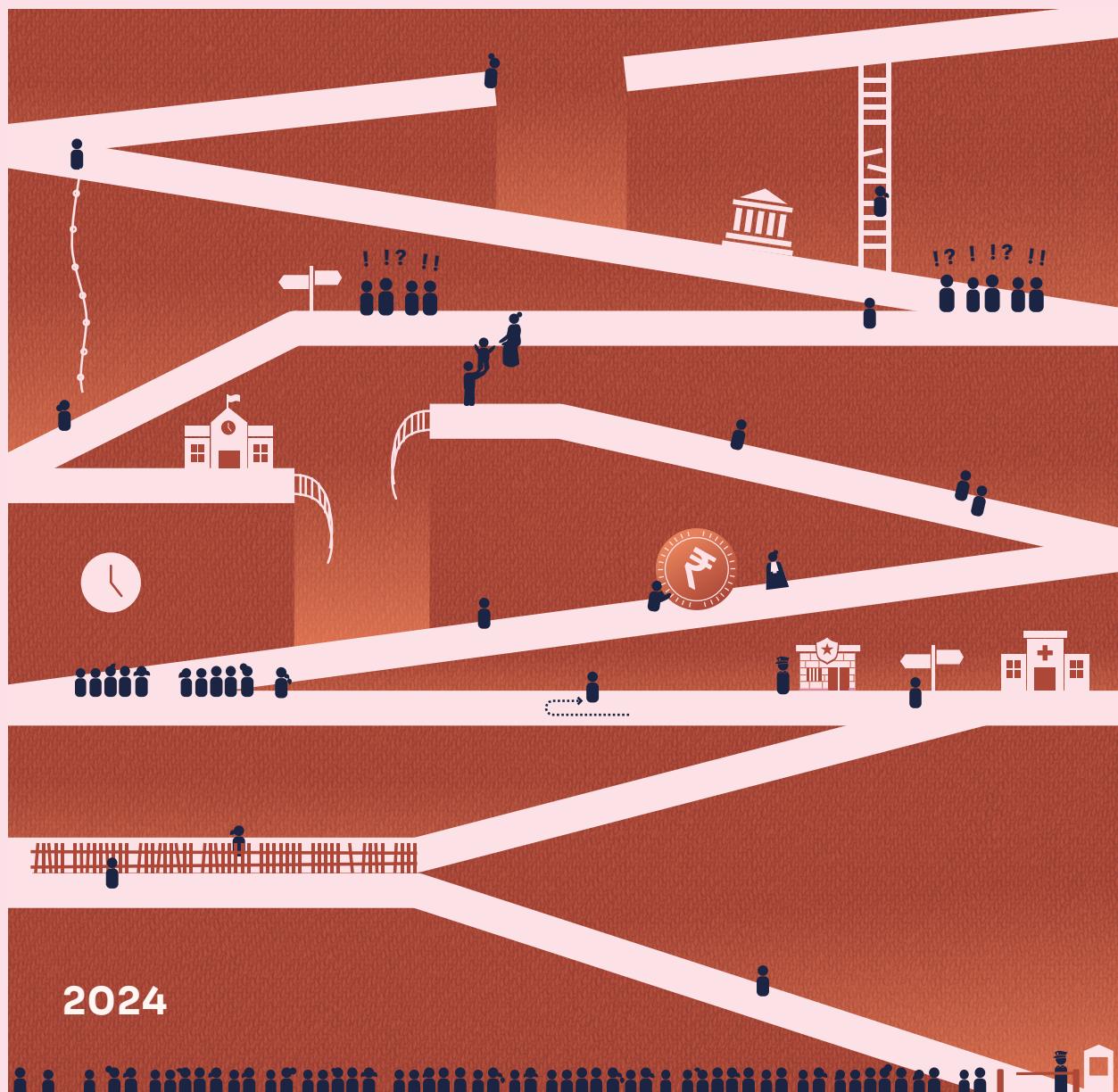


# THE VERDICT AND BEYOND: JUDICIAL TRENDS AND SURVIVOR NARRATIVES IN CHILD SEXUAL ABUSE CASES



**Published in November 2024**

**Designed by**

Diagrammer

**Print and Publication**

Naveen Printers

**ISBN Number**

978-93-84272-55-5

Project39A

© National Law University, Delhi  
All rights reserved



PROJECT 39A  
EQUAL JUSTICE  
EQUAL OPPORTUNITY



# THE VERDICT AND BEYOND: JUDICIAL TRENDS AND SURVIVOR NARRATIVES IN CHILD SEXUAL ABUSE CASES

A report based on 264 judgments from 2019-2021 under the POCSO Act and the IPC for sexual offences against children, and perspectives of survivors, families, and CSOs.

# TABLE OF CONTENTS

---

<b>Acknowledgments</b>	<b>6</b>
<b>List of Abbreviations</b>	<b>8</b>
<b>Introduction</b>	<b>9</b>
<b>Methodology</b>	<b>13</b>
A. Nature of Sample	<b>14</b>
B. Data Collection	<b>28</b>
C. Methodological Limitations	<b>29</b>
<b>Structure of the Report</b>	<b>30</b>

---

# Insights from Judgments of Special Courts

<b>Overview</b>	<b>32</b>	4.5. Informants' Testimony vis-à-vis Outcomes <b>83</b>
<b>Summary of Findings</b>	<b>34</b>	4.6. Outcomes vis-à-vis age of victims and accused persons <b>85</b>
<b>1. Profile of Victims, Informants and Accused Persons</b>	<b>41</b>	4.7. Link between Age-Determination and Outcomes <b>88</b>
1.1. Profile of Victims <b>43</b>		4.8. Outcomes in cases in which the victim had a disability <b>88</b>
1.2. Profile of Accused Persons <b>45</b>		4.9. Time taken to record evidence and dispose of cases <b>89</b>
1.3. Profile of Informants <b>48</b>		4.10. Illustrative Cases of Convictions and Acquittals <b>92</b>
1.4. Conclusion <b>51</b>		4.11. Conclusion <b>97</b>
<b>2. Age Determination by Special Courts</b>	<b>52</b>	<b>5. Trends in “Romantic” Cases</b> <b>98</b>
2.1. Nature of Age-related Evidence <b>53</b>		5.1. Proportion of Cases <b>100</b>
2.2. Age-determination procedure adopted by Special Courts <b>54</b>		5.2. Context in which “romantic” cases are filed <b>102</b>
2.3. Outcomes of Age-determination <b>57</b>		5.3. Nature of testimony and outcomes <b>103</b>
2.4. Conclusion <b>60</b>		5.4. Conclusion <b>105</b>
<b>3. Availability and Appreciation of Medical Evidence</b>	<b>61</b>	<b>6. Application of Presumptions under the POCSO Act</b> <b>107</b>
3.1. Availability and Nature of Medical Evidence <b>62</b>		6.1. References to Presumption <b>107</b>
3.2. Appreciation of Medical Evidence and its Link to Victim's Testimony & Outcomes <b>64</b>		6.2. Standard of Proof <b>109</b>
3.3. Areas of Concern <b>68</b>		6.3. Conclusion <b>110</b>
3.4. Conclusion <b>72</b>		<b>7. Sentences for Penetrative Sexual Offences under the IPC and POCSO Act</b> <b>111</b>
<b>4. Nature of Charges, Outcomes &amp; Factors Influencing Outcomes</b>	<b>73</b>	7.1. Key findings and trends <b>111</b>
4.1. Nature of Charges and Interaction of POCSO Act with other laws <b>74</b>		7.2. Factors considered in the imposition of Life Imprisonment <b>116</b>
4.2. Nature of Outcomes <b>75</b>		7.3. Factors considered in the imposition of Death Penalty <b>118</b>
4.3. Link between Victims' Testimony & Outcomes <b>77</b>		7.4. Conclusion <b>122</b>
4.4. Link between Victims' Testimony, Relationship with the Accused and Outcomes <b>82</b>		<b>8. Victim Compensation</b> <b>123</b>
		8.1. Overall trends <b>124</b>
		8.2. Conclusion <b>128</b>

# Perspectives of Child Survivors, Families, and CSOs on Implementation of Child-friendly Procedures and Challenges Faced

<b>Overview</b>	<b>130</b>	<b>3. Compliance with Child-friendly Procedures during recording of statement under Section 164, CrPC by Magistrates</b>	<b>159</b>
<b>Summary of Findings</b>	<b>132</b>	3.1. Manner of recording statements under Section 164, CrPC <b>159</b>	
<b>1. Police Compliance with Child-friendly Procedures</b>	<b>135</b>	3.2. Assistance of translators, interpreters and special educators <b>161</b>	
1.1 Registration of FIR <b>135</b>		3.3. Audio-visual recording of statements <b>161</b>	
1.2 Recording of Statements of Victims <b>140</b>			
1.3 Provision of information to victims, informants, Support Persons, and the CWC <b>144</b>			
1.4 Facilitation of medical examination/ emergency medical care and collection of samples for forensic examination <b>147</b>			
1.5 Facilitation of Witness Protection <b>148</b>			
<b>2. Compliance of Medical Practitioners with Child-friendly Procedures during Medical Examinations and Care</b>	<b>149</b>	<b>4: Compliance with Child-friendly Processes by Special Courts</b>	<b>163</b>
2.1 Conduct of medical examination <b>149</b>		4.1. Questioning of child victims <b>163</b>	
2.2 Ensuring privacy during examination <b>151</b>		4.2. Provision of breaks <b>165</b>	
2.3 Informed Consent of Guardian and Survivors <b>153</b>		4.3. Supportive presence during testimony <b>165</b>	
2.4 Provision of medical examination report to survivors and families <b>155</b>		4.4. Prevention of exposure to the accused <b>168</b>	
2.5 Provision of first aid and emergency medical treatment <b>155</b>		4.5. Assistance of interpreters, translators and special educators <b>170</b>	
2.6 Medical termination of pregnancy <b>156</b>		4.6. Speedy trial <b>171</b>	
		4.7. Child-friendly infrastructure in courts <b>175</b>	
		<b>5. Experience with Special Public Prosecutors and Legal Practitioners</b>	<b>176</b>
		5.1. Experience with Special Public Prosecutors <b>177</b>	
		5.2. Experience with legal counsel or legal aid lawyer <b>178</b>	
		<b>6. Conclusion</b>	<b>181</b>

## **Perspectives on Justice and Punishment**

---

<b>1. Profile of Respondents</b>	<b>186</b>
1.1. Profile of Survivors and Parents	186
1.2. Profile of CSOs	187
1.3. Methodological Limitations	187
<b>2. Ideas of 'Justice' and 'Justice Needs'</b>	<b>188</b>
a) Justice as punishment	190
b) Need for the abuse to stop and be prevented	192
c) Need to be heard and believed by stakeholders, family and community	193
d) Need for support from family and community	194
e) Need for a supportive, speedy, and sensitive justice system	196
f) Need for the perpetrator to comprehend wrongdoing	197
g) Apology from the perpetrator	198
h) Mental Health Support	200
<b>3. Perspectives on Death Penalty and Minimum Mandatory Sentences</b>	<b>201</b>
3.1. Views of Survivors on Death Penalty for Rape of Children	201
3.2. Views of parent respondents on death penalty for rape of children	204
3.3. Insights of CSO respondents on the views of survivors and parents on punishment	206
3.4. Views of CSO respondents on death penalty and minimum mandatory sentences	207
<b>4. Conclusion</b>	<b>212</b>

---

---

<b>Recommendations</b>	<b>213</b>
------------------------	------------

---

---

<b>Annexure</b>	<b>217</b>
-----------------	------------

---

**PART A:**

*Insights from Judgment of Special Courts*

**Authors**

Shruthi Ramakrishnan  
Swagata Raha

**Research Support**

Gopika Nangia  
Ranu Tiwari  
Sreedevi Nair  
Anindita Pattanayak  
Vibha Angre

**PART B:**

*Perspectives of Child Survivors, Families, and CSOs on Implementation of Child-friendly Procedures and Challenges Faced*

**Author**

Swagata Raha

**Research Support**

Gopika Nangia  
Ranu Tiwari  
Shivangi Puri  
Sreedevi Nair  
Shruthi Ramakrishnan  
Anindita Pattanayak  
Vibha Angre

**PART C:**

*Perspectives on Justice and Punishment*

**Authors**

Swagata Raha  
Shivangi Puri

**Research Support**

Dee Bharadwaj  
Ranu Tiwari  
Shruthi Ramakrishnan

# ACKNOWLEDGMENTS

**CORE RESEARCH TEAM**

*responsible for data collection, analysis, validation, visualisation writing, and revision*

**Shruthi Ramakrishnan**

Associate Director - Legal Researcher

**Swagata Raha**

Director-Research

**Gopika Nangia**

Legal Research Associate

**Sreedevi Nair**

Legal Researcher

**Ranu Tiwari**

Legal Research Associate

**Shivangi Puri**

Research Associate

**Vibha Angre**

Research Associate

**EXTERNAL REVIEWERS****Mahesh Menon**

**Nimisha Srivastava, Urvashi Tilak & Arti Mohan**  
Counsel to Secure Justice

**Persis Sidhva**

Director, RATI Foundation

**ETHICAL REVIEW****Dr. Kavita Jangam**

Additional Professor of Psychiatric Social Work, NIMHANS

**Kushi Kushalappa**

Director, Rehabilitation & Support, Enfold

**Priyanka Mittal**

Clinical Psychologist & Psychotherapist

**SUPPORT WITH INTERVIEWING CHILD SURVIVORS AND FAMILIES**

*We sincerely thank the team at Counsel to Secure Justice (CSJ), HAQ- Centre for Child Rights, Society-Peace and Equality Cell, Enfold Proactive Health Trust, and UTSAH for their support in interviewing child survivors and families of survivors. We would also like to express our gratitude to the CSJ team comprising Arti Mohan, Nimisha Srivastava, and Urvashi Tilak, and Kushi Kushalappa from Enfold for their support in developing the tools for children and families.*

**Arti Mohan**

Counsel to Secure Justice

**Babu K.V**  
Enfold Proactive Health Trust

**Kavita Magnani**  
HAQ Centre for Child Rights

**Kushi Kushalappa**  
Enfold Proactive Health Trust

**Nikita Kataria**  
Counsel to Secure Justice

**Nimisha Srivastava**  
Counsel to Secure Justice

**Priti Jha**  
Society-Peace and Equality  
Cell

**Shivangi Goenka**  
Counsel to Secure Justice

**Sujatha Sukumaran**  
Enfold Proactive Health Trust

**Programme Team**  
UTSAH Child Rights Org,  
Assam

**Vasumathi Bhaskar**  
Enfold Proactive Health Trust

### SUPPORT FROM PROJECT 39A TEAM

**Anup Surendranath**  
Executive Director,  
Project 39A

**Neetika Vishwanath**  
Director, Sentencing,  
Project 39A

**Maitreyi Misra**  
Director, Mental Health  
& Criminal Justice;  
Project 39A, National Law  
University, Delhi

**INTERNS**  
*We wish to thank student  
interns from National Law  
School of India University,  
Bengaluru [NLSIU] who  
supported the Enfold team  
with compiling and analysing  
judgments and providing other  
research support.*

**Aastha Malipatil**  
**Ananya Chaturvedi**  
**Debditya Saha**  
**Manas Agarwal**  
**Nidhi Agrawal**  
**Preeti Yadav**  
**Shikhar Sharma**

### CSO RESPONDENTS

**Amu Vinzuda**  
Jan Sahas

**Archana Sahay**  
Aarambh  
**Arushi Anthwal, Nimisha  
Srivastava, Shabana  
Parveen, Shivangi Goenka**  
Counsel to Secure Justice

**Dipali Dandawate**  
Muskaan

**Kavita Mangnani**  
HAQ, Centre for Child Rights

**Miguel Das Queah**  
UTSAH

**N.V.S. Rammohan**  
HELP

**Prita Jha**  
Society-Peace and Equality Cell

**Persis Sidhva**  
RATI Foundation

**Priti Patkar**  
Prerana

**Sandhya Raju**  
Centre for Constitutional  
Rights Research and Advocacy

**Sangeeta Sharma**  
HUM

**Sneha Singh**  
Child Rights Lawyer

**Sonu Bh. Chhetry**  
Child In Need Institute

**Vidya Reddy**  
Tulir - Centre for the  
Prevention & Healing of Child  
Sexual Abuse

### DESIGN ASSISTANCE

**Jameela Ahmed**  
Diagrammer

**ADMINISTRATIVE  
SUPPORT**  
*We place on record our  
gratitude to the administrative  
and finance team at Enfold for  
their constant support.*

**Bharath H.M.**  
Coordinator - Accounts

**Bhavana D.**  
Executive - Finance

**Dezly Fernandes**  
Co-ordinator- Administration

**Geetha Nair**  
Head - Finance and CSR

**Amrutha M**  
Coordinator-Administration

# LIST OF ABBREVIATIONS

<b>APP</b>	Assistant Public Prosecutor	<b>NGO</b>	Non-Governmental Organization
<b>AP</b>	Andhra Pradesh	<b>NLSIU</b>	National Law School of India University
<b>CA</b>	Chemical Analysis	<b>OPD</b>	Outpatient Department
<b>CICL</b>	Children in Conflict with the Law	<b>PCMA</b>	Prohibition of Child Marriage Act, 2006
<b>CCI</b>	Child Care Institution	<b>POA</b>	Probation of Offenders Act, 1958
<b>CNCP</b>	Children in need of care and protection	<b>POCSO</b>	Protection of Children from Sexual Offences Act, 2012
<b>CrPC</b>	Code of Criminal Procedure, 1973	<b>PSI</b>	Police Sub-Inspector
<b>CSO</b>	Civil Society Organisation	<b>PP</b>	Public Prosecutor
<b>CWC</b>	Child Welfare Committee	<b>PW</b>	Prosecution Witness
<b>DCPU</b>	District Child Protection Unit	<b>PWD</b>	Public Works Department
<b>DLSA</b>	District Legal Service Authority	<b>SC/ST Act</b>	Scheduled Tribes (Prevention of Atrocities) Act, 1989
<b>DNA</b>	Deoxyribonucleic Acid	<b>SP</b>	Support Person
<b>FIR</b>	First Information Report	<b>SPP</b>	Special Public Prosecutor
<b>FSL</b>	Forensic Science Laboratory	<b>SJPU</b>	Special Juvenile Police Unit
<b>HIV</b>	Human Immunodeficiency Virus	<b>VWDC</b>	Vulnerable Witness Deposition Centres
<b>IPC</b>	Indian Penal Code, 1860	<b>WB</b>	West Bengal
<b>ITPA</b>	The Immoral Traffic (Prevention) Act, 1956		
<b>JJ Act</b>	Juvenile Justice (Care and Protection of Children) Act, 2015		
<b>JJB</b>	Juvenile Justice Board		
<b>ME</b>	Medical Examination		
<b>MER</b>	Medical Examination Reports		
<b>MOHFW</b>	Ministry of Health and Family Welfare		
<b>MTP</b>	Medical Termination of Pregnancy		
<b>MTP Act</b>	Medical Termination of Pregnancy Act, 1971		
<b>MP</b>	Madhya Pradesh		
<b>NALSA</b>	National Legal Services Authority		

# INTRODUCTION

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) lays down a comprehensive framework of sexual offences, child-friendly procedures, and rehabilitative measures to address child sexual abuse in India. It is a special law which recognises different forms of sexual offences against children and prescribes child-friendly procedures to be followed by the police, medical practitioners, Magistrates, and Special Courts. It also provides for the presumption of guilt for specific sexual offences and a presumption of culpable mental state for offences requiring 'sexual intent'. The POCSO Act prescribes minimum mandatory sentences for most sexual offences and does not afford any discretion to the courts to impose a lower sentence. The Indian Penal Code, 1860 (IPC) also contains several provisions pertaining to sexual offences, among others, that are applied along with the POCSO Act in cases of child sexual abuse.

Since 2013, several amendments have been introduced which have enhanced the punishment for sexual offences, particularly against children. The Criminal Law (Amendment) Act 2018, which came into force on 21 April 2018, introduced the offences of rape and gang rape of women under the age of 16 years and 12 years for greater deterrence through more stringent punishment.<sup>1</sup> The immediate trigger for this Amendment was the rape and murder of an eight-year-old girl in Kathua, Jammu and Kashmir, and "demands from various sections of society to make the penal provisions more stringent and effective..."<sup>2</sup> Section 376AB was introduced in the IPC which made the rape of a woman below the age of 12 years punishable with a minimum sentence of 20 years' rigorous imprisonment which may extend to life imprisonment which shall mean imprisonment for the remainder of that person's natural life, and fine, or death. Section 376DB, IPC provides for gang rape of a woman below the age of 12 years, the minimum punishment for which is life imprisonment, which shall mean imprisonment for the remainder of that person's natural life, and fine, while the maximum is death.

The POCSO (Amendment) Act, 2019 was passed on the heels of the 2018 Amendment, which also increased the minimum sentence for penetrative offences and introduced the death penalty for aggravated penetrative sexual assault of a person below 18 years. It came into effect on 16 August 2019. The Statement of Objects and Reasons of the POCSO (Amendment) Act, 2019 referred to the steady incline of reported cases under the POCSO Act<sup>3</sup> and also to *Machhi Singh v State of Punjab*,<sup>4</sup> in which the Supreme Court relied on the community's perception of when death penalty is warranted and its expectation from the judiciary to respond to the collective conscience:<sup>5</sup>

---

<sup>1</sup> The Criminal Law (Amendment) Bill 2018, Statement of Objects and Reasons.

<sup>2</sup> *ibid.*

<sup>3</sup> The Protection of Children from Sexual Offences (Amendment) Bill 2019, Statement of Objects and Reasons.

<sup>4</sup> *Machhi Singh v State of Punjab* [1983] 3 SCC 470 (Supreme Court of India).

<sup>5</sup> The Protection of Children from Sexual Offences (Amendment) Bill 2019, Statement of Objects and Reasons.

when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty.

Further, *Devender Pal Singh v State (NCT of Delhi)*,<sup>6</sup> where the court held “when the collective conscience of the community is so shocked, the court must award [the] death sentence” was also pressed into service to make the case for higher punishments “to deter the rising trend of child sex abuse in the country... so as to deter the perpetrators and ensure safety, security and dignified childhood for a child.” In doing so, the Amendment evinced the legislature’s assumption that increased punishment will advance the safety and dignity of children and also the conflation of justice for sexual violence with harsher punishments.

Notably, child rights organisations, advocates, and activists raised objections against the introduction of the death penalty for child rape and the enhancement of the sentences under the POCSO Act, arguing that majority of perpetrators are known to victims and such harsh sentences will deter victims from reporting or testifying against the perpetrator in court. An appeal by civil society organisations and activists working on child rights to the Prime Minister stated,

“When the accused is a person ‘known’ to the child, the child is often pressurized into turning hostile to ‘save’ the ‘known’ perpetrator. Such pressure upon the child will increase manifold if death penalty is imposed as punishment for ‘rape’.”<sup>7</sup>

According to Crime in India, 2022, for instance, in 96.8% cases, the offenders were known to child victims of penetrative and aggravated penetrative sexual assault.<sup>8</sup> Given this reality, the introduction of the death penalty raises concerns about the safety of survivors, the pressure they may face from the family of the accused to withdraw the case or turn hostile, and the resistance from defence lawyers to questions being put to the child victim by the court and not them.

It was also submitted by child rights organisations, advocates, and activists that the punishment under the POCSO Act adequately addressed the gravity of sexual violence against children, including those below 12 years<sup>9</sup> and attention was drawn to judicial preferences for imposition of the minimum punishment and the perception that punishments under the POCSO Act are already very high.<sup>10</sup> They were concerned that the “lack of judicial discretion in sentencing coupled with enhanced mandatory minimum sentences provided for in the ordinance will increase the chances

---

<sup>6</sup> *Devender Pal Singh v State (NCT of Delhi)* [2002] 5 SCC 234 (Supreme Court of India).

<sup>7</sup> Appeal against Criminal Law (Amendment) Ordinance 2018 introducing the death penalty for rape of girls below 12 years to the Prime Minister of India, dated 22 May 2018 signed by 197 representatives of civil society organizations, academics, researchers, advocates, activists and individuals working on issues concerning children in India.

<sup>8</sup> National Crime Records Bureau, *Crime in India*, 2022, Table 4A.10 Offenders Relation to Child Victims of POCSO Act (Section 4 & 6) - 2022, 372.

<sup>9</sup> Appeal against Criminal Law (Amendment) Ordinance 2018 introducing the death penalty for rape of girls below 12 years to the Prime Minister of India, dated 22 May 2018 signed by 197 representatives of civil society organizations, academics, researchers, advocates, activists and individuals working on issues concerning children in India.

<sup>10</sup> *ibid* 3.

of judges acquitting offenders rather than imposing disproportionate sentences.”<sup>11</sup> This is borne out by a subsequent study of trial court decisions after minimum mandatory sentences for rape was introduced under the Criminal Law (Amendment) Act, 2013, which indicates a drop in conviction rates and cites research that explains the lack of judicial discretion as an explanation.<sup>12</sup>

Several child rights and human rights defenders stressed on this when the amendments introducing the death penalty for child rape were proposed,<sup>13</sup> and were also taken note of by some parliamentarians when the Criminal Law (Amendment) Bill, 2018 and POCSO (Amendment) Bill, 2019 was being discussed.<sup>14</sup>

Several studies have revealed the weak implementation of the provisions of the POCSO Act, poor outcomes, lack of sensitivity, and acute lack of support systems and services for child survivors and their families based on court data, judgments of Special Courts, ethnographic studies, and stakeholder interviews.<sup>15</sup> Few studies, however, have been able to document the experiences of child sexual abuse survivors within the justice system<sup>16</sup> and their views on justice and punishment for sexual offences.<sup>17</sup>

Although previous studies have emphasised the need for better implementation of existing provisions and investment in support systems for child victims, recent legislative amendments have singularly focused on enhancing punishment and have introduced the death penalty. It is thus important to interrogate whether the seriousness accorded to sexual violence in recent years and the introduction of the death penalty have improved the implementation of the child-friendly provisions, children’s participation during the trial, and overall outcomes. Further, has the intense public and legislative concern significantly enhanced the experience of survivors and families while dealing with the police, doctors, Magistrates and Special Courts? Finally, it is also important to

---

<sup>11</sup> ibid 4.

<sup>12</sup> Preeti Pratishruti Dash, ‘Rape adjudication in India in the aftermath of Criminal Law Amendment Act, 2013: Findings from trial courts of Delhi’, (2020) 4:2 Indian Law Review 7 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3622538](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3622538)> accessed 10 April 2024.

<sup>13</sup> Swagata Raha & Shruthi Ramakrishnan, ‘Death and Deterrence’ *Indian Express* (9 March 2019).

<sup>14</sup> Rajya Sabha Secretariat, ‘Synopsis of Rajya Sabha Debates on 24 July 2019’ (NeVA-CMS) <[https://cms.neva.gov.in/FileStructure\\_RS/Notices/19dd2163-81dd-4ee9-8be1-2e93ae050342.pdf](https://cms.neva.gov.in/FileStructure_RS/Notices/19dd2163-81dd-4ee9-8be1-2e93ae050342.pdf)> accessed 12 April 2024.

<sup>15</sup> Centre for Child and the Law, National Law School of India University, *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues* (2018) (CCL-NLSIU Report); HAQ: Centre for Child Rights & Forum Against Sexual Exploitation of Children, *Implementation of the POCSO Act: Goals, Gaps and Challenges - Study of cases in Special Courts in Delhi & Mumbai 2012 - 2015* (2017) (HAQ & FACSE Study); Partners for Law in Development, *Towards Victim Friendly Responses and Procedures for Prosecuting Rape: A Study of Pre-Trial and Trial Stages of Rape Prosecutions in Delhi*, January 2014 - March 2015 (2017); Vidhi Centre for Legal Policy, *A Decade of POCSO: Developments, Challenges and Insights from Judicial Data* (2022) (Vidhi POCSO Study); HAQ: Centre for Child Rights and CivicDataLab, #Data4Justice - *Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana 2012 to April 2020* (2021); Centre for Enquiry into Health and Allied Themes, *Role of Medicolegal Evidence in Rape Trials: A Review of Judgments at the Sessions Courts in Mumbai, Mumbai, India* (2020); Dignity Alliance International and Equality Now, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors* (2021); Audrey Dmello and Flavia Agnes, *Ringside View of Rape Trials* (2022). Pratiksha Baxi, *Public secrets of law: Rape trials in India* (2013). Commonwealth Human Rights Initiative and Association for Advocacy and Legal Initiatives, *Barriers in Accessing Justice: The experiences of 14 rape survivors in Uttar Pradesh, India* (2020).

<sup>16</sup> Human Rights Watch, *Everyone Blames Me - Barriers to Justice and Support Services for Sexual Assault Survivors in India* (2017). Padma Bhate-Deosthali, Sangeeta Rege, and Sanjida Arora, *The Aftermath of Rape: Survivors Speak* (Taylor & Francis 2022).

<sup>17</sup> Counsel to Secure Justice and Centre for Criminology and Victimology, *Perspectives of Justice: Restorative Justice and Child Sexual Abuse in India* (2018).

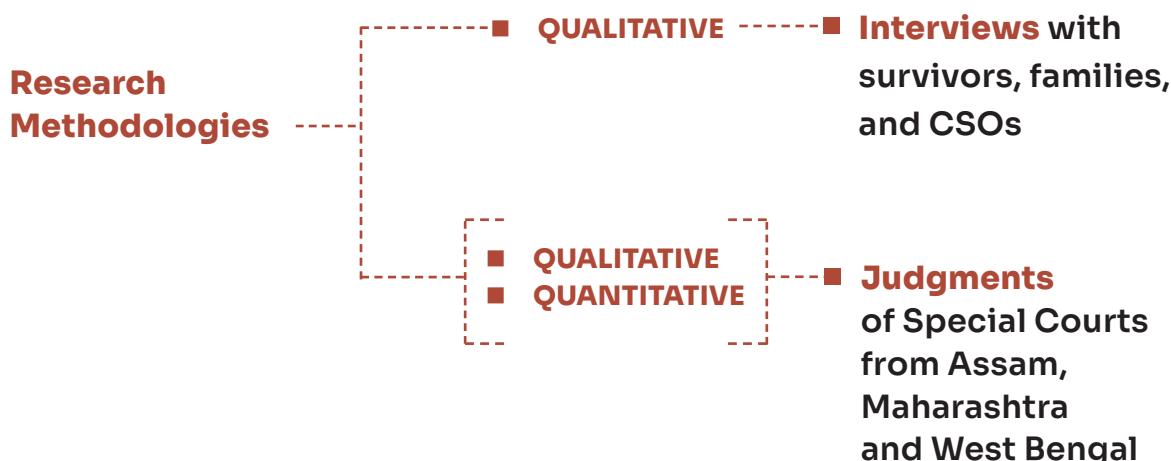
unpack what justice means to survivors and families and whether the criminal justice system can address them effectively.

In this backdrop, this study was designed to:

1. Analyse the profile of victims, accused, and informants; the relationship between the victim and the accused; age-determination process; nature of testimony of victims and informants; appreciation of medical evidence; application of presumptions; judicial outcomes; award of compensation, and the sentences passed in cases of penetrative sexual offences against children that attract the death penalty under the POCSO Act and IPC.
2. Examine the compliance of the police, doctors, Magistrates, and Special Courts with child-friendly procedures laid down in the POCSO Act and Rules.
3. Explore conceptions of justice and “justice needs” in the context of sexual violence.
4. Formulate recommendations to improve the experiences of child survivors of sexual abuse in the criminal justice system and ensure effective implementation of child-friendly procedures in cases of child sexual abuse, and offer suggestions on reimagining justice and sentencing.

# METHODOLOGY

The study uses qualitative and quantitative data gathered from different sources to achieve the research objectives. The sources of data that have been relied upon are given below:



Research Objectives	Data Source/s
Analyse the profile of victims, accused, and informants; the relationship between the victim and the accused; age-determination process; nature of testimony of victims and informants; appreciation of medical evidence; application of presumptions; judicial outcomes; award of compensation, and the sentences passed in cases of penetrative sexual offences against children that attract the death penalty under the POCSO Act and IPC, based on judgments of Special Courts from three States.	Judgments of Special Courts from Assam, Maharashtra, and West Bengal
Examine the compliance of the police, doctors, magistrates, and Special Courts with child-friendly procedures laid down in the POCSO Act and Rules based on qualitative interviews with survivors, families, and civil society organisations (CSOs).	Interviews with survivors, families, and CSOs
Explore conceptions of justice and “justice needs” in the context of sexual violence	Interviews with survivors, families, and CSOs
Formulate recommendations to improve the experiences of child survivors of sexual abuse in the criminal justice system and ensure effective implementation of child-friendly procedures in cases of child sexual abuse.	Interviews with survivors, families, and CSOs; Findings of the report

# A. Nature of Sample

## Selection of States

For the purpose of judgment analysis, the states of Assam, Maharashtra, and West Bengal were selected, as they constituted states with a high rate of POCSO cases in the North-East, West, and Eastern region, respectively. Further, judgments from these states were available on e-courts in English. The method adopted to identify judgments for analysis was as follows:

- All available e-court judgments in the states of Assam, Maharashtra, and West Bengal which included a charge under Sections 376AB and 376DB of the IPC, and Section 6 of the POCSO Act, 2012 decided in 2019, 2020, and 2021, in English were downloaded. The cases were downloaded using “Act-type” and “Case-type” search within the e-courts platform. A total of 970 judgments were obtained.
- These judgments were then filtered. For judgments under Section 6 of the POCSO Act, only cases decided between 2019-2021 where the date of incident, or if the same was unavailable, the date of FIR was after the POCSO (Amendment) Act, 2019 came into force on 16.08.2019 were retained. Cases where the incident happened over a period of time, and part of the incident was before the amendment date and part of the incident was after the amendment date, were included.
- A total of 264 judgments were arrived at after filtering the initial set of 970 judgments according to the aforementioned criteria. The data was cross-checked and underwent two rounds of verification to ensure accuracy.
- Data from judgments was entered into an excel template created to capture details on key inquiries such as informants in such cases, key dates, profile of the accused, profile of the victim, relationship between the accused and victim, age determination, testimony of informants and victims, outcomes, sentencing, provision of compensation, bail, etc. Cross-tables have been used to show trends and patterns on themes such as links between testimony and outcomes, age-determination and outcomes, among others.

