and its co-relation with child marriage

Being born of a young mother	Child marriage is likely the cause of at least 84 percent of births of children from mothers younger than 18
Risk for children dying by age 5	Being born of a mother younger than 18 increases the risk of under-five mortality by 3.5 percentage points
National rate of under-five mortality	On average, three in 100 deaths among children under five are directly attributable to early childbirths
Risk for children of being stunted	Being born of a mother younger than 18 increases the risk of under-five stunting by 6.3 percentage points
National rate of under-five stunting	On average, one in 100 stunted children under five are stunted directly because of early childbirths
Intimate partner violence	Marrying very early in some countries has a statistically significant direct impact on intimate partner violence. There may also be indirect



2. POLICY LEGAL FRAMEWORK FOR PROTECTION OF GIRL CHILD

2.1 International Standards and Conventions on Safeguarding the Girl Child

The international framework for girl child protection rests on two foundational conventions that work in tandem to address the unique vulnerabilities faced by girls worldwide. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) form the cornerstone for protecting and promoting girls' rights in law. To date, 189 States have ratified CEDAW, demonstrating near-universal commitment to eliminating gender-based discrimination. A pivotal milestone came with the 1995 Beijing Platform for Action, which was the first global policy document on women that included a specific focus on the girl child. The Beijing Platform for Action flagged 12 key areas where urgent action was needed to ensure greater equality and opportunities for women and men, girls and boys. Considered the most progressive blueprint ever for advancing women's rights, the Beijing Declaration and Platform for Action established comprehensive strategic objectives including eliminating discrimination, ending harmful practices like child marriage, ensuring equal access to education and healthcare, and protecting girls from all forms of violence and exploitation. These instruments collectively mandate States to implement legislative, administrative, and policy measures that address the intersectional discrimination girls face based on both their age and gender.

Reference Links:

- OHCHR Committee on the Elimination of Discrimination against Women
- Convention on the Rights of the Child - OHCHR
- UN Women Beijing Declaration
- UN Beijing Platform - The Girl Child

2.2 Juvenile Justice (Care and Protection of Children) Act 2015, and Jharkhand JJ Rules, 2017

The Juvenile Justice (Care and Protection of Children) Act 2015 incorporates several specific provisions for safeguarding the girl child, reinforced by the 2021 Amendment and operationalized through state rules like the Jharkhand JJ Rules 2017. Section 3(x) enshrines the principle of equality and non-discrimination, mandating that “There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child”.

The Act specifically addresses vulnerabilities faced by girls through Section 2(14)(xii), identifying children “at imminent risk of marriage before attaining the age of marriage” as children in need of care and protection. Section 57(4) specifically prohibits single males from adopting girl children, providing an additional safeguard. The Act also addresses violence through Section 2(14)(viii), covering children “likely to be abused, tortured or exploited for

the purpose of sexual abuse.” Segregation provisions under Sections 47(4) and 48(3) mandate gender-based separation in observation homes and special homes.

Sec 75 of the JJ Act 2015, states that “Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both.” It also states that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful, and the penal provisions of this section shall not apply in such cases. It further mentions that if such an offence is committed by any person employed by or managing an organization which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to **five years, and fine which may extend up to five lakhs rupees**. If on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less **than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees**.

The JJ Amendment 2021, enhanced monitoring through District Magistrate oversight [Sections 27(8) and 27(10)] creating additional accountability layers.

Reference Sources:

- Juvenile Justice Act 2015
- CARA - JJ Amendment Act 2021
- Jharkhand JJ Rules 2017

2.3 Prohibition of Child Marriage Act 2006

The Prohibition of Child Marriage Act 2006, operationalized through Jharkhand’s rules, establishes gender-sensitive protection mechanisms specifically safeguarding girl child rights. Section 4 of the Act mandates maintenance and residence provisions exclusively for female contracting parties, ensuring economic security and safe shelter - critical given that child brides often face abandonment and destitution. Jharkhand’s rules strengthen this through detailed procedures requiring monthly maintenance payments by the 15th of each month and court-supervised residence arrangements until remarriage.

The PCMA 2006 framework provides robust protection mechanisms specifically designed to safeguard girl children’s rights through preventive and remedial measures. The Act’s injunctive provisions under Section 13 empower Judicial Magistrates to issue prohibitory orders against impending child marriages upon receiving complaints from CMPOs, NGOs, or concerned citizens. Jharkhand’s rules enhance this protection by mandating electronic alerts and requiring District Magistrates to exercise suo moto powers during mass marriage events like Akshaya Tiritiya. Crucially, the framework ensures gender-sensitive implementation - women cannot be imprisoned for violations, recognizing their vulnerable position within patriarchal structures. For girl children already in child marriages, Section 4 guarantees maintenance

and residence rights until remarriage, with courts determining quantum based on the child's needs and lifestyle. The voidable nature of child marriages under Section 3 empowers girls to seek annulment within two years of attaining majority, while Section 6 protects legitimacy of children born from such unions. The Jharkhand rules strengthen this by requiring CMPOs to coordinate with Child Welfare Committees for minor girls' protection and mandating shelter home arrangements during legal proceedings. Additionally, the framework addresses trafficking concerns by requiring immediate police notification when girls are taken from lawful guardians, sold for marriage, or subsequently trafficked - creating comprehensive protection against exploitation and ensuring girl children's fundamental rights to childhood, education, and dignified development are preserved.

The framework addresses trafficking concerns under Section 12, making marriages void when girls are "taken, enticed, compelled, or sold," with mandatory reporting to specialized police units under the Immoral Traffic Prevention Act. This intersection recognizes the continuum between child marriage and trafficking that disproportionately affects girls. The Jharkhand rules mandate Child Marriage Prohibition Officers to coordinate with Child Welfare Committees for girls below 18 years, ensuring best interest principles guide interventions for their safety and rehabilitation.

However, implementation gaps persist in addressing deep-rooted patriarchal attitudes that view girls as economic burdens. Successful protection requires sustained community engagement challenging dowry practices, gender discrimination, and socio-economic factors that perpetuate girl child marriages, necessitating convergence with education, health, protection and livelihood programs targeting adolescent girls for their empowerment. Engagement with boys and men on this issue is equally important to change harmful social norms.

2.4 Marriage Registration

The Jharkhand Compulsory Registration of Marriage Act 2017 establishes a critical legal infrastructure that significantly enhances girl child protection by creating mandatory documentation systems. The Act's requirement for compulsory registration within one year (Section 22) creates an accountability mechanism that directly addresses child marriage prevention. By mandating age verification - 18 years for brides and 21 for grooms (Section 11) - the legislation operationalizes PCMA 2006's age provisions through a systematic documentation process.

The Act's digital framework requiring Aadhaar numbers, photographs, and witness verification creates multiple checkpoints that can detect underage marriages. The provision requiring certificates from Mukhiyas/Sarpanch's or Ward Commissioners (Section 12) embeds community-level verification, making it difficult to falsify ages. The mandatory disclosure of passport details for foreign nationals (Section 10) addresses concerns about transnational child marriages and trafficking.

Particularly significant is the Act's intersection with child protection through its penalty structure - while modest fines (₹5 per day, maximum ₹100) may seem inadequate, the real deterrent lies in the mandatory documentation process that exposes illegal child marriages to scrutiny. The appeal mechanism through Chief Registrars and Registrar General ensures due process while maintaining oversight. However, implementation gaps persist in rural

areas where birth registration remains incomplete, making age verification challenging with potentially fake document.

2.5 Protection from sexual abuse and harassment

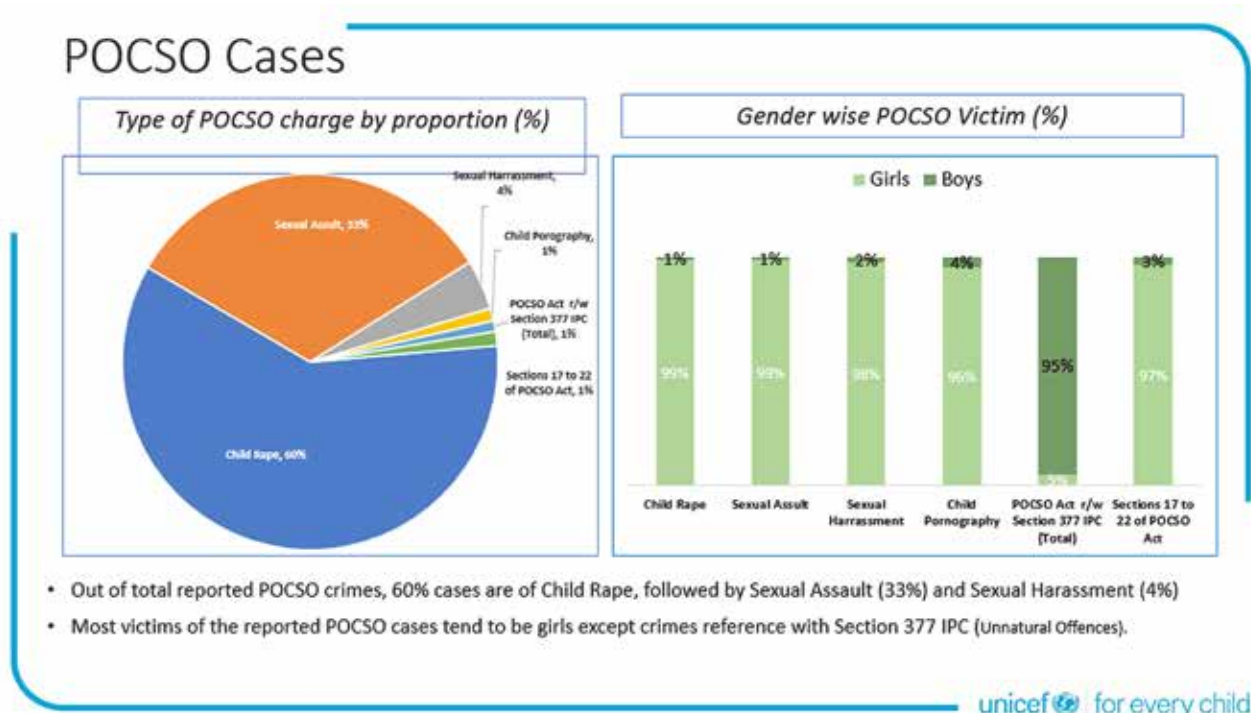
The Protection of Children from Sexual Offences (POCSO) Act, 2012, serves as a comprehensive law to protect children under the age of 18 from sexual assault, harassment, and exploitation. It is specifically designed to be child-centric and prioritize their well-being throughout the legal process. The law defines various sexual offenses and prescribes stringent, graded punishments for offenders, with the 2019 amendment introducing more severe penalties.

A key aspect of this framework is the establishment of child-friendly procedures. Special Courts and in-camera trials to ensure a safe environment for the child. They also detail the process for recording the child's statement, with provisions to ensure they do not have to face the accused directly. Furthermore, the Act provides the right for a child to have a legal representative and the assistance of experts, such as counsellors and social workers, at every stage.

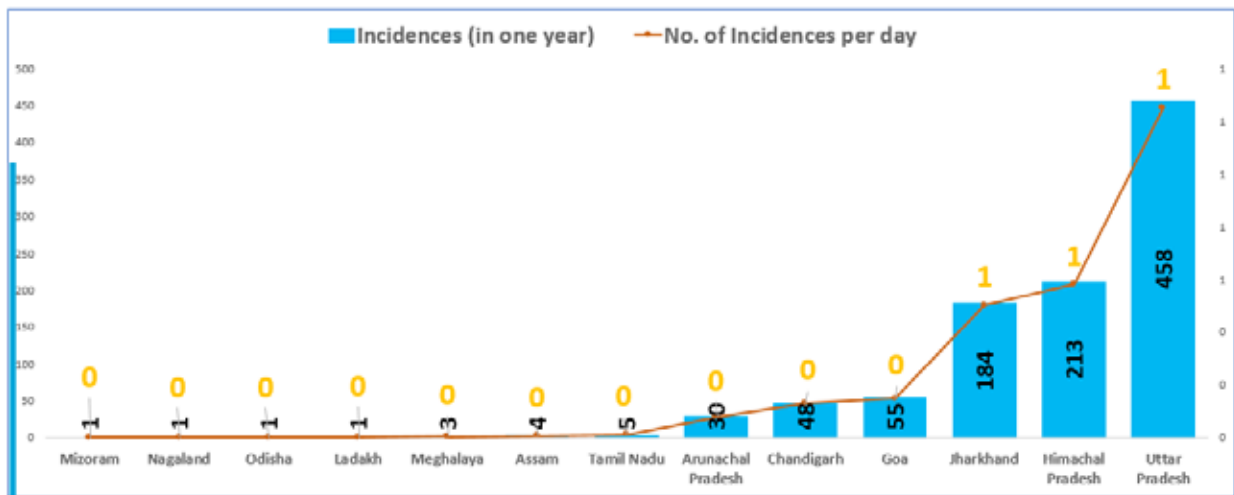
The Act places a strong emphasis on **mandatory reporting and recording**, failing of which attracts penal actions. Any person who becomes aware of an offense against a child has a legal duty to report it, and similarly police have the responsibility of recording the case. This collective responsibility is crucial for early intervention and protection. Overall, the legal and procedural guidelines work in tandem to create a supportive and protective ecosystem for the child victim, with a focus on their safety, rehabilitation and speedy justice.

Reference material for special courts and trial under POCSO https://jajharkhand.in/wp/wp-content/uploads/2019/04/pocso_book.pdf

Some data from NCRB - Violence Against Children (2022)



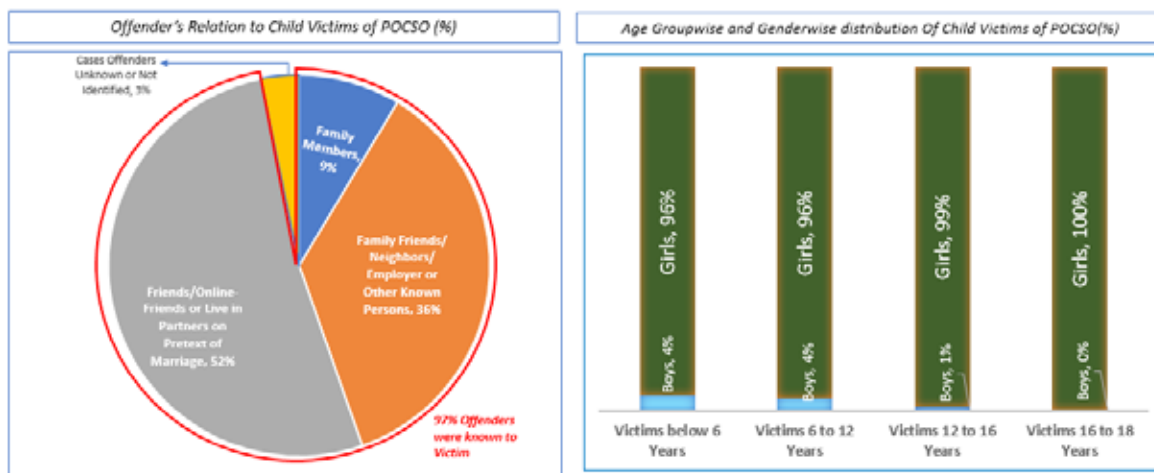
Rape Incidences- Girls (below 18 Yrs.)



- Out of total Rape incidences, 3.2% happen with the girls (below 18 yrs.)
- On an average 3 incidences of rape with girls (below 18 yrs.) reported daily in the country.
- UP reported highest incidences of rape with girls (below 18 yrs.)
- There are 23 states and UTs where rape with girls (<18 yrs.) incidences are 0 in the year 2022.

unicef for every child

Analysis of Crimes Reported under Section 4 and 6 of POCSO (Child Rape)



- Section 4 and 6 of POCSO cover the offence of rape
- 97% offenders were known to child victim under POCSO
- Girls are most vulnerable in each age group under POCSO cases.

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2.6 The Bharatiya Nyaya Sanhita, 2023

BNS strengthens the legal framework for the protection of girl children by addressing a wide range of offences, including sexual violence, trafficking, child marriage, and exploitation. It criminalizes acts such as rape (Sections 63–66), sexual harassment (Section 74), stalking (Section 77), voyeurism (Section 76), and the sale or procurement of children for prostitution (Sections 94, 96–97), ensuring stringent punishments for offenders. These provisions align with the survivor-centric approach of child rights frameworks, prioritizing dignity, safety, and justice for girls.

Protection of the girl child is intrinsically linked to the elimination of harmful practices like child marriage, addressed through intersectional strategies combining law enforcement with education, social empowerment, and economic support for families. The synergy between strong legal provisions and community-based prevention can create a protective ecosystem where every girl can live free from violence, discrimination, and fear, and fully realize her potential.



2.7 Jharkhand Panchayat Raj Act, 2001

The provisions that can be linked to **safeguarding girl child rights** primarily fall under the Panchayats' roles in **social justice, welfare, and protection**. Key points include:

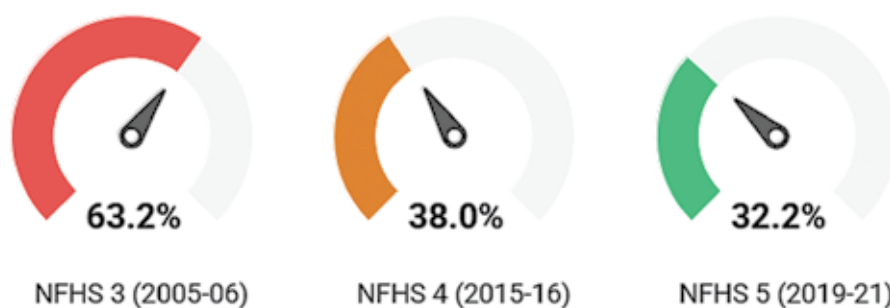
1. **Section 22 & Section 23 – Functions of Gram Panchayat**
 - Promote welfare of women and children.
 - Implement programs related to social justice, including protection from exploitation.
 - Support measures for prevention of child marriage and child labour.
2. **Section 46 & Section 47 – Functions of Panchayat Samiti**
 - Coordinate implementation of schemes for women and child development.
 - Facilitate awareness programs on legal rights, education, and health of children.
 - Monitor anganwadis, schools, and health centres to ensure child safety.
3. **Section 78 – Functions of Zila Parishad**
 - Supervise and support district-level schemes for women and children's welfare.
 - Ensure compliance with state and central government policies for child protection.
4. **Schedule I & II (Functional Domains)**
 - Education, including primary and secondary education for girls.
 - Health & nutrition programs (e.g., ICDS).
 - Social justice initiatives to prevent exploitation and abuse

3. OVERVIEW OF CHILD MARRIAGE IN JHARKHAND

3.1 Current Situation in Jharkhand

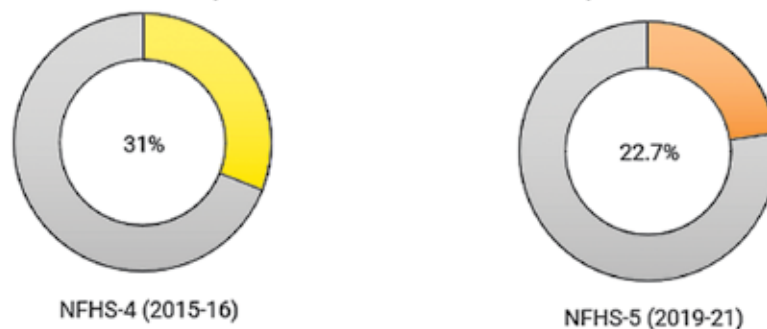
Jharkhand faces a significant child marriage challenge, with **32.2% of women** aged 20-24 married before age 18 and **22.7% of men** aged 25-29 married before age 21 according to NFHS-5 data. While there's been progress with nearly half reduction from 2006 levels (63.2% to 32.2%), Jharkhand remains among the eight states with child marriage rates above the national average.

Trend of Child Marriage in Jharkhand (2005-2021)



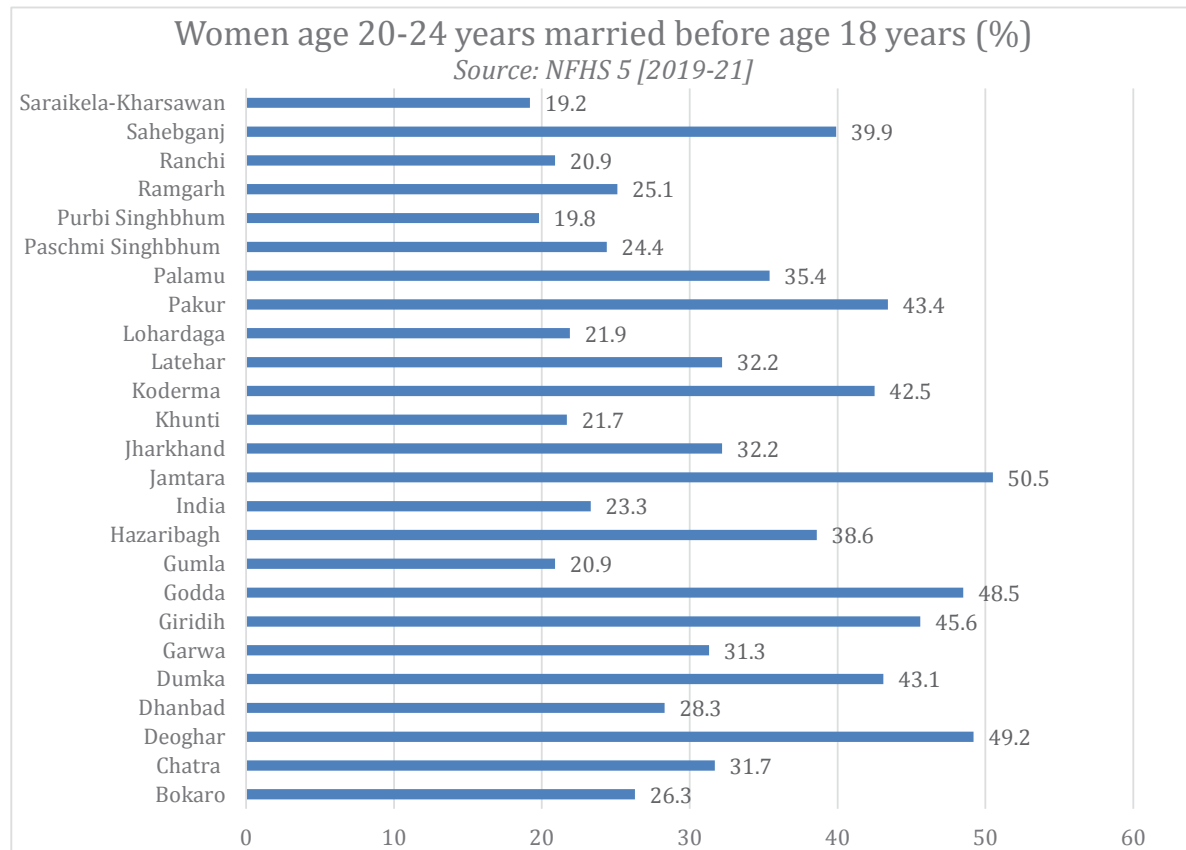
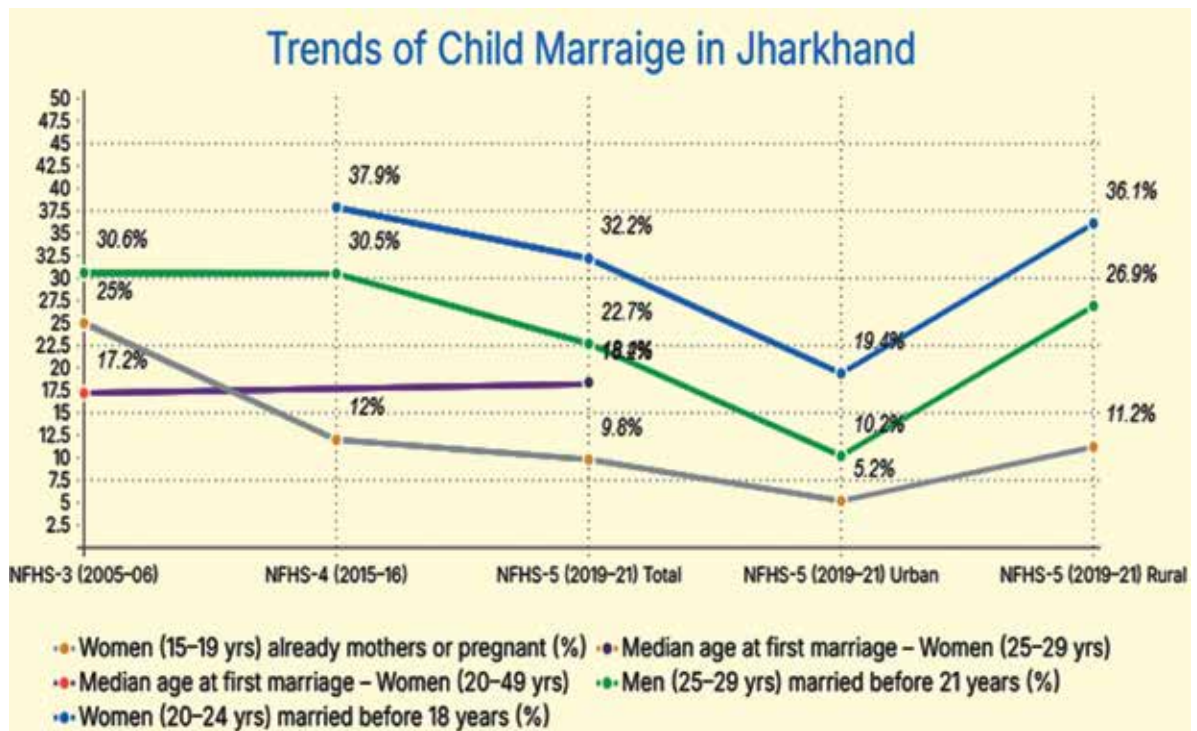
- 32.2% of women aged 20-24 years were **married before age 18 years**.

Men Child Marriage Rates in Jharkhand (2015-2021) (Men 25-29 married before 21)



- 22.7% of men aged 25-29 years were **married before age 21 years**.

The prevalence of child marriage has **reduced nearly half from 63.2% (2006) to 32.2% (2019-21)**



3.2 Reasons for the prevalence of child marriages

- **Poverty and Resource Scarcity:** Families marry off daughters early to reduce financial burdens, particularly dowry, and view girls as economic liabilities.
- **Deep-rooted Cultural and Traditional Beliefs:** Child marriage is seen as a way to preserve family honour, and protect girls from premarital sexual relationships. Traditional, religious, entrenched customs and social acceptance of child marriage is a predominant reason for the prevalence of child marriage.
- **Patriarchy and Gender Inequality:** Girls are seen as a burden on their family and marrying one's daughter at a young age is viewed as a way to ease economic hardship by transferring this 'burden' to her husband's family.
- **Low value placed on Girl's education:** Girls are not seen as being worthy of investment in education. Poor educational opportunities limit the power of children to resist marriage as alternative aspirations get diminished.
- **Fear of Safety and Security:** Many parents feel that it is in best interest of girl child to marry early to ensure her safety where girls are at high risk of harassment and physical or sexual assault.
- **Lack of access to alternatives to prevent child marriage** – Higher education, skilling, sports, transportation facilities, girls hostel facilities are inadequate. Limited access and lack of awareness also poses a challenge on girls and boys to avail these services especially for those living in hard to reach areas or belonging to marginalized families. Their continued engagement either through education, vocational training, skill development etc. is critical to reduce child marriage.
- **Legal and Enforcement Gaps:** Weak law enforcement, lack of awareness, and inadequate monitoring, especially in rural and remote areas, lead to continuation of menace of child marriage. e.g. Conviction and Reporting of child marriage cases are extremely low.

3.3 Measures taken by Government

- **Enactment of 'Prohibition of Child Marriage Act (PCMA), 2006 and Jharkhand State Child Marriage Prohibition Rules 2015.**
- **The Juvenile Justice (Care and Protection of Children) Act, 2015:** It has provisions for care and protection of children who are at imminent risk of marriage before attaining the age of marriage.
- **Mission Vatsalya** – Sponsorship scheme provides financial support may be extended to vulnerable children living with extended families/ biological relatives for supporting their education, nutrition and health needs. A sum of Rs. 4000/- per month with reference to girl child as per Jharkhand Sponsorship guideline. This is a centrally sponsored schemes implemented by DWCD&SS Government of Jharkhand.
- **Mission Shakti** - Beti Bachao Beti Padhao Scheme, **centrally sponsored scheme** implemented by Department of Women and Child Development and Social Security, it aims to break gender stereotypes. It incorporates components of celebration of Birth of

Girl Child, linking Sukanya Samriddhi accounts with birth of girl child and preventing child marriages.

- **National Action Plan to Prevent Child Marriage:** It is a comprehensive framework which aims to provide support to girls who are at risk of early marriage. It includes better data collection, awareness programs, and stronger coordination between state and local governments.
- **State Plan of Action to Make Jharkhand Child Marriage Free, 2018** provides a framework on convergent initiatives from nine departments.
- **Emergency Outreach Services:** Government of India has introduced CHILDLINE with short code 1098, a 24X7 telephone emergency outreach service for children in crisis, including for prevention of child marriages.

4. VIOLENCE AGAINST CHILDREN

Background

Violence against children be it physical, sexual, and emotional violence has devastating and long-lasting consequences, leaving deep impact on their mental, physical and emotional well-being. According to World Health Organization (WHO)/Centres for Disease Control (CDC) supported studies, at least

- 60% of any given population have experienced at least one adverse childhood experience
- 25% have experienced three or more.

Adverse Childhood Experiences (ACEs) are consistently under-reported, and many more children than what we are aware of experience violence, abuse, and neglect every single day.

Globally, every year at least one billion children experience violence – that's half of the world's children.

- **Violence at home:** Three out of four (3/4) young children are regularly subjected to violent discipline by their caregivers.
 - 1 in 4 children under age 5 lives with a mother who is a victim of domestic violence. The single best predictor of children becoming either perpetrators or victims of domestic violence later in life is whether they grow up in a home exposed to domestic violence. (<https://data.unicef.org/resources/a-familiar-face/>)
- **Violence at school:** Worldwide, close to 130 million (more than one in three) students from ages 13-15 experience bullying. 86% percent of the world's children are not fully protected from corporal punishment by law.
- **Violence online:** More than a third of young people in 30 countries report being a victim of online bullying. In 2020, more than 153,000 websites were reported as containing images of child sexual abuse, an increase of 16% from the year before.
- **Sexual violence:** Worldwide, around 15 million adolescent girls aged 15 to 19 have experienced forced sexual intercourse or other forced sexual acts in their lifetime.
- **Children with disabilities** are almost four times more likely to experience violence than non-disabled children.

Impact of Violence against children

- Triggers mental health disorders, non-communicable diseases
- Poor learning outcomes, drop outs
- Increases vulnerability to exploitation, child marriage, trafficking, and conflict with the law.
- Greater risk of substance abuse, early pregnancy, and perpetuating intergenerational cycles of violence.

- Children who experience abuse and neglect are more vulnerable to family separation
- Becoming children in conflict with the law;
- Difficulties in building healthy relationships
- Higher risk of becoming victims or perpetrators of violence as adults.

A 2014 Overseas Development Institute (ODI) study, commissioned by the Child Fund Alliance, estimated that US\$7 trillion is lost due to VAC each year, equivalent to 8 per cent of global GDP. (The Cost and Economic Impact of Violence against Children, Paola Perezniето, Andres Montes, Lara Langston and Oveig Routier).

While violence affects both girls and boys, **girls remain more vulnerable**, with larger ramifications on them, and thus reemphasizing the importance of placing a strong emphasis on protecting girls from all forms of violence and ensuring their safety and well-being.




Policy and legal frameworks addressing rights and protection for children, providing opportunities to ensure that all children have equal access to quality protection services through the following laws:

- The Juvenile Justice Act (Care and Protection of Children) Act 2015
- The Child Marriage Prohibition Act (2006)
- The Protection of Children from Sexual Offences Act (2012, amended in 2019)
- The Child Labour Prohibition and Regulation (1986, amended in 2016).
- India is among the 128 countries worldwide that legally prohibit corporal punishment in schools and institutions.
- The Right of Children to Free and Compulsory Education (RTE) Act, 2009, prohibits physical punishment and mental harassment for children enrolled in schools aged 6-14 years.
- Constitution
- UNCRC

Few Key schemes and programs addressing violence against children, child marriage child trafficking and other harmful norms and promoting empowerment of women and girls

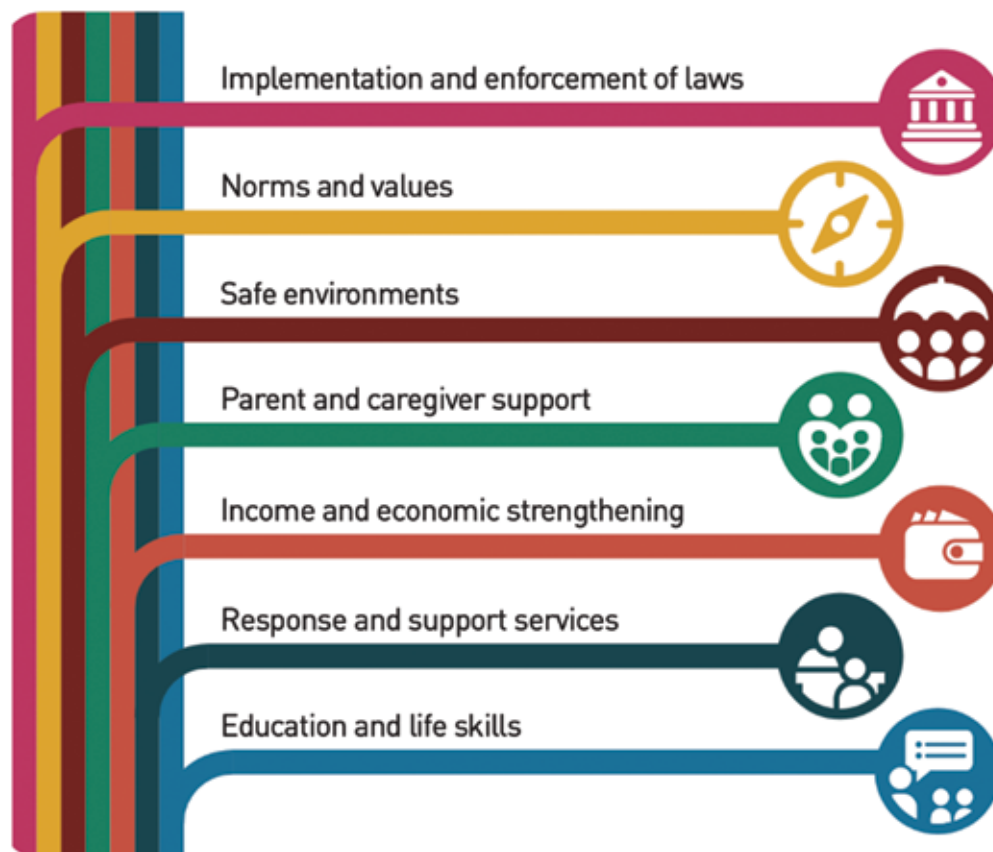
- Mission Vatsalya, Mission Shakti which integrates the National flagship Beti Bachao Beti Padhao (BBBP) scheme have sought to highlight the focus on the girl-child, especially in preventing sex-selective abortions, early child marriage, and to promote early childhood care.
- State Livelihood Promotion Society – Gender Based violence, child marriage etc
- Savitri Bai Phule Kishori Samridhi Yojna – prevention of child marriage
- Mukhyamantri Maiya Saaman Yojna – women empowerment
- KGBVs, CM schools of excellence, JABV etc
- Skill development institutions
- Telemanas

SDGs related to ending violence against children and women

	<p>Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.</p>	<p>Target 16.1 Significantly reduce all forms of violence and related death rates everywhere.</p> <p>Target 16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children.</p>
	<p>Goal 5. Achieve gender equality and empower all women and girls.</p>	<p>Target 5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.</p> <p>Target 5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.</p>
	<p>Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.</p>	<p>Target 4.A Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all.</p>

Strategies for ending violence against children

“INSPIRE” Seven Strategies for ending Violence Against Children is an evidence-based technical package to reduce and prevent violence against children aged 0-17 years (<https://inspire-strategies.org/>)



Supporting the mental health and psychosocial well-being of parents and caregivers is crucial to breaking these cycles. Research over the past two decades has provided critical data, highlighting the urgent need for comprehensive strategies to protect girls from violence and ensure they grow up in nurturing, safe environments.

References

- Hillis, Susan et al. “Global Prevalence of Past-year Violence Against Children: A Systematic Review and Minimum Estimates.” *Pediatrics* vol. 137,3 (2016): e20154079. doi:10.1542/peds.2015-4079
- UNICEF. “A Familiar Face: Violence in the Lives of Children and Adolescents.” November 2017, available at: <https://www.refworld.org/docid/5a0b00e34.html>
- “Countdown.” Global Initiative to End All Corporal Punishment of Children. <https://endcorporalpunishment.org/countdown/>
- <https://www.unicef.org/press-releases/unicef-poll-more-third-young-people-30-countries-report-being-victim-online-bullying>
- Annual Report, Internet Watch Foundation, 2020
- UNICEF. “A Familiar Face: Violence in the Lives of Children and Adolescents.” November 2017, available at: <https://www.refworld.org/docid/5a0b00e34.html>
- Jones, Lisa, et al. “Prevalence and Risk of Violence against Children with Disabilities: a Systematic Review and Meta-Analysis of Observational Studies.” *The Lancet*, vol. 380, no. 9845, 2012, pp. 899–907., doi:10.1016/s0140- 6736(12)60692-8.
- <https://data.unicef.org/resources/a-familiar-face/>

5. IMPROVING EMOTIONAL WELLBEING AND STRENGTHENING MENTAL HEALTH AND PSYCHOSOCIAL SUPPORT OUTCOMES

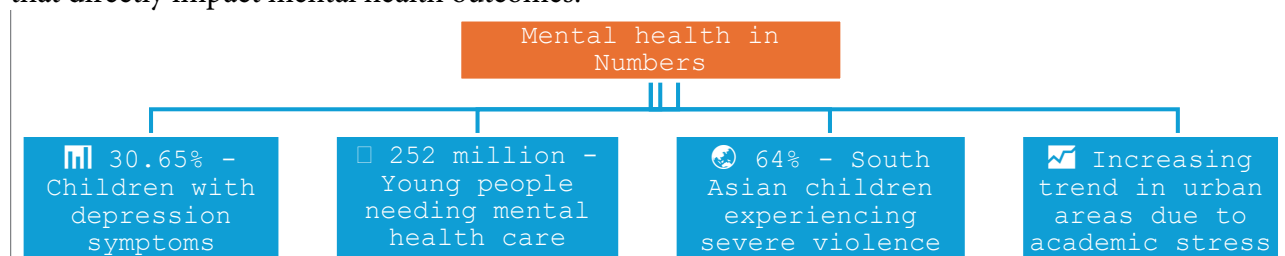
Background

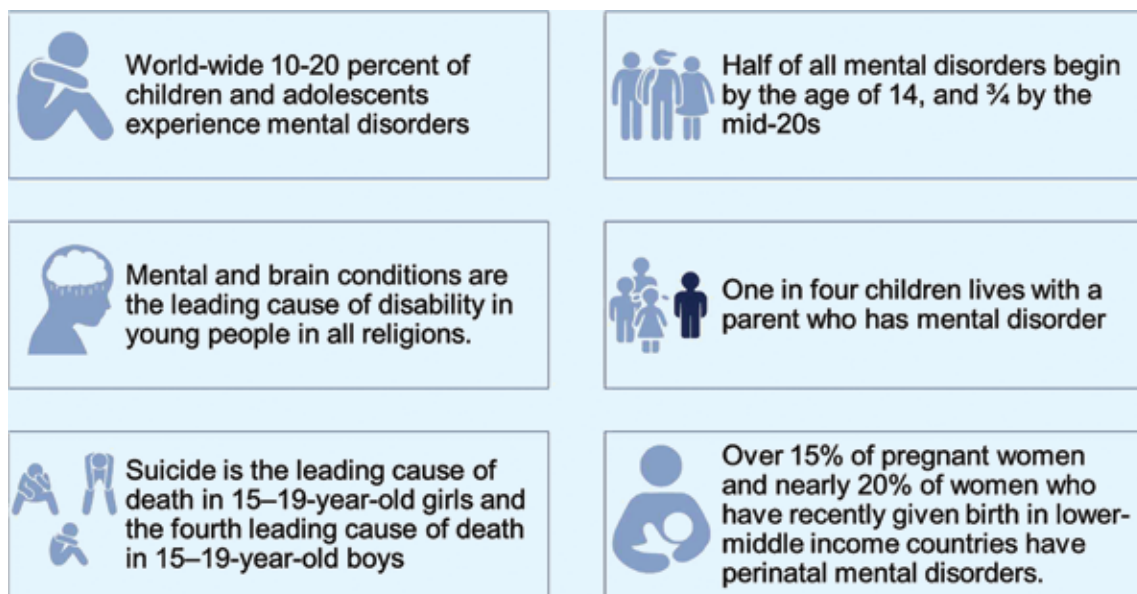
Mental health and psychosocial support (MHPSS) aims to promote psychosocial well-being and prevent or treat mental disorders/health conditions. Mental health condition covers psychological, behavioural and neurodevelopmental disorders and a wide range of resultant disabilities. It is characterized by disturbances in an individual's emotions, thinking, or behaviour such as anxiety, depression etc. The term 'psychosocial' denotes the inter-connection between psychological and social processes which continually interact with and influence each other. **Mental wellbeing** describes the positive state of being in which a child/adolescent enjoys physical, psychological, cognitive, emotional, social, and spiritual wellbeing that influences their ability to grow, learn, socialize, and develop to their full potential. Well-being is commonly understood in terms of **three domains**. First being **personal wellbeing** experiencing emotional well-being, life satisfaction, vitality, resilience, self-confidence and self-esteem. Second is **Interpersonal wellbeing** which means nurturing relationships, responsive caregiving, a sense of belonging and the ability to resolve conflicts and be close to others. Third being **skills and knowledge** to make positive decisions, effectively respond to life challenges, express oneself, and contribute to one's community.

Mental Health and Psychosocial Support (MHPSS) and mental wellbeing are emerging agenda essential to realize children's and adolescent's rights. MHPSS describes support to **promote psychosocial wellbeing and prevent or treat mental disorders**. The term 'psychosocial' denotes the interconnection between psychological and social processes which continually interact with and influence the other. Good mental health during childhood is fundamental to supporting children's development, their resilience to cope with challenges, their emotional well-being, and their capacity to reach their potential.

Evidence shows that **1 in 7 adolescents** have mental health conditions, and **anxiety and depression account for 40% of adolescent mental health conditions**. Most of these cases will go undetected and untreated ("The State of the World's Children 2021: On My Mind – Promoting, Protecting and Caring for Children's Mental Health." UNICEF, UNICEF, Oct. 2021, <https://www.unicef.org/reports/state-worlds-children-2021>).

UNICEF Global Context: Over half of the world's children have experienced severe violence and 64 per cent of these are in South Asia, indicating the regional concentration of child protection challenges that directly impact mental health outcomes.





Source: WHO global health estimates 2020

With over 252 million young people in the country, India faces an unprecedented burden of addressing mental health needs while simultaneously building robust systems for psychosocial support (Kieling et al., 2022). The intersection of traditional social structures, rapid urbanization, educational pressures, and evolving family dynamics creates a complex landscape where children's mental wellbeing is increasingly at risk. Recent systematic reviews reveal alarming statistics about mental health issues among school-aged children and adolescents in India. A comprehensive meta-analysis conducted in 2024 found that 30.65% of school-aged children and teenagers experience symptoms of depression, indicating that nearly one in three young people struggle with mental health challenges (Kumar et al., 2024). This prevalence rate significantly exceeds global averages and highlights the urgent need for targeted interventions.

In Jharkhand, 11% of the population is affected by some or the other mental health conditions. Despite the high burden of poor mental health, many children and youth do not seek help. According to studies 80 to 90% of children will never seek treatment (Hossain, Md Mahbub, and Neetu Purohit. "Improving Child and Adolescent Mental Health in India: Status, Services, Policies, and Way Forward." Indian Journal of Psychiatry, vol. 61). Only 41% of youth in India, age 15-24, believe in seeking help for mental health, compared to 83% globally ("The Changing Childhood Project: A Multigenerational, International Survey on 21st Century Childhood." UNICEF, UNICEF, 2021).

Some data from **the Mental Health and Wellbeing of School Students**, a Survey by National Council for Education, Research and Training (NCERT), 2022 Ministry of Education, Government of India

- 11% of students reported feeling anxiety; 14% reported extreme emotions and 43% reported frequent mood swings.
- 45% of the total responses mentioned feeling tired and low on energy, 34% felt tearful, 27% felt lonely 2-3 times in a week.
- Only 39% were always satisfied with academic performance. The most frequently cited reason for anxiety was studies (50%) followed by examinations and results (31%).

- 57% respondents reported facing difficulties at home since the outbreak of COVID-19 which included emotional changes, financial problems, and violence.

It is estimated that less than 1% of governmental health budgets in low-income countries is spent on mental health. Post-COVID-19, international and national stakeholders have paid more attention to the effects of mental health to the global burden of disease and taken steps towards transforming policies and programs. Nonetheless, mental health remains stigmatized, under-funded, and under-resourced in most countries – rich and poor. (“Mental Health Atlas 2020.” World Health Organization, World Health Organization, 8 Oct. 2021)

Triggers and Enabling factors:

Adverse childhood experiences (ACEs) have a direct impact on mental health well-being of individuals. Evidence shows that children and youth exposed to ACEs have an increased risk for emotional and mental conditions as well as learning, attention, and behavioural problems. For example, rates of depression in adult life are 3 to 4 times higher for women exposed to childhood sexual abuse or physical partner violence compared to non-victims.

Gender is an important determinant of mental health. Issues such as gender-based violence, gender and other forms of social discrimination, identity formation and acceptance and anxieties associated with it directly influence mental health outcomes. Mental health needs and priorities differ for children and adolescents based on their gender. For example, study shows that **boys were seen to face greater struggles with substance use and interpersonal**

violence while girls talked more about sexual violence and eating disorders. Evidence also shows higher risk of mental health morbidities among children and adolescents **with diverse gender identities**. Those children and adolescents, young boys and girls **experiencing multiple deprivations** or living at intersections may also be most affected by mental health issues. **Children with disabilities**, including intellectual and neurodevelopmental disabilities, have a higher risk of developing mental health conditions and there is limited access to services for them especially in low- and middle-income countries. Recent research in mental health, neurobiology and early childhood development strengthens the case for prevention and early intervention for children with disabilities to mitigate the risks of developing mental disorder.

Studies have pointed that **suicide rates** in India peaks at a young age and is **more common among girls and women in India**, in comparison with global trends. It is the **second leading cause of death among 15–29-year-olds, 56% of suicide victims being women**, which contrast higher prevalence trends among men globally. In 2021, **29 children committed suicide every day, of which 53% were girls**. The reported data does not include the numbers of “attempted suicides” by individuals including children. Between 2019-21, the major cause of suicide among boys and girls was reported as **“family related problems”** followed by **failure in examination**. Girls were more likely to commit suicide due to **marriage and love affairs** compared to boys (“Accidental Deaths & Suicides in India 2021.” National Crime Records Bureau; Ministry of Home Affairs, Government of India).

The distribution of mental health issues is not uniform across demographic groups. Research indicates that adolescent girls face particular vulnerabilities, with higher rates of depression and anxiety disorders compared to their male counterparts. Urban children, while having better access to

resources, face unique stressors related to academic competition, social media pressure, and changing family structures that contribute to mental health challenges.

The risks of mental health conditions and psychosocial problems among children, adolescents, and their caregivers are exacerbated when they are exposed to adverse childhood experiences, **poverty, social discrimination, violence, disease, or emergency**. Evidence shows that gender-based and other forms of violence against children fuelled by harmful gender norms, discrimination against certain groups, and **fear of stigma and retribution** have significant impact on their physical and mental health. A longitudinal cohort study from Uttar Pradesh and Bihar showed **strong correlation between child marriage and mental health of adolescent girls** (Aggarwal, Shilpa, et al. "Child Marriage and the Mental Health of Adolescent Girls: A Longitudinal Cohort Study from Uttar Pradesh and Bihar, India." *The Lancet Regional Health - Southeast Asia*, vol. 8, 2023 <https://doi.org/10.1016/j.lansea.2022.100102>). Societal expectations that young married girls will embrace the sudden shift to gendered adult roles – which many young girls may not be developmentally prepared for – also accentuate feelings of vulnerability and distress (Mathur et al., Citation2003) (Child marriage and its consequences for adolescent mental health in conflict-affected contexts: evidence from Bangladesh, Ethiopia and Jordan <https://www.tandfonline.com/doi/full/10.1080/17450128.2025.2467697?src=exp-la>). The lack of social support from peers, coupled with the pressures of fulfilling adult responsibilities at a young age, intensifies the emotional vulnerability faced by married adolescents (Neetu et al., Citation2022). Also, **children with disabilities or without parental care**, especially those **institutionalized**, are at great risk (World Health Organization-Global Status Report on Preventing Violence against Children 2020). Other forms of abuse, exploitation, unhealthy lifestyles, poverty, lack of access to education or other basic services, are some other factors that may negatively affect children and adolescents' mental health status. **Climate change** also impacts the mental health of the population, including children directly and indirectly. Direct impacts include mental trauma and psychological vulnerabilities due to exposure to natural disasters such as cyclones, floods, droughts, or earthquakes.

On the other hand, **protective factors for children's and young people's positive mental health and wellbeing are supportive relationships with peers, families, and teachers, combined with open, honest, and stigma-free conversations**. ("The State of the World's Children 2021: On My Mind – Promoting, Protecting and Caring for Children's Mental Health." UNICEF, UNICEF, Oct. 2021)

Evidence drawn from a systematic review of qualitative and quantitative studies illustrates that **mental health improves when one has necessary personal attributes to make own choices (competent decision-making), is granted the freedom to do so, and feels safe and protected** Renwick, Laoise, et al. "Conceptualizations of Positive Mental Health and Wellbeing among Children and Adolescents in Low and Middle Income Countries: A Systematic Review and Narrative Synthesis." *Health Expectations*, vol. 25, no. 1, 2021)

Legal and Policy framework on MHPSS in India

Over the years, India has developed a comprehensive legal framework for the care and protection needs of children. This framework includes the Juvenile Justice (Care and Protection of Children) 2015, Amendment Act, 2021 and Protection of Children from Sexual Offences Act, 2012 (Amendment 2019), which emphasizes the provision of mental health care and psychosocial support to children.

India has also put in place a comprehensive National Mental Health Policy (2014) which seeks to promote mental health, prevent mental illness, promote de-stigmatization and desegregation and a new Mental Healthcare Act was enacted in 2017. The Act specifically addresses children's mental health needs by requiring specialized services for minors and establishing protocols for consent and treatment decisions involving young people. It emphasizes family involvement while protecting children's rights and autonomy in mental health treatment decisions.

The National Education Policy 2020 also include important references to MHPSS. Schools are important settings for increasing reach and uptake of children and adolescent mental health interventions. The Policy specifically recommends mental health check-ups along with regular

health check-ups under the School Health Program (see below), and introduction of well-trained social workers and counsellors in the schooling system. It also called for the inclusion of mental health and social-emotional learning in school curriculum.

Schemes of Government of India on MHPSS

Ministry of Health and Family Welfare

The National Mental Health Programme (NMHP), launched in 1982 and revamped in 2017 with increased funding and a focus of preventive and promotive measures along with treatment and care.

The District Mental Health Programme (DMHP), which has been in existence since 1996, was revamped in 2015 to ensure availability and accessibility of minimum mental health at district level and promote community engagement in mental health service delivery. Presently, the programme undertakes facility- and community-based outreach in 704 districts nationwide.

In 2022, the Tele Mental Health Assistance and Networking across States (Tele-MANAS) was launched to provide free tele-mental health services all over the country around the clock, particularly catering to people in remote or under-served areas. The programme includes a network of 42 tele-mental health centres, 23 Mentoring Institutes and 05 Regional coordinating Centres with NIMHANS as Centre of excellence with NIMHANS being the nodal centre. CIP situated in Jharkhand is one such regional coordinating Centre.

“Operational Guidelines Mental, Neurological and Substance Use Disorders Care at Health and Wellness Centres”, aims to integrate mental health within primary healthcare services. The guide suggests empowering the primary healthcare system to provide preventive, promotive, and therapeutic mental health care services in the country.

School Health and Wellness Programme under the umbrella of Ayushman Bharat was started in 2020. The Programme focuses on school-based health promotion activities and is implemented in government and government aided schools. 11 themes include mental health, substance abuse, gender-based and other forms of violence. School health and Wellness programme is being implemented in co-ordination with Rashtriya Kishor Swasthya Karyakram (adolescent health programme) which was launched in 2014. It focuses on holistic health promotion behaviour and access to services for adolescents. Key components of the program are community-based interventions like, outreach by counsellors; facility-based counselling; Social and Behaviour Change Communication; and strengthening of Adolescent Friendly Health Clinics across levels of care

Ministry of Education

Manodarpan: Recognizing the acute mental health needs that emerged during the COVID-19 pandemic, the Ministry of Education launched the Manodarpan initiative in 2020. This comprehensive program provides psychosocial support to students, teachers, and families through multiple channels including helplines, online counselling services, and educational resources (Sharma & Patel, 2025).
School Health and Wellness Program

Ministry of W&CD

Mission Vatsalya specifically focuses on creating a safety net for children with a focus on most vulnerable children and providing a continuum of care for children including case management. The social service workforce under Mission Vatsalya plays a key role in promoting mental health and facilitating MH services for children who encounter the Juvenile Justice system.

Mission Shakti has a focus on empowering girls and women with a special focus on gender equity and addressing gender -based violence. One stop centres under Mission Shakti are specifically designed to support girls and women who face gender-based violence and have dedicated counsellors attached to the centres.

Support, Advocacy & Mental health interventions for children in Vulnerable Circumstances and Distress (SAMVAD) was established in 2019 as a centre of excellence located in the Department of Child & Adolescent Psychiatry, NIMHANS. SAMVAD aims to strengthen capacities of various cadres of mental health service providers on child protection and mental health and psychosocial support. The centre has developed and implemented standardized training modules for different cadres of mental health service providers, including child protection functionaries, judiciary, teachers, and frontline workers.

Ministry of Social Justice & Empowerment

DISHA (Early Intervention and School Readiness Scheme) is a scheme to support children with disability. The scheme provides children in the age group of 0-10 years with the four disabilities covered under the National Trust Act (Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities) and aims at setting up Disha Centres for early intervention for Person with Disability (PwD) through therapies, trainings and providing support to family members.

Challenges

India spends only 0.05% of the total health budget on mental health, and there are gaps in infrastructure, human resources, and funding

There is also insufficient number of trained human resources or standardized services in the country for child and adolescent MHPSS in India. Total mental health workers per 100,000 people remain at 1.93

There is a dearth of well-trained social service workforce to provide preventative, responsive, and promotive programmes that support families and children at district level. Those available often have limited capacities to facilitate such services at district and sub-district levels.

Allied workers, who are professionals, paraprofessionals, and volunteers in sectors like education, health, and justice have no formal training or certification in related areas though they have roles in mental health wellbeing. Thus the need for Importance of capacitating non-specialized cadre. Reaching the most vulnerable out of school is a challenge.

Infrastructure limitations, including inadequate facilities, limited technological resources, and poor transportation networks, create additional barriers to accessing mental health services. Many families must travel significant distances to reach specialized care, creating financial and logistical obstacles that prevent treatment engagement.

Mental health stigma remains a pervasive challenge that prevents families from seeking help for children experiencing psychological difficulties. Traditional beliefs about mental illness, concerns about social reputation, and lack of awareness about treatment options contribute to delayed help-seeking and poor treatment adherence.

Key Strategies



Early detection by identification of mild behavioral and emotional symptoms that indicate mental health risks or vulnerability by specialized and non-specialized service providers is very critical. It helps in preventing mental disorders from worsening and in achieving improved outcomes for children through planned management.

Parenting programs - Parenting, which is the process of protecting, promoting, and supporting the development and socialization of the child through nurturing practices does play an important role in promoting mental wellbeing of a child as well as early detection and support seeking behaviour.

Designing and rolling out promotive mental health programs - MHPSS service provision and programming that identify and mitigate risk factors that contribute to poor mental health is preventative in nature. When it leads to increased feelings of well-being, productivity, connectedness, positive emotions, etc., such programming is seen as promoting mental health.

Improving referrals and mental health service delivery through effective implementation of government schemes such as DMHP, telemanas etc - It is important for MHPSS programming to address distress, symptoms, and deficits

Creating barefoot counsellors on Psychological first aid (PFA) – PFA refers to a humane, supportive response to someone in distress and need of support. PFA involves providing practical care and support through a process where helpers can “look, listen and link”. Look refers to assessing needs, dangers, safety, and security risks, and concerns to help people to address basic needs (e.g., food and water, information, etc.). Listen refers to listening to people, but not pressuring them to talk; comforting and helping them to feel calm. Link refers to connecting people to information, services, and social supports which protect them from further harm.

Community mobilization for Addressing Stigma: When an individual is viewed negatively by others in their community because they have a distinguishing characteristic or personal trait that's thought to be, or is, a disadvantage (a negative stereotype). Stigma may lead to discrimination and act as a barrier to receiving care.

Build capacities of Panchayati Raj Institutions and local bodies, SHGs, FLWs to create a safe and equitable environment for children, adolescents, and young people and facilitate access to MH services.

The mental health and psychosocial well-being of children and adolescents depend on either the absence of or the ability to cope healthily with risk factors and the availability of protective environments, including access to quality and relevant services. The well-being of children can be improved by co-creating safe & nurturing environments at home, school, and in the community; inculcating positive relationships that promote inclusion, respect, equality, belongingness, and agency; and creating opportunities for stimulation, learning, and skill development. Similarly, caregivers, including parents, teachers, and frontline workers whose well-being significantly impacts that of children should be provided with support based on their individual needs, coping skills, and recovery. The overall well-being of caregivers is essential to give them the emotional resources with which to provide children with the required care. This requires strategies that support not only individual caregivers' well-being but also interpersonal well-being through family and community networks as well as building the necessary skills and knowledge for parenting children in distress.

References

- Johnson, A., Smith, R., & Patel, S. (2021). Integrating child protection and mental health concerns in early childhood care: A systematic review. **Child Abuse & Neglect**, 115, 105018. <https://doi.org/10.1016/j.chiabu.2021.105018>
- Kieling, C., Baker-Henningham, H., Belfer, M., Conti, G., Ertem, I., Omigbodun, O., ... & Rahman, A. (2022). India's policy and programmatic response to mental health of young people. **The Lancet Child & Adolescent Health**, 6(11), 789-801. [https://doi.org/10.1016/S2352-4642\(22\)00238-8](https://doi.org/10.1016/S2352-4642(22)00238-8)
- Kumar, P., Singh, M., & Gupta, R. (2024). Mental health issues among school children and adolescents in India: A systematic review and meta-analysis. **Indian Journal of Psychiatry**, 66(6), 512-525. https://doi.org/10.4103/indianjpsychiatry.indianjpsychiatry_123_24
- Sharma, N., & Patel, V. (2025). Mental health status of school students in India: The role of school-based family counselling in the post-COVID-19 era. **SAGE Open Medicine**, 13, 20556365251321202. <https://doi.org/10.1177/20556365251321202>

6. SCHEMES FOR ADOLESCENTS

Social Protection Schemes and Services for Early Adolescent age group 10 - 13 years

1. PM POSHAN (Mid-Day Meal Scheme)

PM POSHAN is one of the rights-based Centrally Sponsored Schemes under the National Food Security Act, 2013 (NFSA). The scheme is applicable to all children in government and government-aided schools/ Balvatikas from pre-primary to grade 8.

Objective: Improving the nutritional status of children in classes I-VIII and reducing dropout rates in government, local body and government aided schools and to address classroom hunger that prevented students from learning and leading to enhanced enrollment and attendance in school and to address classroom hunger that prevented students from learning and leading to enhanced enrollment and attendance in school.

Eligibility Criteria: Children studying in primary and upper primary classes in government, government-aided, local body, EGS, and AIE centres are eligible for the Mid-Day Meal Scheme (MDMS) in Jharkhand.

Benefits: The MDMS provides a cooked, nutritious meal every day to children in classes 1-8 who are between the ages of 6 and 14, except on school holidays.



2. Free Distribution of Textbooks:

Objective:

The primary objective of the free distribution of textbooks is to ensure that every child enrolled in primary education has access to essential learning materials without any cost.

Coverage:

This initiative typically covers students enrolled in government schools, especially those in classes 1 to 5, which constitute primary education.

Implementation:

The Government of Jharkhand, through its Department of School Education and Literacy, undertakes the responsibility of procuring textbooks and distributing them to eligible students at the beginning of the academic year.

Textbook Selection:

The textbooks provided are usually selected based on the curriculum prescribed by the state education board. These books are chosen to meet the educational standards and requirements set by the board for primary education.

Distribution Process:

- **Procurement:** The government initiates the procurement process well in advance to ensure that textbooks are available on time.
- **Distribution:** Once the textbooks are procured, they are distributed through the respective schools.
- **Identification of Beneficiaries:** Schools identify enrolled students who are eligible to receive the textbooks based on their class and enrolment status.

Benefits:

- **Financial Relief:** Families of primary school students are relieved of the financial burden of purchasing textbooks, which can be significant.
- **Increased Enrolment:** Free textbooks encourage higher enrolment rates as it reduces one of the barriers to accessing education.
- **Enhanced Learning:** Having textbooks readily available enables students to follow the curriculum effectively and improves learning outcomes.



3. Free Cycle Distribution (General/SC/ST/OBC/Minority):

The cycle distribution scheme in Jharkhand is an initiative by the state government aimed at providing bicycles to students, primarily those from economically weaker sections. The scheme's primary objective is to promote education by making it easier for students to commute to school, thereby reducing dropout rates and improving attendance. Here are some key details about the scheme:

Objectives:

- **Promote Education:** Facilitate easier access to schools for students from rural and remote areas.
- **Reduce Dropout Rates:** Encourage students to continue their education by reducing the physical barriers to attending school.
- **Gender Equality:** Empower girl students by making it safer and more convenient for them to travel to school.

Target Beneficiaries:

- Students of government and government-aided schools.
- Primarily aimed at students in classes 8 to 10.
- Focus on students from economically weaker sections, Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC).

Implementation:

Distribution Mechanism: Bicycles are distributed through schools based on the lists provided by school authorities.

Funding: The scheme is funded by the state government, with specific budget allocations made annually.

Procurement: Bicycles are procured through a transparent tendering process to ensure quality and cost-effectiveness.

Impact:

Attendance Improvement: Increased school attendance rates due to reduced travel time and effort.

Educational Continuity: Lower dropout rates, especially among girls who might otherwise be deterred by long or unsafe commutes.

Social Empowerment: Enhanced mobility and independence for students, contributing to their overall development.

Social Protection Schemes and Services for Adolescent age group 14 to 19 years



1. Free Distribution of Dress, Textbook and note books to Girl Students:

Objectives:

- **Encourage Education:** Increase school enrolment and retention rates among girls.
- **Reduce Economic Burden:** Alleviate financial pressures on families by providing essential school items.
- **Promote Gender Equality:** Foster an inclusive educational environment.

Components:

- **Dress Distribution:** Provision of school uniform to ensure all students have school uniforms.
- **Textbook Distribution:** Free textbooks covering various subjects to minimize costs for families and ensure all students have access to learning materials.
- **Stationery Supplies:** Distribution of essential stationery items such as notebooks, pens, pencils, and other necessary school supplies.

Target Beneficiaries:

Girls aged 14-17, specifically aimed at adolescents in high school to support their education during critical years.

Implementation Strategies:

- **Collaboration with Schools:** Partnering with local schools and educational institutions for effective distribution.
- **Awareness Campaigns:** Informing communities about the program to encourage participation and support.