**Note:** The term “**victim**” has been used in Parts A and B, while referring to legal provisions and analysis based on judgments and also encompasses deceased victims. This is primarily because of the use of the term “victim” in these cases. Parts B and C which capture the views and voices of those who have been interviewed use the term “**survivor**” to describe respondents who participated in the study, in an attempt to signify their journey through the justice system and beyond.

In judgments pertaining to alleged abuse by a family member or a person related to the child, the name of the accused person in the case title has been redacted to protect the privacy of the victim.

## Methodology for Judgment Analysis

### 1. STATE SELECTION

- ✓ Geographical representation
- ✓ Judgments in English
- ✓ High rate of POSCO cases

#### SELECTED STATES:

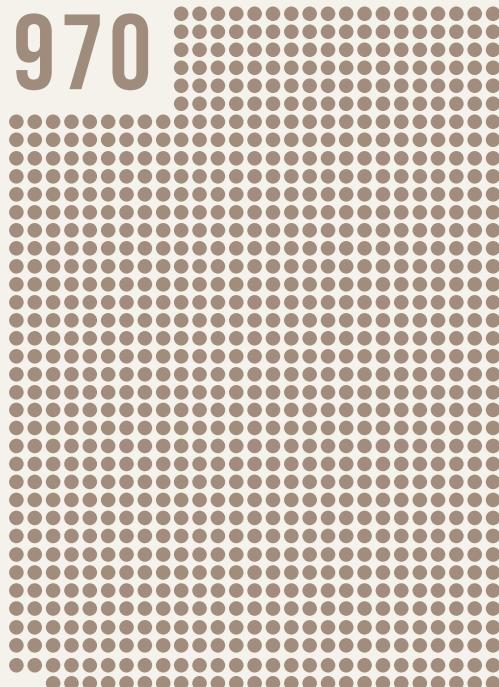


### 2. DOWNLOAD OF JUDGMENTS

All e-Courts judgments from the select states under S.6, POSCO, S.376AB, IPC, & S.376DB, 1PC between 2019-21

#### JUDGMENTS:

**970**

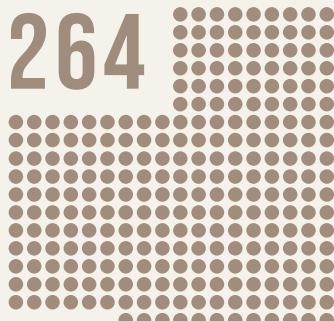


### 3. CASE FILTERING

Cases under S.6 where date of incident/date of FIR was after POSCO Amendment Act, 2019 came into force

#### JUDGMENTS:

**264**



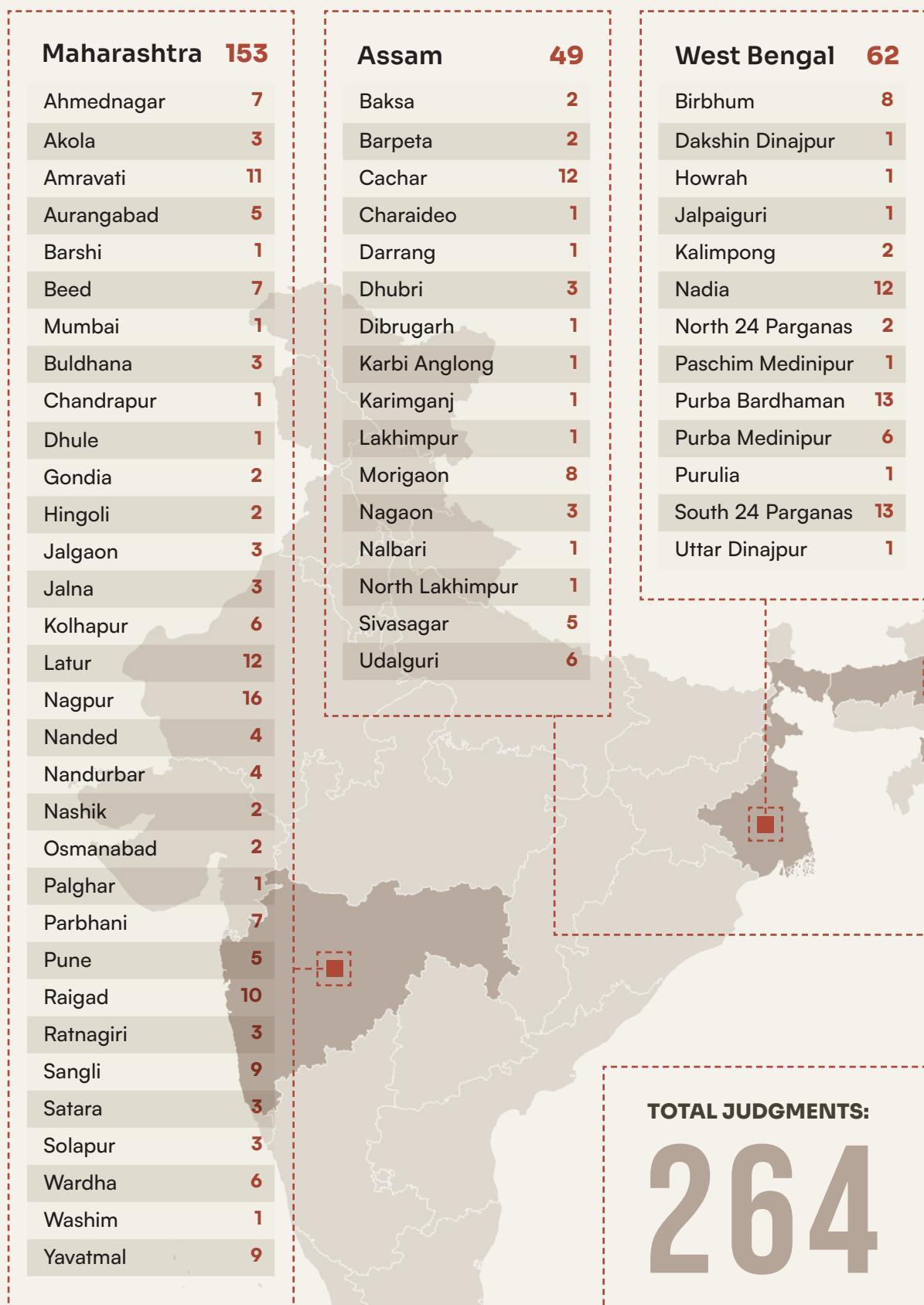
### 4. CASE DATA-ENTRY

Judgment data entry & two rounds of verification. Data entry into excel sheet template capturing key details such as:

- profile of victims, accused, and informants
- outcomes; sentencing
- age-determination
- provision of compensation
- bail etc.

### 5. CASE DATA ANALYSIS

Analysis of data to capture trends

**Table 1:** State and district-wise break-up of downloaded judgments

## Selection of Respondents

### SURVIVORS & FAMILIES

Support of CSOs directly working with child survivors in Assam, Delhi, Gujarat, and Karnataka was taken to identify survivor and family respondents. CSOs from Maharashtra and Tamil Nadu were also contacted, but they said that they did not have contact with survivors who met our criteria or were unable to facilitate such interviews with survivors. A total of **16 interviews** were conducted with child survivors from Assam, Karnataka, Delhi, and Gujarat, and **six interviews** were conducted with families of child victims from the states of Assam, Gujarat, and Karnataka. *Refer to Table 2 for the Profile of Survivor Respondents and Parent Respondents.* Also refer to *Fig 1 for Status of the Cases of Survivor and Parent Respondents.*

Semi-structured interviews were conducted with child survivors of penetrative sexual offences and one child survivor of aggravated sexual assault under the POCSO Act who were above 16 years at the time of the interview, except one child who was 14 years and interviewed together with her mother. Interviews were also conducted with parents of child survivors below 16 years. The purpose of the interviews were to understand their experience of navigating the criminal justice system, the support received, challenges faced, and their perspectives on justice. Qualitative data generated from interviews was transcribed, checked for errors and gaps, reviewed, and then summarised and grouped based on the analysis that also emerged from the study of the judgments.

Strict ethical standards were adhered to in conducting the interviews and an Ethics Committee was constituted to review the interview tools and the methodology adopted. The interviews were designed keeping in mind the sensitive nature of the issue and to minimise re-traumatising the children and their parents. The following measures were taken:

- All interviews were conducted in-person by social workers attached to organisations who had been supporting the families and had a pre-established relationship with the child and/or family. They were oriented by the Enfold team about the research study, its aim, objectives, the research tool, process of taking informed consent, and on documenting the interview. It was emphasised that no child should be compelled or persuaded to participate and if the child felt uncomfortable at any time, the interview should be terminated. The social workers were also instructed to put the questions to the informants in a language and manner that may be understood by them.
- A detailed interview guide was prepared for children, and social workers explained the purpose of the study and how the findings will be used to the children and the family members. The interview proceeded only after prior informed consent of family members and/or assent/consent of the child was received.
- Semi-structured interviews were conducted with child survivors of penetrative sexual offences and one child survivor of aggravated sexual assault under the POCSO Act who were above 16 years at the time of the interview, except one child who was 14 years and interviewed together with her mother.
- An attempt was made to interview either parent where the child was below the age of 16, and it was ensured that the testimony of their child had been completed at the time of the interview.
- No information pertaining to the offence was asked to either the child survivors or their parents. Background information about the cases, relationship of the child and the accused, status of the case in court, and details of compensation were collected in advance from the Support Person or the organisation supporting the child.
- Interviews with survivors and families took place in languages preferred by them, and care was taken to ensure that the survivors were not probed about their responses.

**Table 2: Profile of Survivor & Family Respondents**

\*All names given are fictitious and have been changed to protect the identity of the respondents.

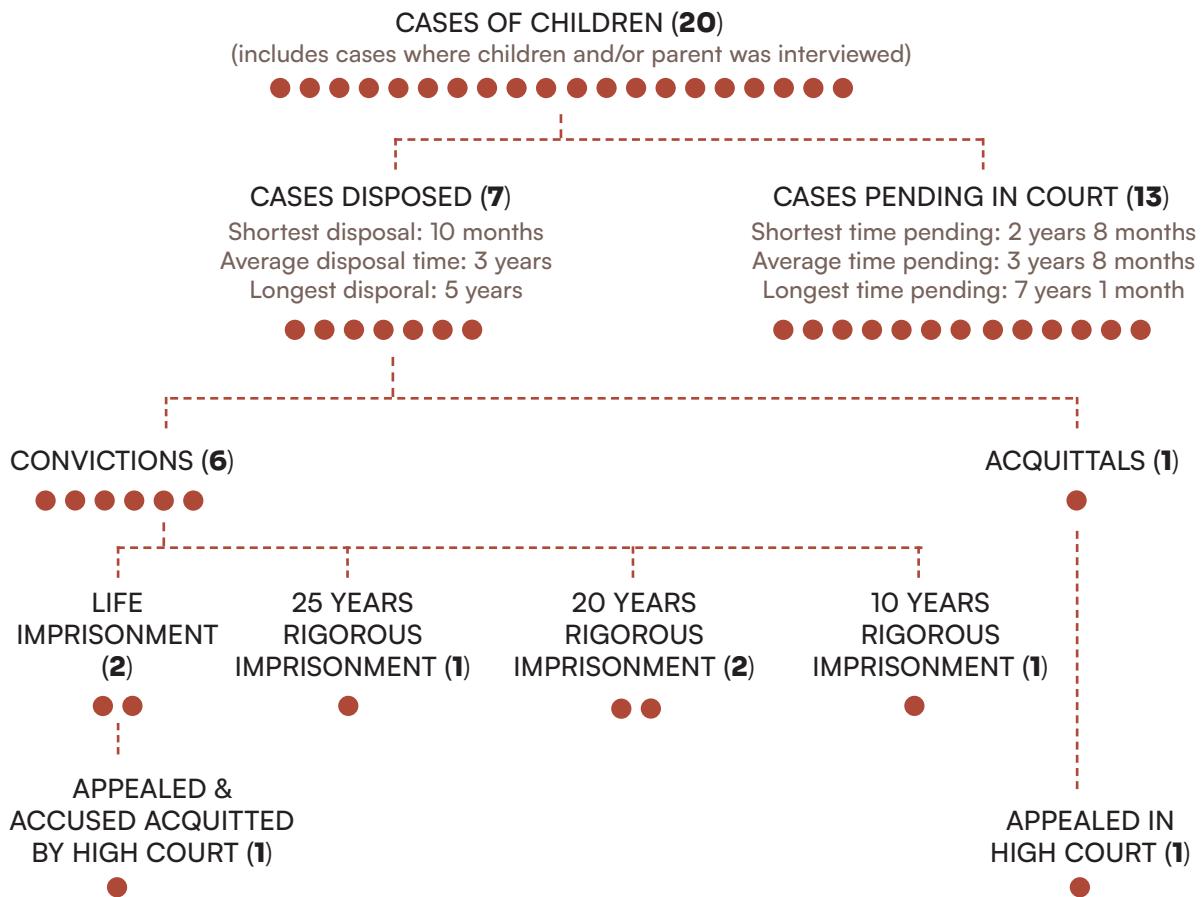
Respondent name	Charges against the accused (as mentioned in Chargesheet)	Relationship between the accused & the survivor	Age of the child at the time of incident	Age of the child at the time of interview	Age of the offender	Brief Facts of the case	Time taken for disposal or time the case has been pending	Outcome of the case if disposed	Details about compensation
<b>Survivor, Parent</b>									
<b>Sarika*</b>	Sec 8 & 12 POCSO Act, 2012 Sec 75, JJ act 2015	Father	13	16	35	The child was being sexually assaulted by her father while she was disbelieved by her mother because of her association with a male friend.	<b>PENDING</b> for 3 years and 1 month ●●●●		Not awarded.
<b>Saanvi*</b>	Sec 376(2) & 506 IPC Sec 6 , POCSO Act 2012	Father's colleague	9	18	40	The child of migrant parents was taken from her home one evening by her father's co-worker and sexually assaulted. After the incident, the father was fired, following which they had to find a new home and change her school.	<b>DISPOSED</b> in 4 years and 2 months ●●●●	Conviction of 10 years Rigorous imprisonment	1,00,000 final compensation awarded by the Special Court which has been partly received by the family.
<b>Savitri*</b>	Sec 366 & 376 IPC Sec 4.5(j) (ii) & 8 POCSO Act, 2012	Neighbour	13	16	25	The child was studying in 7th standard. Her mother was a domestic worker and father a gardener. She was coerced and taken away by a neighbour. She was held in captivity by the accused for about 6 months. The girl was pregnant when the police found her and she was produced before the CWC.	<b>PENDING</b> for 4 years and 2 months ●●●●		50,000 interim compensation awarded by the Special Court which has been received by the family.
<b>Aarohi*</b>	Sec 376, 506 & 109 IPC 5(l), 5(p), 5(q), 5(j), (2), 6 & 17 POCSO Act 2012 Sec 9, 10 & 11 PCMA 2006	Uncle-husband	17	21	35	The child was studying in 12th standard. Under the guise of a housewarming ceremony at her grandmother's house, she was forcibly married to her mother's brother, by her parents, grandmother and uncle. Her husband sexually and physically abused the girl everyday after their "marriage". She became pregnant and fainted in school where the counsellor found out and she was taken to the hospital, after which a case was registered.	<b>PENDING</b> for 3 years and 4 months ●●●●		Not awarded.
<b>Chaya*</b>	Sec 376(2) & (3), 354 & 506 IPC Sec. 10 & 12 POCSO Act 2012	Father	15	22	40- 45	The child was sexually abused by her father multiple times.	<b>DISPOSED</b> of in 5 years ●●●●●	Conviction of life imprisonment	70,000 final compensation awarded by the Special Court which has been partly received by the family.
<b>Esha*</b>	Sec 376, 370, 34, 6 & 21 IPC POCSO Act 2012	Neighbours	17	21	26	The child was trapped into sex work by a couple in her neighbourhood on the pretext of giving her employment.	<b>PENDING</b> for 3 years and 6 months ●●●●		75,000 interim compensation awarded by the Special Court which has been received by the family.
<b>Divya*</b>	Sec 376,354 & 506 IPC Sec 6 & 10 POCSO Act 2012	Father	14	18	36	The girl was sexually abused by her father, which she disclosed to an aunty in the neighbourhood, who then informed the police.	<b>PENDING</b> for 3 years and 7 months ●●●●		Not awarded.

Respondent name <b>Survivor, Parent</b>	Charges against the accused (as mentioned in Chargesheet)	Relationship between the accused & the survivor	Age of the child at the time of incident	Age of the child at the time of interview	Age of the offender	Brief Facts of the case	Time taken for disposal or time the case has been pending	Outcome of the case if disposed	Details about compensation
<b>Lakshmi*</b>	Sec 376, 363 IPC Sec 6 POCSO Act 2012	Romantic partner / Neighbour	17	21	25	The child left her home after an argument with her mother. She went with the accused to another state and took the family's jewellery with her on the suggestion of the accused. On finding her missing from home, her parents filed an FIR under section 363 of IPC. She stayed with the accused and 8 months later came back to her home on her own to get her ID proofs to get married. Her parents then informed the police and the accused was arrested. The girl then found out that the accused was married and had children, after which she wanted to pursue the case.	<b>PENDING</b> for 3 years and 6 months ●●●●		Not awarded.
<b>Preethi*</b>	Sec 376 IPC Sec 6 POCSO Act 2012	Uncle	14	17	40	The child was living with her paternal uncle from an early age and had been abused by him multiple times. She found out about her pregnancy when she started to bleed from her vagina. She was taken to the hospital where a dead foetus of about 24 weeks was born and the police were informed. The child was placed in a CCI as she did not want to live with her parents as they were pressuring her to turn hostile.	<b>PENDING</b> for 3 years and 8 months ●●●●		Not awarded.
<b>Meera*</b>	Sec 376,506 & 342 IPC Sec 4 POCSO Act 2012	Neighbour	12	17	48	The accused was the child's friend's father who lived in the neighbourhood. The accused requested the girl to buy something from the market and when she came to his house to give it to him, he caught hold of her and her younger sister inside his house and locked them in the house. He then told the younger sister to watch TV and he took the elder sister to another room and sexually abused her. The younger sister saw what happened but he threatened both of them and warned them against disclosing the abuse. The child reported the abuse after two days and an FIR was filed. Ever since the case was registered there had been a lot of threats and pressure from the community on her and her family to withdraw the case.	<b>PENDING</b> for 4 years and 3 months ●●●●●		Rs 1,25,000 interim compensation awarded by the Special Court which has not been received by the family
<b>Sonia*</b>	Sec 376 IPC Sec 4 POCSO Act 2012	Uncle	16	19	26	The accused, who was the girl's uncle, was visiting the family. On the day of the incident, the girl was preparing for her board examination and studied till 3 am after which she went to sleep. Her uncle came and slept beside her and inserted his finger in her private parts. In some time she went and narrated the incident to her mother, who after the girl's examination that day went to the police station to file a FIR. The uncle had been arrested thereafter, and then released on bail subsequently. The family had to relocate as the landlord pressured them to vacate because of the case.	<b>PENDING</b> for 2 years and 11 months ●●●		Rs 10,000 interim compensation awarded by the Special Court

Respondent name	Charges against the accused (as mentioned in Chargesheet)	Relationship between the accused & the survivor	Age of the child at the time of incident	Age of the child at the time of interview	Age of the offender	Brief Facts of the case	Time taken for disposal or time the case has been pending	Outcome of the case if disposed	Details about compensation
<b>Survivor, Parent</b>									
<b>Nancy*</b>	Chargesheet not available with the family.	Cousin	15	18	22-23	The child was subjected to penetrative sexual assault by her cousin in her home. The child reported the incident immediately to her parents but instead of supporting her they sent the cousin back to his home and requested the girl not to report the matter to the police. The next day, the child reported the incident to the police with the help of her tuition teacher. Even after the FIR, the parents have remained unsupportive and have created pressure on the child to turn hostile. The child's family also filed a petition in the High Court to quash the FIR but it has been dismissed by the High court because the child stood her ground.	<b>PENDING</b> for 2 years and 9 months ●●●		Rs 50,000 interim compensation awarded by the Special Court which has not been received by the family
<b>Anchal*</b>	Sec 376(2)(i)(n) IPC Sec 4,6 & 8 POCSO Act 2012 Sec 4(1) & 5(1) ITPA 1956	Guardian	15	21	34	The accused was the child's guardian officially and she allegedly prostituted the child several times. The child knew the guardian as her mother. The child was raped by various men and the accused earned from this.	<b>DISPOSED</b> in 1 year and 11 months ●●	Acquitted. An appeal has been filed in the High Court.	Rs 5,00,000 interim compensation awarded by the High Court
<b>Ishita*</b> and her mother <b>Parvati*</b>	Sec 6 & 12 POCSO Act 2012	Father	12	14	Not Available	The child shared with the mother a series of abusive incidents where the child was first sexually assaulted by the accused when she was 6-7 years old, wherein the accused would often touch her chest with his bare hands. As the child grew older, during the lockdown the accused would often touch her breasts and once the accused had tried to put his penis into the girl's vagina but when it hurt the girl pushed him away and ran to a neighbour's house. The mother didn't find the courage to report the matter immediately, but ultimately filed the FIR a few months later.	<b>PENDING</b> for 2 years and 8 months ●●●		Not awarded.
<b>Neha*</b> and her mother <b>Bhavana*</b>	Sec 6 POCSO Act 2012	Father	14	16	Not Available	The 14-year-old child used to reside with her father and paternal family, while her younger brother and mother used to live separately with her maternal family. Owing to marital discord and domestic violence, the parents had parted ways and had arrived at this settlement. Three years later, the child had been missing her menstrual cycle for three months; and knowing the father's past history of abuse and violence, the paternal aunt questioned the child. This was when the child confided in her aunt about the sexual abuse. The mother was informed who then filed an FIR after which the accused was arrested and sent into judicial custody. Since then, the victim child has been living with her mother, younger brother, and her maternal grandmother.	<b>DISPOSED</b> in 1 years and 9 months ●●	Conviction of 25 years Rigorous imprisonment	Rs 50,000 final compensation awarded by the Special Court which has not been received by the family

Respondent name	Charges against the accused (as mentioned in Chargesheet)	Relationship between the accused & the survivor	Age of the child at the time of incident	Age of the child at the time of interview	Age of the offender	Brief Facts of the case	Time taken for disposal or time the case has been pending	Outcome of the case if disposed	Details about compensation
<b>Survivor, Parent</b>									
<b>Fatima*</b>	Sec 6 POCSO Act 2012	Close friend of victim's father	17	20	Not Available	The child was sexually assaulted by her father's close friend which resulted in a pregnancy. The child gave birth to a baby and 4 days later the girl and baby were produced in front of the CWC by the girl's mother. After recording the statement of the girl and her mother, the CWC refused to hand the baby and the girl back to the girl's mother as the girl's mother couldn't produce any valid document(s) to prove her guardianship over the girl. CWC directed the Children's Home to keep the girl and the new born baby and to take them for their immediate health check-ups and immunisation. After an FIR was filed by the girl's father, the accused was placed in judicial custody and a DNA test was conducted. The girl was released from the CCI later and at the time of the interview worked in a factory and had a 2.5 year old who she took care of.	<b>DISPOSED</b> in 2 years and 11 months ●●●	Conviction of 20 years Rigorous imprisonment	Rs 50,000 final compensation awarded by the Special Court which has been received by the family.
<b>Mary*</b>	Sec 376, 326 & 201 IPC Sec 4,8,9M &10 POCSO Act, 2012	Neighbour	5	10	28 approx.	Mary and her daughter were sleeping as usual at night, when her daughter went outside their shanty home to relieve herself. A neighbourhood drunken man abducted the child, sexually assaulted her, grievously hurt her, with the intention of killing her. He passed out after this incident and the beat police found the bleeding child and rushed her to the hospital.	<b>DISPOSED</b> in 10 months ●	Conviction of Life imprisonment	Rs 3,00,000 final compensation awarded by the Special Court which has been received by the family
<b>Radhika*</b>	Sec 376, IPC Sec 4,6, & 8 POCSO Act, 2012	Cousin	8	13	26	Radhika and her ex husband were separated when the incident happened. Her daughter and her elder son used to stay at the father's house in the joint family. Radhika's daughter's was being sexually assaulted by her cousin. Radhika's elder son saw that and informed her, who then complained to the police.	<b>DISPOSED</b> in 4 years and 6 months ●●●●	Conviction of 20 years. An appeal has been filed in the High Court.	Rs 40,000 final compensation awarded by the Special Court which has not been received by the family
<b>Sheela*</b>	Sec 376,506 & 354 IPC 5(L),6,8,9 & 10 POCSO Act, 2012	Cousin	9	13	24	Sheela's daughter's cousin was working in a mechanic shop and living with her family. He was sexually abusing her as well as her younger cousin when no one was at home. He showed them pornographic videos and was forcing the children to act the same way. He sexually assaulted the girls multiple times. One of the girls was impacted very adversely and experienced a lot of psychological issues, lost interest in studies, lost her appetite, and went through a lot of trauma. This child had to be put on psychiatric treatment for an extended period of time.	<b>PENDING</b> for 4 years and 1 month ●●●●		Not awarded.
<b>Suresh*</b>	Sec 376 IPC Sec 3 & 4, POCSO	Neighbour	17	24	28 approx.	Suresh's daughter was raped by their neighbour after calling her to his home on the pretext of giving her some food.	<b>PENDING</b> for 7 years and 1 month ●●●●● ●●		Rs 50,000 final compensation awarded by the DLSA which has been received by the family

**Figure 1: Status of cases of survivor and family respondents**



### Selection of CSOs

Semi-structured interviews were conducted online with national and state-level experts, including organisations providing support to child victims of sexual abuse, to understand their insights on adherence to child-friendly provisions at different stages of the case, challenges faced by victims and family within the criminal justice system, and their views on justice for sexual violence, including death penalty. Twenty organisations were contacted for interviews, of which 14 organisations responded and agreed to participate in the interview. A total of 15 CSO respondents directly working on cases of sexual violence against children and providing psycho-socio-legal support to them were interviewed. On an average, the organisation that the respondents were from had been supporting survivors of child sexual abuse for the past 17 years 7 months. They were based in the states of Andhra Pradesh, Assam, Delhi, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Tamil Nadu, Uttar Pradesh, and West Bengal.

Twelve of these CSO respondents were officially appointed as Support Persons by CWCs and at times by the families directly, while the other three CSO respondents supported the child survivors of sexual assault in other capacities. These organisations provided a range of support to survivors of child sexual abuse at all stages of the legal process, such as before and during the registration of FIR, at the time of recording of 164 statements, medical examination, during evidence in court, trial and post-trial processes such as compensation, rehabilitation of the victim or other psycho-social support. At times, support was extended even before the registration of FIR by offering guidance and support at the police station.

## Nature of Support provided by CSO Respondents



### LODGING FIR

#### 10 CSO Respondents

assist the survivor/family with reporting to the police. One CSO respondent's support begins after the FIR is lodged.



### MEDICAL EXAMINATION

#### 11 CSO Respondents

extend support to the survivor/family by accompanying them to the hospital for medical examination



### LEGAL REPRESENTATION

#### 6 CSO Respondents

provide legal representation to the victims through their own counsels.



### SECTION 164 CrPC STATEMENT

#### 12 CSO Respondents

guide/accompany the survivors through the process of the recording of their statement under Sec. 164 CrPC by the Magistrate. One CSO respondent provides support starting from this stage. Three CSO respondents start providing socio-legal support after the recording of the victim's 164 CrPC statement.



### SECTION 161 CrPC STATEMENT

#### 11 CSO Respondents

guide/accompany the survivors through the process of the recording of their statement under Sec. 161 CrPC by the Police.



### SUPPORT DURING TRIAL

All 15 CSO Respondents provide support through the trial by accompanying the survivor to court hearings, providing case updates and assisting the victim with compensation applications/legal aid/witness protection



### REHABILITATION SERVICES

#### All 15 CSO Respondents

provide rehabilitation support in the form of providing or facilitating psychosocial services, counselling, financial support, vocational training, and assisting with enrollment in school and other rehabilitation services



CSOs provide support till the point the survivors/families seek such support or till the passing of the final judgment.

## B. Data Collection

Data collection was done through semi-structured interviews with CSO respondents by the Enfold core team members and with survivor and parent respondents by CSO Support Persons. Interview schedules with open-ended questions were prepared for each respondent category and the researchers had the flexibility to request further elaboration of any of the points made by the CSO respondents. All interviews with CSOs were conducted via Zoom meetings. Permission to record the interviews was sought in advance. The recorded files of the interviews were deleted once the transcripts were checked for gaps and errors.

All the respondents were provided information about the study before commencing with the data collection. Informed consent was taken prior to the collection of data. The CSO respondents received a link to the Participant Information Sheet with the necessary information about the study in English. They confirmed that they had read the information after which they were asked to insert their name, date, place, and confirm their consent. A record of the results indicating consent, obtained via Google Forms, was maintained by Enfold. This method was used because respondents found it easier to review and click the form, rather than having to take a printout, sign, scan, and email their consent to the research team. All the interviewers were Enfold consultants and staff and signed a Non-Disclosure Agreement along with their contracts which bound them to confidentiality of information obtained during the course of their work, including this research study.

While collecting data, no personal identifiers, particularly names and addresses, were asked and recorded on the tools. All tools contained 'code fields' instead of actual names at the beginning of the tool. Only codes were used to identify respondents, thereby de-identifying their real identities.

## C. Methodological Limitations

### Related to Judgment Analysis

- Judgments from the selected states that were in Bengali, Marathi, and Assamese were excluded from the analysis pool due to lack of time and funds for translation.
- Analysis is based on facts and details as mentioned in the judgment. Records related to evidence could not be accessed. The analysis thus depends entirely on the representation of the testimony by the judge in the judgment.
- Only cases that were disposed of by 31 December 2021 and with an outcome of conviction or acquittal were selected. Cases registered after the amendments came into force that are pending were excluded. Therefore, the data on time taken to dispose of the case from the date of the FIR and the date of registration of the case before the Special Court will not reflect cases that were pending and may have taken longer.

### Related to interviews

- Considering the sensitive nature of the study, survivors were identified with the assistance of organisations working directly with them so as to avoid and minimise re-traumatisation and to also ensure that the survivor and parents are able to receive psycho-social support, if the need arises. Thus the survivor and parent respondents of this study represent a very small minority of those cases that are reported to the police, supported by a support person for a significant duration of time, and where the survivor testified against the perpetrator. For a more detailed explanation of the limitations refer to *Part C* of the report.
- CSO respondents who were interviewed primarily worked in the capital city of the state, and very few CSOs were working in two or more districts. As a result, their reflections on the state of implementation of child-friendly provisions is limited to the cases handled by them in a particular district and is not representative of the implementation of the POCSO Act in their entire state or the country.

# STRUCTURE OF THE REPORT

## The report is divided into three sections:

Each Part has a distinct conclusion and the report ends with a brief section outlining recommendations based on the findings.

### PART A

#### **Key findings based on Judgment Analysis:**

This section examines the trends and outcomes under provisions that have introduced the death penalty for sexual offences against children via the Criminal Law (Amendment) Act, 2018 and the POCSO (Amendment) Act, 2019. This section presents findings that shed light on the nature of cases of sexual violence that attract the death penalty, the relationship between the victim and the accused, and the manner in which victims and informants testify in these cases. It also looks at factors such as the victims' age and the availability of medical evidence, and examines the court's approach towards these aspects while arriving upon its decision.

### PART B

#### **Perspectives of Child Survivors, Families, and CSOs on Implementation of Child-friendly Procedures and Challenges Faced:**

This section details the experience of the victims and families with the police, medical practitioners, Magistrates, and Special Court and examines the compliance with child-friendly and other procedures laid down in the POCSO Act and Rules based on interviews with survivors, families, and CSO representatives.

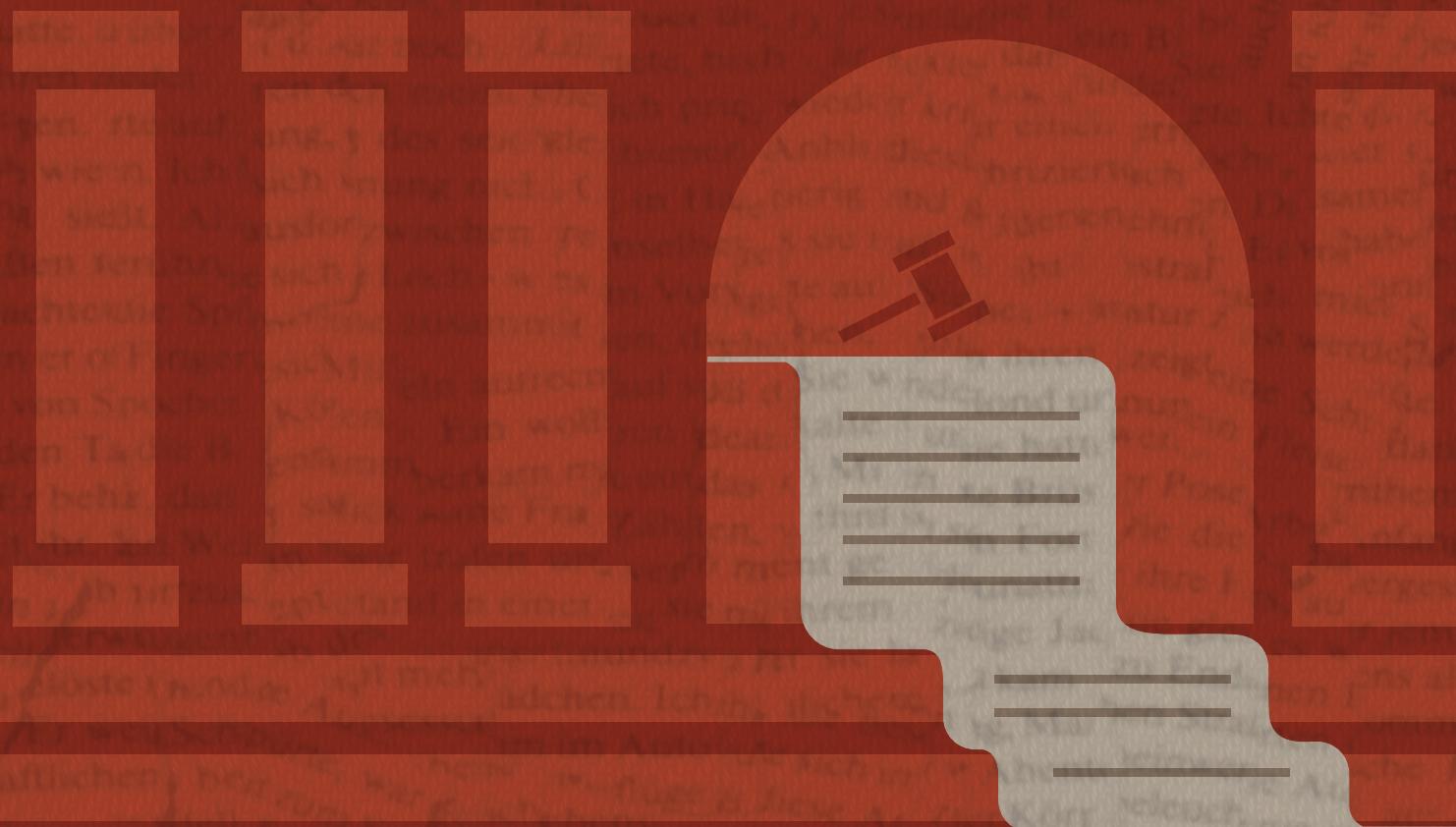
### PART C

#### **Perspectives on Justice and Punishment:**

This section presents an analysis of the views of survivors, families and CSOs on the various justice needs in the context of sexual violence, as well as opinions on death penalty.

PART A

# INSIGHTS FROM JUDGMENTS OF SPECIAL COURTS



# OVERVIEW

The POCSO Act is gender neutral qua the victim and the accused, and also considers penetrative sexual assault against a child with disability or a child below 12 years to be aggravating in nature. An inquiry into the identity of the child victim provides partial insights on vulnerability of certain groups, and the possibility of under-reporting within certain demographics. The relationship between the accused and victim is central to mapping the vulnerability of children, and understanding patterns in testimony which eventually impacts outcomes. It also prompts a re-evaluation of the appropriateness of severe sentences, such as the death penalty, in light of these complex dynamics. Examination of informant profiles also reveals the state of implementation of the mandatory reporting obligation, extent of victims' direct access to the police, and the nature of cases in which the criminal justice system was set into motion. This analysis also reveals the proportion of "romantic" cases within the ambit of aggravated penetrative sexual assault. "Romantic" cases refer to cases in which the victim, the victim's family, or prosecution witness state that the victim and accused are in a consensual relationship and include cases in which the court arrives at this conclusion. Trends in these cases including the age profile of victims and accused persons, the profile of informants, victim testimony, and outcomes explain how they enter the system and the eventual outcomes. They compel an examination of the appropriateness of blanket criminalisation without regard for factually consensual and non-exploitative sexual acts involving adolescents.

Establishing the minor status of the child constitutes a critical component of POCSO cases, given that the POCSO Act only applies to victims below the age of 18 years. The procedure adopted by the Special Courts to decide upon the victim's age, therefore becomes relevant to understand whether there is any uniformity in standards of such determination. The availability and appreciation of medical evidence is also of relevance, as the stigma surrounding sexual abuse results in delayed reporting and the potential loss of medical evidence. However, Section 164A of the Code of Criminal Procedure, 1973 (CrPC), which was introduced via the Criminal Law (Amendment) Act, 2005, requires medical examination of victims of rape to be conducted within a period of 24 hours after it has been reported and with the victim's consent. The POCSO Act specifies that the procedure laid down in Section 164-A, CrPC has to be followed in cases of child victims as well.<sup>18</sup> Weightage given by Special Courts to medical evidence, prevalence of the practice of referring to the hymen, and the conclusions drawn based on the absence of injuries are relevant as sexual assault does not always result in injuries, and a medical examination may be conducted long after the sexual assault due to delay in reporting.

<sup>18</sup> The Protection of Children from Sexual Offences Act 2012 (POCSO Act 2012), s 27.

---

Section 5, POCSO Act stipulates 22 aggravating grounds. The judgments are analysed to examine the extent to which the grounds are disaggregated as it can provide insights on the grounds that are most commonly invoked. In addition to analysing conviction and acquittal rates, it is crucial to delve into the underlying reasons behind these outcomes, considering complex dynamics such as the interaction between victim testimony and their relationship with the accused, alongside other factors such as the establishment of minor status and availability of corroborative medical evidence. A primary aim of the POCSO Act is to facilitate expeditious trials, and timelines are specified for the recording of evidence and completion of trial. The study delves into the findings regarding the duration taken to dispose of cases, and explores correlations between case outcomes and the time taken for disposal.

Sentencing trends are of significant interest in light of the enhancement of sentences and introduction of the death penalty. This study explains the dominant trends and also examines the justifications articulated by the Special Courts in support of life imprisonment and death penalty. It also examines the use of presumptions by Special Courts and highlights the different positions of the Special Courts on the burden that has to be discharged by the prosecution and the defence for the presumption to apply.

Finally, trends in the award of victim compensation are also examined to assess whether Special Courts have operationalised the letter and spirit of the POCSO Act in advancing children's recovery and rehabilitation.

# SUMMARY OF FINDINGS

## 1

## PROFILE OF VICTIMS, INFORMANTS AND ACCUSED PERSONS



Although the POCSO Act is gender-neutral qua the accused and victims, all except one accused person were male, and of the 270 victims, 261 (96.7%) were girls. **Boys (3.3%) and children with disabilities (1.1%) were heavily underrepresented in the judgment sample.** These low figures indicate a lack of recognition of the structural and social barriers children with disabilities may face in accessing the police and reporting violence and patriarchal notions of masculinity that discourage expression of vulnerability and in turn, act as barriers for boys to disclose sexual abuse.

**Majority of victims were in the 12-18 years age group**, constituting 64.6% of victims, with those between 16-18 years comprising 36.4% of victims. At first glance, the data might indicate that adolescents aged 16-18 years are particularly vulnerable to aggravated penetrative sexual assault. However, this conclusion may be misleading. Because the age of consent is 18 years, cases often include those aged between 16-18 years who may, in fact, be in factually consensual and non-exploitative relationships.

**Sexual violence by strangers was an exception.** In cases of aggravated penetrative sexual assault, the accused was known to the victim in 240 cases (90.9%), and was a stranger in only eight cases (3%). In one in four cases, the accused was related to the child. 67 cases (25.4%) were “romantic” in nature, i.e. a case where the victim admitted to the romantic relationship with the accused, or a prosecution witness stated this, or the court arrived at this conclusion

**The police were approached predominantly by family members of the victims — parents, siblings and other relatives.** Collectively, they constituted 78% (206 cases) of informants. Informants in “romantic” cases were predominantly family members of the girl in 50 of 67 such cases (74.6%). Reporting of cases by child protection functionaries, doctors, teachers, or service providers in direct contact with the child was an exception and the decision to report was primarily taken by the family and the victim/survivor. Reporting as a result of pregnancy and/or accessing medical services took place in 28 cases (10.6%).

## 2 AGE DETERMINATION



Determination of the minor status of the victim is essential for the applicability of the POCSO Act, but *express findings related to age-determination were found in only 171 of 264 cases (64.7%)*. A strong correlation was observable between the absence of express findings on the victim's age and the victim's testimony as in 84 of the 93 cases (90.3%) in which the victim's age was not determined, the victim had not incriminated the accused while giving evidence in court.

*No standard procedure for determining the victims' age was discernible*, as Special Courts adopted a variety of methods. Special Courts took into consideration age-related documents such as school certificates and birth certificates, opinions based on medical age determination tests, physical appearance of the child, as well as oral testimonies of victims and their family members to arrive at a conclusion on the victim's age.

*An express reference to the prosecution establishing the minority of the victim was found in only 124 cases (47%)*. Since the judgments did not refer to the age-determination of the victim in 93 cases (35.2%), it is not entirely clear whether the prosecution was able to convince the court about the child's minor status in these cases.

An analysis based on age groups revealed that *the proportion of cases where the victim's minority status could not be established was highest among victims aged 16-18 years*. In 31 out of 76 cases (40.8%) in which the victim was stated to be between 16-18 years, the prosecution could not establish their minority.

*The decisions of the Special Court largely evinced an adherence to the standard of proof beyond reasonable doubt in the context of the victim's age.*

## 3

## AVAILABILITY AND APPRECIATION OF MEDICAL EVIDENCE



*Out of 264 cases, some form of medical or forensic evidence was mentioned in the judgment in 197 cases (74.6%),* of which medical examination reports (MER) of the victim were mentioned in 189 cases (95.9 %).

An analysis of the link between the court's appreciation of the available medical evidence and the outcome in the case indicated that *in cases where the victim testified against the accused and the medical evidence indicated the possibility of sexual assault, conviction was the norm*. In 46 out of 57 convictions (80.7%), the victim testified against the accused and the medical evidence corroborated the sexual assault.

*References to the status of the survivors' hymen was observed in the MER referred to in the judgments from all three states.* Out of the 114 cases where the MER clearly recorded either the absence or presence of injuries, in 48 cases (42.1%), in contravention of the MOHFW guidelines, old tears in the hymen, whether it was intact or torn, were mentioned with no relevant findings related to fresh tears, bleeding, edema, etc. This is problematic as it results in undue emphasis on the victim's sexual history, which is irrelevant in cases of sexual offences against children.

*Some Special Courts expected the medical officer to state whether rape or sexual assault had taken place, despite the Supreme Court's categorical position that they cannot do so.* A problematic assumption observed in the appreciation of medical evidence by some Special Courts was that sexual assault would result in injuries and this led them to question the credibility of the victim's testimony when the MER did not indicate injuries. This approach not only fails to recognise the diverse responses to traumatic events but also perpetuates harmful myths and misconceptions regarding victims' behaviour during sexual assault.

## 4

## NATURE OF CHARGES, OUTCOMES & FACTORS INFLUENCING OUTCOMES



*98.4% cases contained a charge under the IPC in addition to charges under the POCSO Act*, with rape charges in 92.3% cases and kidnapping charges in 31.5% cases.

*Convictions for sexual offences were recorded in a minority of cases* i.e., in 57 of the 264 cases (21.6%), with cases predominantly ending in an acquittal i.e., in 207 cases (78.4%).

*In a majority of cases, i.e., in 177 cases (67.0%) the victim did not say anything incriminating against the accused.* Cases where the victim supported the prosecution were significantly more likely to result in a conviction compared to cases where the victim did not incriminate the accused. Convictions were recorded in 52 out of 77 cases (67.5%) in which the victim testified against the accused, and 175 of the 177 cases (98.8%) in which the victim did not incriminate the accused ended in an acquittal.

**The highest acquittal rates**, reaching 100% when the accused was the victim's husband and 96.7% when the accused was a boyfriend, **are attributed to the notably low rates of testimony against these categories of accused persons.**

**Conviction rates were notably high at 53.8% when the accused was a neighbour and 30% when the accused was another known person** such as an acquaintance, co-villager, or friend. In these cases, a relatively higher proportion of victims testified against the accused, contributing to the higher conviction rates observed. In cases where the accused was a father or mother's partner, the conviction rate stood at 26.7%. Similarly, in cases involving relatives, the conviction rate was 27.5%. The moderate conviction rates in these categories indicate the challenges inherent in cases involving family members.

**A majority of informants did not testify against the accused person despite setting the criminal justice system into motion.** In 125 (56.6%) of the 221 cases in which the informant was a person other than the victim, they did not testify against the accused and 123 of these cases (98.4%) ended in an acquittal. They incriminated the accused in only 75 cases (33.9% cases) and 45 of these cases (60%) resulted in a conviction.

**Of the 124 cases in which the minor status of the victim was established, the accused was convicted for a sexual offence under the POCSO Act and/or IPC in 56 cases (45.2%) and acquitted in 68 cases (54.8%).** All 47 cases in which the minor status of the victim could not be established and all 93 cases in which the age of the victim was not determined, resulted in an acquittal under the POCSO Act.

Of the 167 cases in which data on time taken from registration till disposal was available, **a majority of cases, i.e. 97(58.1%) took over a year from registration of the cases to be disposed of.**

**Of the 70 cases that were disposed of within a year from registration, the victim did not say anything incriminating against the accused in 58 cases (82.9%).** Consequently, the conviction rate was much lower at 12.9% and the acquittal rate was much higher and stood at 87.1% in cases disposed within a year. A possible explanation is that in a large proportion of the cases that were disposed of within a year, since the victim did not say anything against the accused, the Special Court may have dispensed with the examination of formal and other witnesses.

## 5

## TRENDS IN “ROMANTIC” CASES



**One in four cases i.e. 67 out of 264 (25.4%) constituted a “romantic” case.** A “romantic” case comprised cases where the victim-girls admitted to the romantic relationship with the accused; or a prosecution witness stated that there was a romantic relationship between the victim-girl and accused; or the court arrived at this conclusion.

---

**74.6% of informants in “romantic” cases were family members of the girl.**

---

**“Romantic” cases were *prima facie non-exploitative*.** The facts in a majority i.e., 51 cases (76.1%) did not indicate the presence of any exploitative elements. These findings necessitate an examination of the use of criminal law to regulate factually non-exploitative sexual relationships involving adolescents.

---

**Girls’ testimony against the accused was an exception in “romantic cases”** and was seen in only six cases (9.0%), whereas in 60 cases (89.6%) the girl did not incriminate the accused. As a result, acquittals were the norm and were recorded in 65 cases (97%), and convictions were an exception and were recorded in only two cases (3%).

---

## 6

## APPLICATION OF PRESUMPTIONS UNDER THE POCSO ACT



**A reference to presumptions was seen in only 83 cases (31.5%),** of which in six cases it was successfully rebutted by the accused.

---

**A link between the application of presumptions and the nature of testimony of the victim was observed.** Out of the 181 cases where there was no mention of presumption, in 151 cases (83.9%), the victim had not testified against the accused. Out of the 177 cases where the victim did not testify, presumption was mentioned and applied only in seven cases (4%). In comparison, of the 77 cases where the victim testified against the accused, presumption was mentioned and applied in 43 cases (55.8%).

---

**In 47 of 57 convictions (82.5%), the legal presumptions under Sections 29 and 30, POCSO Act were applied.**

---

**Special Courts took different positions on the standard of proof upon the prosecution and the defence in the context of the presumptions.** While some courts held that the prosecution had to establish foundational facts beyond reasonable doubt for the presumption to be applied, others held that the standard was preponderance of probabilities.

## 7

## SENTENCES FOR PENETRATIVE SEXUAL OFFENCES UNDER THE IPC AND POCSO ACT



*In the 44 cases of conviction for a penetrative sexual offence, 62 sentences were passed, of which 38 were under the POCSO Act and 24 under the IPC.*

*The minimum sentence was the most preferred sentence by Special Courts, and was imposed in 31 out of 62 sentences (50%). The minimum sentence was passed in 31.3% of cases in which the accused was related to the victim, whereas minimum sentence was passed in 71.47% of cases in which the accused was not related to the victim.*

*Life imprisonment was imposed in 14 cases and Special Courts considered factors such as the victim's tender age, the accused's close/blood relation to the victim, and the long term mental impact that the assault would have on the victim in cases in which she was alive. Special Courts mentioned deterrence, adequate punishment, and sending out a message to society while sentencing in these cases. Life imprisonment was imposed in 8 of the 16 cases (50%) in which the accused was related to the victim, and in 6 of the 28 cases (21.4%) in which the accused was unrelated to the victim.*

*Non-compliance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 was observed in one case involving a child in conflict with the law, aged 16-17 who had been found guilty of raping a 7-year-old victim and was sentenced to 20 years rigorous imprisonment. He was not produced before the JJB and directly tried by the Children's Court in gross violation of the JJ Act.*

*Death penalty was imposed in two cases and the sentence in both cases was subsequently set aside by the Bombay High Court.*

## 8

## VICTIM COMPENSATION



*Award of interim and final compensation was an exception as a direction or recommendation related to compensation was passed only in 33 of 264 cases (12%) and interim compensation was given in only 2 cases.*

Although, Rule 9(2), POCSO Rules envisages that compensation can be ordered even if the accused was acquitted, *compensation was awarded only in cases that ended in a conviction*, and in only 33 of the 57 cases (57.9%) that ended in a conviction. Further, *it was predominantly ordered in cases in which the victim testified against the accused* (31 of 33 cases).

---

Section 33(8), POCSO Act read with Rule 9, POCSO Rules vests the Special Court with the responsibility of deciding the quantum of compensation so that the victim is spared approaching the DLSA for a fresh assessment and delays are avoided. However, *most Special Courts failed to exercise this obligation and instead recommended that the DLSA determine compensation in 21 out of 33 cases (64%)*.

---

Although Section 33(8), POCSO Act envisages compensation for physical or mental trauma, *a reference to mental trauma of the victim was seen in only two judgments in which compensation was given.*

---

*Of the 55 cases in which a fine was imposed on the accused, the Special Court directed that it be paid to the victim in 29 cases (52.7%).*

# 1 Profile of Victims, Informants and Accused Persons

An unique aspect of the POCSO Act is that it recognises that children of all genders can be victims of sexual offences. Moreover, it adopts an intersectional perspective by specifically addressing the exacerbated nature of sexual violence against children with disabilities. Through an examination of the gender, disability status, and age of victims, significant insights emerge regarding the characteristics of victims subjected to aggravated penetrative sexual assault. When combined with analyses of the profiles of accused persons and informants, these findings contribute to a nuanced understanding of the populations currently accessing or being brought into the criminal justice system, those being “victimised”, and marginalised groups that may remain invisible.

While the National Crime Records Bureau data has debunked the misconception of “stranger-danger” in cases of penetrative sexual assault,<sup>19</sup> this study further unpacks the identities of accused persons. Coupled with the analysis of informant profiles, this section focuses particularly on reporting trends in cases involving incest and romantic relationships.

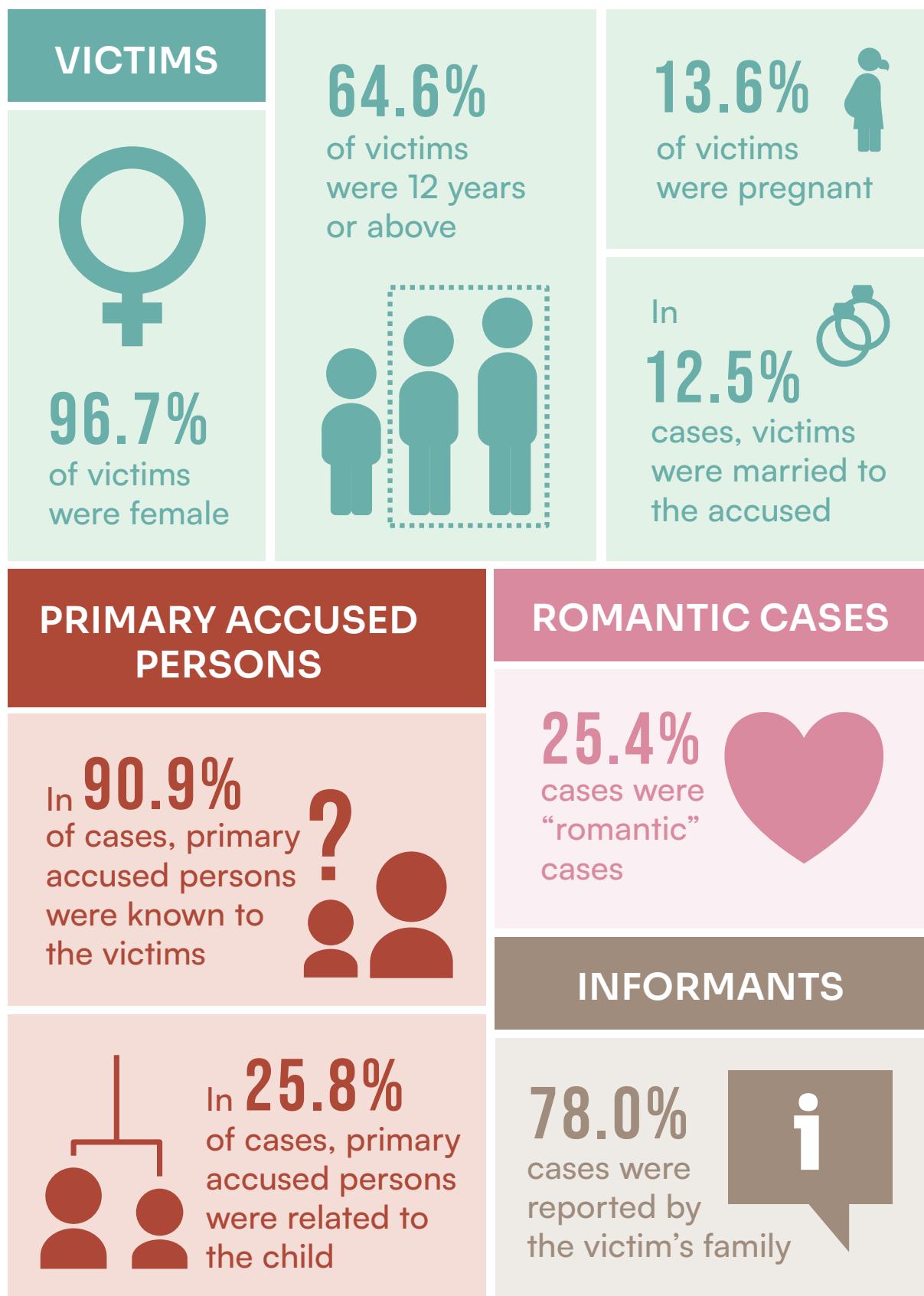
The POCSO Act includes a mandatory reporting obligation, compelling individuals with knowledge of a sexual offence to report it to the police or the Special Juvenile Police Unit, and prescribes punishment for non-compliance.<sup>20</sup> However, concerns have emerged regarding the potential impact of this obligation, especially on adolescents’ unrestricted access to sexual and reproductive health services.<sup>21</sup> This section provides insights into the implementation of the mandatory reporting obligation, assessing whether reporting occurs after interactions with the health system.

<sup>19</sup> 96.81% of the offenders were known to the victim in respect of cases registered under Section 4 and 6 of the POCSO Act. See National Crime Records Bureau, ‘Crime in India 2022’, Table 4A.10 Offenders Relation to Child Victims of POCSO Act (Section 4 & 6) - 2022.

<sup>20</sup> POCSO Act 2012, ss 19(1), 20 and 21

<sup>21</sup> Centre for Child and the Law, National Law School of India University, ‘An Analysis of Mandatory Reporting under the POCSO Act and its Implications on the Rights of Children’ (2018) (CCL-NLSIU Mandatory Reporting Analysis); Jagadeesh N, Padma Bhate-Deosthali & Sangeeta Rege, ‘Ethical concerns related to mandatory reporting of sexual violence’ [2017] Apr-Jun; 2(2) Indian J Med Ethics :116-120; Nanditta Batra, ‘Navigating the conundrum of mandatory reporting under the POCSO Act: Implications for medical professionals’ [2024] Jan-Mar; 9(1) Indian J Med Ethics 58-63.

**Figure 1.1: Profile of Victims, Accused Persons, and Informants**



**Note:**

- ‘Primary accused persons’ refers to a person charged with the commission of a sexual offence against the child.
- The percentages are calculated out of the total number of cases which also includes cases where the information was unavailable. Please see the chapter below for a complete break-up of data.

## 1.1. Profile of Victims

The key findings that emerged from an analysis of the profile of 270 victims are as follows:

■ **Sexual violence against boys and children with disabilities remains invisible:**

Although the POCSO Act is gender neutral qua victims, and studies indicate that boys also experience sexual violence,<sup>22</sup> boys were heavily underrepresented in the judgment sample. Only 9 out of 270 victims (3.3%) were male. Underreporting of sexual violence against boys is also evident from the national crime data which shows that between 2019-2021, only 0.97% of victims under Section 4 or 6 of the POCSO Act were boys.<sup>23</sup> This can be attributed to patriarchal notions of masculinity that discourage expression of vulnerability and, in turn, act as barriers for boys to disclose sexual abuse.<sup>24</sup>

- The POCSO Act evinces an intersectional lens as it expressly recognises the aggravating nature of sexual violence against children with disabilities<sup>25</sup> and provides support measures such as the assistance of a sign language expert or special educator when the statement or evidence is recorded.<sup>26</sup> Global evidence also points to children with disabilities being more vulnerable to sexual abuse, particularly those with intellectual disabilities.<sup>27</sup> Further, data on the extent of reported cases of sexual violence against children with disabilities is not available, because, despite the recommendations of the Committee on the Rights of Persons with Disabilities (CRPD) under the UN Convention on the Rights of Persons with Disabilities to India, the National Crime Records Bureau does not provide such disaggregated data.<sup>28</sup>
- Only three cases (1.1%) out of 264 cases involved sexual abuse of a child with disability. Victims in two cases were described as being “mentally retarded” and in one case as deaf (for details about these cases and the manner in which evidence was recorded, refer to [Section 4.9](#)). These low figures indicate a lack of recognition of the structural and social barriers children with disabilities may face in accessing the police and reporting violence. It also reflects poor adherence to Section 4(1) of the Rights of Persons with Disabilities Act, 2016, which obligates the government and local authorities to take measures to ensure that “children with disabilities enjoy their rights equally with

<sup>22</sup> Ministry of Women and Child Development, Government of India, *Study on Child Abuse: India* (2007) 75. Of the 2324 respondents aged between 18 and 24 years from 13 states who were interviewed about their childhood experience of sexual abuse, 58.33% males shared that they had faced one or both forms of sexual assault which included penetration of anus by objects or penis and oral sex; Alankaar Sharma, ‘Men survivors’ perspectives on impact of child sexual abuse’, [2022] 137 Children and Youth Services Review 4588-4605; Butterflies, *Breaking the Silence: Sexual Violence against Boys in India* [2020] 22.

<sup>23</sup> Average calculated based on Table 4A.2 (ii) SLL Crimes against Children (Crime Head-wise & State/UT-wise) - 2019, 2020 and 2021 in ‘Crime in India’ reports of 2019, 2020 and 2021, published by the National Crime Records Bureau

<sup>24</sup> Sharma (n 22) 4590, 4603.

<sup>25</sup> POCSO Act 2012, s 5(k)

<sup>26</sup> POCSO Act 2012, ss 26(3) and 38.

<sup>27</sup> Lisa Jones and others, ‘Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies’, [2012] Volume 380, Issue 9845, Lancet 899-907; Zuyi Fang and others, ‘Global estimates of violence against children with disabilities: an updated systematic review and meta-analysis’ (2022) May; 6(5) Lancet Child Adolesc Health 313-323.

<sup>28</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of India (CRC Concluding Observations 2019)* [29 October 2019] CRPD/C/IND/CO/1 10.

others”, and provide suitable support measures to enable their exercise of legal rights.<sup>29</sup> The possibility of the police not bringing on record the disability status of victims also exists, either because the disability could not be recognised or no supporting disability certificate was available.<sup>30</sup> Refer to [Table No. A1.1](#) State-wise profile of victims.

- **Majority of victims under the POCSO Act were between 12-18 years:** The age of the victim is a relevant fact that has to be established in court in order for the POCSO Act or specific provisions of the IPC to apply. Both the POCSO Act and the IPC recognise the vulnerability of children below 12 years, and consider penetrative sexual assault or rape against them to be an aggravated offence that attracts the death penalty.<sup>31</sup> The upper age is also relevant because prior to the enactment of the POCSO Act in 2012, the age of consent for sexual intercourse in India was 16 years. Since the POCSO Act defines “child” to mean a person below 18 years, all sexual acts with and among those between 16-18 years irrespective of consent are now criminalised.

Age related data was available in case of 209 victims out of 270 victims (77.4%) wherein the text of the judgment referred to the victims’ age according to the FIR and/or age-related documents produced. Of the 209 cases where age data was available, children below 12 years constituted 35.4% of victims.

Victims under the POCSO Act were predominantly between 12-18 years, with those between 16-18 years comprising 36.4% of victims. In 40 out of 67 (59.7%) “romantic cases”, the victim was between 16-18 years. At first glance, the data might indicate that adolescents aged 16-18 years are particularly vulnerable to aggravated penetrative sexual assault. However, this conclusion may be misleading due to the age of consent being 18 years thus resulting in the inclusion of cases involving adolescents aged 16-18, who may be involved in factually consensual and non-exploitative relationships.

Refer to [Table No. A1.2](#) for a state-wise breakup of age of victim as per FIR and as per document.

**Figure 1.2:** Age profile of victims as per age in FIR and/or age-document (n=209 victims)



**Note:** The category of 16-18-year-old victims includes only victims younger than 18 years.

<sup>29</sup> Rights of Persons with Disabilities Act 2016, s 12(1).

<sup>30</sup> Human Rights Watch, *Sexual Violence Against Women and Girls with Disabilities in India* (2018) 37, 39.

<sup>31</sup> POCSO Act 2012, s 5(m); Indian Penal Code 1860 (IPC), s 376AB (Rape of a woman below 12 years).

## 1.2. Profile of Accused Persons

- **All except one accused person were male.** Although the POCSO Act is gender-neutral, of the 281 persons accused of a sexual offence, 280 (99.6%) were male and only one accused person (0.4%) was female.<sup>32</sup>

Refer to [Table No. A1.3](#) State-wise break-up of number and profile of accused persons.

- **Sexual violence by strangers was an exception.** In keeping with findings in other studies<sup>33</sup> and NCRB data,<sup>34</sup> the primary accused in cases of aggravated penetrative sexual assault was known to the victim in 240 cases (90.9%), and was a stranger in only eight cases (3%). **In one in four cases, the primary accused was related to the child.** The victims' family members such as father, grandfather, adoptive-father, step-father, brother-in-law, and other relatives emerged as a significant category of accused persons — 68 cases (25.8%) in instances of aggravated penetrative sexual assault and rape (see [Section 4.3](#) for the trends in victims' testimony and [Table No. A1.4](#) for a state-wise breakup of relationship between the accused persons and victim).

Previous studies have shown that the proximity of the accused to the victim impacts the latter's testimony and results in higher rates of retraction of prior statements against the accused.<sup>35</sup> This was also flagged by those objecting against the introduction of the death penalty, stating that higher penalties will aggravate the concern of victims retracting their statements, particularly in cases of incest. It was submitted that “[t]he fear of the death penalty will act as a pressure upon children and their families as the trauma or guilt of sending someone they know to the gallows is a heavy burden.”<sup>36</sup>

<sup>32</sup> *State of Maharashtra v Namrata @ Guddi Jagdish Mishra & Ors* [2021] Special Child Case No 65/2019 (Court of Session at Yavatmal). She was charged along with two male accused persons under Sections 363, 366A, 376(3), 343, 370 of the IPC, Sections 4, 6, 17 of the POCSO Act, Section 3(2)(va) of the SC/ST Act and Sections 4, and 5 of Immoral Traffic (Prevention) Act, 1956.