2. Free Cycle Distribution (SC/ ST/ OBC/ Minority /General):

Objectives:

- **Encourage Physical Activity:** Promote cycling as a regular activity to enhance fitness levels among adolescents.
- **Support Education:** Facilitate easier access to schools and educational institutions, and to ensure access to secondary education amongst the disadvantaged groups.
- **Reduce Traffic Congestion:** Minimize reliance on motor vehicles, thereby decreasing traffic and pollution.

Key Features:

Eligibility: Generally targeted at adolescent girls aged 14-17, often with specific criteria such as enrolment in school or belonging to economically weaker sections.

Distribution Process:

- **Application:** Interested students may need to fill out an application form through schools or local authorities.
- **Verification:** Verification of eligibility based on criteria like school attendance or economic background.
- **Types of Cycles:** Standard bicycles that are durable and suitable for everyday use.
- **Distribution Locations:** Cycles are often distributed through schools, community centres, or local government offices.
- **Awareness Programs:** Alongside distribution, programs may be conducted to educate students about road safety, cycle maintenance, and health benefits.

Benefits:

Mobility: Easier access to schools and extracurricular activities.

Jharkhand Scholarship

Apply Online Last Date Check Status

3. Merit Scholarship (SC/ ST/ OBC/ General/ Minority)

The Merit Scholarship scheme in Jharkhand aims to support meritorious students from economically weaker sections and promote higher education.

Objectives:

- To encourage higher education among students.
- To provide financial assistance to deserving candidates.

Eligibility Criteria:

- Students must belong to economically weaker sections.
- Usually, candidates should have secured a minimum percentage in their previous examinations (specific percentage may vary by level and year).
- Open to students pursuing various courses, including professional and technical education.

Benefits:

- Financial aid covering tuition fees and other educational expenses.
- Scholarships may vary based on the level of education (undergraduate, postgraduate, etc.).

Application Process:

- Applications are typically submitted online through the state government's official education portal.
- Required documents include academic certificates, income certificates, and identity proof.

Selection Process:

- Based on merit and financial need.
- Shortlisted candidates are informed through official notifications.



6. Scheme for Adolescent Girls (SAG) - Nutrition component

The Scheme for Adolescent Girls (SAG) - Nutrition component is a welfare initiative aimed at improving the health and nutrition of adolescent girls, especially those in vulnerable sections of society.

Objectives:

- **Improve Nutritional Status:** Address the nutritional needs of adolescent girls between the ages of 11-14 who are out of school.
- **Empowerment through Health Education:** Provide knowledge on health, hygiene, and nutrition to promote overall well-being.
- **Reduce Anaemia:** Combat anaemia and malnutrition among adolescent girls.

Key Features:

- **Target Beneficiaries:** Girls aged 11-14 years who are out of school. The scheme also indirectly benefits school-going girls through awareness and educational activities.

Nutritional Support:

- **Supplementary Nutrition:** Provision of Take Home Rations (THR) or Hot Cooked Meals (HCM) to meet daily nutritional requirements.
- **Dietary Guidelines:** Information on balanced diets, locally available foods, and healthy eating practices.

Health Services:

- **Regular Health Check-ups:** Periodic health check-ups to monitor growth, identify health issues, and provide necessary interventions.
- **Iron and Folic Acid (IFA) Supplementation:** Distribution of IFA tablets to prevent and treat anaemia.
- **De-worming:** Regular de-worming to ensure better nutrient absorption.

Capacity Building:

- **Training and Awareness Programs:** Sessions on health, hygiene, nutrition, and life skills.
- **Community Engagement:** Involvement of families and communities to support adolescent girls' health and nutrition.

Implementing Partners:

- **Anganwadi Centres (AWCs):** Key points for delivering services and nutritional support.
- **Integrated Child Development Services (ICDS):** Responsible for implementing the scheme at the grassroots level.
- **Health Department:** Collaboration for health check-ups, IFA supplementation, and de-worming.
- **Implementation Strategy in Jharkhand:**
- **Identification of Beneficiaries:** Through surveys and data collection by Anganwadi workers and ICDS functionaries.
- **Nutritional Assessment:** Baseline nutritional status assessment to tailor interventions.
- **Distribution of Nutritional Supplements:** Either as take-home rations or hot cooked meals through Anganwadi Centres.
- **Convergence with Other Schemes:** Linking with schemes like the Mid-Day Meal (MDM) for school-going girls and other health programs for broader impact.
- **The Scheme for Adolescent Girls (SAG):** Nutrition component in Jharkhand aims to bridge the gap in nutrition and health services for adolescent girls, ensuring they have a healthier and more empowered future.



4. Savitri Bai Phule Kanya Samridhi Yojana (SBPKSY)

The Savitri Bai Phule Kanya Samridhi Yojana in Jharkhand is a social welfare scheme aimed at empowering and supporting the education of girls in the state.

Objectives:

- Provide financial assistance to girl child to continue education after primary classes.
- Encourage families to prioritize the education and well-being of their daughters.
- Reduce child marriage.

Key Features:

Financial Assistance: Eligible girl child receive financial support of ₹2500 in class eight, ₹2500 in class nine, ₹5000 in class ten, ₹5000 in class eleven, ₹5000 in class twelve and ₹20000 for girl child in age group 16-18 years unmarried in education institutional or vocational training.

Eligibility Criteria:

- Families must be residents of Jharkhand.
- The scheme generally targets families with a lower economic status.
- Should be in educational institution/ vocational training.
- Age of 18 and not married.

Age Limit: The scheme usually covers girls from birth up to a certain age (often up to 18 years).

Enrollment Process: need to register daughters under the scheme through designated government offices or online portal.

One-time Assistance: A lump sum amount is often provided at various stages of education or upon completion of certain milestones.

Benefits:

- Encourages higher enrolment and retention of girls in schools.
- Aims to reduce dropout rates among female students.
- Supports gender equality and empowerment in society.

Implementation:

- The scheme is implemented by the Department of Women, Child Development, and Social Security in Jharkhand.
- Collaborates with local bodies and educational institutions for effective execution.

Awareness Programs:

The government often conducts awareness campaigns to inform families about the benefits and processes related to the scheme.



5. Mukhyamantri Kanyadan Yojana (MKY)

The Mukhyamantri Kanyadan Yojana is a scheme implemented by the Government of Jharkhand, India, aimed at providing financial assistance for the marriage of girls from economically weaker sections.

Objectives:

- **Financial Assistance:** To provide monetary support for the marriage of girls from poor families, ensuring they can afford the necessary expenses.
- **Social Welfare:** To promote social welfare and reduce the financial burden on families.
- **Encouragement of Girl Child Welfare:** To encourage the welfare and upliftment of the girl child in society.

Eligibility Criteria:

- **Residency:** The applicant must be a resident of Jharkhand.
- **Economic Status:** The family should belong to the Below Poverty Line (BPL) category or come from an economically weaker background.
- **Marital Status:** The beneficiary must be an unmarried girl.
- **Age:** The minimum age for the girl at the time of marriage should be 18 years.

Benefits:

A financial grant of ₹30,000 is provided to the eligible families for the marriage of their daughters.

Application Process:

1. **Application Form:** The applicant needs to fill out the Mukhyamantri Kanyadan Yojana application form, which is available at the block office or can be downloaded from the official website.

2. **Documentation:** The following documents are typically required:

- a. Proof of residence (Aadhaar card, Voter ID, etc.)
- b. Income certificate or BPL certificate
- c. Birth certificate or age proof of the girl
- d. Marriage invitation card (as proof of the impending marriage)
- e. Bank account details

3. **Submission:** Submit the filled application form along with the necessary documents to the local block or district office.

4. **Verification:** The authorities will verify the documents and the details provided in the application form.

Disbursement: Upon successful verification, the financial assistance is directly transferred to the bank account of the beneficiary.

Implementation:

The scheme is implemented through the Department of Social Welfare, Women and Child Development, Government of Jharkhand. Regular monitoring and verification processes are conducted to ensure the effective utilization of funds and to prevent misuse.

Contact Information:

For more information, applicants can contact the local block office or visit the official website of the Jharkhand Government's Women, Child Development and Social Security Department.

Part II

By Judicial Academy, Jharkhand

1. INTRODUCTION

“Children are precious human resources of our country; they are the country’s future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas.”

– M. R. Shah, J.¹

The Protection of Children from Sexual Offences (POCSO) Act, 2012 stands as a landmark legislation in India’s legal landscape, designed to provide a comprehensive legal framework for the protection of children from sexual abuse, exploitation, and pornography. Recognizing that children are among the most vulnerable members of society, the Act defines a *child* as any person below the age of 18 years and criminalizes a broad spectrum of sexual offences, ensuring child-friendly procedures throughout the investigation and trial process.

Since its enactment, the POCSO Act has been progressively strengthened to enhance its effectiveness. The Criminal Law (Amendment) Act, 2019 introduced more stringent punishments, including the death penalty for cases of aggravated penetrative sexual assault, reinforcing the law’s deterrent framework. Further, the POCSO Rules, 2020 laid down robust procedural safeguards and institutional responsibilities, notably the provision of interim compensation, deployment of support persons, and mandatory background checks and sensitization for personnel in child-facing institutions.

The Government of India, in collaboration with State Governments, has undertaken several initiatives to ensure the effective implementation, monitoring, and awareness of the POCSO Act. These include:

- Establishment of Fast Track Special Courts (FTSCs), including exclusive POCSO Courts, under a centrally sponsored scheme for the expeditious disposal of cases. As of January 2025, 750 FTSCs, including 408 exclusive POCSO Courts, have disposed of more than 2.87 lakh cases.
- Active involvement of District Legal Services Authorities (DLSAs) under Section 357A CrPC (now Section 396 of BNSS), ensuring swift compensation to victims, with over ₹3,470 crore awarded between 2020–2023.
- Empowerment of Child Welfare Committees (CWCs) to recommend special relief and appoint support persons, under the POCSO Rules, to assist children through the trauma of trial and investigation.
- Development of digital monitoring portals, like Baal Swaraj, and interventions to tackle Child Sexual Abuse Material (CSAM) and cyber exploitation.
- Extensive sensitization and training programmes conducted under Mission Vatsalya, involving CWCs, JJBs, DCPOs, Special Juvenile Police Units, Panchayati Raj representatives, and other grassroots stakeholders.

¹ *Nawabuddin v. State of Uttarakhand*, AIR 2022 SC 910, (para. 10).
... § 33 §...

Significant efforts have also been made to create public awareness. From the dissemination of short films in cinema halls and on Doordarshan, to NCERT's inclusion of Childline 1098 and the POCSO e-box in school textbooks, the aim has been to empower children with knowledge and reporting mechanisms. Additionally, regional symposia, state-level workshops, and digital outreach campaigns have been undertaken to ensure that the message of child protection permeates to the remotest corners of the country.

Despite these efforts, challenges remain in terms of delay in trials, underreporting, societal stigma, and lack of child-sensitive infrastructure. However, continuous data-driven interventions, legal reform, and an unwavering policy commitment toward child safety and dignity reinforce the transformative potential of the POCSO framework.

1.1 INDIAN SCENARIO

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India is home to over 440 million children under the age of 18, constituting nearly 19% of the world's total child population (UNICEF, 2023). Despite a strong legal framework aimed at child protection, the country continues to grapple with the disturbing prevalence of child sexual abuse. The problem is compounded by deep-rooted societal stigma, underreporting, and gaps in institutional support systems.

The Ministry of Women and Child Development's 2007 "Study on Child Abuse: India" remains one of the most comprehensive national surveys conducted in this domain. The study covered over 12,000 children, along with young adults and stakeholders across 13 states, and examined abuse across different settings—family, schools, workplaces, streets, and institutional care. Alarmingly, 53.22% of children reported having experienced some form of sexual abuse, with boys (52.94%) marginally outnumbering girls (47.06%), thereby challenging the assumption that girls are the sole victims of such offences. About 21.90% of the children faced severe forms of sexual abuse, 5.69% were sexually assaulted, and 50.76% reported other forms such as sexual harassment and inappropriate touch. Children who lived or worked on the streets or resided in institutional settings reported the highest levels of abuse.

A particularly distressing finding from the study was that in more than half of the cases, the perpetrator was known to the child—often someone in a position of trust or authority, such as a relative, teacher, neighbour, or caretaker. The vast majority of children never reported the abuse to anyone, primarily due to fear, shame, or lack of awareness about their rights and legal remedies. These findings underscore the urgent need for safe, child-sensitive, and accessible reporting mechanisms.

Recent data from the National Crime Records Bureau (NCRB), Crime in India 2022, reveals the magnitude of the crisis. A total of 61,052 cases were registered under the Protection of Children from Sexual Offences (POCSO) Act, 2012. Of these, a significant number involved penetrative sexual assault and aggravated sexual assault. Statistically, one in every three rape victims in India is a minor, and states like Uttar Pradesh, Maharashtra, Madhya Pradesh, and Rajasthan consistently report the highest number of cases under the POCSO Act.

According to a compilation of NCRB data and independent child rights reports, it is estimated that a child under the age of 16 is raped every 155 minutes, and a child under the age of 10 is raped every 13 hours. Moreover, it is widely accepted that one in every 10 children

in India experiences sexual abuse at some point in their life. These figures are considered conservative estimates, as numerous cases still go unreported, especially in rural areas and among marginalized communities.

The structural vulnerabilities of children in India exacerbate their risk of exploitation. The country has the highest number of working children globally, many of whom are engaged in informal or hazardous sectors without any oversight or protection. Additionally, children affected by poverty, migration, armed conflict, or those living in urban slums, orphanages, and juvenile homes remain the most vulnerable. Gender-based disparities further intensify the problem—girls face the risk of sexual abuse throughout their life cycle, beginning with female foeticide, continuing through neglect, and manifesting as trafficking, rape, and commercial sexual exploitation.

Until 2012, India lacked a dedicated legal framework to address child-specific sexual offences. Existing laws treated child victims as if they were adults, often subjecting them to insensitive procedures. The enactment of the Protection of Children from Sexual Offences Act, 2012 marked a watershed moment in India's child protection landscape. The law introduced comprehensive definitions of sexual offences against children, prescribed special procedures for child-friendly investigations and trials, and mandated reporting by all persons who become aware of such offences. It also established child-friendly courts, encouraged the use of support persons, and ensured the right to free legal aid and compensation for victims.

Further, the Criminal Law (Amendment) Act, 2019 introduced stricter punishments, including capital punishment for aggravated penetrative sexual assault. The POCSO Rules, 2020 expanded the responsibilities of institutions and individuals in prevention, reporting, and rehabilitation, while placing an emphasis on inter-agency coordination, child welfare monitoring, and mandatory background verification for employees working with children.

While legislative efforts have advanced significantly, implementation gaps persist. Challenges such as low conviction rates (under 30% as per NCRB 2022), delayed trials, re-traumatization during investigation, and inadequate psycho-social support continue to affect the child protection regime. Nonetheless, with an increasing focus on institutional capacity-building, public awareness, and inter-sectorial coordination, there is cautious optimism that India is moving towards a more responsive and child-centric justice system.

1.2 OVERVIEW OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

India continues to face widespread challenges in protecting children from abuse, especially sexual abuse, which is among the gravest violations of child rights. To address this, the Government of India enacted the **Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)**, establishing a comprehensive legal framework to prevent, report, and prosecute offences of sexual assault, harassment, and exploitation of children below 18 years of age.

The Act is gender-neutral and defines various forms of sexual abuse, including penetrative and non-penetrative assaults, sexual harassment, and child pornography. It also recognizes

“aggravated” forms of abuse—such as when the perpetrator is in a position of trust (e.g., a teacher, police officer, or doctor) or when the child is mentally or physically disabled.

Key features of the Act include:

- **Child-friendly procedures** at every stage of the judicial process—from recording the statement to trial—ensuring minimal trauma to the victim.
- **Mandatory reporting:** Any person with knowledge of an offence must report it, failing which they may face legal consequences under Section 21 of the Act.
- **Special Courts:** Trials must be conducted in-camera, without revealing the child’s identity, and must be completed within **one year** from the date of cognizance.
- **Support and rehabilitation:** The Act mandates prompt medical care, psychological counselling, and interim compensation. The Special Court may also award **compensation under Section 33(8)** for the child’s treatment and rehabilitation.
- **Medical examination safeguards:** Examinations must be conducted sensitively, preferably by a female doctor and in the presence of a trusted adult.
- **Role of police and CWCs:** Police officers are required to report cases to the **Child Welfare Committee (CWC)** within 24 hours and ensure immediate care and protection, including shelter and medical assistance.

The POCSO Act also complements India’s international obligations, including the **UN Convention on the Rights of the Child (UNCRC)** and aligns with SDG 16.2 (ending abuse, exploitation and violence against children).

Despite its progressive framework, implementation challenges persist. **NCRB data (2022)** shows over **56,000 POCSO cases** registered annually, but conviction rates remain below **30%**, indicating systemic gaps in investigation, delay in trials, and inadequate victim support. Recent judicial decisions have emphasized strict interpretation and protection under the Act. The **Criminal Law Reforms (2023)** have not diluted POCSO but sought procedural streamlining, including e-courts and video evidence to reduce trauma.

Overall, the POCSO Act serves as a vital legal instrument in India’s child protection architecture, aiming not only to punish offenders but also to provide comprehensive care, support, and rehabilitation to victims, and to serve as a deterrent against child sexual abuse.

1.3 INEFFICIENCY OF EXISTING LAWS BEFORE THE ENACTMENT OF POCSO ACT

Child sexual abuse has been on the rise globally, with India among the countries reporting the highest incidence. Indian children face various issues including malnutrition, trafficking, drug abuse, and sexual exploitation. Abuse by someone in a position of trust can result in severe psychological consequences such as PTSD, depression, suicidal tendencies, and various behavioural disorders in children. Despite the growing crisis, India lacked a dedicated legal framework to protect children from sexual offences before 2012.

The provisions under the Indian Penal Code (IPC), which has now been replaced by the Bharatiya Nyaya Sanhita (BNS) in 2023, were insufficient in addressing the unique needs of children or recognizing various non-conventional forms of sexual abuse. Although certain

IPC sections—such as Sections 354 (now Section 74 of the Bharatiya Nyaya Sanhita, 2023), 366 (now Section 87), 370 (now Section 143), 375 (now Section 63), and 376 (now Section 64)—criminalized acts like molestation, rape, trafficking, and voyeurism, these laws were primarily designed for adult female victims and often failed to cover boys or account for the vulnerability and rights of children. Prior to POCSO, the legal system did not distinguish between adult and child victims in terms of protection or trial procedures.

IPC (now BNS) provisions were also gender-specific and failed to recognize or penalize many forms of abuse such as child pornography or sexual harassment involving male victims. Even though the 2013 amendments to the IPC broadened the definition of rape and aggravated sexual offences, the system still lacked child-specific provisions and trial mechanisms. Laws like the Immoral Traffic (Prevention) Act and the Juvenile Justice Act addressed only limited aspects such as prostitution or care and protection, leaving large gaps in the legal framework.

Before POCSO, Goa's Children's Act, 2003 was the only legislation in India that attempted to offer special protection for children from sexual offences. Hence, the need for a comprehensive, gender-neutral, child-centric law became imperative.

1.4 BASIS OF POCSO ACT

1.4.1. International Conventions

The POCSO Act aligns with several international agreements such as the United Nations Convention on the Rights of the Child (UNCRC), which India ratified in 1992. The convention mandates protection of children from exploitation and abuse, and POCSO was enacted to fulfil these obligations. The Act also draws from the Vienna Declaration (1993), the Optional Protocols to the UNCRC concerning child exploitation, and ILO Convention No. 182 on eliminating the worst forms of child labour. In addition, the Act supports the objectives of the UN's Sustainable Development Goals (SDGs), particularly those focused on ending violence against children.

1.4.2 Constitutional Basis

India's Constitution provides a strong foundation for child protection. Articles 14 and 15(3) ensure equality and permit special provisions for children. Article 21A guarantees the right to education, which is essential in empowering children to understand and resist exploitation. Directive Principles such as Articles 39(e), 39(f), and 45 emphasize safeguarding children from abuse and enabling healthy development. Furthermore, Article 39A ensures equal justice and access to legal aid, which underpins the procedural safeguards built into the POCSO Act.

1.4.3 Journey of Enactment of POCSO Act

The process of enacting the POCSO Act began in 2009, when the Ministry of Women and Child Development initiated consultations by circulating a draft bill. NGOs like Tulir and HAQ, and the National Commission for Protection of Child Rights (NCPCR) played key roles in shaping the final draft. Simultaneously, outrage over high-profile cases like the Ruchika Girhotra incident brought public attention to the need for reform. Multiple versions of the draft bill

were circulated by different ministries until the final version, the Protection of Children from Sexual Offences Bill, 2011, was introduced in Parliament. It came into force along with its Rules on 14 November 2012. Subsequent guidelines were issued to facilitate medical examinations, rehabilitation, and child-friendly trial procedures.

1.5 IMPORTANCE OF THE POCSO ACT, 2012

The enactment of the POCSO Act filled significant gaps in Indian criminal law by creating a dedicated, child-focused legal framework to address sexual offences. The Act defines a child as any person under 18 and criminalizes a broad range of offences such as sexual assault, harassment, and pornography. It takes a child-centric approach, ensuring protection and dignity at every stage—from complaint to trial.

POCSO emphasizes the best interests of the child and mandates special procedures such as child-friendly investigation, appointment of Special Public Prosecutors, and establishment of Special Courts. The law ensures confidentiality, psychological care, and rehabilitation for victims. It also encourages the training of police, judiciary, and medical personnel to sensitively handle such cases. By bridging legal, procedural, and institutional gaps, the POCSO Act plays a crucial role in ensuring justice and safety for children in India.

1.6 UNDERSTANDING THE POCSO ACT: A CONCISE OVERVIEW

The Protection of Children from Sexual Offences Act, 2012 (POCSO), is a comprehensive and gender-neutral legislation enacted to protect children below the age of 18 years from sexual assault, sexual harassment, and pornography. Recognizing the inadequacy of the general provisions under the Indian Penal Code to deal with child-specific sexual offences, the POCSO Act was introduced to provide a specialised legal framework ensuring both protection and child-friendly procedures. It mandates the establishment of Special Courts for the swift disposal of cases and introduces mechanisms that prioritise the best interests and welfare of the child throughout the legal process.

One of the salient features of the Act is the principle of mandatory reporting. Every person who has knowledge or suspicion of a sexual offence committed against a child is legally obliged to report it, failing which penalties may be imposed. The Act also does not impose any limitation period for reporting offences, acknowledging the delayed disclosure often associated with child sexual abuse. To maintain the dignity and privacy of child victims, the Act prohibits disclosure of the child's identity, including through media, unless permitted by the Special Court.

The POCSO Act classifies certain offences as “aggravated” when committed by individuals in positions of trust or authority, such as police officers, teachers, or doctors. It lays down specific procedural safeguards, including recording a child's statement at a familiar place by a female officer out of uniform, ensuring the child is not exposed to the accused during proceedings, and conducting medical examinations in a manner that minimises trauma. Special provisions are made for children with disabilities or those in institutional care, ensuring additional layers of protection.

Furthermore, the Act encourages a coordinated response among all stakeholders—police, judiciary, medical professionals, counsellors, and child welfare bodies—to ensure effective

implementation. The judiciary has played a crucial role in reinforcing the Act's provisions through landmark judgments that underline the importance of mandatory reporting, maintaining confidentiality, and upholding child-friendly procedures. The POCSO Act, thus, marks a significant step forward in strengthening the legal regime for the protection of children and in advancing a more sensitive and responsive justice delivery system.

2. CHILD AND DETERMINATION OF AGE THEREOF

2.1. Definition of Child:

Section 2 (1) (d) of the POCSO Act and Section 2 (12) of the JJ Act defines **child**, unless the context otherwise requires, it to mean any person below the age of eighteen years. In *Eera through Manjula Krippendorf v. State (Govt. of NCT of Delhi) and Ors.*², while dealing with the definition of 'Child' under the Protection of Children from Sexual Offences Act, 2012, it was held that the word 'Age' only includes physical age and not mental age and hence biological age up to 18 years to be included within the meaning of the term 'Child' under the provisions of the aforesaid Act.

Section 34 (2) of the POCSO Act requires the Special Court to satisfy itself about the age of the child and record in writing its reasons for arriving at a conclusion in this regard.³

Section 2 (13) of JJ Act, 2015 defines child in conflict with law as a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.⁴

Definition of a **child in need of care and protection** however must be given a wider meaning and in addition to some children in conflict with law it must also include victims of sexual abuse or sexual assault or sexual harassment under POCSO Act as also victims of child trafficking. Such children must also be given protection under the provisions of the JJ Act being victims of crime under the POCSO Act as also victims of child trafficking. Such children must also be given protection under provisions of JJ Act being victims of crime under POCSO Act and Immoral Traffic (Prevention) Act, 1956.

2.2. Determination of Age:

Jurisdiction of Special Court turns on the age of the victim child. It does not matter whether the victim belongs to SC or ST category and the offence also comes under The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 if he or she is a child under 18 years of age. The power of age determination has therefore been vested in the Special Court under Section 34 of the Act.

A parent may walk in with a child to lodge a FIR alleging sexual abuse. A child victim of a brutal sexual assault may be found abandoned on the roadside by a patrolling police vehicle. After institution of FIR and receipt of the same in the court for the purpose of trial as well as for the purpose of disposal of other interlocutory applications including bail applications

2 *Eera through Manjula Krippendorf v .State (Govt. of NCT of Delhi) and Ors.*, AIR 2017 SC 3457.

3 The Prevention of Children from Sexual Offences Act, 2012 (Act 32 of 2012), *Section 34. Procedure in case of commission of offence by child and determination of age by Special Court-*

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

4 The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 2(13).

involving the issues relating to age of the victim, the court may have to prima facie determine the age of the child, particularly to determine whether the victim is indeed a child under the POCSO Act, 2012, or other relevant laws. There is no doubt that when the age of the victim is to be assessed or ascertained the provisions of Section 94 of JJ Act are applicable. The provisions of the Juvenile Justice Act become relevant and are to be read along with the provisions of the POCSO Act so far as the determination of the age of the victim too is concerned.

This is crucial because certain child-friendly procedures need to be followed and legal provisions applied if the victim is a child. For instance, if the child is a victim of penetrative sexual assault or sexual assault and is below 12 years, the offence will be aggravated under the POCSO Act and the relevant provisions will have to be mentioned in the FIR.

It may be difficult to assess the age when the child appears to be on the borderline. Erring on the side of caution, the police may treat such a person as a child and produce him/her before the CWC or the Special Court under the POCSO Act, as the case may be. This is because these bodies have the authority under Section 94 of the JJ Act, 2015 and Section 34(2) of the POCSO Act, respectively, to determine age.

2.2.1. Determination of Age under POCSO Act, 2012:

- Determination of the age of a victim or of an accused person is a very important jurisdictional and substantive issue, which determines the applicability of the POCSO Act and the Juvenile Justice Act.
- Section 34 of POCSO Act- Procedure in case of commission of the offense by child and determination of age by Special Court. Section 34 (2) reads: -
“(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.”

2.2.2. Determination of Age Before the enactment of JJ Act, 2015:

The Supreme Court in *Jarnail Singh v. State of Haryana*,⁵ held that the provisions of the Juvenile Justice Act and Rules would equally apply to determine the age for both a victim as well as an accused person. In particular, the Supreme Court relied on Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007.⁶ The documents listed in Rule 12 (3) therefore

⁵ *Jarnail Singh v. State of Haryana*, (2013) 7 SCC 263.

⁶ Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12. *Procedure to be followed in determination of Age*

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the

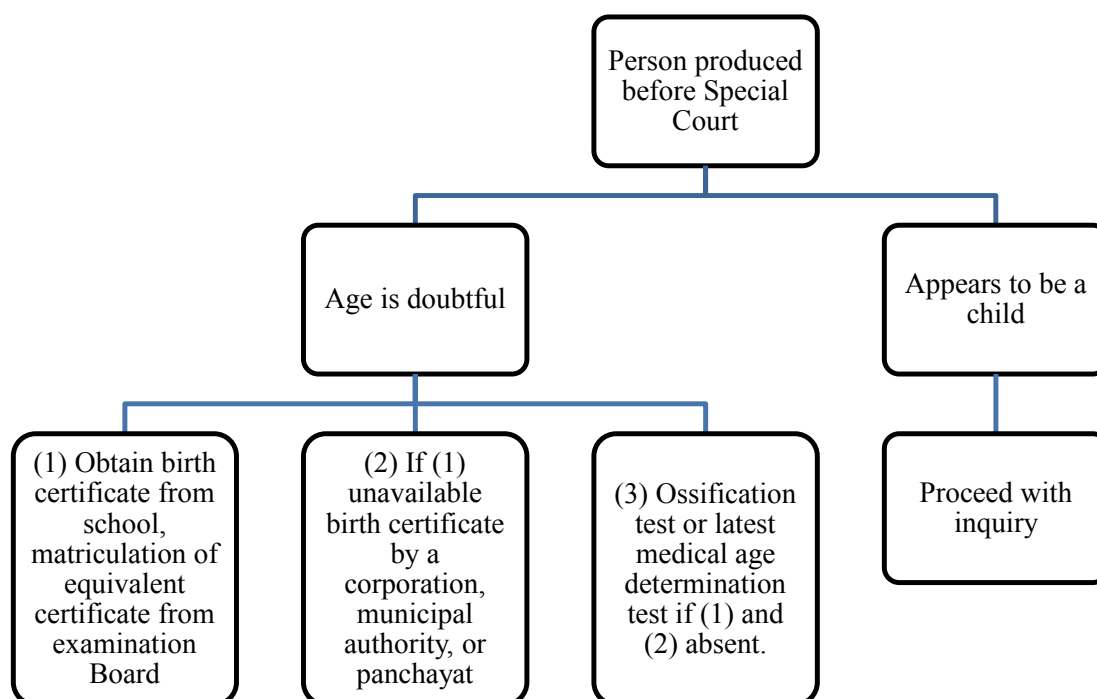
become critical to establish the age of the child, and are referred to in several of the judgements listed below.

While these judgments are in the context of determination of the age of a victim in POCSO case, they could in some instances, equally apply to determination of juvenility of a '**child in conflict with law**'.

However, the process of determining the age based on the documents was in conflict. In cases like *Mahadeo v. State of Maharashtra*,⁷ and *State of Madhya Pradesh v. Anoop Singh*,⁸ a dispute on determining age based on the Middle School Examination Certificate and Birth Certificate arose. The Supreme Court held that Rule 12(3) would apply and medical opinion could be looked into only in absence of documents referred to in Rule 12, JJ Rules, 2007. The court further held that Rule 12(3), JJ Rules, 2007 would also apply to determine the age of the victim.

2.2.3. Determination of Age After the enactment of JJ Act, 2015:

After the enactment of new JJ Act, 2015 Section 94 has been inserted to determine the age of child. The process for Age-Determination under Section 94, Juvenile Justice Act, 2015 is as follows:



age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

⁷ *Mahadeo v. State of Maharashtra*, (2013) 14 SCC 637.

⁸ *State of Madhya Pradesh v. Anoop Singh*, (2015) 7 SCC 773.

The above process can be followed by any court before which the age of a person either the victim or the accused, is in question. The moot question is what steps are to be followed in case the age of a minor or child is to be ascertained.

If the person alleged to have committed a sexual offence looks clearly above 18, but the defence produces document to show he is under 18, what should be done?

Under Section 94(1), JJ Act, 2015, appearance of a person can be relied upon only to conclude that the person is a child. It cannot be the basis to conclude that the person was an adult. According to Section 94(2), JJ Act, 2015, the birth certificate from school, matriculation or evaluation certificates will be considered to determine if the person is a child. If these documents are not available, the birth certificate by a corporation, municipal authority, or a Local Body will be considered. If these are also unavailable, the JJB or CWC can order an ossification test or latest medical age determination test. The Special Court under the POCSO Act could also adhere to the procedure prescribed under the JJ Act, 2015 for age-determination as in *Jarnail Singh* case⁹, the Supreme Court has held that the procedure to determine age of a child in conflict with the law can be used to determine age of a child victim.