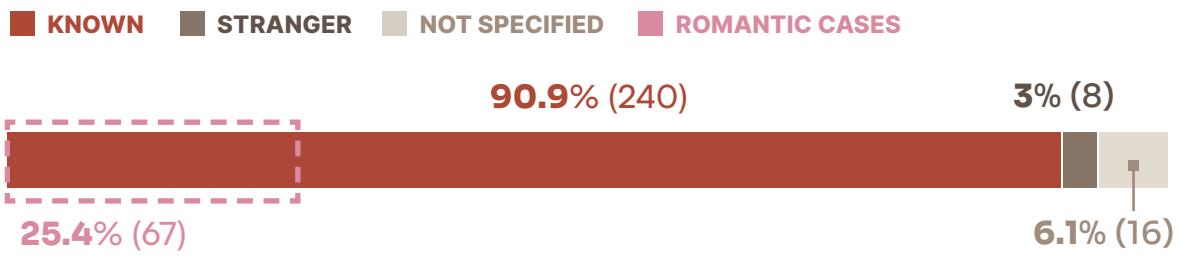
<sup>33</sup> Vidhi POCSO Study (n 15) 95 - The study found that- in its analysis of 138 random POCSO judgments to identify trends in implementation of the Act, it was found that the accused was a stranger to the victim in 6% of cases. HAQ & FACSE Study (n 15) 127 - The study based on judgment analysis of cases decided by Special Courts under the POCSO Act in Delhi and Mumbai found that in 82.5% cases (547 out of 665 cases), the accused was known to the victim. Centre for Enquiry into Health and Allied Themes and Municipal Corporation of Greater Mumbai, *Understanding Dynamics of Sexual Violence : Study of case records* (2018) 24 (CEHAT & MCGM study).

<sup>34</sup> The accused was known to the victim in 98.9%, 100% and 81.3% of cases in Assam, Maharashtra and West Bengal respectively. See National Crime Records Bureau, *Crime in India*, 2021, Table 4A.10: Offenders Relation to Child Victims of POCSO Act (Section 4 & 6) - 2021.

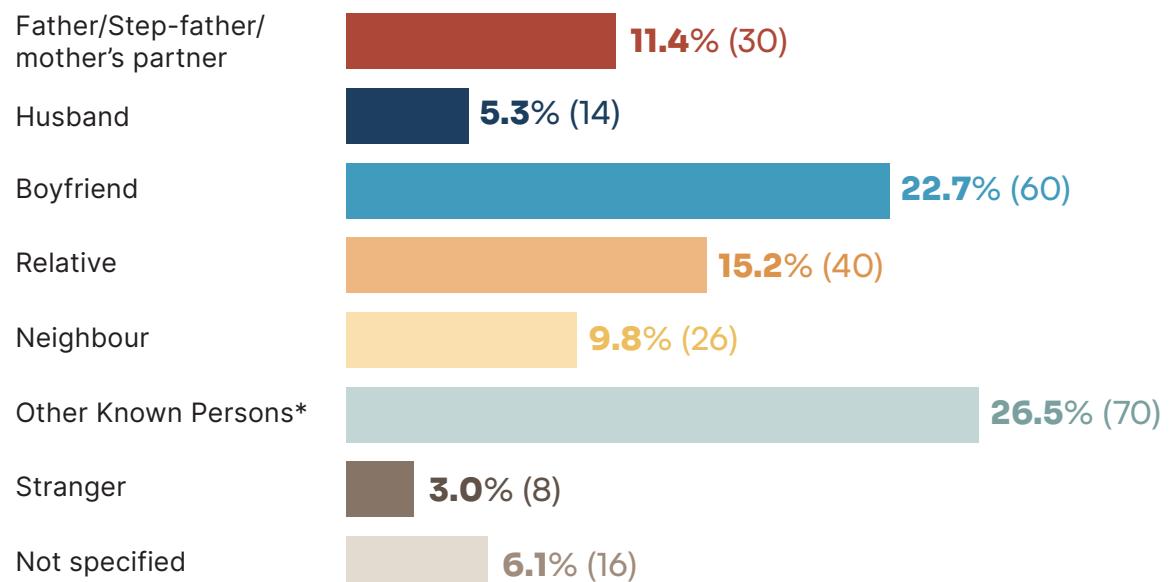
<sup>35</sup> CCL-NLSIU, 'Study on the Working of Special Courts under the POCSO Act, 2012 in Delhi' (2016) 69-70; CCL-NLSIU, 'Study on the Working of Special Courts under the POCSO Act, 2012 in Maharashtra' (2017) 69-70; HAQ & FACSE Study (n15) 129.

<sup>36</sup> Appeal against Criminal Law (Amendment) Ordinance 2018 introducing the death penalty for rape of girls below 12 years to the Prime Minister of India, dated 22 May 2018 signed by 197 representatives of civil society organizations, academics, researchers, advocates, activists and individuals working on issues concerning children in India.

**Figure 1.3:** Proportion of accused persons known to the victim & proportion of “romantic” cases

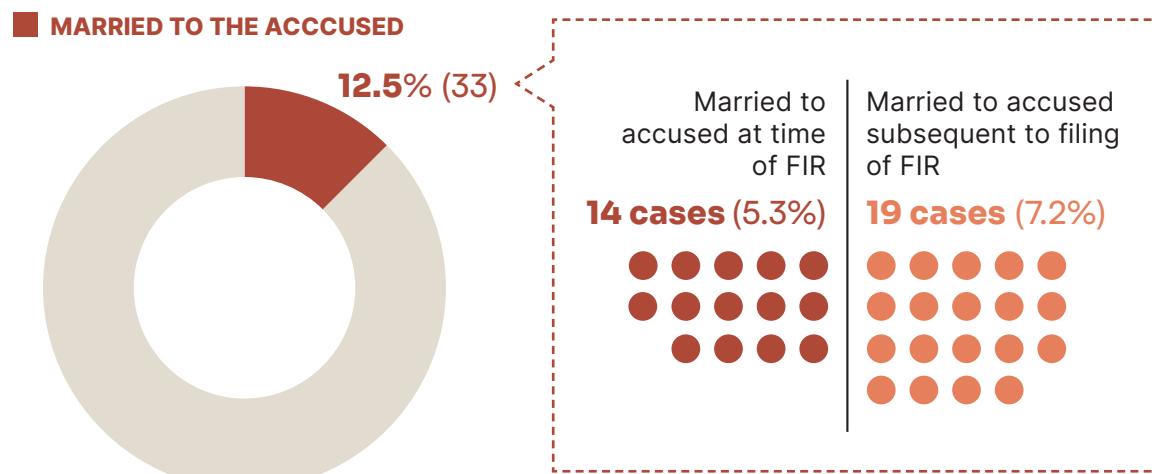


**Figure 1.4:** Relationship of the victim to the primary accused



\*including persons such as a co-villagers, friends, and teachers

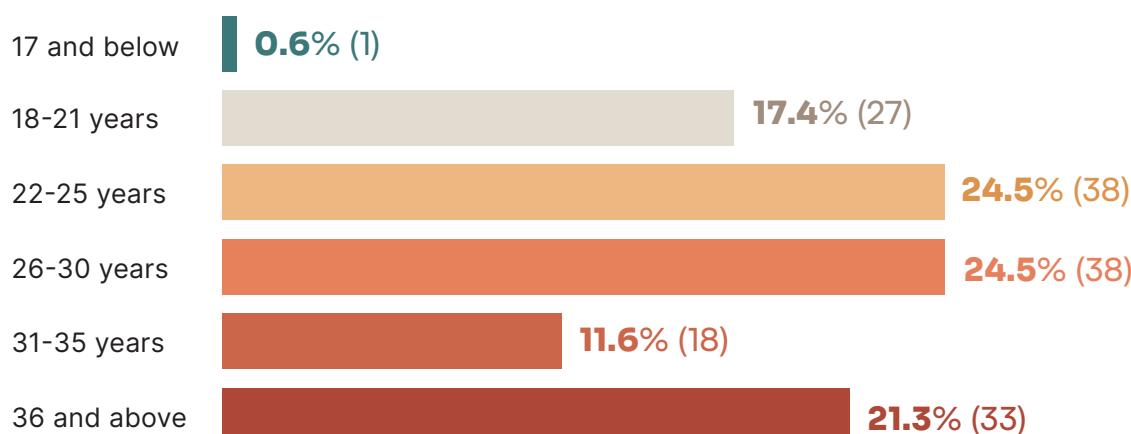
**Figure 1.5:** Marital status of the victim (n=264 cases)



- **One in four cases was a “romantic” case.**<sup>37</sup> 67 cases (25.4%) were “romantic” in nature, i.e, a case where the victim admitted to a romantic relationship with the accused, or a prosecution witness stated this, or the court arrived at this conclusion.<sup>38</sup> The informants in these cases predominantly comprised the victim’s parents, sibling and relatives in 50 cases. In 14 cases, the victim was the informant and in two cases it was a staff member of a Child Care Institution. (see [Chapter 5](#) for trends in romantic cases).
- **In 33 cases (12.5%), the accused was married to the victim**, and 22 of these cases fell under the category of ‘romantic cases’ (see [Chapter 4](#) for the outcomes in cases in which the victim was married to the accused).
- **Data relating to the age of the accused were not available in cases in Assam and West Bengal. Majority of accused persons in Maharashtra were between 22 to 30 years.** The oldest recorded accused person was 80 years old. In only one case (0.7%) from Maharashtra, the accused was 17-years-old and was tried by the Special Court as an adult.<sup>39</sup>

Refer to [Table No. A1.5](#) for gender and age profile of the accused in Maharashtra.

**Figure 1.6: Age of accused persons in Maharashtra at the time of registration of case (n=155 cases)**



<sup>37</sup> In 15 cases the defence pleaded that the case was consensual, but these were not included in the classification of “romantic” cases.

<sup>38</sup> Shruthi Ramakrishnan & Swagata Raha, “Romantic” Cases under the POCSO Act (Enfold Proactive Health Trust, 2022) 5. In this study 1715 out of 7064 cases (24.3%) of POCSO cases decided between 2016-2020 by Special Courts in Assam, Maharashtra, and West Bengal were “romantic” cases; Vidhi POCSO Study (n 15) 95 - In their analysis of 138 random POCSO judgments revealed that there was a prior romantic relation between the victim and the accused in 18% of the cases; HAQ & FACSE Study (n 15) 100 - In 83 out of 231 (35.9%) POCSO cases from Mumbai and Delhi were of romantic relationships; CCL-NLSIU Study (n 15) 133 - Studies based on 2788 cases decided by Special Courts under POCSO Act across five states in India by the Centre for Child and the Law at National Law School of India University (CCL-NLSIU), revealed that romantic cases constituted 21.2% cases in Andhra Pradesh (108 out of 509 cases), 15.6% in Assam (27 out of 172 cases), 21.5% in Delhi (144 out of 667 cases), 5.45% in Karnataka (6 out of 110 cases) [in 3 districts], and 20.5 % in Maharashtra (273 out of 1330 cases).

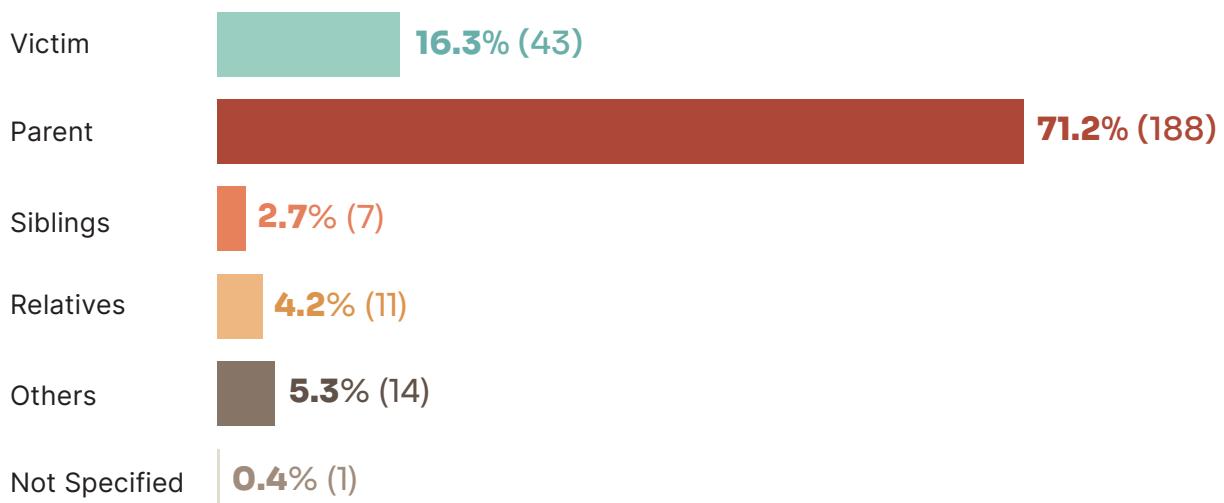
<sup>39</sup> It should be noted that the data set of 264 cases is restricted to cases being tried by Special Courts and does not include proceedings against children in conflict with the law before a Juvenile Justice Board.

- **Breach of provisions of the JJ Act in respect of children in conflict with the law (CICL) were observed in one case each from West Bengal and one from Maharashtra, where the accused was a child in conflict with the law who was tried as an adult.** In the case from West Bengal,<sup>40</sup> although the defence lawyer argued that the accused was a minor and must be dealt with by the Juvenile Justice Board (JJB), the Special Court noted that the investigative authorities had failed to produce any documentary evidence on the age of the accused and based on the ossification test report, he was between 16-17 years on the date of the test. Although the court noted that the child was above 16 and the offence alleged was heinous, and Section 15, JJ Act, 2015 would apply, the Special Court proceeded with the trial instead of directing the child to be produced before the JJB. The child was convicted under Section 376AB, IPC and Section 6, POCSO Act. The Additional Public Prosecutor prayed for the imposition of the death penalty despite the legal prohibition against its imposition on CICLs under the JJ Act.<sup>41</sup> The Special Court ultimately sentenced the child to rigorous imprisonment for 20 years.

In the case from Maharashtra,<sup>42</sup> the CICL was transferred by the JJB and tried under Sections 363, 366A, 376AB read with Section 511 of IPC and Sections 4, 6, and 8 of the POCSO Act for luring the 4-year-old victim to his house by offering her firecrackers and thereafter raping her. The Special Court did not record its decision and the basis on which it concluded that the child needs to be tried as an adult, as required under Section 19(1), JJ Act. The child was eventually acquitted as the victim's mother had not supported the prosecution during the cross-examination and the medical evidence did not corroborate the allegations.

## 1.3 Profile of Informants

**Figure 1.7: Profile of Informants (n=264)**



**40** *State of West Bengal v \*\*\*\**, (2021) Spl POCSO Case No 11/2019 (Court of Additional Sessions Judge Bolpur Birbhum).

**41** The Juvenile Justice (Care and Protection of Children) Act 2015 (JJ Act 2015), s 21.

**42** *State of Maharashtra v \*\*\** (2021) Spl Case POCSO No 08/2019 (Court of Session at Latur).

- **The police were approached predominantly by family members of the victims – parents, siblings and other relatives.** Collectively, they constituted 78% (206 cases) of informants. Victims formed a low but significant group of informants in 43 cases (16.3%) and approached the police to report penetrative sexual assault, breach of promise to marry, or refusal to marry by their romantic partners. The accused in these cases were boyfriends in 14 cases (32.6%); father, step-father, adoptive father or the mother's partner in 11 cases (25.6%); a relative in eight cases (18.6%); an acquaintance in six cases (13.9%), and the victim's husband, neighbour, stranger, and unspecified in one case each (2.3%). The low reliance on the mandatory reporting obligation was evident from the very few cases i.e., 14 cases (5.3%) in which the abuse was reported by those outside the family unit — doctors in three cases, social workers, bystanders, staff of a group foster care facility, and police in two cases each, and by a CWC Chairperson, Mahila Samiti Member, and neighbour in one case each. It is possible that children do not have access to a safe adult or access to any service provider to whom abuse may be disclosed and may not approach them for fear of judgment or shame. Where a safe adult or service provider is aware of the abuse, it is also possible that they do not report to the police owing to lack of awareness of the obligation, failure to recognise that the victim is below 18 years,<sup>43</sup> or lack of adequate information about the details of the abuse. Ethical concerns about prioritising reporting over ensuring care, support, and confidentiality, risk of secondary victimisation of the child due to non-adherence of child-friendly procedures, and disregarding views of the child and the family about involving the police also impact reporting by medical professionals<sup>44</sup> (see [Table No. A1.6](#) for a state-wise breakup of the profile of informants. Refer to [Table A1.7](#) for profile of accused vis-à-vis profile of the informant).
- **Cases against fathers and mother's partners were primarily reported by mothers and victims themselves.** In the 30 cases where the accused was a father/step-father/mother's partner/adoptive father, the abuse was reported by the mother in 13 cases and by the victim in 11 cases. The victims who reported the abuse were between 12-17 years. In three cases, the biological father lodged the case, of which in two cases, the biological father alleged sexual abuse by a step-father<sup>45</sup> and adoptive father, respectively.<sup>46</sup> In one case,<sup>47</sup> although the biological father approached the police because his daughter was missing, when she was traced, she alleged sexual abuse by him. He was subsequently named as an accused. Relatives reported the matter in two cases. Considering the secrecy and shame surrounding sexual abuse, reporting in such cases appears to depend entirely on the mother and older victims. As an exception, only one case was reported by the Child Welfare Committee. **No service provider such as a doctor, teacher, or Childline were seen as reporters in these sensitive cases.**

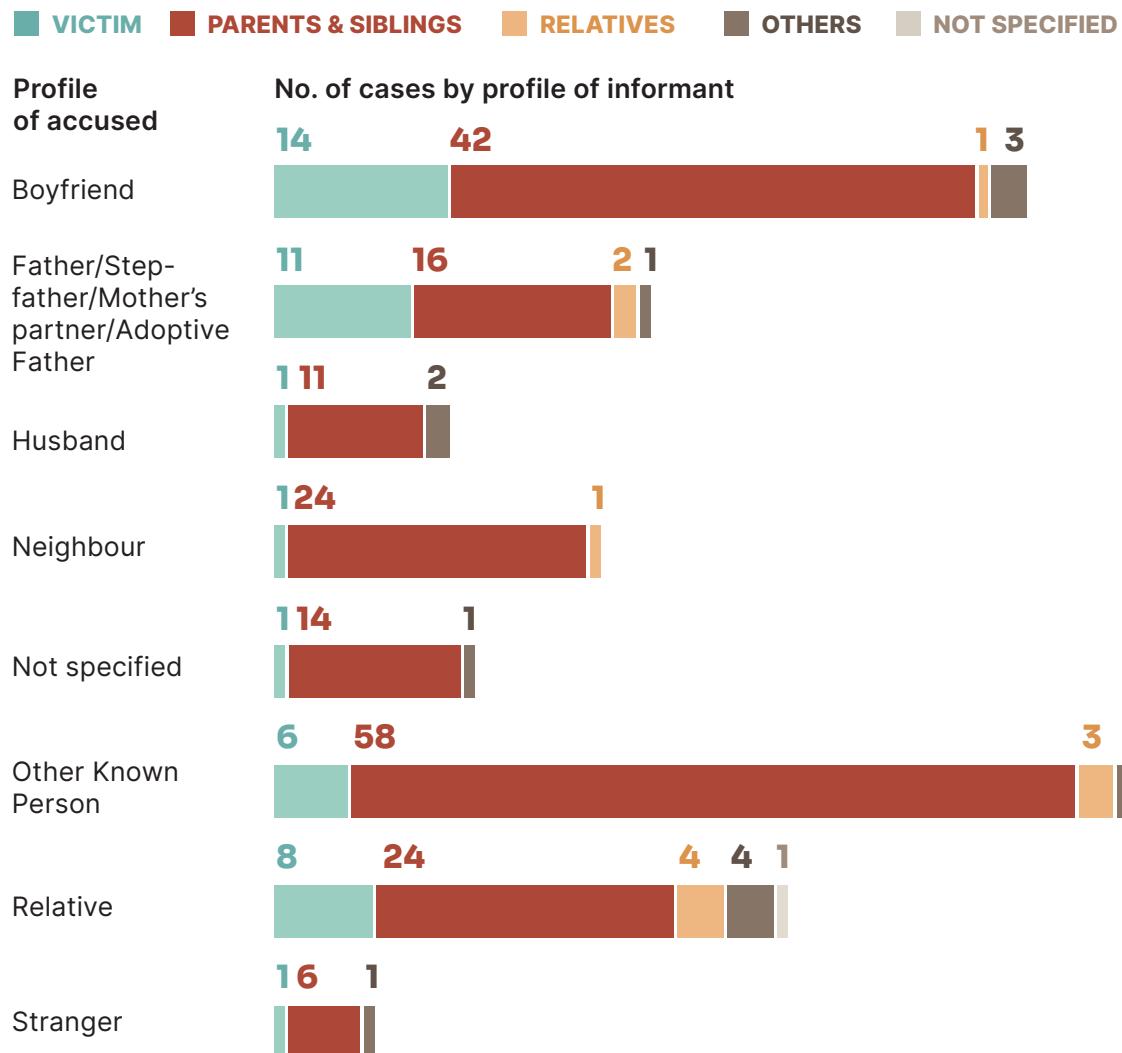
<sup>43</sup> Dr. Chandrashekhar T B v State of Karnataka, [2023] W.P.No. 8789 of 2023 (GM – RES) (Karnataka High Court).

<sup>44</sup> CCL-NLSIU Mandatory Reporting Analysis (n 22) 11-14. Jagadeesh N, Padma Bhate-Deosthali & Sangeeta Rege (n 22) 118-119.

<sup>45</sup> State of Maharashtra v \*\*\*\*, [2021] Spl POCSO Case No 17 of 2019 (Court of Session at Wardha).

<sup>46</sup> State of West Bengal v \*\*\*\*, [2020] Spl POCSO Case No 76/2019 (Court of Session at Cachar).

<sup>47</sup> *ibid.*

**Figure 1.8: Profile of informant vis-à-vis profile of accused**

- **Reporting as a result of pregnancy and/or accessing medical services took place in 28 cases (10.6%).** In 17 of these cases, the victim was in a romantic relationship with the accused and the case was registered after the pregnancy came to light. In this context, the UN Committee on the Rights of the Child's recommendation to India to "[t]ake measures to ensure that adolescent girls and boys have effective access to confidential sexual and reproductive health information and services such as modern contraception as well as girls' access to legal abortions in practice,"<sup>48</sup> assumes significance. Registration of a case following an interface with doctors can hinder adolescent victims' confidential access to sexual and reproductive healthcare.<sup>49</sup> It may render adolescents exceedingly vulnerable as they may be compelled to avoid hospitals or doctors if they do not wish criminal action against their partners, husbands, or relatives.<sup>50</sup> This calls for comprehensive

<sup>48</sup> CRC Concluding Observations 2019 (n 29) para 66(b).

<sup>49</sup> CEHAT & MCGM study (n 34) 40-41.

<sup>50</sup> Swagata Raha & Shruthi Ramakrishnan, *Implication of the POCSO Act in India on Adolescent Sexuality* (2022) 12; CCL-NLSIU Mandatory Reporting Analysis (n 22) 11-14. Jagadeesh N, Padma Bhate-Deosthali & Sangeeta Rege (n 22) 118-119; Aparna Chandra and others, *Legal Barriers to Accessing Safe Abortion Services in India: A Fact-Finding Study* (Centre for Reproductive Rights & Centre for Constitutional Law, Policy, and Governance, NLU Delhi 2021) 140.

sexuality education, confidential and non-judgmental access to health services, so as to prevent early pregnancies and ensure that adolescents' access to health services is not compromised.

- **Informants in “romantic” cases were predominantly family members – parents, siblings and relatives of the girl in 50 of the 67 “romantic” cases (74.6%).** Girls were the informants in 14 cases (20.9%). In two cases, a staff of the Child Care Institution where the victim-girl was residing filed the complaint and in one case a police officer filed the complaint. In 36 “romantic” cases (53.7%), a case was filed after the victim-girl was found to be missing, and in seven cases (10.4%) it was reported after the victim-girl visited a hospital. Factors that prompted victim-girls to file cases included refusal by the accused to marry or a breach of promise to marry after establishing physical relations, forced sexual intercourse, abandonment after birth of a child, violence in the relationship, and community pressure to file a complaint. **These findings are consistent with the results of other studies, which suggest that in “romantic” cases, the initiation of criminal law proceedings is largely instigated by the parents and relatives of the “victim” girl.<sup>51</sup>** This raises concerns regarding the intended focus of the POCSO Act: whether it aims to regulate the sexual activities of adolescents above 16 years or primarily safeguard children from instances of sexual violence.

## 1.4. Conclusion

The low representation of boys and children with disabilities underscores the pervasive gender stereotypes and structural obstacles that hinder them from reporting instances of sexual violence. Additionally, it is apparent that reporting by child protection functionaries, teachers, or service providers who directly interact with the child is uncommon. Instead, the decision to report is predominantly made by the family or the victims themselves. Although doctors are not typically identified as informants, they play a crucial role in reporting cases when pregnancies are discovered or when children seek medical attention. Given that victims aged 16-18 constitute the largest group overall, including within the category of romantic cases, a comprehensive examination is warranted to understand the nature of the sexual violence alleged and experienced by adolescents in this age group. Finally, the statistic which reconfirms that perpetrators of aggravated penetrative sexual assault are known to victims, and that one-fourth of them are closely related to the victim, carries significant weight when considering policy responses to sexual violence against children, particularly in evaluating the appropriateness of the death penalty for child rape.

<sup>51</sup> Shruthi Ramakrishnan & Swagata Raha, “Romantic Cases” under the POCSO Act (n 38) 6; Maharukh Adenwalla and Prakriti Shah, ‘Age of Consent under the POCSO Act’ (SCC Online Blog, 12 March, 2023) <<https://www.scconline.com/blog/post/2023/03/12/age-of-consent-under-the-pocso-act/>> accessed 10 April 2024; HAQ & FACSE Study (n 15) 65, CCL-NLSIU, *Report of Study on the working of Special Courts under the POCSO Act, 2012 in Maharashtra* (2017) 38.

## 2 Age Determination by Special Courts

Age of the victim is a relevant fact that has to be established by the prosecution in cases with charges under the POCSO Act and Sections 376AB, 376DB, and 376(3) of the IPC, as these specify an age threshold for victims. The POCSO Act does not prescribe the procedure to be followed by a Special Court for age determination. Section 34(2), POCSO Act, states that where a question arises 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.”. In *Jarnail Singh v State of Haryana*<sup>52</sup> and *Mahadeo v State of Maharashtra*,<sup>53</sup> noting the absence of a legislative standard on age determination for victims, the Supreme Court had held that the procedure laid down in Rule 12, Juvenile Justice (Care and Protection of Children) Model Rules, 2007 can be applied to ascertain the age of a child victim. With the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015), the procedure for age determination of a child in conflict with the law and child in need of care and protection is laid down in Section 94. As per Section 94(1), JJ Act, 2015, when it is obvious to the CWC or JJB that the person appearing before it is a child, based on appearance, they can proceed with the inquiry and record such observation without waiting for further confirmation of age. Section 94(2), JJ Act, 2015 states:

**“(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence 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) and 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 conducted on the orders of the Committee or the Board : Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.**

Some High Courts held that the procedure under Section 94, JJ Act, 2015 should be followed by Special Courts while determining the age of victims under the POCSO Act.<sup>54</sup> Recently, in *P. Yuvaprakash v State*,<sup>55</sup> the Supreme Court also held that courts have to take recourse to the steps

<sup>52</sup> *Jarnail Singh v State of Haryana* [2013] (3) SCC (Criminal) 302 (Supreme Court of India). The Supreme Court here clarified 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.”

<sup>53</sup> *Mahadeo v State of Maharashtra* [2013] 14 SCC 637 (Supreme Court of India).

<sup>54</sup> *Rajendran v State* (2016) Crl A No 483/2016 (Madras High Court); *Debabrata Sahoo v. State of Odisha* (2020) Criminal Appeal 71/2020 (Orissa High Court).

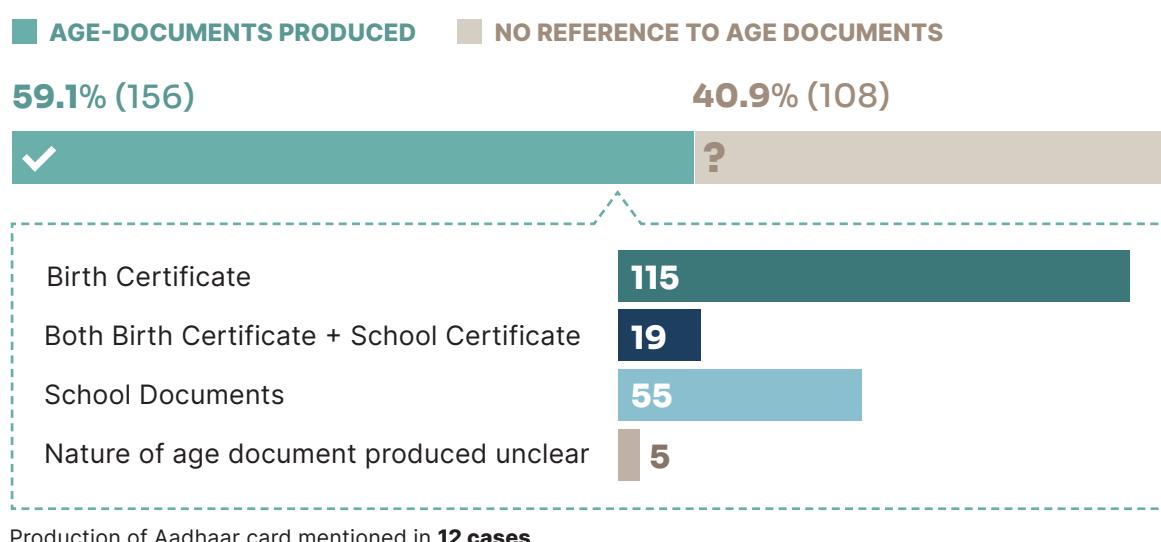
<sup>55</sup> [2023] AIR 2023 SC 3525 (Supreme Court of India).

outlined in Section 94, JJ Act, while dealing with a dispute about the victim's age under the POCSO Act. Since both the POCSO Act and the IPC prescribe stringent punishment for aggravated sexual assault and rape of a woman below 12 years, the procedure followed by Special Courts for determining the age of the victim assumes significance. This section explains the procedures adopted by the Special Court to determine the victims' age and the conclusions related to the age of the victim in these cases. It is based on an analysis of 264 judgments of Special Courts in Assam, Maharashtra, and West Bengal.

## 2.1. Nature of Age-related Evidence

- **In 156 of 264 cases (59.1%), documentary evidence such as a school record or birth certificate was produced to establish the age of the victim.** School records included birth certificates issued by the school, school admission register, marks cards, and school leaving certificate or a transfer certificate. Birth certificates were produced in more cases i.e., 115 cases (43.65) as compared to school certificates or school records which were produced in 55 cases (20.8%).
- **Maharashtra had the highest proportion of cases where an age-related document was produced** — in 114 of 153 cases (74.5%). In West Bengal, documentary evidence was adduced in 34 of 62 cases (54.8%). On the other hand, Assam had the lowest proportion of cases where an age-related document was produced — only in 8 of 49 cases (16.3%). This calls for an examination of the status of birth registration and certification in Assam, and also presents an opportunity for enabling birth registration through the CWC<sup>56</sup> and the DCPU, after a child in need of care and protection comes into the criminal justice system (see [Table A2.1](#): State-wise availability of age-related documents in all cases for state-wise information).

**Figure 2.1:** Availability of age-related documents (n=164 cases)



<sup>56</sup> The CWC can pass orders for the care, protection and rehabilitation of a child in need of care and protection based on the Individual Care Plan, under Section 30(vi), JJ Act. Steps need to be taken to ensure a child in need of care and protection, whether in institutional or non-institutional care has a birth certificate as part of the Individual Care Plan under Form 7 of the Juvenile Justice (Care And Protection Of Children) Model Rules, 2016.

- **Although a reference to medical age determination tests was seen in only 21 cases, in 11 of these cases, documentary evidence of age in the form of school records and/or birth certificates was also available.** According to Section 94(2)(iii), JJ Act, an ossification test or latest medical age determination test should be conducted on the orders of CWC or JJB, if documentary evidence mentioned in the provision is not available. Adherence to this would require that a court order be secured before a medical test is done. However, there was no explanation available as to why a medical age determination test was done when documents were available and whether it was conducted based on an order of the Special Court.
- **No uniformity of references to age-brackets was discernible from the medical opinions based on the age determination test.** The age ranges provided were either two year or three year periods, such as “15 to 16 years”, or “15 to 17 years”. Some cases merely stated “below 10 years”, “below 11 years”, or “18+ years”. For example, one report provided an opinion stating, “15 to 16 years old more towards 15 years”, while another report merely stated that the victim was a “minor” without specifying the tests or methods followed to arrive at this conclusion.