A comparison between the Rule 12 of J.J Rules 2007 and Section 94 of Juvenile Justice Act, 2015 is given below:

Rule 12 of J.J Rules 2007- Procedure to be followed in determination of Age.	S. 94 of Juvenile Justice Act, 2015- Presumption and determination of Age.
<ul style="list-style-type: none"> • The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail. (Rule 2). • According to Rule 12, age determination inquiry, shall be conducted by the court or the Board, as the case may be. • The Committee by seeking evidence by obtaining – • (a) (i) the matriculation or equivalent certificates, and in the absence whereof; • (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat; • b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board. 	<ul style="list-style-type: none"> • Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with, without waiting for further confirmation of the age. [Section 94(1)] • In case, the Committee or the Board has reasonable grounds for doubt regarding juvenility, it shall undertake the process of age determination, by obtaining – • (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof; • (ii) the birth certificate given by a corporation or a municipal authority or a panchayat; • (iii) only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test [Sec 94(2)].

The question that arises is whether Special Courts under the POCSO Act need to follow the procedure prescribed under Section 94, JJ Act, 2015. It may be argued that since Section 94, JJ Act, 2015 does not refer to a “court”, a Special Court under the POCSO Act is not bound to adhere to the age-determination procedure prescribed under the JJ Act, 2015 and that Section 34(2), POCSO Act leaves it to the Special Court as to how age should be determined.

Judgments of the Delhi and Madras High Court are instructive in this regard. In *State (Govt. of N.C.T. of Delhi) v. Kishan*,¹⁰ the Special Court had relied on Section 94, JJ Act, 2015 and held that the victim was a child based on the records from the first attended school and no infirmity was found with respect to this aspect of the decision by the Delhi High Court.

More specifically, in *Rajendran v. State*,¹¹ a division bench of the Madras High Court relied on Section 94(2), JJ Act, 2015 to conclude that the victim under POCSO Act was a child. In *Tulachha Ram v. State of Rajasthan*¹², while relying upon the school certificate the trial court referred to the principles laid down under Section 35 of the Evidence Act¹³ (now Section 140 of BSA) and raised a presumption regarding genuineness of the official document produced by the prosecution. The Hon’ble High Court observed that the approach of the trial court was not appropriate in view of the fact that the complete mechanism for age determination of juveniles is laid down under Section 94 of the JJ Act. The Court held as below-

*“30. As per clause 2 (i) of the Act of 2015, the date of birth certificate issued from the school is a governing factor for deciding the age of a juvenile. However, considering in light of various pronouncements of Hon’ble Supreme Court including the observations made in the case of **Birad Mal Singhvi v. Anand Purohit** reported in AIR 1988 SC 1796, it is manifest that for satisfying the court regarding genuineness of the school certificate (Ex. P.14) (in view of the fact that the father of the victim has himself gave evasive reply regarding the exact date of birth of the girl as recorded in the school certificate), the prosecution was required to produce on record and prove the date of birth of the prosecutrix as recorded in the concerned school at the time of her initial admission in the school.*

32. Therefore, in the facts and circumstances of the case, we have no reason to disbelieve the statements of the victim (PW 1), her father Mal Singh (PW 2) and mother Santosh Kanwar (PW 4) that the age of the victim was more than 18 years at the time of the incident. Therefore, it is a clear case of consensual relations and since the victim was above the age of 18 years on the date of the incident, the provisions of Protection of Children from Sexual Offences Act were wrongly applied in the present case as observed by us in the detailed discussion made above.”

Application of Section 94, JJ Act thus differs widely depending upon the factual matrix of the case. Following are the issues which prevail in the cases where age determination is in question:

- i. Absence of birth certificate and poor maintenance of records
- ii. Application of JJ Act

10 *State (Govt. of N.C.T. of Delhi) v. Kishan*, 2017 (4) JCC 2291.

11 *Rajendran v. State*, (Crl. A.No. 483 of 2016 decided on 23.12.16).

12 *Tulachha Ram v. State of Rajasthan* 2019 (2) WLN 371 (Raj.).

13 The Indian Evidence Act, 1872 (Act No. 1 of 1872), s. 35.

- iii. Inconsistent appreciation of school records
- iv. Benefit of margin of error seldom given to the victim
- v. Investigation lapses

2.2.4. Judgements Where Determination of Age is made by the Application of Section 94, JJ Act, 2015:

- *Sanat Yadav v. State of Madhya Pradesh*, 2017 SCC Online MP 252
Dispute on determining age based on School Certificate or on Driving License.
Held: School Certificate will prevail as per Section 94, JJ Act, 2015.
- *Gajab Singh v. State of Haryana*, (2019) ILR 1 Punjab and Haryana 465
Dispute on determining age based on School Certificate and Matriculation Certificate.
Held: School Certificate will prevail as per Section 94, JJ Act, 2015.
- *Rishipal Singh Solanki v. State of Uttar Pradesh*, AIR 2022 SC 630
 - (i) A claim of juvenility may be raised at any stage, even after a final disposal
 - (ii) An application claiming juvenility could be made either before the Court or the JJ Board under S. 94 of JJ Act, 2015.
 - (iii) Ascertainment of age shall be according to S. 94(2), JJ Act, 2015.
 - (iv) Burden of proof of age lies on the person challenging the age of the victim. .

2.2.5. Principle on Margin of Error of Age:

Shweta Gulati v. State (Govt. of NCT of Delhi),¹⁴ 2018 SCC Online Del 10448

The Delhi High Court dealt with a bone ossification test report that had estimated the age of the victim as 17 to 19 years.

The Court held in unequivocal terms that

“Giving the benefit of doubt to the accused, the age of the victim has to be taken as 19 years of age.... It is also a settled position of law that benefit of doubt, other things being equal, at all stages goes in favour of the accused.”

Therefore, by virtue of the benefit of doubt going to the accused the age of the victim as established by the ossification test is to be considered on the higher side.

The same view has been affirmed by the Supreme Court in *Rajak Mohammad v. State of H.P.*,¹⁵ (2018) 9 SCC 248.

It is also pertinent to note that in cases of determining juvenility of the accused, the margin of error is taken at the lower side.

14 *Shweta Gulati v. State (Govt. of NCT of Delhi)*, 2018 SCC Online Del 10448.

15 *Rajak Mohammad v. State of H.P.*, (2018) 9 SCC 248.

2.3. IMPORTANT CASE LAWS ON DETERMINATION OF AGE:

2.3.1. Jarnail Singh v. State of Haryana, (AIR 2013 SC 3467)

The Supreme Court held that Rule 12 of the erstwhile Juvenile Justice (Care and Protection of Children) Rules, 2007, which detailed the age determination process for children in conflict with the law should be applied to determine the age of a child victim. It was held that:

“Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime.”

2.3.2. State of M.P. v. Anoop Singh (2015) 7 SCC 773: 2015 SCC Online SC 603 at page 776

“12. We believe that the present case involves only one issue for this Court to be considered which is regarding the determination of the age of the prosecutrix.

13. In the present case, the central question is whether the prosecutrix was below 16 years of age at the time of the incident? The prosecution in support of their case adduced two certificates, which were the birth certificate and the Middle School Certificate. The date of birth of the prosecutrix has been shown as 29-8-1987 in the birth certificate (Ext. P-S), while the date of birth is shown as 27-8-1987 in the Middle School Examination Certificate. There is a difference of just two days in the dates mentioned in the above mentioned exhibits. The trial court has rightly observed that the birth certificate, Ext. P-S clearly shows that the registration regarding the birth was made on 30-10-1987 and keeping in view the fact that registration was made within 2 months of the birth, it could not be guessed that the prosecutrix was shown as under aged in view of the possibility of the incident in question. We are of the view that the discrepancy of two days in the two documents adduced by the prosecution is immaterial and the High Court was wrong in presuming that the documents could not be relied upon in determining the age of the prosecutrix.

14. This Court in Mahadeo v. State of Maharashtra [(2013) 14 SCC 637: (2014) 4 SCC (Cri) 306] has held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is applicable in determining the age of the victim of rape. Rule 12(3) reads as under:

“12.(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining

- a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;*
 - (ii) the date of birth certificate from the school first attended (other than a play school); and in the absence whereof;*
 - (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;*
- b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the*

Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

15. This Court further held in para 12 of Mahadeo [(2013) 14 SCC 637: (2014) 4 SCC (Cr) 306], as under: (SCC p. 641)

12.... Under Rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rules 12(3)(a)(i) to (in), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of the juvenile in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well.” (emphasis supplied)

This Court therefore relied on the certificates issued by the school in determining the age of the prosecutrix. In para 13, this Court observed: (Mahadeo case [(2013) 14 SCC 637: (2014) 4 SCC (CH) 306], SCC p. 641)

13. In light of our above reasoning, in the case on hand, there were certificates issued by the school in which the prosecutrix did her Vth standard and in the school leaving certificate issued by the school under Ext. 54, the date of birth of the prosecutrix has been clearly noted as 20-5-1990, and this document was also proved by PW 11. Apart from that the transfer certificate as well as the admission form maintained by the Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20-5-1990. The reliance placed upon the said evidence by the courts below to arrive at the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of the occurrence was perfectly justified and we do not find any grounds to interfere with the same.”

16. In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rule 12(3) (b). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence in the form of Exts. P-S and P-6 cannot be discarded. Therefore, the trial court was correct in relying on the documents

17. The High Court also relied on the statement of PW 11 Dr A.K. Saraf who took the x-ray of the prosecutrix and on the basis of the ossification test, came to the conclusion that the age of the prosecutrix was more than 15 years but less than 18 years. Considering this the High Court presumed that the girl was more than 18 years of age at the time of the incident. With respect to this finding of the High Court, we are of the opinion that the High Court should have relied firstly on the documents as stipulated under Rule 12(3) (b) and only in the absence, the medical opinion should have been sought. We find that the trial court has also dealt with this aspect of the ossification test. The trial court noted that the respondent had cited Lakhanlal v. State of M.P. [2004 SCC Online MP 16 2004 Cri LJ 3962], wherein the High Court of Madhya Pradesh said

that where the doctor having examined the prosecutrix and found her to be below 18½ years, then keeping in mind the variation of two years, the accused should be given the benefit of doubt. Thereafter, the trial court rightly held that in the present case the ossification testis not the sole criterion for determination of the date of birth of the prosecutrix as her certificate of birth and also the certificate of her medical examination had been enclosed.

18 Thus, keeping in view the medical examination reports, the statements of the prosecution witnesses which inspire confidence and the certificates proving the age of the prosecutrix to be below 16 years of age on the date of the incident, we set aside the impugned judgment [Anoop Singh v. State of M.P, Criminal Appeal No. 924 of 2006, order dated 10-7- 2008 (MP)] passed by the High Court and uphold the judgment and order dated 24-4- 2006 passed by the Third Additional Sessions Judge, Satna in Special Case No. 123 of 2003.”

2.3.3. Ashwani Kumar Saxena v. State of Madhya Pradesh, AIR 2013 SC 553

The Supreme Court held:

“Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, JJ Board or a Committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the JJ Board or the Committee need to go for medical report for age determination.”

2.3.4. Shah Nawaz v. State of Uttar Pradesh, (2011) 13 SCC 751

The Supreme Court observed that in accordance with the erstwhile JJ Model Rules, 2007 *“...the medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any Panchayat or municipality is not available.”*

2.3.5. Birad Mal Singhvi v. Anand Purohit, AIR 1988 SC 1796

In this case, the Supreme Court held that the basis on which the entry pertaining to date of birth in a school register was recorded needs to be established for it to have evidentiary value. It held:

“To render a document admissible under Section 35, three conditions must be satisfied, firstly entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school

register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.”

2.3.6 Eera through Manjula Krippendorf v. State (Govt. of NCT of Delhi) and Ors (2017)15 SCC 133

The issue before the Apex Court in this case was whether Section 2(d) of the POCSO Act which defines the term “child” should be interpreted to include the mental age of a person so that a mentally retarded person or extremely intellectually challenged person above the biological age of 18 years would come within its ambit. A two- judge bench of the Supreme Court held that such an interpretation would not be tenable because of the purpose of the legislation and the intention of Parliament. The court held:

“we would be doing violence both to the intent and the language of Parliament if we were to read the word “mental” into Section 2(1)(d) of the 2012 Act. Given the fact that it is a beneficial/ penal legislation, we as Judges can extend it only as far as Parliament intended and no further.”

2.3.7. Mahadeo v. State of Maharashtra, (2013) 14 SCC 637: (2014) 4 SCC (Cri) 306: 2013 SCC OnLine SC 662 at page 640

11. Though the learned counsel for the appellant attempted to find fault with the said conclusion by making reference to the evidence of PW 8, the doctor, who examined the prosecutrix and who in her evidence stated that on her examination she could state that the age of the prosecutrix could have been between 17 to 25 years, it will have to be held that the rejection of the said submission even by the trial court was perfectly in order and justified. The trial court has found that to rely upon the said version of PW 8, the doctor, scientific examination of the prosecutrix such as ossification test to ascertain the exact age should have been conducted which was not done in the present case and, therefore, merely based on the opinion of PW 8, the age of the prosecutrix could not be acted upon.

12. We can also in this connection make reference to a statutory provision contained in the Juvenile Justice (Care and Protection of Children) Rules, 2007, where under Rule 12, the procedure to be followed in determining the age of a juvenile has been set out. We can usefully refer to the said provision in this context, inasmuch as under Rule 12(3) of the said Rules, it is stated that:

“12. (3) in every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, by the Committee by seeking evidence by obtaining-

- a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;*
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*
- (iii) the birth certificate given by a corporation or a municipal authority or a Panchayat;”*

Under Rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rules 12(3)(a)(i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of a juvenile, in our considered

opinion, the same yardstick can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well.

13. In the light of our above reasoning, in the case on hand, there were certificates issued by the school in which the prosecutrix did her Vth standard and in the school leaving certificate issued by the said school under Exhibit 54, the date of birth of the prosecutrix has been clearly noted as 20-5-1990, and this document was also proved by PW 11 Apart from that the transfer certificate as well as the admission form maintained by the Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20-5-1990. The reliance placed upon the said evidence by the courts below to arrive at the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of the occurrence was perfectly justified and we do not find any good grounds to interfere with the same.

2.3.8. *Jabbar v. State* 2018 SCC Online Delhi 9327

The court relied on AADHAR card for determining the age of the prosecutrix “We have perused the Aadhar Card (Ex.PW-11/H) and find that, in the said Card, the age of ‘S’ is, indeed, reflected as six years. We may also note that the veracity of the said Aadhar Card has been questioned by the defence, at any stage of proceedings.”

2.4. Consensual Sex: A Deformity of the POCSO Act:

2.4.1. Deformity of the POCSO Act:

Romantic relationship and sexual instinct are a universal phenomenon with its developmental significance, especially during adolescence. One of the striking features of this developmental phase is the formation of a romantic relationship. As a developmental pathway, healthy romantic relationship among adolescents plays a vital role in moulding their personal ideologies regarding intimate relationship and sexuality, along with having the enduring influence on self-esteem and overall wellbeing with the progress to the later stage of life.¹⁶

The Act has failed to sustain the growing needs of society and bring necessary amendments. It did not consider the consensual romantic relationship involving adolescents of age below 18 years. Under the Act the child is described as any person below the age of eighteen years¹⁷, criminalising any type of sexual relationship with a person below 18 years of age.

The law overlooked that during adolescence, due to hormonal and biological changes in the body, adolescents are naturally inclined towards entering into relationships which might lead to physical intimacy. Their tendency to engage in physical relationships is due to the biological and social need of intimacy, it does not have any criminal intent behind the acts.

Criminalisation of the physical relationship between two adolescents is based on the old perceived notion that the girl is the ‘victim’ and the boy is ‘guilty’, which leads to adolescent boys being subjected to the Juvenile Justice Act as Children in conflict with law. Sometimes it

¹⁶ Veenashree Anchan, Navaneetham Janardhana & John Vijay Sagar Kommu, “POCSO Act, 2012: Consensual Sex as a Matter of Tug of War between Developmental Need and Legal Obligation for the Adolescents in India,” *Indian J Psychol Med.* 2020, 43(2), 158–162.

¹⁷ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2 (1) (d).
... § 50 §...

can also lead to the adolescent boy being treated as an adult offender in trial courts for heinous offences such as rape rather than juvenile board, destroying their life at a tender age.

The POCSO Act is said to be gender neutral law, but it still differentiates between adolescent boy and adolescent girl. In a case involving the physical relationship between adolescent boy and adolescent girl, the girl is treated as the victim and the boy is treated as an accused. The Act prioritises the protection of the girl child over the boy child. The world is moving towards the global gender equality but still such progressive Act is putting the protection of the girl child on a higher pedestal than that of the boy child. By not acknowledging the consensual relationship between adolescents, this Act is contributing to gender inequality.

It is also shocking to note that before *Independent Thought v. Union of India and Anr.*¹⁸ case judgment, the age for sexual relations in the case of marriage was 16 years, whereas in the case of romantic relations it is taken as 18 years. Marriage used to grant protection to people who engage in sexual relationships with girls of age between 16 to 18 years. The law used to have an exception for child marriage which is a result of social evil and detrimental to the development of children, but the law refused to even recognise the romantic relationship between adolescents which is a result of biological attraction. According to a report referred by the Constitutional Court of South Africa, sexual activity during adolescence is important for the development of an individual.¹⁹ Whereas child marriage is prejudicial for their development.

In addition, the Act by criminalising the sexual relationship between adolescents is also in violation of the right to choose a partner conferred by Article 21 of the Constitution.²⁰ It presupposes that adolescent girls are not mature enough to be able to give consent, depriving them of the right to choose a partner.²¹

2.4.2. Repercussions of Deformity:

Due to the deformity in the Act, it is misused by the family of an adolescent girl. In cases, where the family of an adolescent girl has not accepted the boy for whatever reasons, the Act is used by the girl's parents as a weapon to frame innocent boys as criminals for serious offences like rape and abduction to reprimand them from pursuing their relationship.

The Act also prevents adolescents from seeking medical health services at registered clinics and hospitals as the Act mandates the reporting to officials.²² Therefore, it causes fear in the minds of young couples of prosecution, encouraging them to go to illegal and unsafe clinics for medical advice and treatments putting them in danger.

The filing of romantic cases i.e., cases involving two consensual adolescents, also unnecessarily overburdens the limited resources of the judicial system. Nearly 2 lakh cases booked under

18 *Independent Thought v. Union of India and Anr.*, W.P. (C) No. 382 of 2013.

19 *Teddy Bear Clinic for Abused Children and Another v. Minister of Justice and Constitutional Development and Another*, (CCT 12/13) [2013] ZACC 35, available at: <http://www.saflii.org/za/cases/ZACC/2013/35.html>

20 *Navtej Singh Johar and Ors. v. Union of India and Ors.*, AIR 2018 SC 4321.

21 Khagesh Meena, "Deformity Relating To Age Of Child Under POCSO Act", *LiveLaw*, January 15, 2023, available at: <https://www.livelaw.in/columns/protection-of-children-from-sexual-offences-act-age-of-child-indian-penal-code-218995>

22 The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 19.

the Act are still pending in the courts.²³ Due to the pendency of cases involving consensual relationships, the other serious cases which call for the immediate attention of courts are deprived of timely justice.

2.4.3. Way to Solve the Deformities:

To solve the deformity, there is a need to decriminalise physical relationships between adolescents. Decriminalising the consensual, non-exploitative sexual relationship between adolescents of similar ages will be a progressive step, as recommended in general comment 24 by the UN committee on the Rights of the Child.²⁴ For that, there is a need to lower the age of consent from 18 to 16 years as recommended by the reports of Justice J.S. Verma Committee on Amendments to Criminal of 2013²⁵ and the report of Why Girls Run Away to Marry – Adolescent Realities and Socio-Legal Responses in India.²⁶

Lowering the age of consent to 16 years would not completely solve problems associated with the law, as it is not a stringent rule that only after attaining the age of 16 years the adolescent becomes mature enough to be able to give free consent. Therefore, some discretionary power should also be granted to the courts for determining the validity of consent, but such discretionary power must be restricted to be exercised only when the age of adolescent is below 18 years to prevent judicial arbitrariness.

Until the amendment is made in the Act, the courts need to play an active role and take the responsibility of purposively interpreting the Act. Many High courts have started to recognise the relationship between young adolescents while considering mutual love and affection, for instance in *Shri Silvestar Khonglah & Anr. v. State of Meghalaya & Anr.*²⁷. Though, the courts have not accepted the consent given by the minor girl as valid consent but has refused to strictly follow the Act by considering that the consensual relationship borne out of mutual love between adolescents cannot attract the provisions of the Act.

In *Ranjit Rajbanshi v. State of West Bengal*,²⁸ case the court took a different approach, the court while accepting the above position interpreted the expression “penetration” as envisaged in the Act as a positive, unilateral act on the part of the accused.²⁹ And held that in the case of a consensual relationship between adolescents, sexual intercourse between two adolescents is not a unilateral act but it is a participatory act done out the volition of both girl and boy.

23 Ministry of Law and Justice, 733 Fast Track Special Courts including 413 exclusive POCSO Courts operationalized in 28 States/UTs (22 DEC 2022).

24 Office of the United Nations High Commissioner for Human Rights, *General Comment No. 24 (2019) on Children's Rights in the Child Justice System*, (September 18, 2019), available at: www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child

25 Jagdish Sharan Verma, Leila Seth and Gopal Subramanian, *Report of the Committee on Amendments to Criminal Law* (January 23, 2013), available at: https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw

26 Madhu Mehra and Amrita Nandy, “Why Girls Run Away To Marry Adolescent Realities And Socio-Legal Responses In India”, *Partners for Law in Development*, New Delhi, ISBN: 978-93-84599-08-9, available at: <https://ajws.org/wp-content/uploads/2020/09/why-girls-run-away-to-marry.pdf>

27 *Shri Silvestar Khonglah & Anr. v. State of Meghalaya & Anr.*, CrI. Petn. No. 45 of 2022.

28 *Ranjit Rajbanshi v. State of West Bengal*, C.R.A. No.458 of 2018.

29 *Shri. Manik Sunar & 2 Ors. v. State of Meghalaya*, CrI. Petn. No. 43 of 2022.

The Madras High Court in *Vijayalakshmi v. State*³⁰, opined that it should be reminded that the POCSO Act was enacted with an aim to protect and render justice to victims and survivors of child abuse, not a tool to be used to abuse the process of law. It was never an objective of the Act to punish an adolescent boy who entered into a consensual relationship with the minor girl.

The Act is curtailing the right to engage in sexual activities of young adolescents, deviating from its original aim which is to protect children from sexual abuse. The law should be aimed at protecting non-exploitive consensual sexual activity between adolescents, which is protected under the constitution, making an advancement in the exercise of rights. Decriminalising sexual relations between young couples would strike a balance between the protection of children from sexual abuse and their liberty to engage in sexual activity. Recognising relationships between adolescents would mean recognising their emotions and their personal choices. Therefore, it would be a progressive step towards the betterment of the overall development of children.

2.4.4. Relevant Judgements:

In Re: Right to Privacy of Adolescents; 2024 SCC OnLine SC 205531

Brief background of the case

The victim, a girl who was fourteen years old at the time of the incident. The victim's mother lodged a First Information Report (FIR) on May 29, 2018. The victim's mother stated in her complaint that the victim, who was her minor daughter, escaped from her home at 5:30 p.m. on May 20, 2018 without informing anyone. On inquiry, it was found that the accused enticed her to leave her house. The accused did so with the help of his two sisters. The victim's mother repeatedly visited the house of the accused and requested him to facilitate the return of her daughter. However, the victim did not come back. A female child was born to the victim.

The accused was arrested on December 19, 2021. The chargesheet was filed on January 27, 2022 against the accused for the offences for which he was convicted. Initially, the accused was charged with Section 9 of the Prohibition of Child Marriage Act, 2006. Later, the Ld. Special judge under the POCSO Act found that there was no evidence of marriage between the victim and the accused and the charge under Section 9 of the 2006 Act was held as not substantiated.

The Ld. Special Judge, Baruipur, South 24 Parganas, convicted the accused for the offences of punishable under Section 6 of the POCSO Act and Sections 363 and 366 of the Indian Penal Code, 1860.

Appeal against conviction before Calcutta High Court

The accused preferred an appeal before the Calcutta High Court against the Conviction. The Division Bench of the Calcutta High Court on October 18, 2023, vide its impugned judgment held that the offences punishable under Section 363 and 366 of the IPC were not made out and the High Court acquitted the accused for the two offences and while exercising its jurisdiction

30 *Vijayalakshmi v. State*, CrI.O.P.No.232 of 2021.

31 <https://cjp.org.in/supreme-court-stands-firm-on-pocso-cases-overturms-high-court-decision/> (accessed on 1st August 2025; 1:35pm)

under Article 226 of the Constitution of India read with Section 482 of the CrPC, 1973 set aside the conviction of the accused for the offences punishable under Section 6 of the POCSO Act and sub-sections 2(n) and (3) of Section 376 of the IPC. The bench observed that the mother of the victim had disowned her and therefore, the victim was continuously residing with the accused along with their minor child.

State of West Bengal's appeal against judgement/order of the HC

Aggrieved by the judgement and order dated October 18, 2023, passed by a Division Bench of the High court, the State of West Bengal preferred Criminal Appeal No. 1451 of 2024 before the Supreme Court as a suo moto writ petition, in pursuance of directions issued by the Hon'ble Chief Justice of India for challenging the impugned judgement. In the present case, senior counsel Madhvi Divan and Liz Mathew were appointed by the Supreme Court as *amicus curia* to assist the Court.

Observations of the Supreme Court against High Court's Decision

The division bench of Justice Abhay S. Oka and Justice Ujjal Bhuyan while setting aside the impugned judgement and order dated October 18, 2023 of the High Court of Calcutta observed that *"the division bench has invited a very peculiar concept of "non-exploitative sexual acts" while dealing with the offences punishable under Section 376(2)(n) of the IPC and Section 6 of the POCSO Act. We fail to understand how a sexual act, which is heinous offence, can be termed as non-exploitative"*.

"When a girl who is fourteen years old is subjected to such a horrific act, how can it be termed as "non-exploitative"? The bench questioned.

The Bench has also invented a non-existent category of "older adolescents" and lamented about the lack of recognition of the consensual behaviour of older adolescents. The bench added that *"We fail to understand this concept of "older adolescents"*."

In relation to the observation made by the High Court that by equating Suo Motu Writ Petition (C) no.3 of 2023 etc. Page 16 of 50 consensual and non-exploitative sexual acts with rape and aggravated penetrative sexual assault, the law undermines the bodily integrity and dignity of adolescents, the SC held that *"what is shocking is the observation made in paragraph 23 of the impugned judgment where the High Court observed that while achieving ostensible objectives to protect all children below 18 years from sexual exploitation, the law's unintended effect has been the deprivation of liberty of young people in consensual relationship"*

The SC added that *"surprisingly, carved out a non-existing category of romantic cases in the rape cases. While dealing with the offences under the POCSO Act, shockingly, the Court observed that the law undermines the identity of adolescent girls by casting them as victims, thereby rendering them voiceless."*

While expressing the disagreement with the observation of the High Court, the bench said that *"the judges ought to have avoided expressing their personal views even assuming that there was some justification for holding the views. While the High Court observed this, it forgot that in the facts of the case, the Court was not dealing with the sexual acts involving adolescents above sixteen years, as the age of the victim was fourteen years and the accused was twenty-five years at the relevant time"*

“The duty of the High Court was to ascertain on the evidence whether the offences under Section 6 of the POCSO Act and Section 376 of the IPC were made out. In view of “sixthly” in Section 375 of the IPC, penetrative intercourse with a woman under eighteen years of age, with or without her consent, constitutes an offence of rape. Therefore, whether such offence arises from a romantic relationship is irrelevant. How can an act that is an offence punishable under the POSCO Act be described as “a romantic relationship”? The High Court went to the extent of observing that the case of criminalisation of a romantic relationship between two adolescents of opposite sex should be best left to the wisdom of the judiciary. The Courts must follow and implement the law. The courts cannot commit violence against the law. The findings and observations in the impugned judgment, except the finding on the applicability of Sections 363 and 366 of the IPC, cannot be sustained” the bench observed.

The division bench while questioning the observation of the High Court, added that *“the duty of the High Court was to ascertain on the evidence whether the offences under Section 6 of the POCSO Act and Section 376 of the IPC were made out. In view of “sixthly” in Section 375 of the IPC, penetrative intercourse with a woman under eighteen years of age, with or without her consent, constitutes an offence of rape. Therefore, whether such offence arises from a romantic relationship is irrelevant. How can an act that is an offence punishable under the POSCO Act be described as “a romantic relationship”?*

“The Courts must follow and implement the law. The courts cannot commit violence against the law. The findings and observations in the impugned judgment, except the finding on the applicability of Sections 363 and 366 of the IPC, cannot be sustained” the bench remarked.

Helpless position of the victim

The division bench expressed concerns over the helpless position of the victim in the present case. Amicus Curiae Madhvi Divan emphasised that no opportunity was made available to the girl of fourteen or fifteen years of age to make an informed choice to decide whether to stay with the accused. She did not get any support from her parents and the State machinery when she required it the most. As held by us hereafter, the State machinery failed to act according to the law to take care of the victim. The situation in which she was placed at that time was such that she had no opportunity to make an informed choice about her future. She had no option but to seek shelter where it was provided to her i.e. in the house of the accused. In any event, it is doubtful whether she could have made an informed choice at the age of fourteen or fifteen.

Decision of the apex court

A division bench of Justice Abhay S. Oka and Justice Ujjal Bhuyan while setting aside the impugned judgement and order dated October 18, 2023 of the High Court of Calcutta, held that *“the accused is guilty of the offences punishable under sub-sections (2)(n) and (3) of Section 376 of the IPC and Section 6 of the POCSO Act. The issue regarding sentencing will be considered after the committee’s report is received”.*

The bench held that *“this extraordinary situation was created because the State machinery did not follow the provisions of law starting from sub-section (6) of Section 19 of the POCSO Act. The importance of rehabilitation of the victims of offences under the POCSO Act, which is a mandatory requirement of law, is being overlooked by all stakeholders. Perhaps, at levels, there is a need for introspection and course correction. We include even the Judiciary in that”.*

The Court, while setting aside the impugned judgement and order of the High Court, passed the order that the Government of West Bengal should constitute a committee of three experts, including a clinical psychologist and a social scientist, to assist the victim in making an informed choice regarding her future. This committee will also review the support offered by the State to the victim and her child. The Court directed the State to provide details of the support measures to the committee and ensure that the committee's recommendations are submitted by October 18, 2024.

The Supreme Court emphasised the need for introspection and course correction by all stakeholders, including the judiciary, in handling cases under the POCSO Act. The Court noted the failure of the State machinery in providing timely support and protection to the victim, which had led to this extraordinary situation

In Re : Right to Privacy of Adolescents; 2025 SCC OnLine SC 1200

On **23 May 2025**, the **Supreme Court of India**, in a path-breaking judgment, exercised its extraordinary powers under **Article 142 of the Constitution** to spare a convict under the **Protection of Children from Sexual Offences Act, 2012 (POCSO)** from serving the statutorily mandated **20-year sentence**. The two-judge Bench comprising **Justices Abhay S. Oka and Ujjal Bhuyan** delivered this decision with a view to doing “complete justice,” prioritizing the **rehabilitation and welfare of the victim**, who had since married the accused and had a child with him. The Court noted that imprisoning the convict would inflict **further harm** on the victim, who had already endured trauma caused not merely by the incident, but by the **failures of the legal system**, society, and her own family.

Chronology of the Case

The legal journey began in **2018**, when the then-13-year-old victim allegedly left her home and married the 25-year-old accused in a temple ceremony. Her mother filed a police complaint, and the accused was eventually convicted by the **Special POCSO Court** under **Section 6 of the POCSO Act** and **Sections 363 and 366 of the IPC**, and sentenced to **20 years of rigorous imprisonment**.

The accused appealed to the **Calcutta High Court**, which **set aside the conviction**, holding that the relationship was consensual and that the victim, now an adult, had voluntarily married the accused and had a child with him. However, the High Court made **controversial remarks** regarding adolescent sexuality, suggesting that consensual sexual relations among teenagers were influenced by peer pressure, pornography, and liberal social interactions. It further held that adolescent girls had an **obligation to control their sexual urges**, drawing sharp criticism.

Supreme Court's Intervention and Observations

The **Supreme Court** took **suo motu cognizance** of the High Court's decision, particularly objecting to the **problematic gendered statements**. It **restored the conviction** under **Section 6 of the POCSO Act** and **Sections 376(2)(n) and 376(3) of the IPC**, reiterating that **consent is not a valid defense** under the POCSO Act when the victim is a minor.