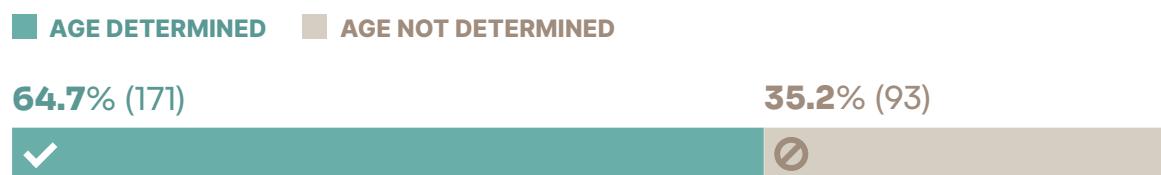
**Figure 2.2: Nature of medical age determination tests done**



## 2.2 Age-Determination Procedure Adopted by Special Courts

- **Although age of the victim was a relevant fact that had to be established in the cases under study, findings relevant to age-determination were expressly stated in only 171 of 264 cases (64.7%).** In 93 of 264 cases (35.2%), the Special Court did not record any finding on the age of the victim. A possible reason for this may have been that in 84 of these 93 cases (90.3%), the victim had not incriminated the accused while giving evidence. Additionally, in 19 of these 93 cases (20.3%), the victim admitted to being in a romantic relationship with the accused hinting at another possible reason for the Court either not delving into determining the age of the victim or not expressly recording its findings on age.

**Figure 2.3: Cases in which age was determined by the Special Court**



- **As stated above, in 2023, the Supreme Court laid down that Special Courts have to adhere to Section 94, JJ Act, 2015, while dealing with a dispute about the victim's age under the POCSO Act.**<sup>57</sup> An express reference to Section 94, JJ Act, 2015, was seen in only two cases and Rule 12, Juvenile Justice (Care And Protection Of Children) Rules, 2007 (now repealed) in six cases. **No standard procedure for determining the victims' age was discernible, as Special Courts adopted a variety of methods.** Special Courts took into consideration age-related documents such as school certificates and birth certificates, opinions based on medical age determination tests, physical appearance of the child, as well as oral testimonies of victims and their family members to arrive at a conclusion on the victims' age. In a majority of cases, multiple forms of evidence were used to arrive at a conclusion on the victims' age and the weightage given to documentary and other evidence varied.

Further, Section 94(1), JJ Act, 2015 states that based on the appearance, if it is obvious to the CWC or the JJB that the person brought before them is a child, the CWC or JJB should record such observation and proceed with the inquiry. An application of Section 94(1), JJ Act by Special Courts would imply that in cases where physical appearance makes it obvious that the victim is a minor, the Special Court can record its observation that the victim is a child and proceed with the trial. However, in *State of Maharashtra v Manoj Vijaykumar Mane*,<sup>58</sup> the Special Court held that the prosecution had failed to establish that the victims were eight and five years old respectively. In this case, the *Pravesh Nigram* (school leaving certificate) Extract of Victim No.1 was produced. There was no mention of whether any age-related documents pertaining to Victim No.2 were produced. The mother testified that the age of Victim No.1 was eight years and the age of Victim No. 2 was five years at the time of the incident. The headmistress, in her cross-examination, admitted that she had not seen the birth certificate of Victim No.1 while entering her date of birth in the school register. The Special Court held that the *Pravesh Nirgam* extract cannot be relied upon, as the basis on which the entry is made is not established, and that the minor status of both victims was not proved.

- **Exclusive reliance on a school record or birth certificate to conclude that the victim was a minor was an exception and was seen only in 35 cases**, of which a birth certificate was relied upon in 26 cases, and a school certificate in 9 cases. Special Courts considered additional evidence such as oral evidence of parents and the victim, physical appearance of the victim, medical age determination tests, and the testimony of the person who recorded the victim's age to arrive at a conclusion.

<sup>57</sup> *P Yuvaprakash v State* AIR 2023 SC 3525 (Supreme Court of India).

<sup>58</sup> *State of Maharashtra v Manoj Vijaykumar Mane* (2021) Spl Case No 35/2019 (Extra Joint District Judge and Additional Sessions at Latur).

Availability of evidence on victim's age in cases where Special Court held that minority was established (n=124)				
Document (birth certificate, school records)	Testimony of parent/victim	Testimony of person who recorded age	Medical Test	Total
✓				35
✓		✓		5
✓		✓	✓	2
✓	✓			47
✓			✓	1
✓	✓	✓		12
✓	✓		✓	3
✓	✓	✓	✓	4
	✓			6
	✓		✓	4
			✓	1
<b>None of the above evidence available</b> (In all these cases victims were below 12 years and Special Courts relied on age as per FIR or as mentioned in the case diary or that the defence had not contested the victim's age)				4

- **The evidentiary standards for the proof of school certificates was distinct from that of birth certificates issued by a corporation, panchayat, or municipality.** For instance, in *State of Maharashtra v Vijay @ Ranu Shankarlal Rawate*,<sup>59</sup> the school leaving certificate of the victim was produced by the prosecution according to which she was 17 years old at the time of the incident. This was corroborated by the evidence of the victim's mother and that of a clerk working in the school where the victim was studying. The Special Court held that mere mentioning of the date of birth in the transfer certificate or school admission register is not a conclusive proof of date of birth. Further, unlike the record of the Registrar of Births and Deaths in the Municipality or Gram Panchayat, or an ossification test, school records on their own are not conclusive. The Special Court further held that the evidence of the mother and clerk is hearsay evidence, which, at most can be treated as a corroborative piece of evidence, and concluded that the victim's minor status was not established.

In several cases from Maharashtra, the Special Court relied on *Mahiboob @ Tanya Peerahamd Shabhai v State of Maharashtra*,<sup>60</sup> in which the Bombay High Court had held that the birth

<sup>59</sup> *State of Maharashtra v Vijay @ Ranu Shankarlal Rawate* (2021) Special POCSO Case No. 294/2020 (Extra Jt. District Judge-1 & Addl. Sessions Judge in Nagpur).

<sup>60</sup> *Mahiboob @ Tanya Peerahamd Shabhai v State of Maharashtra* [2020] ALL MR (Cri) 2585 (Bombay High Court).

certificate issued by the public officer is a public document and according to Section 35 of the Indian Evidence Act, 1872, if an entry is made by a public servant in an official book in discharge of their official duty, then such an entry becomes a relevant fact and admissible as evidence. For instance, in *State of Maharashtra v Gorakh Bhima*,<sup>61</sup> the Special Court relied on the birth certificate which was issued by the Births and Deaths Register maintained as per Section 12 and 17 of the Registration of Births and Deaths Act, 1969 and Rule 8(13) of the Maharashtra Registration of Births and Deaths Rules, 2000. The school leaving certificate also mentioned the same date of birth of the victim, according to which the victim was 13 years old at the time of the incident. The victim's father testified that the victim was 11 years old at the time of the incident. The Special Court, however, concluded that the victim was 13 years old by relying on the documentary evidence and stated that clause 5(m), referring to cases of aggravated penetrative sexual assault of a child under 12 years of age of the POCSO Act would not be applicable. The accused was instead convicted under Sections 4 and 5(r) of the POCSO Act in addition to Sections 363, 392, 394, 307, 376(2)(m), and 376(2)(i) of IPC.

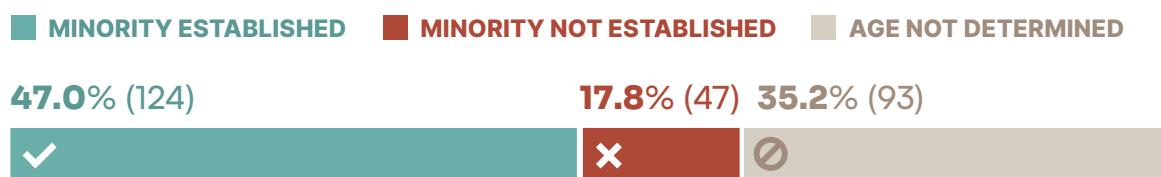
It was thus seen that **the victim's minor status was established in 92% cases (69 of 75 cases) in which only a birth certificate was available, as compared to 65.6% cases (21 of 32 cases) in which only a school record was available.**

- **Lack of contestation of the victim's age or admission of the age by the defence was expressly mentioned by the Special Court while arriving at the conclusion of the minority of 65 victims.** Notably, 31 of these 65 victims were 12 years and below as per the FIR or age related documents. Since their minority may have been obvious based on their physical appearance, the defence may not have contested it.

## 2.3. Outcomes of Age-determination

- **An express reference to the prosecution establishing the minority of the victim was found in only 124 cases (47%) and in 109 of these cases, documentary evidence on the point of age was available.** As mentioned earlier, since the POCSO Act applies to only victims of sexual offences below the age of 18 years, the minority of the victim has to be established by the prosecution for a charge under the POCSO Act to succeed. Since the judgments did not refer to the age-determination of the victim in 93 cases (35.2%), it is not entirely clear whether the prosecution was able to convince the court about the child's minority in these cases (for findings on the link between establishment of minority and outcomes refer to [Section 4.8](#). See [Table A2.2](#): State-wise Outcomes on Age Determination for detailed information).

**Figure 2.4:** Conclusion of age-determination by court



<sup>61</sup> *State of Maharashtra v Gorakh Bhima Rathod* [2021] Special POCSO Case No. 61/2021 (Addl Sessions Judge in Solapur).

- **Where the Special Court concluded that minority was not established, the following factors were seen:** no age-related documents were produced by the prosecution, authenticity of the birth certificate was doubtful due to delay in registration, there were contradictions in the date of birth mentioned in the birth certificate and the Aadhaar card, the victim or parents mentioned a different date of birth than the one mentioned in the documents, inability of the prosecution to establish the basis on which the school documents were recorded, and failure to examine the person who recorded the date of birth in the school register.

**Figure 2.5: Reasons for minority not being established**



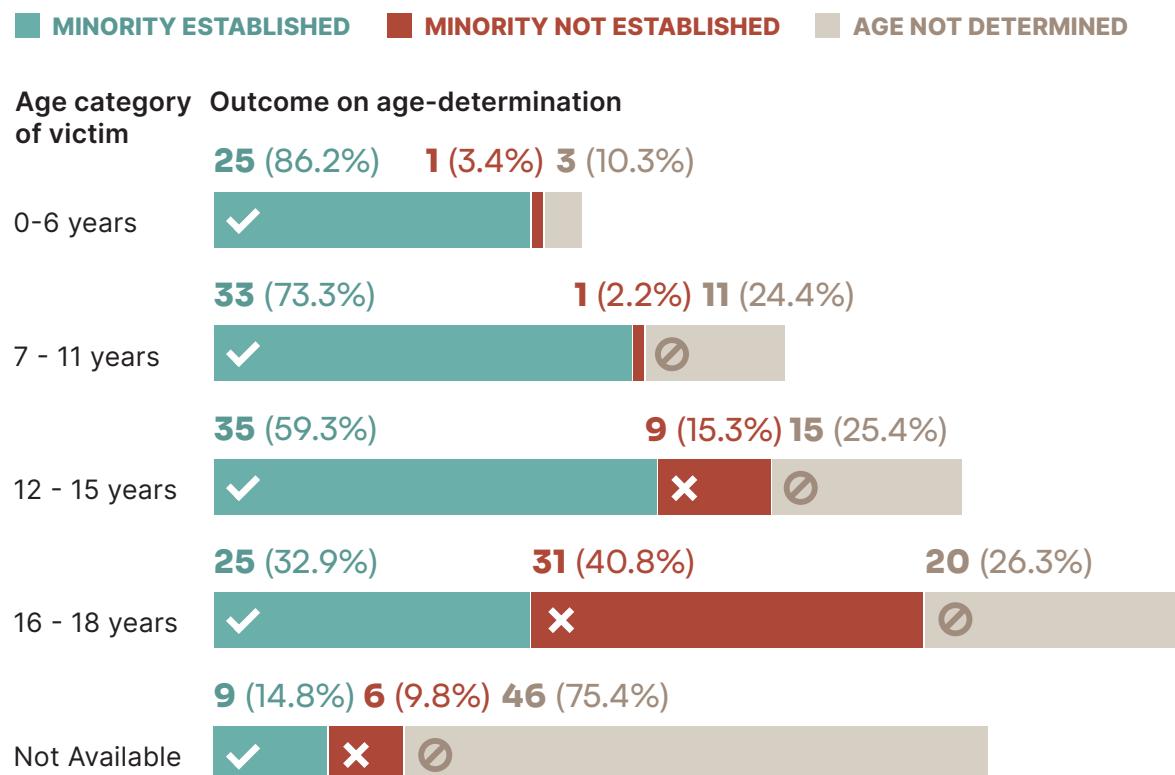
- **An analysis based on age groups revealed that the proportion of cases where the victim's minority status could not be established was highest among victims aged 16-18 years.** In 31 out of 76 cases (40.8%) in which the victim was stated to be between 16-18 years, the prosecution could not establish their minority. Further, 20 out of these 31 cases constituted a romantic case. Of these 20 romantic cases, in 15 cases the victim claimed she was an adult i.e., above 18 years and in 13 of these cases, the Special Court took the victim's position on her age to conclude that she was indeed an adult at the time of the incident. For instance, in one case,<sup>62</sup> the victim was 17 years old at the time of the offence according to her birth certificate, but 18 years as per the Aadhaar Card. Both the victim and her father testified that her age in the Aadhaar Card was accurate. The victim testified that she loved the accused, had gone with him voluntarily, was never forced to have carnal intercourse, and had married him lawfully. The victim's father denied the contents of the FIR, and testified that he never told

<sup>62</sup> State of Maharashtra v \*\*\*\* [2021] Spl POCSO Case No 473/2020 (Extra Jt. District and Additional Sessions Judge Nagpur).

the police that the accused had induced the victim girl to go with him. The Special Court observed that the father did not admit to stating the date of birth to the Municipal Council for the purpose of the birth certificate and this raised a doubt about the correctness of the birth certificate. The Special Court held that the minority of the victim had not been established. Considering that in a majority of cases reported under the POCSO Act, victims are between 16-18 years, the trends in age-determination in this category raise concerns about the POCSO Act being used to criminalise the agency of girls above 18 years in consensual relationships, as well as the taking of the plea that one is an adult to avoid the strict application of the POCSO Act.

See [Table A2.3](#): Break-up of outcomes on age determination by age of victim as stated in the FIR or as per document

**Figure 2.6: Break-up of outcomes on age determination by victim's age**



- **Considering the stringent sentences under the POCSO Act, and the presumption of guilt and culpable mental state, the prosecution has to establish the minority of the victim beyond all reasonable doubt.**<sup>63</sup> The decisions of the Special Court largely evinced an adherence to this standard while arriving at a conclusion on the victims' age. For instance, in *State of Maharashtra v Dashrath Kashinath More*,<sup>64</sup> the prosecution alleged that the 36-year-old accused had impregnated the 14-year-old victim. The prosecution produced the register of the school where the victim studied and examined the teacher of the Zilla Parishad school. The teacher was unable to state the basis on which the date of birth of the victim was recorded in

<sup>63</sup> Shivani Misra and Dr Anup Surendranath, 'A Case for Different Standards in Age Determination Proceedings' [2022] 34, Issue 1, National Law School of India Review 80.

<sup>64</sup> *State of Maharashtra v Dashrath Kashinath More* [2021] Spl Case No 27/2020 (Special Court in Majalgaon).

the admissions register. Further, the name of the victim was different in the school register and in the FIR. The victim was declared hostile after she refused to state anything incriminating against the accused. She testified that she was 19 years old and denied the suggestion that she was 14 at the time of the incident as stated in the FIR. The doctor who conducted the medical examination of the victim testified that he requested an age estimation of the victim from the radiologist and dentist and the report he received showed the victim's age to be 14-15 years. However, this estimate was not considered by the Special Court as an ossification test was not conducted. The Special Court thus held that the minor status of the victim was not established.

- **An express reference to the “beyond reasonable doubt standard” in the context of the victims’ age was found in five cases** of which in three cases, the Special Court held that the prosecution had met the standard. In *State of Maharashtra v Afsar Latif Sayyed*,<sup>65</sup> the prosecution produced the birth certificate of the victim according to which she was 10 years old at the time of the alleged incident. The Special Court held that considering the fact that the genuineness of the birth certificate is not under challenge, and the presumptive value of birth certificates under Section 35 of the Evidence Act, it is proved “beyond doubt” that the victim was a minor. In *State of Maharashtra v Ram Narayan Khote*<sup>66</sup> where the Special Court held that the prosecution had not met the standard, the victim and his father testified that the victim was 12 years old on the date of the alleged incident. However, there was a difference between the date of birth stated by the father and the one mentioned in the admission extract and the variation in dates was about 3.5 years. Since there was a large variation, the Special Court found that there was reasonable doubt in respect of the age of the victim, the Special Court concluded that the minor status had not been established.

## 2.4. Conclusion

Although establishing the victims’ age is an essential requirement in cases under the POCSO Act, a significant number of cases lacked express findings from Special Courts regarding the age of the victims. While this omission might be attributed to the victims’ lack of support for the prosecution in many cases, it is crucial for the court’s determination of age to be documented, as appeals by either parties could be impacted by such oversights. Moreover, it was observed that Special Courts did not consistently adhere to the age-determination procedure outlined in Section 94 of the JJ Act, 2015, raising concerns about the absence of a standardised approach in evaluating age-related evidence. Additionally, the findings suggest that medical age determination tests are sometimes conducted despite the availability of documentary evidence. These aspects can be addressed through capacity-building programs for the police, prosecution, and Special Courts. There is, however, a need for legal clarity regarding the application of Section 94(2)(iii) of the JJ Act, 2015, and whether police are required to obtain a court order for medical age determination.

<sup>65</sup> *State of Maharashtra v Afsar Latif Sayyed* [2020] Spl Case No 397/2018 (Special Court at Ahmednagar).

<sup>66</sup> *State of Maharashtra v Ram Narayan Khote* [2021] Spl Case No 37/2020 (Court of the Special Judge Majalgaon).

### 3 Availability and Appreciation of Medical Evidence

Medical examination of victims under the POCSO Act has to be carried out in accordance with Section 164A, CrPC.<sup>67</sup> Further, Rule 6(1), POCSO Rules, 2020 obligates the police or the SJPU to refer a child victim of penetrative and aggravated penetrative sexual assault, as well as sexual assault, to emergency medical care. It is crucial to consider the impact of the culture of silence surrounding child sexual abuse and the complex dynamics involved, which often lead to delayed disclosure of abuse and the loss of physical signs of abuse.<sup>68</sup> Even in cases where medical examinations are conducted promptly, sexual assaults may not always result in visible injuries to the victim or indicate the presence of spermatozoa if condoms were used or if the sample had disintegrated, or a different test was used.<sup>69</sup> The assumption that child sexual abuse will always result in injuries is flawed, as physical force or violence is rarely employed.<sup>70</sup> Additionally, the timing of the medical examination is pertinent, as injuries can heal quickly. Besides, the accused may have used threats, overpowered the victim, used lubricants, or committed the assault when the victim was unconscious, which may explain the absence of injuries due to resistance.<sup>71</sup> Therefore, negative findings in medical examination reports do not necessarily indicate that a sexual offence did not occur.

The Supreme Court has also emphasised that convictions can be based solely on the testimony of the victim and corroborative evidence is in the nature of a guidance of prudence and not a legal requirement.<sup>72</sup> Further, slightest penetration would constitute rape and the absence of a ruptured hymen or injuries would not affect the otherwise cogent testimony of a victim.<sup>73</sup> Further, in *Madan Gopal Kakkad v. Naval Dubey*,<sup>74</sup> the Supreme Court endorsed the opinion in *Modi on Medical Jurisprudence and Toxicology* that:

**“...rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one.**

While considering forensic reports, courts must also bear in mind that penetration is not confined to peno-vaginal penetration; penetration by objects and fingers fall within the ambit of penetrative sexual assault and rape<sup>75</sup> and absence of medical evidence does not necessarily imply that the abuse did not take place.

<sup>67</sup> POCSO Act 2012, s 27(1).

<sup>68</sup> World Health Organisation, 'Guidelines for medico-legal care for victims of sexual violence' (2003) 75 (WHO Guidelines).

<sup>69</sup> Dr. Jagadeesh N, Appreciation of Medical Evidence by Special Courts in POCSO cases in CCL-NLSIU Report (n 15) 101.

<sup>70</sup> WHO Guidelines (n 68) 76.

<sup>71</sup> Dr. Jagadeesh N, Appreciation of Medical Evidence by Special Courts in POCSO cases in CCL-NLSIU Report (n 15) 101-102.

<sup>72</sup> *State of Punjab v Gurmeet Singh* [1996] 2 SCC 384 (Supreme Court of India).

<sup>73</sup> *Ranjit Hazarika v State Of Assam* [1998] 8 SCC 635 Supreme Court of India.

<sup>74</sup> (1992) 3 SCC 204 (Supreme Court of India).

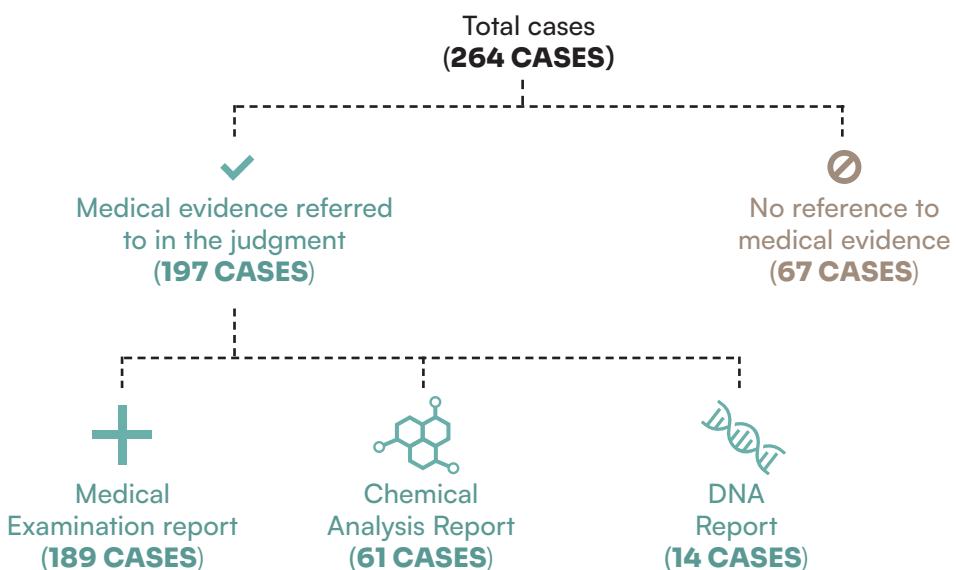
<sup>75</sup> Ministry of Health and Family Welfare, 'Guidelines and Protocols: Medico-legal Care for Survivors/Victims of Sexual Violence' (March 2014) 10 <<https://main.mohfw.gov.in/sites/default/files/953522324.pdf>> accessed 18 January 2023 (MOHFW Guidelines).

Drawing from medical examination reports of victims, this section outlines the availability and characteristics of medical evidence within the analysed judgments. It examines the importance accorded by Special Courts to medical evidence and its interplay with the testimony of victims, ultimately impacting the final outcomes. It also delves into pertinent aspects regarding the conduct of medical examinations of victims, biases evident in the medical examination reports, and the assumptions made by Special Courts regarding the victims' conduct and character based on medical reports.

### 3.1. Availability and Nature of Medical Evidence

- **Out of 264 cases, some form of medical or forensic evidence was mentioned in the judgment in 197 cases (74.6%).** Medical examination reports (MER) of the victim constituted the highest proportion of evidence and were discussed in 189 cases. DNA analysis was available in 14 cases, of which 13 cases were from Maharashtra, and one from West Bengal. Chemical Analysis reports were referred to in 61 cases.

**Figure 3.1:** Availability and nature of medical evidence



**Note:** In some cases more than one form of medical evidence was available

- **Medical examination of the victim was the norm as a reference to it was found in a majority of the cases, i.e., in 228 cases (85.98%).**<sup>76</sup> In two cases, the Special Courts observed that owing to a lapse by the police and medical practitioner, no medical examination was conducted. In *State of Maharashtra v Trimbak Ramkrushna Dahiwal*,<sup>77</sup> the accused, an acquaintance of the victim's family, was charged with disrobing and kissing the 3-year-old victim. A month after the police report had been lodged, the victim's family claimed that the accused had also inserted his finger into the victim's vagina.

<sup>76</sup> In one case the medical examination was done on one victim, but not the other where consent for medical examination was withheld. In 26 cases (9.8%), there was no information available as to whether the victim's medical examination was conducted or not.

<sup>77</sup> *The State of Maharashtra v Trimbak Ramkrushna Dahiwal* [2020] Spl Case Child No 62/2019 (Special Court at Jalna).

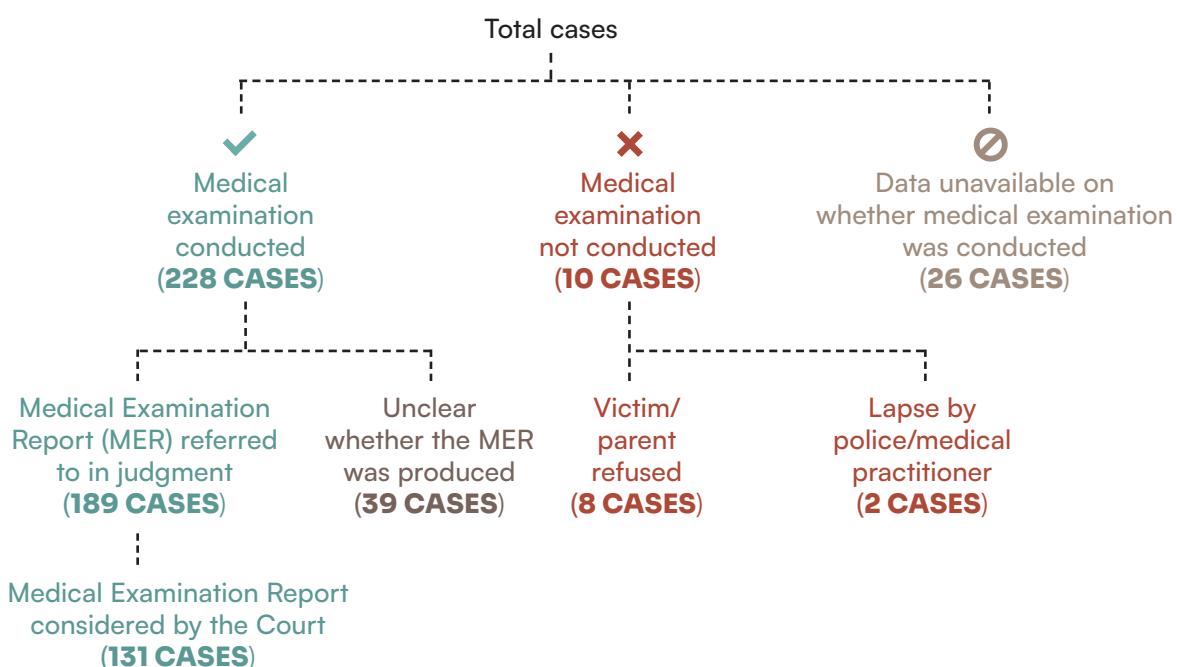
The Special Court observed:

**“** The investigating officer has not followed this mandate. The medical examination of the victim has not been conducted. Had the medical examination of the victim was conducted it would helpful to find out whether or not penetrative sexual assault has been committed on the victim girl.<sup>78</sup>

This prompts the question whether medical examinations should solely rely on the history provided or if doctors should proceed with a comprehensive examination regardless of the reported history, but with the consent of the victim or competent person.

- The MER predominantly contained opinions on the presence of injuries, both genital as well as physical/external, suffered by the victim, and the condition of the hymen, including its laxity. In some cases, the tearing of the hymen itself was considered an injury in the MER.
- The victim's consent or that of a person competent to consent on their behalf is required for the conduct of medical examinations of victims of rape.<sup>79</sup> There were eight cases in which the ME was not done because the victim or guardian did not consent. Further, in *State of Assam v Bakul Borah*<sup>80</sup>, the Special Court drew an adverse inference because the victim had withheld consent observing that, “the refusal of the victim to undergo medical examination also created shadow of doubt as to the happening of any incident of sexual assault upon the victim.” This is concerning as the Special Court disregarded the statutory right accorded to the victim to refuse a medical examination (see Section 2.3, Part B - Informed Consent of Guardians and Survivors for more information).

**Figure 3.2: Availability of medical examination report (MER)**



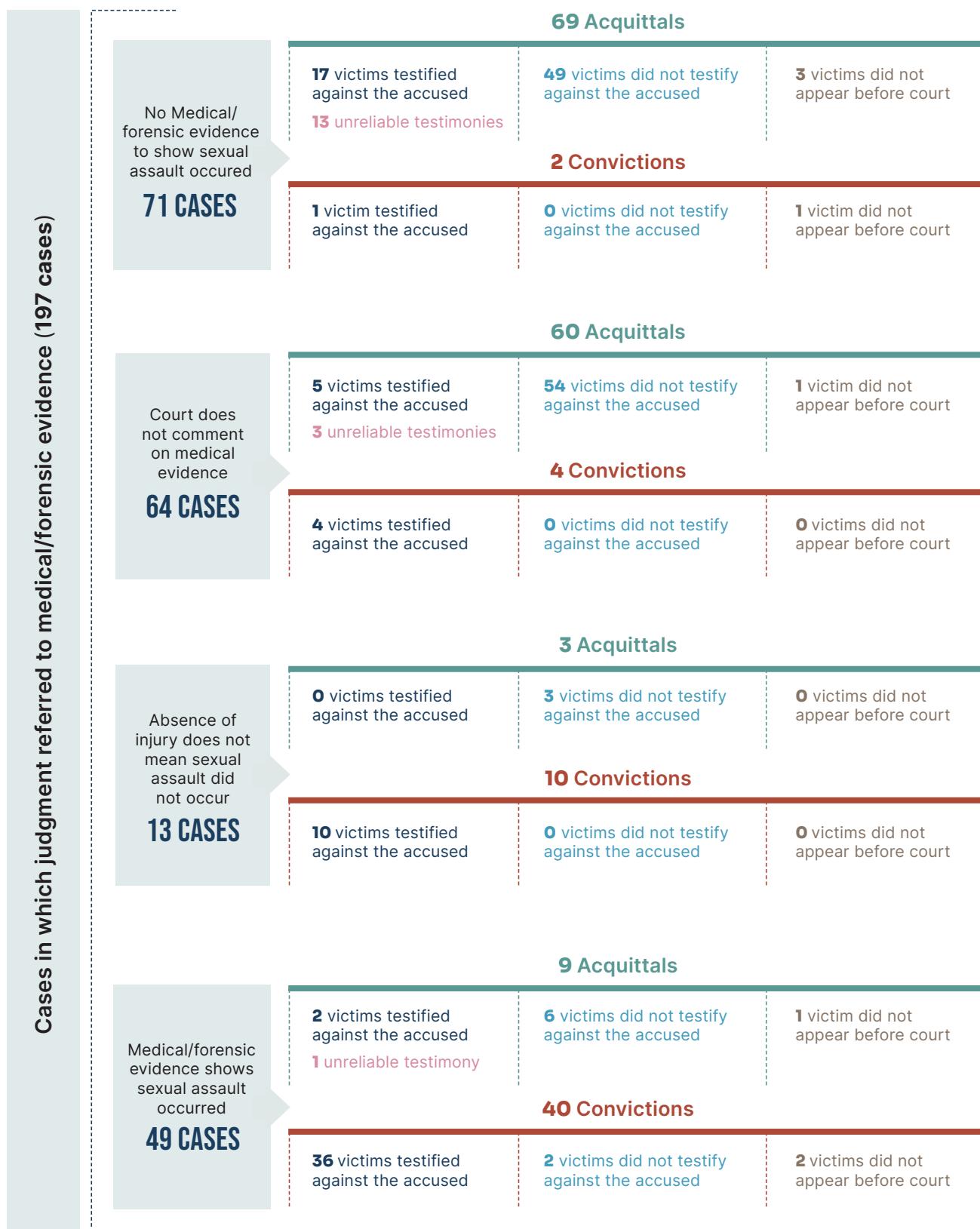
<sup>78</sup> *ibid* [34].

<sup>79</sup> Code of Criminal Procedure 1973 (CrPC 1973), ss 164A(1)(4) and 164A(1)(7).

<sup>80</sup> *State of Assam v Bakul Borah* [2020] Special (POCSO) Case No. 40/2019 (Addl Sessions Judge in Udalguri).