However, the Court **upheld the acquittal** for offences under **Sections 363 and 366 of the IPC**, related to kidnapping and forcing marriage or illicit intercourse. Recognizing the sensitive

circumstances of the case, the Court **withheld sentencing** and appointed a **three-member Committee**—including a clinical psychologist and a social scientist—to assess the victim’s psychological and social situation.

Committee Reports and Findings

The **Committee submitted a preliminary report in October 2024** and a **final report in January 2025**. The reports described the victim’s **emotional and financial distress** caused by the prolonged litigation. The legal proceedings, rather than the original incident, were found to be the **primary source of trauma** for the victim. The Committee highlighted that she **struggled to access justice**, was **ostracized by her family**, and had to **bear the burden of raising a child** while attempting to rescue her husband from legal punishment.

Significantly, the final report concluded that the **best interest of the victim and the child** lay in maintaining the **family unit**, and recommended **state-sponsored rehabilitation**, educational assistance, and economic support.

Supreme Court’s Reasoning: Justice Beyond Law

The **Supreme Court acknowledged the convict’s legal guilt**, yet took an **unprecedented stance** by refusing to impose the mandated sentence. The Bench emphasized the **concept of a welfare state** and the **human realities of the case**, noting that the **victim, now an adult**, was deeply committed to her small family and did not perceive the act as a heinous crime. Justice Oka remarked that the victim was failed not only by the legal system but also by **society and her family**, which denied her the chance to make **an informed choice** at the time.

The Court acknowledged that **sending the convict to jail** would **only add to the victim’s suffering** and potentially disrupt the child’s upbringing. Citing its powers under **Article 142**, the Court held that **true justice in this case lies in not imposing the sentence**, and explicitly stated that this **decision shall not serve as a precedent**.

Directions Issued by the Court

To ensure the **rehabilitation and protection** of the victim and her family, the Supreme Court issued a series of detailed directions to the **State of West Bengal**:

- **Act as a guardian** to the victim and her child;
- **Provide better shelter** for the family within a few months;
- **Bear the full cost** of the victim’s education up to **10th standard** and, if she desires, through **graduation**;
- **Offer vocational training** after 10th standard, fully funded by the State;
- **Pay for the child’s education** up to the 10th standard and ensure **quality schooling** near their residence;
- **Assist with clearing debts** incurred by the victim, using support from NGOs or public-spirited individuals;
- **File compliance reports**, with the **first due by 15 July 2025**, followed by **biannual updates**.

Additionally, the **Secretary of the Ministry of Women and Child Development** was directed to constitute a **Committee of experts** to assess and implement broader systemic reforms as suggested by the **Amicus Curiae**, Senior Advocates **Madhavi Divan and Liz Mathew**. The Union Committee is required to submit a **detailed report by 25 July 2025**.

Legal and Societal Implications

This decision is a **remarkable instance** of the judiciary responding to **real-life complexities**, balancing **statutory mandates** with **human justice**. The Court did not ignore the statutory minimum punishment prescribed by POCSO, but chose to **exercise judicial discretion in the rarest of rare circumstances**, emphasizing **victim-centric justice**.

The judgment serves as a **mirror to the failures** of the legal system, social structures, and public institutions in protecting the most vulnerable. The Supreme Court described this case as a “**complete failure of the concept of welfare state**”, and underscored the **State’s obligation** to uphold **social and economic justice**, especially for women and children.

Conclusion

The Supreme Court’s ruling is both **legally exceptional and morally bold**. While reaffirming the legal guilt of the accused, it carved out a unique remedy grounded in **empathy, victim autonomy, and rehabilitation**, rather than retribution. By prioritizing the welfare of the victim and her child over mechanical sentencing, the Court set a **new standard in compassionate constitutional justice**, while making it clear that the ruling is **not to be treated as precedent**.

This case will likely remain a **touchstone** for debates on adolescent rights, child protection, victim justice, and the role of courts in navigating between **legal mandates and human realities**.

3. OFFENCES UNDER POCSO ACT AND PUNISHMENT THEREOF

3.1. Nature of Offences under the POCSO Act:

The POCSO Act, 2012 and its rules were enacted with the objective of protecting children from physical, emotional or sexual abuse while safeguarding interest of children at all stages. The POCSO Act is a stringent law which is gender neutral and affords protection to children of all gender as well as provides for child friendly measures in investigation & prosecution within stipulated time frame. All individuals, male or female, under the age of 18 years, are entitled to get protection under POCSO Act. The Act is also gender neutral in case of the offender. As for the person who commits the crime - it does not matter whether the person is male or female. Both genders are equally punishable for offences under this law.

The POCSO Act not only spells out the punishments for offences, but also sets out a system for support of victims and improved methods for catching offenders. There are 3 broad categories of sexual offences punishable under POCSO: sexual assault, sexual harassment and using a child for pornography. Sexual assault itself has various degrees of seriousness. By sub-categorising them further, Penetrative and aggravated penetrative sexual assault, sexual and aggravated sexual assault, sexual harassment, and child harassment including using of child for pornographic purposes are the five offences against children that are covered by this act.

This act envisages punishing even for abetment or for an attempt to commit the offences defined in the act. It recognizes that the intent to commit an offence, even when unsuccessful, needs to be penalized. The punishment for the attempt to commit is up to half the punishment prescribed for the commission of the offence.

3.2. Mandatory Reporting of Offences (Section 19 & 20):

- The Act provides for mandatory reporting. Any person (including the child) who has apprehension that an offence is likely to be committed, or has knowledge that an offence is likely to be committed, or has knowledge that an offence has been committed shall complain to the Special Juvenile Police Unit or the local police.
- In case any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities comes across any child pornography (through any medium), shall provide such information to the Special Juvenile Police Unit or the local police.

3.3. Various Penal Provisions in Tabular Form:

Offences	Description of particulars	Punishment			
		Relevant Section	Minimum Sentence	Maximum Sentence	Fine
Section 3: Penetrative Sexual Assault	Infiltration/ Penetration + Touching	Section 4 (1)	10 yrs	Imprisonment for life	+ Fine
	Penetrative Assault on a child below sixteen years of age	Section 4 (2)	20 yrs	Imprisonment for remainder of natural life	+ Fine
Section 5: Aggravated Penetrative Sexual Assault	Custody + Duty to save + Penetration + Touching	Section 6	20 yrs (RI)	Imprisonment for life/ Death	+ Fine
Section 7: Sexual assault	Touching with sexual intent	Section 8	3 yrs	5 yrs	+ Fine
Section 9: Aggravated Sexual Assault	Custody + Duty to save + Touching	Section 10	5 yrs	7 yrs	+ Fine
Section 11: Sexual harassment	Verbal / Gesture / Threatening /Enticing for / Showing Pornographic purposes etc.	Section 12	-	3 yrs	+ Fine
Section 13: Use of child for pornographic purposes	In any form of media for personal use or for distribution	Section 14 (1)	5 yrs	-	+ Fine
	Second or subsequent conviction	Section 14 (1)	7 yrs	-	+ Fine
	Along with offence under Sections 3, 5, 7 or 9	Section 14 (2)	Punishment under Sections 4, 6, 8 and 10 respectively + Section 14 (1)		
Section 15: Storage of Pornographic Material Involving Child	Storing/ Possession but fails to delete or destroy or report + intention to share or transmit child pornography	Section 15 (1)	-	-	Minimum Rs. 5,000
	Second or subsequent offence		-	-	Minimum Rs. 10,000
	Storing/ Possession for transmitting/ propagating/ displaying/ distributing (except for the purpose of reporting)	Section 15 (2)	-	3 yrs	/ Fine / +Fine
	Storing/ Possession for commercial purpose	Section 15 (3)	3 yrs	5 yrs	/ Fine / +Fine
	Second or subsequent conviction		5 yrs	7 yrs	+Fine

Offences	Description of particulars	Punishment			
		Relevant Section	Minimum Sentence	Maximum Sentence	Fine
Section 16: Abetment of an offence	Instigation/ Engaging in criminal conspiracy/ Aiding	Section 17	Punishment provided for that offence		
Section 18: Attempt to commit an offence	Attempting to commit	Section 18	$\frac{1}{2}$ of the imprisonment for life/ $\frac{1}{2}$ of the longest term of imprisonment provided for that offence		/ Fine / +Fine
Section 21: Punishment for failure to report or record a case	Failure to report or record a case	Section 21 (1)		6 months	/ Fine / +Fine
	Failure is made by a person being in-charge of any company or an institution	Section 21 (2)		1 yr	+Fine
Section 22: Punishment for false complaint or false information	Intention to humiliate, extort or threaten or defame	Section 22 (1)		6 months	/ Fine / +Fine
	A child makes such false complaint	Section 22 (2)	No Punishment		
	Whoever, not being a child victimises child in any offences	Section 22 (3)		1 yr	/ Fine / +Fine

Note:

- All the above offences shall be punished with imprisonment for either description but aggravated penetrative sexual assault shall be punished with rigorous imprisonment.
- Imprisonment for life is always rigorous imprisonment.
- All the above offences shall also be liable to fine if not otherwise provided. Sections 42 and 42A provides that if the same act is an offence under IPC (now BNS) the stringent punishment of the two shall be awarded because though the act is overriding, it is not in derogation.
- While **Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act)** prescribes **rigorous imprisonment for a term not less than twenty years, which may extend to imprisonment for life (meaning imprisonment for the remainder of natural life)**, or even **death penalty**, for the offence of *aggravated penetrative sexual assault*, a different statutory consideration arises when the offender is a child. In such a situation, **Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015** expressly prohibits sentencing a *child in conflict with law* to **death or life imprisonment without the possibility of release**, for any offence, whether under the JJ Act, the IPC, or any other law in force, including the POCSO Act. Thus, **if a minor is found to have committed an offence under Section 6 of the POCSO Act, the sentencing must comply with the protective mandate of Section**

21 of the JJ Act, ensuring that the child is not subjected to the death penalty or life imprisonment without the prospect of reintegration into society.

3.4. Cognizable but when Bailable or Non-bailable:

While providing for a whole range of offences, the POCSO Act does not specify whether the offences are cognizable or not, or bailable or not. Section 19 of the POCSO Act and Rule 4 (3) (a) of the POCSO Rules imply that the sexual offences are cognizable as the police receiving information of commission of such offence is required to record and register a First Information Report (FIR), per the provisions of Section 154 of CrPC (now Section 173 of BNSS) , and furnish a copy of it, free of cost, to the person making such report.

To determine whether a sexual offence is bailable or non-bailable, it is necessary to see the First Schedule of CrPC (now BNSS) (Part II - Classification of Offences against Other Laws):

- Whenever the punishment is less than 3 years of imprisonment, the offence is bailable.
- Any term of imprisonment equal to or more than 3 years, the offence is non-bailable.

All sexual offences under the POCSO Act are punishable with imprisonment up to 3 years or more and are, therefore, non-bailable.

4. MEANING OF CHILD FRIENDLY APPROACH:

4.1. Meaning of Child Friendly Approach:

JJ Act, 2015, Section 2 (15) defines the term “child-friendly” to mean “any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child.”³² This Act provides for setting up of institutional mechanisms to adjudicate and provide services to children in a comprehensive and holistic manner. It also specifies certain offences against children.

The Preamble of JJ Act, 2015 highlights the objectives of a ‘child-friendly approach’ and ‘best interest of the child’ principle in their care, protection, development, treatment, and social reintegration.

The Principles underlined in Section 3, JJ Act, 2015, for guiding the juvenile justice system are as follows –

- ***Principle of presumption of innocence*** – Any child, who is a ‘child in conflict with law’ shall be presumed to be innocent of any mala fide or criminal intent up to the age of eighteen years.
- ***Principle of dignity and worth*** – All children, whether a child victim or a child in conflict with law, shall be treated with equal dignity by the police, without showing any bias or prejudice, towards the situation that the child is facing. For example, a child seen begging on the road junction cannot be treated as a ‘beggar’ at par with an adult. The child shall be treated as a person who was made to beg by somebody.
- ***Principle of participation*** – The police shall hear the child and pay due respect to the wishes of the child – such as, when the child wants the police interview to discontinue, or the child expresses a desire to go home instead of to a Child Care Institution. Having heard the child’s views, the police should take them into consideration in the totality of the situation and take decisions accordingly, with due regard to the age and maturity of the child. For example, a trafficked child or a child subjected to sexual abuse may change his statement a few times, depending on its capacity to recall the events. This is natural and cannot be construed as concoction or ‘padding’ as one would attribute to an adult victim.
- ***Principle of best interest*** – “All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.” The child and the child alone should be the focal point of all decision making, vis-à-vis the other adults who might be affected by those decisions. For example, the police cannot insist on the institutionalization of a child victim of a sexual offence only because her family members may pressurize her to turn hostile. This is because separating her from her family when she has undergone abuse and needs their support may not be in her best interest. Separation, may however, be considered by the Child Welfare Committee (CWC) where the perpetrator is a family member.

32 The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), s. 2(15).

- ***Principle of family responsibility*** – The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be. For instance, if a child begging on the street is living with the parents/ relatives who also work on the street, it may probably not be prudent to separate and immediately produce the child before the CWC. Action in this case could also involve an NGO who could counsel the family and take the child off the street from begging and into a school, whilst continuing to live with the family.
- ***Principle of safety*** – “All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.” Children are sometimes re-victimised in the child care institutions by the staff, or by other senior children. The police should ensure the child’s safety, within this care and protection system. It would also entail ensuring their safety and protection from the accused during an on-going investigation or trial.
- ***Positive measures*** – “All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.” Through community policing, by mapping the vulnerable populations and communities within cities, towns and villages, the police can prevent the occurrences of crimes against children and also of children committing offences.
- ***Principle of non-stigmatizing semantics*** – “Adversarial or accusatory words are not to be used in the processes pertaining to a child.” During interviewing a child victim, especially in cases of sexual offences, the police should not use language that attributes blame to the child for the crime. Similarly, when a child is alleged to have committed an offence, the police should not use language which labels the child as a criminal. For example, a child rescued from a brothel can never be called a “child prostitute” as she was never one; whereas the fact is that she has been prostituted and victimized.
- ***Principle of non-waiver of rights*** – The child should get the benefit of all provisions of the JJ Act, and other fundamental rights as laid down in the Constitution. No authority, which is statutorily bound to take a decision for the child, can claim that these procedures need not be undertaken or be deemed to have been waived either by the child/ or the family/ guardians.
- ***Principle of equality and non-discrimination*** – There shall be no discrimination by the police against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child. For instance, the police should not automatically assume that a child from a rich family would be more intelligent and can participate in the justice process, but a child who lives with the parents on the street, need not be asked for his/ her opinion with respect to decisions affecting the child.
- ***Principle of right to privacy and confidentiality*** – The police should for instance, ensure that the child’s identity is never disclosed to the media, by the media or by anyone so as to identify the child – either as a victim or as a child in conflict with the law. The police should also maintain the confidentiality of their records with respect to processes under the JJ Act, for every child.

- **Principle of institutionalization as a measure of last resort** – Although it is for the CWC or the Juvenile Justice Board (JJB) to order for institutionalization of the child brought before them, the police may also remember that taking the child away from the family and placing it in an institution may not always be the best course of action.
- **Principle of repatriation and restoration** – Again, this is a point to be decided by the CWC or the JJB respectively, and is the ultimate responsibility of the Child Care Institution where the child is staying, but the police should be aware of this principle that the child has a right to be reunited with his/ her family at the earliest, if it is in the best interest of the child.
- **Principle of fresh start** – All past records of any child under the Juvenile Justice system should be erased except in special circumstances, as is provided for under the law. The police should not disclose records of children for character certificates in cases that are closed or disposed of.
- **Principle of diversion** – Measures for dealing with children in conflict with law without resorting to judicial proceedings are to be promoted by the JJB, unless it is in the best interest of the child or the society as a whole.
- **Principles of natural justice** – Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act. The Juvenile Justice Model Rules of 2016 provides that non-compliance with the Act and the Rules by any officer/ institution, statutory body, etc., can invite action by the State Government against such officer/institution, statutory body etc., after due inquiry and simultaneously make alternative arrangements for discharge of functions for effective implementation of the Act (Rule 93).

4.2. Recording of Statement of a Child by Magistrate under Section 25 and 26:

4.2.1. Procedure under Section 25 of POCSO Act:

The POCSO Act does not mandate that a statement under Section 164, Cr.P.C. (now Section 183 of BNSS) be recorded in every case. However, pursuant to the Criminal Law (Amendment) Act, 2013, Section 164 (5A) (a), the statement of victim against whom offences has been committed under Sections 354, 354-A, 354-B, 354-C, 354-D, 376(1), 376(2), 376-A, 376-B, 376-C, 376-D, 376-E or 509 of the IPC shall be recorded by a Judicial Magistrate. As per the provisions of Section 164(5-A)(a) Cr.P.C., the statement should be recorded as soon as the commission is brought to the notice of the police. In cases of rape, the IO should take the victim within 24 hours to any Metropolitan/preferably Judicial Magistrate for recording the 164 statement and preferably to a Lady Magistrate (*State of Karnataka v. Shivanna*)³³.

- **Child victim to be brought immediately:** In case of sexual offences under the IPC (now BNS), the IO should bring the child victim to the Magistrate immediately. [Section 164 (5A) (a)] In cases of rape, the IO should take the victim within 24 hours to any Metropolitan/ preferably Judicial Magistrate for recording the statement under Section 164.

33 *State of Karnataka v. Shivanna*, (2014) 8 SCC 913.

- **Reasons for delay:** The reasons for delay in bringing the victim of rape within 24 hours should be recorded in the case diary and the copy of the same should be handed to the Magistrate. For instance, if the child is traumatized or in no state to be physically taken for the statement under Section 164, the above mentioned reason should be cited to the Magistrate to explain the delay.
- **Medical examination report:** The IO should also hand over to the Magistrate a copy of the medical examination report.
- **Unavailability of lady Magistrate:** The POCSO Act does not mandate that the child should be taken to a lady Magistrate. The Supreme Court has also indicated that this is a preference and not a mandatory requirement. The priority should be on ensuring that the statement is recorded at the earliest. If a lady Magistrate is unavailable, the IO should not delay matters and take the child to any Metropolitan or Judicial Magistrate.

4.2.2. Additional Procedure under Section 26 of POCSO Act:

- The recording by the police of the FIR and the statement of the child under Section 161 of CrPC (now Section 180 of BNSS) should be “as spoken by the child” and in the presence of the child’s parents or a person in whom the child has trust or confidence. [Section 26 (1) of the POCSO Act].
- It is the duty of the police to read out the FIR to the child victim / informant as written down. [Section 19 (2) (b) of the POCSO Act and Section 154 (1) of CrPC (now Section 173(1) of BNSS)].
- If the child does not understand the language in which the FIR is recorded, it is incumbent upon the police to seek assistance of a translator or interpreter whose qualifications and experience is prescribed under the POCSO Rules, to help the child communicate. [Section 19 (4) of the POCSO Act and Rule 3 of the POCSO Rules].
- If the child has a mental or physical disability, the police should “seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field” to enable such child to communicate [Section 26 (3) of the POCSO Act and Rule 3 of the POCSO Rules].
- Every informant has a right to get a copy of the FIR from the police free of cost as soon as it is registered. [Rule (4) (2) (a) of the POCSO Rules and Section 154 (2) of CrPC (now Section 173(2) of BNSS)].
- The statement of the child shall be recorded by the police “at the residence of the child or at a place where he usually resided or at a place of his choice” [Section 24 (1) of the POCSO Act].
- The statement of the child shall be “recorded as far as practicable by a woman police officer” [Section 24 (1) of the POCSO Act]. The statement of a woman against whom a sexual offence is alleged to have been committed is to be “recorded by a woman police officer or any woman officer” [2nd proviso to Section 161 (3) of CrPC (now 2nd proviso to section 180(3) of BNSS)]. If the first informant is a woman against whom a sexual offence is alleged to have been committed, the FIR shall be “recorded by a woman police officer or any other woman officer” [1st proviso to Section 154 (1) of CrPC (now 1st proviso to Section 173(1) of BNSS)].

- The police officer recording the statement of a child should not be below the rank of sub-inspector [Section 24 (1) of the POCSO Act] and should not be in uniform [Section 24 (2) of the POCSO Act].
- Where the police is to record the statement of the child, use of “audio-video electronic means”, in addition to recording such statement in writing, is encouraged [Section 26 (4) of the POCSO Act and 1st proviso to Section 161 (3) of CrPC (now 1st proviso to Section 180(3) of BNSS)].
- An FIR has to be signed by the informant [Section 154 (1) of CrPC (now Section 173(1) of BNSS)], but statements given to the police in the course of police investigation are not to be signed by the maker of the statement [Section 162 (1) of CrPC (now Section 181(1) of BNSS)].
- While recording the statement of the child, the police should ensure “that at no point of time the child comes in contact in any way with the accused.” [Section 24 (3) of the POCSO Act].

4.3. Medical Examination under Section 27 of the POCSO Act:

4.3.1. Section 27 of POCSO Act:

Under this provision of the POCSO Act, the medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences, be conducted in accordance with Section 164A of the CrPC, 1973 (now Section 184 of BNSS, 2023). In case the victim is a girl child, the medical examination shall be conducted by a woman doctor. The Act further states that medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence. Where, the parent cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

4.3.2. Section 164, CrPC (Section 183, BNSS): Medical Examination of the Victim of Rape:

- 1) Medical examination shall be conducted within 24 hours by a registered medical practitioner of a government hospital and in the absence, by any other registered medical practitioner.
- 2) Consent of such a victim or of a person competent to give consent on her behalf must be obtained.
- 3) The registered medical practitioner shall examine her person and prepare a report giving the following particulars, namely—
 - a) the name, address and age of the woman
 - b) the description of material taken from the person of the woman
 - c) marks of injury
 - d) general mental condition of the woman

- e) other material particulars found in the course of examination.
- 4) Exact time of initiation and completion of examination.
- 5) Medical report must be sent to I.O. immediately.

4.3.3. Guidelines and Protocols for Medical Examination of Victims of POCSO Act, 2014:

The Ministry of Health & Family Welfare, Government of India has regulated the following guideline.³⁴ The guidelines are for health professionals when a survivor of sexual violence reports to a hospital. The guidelines describe in detail the stepwise approach to be used for a comprehensive response to the sexual violence survivor as follows:

- I. Initial resuscitation/ first Aid
- II. Informed consent for examination, evidence collection, police procedures
- III. Detailed History taking
- IV. Medical Examination (2 finger test is prohibited)
- V. Age Estimation (physical/dental/radiological) – if requested by the investigating agency.
- VI. Evidence Collection as per the protocol
- VII. Documentation (at the earliest)
- VIII. Packing, sealing and handing over the collected evidence to police
- IX. Treatment of Injuries
- X. Testing/prophylaxis for STIs, HIV, Hepatitis B and Pregnancy
- XI. Psychological support & counselling
- XII. Referral for further help (shelter, legal support)

If a person has come directly to the hospital without the police requisition, the hospital is bound to provide treatment and conduct a medical examination with consent of the survivor/ parent/guardian (depending on age). A police requisition is not required for this.

If a person has come on his/her own without FIR, he/she may or may not want to lodge a Complaint but requires a medical examination and treatment. Even in such cases the doctor is bound to inform the police as per law. However, neither court nor police can force the survivor to undergo a medical examination. It has to be with the informed consent of the survivor/ parent/ guardian (depending on the age). In case the survivor does not want to pursue a police case, a MLC must be made and she must be informed that she has the right to refuse to file an FIR. An informed refusal must be documented in such cases.

If the person has come with a police requisition or wishes to lodge a complaint later, the information about medico-legal case (MLC) no. & police station should be recorded.

Doctors are legally bound to examine and provide treatment to survivors of sexual violence. The timely reporting, documentation and collection of forensic evidence may assist the

34 Guidelines and Protocols - Medico-legal care for survivors/victims of sexual violence, The Ministry of Health & Family Welfare, Government of India, Available at- <https://main.mohfw.gov.in/sites/default/files/953522324.pdf>
... § 68 §...

investigation of this crime. Police personnel should not be present during any part of the examination.




Doctors shall inform the person being examined about the nature and purpose of examination and in case of child to the child's parent/guardian/ or a person in whom the child reposes trust. This information should include:

- a) The medico-legal examination is to assist the investigation, arrest and prosecution of those who committed the sexual offence. This may involve an examination of the mouth, breasts, vagina, anus and rectum as necessary depending on the particular circumstances.
- b) To assist investigation, forensic evidence may be collected with the consent of the survivor. This may include removing and isolating clothing, scalp hair, foreign substances from the body, saliva, pubic hair, samples taken from the vagina, anus, rectum, mouth and collecting a blood sample.
- c) The survivor or in case of child, the parent/guardian/or a person in whom the child reposes trust, has the right to refuse either a medico-legal examination or collection of evidence or both, but that refusal will not be used to deny treatment to survivor after sexual violence.
- d) As per the law, the hospital/ examining doctor is required/duty bound to inform the police about the sexual offence. However, if the survivor does not wish to participate in the police investigation, it should not result in denial of treatment for sexual violence.

Emphasize that seeking treatment is critical for the survivor's well-being.

- The survivor or guardian may refuse to give consent for any part of the examination. In this case the doctor should explain the importance of examination and evidence collection, however the refusal should be respected. It should also be explained that refusal for such examination will not affect/compromise treatment. Such informed refusal for examination and evidence collection must be documented.
- In case there is informed refusal for police intimation, then that should be documented. At the time of MLC intimation being sent to the police, a clear note stating "informed refusal for police intimation" should be made.
- Only in situations, where it is life threatening the doctor may initiate treatment without consent as per Section 92 of IPC (now Section 30 of BNS).
- The consent form must be signed by the person themselves if they are above 12 years of age. Consent must be taken from the guardian/ parent if the survivor is under the age of 12 years.
- The consent form must be signed by the survivor, a witness and the examining doctor.

Example of Sexual Assault Victim Examination Protocol by Hospitals:

SADAR HOSPITAL, RANCHI Sexual Assault Victim Examination Protocol		
MLC No.	Date of Examination	Time
Name :	D/o, S/o.	Age Sex
Address :	Brought By :	
Police Station :	Mob. No. :	
Kand Sankhya	Date	
Board formation (by DS if any) (1) (2) (3)		
I D/o hereby given my consent for this medical examination having understood the purpose and the examination including the risk and benefit, explained to me by the examining doctor. My right to refuse the examination at any stage and the consequence of such refusal has also been explained and can be recorded, if necessary.		
Witness / Accompanying person Mark of Identification 1. 2.	Signature of person and/or Guardian, in case of minor Right Thumb Impression (RTI) 	
Any scar/mark/deformity.....		
HISTORY (including brief description of the incident) (no of assailant, time, date, type of penetration)		
TAKING BATH/CHANGING CLOTHES:		
USE OF EMERGENCY CONTRACEPTION:		
Menstrual History	LMP	Age of menarche
Obstetrical History	Medical/Surgical History	
EXAMINATION		
General Physical (1) General Condition..... (2) P = Temp = Pupils = BP= PR=	Injuries (other than genitalia) 1. 2. 3. 4. 5.	Secondary Sexual Character A. Breast B. Axillary Hair C. Pubic Hair D. External Genitalia injuries E. Internal injuries F. P/v (if indicated) G. Foreign Body If any
		
SAMPLE COLLECTED (For FSL)	INVESTIGATION	Treatment advised:
FSL sample handed over to:	Clinical Opinion : After preparing the above mentioned clinical examination the findings are: (a) Signs suggestive of recent forceful penetration. (b) No obvious signs of force present. Sexual assault cannot be ruled out (c) Opinion pending for FSL report.	
Medical Officer Signature		
1. UPT - 2. USG - 3. Blood Test - 4. Vaginal Smear report - 5. X Ray - 6. Dental Opinion - 7. Others -		
FINAL OPINION :		
Examining Medical Officer Name : Mob. No.		
Signature / Date :		

4.4. Norms of Child-friendly Trial:

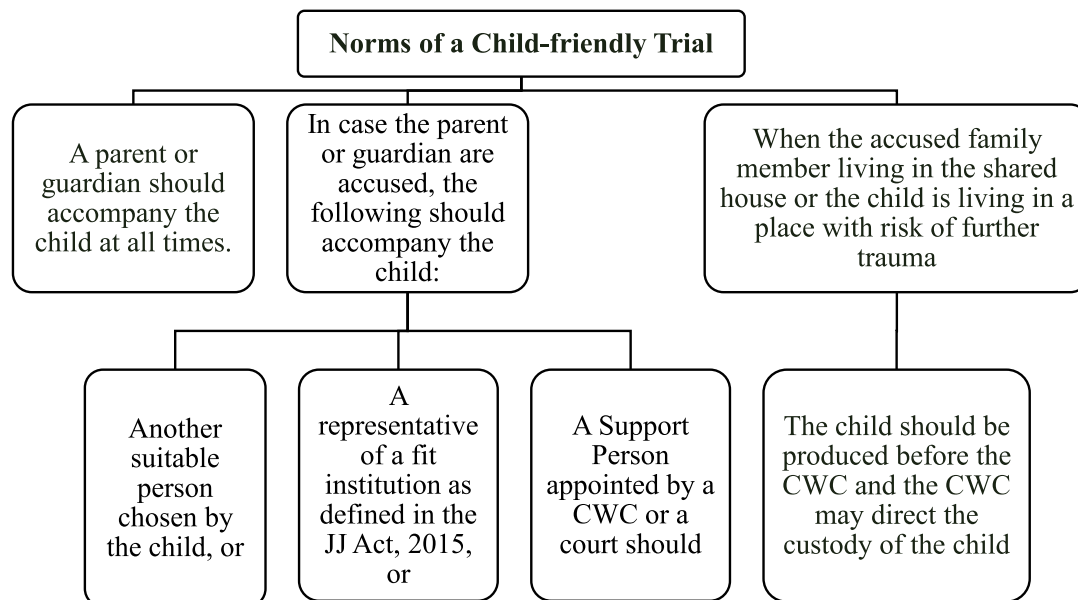
A parent or guardian should accompany the child at all times. In case they are accused of the offence against the child, another suitable person chosen by the child, or a representative of a fit institution as defined in the JJ Act, 2015, or a Support Person appointed by a CWC or a court should accompany the child.

Where the parents or guardians or someone living in the same shared house is the perpetrator or are involved in the commission of an offence or the child is living at a place where there is a risk of further trauma, the child should be produced before the CWC and the CWC may direct the child to be taken out of their custody or care, or out of such situation. In the context of a sexual offence against a child, the decision to take the child out of the custody of a parent, guardian, or child care institution can be taken only by the Child Welfare Committee as per the provisions of Rule 4(3) and 4(4) of POCSO Rules. Courts before whom such children are produced should direct the police to present the child before the jurisdictional CWC.

Age determination must be conducted as per the procedures laid out in Section 94, JJ Act, 2015.

- The language used in the court must be familiar to the child and where needed, translators, interpreters, and special educators must be made available.
- The court must ensure beforehand that the child is capable of giving a voluntary statement.
- No statement of the child should be disregarded as evidence in the trial solely on the basis of the age of the child.
- Images or statements admissible in the interview of the child should not be detrimental to the mental or physical well-being of the child.
- Length and questions admissible at the interview should not be taxing and must be suitable to the attention span of the child.
- In case of young children, or otherwise incapacitated children, alternative methods of interaction and evidence collection that are less intimidating to be adopted.
- The Court should ensure that at no stage during trial, the child comes face to face with the accused.
- Special permission from school and arrangement for remedial classes for days lost to be ensured by the school authorities.
- Identity of the child should be protected from the media.

5. TRIAL, COMPENSATION AND DISPOSAL UNDER POCSO ACT



5.1. Trials of the POCSO Cases:

Trials under the POCSO Act are a little different than those under the CrPC (now BNSS). Time taken for the trial to be completed along with the way the trial is conducted is very important. Since time is of essence, speedy trials are a must. Section 28 of the Act gives way for the designation of the special courts, which have been given their status to ensure speedy redressal in these matters.

Additionally, Section 33 of the Act mentions the procedure of how a trial under this Act should be conducted.

Special Courts can take cognizance directly without commitment. (Section 33(1), POCSO Act). The police should thus submit the charge sheet to the Special Court under the POCSO Act.

5.1.1. Roles of Special Court under POCSO Act during the trial Child-friendly atmosphere:

- Special Courts should create a child-friendly atmosphere by allowing a family member, guardian, friend, or relative whom the child trusts or has confidence in to be present. [Section 33(4), POCSO Act]
- They should ensure that the child is not repeatedly called to testify in court. [Section 33(5), POCSO Act]
- They should ensure that the identity of the child is not disclosed at any time during the investigation or trial unless the disclosure is in the interest of the child. Reasons should be recorded in writing if the disclosure is allowed. [Section 33(7), POCSO Act]

- Special Courts should determine the age of the child when the question arises before the court and adhere to the provisions of the JJ Act, 2015 on age determination. [Section 34(2), POCSO Act]
- They should ensure that the child is not exposed to the accused at the time of recording the evidence and that the accused is able to hear the statement of the child and communicate with his advocate. Video conferencing, single visibility mirrors, curtains, or any other device should be used to facilitate this. [Section 36, POCSO Act]
- They should conduct the trial in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence. [Section 37, POCSO Act]
- Special Courts should examine the child in a place other than the courtroom if the situation requires it. [Section 37, POCSO Act]
- The Special Court shall complete the trial within a period of one year from the date of taking cognizance of the offence. [Section 35]

In the ***Sakshi case***³⁵, the Supreme Court observed (paragraph 31), “The whole inquiry before a court being to elicit the truth, it is absolutely necessary that the victim or the witness are able to depose about the entire incident in a free atmosphere without any embarrassment.” To achieve this, the Supreme Court passed several directions, most of which are contained in the POCSO Act.

- In-camera trials in cases of sexual offences committed against children are mandatory [Section 37 of the POCSO Act]. Trials of sexual offences against women are also to be conducted in camera [Section 327 (2) of CrPC (now Section 366(2) of BNSS)]. Under the POCSO Act, the child victim is entitled to the “presence of the parents of the child or any other person in whom the child has trust or confidence”.
- The Special Court is obligated to create a child-friendly environment, and for this, allow in the court room, the presence of the child’s parent or guardian or family member or friend of person in whom the child has confidence [Section 33 (4) of the POCSO Act]. A child may have trust or confidence in a support person, who should be allowed to be present to enable the child to depose without fear.
- A child may also be examined at a place other than the Special Court, if required in the interest of the child, through a commission [Section 37 of the POCSO Act].
- The examination-in-chief and cross-examination of the child victim should be taken up on the day the child has attended the Special Court for such purpose. This will ensure that the child is not required to be called repeatedly to testify [Section 33 (5) of the POCSO Act]. Likewise, if on a particular date a child is unable to remain present, the Special Court should ascertain the reason for such absence and adjourn the matter to a convenient date.
- The court should allow frequent breaks to the child while recording of evidence [Section 33 (3) of the POCSO Act].
- Use of screens, single visibility mirrors or curtains, video conferencing and such other devices is essential to “ensure that the child is not exposed in any way to the accused

35 *Sakshi and Ors. v. Union of India and Ors.*, AIR 2004 SC 3566.

at the time of recording of the evidence” [Section 36 of the POCSO Act], to reduce the victim’s stress of testifying in a court. Keeping in mind the right of the accused, an accused should be “in a position to hear the statement of the child and communicate with his advocate.”

- There can be no direct questioning of the victim by the defence counsel. Under the POCSO Act, the defence counsel should communicate the questions to the Special Court, who shall “in turn put those questions to the child” so as not to frighten or confuse the child [Section 33 (2) of the POCSO Act]. The child’s dignity is to be always maintained during the trial, so the Special Court should control “aggressive questioning” and “character assassination of the child” [Section 33 (6) of the POCSO Act]. The court may “forbid any questions or inquiries which it regards as indecent or scandalous” [Section 151 of IEA (now 154 of BSA)], as also questions “intended to insult or annoy” or are “needlessly offensive in form” [Section 152 of IEA (now 155 of BSA)].
- In a trial for an offence of penetrative sexual assault [Section 3 of the POCSO Act], sexual assault [Section 7 of the POCSO Act], or such offence in its aggravated form [Sections 6 and 9 of the POCSO Act], or abetment or attempt to commit such offence [Sections 16 and 18 of the POCSO Act], there is a presumption that the accused committed the offence and the burden to prove innocence is upon the accused. Hence, the accused may be required to lead evidence in his favour [Section 29 of the POCSO Act]. This provision is contrary to the philosophy of criminal jurisprudence. Generally, the burden of proof is upon the prosecution to prove that the offence was committed by the accused [Section 101 of IEA (now 104 of BSA)] – an accused is “innocent until proven guilty”.
- When an offence requires a ‘culpable mental state’ on the part of the accused, the Special Court will presume that the accused had the same state [Section 30 (1) of the POCSO Act]. The “presumption of culpable mental state” relates to intention, motive, knowledge of a fact, etc. [Explanation to Section 30 of the POCSO Act]. For example, ‘sexual intent’ is the core ingredient of the offence of ‘sexual harassment’ [Section 11 of the POCSO Act], so such ‘sexual intent’ shall be presumed on the part of the accused. It is for the accused to lead evidence to rebut the presumption by proving “beyond reasonable doubt”¹⁶ that there was no ‘sexual intent’ on his part. Proof of mere “preponderance of probability” shall not establish lack of ‘culpable mental state’ on the part of the accused [Section 30 (2) of the POCSO Act].
- The child must be present before the Special Court to give evidence. To ensure such attendance, the child and the family member accompanying the child should be provided with reimbursement of the cost of travel to the court.

5.2. Compensation under the POCSO Act:

5.2.1. Provisions for Compensation under POCSO Act:

Under Section 33 (8) of the POCSO Act, 2020 in addition to punishment, the Special Court may “direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to her / him for immediate rehabilitation of such child.”

Rule 9 of the POCSO Rules lays down the details regarding payment of compensation. Compensation is payable to the child by the State Government, and not by the accused as in the case of fine. The awarding of compensation and the amount to be so paid is to be determined by the Special Court. The factors to be considered by the Special Court for computing the amount of compensation are contained in Rule 9 (3) (i) to (xii) of the POCSO Rules. The list is not exhaustive and includes: type of abuse; gravity of the offence and the severity of the mental or physical harm or injury suffered by the child; the expenditure incurred or likely to be incurred on medical treatment for physical and/or mental health; loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason; the relationship of the child to the offender, if any; financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation; etc.

- The Special Court may direct payment of compensation in the following form:-
 - I. interim compensation to meet the immediate needs of the child;
 - I. final compensation taking into account the loss or injury suffered by the child as a result of the offence.
- The Special Court may pass an order directing payment of compensation on its own or on an application made by the Special Public Prosecutor or the child's lawyer.
- Compensation may be provided at any stage after the registration of FIR, irrespective of whether “the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified” [Rule 9 (2) of the POCSO Rules]
- The interim compensation paid to the child is to be adjusted against the final compensation awarded by the Special Court, if the court decides to award any final compensation [Rule 9 (1) of the POCSO Rules].
- The needs and interests of the child should determine the amount of compensation payable.
- Once the amount of compensation is determined by the Special Court, it shall pass an order “for the award of compensation to the victim” [Rule 9 (3) of the POCSO Rules]. The order should mention the amount of compensation to be paid by the State Government to the child.

The amount of compensation is a contended issue in POCSO cases since no amount of compensation can actually undo the wrong done to a child. Taking a progressive and novel

view, Justice Jasmeet Singh of the Delhi High Court, in the case of **X v. State of NCT of Delhi and Ors.**³⁶, said that –

“The compensation as per DVC scheme provides a maximum and a minimum. The statutes/scheme should not decide the maximum. The court has the power to scale up and scale down. To scale down these provisions would mean injustice to the survivors who have suffered. These are the situations which require scaling up. For instance, the compensation for “rape” in the schedule has been provided as 7 lakhs maximum. In view of the aforesaid discussion, I am of the view that purposive interpretation and beneficial legislation requires the said sum of Rs. 7 lakhs to be considered as a minimum base while adjudicating compensation in POCSO cases.

Hence for POCSO survivors of “rape,” it should be 7 +3.5-10.5 lakhs (50% of 7 lakhs being added in POCSO cases as per DVC scheme) lakhs. The final compensation shall not be less than 10.5 lakhs.

The special court will be within their rights and within POCSO to adjudicate and grant compensation for more than 10.5 lakhs. The special court shall decide the final compensation amount and the interim compensation granted by the DSLSA/DLSA and the special court, shall be adjusted from the final compensation amount awarded by the special court.”

5.2.2. Stage of Awarding Compensation:

The Rule 9 of POCSO Rules makes it clear that interim compensation can be awarded by the Special Court, on its own, or based on an application by or on behalf of the child, at any time after the FIR has been registered. A sustained reading of the POCSO Rules along with the objectives of POCSO makes it clear that compensation is to be given as soon as the Special Court forms an opinion that the child has suffered loss or injury.

In the above-mentioned case of **X v. State of NCT of Delhi and Ors.**,³⁷ it was held that –

“In my opinion, the pendency might be getting created because the POCSO states that compensation shall be given after registration of the FIR but does not provide a fixed time limit, within which the compensation is to be disbursed. The POCSO Rules only give the starting point as registration of the FIR. This gap allows for the delay in disbursal of interim compensation.

Thus, I am of the opinion that the interim compensation is to be paid at the earliest. Although no time frame has been given but in my understanding 2 months within filing of charge sheet to disburse interim compensation would be reasonable. Section 357A (5) of the CrPC (now Section 396(5) of BNSS) deals with grant of compensation to the victims which contemplates a similar time frame.”

“I must reiterate that the trigger to award compensation is filing of the chargesheet. The Special Court must endeavour to, within 2 months of filing of chargesheet, award the compensation. After the conclusion of trial, even if the order of acquittal is passed, but if the factum of rape/injury is substantiated, the Special Court is obligated to grant maximum permissible compensation, less the interim compensation awarded earlier by the special court and the DSLSA/DLSA.”

36 *X v. State of NCT of Delhi and Ors.*, MANU/DE/4086/2022

37 *X v. State of NCT of Delhi and Ors.*, MANU/DE/4086/2022

5.2.3. Hostile Victim and Compensation

It has been noted that in a lot of cases received under the Act, many victims eventually turn hostile and hence the trial has to be disposed of. Girls under the pressure of their families or owing to their poor financial backgrounds or due to some greed of monetary compensation, file a case against the accused but later on turn hostile and refuse to recognise the perpetrator. Some victims go even further and deny all claims of the crime having been committed against them. In such cases, the question arises, what happens to the compensation received by the victim and whether such persons should be allowed to keep the compensatory amount even after being declared hostile.

The Trial Court in Mumbai ordered recovery of Government aid from the victim after she turned hostile and prosecution was found guilty of perjury in a POCSO Case. It was held by the court that –

*“It is not clear, as to whether PW 1 victim received any ex-gratia monetary aid from the State Government. If she has received any such aid, it becomes the duty of this court to appraise the Government of the fact that the FIR itself appears to have been falsely lodged by the informant, as appears from her own testimony. Thus, if any monetary benefit has been received by her from the State Government, the same deserves to be recovered back from her, by taking necessary actions, in the nature of recovery of land revenue, for the simple reason that it would otherwise amount to misappropriation of public money by an unscrupulous person.”*³⁸

In a similar case where the Court had to see whether the victim was genuine or not, a single judge bench of Justice Brij Raj Singh of the Allahabad High Court observed: *“The question has cropped up before me as to whether the rape victim who has become hostile is entitled to retain the amount of compensation.”*

“In my opinion, if the victim has become hostile and does not support the prosecution case at all, it is appropriate to recover the amount if paid to the victim,” the court said. *“The victim is the person who comes before the court and during trial if she denies the allegation of rape and becomes hostile, there is no justification to keep the amount of compensation provided by the State Government. The State Exchequer cannot be burdened like this and there is all possibility of misuse of the laws. Therefore, in my opinion, the amount of compensation given to the victim or the family member, is liable to be recovered by the authorities concerned who have paid the compensation.”* the court observed.³⁹

5.3. Disposal of POCSO Case

Section 35: Period for Recording of Evidence of Child and Disposal of Child:

Speedy disposal of cases under the Act have been mentioned under Section 35, POCSO Act. It reads –

38 *State of Maharashtra v. Vicky Vinod Gajabe and Ors.* Special Case No. 258 of 2016

39 *Jeetan Lodh alias Jitendra v. State of Uttar Pradesh CRIMINAL MISC. BAIL APPLICATION No. - 4824 of 2023*

- (1) *The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.*
- (2) *The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.*

A duty of quick disposal has been placed on the Special Court, where the evidence of the child is to be recorded within thirty days and any delay must be reasonable and justified. The Act also places a duty on the Courts to deal with the case within the period of one year, which is important for the child involved. A case may get vitiated if not disposed off in a speedy manner and justice would be in danger then.

The Apex Court has issued guidelines in the case of ***Alakh Alok Srivastava v. Union of India and Others***,⁴⁰ in following wordings: -

“24. It is submitted by Mr. Srivastava that in both the States, the cases are pending at the evidence stage beyond one year. We are absolutely conscious that Section 35(2) of the Act says “as far as possible”. Be that as it may, regard being had to the spirit of the Act, we think it appropriate to issue the following directions: —

- i. *The High Courts shall ensure that the cases registered under the POCSO Act are tried and disposed of by the Special Courts and the presiding officers of the said courts are sensitized in the matters of child protection and psychological response.*
- ii. *The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under the POCSO Act.*
- iii. *The instructions should be issued to the Special Courts to fast track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act and thus complete the trial in a time-bound manner or within a specific time frame under the Act.*
- iv. *The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the POCSO Act. The High Courts where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee.*
- v. *The Director General of Police or the officer of equivalent rank of the States shall 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.*
- vi. *Adequate steps shall be taken by the High Courts to provide child friendly atmosphere in the Special Courts keeping in view the provisions of the POCSO Act so that the spirit of the Act is observed.”*

In a research done by the Vidhi Centre for Legal Policy on the completion of 10 years of the POCSO Act, a report was published. The report, a product of Vidhi’s Justice, Access and Lowering Delays in India (JALDI) Initiative and the Data Evidence for Justice Reform (DE JURE) programme at the World Bank studies trends in POCSO cases through the decade and

the courts' impact on its implementation. The study looks at nearly 400,000 POCSO cases and analyses 230,730 of them to understand pendency and disposal patterns.

On an average, it takes 509.78 days (nearly 1 year and 5 months) for a POCSO case to be disposed of as against the one year time period stipulated by Section 35 of the Act. Chandigarh and West Bengal are the only states where the average time taken for convictions is within the statutorily prescribed period of one year. In most states, courts spend more time in hearing cases that ultimately end in conviction as compared to cases that end in acquittal.⁴¹

During its journey through the criminal justice system, a POCSO case goes through various stages, including preliminary hearing, framing of charge, evidence, and arguments.

The evidence stage involves both the prosecution and the defence presenting evidence before the court to support their case. It includes examination and cross examination of witnesses, which requires witnesses to appear before the court to give evidence.

However, the stage of evidence consumes a disproportionate amount of time (both in number of days and number of hearings) in a POCSO trial. 183.41 days (over 6 months) are spent on the evidence stage in a typical POCSO case.

41 Apoorva, Aditya Ranjan, Sandeep Bhupatiraju, Shareen Joshi, Daniel L. Chen, "A Decade of POCSO Developments- Challenges and Insights from Judicial Data", 73, Available at - <https://vidhilegalpolicy.in/research/a-decade-of-pocso-developments-challenges-and-insights-from-judicial-data/>

6. ROLE OF STAKEHOLDERS UNDER POCSO RULES, 2020

6.1. Role of SJPU or Local Police:

[Sec 19 of POCSO Act, 2012; Rule 4(1);(2);(3);(4);(10);(13);(14);(15);11(1)&(2)]

The United Nations Beijing Rule 1985, emphasised and envisaged special humane treatment of a child who came in contact with the police. The Juvenile Justice Act 2000, incorporated and introduced the Special Juvenile Police Unit (SJPU), which aimed at fostering an atmosphere wherein the interaction between the child in both the categories (Child in Conflict with law and Children in need of Care and Protection) and the police officer will have undergone massive change. Section 107 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act 2015), provides for creation of a SJPU by State Governments/Union Territories Administrations for every district and city to coordinate all functions of Police related to children.⁴²

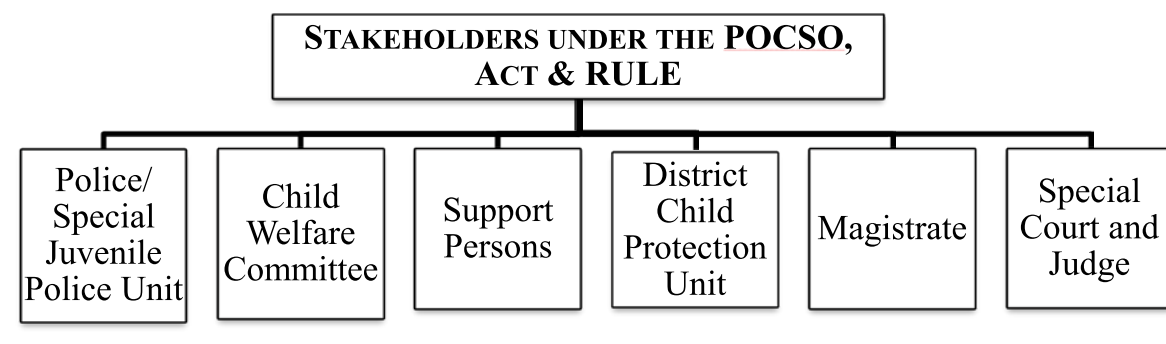
6.1.1. Reporting of offences under Section 19 of POCSO Act, 2012:

Sec 19 of the POCSO Act reads as –

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,
 - a. the Special Juvenile Police Unit; or
 - b. the local police.
- (2) Every report given under sub-Section (1) shall be—
 - a. ascribed an entry number and recorded in writing;
 - b. be read over to the informant;
 - c. shall be entered in a book to be kept by the Police Unit.
- (3) Where the report under sub-Section is given by a child, the same shall be recorded under sub-Section (2) in a simple language so that the child understands the contents being recorded.
- (4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.
- (5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall,

⁴² Dr. Kavita Singh “Role of Special Juvenile Police Unit in Interface with Juvenile in Conflict with Law” 11 *Indian Journal of Law and Justice* 88 (2020).

after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest



hospital) within twenty-four hours of the report, as may be prescribed.

- (6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.
- (7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-Section.

6.1.2. Rule 4, POCSO Rules, 2020: Procedure regarding care and protection of Child:

(1) Where any Special Juvenile Police Unit (SJPU) or the local police receives any information under sub-Section (1) of Section 19 of the Act from any person including the child, the SJPU or local police receiving the report of such information shall forthwith disclose to the person making the report, the following details:-

- i. *his or her name and designation;*
- ii. *the address and telephone number*
- iii. *the name, designation and contact details of the officer who supervises the officer receiving the information.*

Rule 4(2) If any such information regarding the commission of an offence under the provisions of the Act is received by the child helpline-1098, the child helpline shall immediately report such information to SJPU or Local Police.

Rule 4(3) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-Section (1) of Section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, --

- a. *proceed to record and register a First Information Report as per the provisions of Section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), and furnish a copy thereof free of cost to the person making such report, as per sub-Section (2) of Section 154 of that Code;*

- b. *where the child needs emergency medical care as described under sub-Section (5) of Section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 6;*
- c. *take the child to the hospital for the medical examination in accordance with Section 27 of the Act;*
- d. *ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory immediately;*
- e. *inform the child and child's parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;*
- f. *inform the child and child's parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with Section 40 of the Act.*

Rule 4(4) SJPU or the local police on receiving information under S. 19(1) on reasonable apprehension that the offence has been committed/attempted/is likely to be committed by a person living in the shared household with the child, or the child is living in a child care institution without parental support, or the child is without any home and parental support, the SJPU etc. shall produce the child before the Child Welfare Committee within 24 hrs of receipt of report, with reasons in writing as to whether the child is in need of care and protection under S. 19(5), and with a request for a detailed assessment by the CWC. ...

... Rule 4 (10)- Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing.

Rule 4 (13)- It shall be the responsibility of the SJPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.

Rule 4 (14)- SJPU or the local police shall also inform the child and child's parents or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act or any other law for the time being applicable as per **Form-A**. It shall also complete the Preliminary Assessment Report in **Form B** within 24 hours of the registration of the First Information Report and submit it to the CWC.

Rule 4 (15) The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:-

- i. *the availability of public and private emergency and crisis services;*
- ii. *the procedural steps involved in a criminal prosecution;*
- iii. *the availability of victim's compensation benefits;*
- iv. *the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;*

- v. *the arrest of a suspected offender;*
- vi. *the filing of charges against a suspected offender;*
- vii. *the schedule of court proceedings that the child is either required to attend or is entitled to attend;*
- viii. *the bail, release or detention status of an offender or suspected offender;*
- ix. *the rendering of a verdict after trial; and*
- x. *the sentence imposed on an offender.*

6.1.3. Rule 11, POCSO Rules, 2020: Reporting of pornographic material involving a child.

Rule 11 (1) Any person who has received any pornographic material involving a child or any information regarding such pornographic material being stored, possessed, distributed, circulated, transmitted, facilitated, propagated or displayed, or is likely to be distributed, facilitated or transmitted in any manner shall report the contents to the SJPU or local police, or as the case may be, cyber-crime portal (cybercrime.gov.in) and upon such receipt of the report, the SJPU or local police or the cyber-crime portal take necessary action as per the directions of the Government issued from time to time.

Rule 11 (2) In case the “person” as mentioned in sub-rule (1) is an “intermediary” as defined in clause (w) of sub-Section (1) of Section 2 of the Information Technology Act, 2000, such person shall in addition to reporting, as provided under sub-rule(1), also hand over the necessary material including the source from which such material may have originated to the SJPU or local police, or as the case may be, cyber-crime portal (cybercrime.gov.in) and upon such receipt of the said material, the SJPU or local police or the cyber-crime portal take necessary action as per the directions of the Government issued from time to time.

6.2. Role of Child Welfare Committee:

[Section 30 of Juvenile Justice Act, 2015; Rule 4(4); (5); (6); (7); (8); (11) & (12)]

6.2.1. Section 30: Functions and Responsibilities of Committee (Juvenile Justice Act, 2015):

The functions and responsibilities of the Committee shall include—

- i. *taking cognizance of and receiving the children produced before it;*
- ii. *conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;*
- iii. *directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;*
- iv. *conducting inquiry for declaring fit persons for care of children in need of care and protection;*
- v. *directing placement of a child in foster care;*

- vi. *ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;*
- vii. *selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;*
- viii. *conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;*
- ix. *certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;*
- x. *ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;*
- xi. *declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;*
- xii. *taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;*
- xiii. *taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act,*
- xiv. *dealing with cases referred by the Board under sub-Section (2) of Section 17;*
- xv. *coordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;*
- xvi. *in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;*
- xvii. *accessing appropriate legal services for children;*
- xviii. *such other functions and responsibilities, as may be prescribed.*

6.2.2. Rule 4, POCSO Rules, 2020: Procedure regarding care and protection of Child:

Rule 4 (4)- Where the SJPU or the local police receives information under sub-Section (1) of Section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in

writing as to whether the child is in need of care and protection under sub-Section (5) of Section 19 of the Act, and with a request for a detailed assessment by the CWC.

Rule 4 (5)- Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-Section (1) of Section 31 of the Juvenile Justice Act, 2015 (2 of 2016), to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of child's family or shared household and placed in a children's home or a shelter home.

Rule 4 (6)- In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations, namely:--

- i. *the capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counselling;*
- ii. *the need for the child to remain in the care of parent's, family and extended family and to maintain a connection with them;*
- iii. *the child's age and level of maturity, gender, and social and economic background; (iv) disability of the child, if any;*
- iv. *any chronic illness from which a child may suffer;*
- v. *any history of family violence involving the child or a family member of the child; and, (vii) any other relevant factors that may have a bearing on the best interests of the child: Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.*

Rule 4 (7) The child and child's parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered.

Rule 4 (8) The CWC, on receiving a report under sub-Section (6) of Section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and child's parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, and shall immediately inform the SJPU or Local Police about providing a support person to the child.

Rule 4 (11) The services of the support person may be terminated by the CWC upon request by the child and child's parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.

Rule 4 (12) The CWC shall also Seek monthly reports from support person till the completion of trial, with respect to condition and care of child, including the family situation focusing on the physical, emotional and mental wellbeing, and progress towards healing from trauma; engage with medical care facilities, in coordination with the support person, to ensure need-based continued medical support to the child, including psychological care and counselling;

and shall ensure resumption of education of the child, or continued education of the child, or shifting of the child to a new school, if required.

6.2.3. Rule 8, POCSO Rules, 2020: Special Relief:

- (1) For special relief, if any, to be provided for contingencies such as food, clothes, transport and other essential needs, CWC may recommend immediate payment of such amount as it may assess to be required at that stage, to any of the following:-
 - i. the DLSA under Section 357A; or;
 - ii. the DCPU out of such funds placed at their disposal by state or;
 - iii. funds maintained under Section 105 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016);
- (2) Such immediate payment shall be made within a week of receipt of recommendation from the CWC.

6.2.4. Rule 10, POCSO Rules, 2020 Procedure for imposition of fine and payment thereof.

- (1) The CWC shall coordinate with the DLSA to ensure that any amount of fine imposed by the Special Court under the Act which is to be paid to the victim, is in fact paid to the child.
- (2) The CWC will also facilitate any procedure for opening a bank account, arranging for identity proofs, etc., with the assistance of DCPU and support persons.

6.3. Role of Support Persons

[Rule 5(6); Rule 4(8); (9); (11); (12) and Rule 5].

6.3.1. Rule 5(6), POCSO Rules, 2020:

Support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU.

Provided that nothing in these rules shall prevent the child and child's parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

A support person renders assistance to the child in all possible manner throughout the process of investigation and trial and immediately informs the SJPU or Local Police about providing a support person to the child.

6.3.2. Rule 4, POCSO Rules, 2020: Procedure regarding care and protection of child:

Rule 4(8)- The CWC, on receiving a report under sub-Section (6) of Section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and

child's parent or guardian or other person in whom the child has trust and confidence, may provide a, and shall immediately inform the SJPU or Local Police about providing a support person to the child.

Rule 4 (11)- The services of the support person may be terminated by the CWC upon request by the child and child's parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.

Rule 4 (12)- The CWC shall also Seek monthly reports from support person till the completion of trial, with respect to condition and care of child, including the family situation focusing on the physical, emotional and mental wellbeing, and progress towards healing from trauma; engage with medical care facilities, in coordination with the support person, to ensure need-based continued medical support to the child, including psychological care and counselling; and shall ensure resumption of education of the child, or continued education of the child, or shifting of the child to a new school, if required.

6.3.3. Rule 5, POCSO Rules, 2020: Role of Interpreters, Translators, Special Educators, Experts:

(1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators, experts, special educators and **support persons** for the purposes of the Act, and this register shall be made available to the SJPU, local police, magistrate or Special Court, as and when required.

(2) The qualifications and experience of the interpreters, translators, special educators, experts and **support persons** engaged for the purposes of sub-Section (4) of Section 19, sub-Sections (3) and (4) of Section 26 and Section 38 of the Act, and rule 4 respectively shall be as indicated in these rules. ...

... (4) Interpreters and translators engaged under sub-rule (1) should have functional familiarity with language spoken by the child as well as the official language of the state, either by virtue of such language being child's mother tongue or medium of instruction at school at least up to primary school level, or by the interpreter or translator having acquired knowledge of such language through child's vocation, profession, or residence in the area where that language is spoken.

(8) Any interpreter, translator, special educator, expert or **support person** engaged for the purpose of assisting a child under this Act, shall be paid a fee which shall be prescribed by the State Government, but which, shall not be less than the amount prescribed for a skilled worker under the Minimum Wages Act, 1948 (11 of 1948).

(9) Any preference expressed by the child at any stage after information is received under sub-Section (1) of Section 19 of the Act, as to the gender of the interpreter, translator, special educator, expert or **support person**, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child.

(10) The interpreter, translator, special educator, expert, **support person** or person familiar with the manner of communication of the child engaged to provide services for the purposes

of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest and shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with Section 282 of the Code of Criminal Procedure, 1973 (2 of 1974). ...

... (12) Any interpreter, translator, special educator, expert or **support person** appointed under the Act shall be bound by the rules of confidentiality, as described under Section 127 read with Section 126 of the Indian Evidence Act, 1872 (now Section 132 of Bharatiya Sakshya Adhiniyam).

6.4. Role of District Child Protection Unit

[Sec 2(26) of JJ Act, 2015; Rule 5(3); and (7)]

6.4.1. Section 2 (26), POCSO Act, 2012:

“DCPU” means a Child Protection Unit for a District, established by the State Government under Section 106, which is the focal point to ensure the implementation of this Act and other child protection measures in the district.

6.4.2. Rule 5, POCSO Rules, 2020:

Rule 5(3) Where an interpreter, translator, or special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on evidence of relevant experience or formal education or training or demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, Special Court or other authority concerned.

Rule 5(7) Payment for the services of an interpreter, translator, special educator, expert or support person whose name is enrolled in the register maintained under sub-rule (1) or otherwise, shall be made by the State Government from the Fund maintained under Section 105 of the Juvenile Justice Act, 2015 (2 of 2016), or from other funds placed at the disposal of the DCPU.

6.4.3. Rule 8, POCSO Rules, 2020: Special relief:

Any special relief, if any, to be provided for contingencies such as food, clothes, transport and other essential needs, CWC may recommend immediate payment of such amount as it assess to be required at that stage out of such funds placed at the DCPU’s disposal by state.

6.4.4. Rule 10, POCSO Rules, 2020: Procedure for imposition of fine and payment thereof.

Rule 10(2) The CWC will also facilitate any procedure for opening a bank account, arranging for identity proofs, etc., with the assistance of DCPU and support person.

6.5. Role of Magistrate

6.5.1. Recording of Statement under Section 164, Cr.P.C., by the Magistrate

- The POCSO Act does not mandate that a statement under Section 164, Cr.P.C. be recorded in every case.
- However, pursuant to the Criminal Law (Amendment) Act, 2013, Section 164(5-A) (a), the statement of victim against whom offences has been committed under Sections 354, 354-A, 354-B, 354-C, 354-D, 376(1), 376(2), 376-A, 376-B, 376-C, 376- D, 376-E or 509 of the IPC shall be recorded by a Judicial Magistrate.
- As per the provisions of Section 164(5-A)(a) Cr.P.C., the statement should be recorded as soon as the commission is brought to the notice of the police.
- In cases of rape, the IO should take the victim within 24 hours to any Metropolitan/ preferably Judicial Magistrate for recording the 164 statement and preferably to a Lady Magistrate.

6.5.2. Section 164 A, Cr.P.C: Medical examination of the victim of rape:

- Medical examination shall be conducted within 24 hours by a registered medical practitioner of a government hospital and in the absence, by any other registered medical practitioner.
- Consent of such a victim or of a person competent to give consent on her behalf must be obtained.
- The registered medical practitioner shall examine her person and prepare a report giving the following particulars, namely—
 - i. the name, address and age of the woman
 - ii. the description of material taken from the person of the woman
 - iii. marks of injury
 - iv. general mental condition of the woman
 - v. other material particulars found in the course of examination.
- Exact time of initiation and completion of examination. Medical report must be sent to I.O. immediately.

6.6. Role of Special Court

.....

[Rule 5(3);(11) and Rule 9]

6.6.1. Rule 5, POCSO Rules, 2020: Interpreters, translators, special educators, experts and support persons:

Rule 5(3): Where an interpreter, translator, or special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on evidence of relevant experience or formal education or training or demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, **Special Court** or other authority concerned.

Rule 5 (11), POCSO Rules, 2020: In proceedings under Section 38, the Special Court shall ascertain whether the child speaks the language of the court adequately, and that the engagement of any interpreter, translator, special educator, expert, support person or other person familiar with the manner of communication of the child, who has been engaged to facilitate communication with the child, does not involve any conflict of interest.