### 3.2. Appreciation of Medical Evidence and its Link to Victim's Testimony & Outcomes

Figure 3.3: Linking medical evidence with victim testimony and outcomes

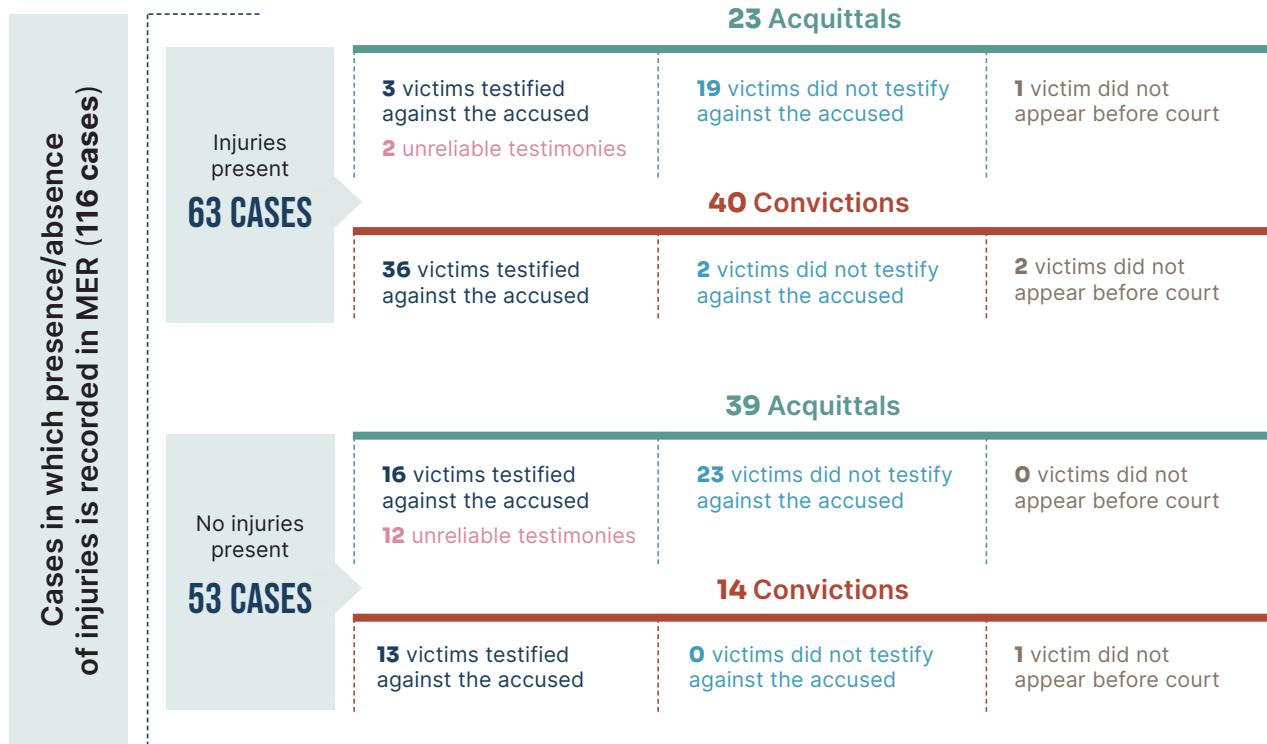


- **An analysis of the link between the court's appreciation of the available medical evidence and the outcome in the case indicated that in cases where the victim testified against the accused and the medical evidence indicated the possibility of sexual assault, conviction was the norm.** In 46 out of 57 convictions (80.7%) the victim testified against the accused and the medical evidence corroborated the sexual assault. Even in instances where the medical evidence did not directly corroborate the prosecution's case or where the judgment was silent on medical evidence, convictions were recorded in eight cases based on the reliable testimony of the victim or informant.
- **Of the 197 cases in which the judgment referred to medical evidence, in 49 cases (24.7%), the court concluded that the medical evidence indicated that sexual assault had occurred.** 40 of these resulted in a conviction and in 36 out of the 40 (90%) cases, the victim had also testified against the accused. In the remaining nine cases, the victim had either not testified against the accused (six cases), not appeared (one case), the victim's testimony was found unreliable (one case), or the medical examiner's testimony was found unreliable (one). In two of these nine cases, the DNA report supported the prosecution, but the Special Court concluded that in the absence of substantive evidence from the victim and her parents, DNA cannot be the basis of conviction.
- **In 71 out of 197 cases (36%), the court held that there was a lack of medical evidence to suggest that sexual assault had taken place.** Only two cases in this category (2.8%) resulted in a conviction. One of these had reliable victim testimony. And, in the other, the victim was of tender years and did not appear before court, but her grandmother — an eye-witness — testified against the accused. An overwhelming majority, comprising 69 out of the 71 cases (97.1%), resulted in acquittal. Consistent with the overarching trend emphasising the significance of the victim's testimony, it was observed that in 49 of these 69 cases, the victim did not testify against the accused. Additionally, in three cases, the victim did not appear before the court, and in 13 cases, the victim's testimony against the accused was deemed unreliable.
- **Of the 189 cases where the victim's MER was produced before the court, the Court did not discuss the findings or record any finding about its evidentiary value in 58 cases (30.7%). It was apparent that the Special Courts did not delve into the MER in cases where the victim/ informant did not support the case of the prosecution.** In 49 of these 58 cases (84.48%), the victim or the informant did not say anything incriminating against the accused and in four of these cases they also did not appear in court to testify. In one such case, where the alleged survivor eloped with the accused and did not testify against him, the Special Court stated that, “In such circumstances [no testimony from the victim or her family], evidence regarding age of victim, spot panchnama, seizure panchnama and medical evidence is not sufficient to connect accused in the commission of offence.”<sup>81</sup>

---

<sup>81</sup> State of Maharashtra v Kirtan Bideshram Paal [2021] Spl. POCSO Case No. 464/202 (District Judge in Nagpur).

**Figure 3.4: Linking presence or lack of injuries with outcomes and victim testimony**



- **Consistent with the overarching finding that the victim's testimony is a primary consideration, the analysis indicates that this factor significantly influenced both convictions and acquittals in cases where injuries were either present or absent.** Acquittals occurred even when injuries were present, often because the victim did not testify against the accused or their testimony was deemed unreliable. Additionally, in 14 cases, the court reasoned that there were alternative explanations for the presence of injuries, and other factors contributed to acquittals, such as the prosecution's failure to prove the victim's minor status, lack of resistance by the victim, and absence of a Forensic Science Laboratory (FSL) report. Similarly, the absence of injury did not prejudice the prosecution, with convictions being recorded in 13 cases based on the cogent testimony of the victim.
- **DNA profiling may be done while conducting a medical examination of a victim of rape as well as a person accused of rape.**<sup>82</sup> In nine out of 14 cases in which DNA evidence was available, it indicated that the accused was the biological father of the child born to the victim or an aborted foetus. The accused was convicted in seven cases and acquitted in two because the victim did not testify against them. Some Special Courts described DNA evidence as "clinching evidence" having "scientific accuracy"<sup>83</sup> and "conclusive proof"<sup>84</sup> of paternity. However, in *State of Maharashtra v. Bapu Soma Hatgir*,<sup>85</sup> the victim had not testified against the accused and the court observed that the "DNA report, howsoever advanced scientific technique, is only a corroborative piece of evidence ... In absence of ocular evidence, it is not possible to record [the] verdict of conviction even if scientific evidence is alluring and tempting."

<sup>82</sup> CrPC 1973, ss164A(2)(iii) and 53A(2)(iv).

<sup>83</sup> *State of Maharashtra v Waman Vitthal Shende* [2021] Spl. (POCSO) Case No.72/2019 (Additional Sessions Judge in Yavatmal).

<sup>84</sup> *State of Maharashtra v Mukesh @ Rupesh @ Fata* [2021] Special POCSO Case No. 247/2020 (Special court in Nagpur).

<sup>85</sup> *State of Maharashtra v Bapu Soma Hatgir* [2021] Special Case No.131/2019 (Court of Sessions in Dhule).

## DNA Evidence vis-à-vis Survivor Testimony

To illustrate the approach taken by the courts where DNA evidence was available, two cases are contrasted in which the DNA report confirmed that the accused was the biological father of the abortus. In both these cases, the survivor and her family did not testify against the accused.

In *Dashrath Kashinath More*<sup>86</sup>, the accused allegedly had sexual intercourse with his cousin, a girl between 14 and 19 years, resulting in a pregnancy that was terminated. During her medical examination, she said she was 14 years old and had a sexual relationship with the accused and another person named Vishal, whom she liked. Later, she underwent an MTP and the DNA analysis of the abortus concluded that the accused was the biological father. During the trial, in their evidence, she and her parents denied every detail of the prosecution's version of events including her name and age, which she stated as 19. The doctor who performed the MTP and collected the DNA sample from the abortus was not examined in court. There was a delay in sending the sample to the FSL. She was not conclusively proved to be a minor. These factors contributed to the acquittal of the accused. On the DNA evidence and the paternity of the abortus the Court noted that "**[S]olely on the basis of DNA report, it cannot be concluded that the product of conception of victim matched with blood of accused Dashrath, when there was sexual intercourse between victim and Vishal...as well.**" While the DNA report could indicate a false positive, it is unlikely to be because the survivor had sexual intercourse with another person. Scientific evidence in this instance was interpreted with a preconceived notion of chastity expected from the victim.

On the other hand, in *State of Maharashtra v Iqbal Ismail Monye*,<sup>87</sup> a 17-year-old girl was sexually assaulted by a 38-year-old religious leader in her locality who threatened to kill her if she told anyone. The survivor underwent an MTP and the DNA analysis of the abortus concluded that the accused was the biological father. The victim refuted the prosecution's version of events, including the video recording of her statement while making the complaint. The doctor who conducted the MTP stated that samples for DNA analysis from the abortus and the survivor were submitted sealed to the police before witnesses, with supporting signed documentation. Similarly, the doctor who conducted the medical exam of the accused corroborated sample collection and submission for DNA analysis. The chemical analyser who conducted the DNA analysis was examined extensively and explained the method of analysis to arrive at the conclusion regarding the paternity of the abortus. Based on the DNA report, satisfaction as to the chain of custody and the testimony of the investigative officers, the court convicted the accused even with the lack of supporting testimony from the survivor or her family.

<sup>86</sup> *State of Maharashtra v Dashrath Kashinath More* [2021] Spl [Child] Case No.27/2020 (Court of Special judge in Majalgaon).

<sup>87</sup> *State of Maharashtra v Iqbal Ismail Monye* [2021] Special Case No. 21/2020 (Additional Sessions Judge in Ratnagiri).

### 3.3. Areas of Concern

- **Misconception that an ME should be conducted by a gynaecologist was apparent in a few cases.** In *State of West Bengal v Sajim @ Biswajit Mandal*,<sup>88</sup> the 13-year-old survivor was allegedly raped by two persons. She identified the accused and her testimony supported the prosecution's case. Her medical examination was conducted the day after the incident by a medical officer who was not a gynaecologist. The medical officer examined the vulva and vagina of the survivor and obtained a vaginal swab. She recorded her findings, including that she did not find any vaginal injury. She also suggested that the investigating agency take the survivor to a gynaecologist and psychologist. It is unclear if this was for treatment or collection of medical evidence. The MOHFW Guidelines do not require the medical examination to be conducted by a gynaecologist and any medical practitioner can conduct the complete medical examination.<sup>89</sup> Despite this and the fact that the medical officer examined the genital area of the survivor in some detail, the Special Court in this case described the medical examination as "superficial"<sup>90</sup> and admonished the investigating officers for not taking the survivor to a gynaecologist.
- **References to the status of the survivors' hymen was observed in the medical examination reports referred to in the judgments from all three states.** Observations on the hymen and the "two-finger" test are typically associated with the virginity of the survivor. In cases of rape, these findings are used to comment on the victim's sexual history and perpetuate myths about false allegations and victim resistance for the offence to have taken place.<sup>91</sup> They bear no relevance to establish the lack of consent or extent of penetration,<sup>92</sup> and are irrelevant in POCSO cases, as consent of the minor is immaterial. The MOHFW includes injury and infection involving the hymen as a part of examination of the vulva in case of a female survivor.<sup>93</sup> However, the Guidelines also make it clear that:

**“...the status of hymen is irrelevant because the hymen can be torn due to several reasons such as cycling, riding or masturbation among other things. An intact hymen does not rule out sexual violence, and a torn hymen does not prove previous sexual intercourse. Hymen should therefore be treated like any other part of the genitals while documenting examination findings in cases of sexual violence. Only those that are relevant to the episode of assault (findings such as fresh tears, bleeding, edema etc.) are to be documented.”<sup>94</sup>**

Yet, out of the 114 cases where the MER clearly recorded either the absence or presence of injuries, **in 48 cases (42.1%), in contravention of the MOHFW guidelines, old tears in the hymen, whether it was intact or torn, were mentioned with no relevant findings related to fresh tears, bleeding, edema, etc.** Concerningly, in 25 cases, the reference to the hymen was used to form opinions on the survivor's sexual history. For instance, in *State of West Bengal*

<sup>88</sup> *State of West Bengal v Sojim @ Sajim @ Biswajit Mondal* [2021] Spl Case No. 90(12)/2019 (Special Court in Krishnanagar).

<sup>89</sup> MOHFW Guidelines (n 75) 20.

<sup>90</sup> *ibid* 19.

<sup>91</sup> Durba Mitra & Mrinal Satish, 'Testing Chastity, Evidencing Rape Impact of Medical Jurisprudence on Rape Adjudication in India', (2014) Vol 49 Issue 41 EPW 54-56.

<sup>92</sup> *ibid* 54.

<sup>93</sup> MOHFW Guidelines (n 75) 28.

<sup>94</sup> *ibid*.

*v Bikram Singh*,<sup>95</sup> the 26-year-old accused developed a sexual relationship with the 13-year-old victim over a period of a year on the pretext of marriage. The victim and the informant testified against the accused. The Special Court, while considering the medical report, commented:

**“** On examination of her hymen I found it to be loose, lax, folded hymen, which gapes widely on abduction of labia minora. From her genital examination findings suggest that she is a deflorated woman having experience of sexual intercourse. According to statutory definition possibility of sexual assault can not be ruled out.<sup>96</sup>

Further, the term ‘deflorated’ is an antiquated term to refer to the victim’s loss of her virginity. It is closely linked to notions of a woman’s chastity, purity, and honour and is a stigmatising term which offends the dignity of child victims of sexual offences.

Some Special Courts also drew adverse inferences due to the absence of reference to the position of the hymen in the MER. In *State of Maharashtra v Ganesh Tukaram Gund*,<sup>97</sup> the Special Court noted that “No position of hymen was mentioned” in the MER and, on the basis of this, concluded that “medical examination reports filed on record [...] are not corroborating to the allegations made by prosecution.” In some of these cases, the doctor conducting the exam found it necessary to note that the survivor’s hymen was torn even when the survivor was found to be several weeks pregnant from the alleged incident<sup>98</sup> or even if she had recently given birth.<sup>99</sup>

Stigmatising observations about the victim’s sexual history were also observed, although Section 155(4) of the Indian Evidence Act, 1872, which allowed the defence to show that the character of a victim of rape is immoral, has been repealed. In *State of Maharashtra v Krushna s/o Nagorao Vithale*,<sup>100</sup> the accused was the 17-year-old victim’s neighbour who had intercourse with her repeatedly. The medical officer noting the tear of the hymen said the victim was found to be “habituated to sexual intercourse.” In *State of Maharashtra v. Sagar s/o Shalikram Kamble*, the accused was the victim’s romantic partner. However, referring to the victim’s medical examination, the Court said:

**“** The medical evidence ... shows that the victim-girl was in [the] habit of enjoying the sex ... The history given by the victim clearly shows that they have enjoyed multiple sexual intercourse during the said period.<sup>101</sup>

<sup>95</sup> *State of West Bengal v Bikram Singh* [2021] Spl Case No 21/2021 (Special Court South 24 Parganas).

<sup>96</sup> *ibid* [23].

<sup>97</sup> *State of Maharashtra v Ganesh Tukaram Gund* [2021] Special Case No. 351/2019 (Additional Sessions Judge in Ahmednagar).

<sup>98</sup> *State of Maharashtra v Arjun Namdeo More* [2021] Spl. Case (POCSO) No. 218/2019 (Special Judge (POCSO) in Aurangabad); *State of Maharashtra v Iqbal Ismail Monye* [2021] Special Case No. 21/2020 (Additional Sessions Judge in Ratnagiri); *State of Maharashtra v Dashrath Kashinath More* [2021] Spl [Child] Case No.27/2020 (Court of Special judge in Majalgaon); *State of West Bengal v Janser Mallick* [2021] SC No. 62 (08) 2019 (Spl) (Special Court in Krishnanagar).

<sup>99</sup> *State of West Bengal v Mintu Kumar Shaw* [2021] Special Trial No. 02(10)2020 and Special Case No. 09 of 2020 (Additional Sessions Judge in Sealdah).

<sup>100</sup> *State of Maharashtra v Krushna s/o Nagorao Vithale* [2021] Spl Case No 16/2020 (Special Court in Parbhani).

<sup>101</sup> *State of Maharashtra v Sagar s/o Shalikram Kamble* [2019] Spl Case No 137/2020 [9] (Special Court in Akola).

The Supreme Court has repeatedly held that the “two-finger” test violates the right of rape survivors to privacy and physical and mental integrity and dignity, and the medical examiner conducting such a test would be guilty of misconduct.<sup>102</sup> However, in *State of Maharashtra v Dipak @ Tanhaji Chandrabhan Tutare*<sup>103</sup> and in *State of West Bengal v Purna Bahadur Jirel*,<sup>104</sup> the “two-finger” test appears to have been conducted on the survivor and the Special Court had not objected to it or noted it as illegal in either case. Additionally, in *State of Maharashtra v Kartik Krushna Shetty*<sup>105</sup> the MER records that “there is hymen torn and one little finger permissible” and in *State of West Bengal v Janser Mallick*,<sup>106</sup> (where the victim was pregnant) the MER records that “one finger admits through external os of cervix, hymen ruptured[sic].”

- **A problematic assumption was where the courts observed that sexual assault would result in injuries and questioned the reliability of the victim’s testimony when the MER did not indicate injuries.** For instance, in *State of West Bengal v. Sajim @ Biswajit Mandal*,<sup>107</sup> the Special Court observed that that sex without the consent of the survivor results in bodily injuries and that a victim of rape would physically resist sexual acts. According to the MOHFW Guidelines, “presence of injuries is only observed in one third cases of forced sexual intercourse. Absence of injuries does not mean the survivor has consented to sexual activity.”<sup>108</sup> The expectation that the victim will physically resist is also contrary to the proviso to Explanation 2 in Section 375, IPC which clarifies that “...a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual act.” Despite this, the Medical Officer on cross-examination appears to have stated that in a case of the rape of a 13-year-old girl, “there must be injury on the private parts of the victim girl.” The Special Court acquitted the accused and stated:

**“** the fact remains that, if a girl of 13-years-old was ravished by two persons consecutively, that too in a field she must [have] sustained severe injury on her person as well as private parts. Moreover, there is no allegation made by the victim that she was then threatened by the accused persons by any means, so she must [have] restrained them and in the process injury would be natural corollary which might be visible even by a general medical practitioner.

Similarly, in *State of Maharashtra v Ganesh Tukaram Gund*<sup>109</sup>, the Special Court stated that “one thing is clarified that if accused has committed forcibly sex upon victim, then there should be injury marks either on the body of victim or accused, but there were no injury marks found.”

<sup>102</sup> *Lillu @ Rajesh and Anr v State of Haryana* [2013] 14 SCC 643 (Supreme Court of India); *State of Jharkhand v Shailendra Kumar Rai @ Pandav Rai*, [2022] SCC OnLine SC 1494 (Supreme Court of India).

<sup>103</sup> *State of Maharashtra v Dipak @ Tanhaji Chandrabhan Tutare* [2021] Special Case No 10/2021 (Special Court in Malegaon).

<sup>104</sup> *State of West Bengal v Purna Bahadur Jirel* [2021] Spl Case No 25/2021 (Special Court in South 24 Parganas) [27].

<sup>105</sup> *State of Maharashtra v Kartik Krushna Shetty* [2021] Special case no. 123/2020 (Special Court in Mangaon).

<sup>106</sup> *State of West Bengal v Janser Mallick* [2021] S.C. No. 62 (08) 2019 (Spl) (Special Court under POCSO Act in Krishnanagar).

<sup>107</sup> *State of West Bengal v Sojim @ Sajim @ Biswajit Mondal* [2021] Spl Case No. 90(12)/2019 (Special Court in Krishnanagar).

<sup>108</sup> MOHFW Guidelines (n 75) 27.

<sup>109</sup> *State of Maharashtra v Ganesh Tukaram Gund* [2021] Spl Case No 351/2019 (Special Court in Ahmednagar).

This approach fails to recognise the diversity of responses to traumatic events including experiences of “paralysis”.<sup>110</sup> Expecting victims to uniformly fight against sexual assault and exhibit physical signs of resistance or to sustain specific injuries overlooks the complex dynamics of sexual violence and different coping and survival mechanisms employed by victims. Approaches that expect victims to respond in a certain way perpetuates harmful myths and misconceptions regarding victims’ behaviours during sexual assault.<sup>111</sup> Reinforcement of such misconceptions will contribute to victim-blaming and undermine the credibility of victims’ testimonies, ultimately hindering their access to justice and perpetuating cycles of trauma.

- **Some Special Courts expected the medical officer to state whether rape or sexual assault had taken place, despite the Supreme Court’s categorical position that they cannot do so.** For instance, in *State of West Bengal v Jamil Bhai @ Md. Jamil*<sup>112</sup>, the accused who was the local maulvi and an influential figure in the community, allegedly inserted his penis into the anus of a nine-year-old boy. The prosecution was supported by testimonies of the survivor, his mother, and other witnesses. The ME of the survivor was conducted two days after the alleged incident. The doctor who conducted the ME stated that “anal examination suggest CNCP was subjected to penetrative attempt” and the “possibility of sexual assault” is present but he did not find any injury. During the cross-examination, the doctor stated that “possibility” means there may or may not be sexual assault. The Special Court concluded from this testimony that since “the medical expert is not confirmed of sexual assault of victim boy on the basis of possibility or doubt court can not hold that victim boy was subjected to sexual assault.”

In *State of Maharashtra v Nilesh Ramchandra Kumbhar*,<sup>113</sup> the accused, a teacher of the 17-year-old victim, allegedly raped her. When the victim was taken to the hospital for her medical examination, the medical officer did not conduct her examination as the victim was menstruating. The IO subsequently wrote to the medical officer for the victim’s medical examination, but the medical officer opined that since several days had passed since the incident, the victim’s medical examination could no longer be conducted. The Special Court’s views in this case indicated a misplaced expectation that a ME can indicate whether assault took place. It stated:

**“**... it is gross negligence on the part of the medical officer. May be, he could not found [sic] the DNA traces of accused from the person of victim, but atleast he could have give opinion that sexual assault was committed against her or not.” (emphasis added)

<sup>110</sup> Sunda Friedman TeBockhorst, Mary Sean O'Halloran and Blair N Nyline, 'Tonic Immobility Among Survivors of Sexual Assault' (2014) Mar;7(2) Psychological trauma: Theory, Research, Practice and Policy 171-178. See also Sigrun Sigurdardottir and Sigridur Halldorsdottir, 'Persistent Suffering: The Serious Consequences of Sexual Violence against Women and Girls, Their Search for Inner Healing and the Significance of the #MeToo Movement.' (2021) Vol. 18,4 International Journal of Environmental Research and Public Health 1849.

<sup>111</sup> Mrinal Satish, *Discretion, Discrimination and the Rule of Law* (Cambridge University Press 2017) 43-44.

<sup>112</sup> *State of West Bengal v Jamil Bhai @ Md. Jamil* [2021] Special Trial No. 01(09)2021 and Special Case No. 22 of 2021 (Special Court in South Parganas).

<sup>113</sup> *The State of Maharashtra v Nilesh Ramchandra Kumbhar* [2021] Spl Case POCSO No 151/2019 (Special Court in Pune).

### 3.4. Conclusion

The analysis of the appreciation of medical evidence reveals that Special Courts give primacy to direct evidence, particularly the testimony of the victim. However, the continued references to the child victims' hymen status in the Medical Examination Report (MER) and the focus on factors such as lack of resistance, absence of injuries, sexual history of the victim, and medical opinion on whether the assault took place, contradict judicial and statutory standards, and undermine the dignity of child victims.

This approach perpetuates myths about resistance and the presence of injuries being necessary for a case to be genuine. The emphasis on the adequacy of the victims' resistance or the expectation of injuries in all cases of child sexual abuse overlooks the complex dynamics of such abuse. It is crucial to address these misconceptions effectively in the curriculum and training programs for judges, prosecutors, and medical practitioners. By doing so, we can enable a more nuanced appreciation of medical evidence, one that is also trauma-informed and sensitive to children's needs, feelings, and behaviour.

## 4 Nature of Charges, Outcomes & Factors Influencing Outcomes

Decisions of Special Courts present an opportunity to explore the interaction of the POCSO Act with different laws such as the IPC, Prohibition of Child Marriage Act, 2006, Immoral Traffic Prevention Act, 1956, Informational Technology Act, 2000, as well as the specific provisions under the IPC that the accused are charged with in cases of sexual offences against children. This, in turn, can shed light on the typology of sexual violence, such as the extent of elopement cases that can be discerned from the inclusion of kidnapping charges under the IPC, whether POCSO Act is being used alongwith the PCMA to regulate child marriages, and whether trafficking for the purpose of sexual exploitation also features in this pool of aggravated sexual violence.

Unlike *Crime in India*, which primarily provides quantitative data such as the number of cases reported to the police, disposed of by the courts, and conviction rates, judgment analysis offers deeper insights into the factors influencing convictions and acquittals. This section is a nuanced examination of how various factors impact court outcomes. Specifically, it explores the extent to which the victim's testimony influences court decisions, the relationship between the testimony and the accused, and other critical factors such as establishing whether the victim is a minor and analysing medical evidence. Additionally, it provides valuable insights into how Special Courts appreciate children's testimonies.

The presumptions of culpable mental state and presumption as to offences under Sections 3, 5, 7, and 9 of the POCSO Act constitute a distinctive feature of this legislation, setting it apart from most other criminal laws. This section delves into the application of these presumptions by the Special Courts, providing insights into how they are utilised in adjudicating cases under the POCSO Act.

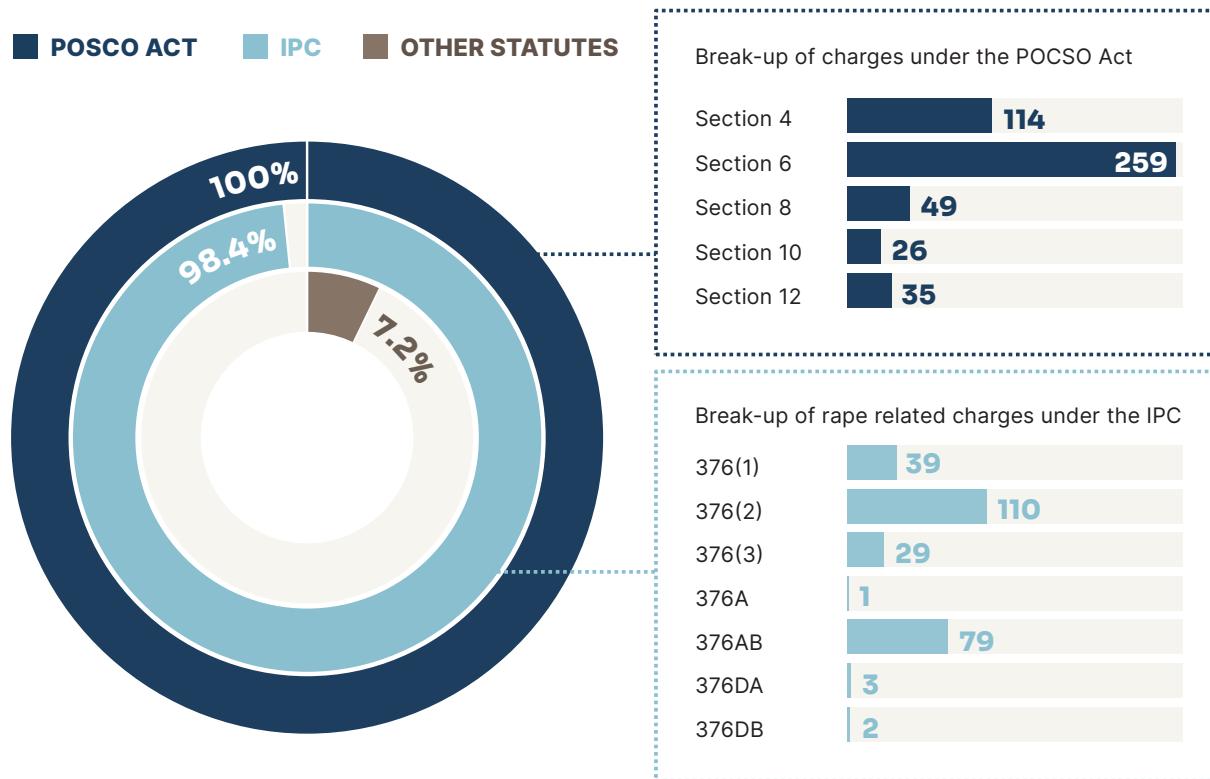
The POCSO Act aims to ensure speedy justice by mandating that the evidence of the child shall be recorded within 30 days,<sup>114</sup> and the trial shall, as far as possible, be completed within a year of taking cognizance of the case.<sup>115</sup> This section critically examines the extent to which judgments in the dataset have been able to adhere to the timelines prescribed under the POCSO Act.

<sup>114</sup> POCSO Act 2012, s 35(1).

<sup>115</sup> POCSO Act 2012, s 35(2).

## 4.1. Nature of Charges and Interaction of POCSO Act with other laws

Figure 4.1: Nature of Charges (n=264 cases)



**Note:** Several cases had charges under multiple statutes and multiple provisions

- Section 5 of the POCSO Act delineates 21 aggravating grounds, many of which demonstrate an intersectional approach to addressing sexual violence against children. These grounds include sexual violence perpetrated against a child with a disability, a child below 12 years of age, or in the context of sectarian or communal violence. Such aggravating factors attract high minimum mandatory sentences and, in some cases, the death penalty. Disaggregated data can further illuminate cases of sexual violence perpetrated by individuals in positions of authority or trust, including authorities in educational or religious institutions, family members, and even those within the police and armed forces. However, it is notable that in a significant portion of cases analysed (194 out of 259 cases, or 74.9%) where the accused was charged under Section 6 of the POCSO Act, the specific sub-clause detailing the aggravating ground was missing. The analysis revealed that the top three specified aggravating grounds included repeated penetrative sexual assault (33 cases), penetrative sexual assault against a child below 12 years (27 cases), and penetrative sexual assault by a relative (15 cases).
- Both the police and the Special Courts have a responsibility in ensuring that all relevant charges are applied in a case. In 25 cases, a charge under Section 6 of the POCSO Act had not been mentioned by the police, but was laudably added later by the Special Court when the charges were framed. In these cases, the chargesheet only mentioned Section 4, POCSO.

- Majority of cases i.e., 260 cases (98.4%) contained a charge under the IPC in addition to the charges under the POCSO Act. Charges under rape-related provisions were present in 240 cases (92.3%) and this is a good practice because if the prosecution fails to prove the minority of the victim, the accused can be held liable for rape under the IPC if the sexual act is non-consensual.
- In 82 cases (31%), the accused was also charged with kidnapping/abduction, and the facts in these cases largely signalled elopement of the victim with the accused.
- Charges under other statutes were added only in a fraction of cases i.e., 19 cases (7.2%). These included the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in 13 cases, the Prohibition of Child Marriages Act, 2006 in four cases, and the Information Technology Act, 2000 in two cases. Notably, only one case had charges under Section 5 and 6 of the Immoral Traffic (Prevention) Act 1956 along with Section 376, IPC, Section 6, POCSO Act and Sections 3(2)(v), 3(2)(va) of the SC/ST Act, but the accused had not been charged under Section 370, IPC (trafficking).

## 4.2. Nature of Outcomes

- **Cases predominantly ended in an acquittal i.e., in 207 cases (78.4%), and convictions for sexual offences were recorded in only a minority of cases i.e., in 57 of the 264 cases (21.6%).** The principal factor influencing the outcome was the nature of the testimony of the victim and this is elaborated in Section 4.3. A possible consequence of high minimum mandatory sentences is that judges hesitate to convict, or frame less stringent charges although the facts reveal aggravating circumstances, and in some cases impose sentences below the mandatory minimum sentence despite the law not allowing it.<sup>116</sup> A recent report on the implementation of the POCSO Act attributed the lack of judicial discretion as one of the reasons for the high acquittal rate under the Act.<sup>117</sup> Dash, in her analysis of 1635 rape judgments from trial courts of Delhi decided between 2013 and 2018,<sup>118</sup> concluded that the removal of judicial discretion by the Criminal Law (Amendment) Act, 2013 along with the already existing patriarchal nature of decision-making by judges led to lower conviction rates as judges do not convict in cases not falling under 'serious rapes'.<sup>119</sup> Tracking these rates is thus crucial for testing the hypothesis that prescription of minimum mandatory sentences, an increase in punishment and lack of judicial discretion may lead to a corresponding rise in acquittals.<sup>120</sup> See Table A4.1 in the Annexure for state-wise break-up of convictions for sexual offences.

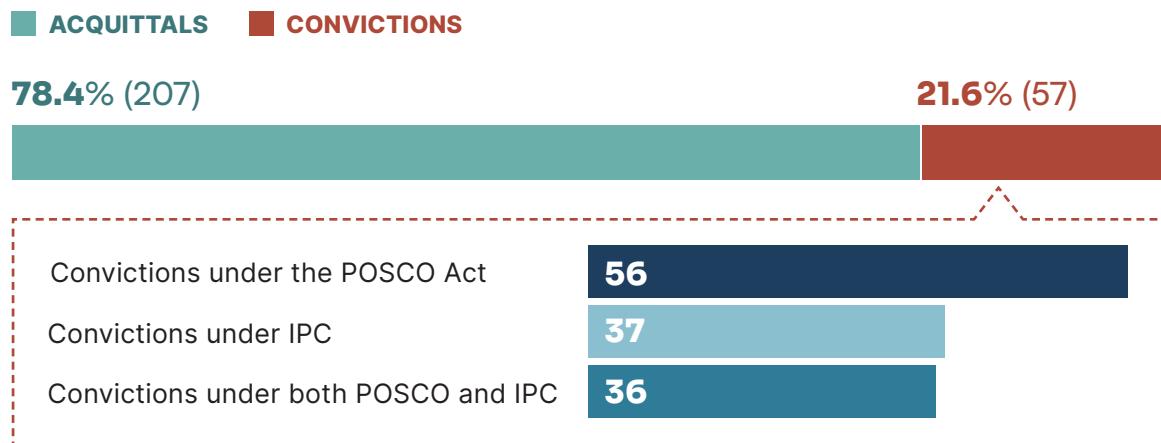
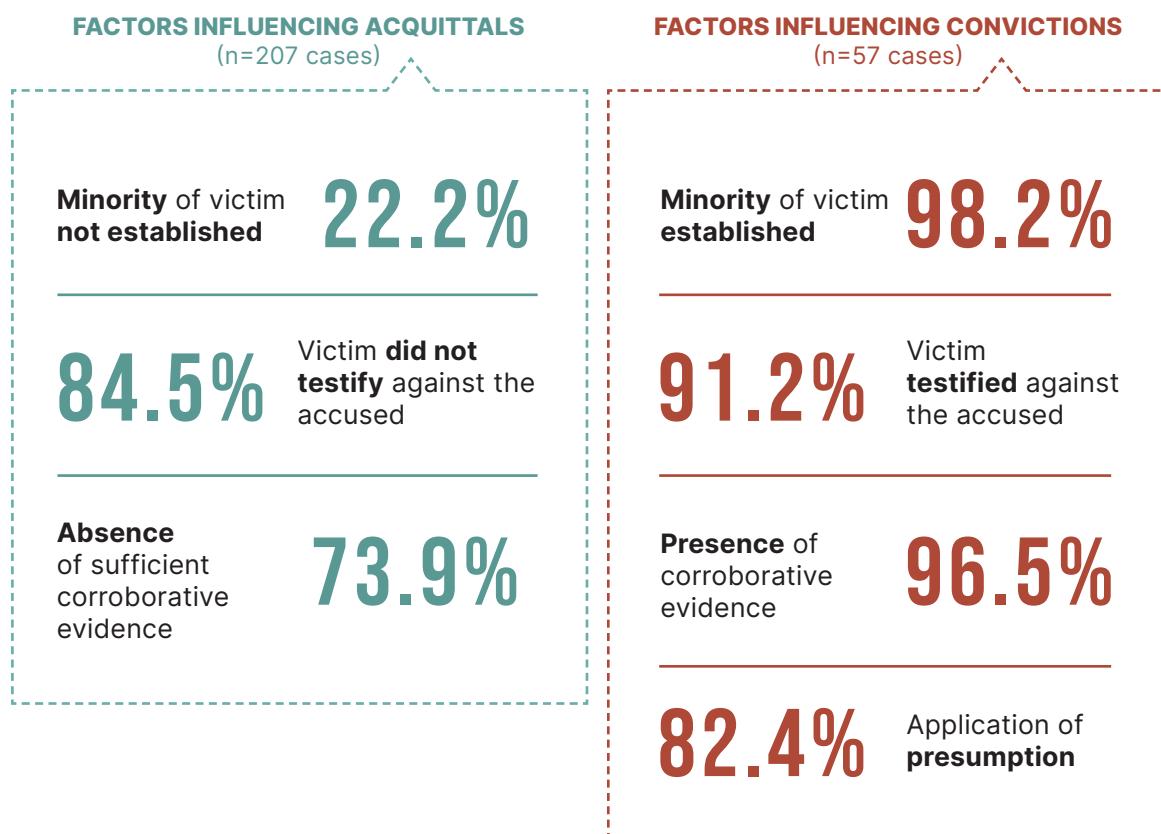
<sup>116</sup> Shraddha Chaudhary, 'Chapter 4: Charges and Sentencing Patterns under the POCSO Act, 2012' in CCL-NLSIU Report (n 15) 60.

<sup>117</sup> Vidhi POCSO Study (n 15) 95.

<sup>118</sup> Preeti Pratishruti Dash 'Rape adjudication in India in the aftermath of Criminal Law Amendment Act, 2013: findings from trial courts of Delhi' (2020) Indian Law Review 1.

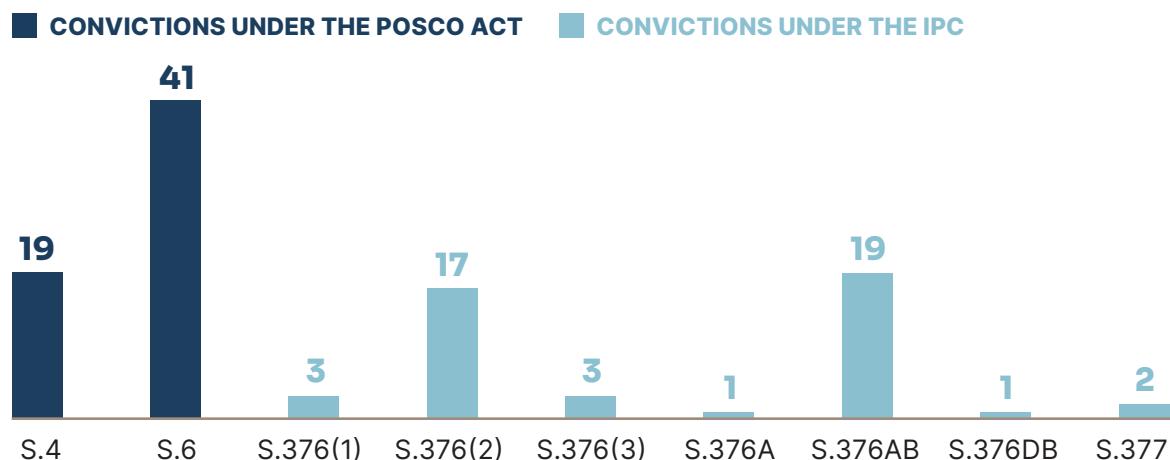
<sup>119</sup> *ibid* 20.

<sup>120</sup> HAQ: Centre for Child Rights and CivicDataLab, #Data4Justice - *Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana 2012 to April 2020*, (2021) 108.

**Figure 4.2: Outcomes in sexual offences (n=264 cases)****Figure 4.3: Factors influencing convictions and acquittals**

- **Convictions under the POCSO Act and IPC were predominantly for penetrative sexual offences** under Sections 4 and 6 of the POCSO Act and rape-related provisions under the IPC-Sections 376, 376(2), 376(3), 376A, 376AB, 376DB, and Section 377, IPC. In 11 out of 57 cases (19.3%), the accused was acquitted under a penetrative charge, but convicted for a non-penetrative sexual offence and in three cases they were convicted for an attempt to commit a penetrative offence.

**Figure 4.4: Convictions for penetrative sexual offences under POCSO Act & IPC**



**Note:** In some cases the accused persons were convicted under multiple penal provisions.

### 4.3. Link between Victims' Testimony & Outcomes

**Figure 4.5: Nature of victim testimony (n=264 cases)**



- The analysis highlights a strong correlation between the victim's testimony<sup>121</sup> and the judicial outcomes in cases of child sexual abuse. Specifically, cases where the victim supported the prosecution were significantly more likely to result in a conviction compared to cases where the victim did not incriminate the accused. Convictions were recorded in 52 out of 77 cases (67.5%) in which the victim testified against the accused. 175 of the 177 cases (98.8%) in which the victim did not incriminate the accused ended in an acquittal. In a majority of cases, i.e, in 177 cases (67.0%) the victim did not say anything incriminating against the accused. While in some cases, victims supported the allegation in their statements under Section 164 of the CrPC, they retracted during recording evidence and stated that the complaints were filed due to a mistake of fact, misunderstanding, or because they were coerced into filing a complaint. In the 43 cases in which the victims were informants, they testified against the accused in only 11 cases (25.6%) and did not say anything incriminating against the accused in 32 cases (74.4%).

<sup>121</sup> Testimony of the victim is presented per case basis. In cases with multiple victims, the testimony is captured once based on the concurring testimony of the victims.

There is, thus, a need to focus on factors influencing victim testimony. Necessary steps should be taken during the pre-trial stage to ensure that victims are supported and psycho-social and legal support is provided to them to address factors affecting their effective participation.

- **The low rates of victim testimony against the accused must be contextualised within the broader challenges faced by victims throughout the legal process**, particularly in cases where they lack constant on-ground support or timely compensation. Psychological, social, and economic impact of incarceration of a family member upon the victim and other family members also have to be borne in mind. The Supreme Court has recognised some of these challenges in matters related to the implementation of the POCSO Act.<sup>122</sup> In *Re:Alarming Rise in the Number of Reported Child Rape Incidents*,<sup>123</sup> the apex court took note of the report of the Registrar of the Supreme Court which stated that Support Persons were not appointed in 96% cases and interim and final compensation was not provided in 99% cases.

The Supreme Court has also considered the reasons that lead to victims turning hostile in *Ramesh v. State of Haryana*<sup>124</sup> and observed:

“ 44. On the analysis of various cases, the following reasons can be discerned which make witnesses retracting their statements before the court and turning hostile:

- (i) Threat/Intimidation.
- (ii) Inducement by various means.
- (iii) Use of muscle and money power by the accused.
- (iv) Use of stock witnesses.
- (v) Protracted trials.
- (vi) Hassles faced by the witnesses during investigation and trial.
- (vii) Non-existence of any clear-cut legislation to check hostility of witness.

[...]

48. Apart from the above, another significant reason for witnesses turning hostile may be what is described as “culture of compromise”. Commenting upon such culture in rape trials, Pratiksha Bakshi [“Justice is a Secret : Compromise in Rape Trials” (2010) 44, Issue 3, Contributions to Indian Sociology, pp. 207-233.] has highlighted this problem in the following manner:

“... The normalising function of the socio-legal category of compromise converts terror into a bargain in a context where there is no witness protection programme. This often accounts for why prosecution witnesses routinely turn hostile by the time the case comes on trial, if the victim does not lose the will to live. ...”

<sup>122</sup> *Bachpan Bachao Andolan v. Union of India*, Writ Petition (Civil) No. 427 of 2022 (Supreme Court of India, decided on 18 August 2023). The Court here observed “..., it was noticed that the role of a ‘support person’ as envisaged in the Protection of Children from Sexual Offences Rules, 2020 (hereafter ‘POCSO Rules, 2020’), despite being a progressive step – remains unfulfilled, or is given effect to, in a partial or ad-hoc manner, thus limiting its positive potential in offering support to victims and their families.”

<sup>123</sup> *Suo Moto Writ (Criminal) No.1/2019* (Supreme Court of India, order dated 13 November 2019).

<sup>124</sup> (2017) 1 SCC 529 (Supreme Court of India)

Previous studies have also highlighted significant support gaps for victims of sexual offences that leave them and their families vulnerable to pressure and threats from the accused in addition to concerns about stigma, dignity, and survival.<sup>125</sup> These concerns are further exacerbated by a system where survivors face hurdles in lodging complaints, encounter pressure to settle, and child-friendly provisions are not adhered to.<sup>126</sup> The data regarding bail granted to primary accused individuals in cases under the POCSO Act also lends significant insights:

- Out of 247 cases where bail information was available, bail was granted to the primary accused in 142 cases (57.5%), with the accused remaining in judicial custody in the remaining 106 cases (42.9%). Among the cases where bail was granted, 53 cases (37.3%) were “romantic”.
- In cases where bail was granted, the accused were convicted in only four (2.8%) cases, while acquittals constituted the vast majority i.e. 138 cases (97.2%). Notably, victims testified against the accused in only 16 cases (11.3%) where bail was granted.
- Conversely, in cases where bail was denied, the accused were convicted in 44 cases (41.5%), with acquittals occurring in 68 cases (58.5%). Victims testified against the accused in 52 cases (49.1%) where bail was denied.

Notwithstanding “romantic” cases where the trends generally show that the victim does not incriminate the accused or cases in which the accused is closely related to the victim, the discrepancy in conviction rates between cases where bail was granted and denied suggests a potential impact of bail on trial outcomes, especially regarding witness testimony. Irrespective of bail decisions, it is exigent for the Witness Protection Scheme approved by the Supreme Court<sup>127</sup> to be operationalised and for witness support and protection to be tailored to the nature of the case and the dynamics between the victim and the accused.

- **Conviction in cases in which the victim did not incriminate the accused or where the victim's testimony was not recorded, were an exception i.e., only five cases.** In these cases, the Special Court relied on the testimony of the informant, eyewitnesses, and DNA evidence, and held that consent of the victim is immaterial. In *State of Maharashtra v Iqbal Ismail Monye*,<sup>128</sup> the victim alleged that the accused, who was a *maulvi*, had forcible sexual intercourse with her on two occasions in the madrasa. Due to his threats, she did not confide in anyone. However, the incident came to light when she was discovered to be four months pregnant. She maintained the allegations in her 164 statement and in the history given during the medical examination. During her testimony, the victim did not support the prosecution and stated she did not remember what happened and claimed she did not know the contents of the FIR. The victim's mother did not support the prosecution either. After the medical termination of the pregnancy of the victim, the products of conception were collected and sent for DNA testing, which matched the accused. The Special Court convicted the accused under Sections 376 and 506 of IPC and Sections 4 and 6 of the POCSO Act.

<sup>125</sup> Michelle Mendonca, 'Factors Affecting Acquittals in Special Courts' in CCL-NLSIU Report (n 15) 46; Urmila Pullat, 'Child Sexual Abuse and the culture of shame and silence' in CCL-NLSIU Report (n 15) 167. Kushi Kushalappa & Suja Sukumaran, 'Support Gaps and Linkages Between the Criminal Justice and Child Protection Systems' in CCL-NLSIU Report (n 15) 184 - 187. Audrey Dmello and Flavia Agnes, 'Ringside View of Rape Trials' (2022) 185,186.

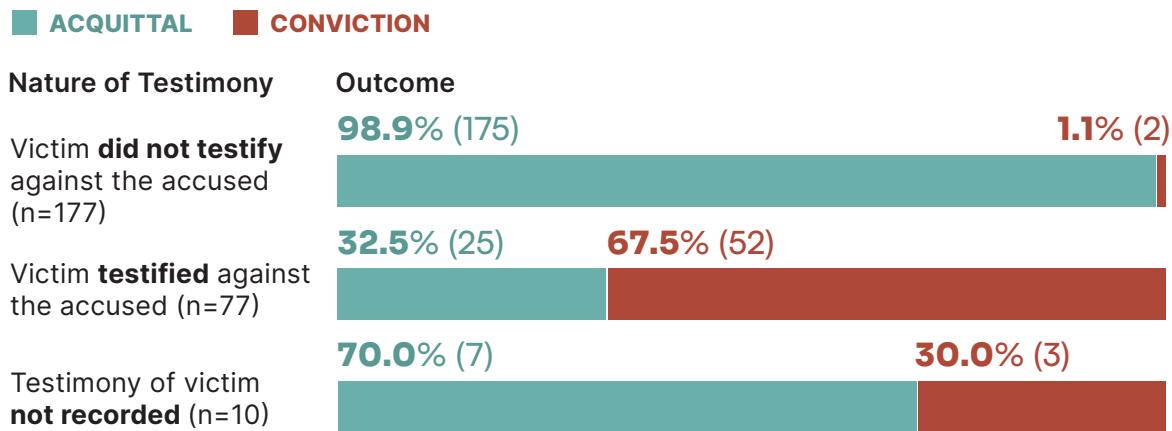
<sup>126</sup> Audrey Dmello and Flavia Agnes, 'Ringside View of Rape Trials' (2022) 185,186.

<sup>127</sup> *Mahender Chawla v Union of India*, (2019) 14 SCC 615 (Supreme Court of India).

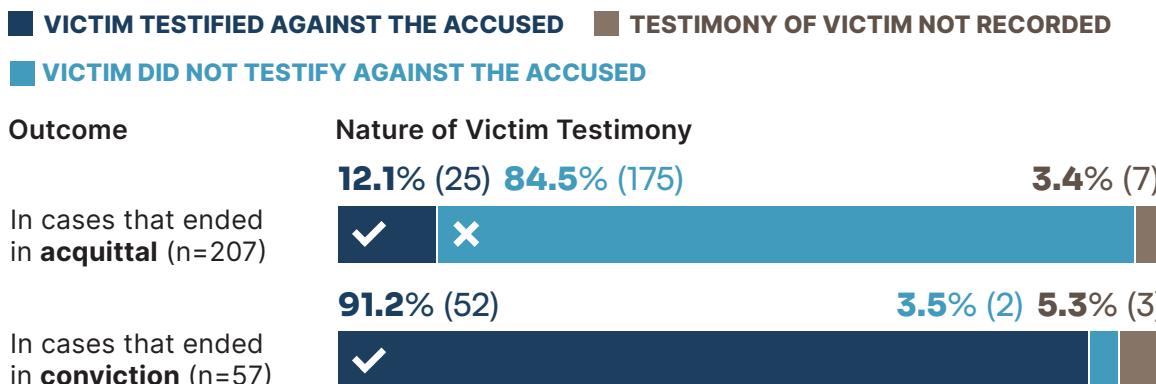
<sup>128</sup> *State of Maharashtra v Iqbal Ismail Monye* [2021] Spl Case No 21/2020 (Special Court in Ratnagiri).

**Figure 4.6: Link between victim testimony and outcomes**

**Outcome vis-à-vis victim testimony**



**Victim testimony vis-à-vis outcome**



- Of the 254 cases in which the victim deposed, in 46 cases (18.1%) the victims were expressly declared hostile by the prosecution.
- In 10 cases (3.8%), the victim's testimony was not recorded as they were deceased, not produced by the prosecution, or their testimony was dispensed with by the Special Court due to disability or tender age.
- While the rate of victims testifying against the accused was low overall at 29.2%, it was lowest for Assam at 16.3% and highest in West Bengal at 41.9%. The rate of testimony against the accused in Maharashtra was 26.8%. While the CCL-NLSIU study reported higher rates of victim testimony against the accused in Maharashtra (42%)<sup>129</sup> and Assam (51%)<sup>130</sup>, the current study reveals lower overall rates of victim testimony. It is essential to note that the discrepancies in these findings could stem from several factors, including differences in sample selection, time frames, and the specific focus of the research. The current study focuses exclusively on cases involving sexual offences against children that attract the death penalty. This narrow focus might result in a different distribution of cases compared to the broader range of offences covered in the CCL-NLSIU study. Future research in this area should track the patterns in testimony in cases that attract the death penalty and examine the various complex factors that affect testimony.

<sup>129</sup> CCL-NLSIU, *Study on the working of Special Courts under the POCSO Act, 2012 in Maharashtra* (2017) 47.

<sup>130</sup> CCL-NLSIU, *Study on the working of Special Courts under the POCSO Act, 2012 in Assam* (2017) 16.

- Outcomes in these cases were also a reflection of the manner in which Special Courts appreciated the testimony of victims. In 19 of the 77 cases (24.7%) in which the victim testified against the accused, the Special Court found the testimony unreliable due to contradictions with earlier statements, inconsistencies, admission of tutoring by parents, or lack of corroborative evidence. The rejection of victim testimony as unreliable in some cases also reflected preconceived assumptions or unrealistic expectations about how child victims should disclose abuse and what physical evidence should be present. Additionally, the stringent sentencing provisions under the POCSO Act, which mandate high minimum mandatory sentences may have also contributed to the Special Courts' strict scrutiny of inconsistencies in victim testimony. For instance, in *State of West Bengal v Md. Usman*,<sup>131</sup> the victim's grandmother alleged that the accused inserted his fingers and penis inside the genital parts of the victim on several instances. The 6-year-old victim used to go to a market to beg. The accused had a mutton shop there. The victim girl identified the accused as her assaulter and testified against him stating that he removed her pants and inserted his finger and penis into her vagina at his meat shop. She further stated that he did this everyday. In her 164 statement, she had stated that the accused touched her vagina and inserted his penis into her mouth and tried to lay upon her body. The Special Court found her testimony unreliable because:

**“** Victim girl also did not say in her statement under section 164 CrPC or before the doctor (PW.5) that accused inserted his finger into her vagina, whereas at the time of adducing evidence before this court victim (PW1) has stated that accused inserted his finger and penis into her vagina. So, PW.1 does not corroborate her statement under section 164 Cr.PC (Exbt. 4) and the history given by her before the doctor.

Although the court noted that the doctor stated that the “possibility of sexual assault with fingering, insertion of any object including oral penetration as stated by the survivor can not be ruled out”, since the victim did not mention the insertion of the penis in her mouth, her testimony was rejected. Additionally, an eye-witness also testified that he saw the accused taking the victim girl to the shop, removing her pants, and inserting his finger into her vagina. However, the Special Court considered the absence of injuries and observed, “It is not believable that if one person aged about 50 years inserts his penis and finger into the vagina of a 6-year old child there will be no injury.”

In *State of Assam v Karuna Saharia*,<sup>132</sup> the victim's father lodged the complaint alleging that the accused, a co-villager, had raped the 9-year-old victim when she was alone in the house and threatened to kill her if she informed anyone about the incident. The assault was witnessed by the victim's aunt, the informant's sister. The accused was charged under Section 376AB, IPC and Section 4, POCSO Act. The victim testified against the accused and stated that the accused took her to his room when she was playing with her younger sister and a friend. He then pushed his penis into her vagina and gagged her mouth when she screamed in pain. She also saw that her aunt witnessed the act through the window, and subsequently raised an alarm, after which the accused fled. The victim's mother testified against the accused stating that the victim also revealed that the accused had committed a similar act on a previous occasion. The victim's aunt, paternal and maternal grandmothers testified against the accused as well. However, the Special Court found the victim and her aunt's testimony unreliable as it was not clear why the victim's aunt peeped through the window. The paternal grandmother similarly, did

<sup>131</sup> *State of West Bengal v Md. Usman* [2021] Special Case No 45 of 2020 (Special Court at South 24 Parganas).

<sup>132</sup> *State of Assam v Karuna Saharia* [2020] Spl POCSO Case No 14/2019 (Court of Sessions at Darrang).

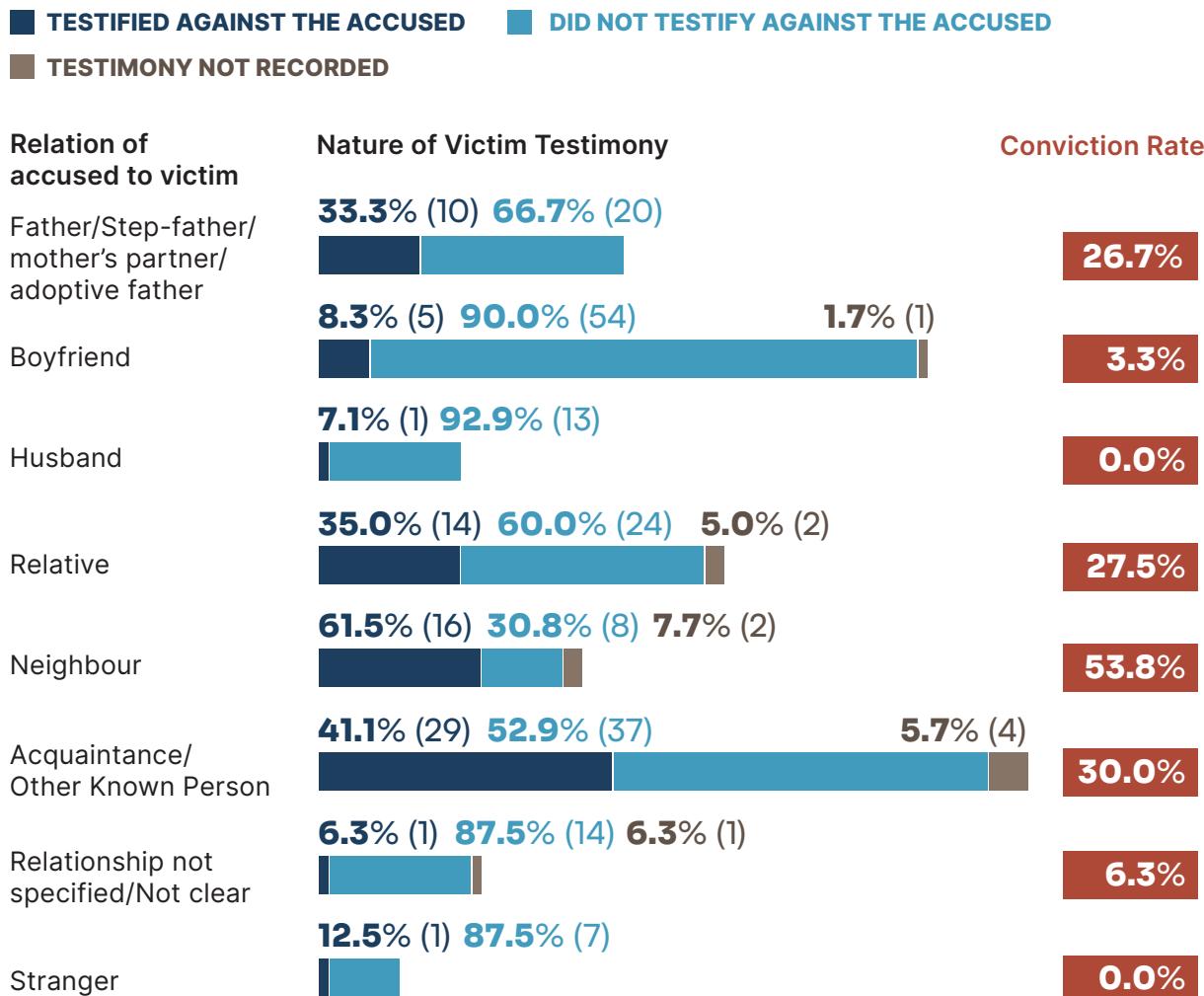
not clarify why she sent her daughter to look into the room and did not go there herself when she suspected something. The court failed to consider the age of the victim and raised the question of reliability of the victim's testimony, because she had not mentioned in her testimony whether the door was open or closed. It acquitted the accused after observing that:

**“** According to victim PW1 she was taken to her house while she was playing with two other kids. But the other two kids did not follow her. She did not state that at the time of the illicit act the accused kept the door closed. PW3 did not state that the accused committed the offence by keeping the door closed from inside. A man of general prudence is not expected to commit an offence like rape of a minor girl in broad day light in a room keeping the door open.

Such expectations from the victim reflect the need for sensitisation of judges about misconceptions about child sexual abuse, child development, and age-appropriate communication.<sup>133</sup>

#### 4.4. Link between Victims' Testimony, Relationship with the Accused and Outcomes

**Figure 4.7: Link between Outcomes, Victim testimony and Relationship between the victim & accused**

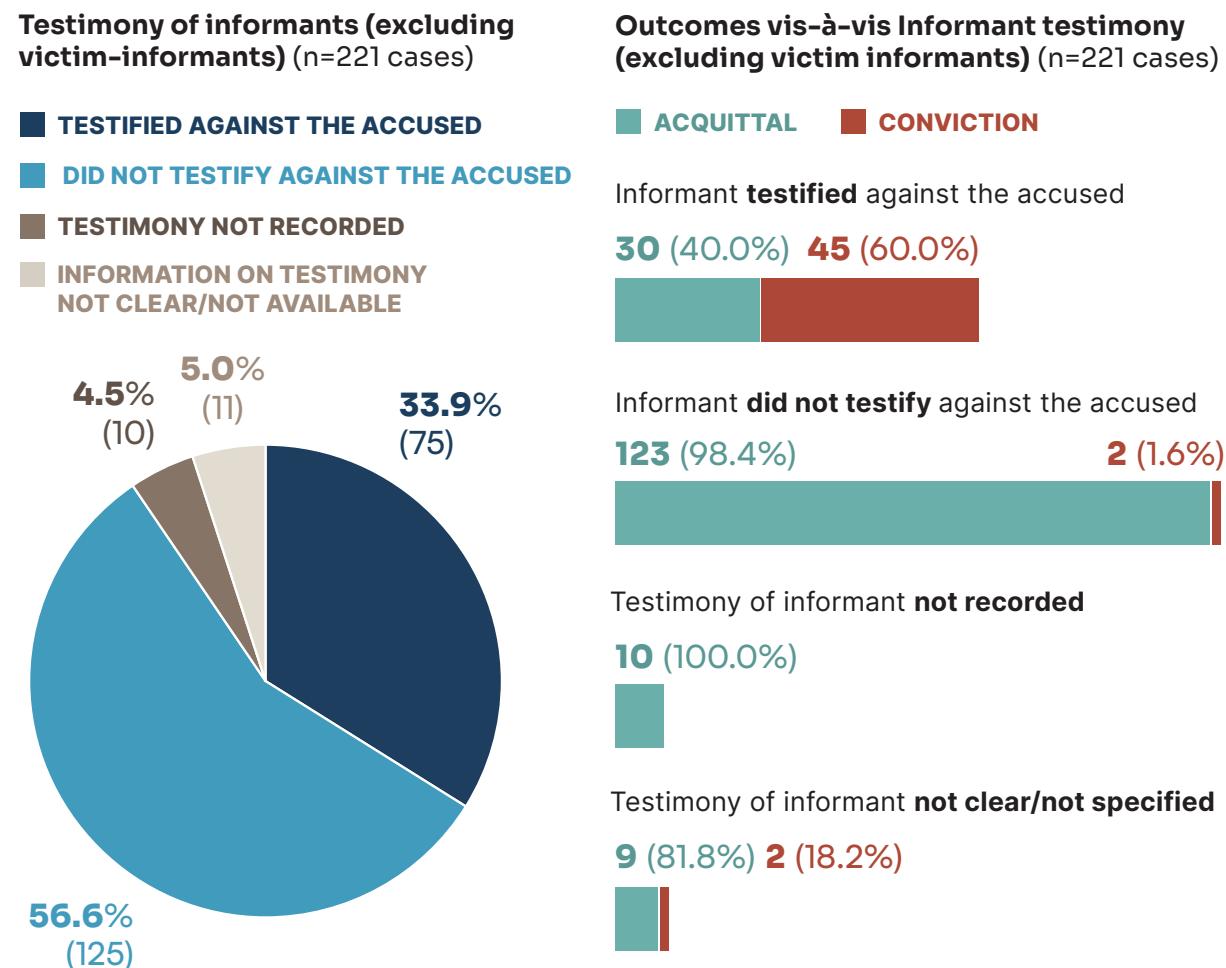


<sup>133</sup> State v Sujeet Kumar, CRL.A. 1190/2014 (Delhi High Court).

- The analysis reveals significant variations in acquittal rates based on the relationship between the accused and the victim. **The highest acquittal rates, reaching 100% when the accused was the victim's husband and 96.7% when the accused was a boyfriend, are attributed to the notably low rates of testimony against these categories of accused persons.** This pattern raises concerns regarding the criminalisation of factually consensual adolescent relationships, as victims often do not incriminate their partners or perceive the acts alleged as constituting an offence against them. In a surprising trend, none of the victims incriminated the accused where he was a stranger and this resulted in 100% acquittals where the accused person was a stranger.
- Conviction rates were notably high at 53.8% when the accused was a neighbour and 30% when the accused was another known person such as an acquaintance, co-villager, or friend.** In these cases, a relatively higher proportion of victims testified against the accused, contributing to the higher conviction rates observed. In cases where the accused was the father or the mother's partner, the conviction rate stood at 26.7%. Similarly, in cases involving relatives, the conviction rate was 27.5%. The moderate conviction rates in these categories indicate the challenges inherent in cases involving family members.