6.6.2. Rule 9, POCSO Rules, 2020: Compensation:

(this topic has been dealt in detailed manner under chapter- 5)

7. RECENT JUDGEMENTS

7.1 In Re: Alarming Rise in the Number of Reported Child Rape Incidents, 2025 SCC OnLine SC 1130

FACTS:

The Supreme Court of India took *suo moto* cognizance of the disturbing increase in reported incidents of child rape across the country. This cognizance was triggered by multiple news reports highlighting the alarming frequency and brutality of such crimes against children. On 12 July 2019, the Court directed the Registry to register a *Suo Moto* Writ Petition under the title “*In Re: Alarming Rise in the Number of Reported Child Rape Incidents*”. Recognizing the gravity of the situation and the urgent need for systemic judicial response, the Court appointed Senior Advocate Mr. V. Giri as *Amicus Curiae* to assist in formulating remedial directions.

Following preliminary hearings involving the *Amicus Curiae*, the Solicitor General of India, and the Registrar of the Supreme Court, the Court issued significant directions on 25 July 2019 to ensure time-bound investigation and trial of offences under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). These directions included the establishment of exclusive/designated POCSO courts in every district with over 100 pending POCSO cases, to be funded centrally, and staffed with specialized personnel including presiding officers, support persons, special public prosecutors, and child-friendly infrastructure.

The Court also directed the Ministry of Women and Child Development to undertake awareness measures such as screening short films in movie theatres and TV channels regarding prevention of child abuse, and to publicize helpline numbers. Further, in light of significant delays in investigations due to bottlenecks in forensic analysis, the Court observed the need for dedicated Forensic Science Laboratories (FSLs) and directed existing FSLs to process POCSO-related samples expeditiously. The Chief Secretaries of all States and Union Territories were instructed to ensure compliance with these directions.

Over time, additional orders were passed to monitor compliance and to collect data from States and High Courts regarding the implementation of these measures. On 13 November 2019, the Registrar of the Supreme Court submitted a report indicating the percentage share of different types of POCSO offences. Based on this, the Court emphasized the need for ensuring that investigations and trials under the POCSO Act adhered to the statutory timelines. The States and Union of India were directed to sensitize officials and judicial personnel and to treat POCSO cases as a top priority.

The Court gave special attention to the high pendency of cases in Uttar Pradesh and West Bengal, and on 16 December 2019, it laid down specific criteria for the establishment of additional exclusive POCSO courts in these States. The Court also contemplated a National Scheme for Compensation to victims under the POCSO Act and directed consideration of this matter by the Union Government. Moreover, concerns regarding inadequate numbers of public prosecutors, delays in FSL reports, and the protection of victims and witnesses—particularly referencing the *Unnao case*—were also addressed through specific orders.

Later, on 24 September 2024, the Court requested the Amicus Curiae Mr. V. Giri and Senior Advocate Ms. Uttara Babbar to submit state-wise data about the implementation of its directions. Based on the status report and charts submitted, the Court noted that while many States had complied with the directive to set up exclusive POCSO courts with central funding, States such as Tamil Nadu, Bihar, Uttar Pradesh, West Bengal, Orissa, and Maharashtra still had significant backlogs and required more exclusive courts.

ISSUES:

1. Whether the States and Union of India had complied with the Court's previous directions on the establishment of exclusive POCSO courts and infrastructure for speedy trial and victim support under the POCSO Act.
2. Whether systemic delays in investigation and trial were being adequately addressed, particularly concerning:
 - The functioning of forensic science laboratories (FSLs),
 - Appointment of special public prosecutors and support persons,
 - Protection of victims and witnesses.
3. Whether the statutory timelines under the POCSO Act for investigation and trial were being followed across jurisdictions.
4. Whether adequate sensitization of officials and judicial officers dealing with POCSO cases was ensured.

JUDGMENT:

After considering the data and submissions provided by the Amicus Curiae and Senior Counsel, the Supreme Court acknowledged that most States had partially complied with its earlier directions and had established exclusive POCSO courts. However, in some States with high pendency, such as Tamil Nadu, Bihar, Uttar Pradesh, West Bengal, Orissa, and Maharashtra, there remained a significant gap between the number of pending cases and the capacity of designated POCSO courts. This shortfall was found to be a major cause for delay in completing trials within the mandated timeframes.

The Court reiterated that the timelines stipulated under the POCSO Act, from investigation to trial, were not mere guidelines but legally binding mandates, and thus must be adhered to strictly. The delay in forensic reporting was found to be another critical bottleneck. While the Court had earlier expressed a desire to establish dedicated FSLs for POCSO cases, for the time being, it directed existing FSLs to expedite processing of POCSO-related samples and instructed State Governments to ensure their efficient functioning.

The Court also emphasized the need for proper sensitization of all officials involved in investigation, prosecution, and adjudication of POCSO cases, and urged governments to appoint dedicated and trained personnel in these cases. The importance of public awareness, victim support systems, and infrastructure such as child-friendly courts was again highlighted.

Finally, expressing satisfaction with the progress made and recording appreciation for the valuable assistance rendered by Senior Advocates Mr. V. Giri and Ms. Uttara Babbar, the Court concluded

that the principal issues had been addressed. Therefore, the Court decided to close the *Suo Moto* proceedings with a direction to all authorities to continue taking proactive steps to ensure effective implementation of the POCSO Act.

DIRECTIONS:

“Having considered the matter, we have deemed it proper to issue the following directions, which will be implemented by the Union of India and the State Governments forthwith:—

(i) In each district of the country, if there are more than 100 cases under the POCSO Act, an exclusive/designated special Court will be set up, which will try no other offence except those under the POCSO Act.

(ii) Such Courts will be set up under a Central scheme and will be funded by the Central Government, which fund will not only take care of the appointment of the Presiding Officer, but also the appointments of support persons, Special Public Prosecutors, Court staff and infrastructure including creation of child friendly environment and vulnerable witness Court rooms, etc.

(iii) While drawing up the panel(s) of support persons in each district which should not exceed a reasonable number keeping in mind the total number of cases to be tried by the special Court to be set up in each district, care should be taken to appoint persons who are dedicated to the cause and apart from academic qualifications are oriented towards child rights; are sensitive to the needs of a child and are otherwise child friendly. The same standards would also apply in the matter of appointment of Special Public Prosecutors.

(iv) The following suggestions of the learned Amicus Curiae shall also be implemented by the Ministry of Women and Child Development through such agency as may be considered appropriate:—

“(e) A short clip intended to spread an awareness of the subject in general, namely, prevention of child abuse and prosecution of crimes against children, should necessarily be screened in every movie hall and could also be transmitted by various television channels at regular intervals. A child helpline number should also be displayed not only in such clip but also at various other prominent places, in schools and other public places.”

7.2. Ramji Lal Bairwa &Anr. Versus State of Rajasthan & Ors; 2024 INSC 846

Facts:

In this case, an FIR was registered by the victim's father against the accused under Sections 354A, 342, 509, and 504 of the Indian Penal Code (IPC); Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act); and Sections 3(1)(r), 3(1)(s), 3(1)(b), and 3(2) (vii) of the Schedule Cast and Schedule Tribe (Prevention of Atrocities) Act, 1989 (SC/ST Act). The allegations were that in 2022, when the victim child, then a student of Class XI in Higher Secondary School was alone in the classroom, the accused who was a teacher, came there. It was further alleged that after gazing through the window to ensure that nobody is there near to the classroom, he reached behind her and started patting her cheeks and soon put his hand inside bodice and rubbed her breast. In anguish and anger, she got up and ran away. The accused allegedly followed to stop her and hurled abuses with ugly words like 'dedh Chamar' etc.

Thereupon, she sat down near the gate and beseeched the teachers for help, but it was of no avail. They persuaded her to be tight-lipped about the incident. Though, the Principal came to know about it, he only took her signature on a blank paper. Meanwhile, one teacher came to the residence of the victim's father and took his wife to the school saying that her daughter was not feeling well. Thereafter, an FIR was lodged but the accused compromised the matter with the victim's father. Thereupon, the accused filed a petition before the Rajasthan High Court seeking quashing of FIR and all further proceedings thereon. The High Court, despite the opposition by the public prosecutor, allowed the said petition and quashed the FIR and all further proceedings in pursuance thereof. Hence, the case was before the Apex Court.

Reasoning by HC:

The High Court relied upon the decision in *Gian Singh vs. State of Punjab*, (2012) 10 SCC 303, while holding that even in non-compoundable offences, the process of Court can be invoked to have the proceedings quashed on the basis of a compromise entered into between the parties.

The Supreme court had held in the case of *Gian Singh* that "if it is convinced that offences are entirely personal in nature and do not affect the public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, the High Court should not hesitate to quash the same by exercising the inherent powers vested in it. It is observed that in such cases, the prosecution becomes the lame prosecution and pursuing such a lame prosecution would be a waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace"

The High Court thus held "This court is aptly guided by the principles propounded by Hon'ble the Supreme Court and feels that whether dispute is essentially inter se between the parties, either they are relatives, neighbours or having business relationship and which does not affect the society at large, then in such cases, with a view to maintain harmonious relationships between the two sides & for restitution of relationship and with a view to end-up the dispute in between them permanently, the High Court should exercise its inherent power to quash the FIR and all other subsequent proceedings initiated thereto."

Issue before SC:

1. Whether a third party to a criminal proceeding has the locus to challenge the order quashing the FIR concerned?
2. Whether the power to quash criminal proceedings or complaint or FIR in regard to heinous and serious offences having serious impact on society, is exercisable merely because the offender and victim or parent(s) of the victim arrived at a compromise, relying on the dictum laid down by this Court in *Gian Singh's case*?

Decision:

The Supreme Court considered whether third-party appellants had the *locus standi* to challenge a High Court order quashing an FIR under Section 482 CrPC, relating to offences under the POCSO Act, based on a compromise between the accused and the victim's father. The appellants, though not directly connected to the case, approached the Court under Article 32, which was later converted into a Special Leave Petition under Article 136.

The Court held that the power under Article 136 is a wide, discretionary, and extraordinary jurisdiction that is not confined by strict procedural limitations or the identity of the petitioner. Citing previous landmark cases like *Ramakant Rai v Madan Rai and Ors* (2003) 12 SCC 395, *P.S.R. Sadhanantham V Arunachalam* (1980) 3 SCC 141, and *Durga Shankar Mehta v Thakur Raghuraj Singh and Ors* (1954) 2 SCC 20(*sic*), the Court reaffirmed that even third parties, including public-spirited individuals, can invoke this jurisdiction in cases of serious miscarriage of justice, especially where the State or victim fails to act.

Emphasizing the objectives of the POCSO Act, the Court observed that offences against children are crimes against society at large and cannot be quashed merely on the basis of a private compromise, especially when the public prosecutor had opposed it. Since the offences were grave and the State had failed to appeal, and given the absence of any personal vendetta or malice on the appellants' part, the Court found their petition maintainable.

Ultimately, the Court dismissed objections regarding locus standi and upheld the appellants' right to challenge the quashing of the FIR under Article 136 of the Constitution.

The Supreme Court set aside the Rajasthan High Court's decision which quashed the 'sexual assault' complaint against a teacher (accused of rubbing the victim's breast). The High Court had quashed the matter based on a 'compromise' between the victim's father and teacher. Justices CT Ravikumar and Sanjay Kumar observed that matters related to sexual assault cannot be treated as private matters eligible for compromise-based quashing. The Court emphasized the societal impact of such crimes and mandated that proceedings continue in the interest of justice. It was held that obviously, rubbing the breast of a child would constitute an offence of 'sexual assault' under Section 7 of POCSO Act, punishable with imprisonment of either description for a term which shall not be less than three years and may extend to five years and also fine. They would reveal that the commission of such offences against the children should be viewed as heinous and serious. The Court also rejected the respondent's argument that the third person/appellant had no locus standi to challenge the quashing of FIR as they were not part of the criminal proceedings.

Reference was made to the decision in *State of M.P. v. Laxmi Narayan* (2019) 5 SCC 688 which held that an offence against the society cannot be compromised.

The Court also quoted with approval the judgment of the Delhi High Court in *Sunil Raikwar v. State and Another* which held that a POCSO Act offence cannot be “permitted to be settled.”

“In view of the very object and purpose of enacting the POCSO Act, we find no reason to disagree with the conclusions in paragraph 12 (of the Delhi HC judgment) extracted above in the given case,” the Supreme Court stated.

Thus, The Supreme Court allowed the appeal, overturning the High Court’s order and directing that criminal proceedings against the accused continue.

7.3. Irfan Ansari v. State of Jharkhand, 2024 SCC OnLineJhar 3245

Facts:

In the present case, an FIR was instituted on the written report of ASI, who stated that during investigation, he came across the fact that a case was filed under Section 376 of IPC and Section 4 of POCSO Act and the victim, who was just years of age, was brought to a Hospital in Jamtara on 27-10-2018 at 9.30 pm. The victim was admitted and was treated by two doctors. The informant further alleged that on 28-10-2018, a local MLA-the petitioner and his supporters visited Hospital to show their sympathy to the victim and her family member and after taking name, address and photograph of victim, it was sent to media and other organization. The informant stated that he got screenshot copy of above said message and photographs, and this act was violative of Sections 74(1) and 74(3) of JJ Act, Section 23 of POCSO Act and Section 228-A of IPC. Thus, the FIR was registered against the petitioner.

Issue:

Whether the revisional court, while examining the correctness, legality or propriety of an order relating to the framing of charges, can interfere with the trial court’s prima facie assessment of facts and materials on record, and whether any disclosure—direct or indirect—of the identity of a victim of a sexual offence amounts to a punishable offence under law.

Decision:

The Court, while examining the revisional jurisdiction, reiterated that its role was to assess the correctness, legality, or propriety of the order passed by the Trial Court. It observed that at the stage of framing of charges, the Court is not required to conduct a detailed analysis or appreciation of evidence but only to determine whether a **prima facie case** exists against the accused. Relying on the decision of the Hon’ble Supreme Court in *State of Maharashtra v. Som Nath Thapa*, the Court reiterated that if the material placed on record discloses grounds for presuming that the accused has committed the offence, charges can be legitimately framed.

Further, the Court placed significant reliance on the decision in *Nipun Saxena v. Union of India*, where the Supreme Court categorically prohibited the disclosure of the identity of victims of sexual offences in any form of media—print, electronic, or social. The Court emphasized that the prohibition

extends not only to the name of the victim but also to any fact or detail that could remotely lead to identification and thereby compromise the victim's privacy and dignity. This, according to the Court, applied equally to platforms like WhatsApp, which fall within the broad definitions of both "media" and "social media" as defined in Black's Law Dictionary.

The Court noted that the Petitioner had **admitted** to forwarding messages and photographs revealing the identity of the rape victim to a WhatsApp news group. This admission was corroborated by a witness who stated that in 2016, he had created a WhatsApp group named 'Nala News', which included officials, journalists, and other local representatives. It was on this group that a message and photograph identifying the teenage victim were circulated from the Petitioner's number. This, the Court held, **prima facie established** the Petitioner's involvement in the publication of prohibited content related to the victim.

The Court further held that the WhatsApp group in question fell under the domain of "**any form of media**" and "**audio-visual media**", thereby attracting the statutory prohibition under Section 228A IPC, Section 74(1)(3) of the Juvenile Justice Act, and Section 23 of the POCSO Act. Consequently, the Trial Court's decision to frame charges was neither illegal nor improper. The Revisional Court found no reason to interfere with the charge-framing order.

In conclusion, the Court dismissed the revision petition, affirming the Trial Court's order. However, it was clarified that the observations and findings made by the Revisional Court were limited to the scope of the present petition and shall not prejudice the outcome of the trial in any manner.

7.4. Gyanendra Singh @ Raja Singh v. State of U.P., 2025 SCC OnLine SC 517

When an offence is punishable under both general law i.e., IPC and special law i.e., POCSO, which punishment prevails under Section 42 of POCSO? Does Section 42A of POCSO have overriding effect and alter sentencing under Section 42?

Facts of the Case:

The case involves Gyanendra Singh @ Raja Singh, who was accused of sexually assaulting his minor daughter, approximately 9 years old at the time of the incident. On 28th October 2015, an FIR was lodged by Smt. Rajani (wife of the appellant) at Police Station Chandpur, District Fatehpur. According to the FIR, Rajani had gone to her parental home approximately two months prior with her youngest son Krishna (aged 2), leaving her minor daughter (the victim) and son Vishnu (aged 4) in the custody of her husband.

The incident allegedly occurred on 22nd October 2015 at approximately 8:00 p.m., when the appellant enticed his minor daughter, took her to the rooftop, and committed sexual assault upon her. The victim was reportedly detained on the roof through threats and was only able to come down in the morning, at which point she narrated the incident to her grandfather, Ram Naresh Singh (PW-3). Ram Naresh Singh telephonically informed the victim's mother (the informant) about the occurrence, after which the appellant allegedly absconded. The informant initially did not go to her matrimonial home due to fear but later approached the police station with her father Ranjeet Singh, father-in-law Ram Naresh Singh, and the victim to file the FIR.

The investigation was undertaken by I.O., Rajesh Kumar Singh (PW-7), and the minor victim was subjected to medical examination by Dr. Manisha Shukla (PW-4). The medical examination revealed redness present over the labia minora in the victim's vagina, though her hymen was intact. Forensic material was collected for pathological examination, DNA mapping, and examination for the presence of spermatozoa. The victim's birth certificate was collected from school, and she was examined under Section 164 of the Code of Criminal Procedure, 1973, (CrPC) wherein she made emphatic allegations of penetrative sexual assault against her father.

The appellant was charged with offences punishable under Sections 376(2)(f) and 376(2)(i) of the Indian Penal Code, 1860 (IPC), and Sections 3/4/5 of the Protection of Children from Sexual Offences Act, 2012 (POCSO). When questioned under Section 313 CrPC, the appellant denied the allegations, claiming he had been falsely implicated because he had previously lodged an FIR against his wife and his father (PW-3). He contended that at the time of the incident, the child was residing with his sister. Though no evidence was led from the defence side.

Finding of the Trial Court

The trial court, in adherence to **Section 42 of the POCSO Act**, had sentenced the appellant to life imprisonment under the IPC, since the punishment prescribed under Section 376(2)(f) and 376(2)(i) of IPC (life imprisonment for the remainder of natural life) was more severe than the punishment provided under Sections 3/4 of the POCSO Act (minimum 10 years and maximum life imprisonment).

Appeal Before the High Court:

Aggrieved by the conviction and sentence, the appellant approached the Allahabad High Court through a Jail Appeal, challenging the sentence awarded by the trial court. The High Court, while upholding the conviction, enhanced the sentence by clarifying that the appellant would serve life imprisonment for the remainder of his natural life without any possibility of early release. This enhancement was made without any appeal from the State for an increased sentence.

The High Court justified this enhancement by interpreting Section 376(2)(f) and 376(2)(i) of the IPC, which prescribe that in cases of aggravated sexual assault by a person in a position of trust, the offender should undergo imprisonment for the remainder of his natural life.

Appeal Before the Supreme Court

Dissatisfied with the enhanced sentence, the appellant approached the Supreme Court of India, raising two primary contentions.

Issues before the Supreme Court

1. Whether the appellant's conviction and sentencing under Sections 376(2)(f) and 376(2)(i) of the Indian Penal Code was legally sustainable in light of Section 42A of the POCSO Act, 2012, or whether the special law ought to have prevailed, thereby rendering the sentence under the IPC unsustainable?
2. Whether the High Court erred in enhancing the sentence in an appeal filed by the accused, when no appeal for enhancement was filed by the State?

Contention of the Petitioner

Argued that Section 42A of the POCSO Act should override IPC provisions, meaning punishment should be under POCSO Act, not IPC. Contended that the High Court wrongly enhanced his sentence when he only appealed against the conviction.

Contention of the Respondent

Emphasized that Section 42 of POCSO Act mandates applying the higher punishment if offences are punishable under both laws. Defended that IPC Sections 376(2)(f) and 376(2)(i) prescribe a higher punishment (life imprisonment for the remainder of natural life).

Analysis of the Judgement:

The Supreme Court clarified the distinction between Section 42 and Section 42A of the POCSO Act. It held that Section 42 deals substantively with sentencing and mandates that in cases where an act constitutes an offence under both the POCSO Act and the IPC (or the Information Technology Act, 2000), the punishment provided under the law prescribing a higher sentence shall apply. In contrast, Section 42A relates to procedural aspects and grants the POCSO Act overriding effect only in instances of conflict between its provisions and those of other laws. The Court firmly stated that Section 42A cannot be interpreted to dilute or override the specific sentencing mandate of Section 42.

Applying this principle, the Court upheld the trial court's decision to impose punishment under Sections 376(2)(f) and 376(2)(i) of the IPC, since these provisions prescribe a more stringent sentence than Sections 3 and 4 of the POCSO Act. Consequently, the trial court's reliance on Section 42 of the POCSO Act was held to be appropriate.

The appellant also challenged the High Court's decision to enhance the sentence to imprisonment for the remainder of his natural life. The Supreme Court accepted the contention that such enhancement was impermissible in the absence of a cross-appeal or revision filed by the State seeking a higher sentence. It reiterated the settled position that in an appeal preferred by a convict against conviction or sentence, the appellate court cannot enhance the punishment unless the State has independently sought such enhancement. The Supreme Court while considering this issue, relied on its previous judgements of *Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka* (2023) 9 SCC 817, *Navas @ Mulanavas v. State of Kerala* (2024) SCC OnLine SC 315, *Union of India v. V. Sriharan alias Murugan* (2016) 7 SCC 1, *Veerendra v. State of Madhya Pradesh*, *Swamy Shraddananda v. State of Karnataka* (2008) 13 SCC 767.

Accordingly, while affirming the conviction under both the IPC and the POCSO Act, the Supreme Court modified the sentence by setting aside the stipulation that the life imprisonment would extend to the appellant's natural life. Instead, it directed that the appellant shall undergo life imprisonment in accordance with law, without the added condition of incarceration for the remainder of his natural life. Additionally, a fine of ₹5,00,000 was imposed in favour of the victim.

Thus, the appeal was partly allowed, with the sentence being modified but the conviction sustained.

7.5. State of U.P. v. Sonu Kushwaha, (2023) 7 SCC 475

Whether a court has the discretion to impose a sentence lesser than the statutory minimum of ten years prescribed under Section 6 of the POCSO Act, 2012, on the ground that the accused has reformed and moved ahead in life after undergoing a reduced sentence pursuant to the impugned judgment of the High Court?

Facts of the Case:

The case of the prosecution is that the complainant XYZ lodged an FIR against the appellant Sonu Kushwaha on 26-3-2016 at Chirgaon, District Jhansi stating therein that on 22-3-2016, at about 05:00 hours in the evening, appellant Sonu Kushwaha came to complainant's house and took his son aged about 10 years in the temple at Hardaul. There appellant gave Rs 20 to complainant's son i.e. victim and said to suck his penis. Appellant Sonu Kushwaha put his penis into the mouth of the victim. Thereafter, victim came to the house having that Rs 20. At this, complainant's nephew Santosh asked to victim that from where he got Rs 20, then victim told the entire happening occurred with him. The appellant also threatened the victim not to disclose about the incident to anybody.

Finding of the Trial Court

The respondent–accused was prosecuted for offences punishable under Sections 377 and 506 of the IPC, as well as Section 5 read with Section 6 of the POCSO Act, 2012. The trial was conducted before the 8th Additional Sessions Judge, Jhansi, functioning as the Special Judge under the POCSO Act. Upon conclusion of the trial, the respondent was convicted for all the charged offences.

He was sentenced to undergo rigorous imprisonment for ten years along with a fine of ₹5,000 for the offence under Section 6 of the POCSO Act, 2012 (aggravated penetrative sexual assault). In addition, the trial court imposed a sentence of seven years' rigorous imprisonment for the offence under Section 377 IPC and one year's rigorous imprisonment for the offence under Section 506 IPC, both accompanied by fines.

Appeal Before the High Court:

Aggrieved by the conviction and sentence, the respondent preferred Criminal Appeal No. 5415 of 2018 before the High Court of Judicature at Allahabad. The High Court, vide its judgment reported as *Sonu Kushwaha v. State of U.P.*, 2021 SCC OnLine All 810, partly allowed the appeal. It held that the offence made out was that of penetrative sexual assault under Section 4 of the POCSO Act, 2012 rather than aggravated penetrative sexual assault under Section 6. Consequently, the sentence under the POCSO Act, 2012 was reduced to seven years' imprisonment with a fine of ₹5,000. The conviction and sentences under Sections 377 and 506 IPC remained undisturbed.

Appeal Before the Supreme Court:

The only question before the Supreme Court in this appeal is whether the respondent is guilty of an offence of aggravated penetrative sexual assault punishable under Section 6 of the POCSO Act, 2012. It is to be noted that there is no dispute that the age of the victim was less than twelve years at the time of the commission of the offence. Further the finding of the High Court in para 16 of its judgement in *Sonu Kushwaha v. State of U.P.*, 2021 SCC OnLine All 810, has not been assailed by the respondent–accused as he did not challenge the order of the High Court. “16. *The proved facts of the case are that*

the appellant put his penis into mouth of the victim aged about 10 years and discharged semen therein.” After recording the said finding, the High Court concluded that the act committed by the respondent was of penetrative sexual assault which was punishable under Section 4 of the POCSO Act, 2012

Issues before the Supreme Court

Whether the respondent is guilty of an offence of aggravated penetrative sexual assault punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012?

Contention of the Appellant

Counsel for the State contended that the High Court had erred in reclassifying the offence from *aggravated penetrative sexual assault* under Section 6 of the POCSO Act, 2012 to *penetrative sexual assault* under Section 4. Referring to the statutory definitions under the Act, the State submitted that Section 3(a) defines *penetrative sexual assault*, and Section 5(m) categorically provides that when such an act is committed upon a child below the age of twelve years, it amounts to *aggravated penetrative sexual assault*. As it was undisputed that the victim in the present case was ten years old at the time of the offence, the State argued that the correct legal classification was under Section 6 of the POCSO Act, which mandates a higher punishment.

Contention of the Respondent – Accused:

Counsel for the respondent submitted that the accused had already undergone the sentence of seven years’ rigorous imprisonment, as imposed by the High Court following the reclassification of the offence under Section 4 of the POCSO Act, 2012. It was further contended that the respondent had reformed himself, had reintegrated into society, and had recently married. In view of these mitigating circumstances, it was argued that it would be harsh and inequitable to now re-impose a more stringent sentence under Section 6 of the POCSO Act, particularly after a considerable lapse of time since the incident and the respondent’s release.

Analysis of the Judgement:

While deciding appeal challenging conviction under Section 6 of POCSO Act, 2012. High Court recorded finding that the accused put his penis into mouth of the victim aged about 10 years and discharged semen therein and, thereafter. High Court concluded that the act committed by the accused was of penetrative sexual assault punishable under Section 4 and not under Section 6. This finding was not assailed by the accused as he did not challenge the order of High Court.

In terms of Section 5(m) of the Protection of Children from Sexual Offences Act, 2012, *aggravated penetrative sexual assault* includes the commission of penetrative sexual assault upon a child below the age of twelve years. Given that the victim in the present case was approximately 10 years old at the time of the offence, the act clearly fell within the ambit of aggravated penetrative sexual assault. The Supreme Court held that the High Court committed an obvious error by holding that act committed by the respondent was not an aggravated penetrative sexual assault.

The Supreme Court further, while interpreting the legislative intent and structure of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), emphasized that the statute was enacted

to impose stricter penalties for offences involving sexual abuse of children. It noted that Sections 4, 6, 8, and 10 of the Act prescribe mandatory minimum punishments, reflecting the legislature's intent to deter such heinous crimes.

With specific reference to Section 6, which deals with *aggravated penetrative sexual assault*, the Court observed that the language of the provision, particularly the use of the phrase "shall not be less than" leaves no discretion with the court to impose a sentence below the prescribed minimum. In the absence of any statutory provision within the POCSO Act permitting a reduction of sentence below the minimum, the Court held that judicial discretion is curtailed, and a lesser sentence cannot be justified.

Rejecting the plea for leniency based on the respondent's subsequent conduct, including the completion of a reduced sentence and rehabilitation, the Court held that such post-conviction circumstances could not override the statutory mandate or the gravity of the offence. The act committed by the respondent was described as particularly heinous, with long-term psychological consequences for the child victim. Given that the victim was indisputably below twelve years of age at the time of the offence, the case fell squarely within the scope of aggravated penetrative sexual assault under Section 6.

Consequently, the Supreme Court set aside the judgment of the High Court and restored the conviction and sentence awarded by the trial court, directing the respondent to undergo rigorous imprisonment for ten years along with the imposed fine.

7.6. Abhishek Ravani v. State of Jharkhand, 2023 SCC OnLineJhar 893

Whether the High Court, in exercise of its inherent jurisdiction under Section 482 CrPC, can quash the criminal proceedings arising out of a POCSO case and offences under IPC, in view of a compromise between the parties, when the offences alleged are neither heinous nor affecting public interest?

Facts of the Case

The case arose out of Complaint Case No. 198 of 2022 filed by Pushpa Devi, which led to the registration of Putki P.S. Case No. 13 of 2022 and was later numbered as Special POCSO Case No. 41 of 2022. The complaint alleged offences punishable under Sections 323, 354/34 of the IPC and Section 8 of the POCSO Act, 2012. The learned Special Judge, POCSO Act, Dhanbad, upon considering the materials on record, took cognizance of the said offences against the two petitioners by order dated 11.05.2022.

Finding of the Trial Court

The trial court, upon examination of the complaint and supporting materials, found a prima facie case and accordingly took cognizance of the offences under Sections 323, 354/34 IPC and Section 8 of the POCSO Act. The matter was fixed for further proceedings before the court of the Special Judge, POCSO Act, Dhanbad.

Application before the High Court

Challenging the continuation of the said criminal proceedings, the petitioners filed a criminal miscellaneous petition before the High Court of Jharkhand under Section 482 CrPC, seeking quashing of the entire proceeding including the cognizance order dated 11.05.2022. It was submitted by the

petitioners and the complainant (opposite party no. 2) through Interlocutory Application No. 3365 of 2023, supported by their respective affidavits, that the matter had been amicably settled between the parties with the intervention of well-wishers.

Both parties affirmed that the dispute was personal in nature, devoid of public interest, and had now been resolved without any coercion. The petitioners further contended that the complaint was instituted as a counter-blast to an earlier FIR lodged by the father of petitioner no. 2 against the complainant. In such a situation, it was argued that the continuation of the case would result in abuse of process and was likely to end in acquittal. The learned Additional Public Prosecutor did not oppose the prayer for quashing in view of the compromise.

Issue before the High Court

The principal issue before the High Court was whether it would be appropriate to exercise inherent powers under Section 482 CrPC to quash a criminal proceeding arising under the IPC and POCSO Act, where the nature of the allegations was not serious or heinous, and the parties had arrived at a voluntary settlement indicating that the matter was purely personal in nature.

Observation and Judgment of the High Court

The High Court, after hearing the parties and examining the record, referred to the authoritative pronouncement in *Parbatbhai Aahir v. State of Gujarat* (2017) 9 SCC 641, where the Supreme Court had laid down guiding principles for exercising jurisdiction under Section 482 CrPC in cases involving compromise between the parties. The Court reiterated that although the power under Section 482 CrPC is wide, it must be exercised with caution, particularly in cases involving serious offences or those having an element of public interest.

“Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.....However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim’s family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences.”

However, in cases involving personal disputes of a private nature, where the possibility of conviction is remote due to compromise, quashing may be justified to prevent abuse of process and secure the ends of justice.

“But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility

of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim.”

On the facts of the present case, the High Court observed that the alleged offences were not heinous and appeared improbable, particularly as the complaint seemed to have been lodged as a retaliatory move. In light of the voluntary and amicable compromise between the parties, the Court found that the chances of conviction were bleak and that continuation of the proceedings would amount to undue harassment and injustice to the petitioners. It concluded that permitting the criminal proceedings to continue would be contrary to the interest of justice and constitute an abuse of the process of law.

In view of the above findings, the High Court quashed the entire criminal proceeding including the cognizance order dated 11.05.2022 passed in Special POCSO Case No. 41 of 2022, corresponding to Putki P.S. Case No. 13 of 2022 arising out of Complaint Case No. 198 of 2022. The criminal miscellaneous petition was allowed, and Interlocutory Application No. 3365 of 2023 was accordingly disposed of. Any interim order passed earlier in the matter stood vacated as a consequence of the final disposal.

8. SEXUAL VIOLENCE IN THE METAVERSE: A DIGITAL CRISIS IN A VIRTUAL WORLD

The Metaverse represents a transformative leap in how humans interact with technology. Envisioned as a collective virtual space that integrates Virtual Reality (VR), Augmented Reality (AR), and Artificial Intelligence (AI), the Metaverse allows users to live parallel lives through digital avatars, engaging in everything from business and education to socialising and entertainment. While it promises unprecedented levels of immersion and global connectivity, it also gives rise to troubling new forms of criminality, most notably, virtual sexual violence.

Understanding the Metaverse

The term “Metaverse” was first coined in Neal Stephenson’s 1992 science fiction novel *Snow Crash*.⁴³ Derived from the Greek words *meta* (beyond) and *verse* (universe), the Metaverse is often described as the next iteration of the internet, a three-dimensional, interactive, and persistent digital environment. Users can access this immersive space through VR headsets and interact with others via avatars, experiencing sights, sounds, and even tactile sensations using haptic technology. As Mark Zuckerberg famously put it, “*Metaverse is the internet you are inside of, rather than just looking at.*”

Although initially celebrated as a tool for enhanced communication and inclusion, the Metaverse has quickly revealed its darker potential. As technology progresses, especially in the wake of increased screen time post-pandemic, the boundaries between digital and physical realities have blurred, allowing harmful behaviours like sexual harassment and assault to manifest in virtual form.

Virtual Rape and its Digital Harm

One of the most alarming trends in the Metaverse is the rise of “virtual rape” and sexual misconduct within virtual spaces. These incidents range from unwanted verbal advances and suggestive messages to simulated physical acts using avatars and haptic devices.

The development of haptic suits and sensory feedback systems has significantly heightened the realism of VR experiences. While these technologies were designed to enhance immersion, they also create conditions where virtual touch can feel disturbingly real. Victims wearing these devices report sensations akin to physical violation, exacerbating trauma and blurring the line between virtual and real-world experiences.

Several chilling incidents have come to light. A victim named Maria DeGrazia reported that, while using the ‘Population One’ platform with a haptic vest, another user touched her avatar’s chest. In another case, Sydney Smith recounted being targeted with lewd sexist remarks in Echo VR and described the difficulty of reporting offenders.⁴⁴ These accounts demonstrate the emotional and psychological toll of such experiences, especially when they occur in supposedly “safe” online environments.

43 A REFLECTION ON VIRTUAL RAPE IN THE METAVERSE: A NEED FOR LEGAL INTERVENTION, Dr. Ashok P. Wadje& Jivantika Gulati, CLR (Vol V, Issue II July- Dec., 2024), Available at: <chrome-extension://efaidn-bmnnnibpcajpcglcfindmkaj/https://cnlu.ac.in/storage/2025/05/A-Reflection-On-Virtual-Rape-In-The-Metaverse-A-need-for-Legal-Intervention-by-Dr.-Ashok-P.-Wadje-Jivantika-Gulati.pdf>

44 Ibid.

A watershed moment occurred in 2024 when British police launched an investigation into a case involving a teenage girl's avatar being sexually assaulted by a group of strangers in the Metaverse. Despite occurring in a virtual space, the girl reported emotional trauma similar to that experienced by survivors of physical assault. This incident reignited debates about how legal frameworks should respond to immersive, non-physical harms.

The Long History of Virtual Misconduct

While the terminology is new, the behaviour is not. The first documented case of “virtual rape” occurred in 1993 in the text-based platform LambdaMoo, where an avatar used code to coerce others into simulating sexual acts.⁴⁵ In 2007, Belgian authorities investigated a similar complaint on the Second Life platform. Although no legal action was taken, these early instances foreshadowed the dangers of unregulated virtual environments.⁴⁶

In recent years, several high-profile cases have brought this issue into the mainstream. In 2016, Jordan Belamire recounted being groped in the VR game QuiVr.⁴⁷ More recently, in 2021, Nina Patel described being harassed by multiple avatars in Meta's Horizon Worlds—an incident she labelled a “virtual gang rape.”⁴⁸ In both cases, the victims experienced genuine psychological harm, highlighting the real-world consequences of virtual actions.

Surveys reinforce these experiences. A 2018 study found that nearly 49% of women in VR platforms had encountered sexual harassment. A 2021 report analysing Facebook's VRChat platform revealed incidents of sexual abuse every seven minutes.⁴⁹ These statistics underscore a dangerous pattern of behaviour that mirrors and magnifies real-world gender-based violence.

The Legal Void and Regulatory Challenges

Despite the severity of these offences, current legal frameworks lag significantly behind technological advancements. Many jurisdictions, including India, lack specific legislation to address sexual misconduct in virtual reality environments. Crimes in the Metaverse are often dismissed as “imaginary” because they occur in digital form, yet the psychological impacts on victims are demonstrably real.

The difficulty in legislating such offences lies in their novelty and complexity. For instance, proving intent, consent, and identity in an environment where avatars can be easily manipulated presents significant evidentiary challenges. Moreover, platforms often escape liability by framing themselves as mere intermediaries, absolving themselves from moderating harmful user behaviour.

45 FROM VIRTUAL RAPE TO META-RAPE: SEXUAL VIOLENCE, CRIMINAL LAW AND THE METAVERSE, Clare McGlynn, and Carlotta Rigotti, *Oxford Journal of Legal Studies* 2025, Vol. XX, No. XX pp. 1–29, *Published on:* 08 April 2025, *Available at:* <https://doi.org/10.1093/ojls/gqaf009>

46 *Ibid.*

47 *Ibid.*

48 BETWEEN PIXELS AND PREDATORS: THE LANDSCAPE OF SEXUAL ASSAULT AND RAPE IN THE METAVERSE, Natalia Rydzewski, *Florida International University Law Review*, Spring 2025, Vol. 19, No. 2, *Published on:* February 2025, *Available at:*

<chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?article=1704&context=lawreview>

49 *Supra* at 45.

In India, where cybercrime laws like the Information Technology Act, 2000 are already strained under the weight of growing digital abuse, there's an urgent need for reform. The current legal structure does not account for non-physical, immersive harm and lacks the terminology to prosecute acts like "Virtual Groping" or "Virtual Rape."

Barriers to Justice and Psychological Toll

One of the main challenges in addressing virtual sexual offences is public perception. Many continue to view these acts as "harmless" or "not real," which results in victim-blaming, denial of trauma, and lack of support systems. Furthermore, proving virtual offences in court, especially in the absence of physical harm remains a significant hurdle. Victims are often dismissed or misunderstood, reinforcing their trauma and dissuading them from seeking help.

For women in patriarchal societies like India, social stigma, coupled with digital illiteracy, makes reporting even more difficult. Victims of metaverse related abuse may suffer in silence, experiencing mental health issues such as anxiety, PTSD, and depression, while also being shamed or disbelieved.

Way Towards a Safe Digital Future

As the Metaverse becomes more central to our lives, it is imperative to treat digital harms with the same seriousness as their physical counterparts. The rise in virtual sexual violence highlights the urgent need for clear legal definitions, platform accountability, and public awareness. Criminal law must evolve to recognise that emotional and psychological injuries in the Metaverse are not fictional, they are real and damaging.

International collaboration, stronger content moderation policies, and age-appropriate technological safeguards must be prioritised. Most importantly, survivors must be believed, supported, and offered legal recourse regardless of whether the crime occurred in the physical world or in its digital shadow. The Metaverse may be virtual, but the violence within it is very real.

9. DIGITAL RAPE IN INDIA: A MISUNDERSTOOD CONCEPT

Introduction

In recent years, the term “digital rape” has begun to surface in India’s legal and public discourse, but it remains one of the most misinterpreted concepts. The word “digital” often misleads laypersons into associating the term with the virtual or online world. However, in the legal context, “digital” refers to the use of “digits”—fingers or toes, to penetrate a person’s bodily orifices without consent. Such acts, though physically invasive and psychologically devastating, were not historically classified as rape under Indian law. It was only after the 2012 *Nirbhaya case*⁵⁰ and the subsequent Criminal Amendment Acts that digital rape was explicitly criminalized.

Understanding Digital Rape: Beyond the Misconceptions

Contrary to popular belief, digital rape in India has no connection with cyberspace, computers, or electronic technology. Instead, it pertains to the non-consensual penetration of a person’s vagina, anus, or urethra using body parts other than the penis (typically fingers or toes) or with objects. Before 2013, such acts were often subsumed under molestation or lesser offences.

Section 35A of the *Crimes Act 1958* provides a statutory definition of sexual penetration, which includes the act of inserting fingers, thumbs, or toes into another person’s vagina. In a comparable scenario, if person ‘A’ inserts their fingers, thumbs, or toes into person ‘B’s anus, even to the slightest extent, such an act may legally constitute sexual penetration. While Indian law does not explicitly use the term “digital rape”, the conduct described namely, non-consensual penetration using fingers or similar body parts can fall within the ambit of rape under certain statutory interpretations.

Prior to this legislative reform, these acts were typically addressed under Section 354 of the IPC, which penalises assault or criminal force against a woman with intent to outrage her modesty. This provision, however, inadequately addressed the severity of the violation, treating it as a lesser offence rather than as an act of sexual violence of a grievous nature.

It was in the aftermath of the horrific Nirbhaya gang rape case of December 16, 2012, that public consciousness and legal scrutiny converged, leading to major criminal law reforms. The *Criminal Law (Amendment) Act, 2013* was introduced, following the recommendations of the Justice J.S. Verma Committee. For the first time, the law formally expanded the definition of rape under Section 375 of the IPC to include acts of digital penetration, that is, non-penile penetration of the vagina, anus, or urethra using fingers or other objects.⁵¹ While the term “digital rape” or “digital penetration” is not expressly used in any Indian legislation, the conduct it describes is now recognized as rape and punishable under the law.

⁵⁰ Mukesh & Anr vs State for NCT of Delhi & Ors (2017) 6 SCC 1

⁵¹ DIGITAL RAPE UPROOTING THE VALUES OF HUMANITY: UNVEILING THE UNSEEN, Dr. Rekha Pahuja, GAP iNTERDISCIPLINARITIES, Vol.- VI Issue IV, October – December 2023, ISSN – 2581-5628, Available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.gapinterdisciplinarity.org/res/articles/\(29-34\)%20DIGITAL%20RAPE%20UPROOTING%20THE%20VALUES%20OF%20HUMANITY%20UNVEILING%20THE%20UNSEEN.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.gapinterdisciplinarity.org/res/articles/(29-34)%20DIGITAL%20RAPE%20UPROOTING%20THE%20VALUES%20OF%20HUMANITY%20UNVEILING%20THE%20UNSEEN.pdf)

Judge Kamini Lau of the Additional Sessions was inspired by this case to urge a broadening of the concept of rape to encompass all forms and classifications of sexual assault. “According to Lau, such events ought to compel Indian legislators to reconsider the definition of “rape” and draught a law that would cover all varieties of sexual assault while being gender-neutral”.⁵²

Furthermore, if such an act is committed against a minor, the provisions of the *Protection of Children from Sexual Offences (POCSO) Act, 2012*, are applicable. Specifically, Section 3(b) of the POCSO Act criminalises penetration with any object or part of the body other than the penis. These legislative changes were pivotal in addressing the inadequacies of the earlier framework and in ensuring more effective protection and redressal for victims of such violent and invasive sexual assaults.

The reformed legal framework thus marks a significant shift in India’s approach to sexual violence, one that not only broadens the understanding of what constitutes rape but also reinforces the principle that all forms of non-consensual sexual penetration, regardless of the instrument used, are grave violations of personal dignity and bodily autonomy.

Distinction between the term “Cyber/Virtual Rape” & “Digital Rape”

The phrase ‘digital rape’ may be associated with the internet or cyber world due to occurrences of sexual assault over digital networks. Any sexual offence done online, including impersonating another person or exploiting an internet platform, is not considered “digital rape.” However, it refers to inappropriately placing one’s fingers or toes into another person’s private areas. Because the English word ‘digit’ connotes a finger, thumb, or toe, the act has been referred to as ‘digital rape.’ ‘Digital rape’ did not satisfy that description because it was defined as molestation rather than rape before December 2012. Following the horrific Nirbhaya gang rape case in 2012, new rape legislation was enacted in parliament, and the conduct was classified as a sexual offence.

Judicial Recognition and Notable Cases

Several judicial pronouncements have reinforced the seriousness of digital rape as a criminal offence:⁵³

Akbar Ali case- In the year 2019 a person whose name is Akbar Ali residential of West Bengal had went to Noida just to visit his daughter house in a family function. Where Akbar Ali had lured a girl child by providing her candies who was playing outside the house. Under the pretext of providing candies he took her to a room alone and digitally raped that girl child. Akbar Ali has booked under POCSO Act and punished with life imprisonment with fine of Rs 50,000.⁵⁴

Similarly, in Graphic Artist Maurice Ryder case- Maurice Ryder an 80 year old person of Greater Noida sector 46 was a graphic artist who established his workshop in Shimla. Maurice took the custody of a 10 years old girl from one of his worker in Shimla as the girl’s father was not having sufficient means to take care of his daughter and providing her the education. In year 2021 girl made complaint against Maurice Ryder that he was digitally rapping her from last 7 years.⁵⁵

52 A SCENARIO OF DIGITAL RAPE IN INDIA WITH SPECIAL REFERENCE TO AKBAR ALI CASE, Devashish Raturia, Dr. Harpreet Kaur, JUS CORPUS LAW JOURNAL, VOL. 3, ISSUE 1, SEPTEMBER – NOVEMBER 2022, Available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.juscorpus.com/wp-content/uploads/2022/10/83.-Devashish-Raturi.pdf>

53 *Supra* 51.

54 *Supra* 51.

55 *Supra* 51.

Another incident where the Father committed digital rape on his daughter- One FIR was filed in year 2022 in Greater Noida, by mother of a girl child against her husband for committing digital rape with his own daughter.⁵⁶

These cases underscore that digital rape, particularly against children, is not a theoretical anomaly but a lived, recurring trauma in Indian society.

Psychological and Social Repercussions

Digital rape inflicts profound psychological damage, often leading to Post-Traumatic Stress Disorder (PTSD), anxiety, depression, and suicidal ideation. Survivors, especially minors, may develop long-term emotional disturbances and trust issues. The trauma is compounded when perpetrators are guardians or relatives. Victims face not just the pain of violation but the indifference of society and, at times, the judicial system.

Proper rehabilitation, including counselling, medical assistance, and compensation, must accompany legal remedies. The Supreme Court has emphasized the need for trial courts to complete rape cases within two months (Section 309 CrPC) and mandated victim-centric proceedings.

The Way Forward: Reform and Recognition

To effectively address digital rape in India, the following steps are vital:

1. **Awareness Campaigns:** Educating the public, police, and judiciary about the correct understanding of digital rape is crucial.
2. **Comprehensive Legal Reform:** Removing the marital rape exemption and making laws gender-neutral can pave the way for more inclusive justice.
3. **Fast-Track Trials and Victim Support:** Implementing swift trials and ensuring psychological support will help reduce trauma and improve conviction rates.
4. **Sensitisation of Law Enforcement:** Police officers and medical professionals must be trained to handle such cases with sensitivity and precision.
5. **Stronger Forensic Capabilities:** Investment in forensic tools and techniques for non-penetrative and subtle injuries can enhance evidentiary collection.

Conclusion

Digital rape is not a lesser crime, it is a grave violation of bodily integrity and human dignity. While legislative reforms post-Nirbhaya have expanded the legal definition of rape, the concept of digital rape continues to be poorly understood. Bridging this gap requires not only legal refinement but also societal introspection. We must acknowledge that every form of non-consensual penetration, regardless of the object or digit used, constitutes rape and deserves equal condemnation and redress. Only through an empathetic, informed, and proactive approach can we ensure justice for all survivors of this misunderstood crime.

⁵⁶ *Supra* 51.

Part III

By Jharkhand State Legal Services Authority

1. ADVANCING CHILD-CENTRIC JUSTICE AND INCLUSIVE LEGAL AID

1.1 Introduction

The Jharkhand State Legal Services Authority (JHALSA), in pursuance of its statutory mandate under the **Legal Services Authorities Act, 1987**, has been working relentlessly to secure the constitutional vision of “*access to justice for all*.” Its efforts have been especially directed towards vulnerable groups, including children, women, Scheduled Castes and Scheduled Tribes, marginalized communities, and survivors of violence and exploitation.

Over the past five years, JHALSA has emerged as a pioneering institution in the State by substantially strengthening **victim compensation mechanisms** under the *Protection of Children from Sexual Offences (POCSO) Act, 2012*, by improving the **Juvenile Justice system**, and by ensuring the effective grassroots implementation of **NALSA and JHALSA schemes**.

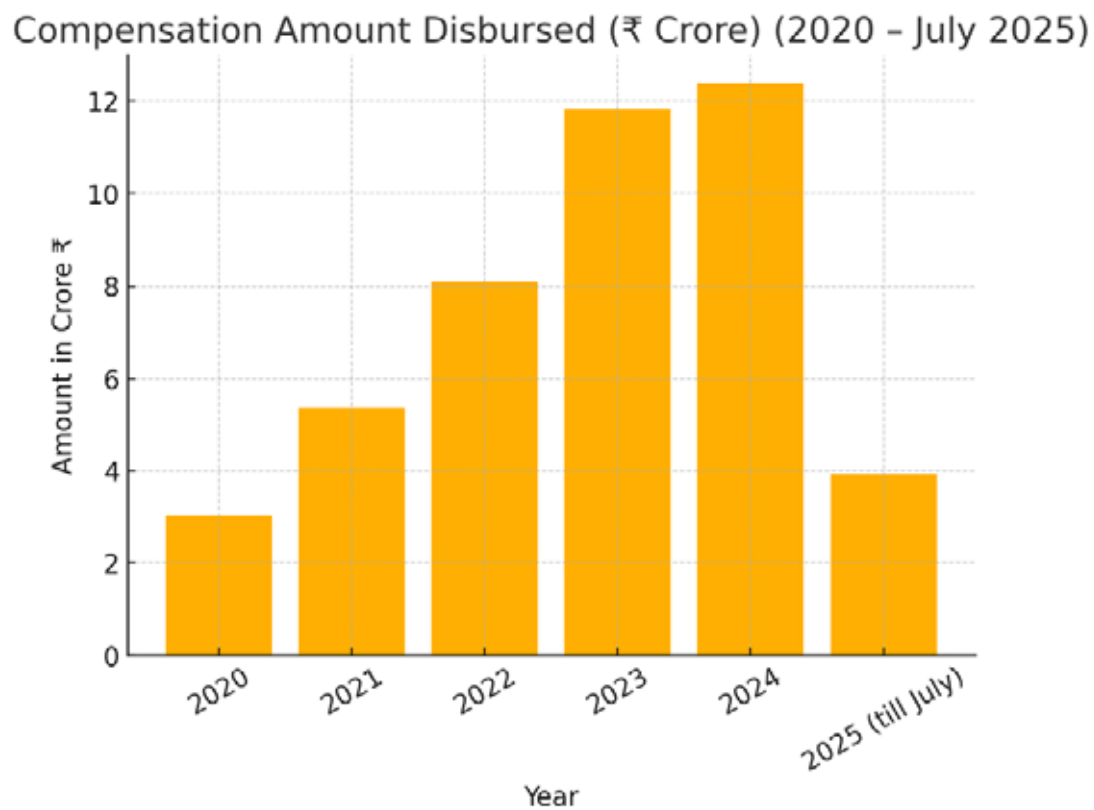
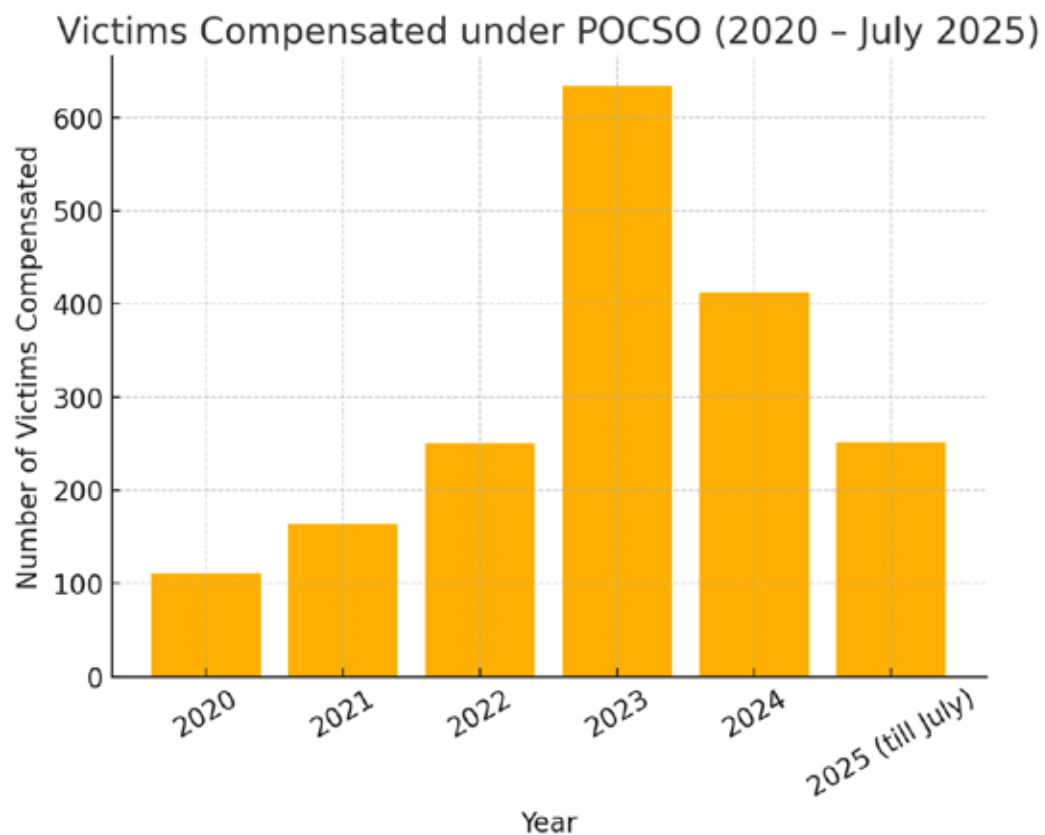
The present report provides a data-driven and analytical account of the progress made by JHALSA, while also underlining its institutional strengths, judicial significance, and future roadmap. It seeks to demonstrate how JHALSA has evolved as a robust pillar of justice delivery, with a child-centric and victim-sensitive orientation.

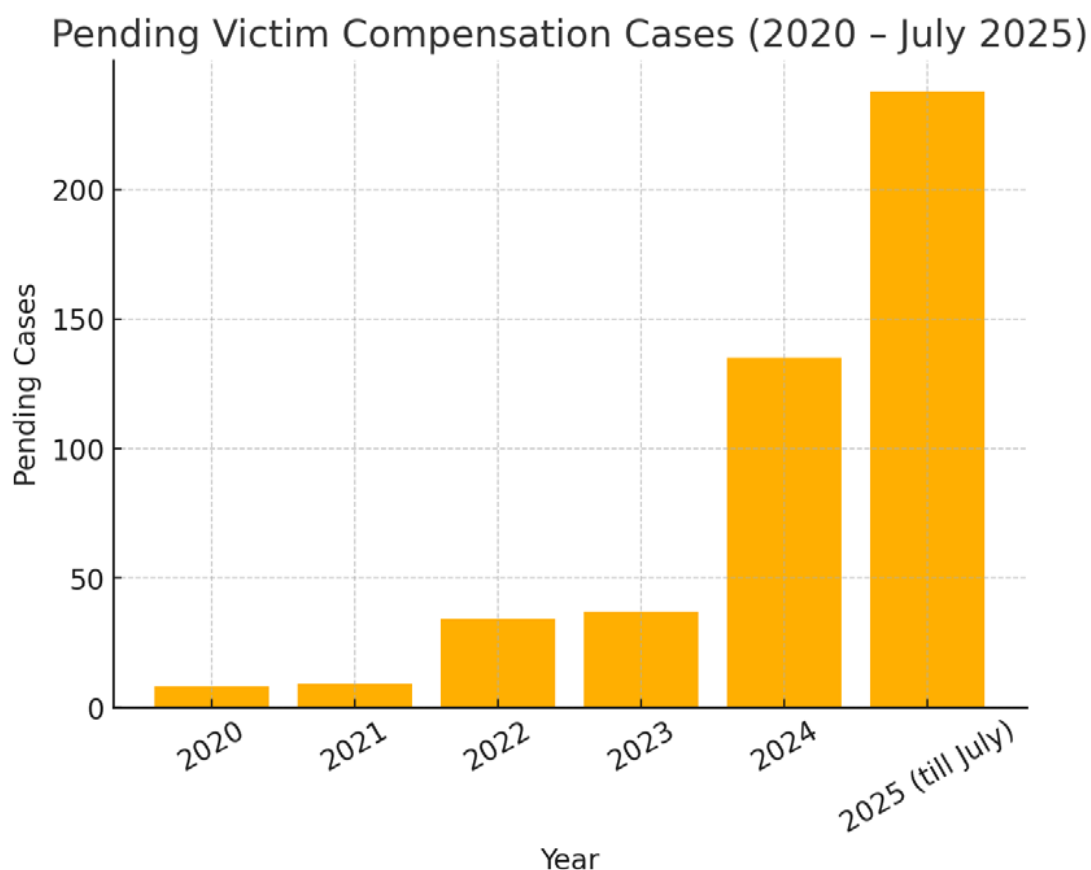
1.2 POCSO Victim Compensation: Progress and Commitment

Victim compensation under POCSO represents not merely financial assistance, but a mechanism of **restorative justice**, designed to restore dignity, ensure rehabilitation, and facilitate social reintegration of survivors. JHALSA has taken consistent steps to streamline compensation procedures, minimize delays, and strengthen monitoring.

Year-Wise Disbursal of Victim Compensation (2020 – July 2025)

Year	No. of Victims Compensated	Compensation Amount Disbursed	Victims Pending Disbursement
2020	111	₹3.03 Crore	8
2021	163	₹5.36 Crore	9
2022	251	₹8.09 Crore	34
2023	634	₹11.83 Crore	37
2024	412	₹12.39 Crore	135
2025 (till July)	252	₹3.92 Crore	238





Achievements during 2024–2025 (1st Jan 2024 – 31st July 2025):

- Total pending POCSO cases: **3,689**
- Compensation quantified in: **736 cases**
- Victims identified: **724**
- Compensation disbursed in: **410 cases**
- Total disbursement: **₹18.23 Crore**
- **49 Para-Legal Volunteers (PLVs)** trained and deployed as *support persons* for POCSO victims.

Judicial Significance

This progressive expansion in both the **quantum and outreach** of victim compensation reflects JHALSA's commitment to the principle of **restorative justice**. By coupling financial rehabilitation with psychosocial support, JHALSA has ensured that survivors are not only compensated but also emotionally strengthened and socially supported. The trained PLVs act as crucial links between survivors, their families, and the justice system—thereby reducing re-traumatization and enhancing trust in judicial institutions.

1.3. Juvenile Justice: Strengthening Institutional Support

The Juvenile Justice system lies at the heart of child-centric justice. JHALSA has consistently advocated for a **rehabilitative and protective approach** rather than punitive measures.

- As on **31st July 2025**, a total of **2,701 cases** were pending before Juvenile Justice Boards (JJBs) across Jharkhand.
- **36 Para-Legal Volunteers (PLVs)** have been deputed across JJBs to provide sustained assistance to children in conflict with law, as well as to children in need of care and protection.

This intervention ensures that children facing proceedings are not stigmatized but are instead guided and reintegrated into society with dignity.

Judicial Significance

By embedding legal services within the JJB structure, JHALSA has operationalized the principle that **“every child deserves care, not criminalization.”** The presence of PLVs has improved access to counselling, legal advice, and referral to welfare services, thereby reducing systemic barriers.

1.4 Awareness Initiatives: Building Legal Consciousness

Awareness is a critical prerequisite for empowerment. JHALSA and the District Legal Services Authorities (DLSAs) have recognized that **justice delivery must be accompanied by awareness and sensitization.**

Between **1st January 2024 and 31st July 2025**, JHALSA and DLSAs organized:

- **5,533 awareness programmes** on child rights, POCSO, Juvenile Justice, and NALSA schemes.
- Direct outreach to **88,159 beneficiaries** across Jharkhand.

These campaigns have been conducted in schools, villages, community centers, and urban settlements, ensuring that even the most marginalized communities are informed of their rights and remedies.

Judicial Significance

Awareness campaigns serve as a **preventive tool** against rights violations. By embedding legal literacy within communities, JHALSA has reduced dependency on litigation and fostered early reporting of offences, particularly under POCSO and child marriage laws.

1.5 Implementation of NALSA and JHALSA Schemes

JHALSA has acted as a bridge between **national policies and local realities** by effectively implementing both NALSA and state-level schemes.

Beneficiaries of NALSA Schemes (Jan 2024 – July 2025)

- Victims of Trafficking and Commercial Sexual Exploitation: **2,116**
- Child-Friendly Legal Services for Children (2024): **12,537**
- Victims of Acid Attacks: **18**
- DAWN Scheme (2025): **36**
- SAATHI Campaign: **3,115**
- ASHA Campaign (Eliminating Child Marriage, launched April 2025): Units constituted in all DLSAs; annual reporting awaited.

Beneficiaries of JHALSA Projects

- **Project Vatsalya:** 13,076
- **Project Sahyog:** 8,797

Long-Term NALSA Beneficiaries (Past 5 Years)

- Girls: **40,683**
- Boys: **42,726**
- SC/ST Communities: **44,891**
- **Total:** 58,48,275

Judicial Significance

These figures reflect JHALSA's **inclusive approach**. By addressing diverse categories—children, women, SC/ST communities, and victims of trafficking and violence—JHALSA has ensured that the benefits of welfare jurisprudence are not confined to a select few but equitably distributed across vulnerable groups.

1.6 Institutional Strengths of JHALSA

1. **Victim-Centric Orientation:** Integration of financial assistance with psychosocial support.
2. **Grassroots Outreach:** Use of PLVs and Legal Services Clinics in remote and tribal areas.
3. **Judicial Synergy:** Alignment of schemes with judicial directives and NALSA frameworks.
4. **Transparency:** Data-based monitoring and accountability in disbursement of funds.
5. **Awareness Building:** Comprehensive campaigns to ensure rights are not theoretical but practical.

1.7 Broader Judicial Significance

The achievements of JHALSA illustrate how **legal aid can serve as a vehicle of constitutional morality**. By adopting a **rights-based and victim-sensitive model**, JHALSA has operationalized the principles of dignity, equality, and justice enshrined in Articles 14, 21, and 39 of the Constitution of India.

The Authority's work also reflects compliance with **Supreme Court directives** on victim compensation, child rights, and access to justice, thereby reinforcing judicial legitimacy.

1.8 Future Roadmap

Moving forward, JHALSA aims to:

- **Digitize victim compensation tracking** to ensure zero delays.
- **Strengthen the ASHA campaign** to curb child marriage across Jharkhand.
- Expand **child-friendly legal services units** in all districts.
- Train more PLVs in **trauma counselling and restorative justice approaches**.
- Establish a **statewide monitoring dashboard** for real-time reporting of legal aid outcomes.

1.9 Conclusion

The performance of JHALSA in recent years demonstrates that it has matured into a **dynamic and responsive institution** of justice delivery. By ensuring record-high compensation disbursements, strengthening the Juvenile Justice framework, conducting thousands of awareness initiatives, and implementing NALSA and JHALSA schemes effectively, the Authority has laid down a model of **proactive and inclusive legal aid delivery**.

For the judiciary, this signifies not only **institutional efficiency** but also a reaffirmation of **constitutional values**—dignity, equality, and justice for the most vulnerable.

With continued judicial guidance and the tireless dedication of officers, PLVs, and volunteers, JHALSA is well-positioned to deepen its impact and set national benchmarks of excellence in **child-centric justice and inclusive legal aid delivery**.



"Children
are the **living
Messages** we
send to a time
we will not see."

- Neil Postman