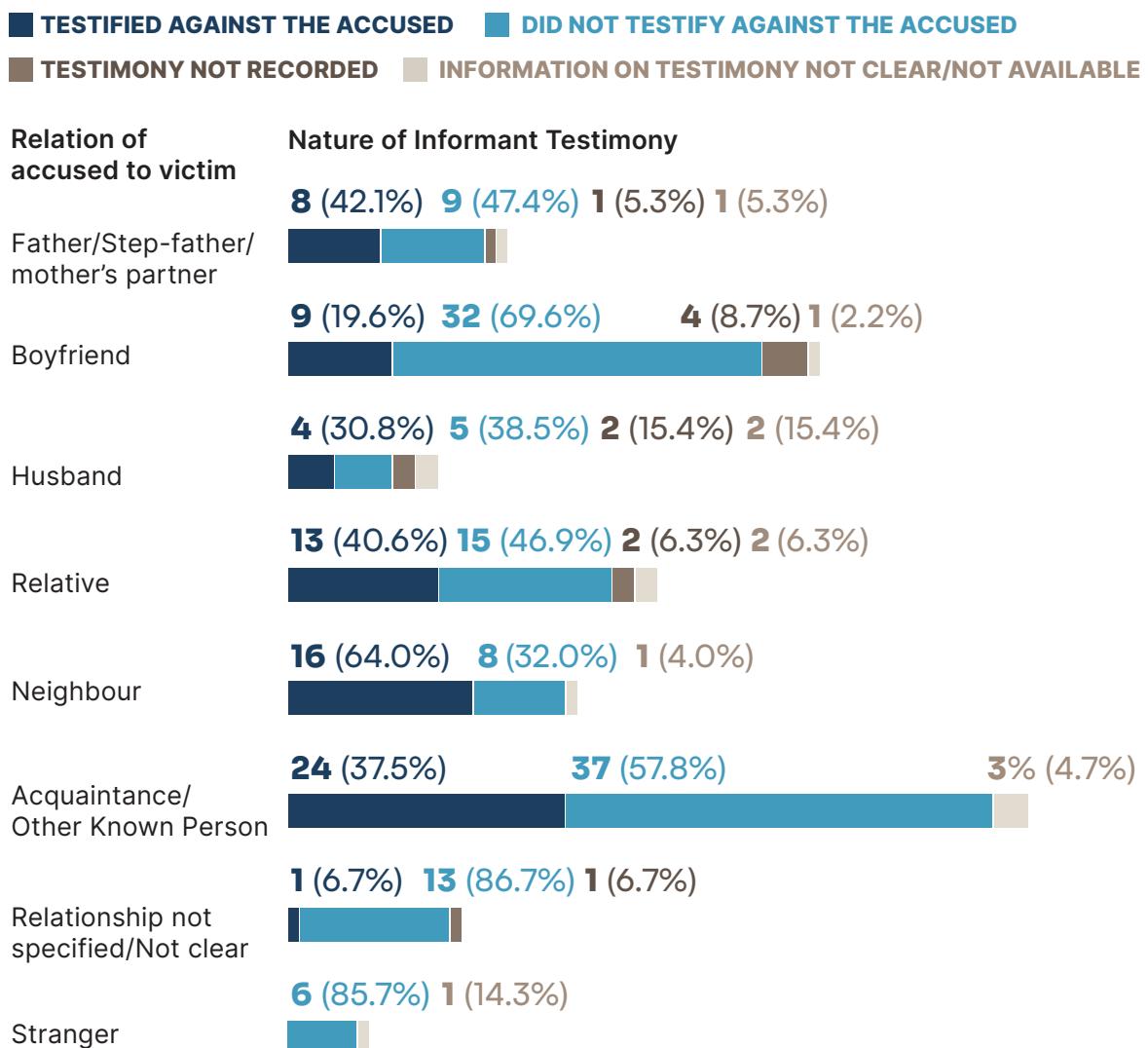
## 4.5. Informants' Testimony vis-à-vis Outcomes

**Figure 4.8:** Nature of Testimony of Informants and Outcomes vis-à-vis informant testimony



- **A majority of informants did not testify against the accused person despite triggering the criminal justice system.** In 125 of the 221 cases (56.6%) in which the informant was a person other than the victim, they did not testify against the accused and 123 of these cases (98.4%) ended in an acquittal. They incriminated the accused in only 75 cases (33.9% cases)<sup>134</sup> and 45 of these cases (60%) resulted in a conviction. These trends call for deeper examination of factors that influence the testimony of informants who are predominantly family members of the victim and an assessment of the nature of support made available to families at the pre-trial stage.
- **Informants (excluding victims) largely testified against the accused in cases in which the accused were neighbours, and the rates were comparable in cases in which the accused was the relative or the father, step-father, adoptive father or mother's partner.** Where the accused was a stranger, none of the informants testified against the accused person.

**Figure 4.9:** Informant testimony (excluding victims) by the relationship between victim & accused



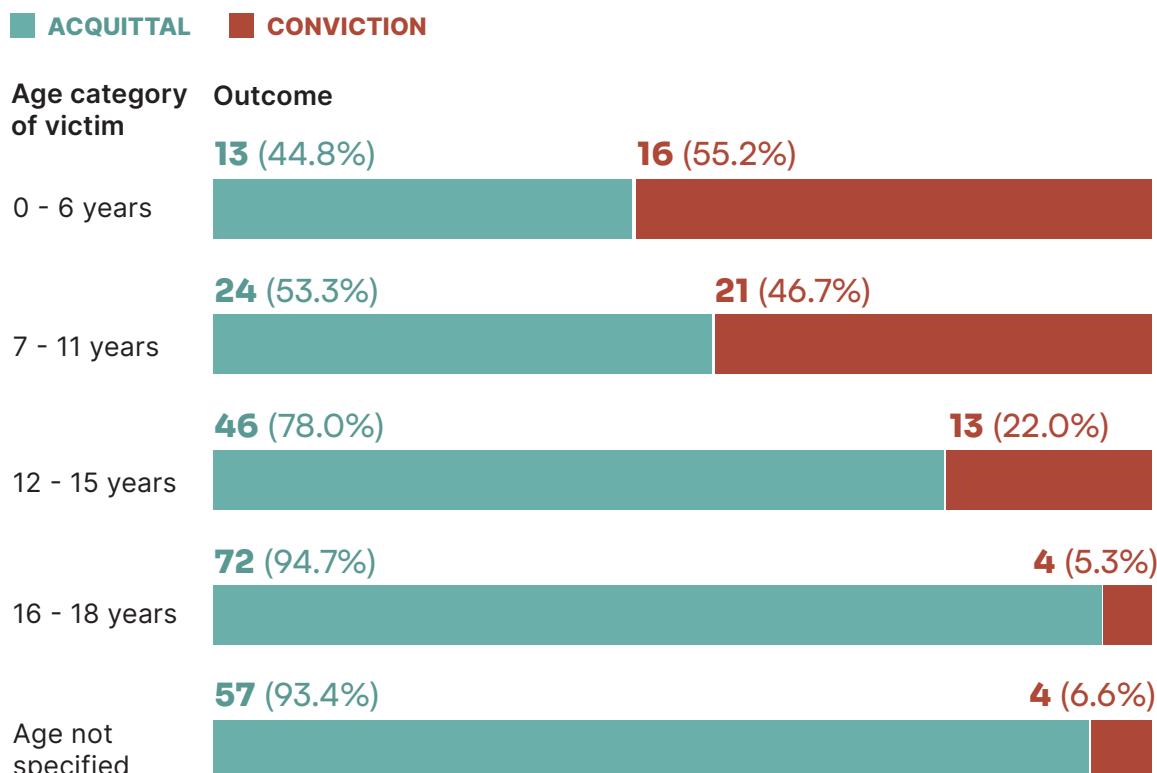
<sup>134</sup> Informants' testimony was not recorded in 10 cases (4.5%) and the nature of their testimony was either not clear or not available in 11 cases (5%).

- Notably, in only 12 of the 53 “romantic” cases which were reported by a family member or other, did the informant testify against the accused. The low rates of testimony against the victim’s boyfriend hint at the possibility of compromise between the parties, or the subsequent acceptance of the relationship in “romantic” cases by the families. As with victim testimony overall, no explanation could be gleaned from the judgments as to why informants and victims who lodged the case themselves did not incriminate the accused.

## 4.6. Outcomes vis-à-vis age of victims and accused persons

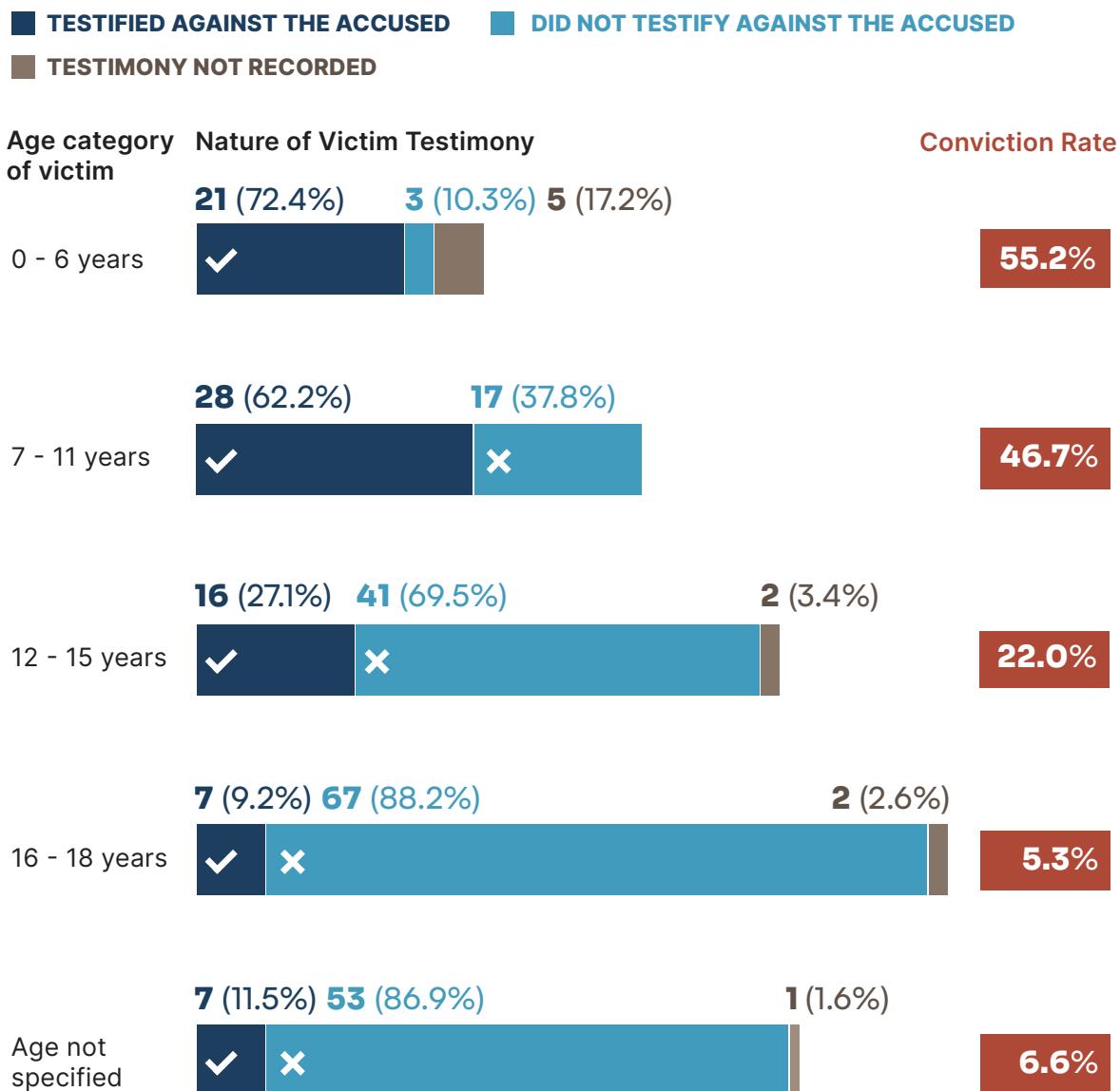
- Conviction rates were higher in cases of victims below 12 years as compared to those between 12-18 years, and conviction was based on the manner in which the children in these age-groups testified.** 66.2% of victims under 12 years of age testified against the accused, while only 17% of victims between 12 -18 years of age testified against the accused. Conviction rates were highest for the age-group of 0-6 years with convictions recorded in cases of 16 of 29 victims (55.2%). Conviction rate was the least in cases of 4 of 76 victims (5.3%) in the age group of 16-18 years. A partial explanation is the volume of “romantic” cases which involve victims between 16-18 years, but a qualitative inquiry is necessary to understand the factors that impact or affect how older children testify in courts. In any case, efforts to enhance pre-trial support services for child victims, regardless of their age, is essential to ensure their effective participation.

**Figure 4.10:** Number of convictions vis-à-vis the age of victim (n=270 victims)



**Note:** In cases that number of convictions has been calculated as per the number of victims

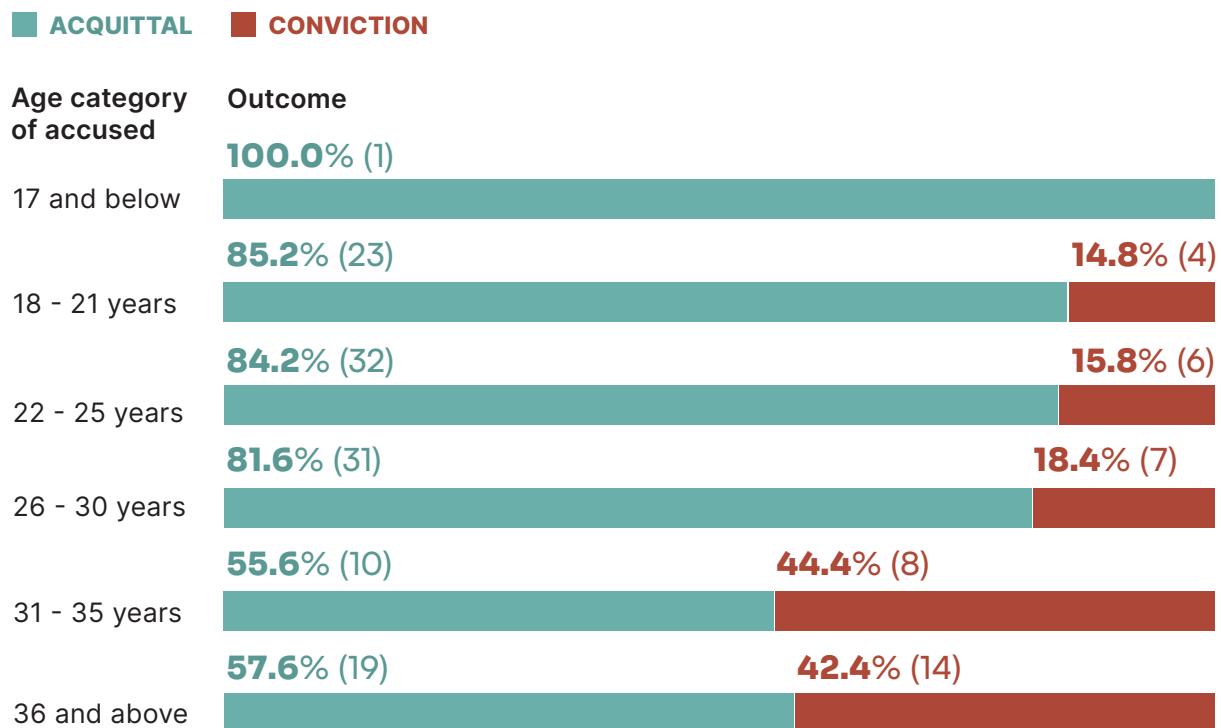
**Figure 4.11:** Outcomes and victim testimony disaggregated by age of victims (n=270 victims)



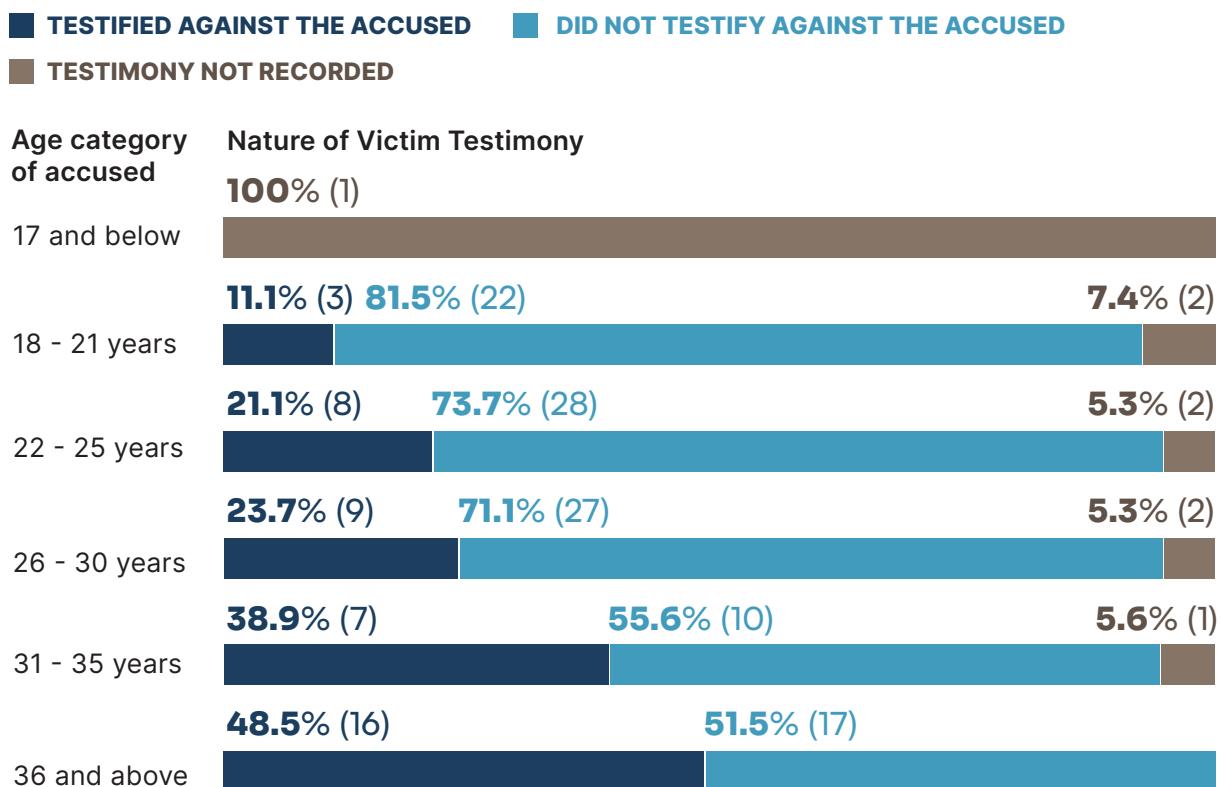
- Of the 155 accused persons in Maharashtra in respect of whom age-related data was available,<sup>135</sup> the conviction rate was highest for accused persons between 31 and 35 years of age (44.4%), and least for accused persons below the age of 18 years (0%) and those between 18 to 21 years of age (14.8%). An analysis of victim testimony vis-à-vis the age of the accused person evinced that the victim testified against the accused in higher proportion in cases where the accused was much older. A sharp increase in the rate of victims testifying against the accused was seen in cases where the accused persons were over 30 years of age.

<sup>135</sup> The age of accused persons in the state of Maharashtra is recorded as per the age at the time of registration of the case in court and not at the time of incident or at the time of FIR.

**Figure 4.12:** Outcomes in Maharashtra disaggregated based on accused's age at the time of registration in court (n=155 accused persons)



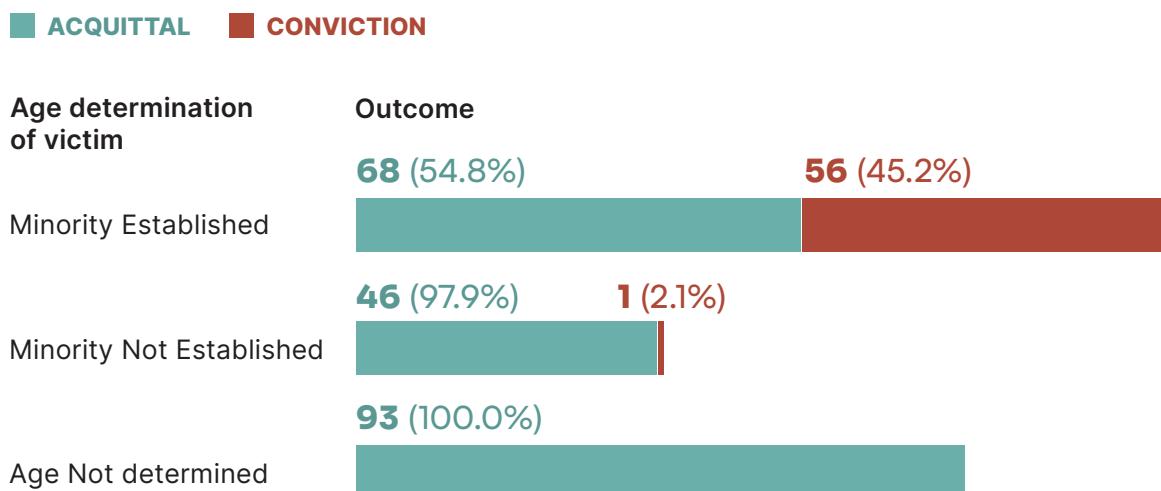
**Figure 4.13:** Nature of victim testimony in Maharashtra by age of accused at time of registration (n=155 accused persons)



## 4.7. Link between Age-Determination and Outcomes

- Of the 124 cases in which the minor status of the victim was established, the accused was convicted for a sexual offence under the POCSO Act and/or IPC in 56 cases (45.2%) and acquitted in 68 cases (54.8%). Acquittals took place despite the establishment of the minor status because the victim had not incriminated the accused (52 cases), or the testimony was not considered credible (nine cases), and /or due to lack of corroborative evidence.
- All 47 cases in which the minor status of the victim could not be established, resulted in an acquittal under the POCSO Act. In one of these cases, though the accused was acquitted under the POCSO Act, he was convicted under the IPC instead. All 93 cases in which the age of the victim was not determined resulted in an acquittal.

**Figure 4.14: Outcomes vis-à-vis age determination of the victim**



## 4.8. Outcomes in cases in which the victim had a disability

In three cases, the victim had a disability — deafness (one case) and intellectual disability (two cases). In two of the three cases, the testimony of the victim was dispensed with and in one case, the victim's testimony was recorded with the aid of an interpreter.

In *State of Assam v Faruk Ali*,<sup>136</sup> the victim's brother filed a complaint alleging that his 14-year-old sister with deafness was raped by the accused person as a result of which she became pregnant. The victim was sent for medical examination and her statement was recorded under Section 164, CrPC. The brother did not support the prosecution and stated that he filed a case after misunderstanding what the victim had communicated to him. As the victim was deaf and did not know sign language, the Special Court called upon her brother to act as her interpreter. However, the Special Court noted that the victim could not understand or communicate beyond her basic day-to-day requirements and dispensed with her evidence. The Special Court acquitted the accused due to lack of evidence.

<sup>136</sup> *State of Assam v Faruk Ali*, (2021) Special (POCSO) Case No. 10/2020 (Court of Session at Nalbari).

In *State of Maharashtra v Punjaram @ Sonya*,<sup>137</sup> the 13-year-old victim was intellectually disabled from birth. She told her mother that the accused, an acquaintance, kissed, hugged, and raped her. The accused was charged under Sections 354, 354A, 376(2)(i)(j)(l) of the IPC and Section 6 r/w 8 and Section 10 of the POCSO Act. The Special Court noted that the victim was “not competent witness because she is mentally retarded from her childhood.” However, there was no reference to any assessment done to determine the extent of retardation. Since the mother and grandmother of the victim did not testify against the accused, the Special Court acquitted the accused. The judgment was silent about the use of special educators or persons familiar with the manner of communication of the child to assess her competence.

A reference to an interpreter under Section 38 of the POCSO Act was seen in only one case. In *State of Maharashtra v Suresh Kisan Surwade*,<sup>138</sup> the 13-year-old victim was “partially mentally retarded and appeared in court to give testimony against the accused. The accused was charged under Sections 452, 376(2)(j)(n), 376(3), 377, IPC and Sections 4 and 6, POCSO Act. It is noteworthy that the Special Court made use of a special room with all required facilities for vulnerable witnesses while taking the testimony of the victim. Her evidence was videographed by the experts provided under the computer management system of the court. The corresponding certificate about its hash value was also obtained and all this procedure of recording of evidence and videography was carried out in presence of the APP and advocate representing the accused. The accused heard the evidence recorded by video conferencing method. The court cited *Sakshi v Union of India*,<sup>139</sup> and *State of Punjab v Gurmit Singh*,<sup>140</sup> while discussing mode of recording of evidence of child in sexual abuse cases and followed the guidelines laid therein. The victim’s testimony was in the form of question and answer and was taken in the presence of a female PSI and interpreter who was an expert, being a teacher in the school of “mentally retarded students”. The cross-examination was conducted after obtaining the questions in writing. The Special Court held the accused guilty under Section 6 of the POCSO Act, and Section 377, IPC.

## 4.9. Time taken to record evidence and dispose of cases

- **Evidence of the victim was rarely recorded within 30 days of the court taking cognizance of the matter, as is required under Section 35(1), POCSO Act.** The objective of the provision is to ensure that the testimony is recorded at the earliest so that the child’s memory is fresh and the child is able to move forward and not have to revisit the abuse months or years later. However, of the 76 cases in which information of the date of registration of the case and the date of completion of recording of examination-in-chief of the victim was available, it was recorded within 30 days in only two cases (2.6%). It took between six months to a year in 27 cases (35.5%), between one to two years in 23 cases (30.3%), and between 2-3 years in three cases (3.9%). The average time taken to record the examination-in-chief of the victim was 10.2 months and the median time was nine months. It must be noted that this is the time from the registration till the examination-in-chief and the actual completion of the evidence would have taken longer.

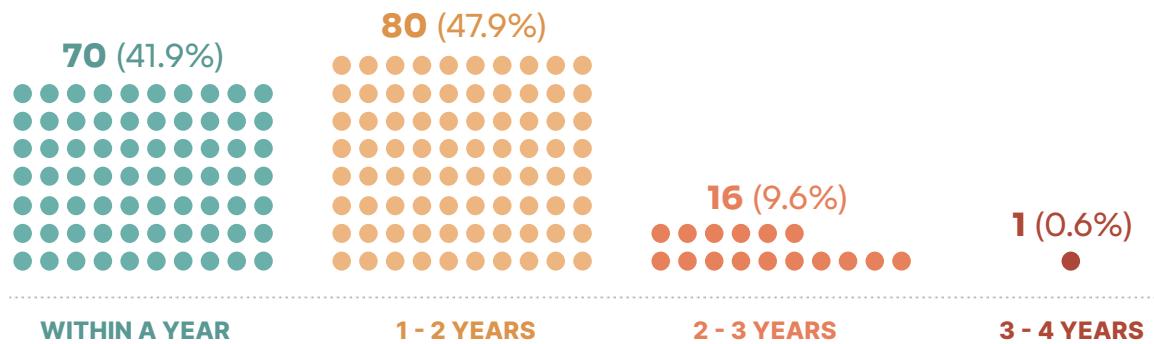
<sup>137</sup> *State of Maharashtra v Punjaram @ Sonya*, (2021) Special Case (Child Prot.) No. 339/2021 (Court of Session at Jalna).

<sup>138</sup> *State of Maharashtra v Suresh Kisan Surwade*, (2021) Special POCSO Case No.30/2020 (Court of Session at Buldana).

<sup>139</sup> (2004) 5 SCC 518 (Supreme Court of India).

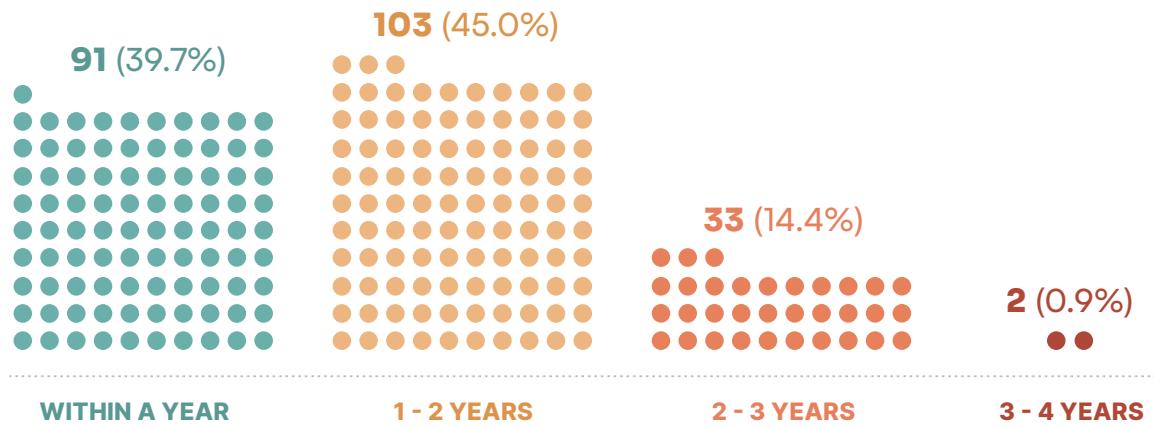
<sup>140</sup> (1996) SCC (2) 384 (Supreme Court of India).

**Figure 4.15:** Duration from registration of case to disposal (n=167 cases)



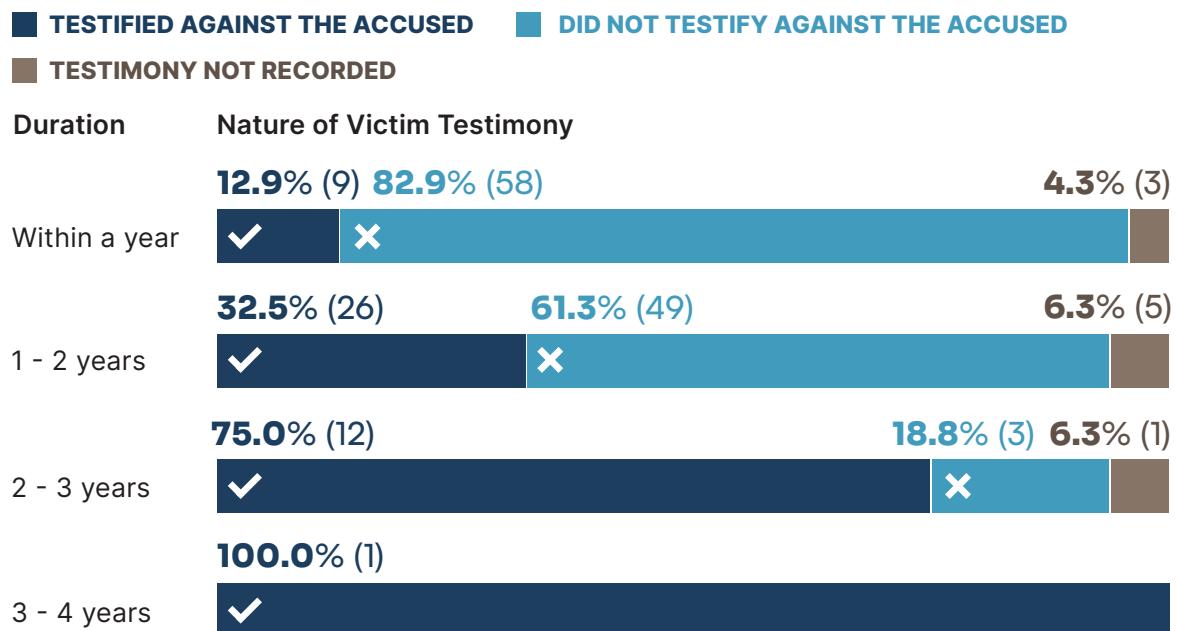
- **Section 35(2), POCSO Act states that as far as possible, the trial should be completed within one year of taking cognizance of the offence.** Data on time taken from the registration of cases before the court till disposal of cases was available for 167 of 264 cases out of which 150 cases were from Maharashtra. **A majority of cases, i.e., 97 of 167 cases (58.1%) took over a year from registration to disposal.** The shortest duration taken from registration to disposal across all states was a case from Maharashtra that took 25 days and the longest was a case from West Bengal that took three years and three months. The median duration was one year and one month (See [Table A4.2](#) for state-wise data on time taken from registration of case till disposal. For the impact of delays on survivors and their families, refer to [Section 4.2](#) in Part B).

**Figure 4.16:** Duration from lodging of FIR to disposal (n=229)



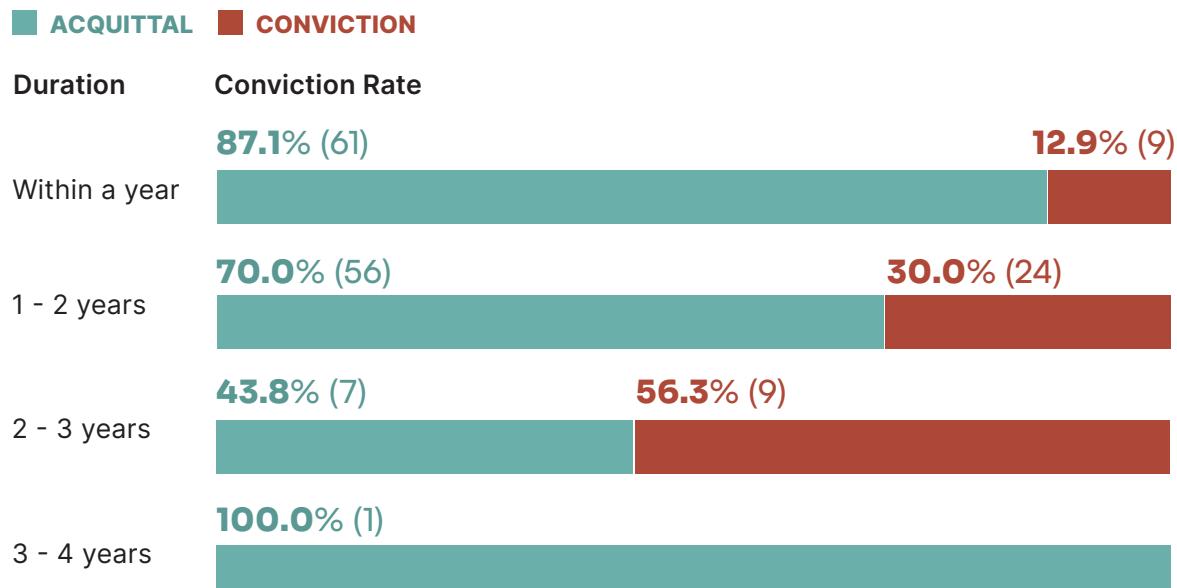
- **Data on duration taken from lodging of FIR till the disposal of the case was available for 229 of 264 cases. A majority of the cases, i.e. 138 of 229 cases (60.3%) took more than a year to be disposed of.** Disposal was within one year in 91 cases (39.7%). Across all states, the shortest duration taken from FIR to disposal was a case from West Bengal that was disposed of in 54 days, the longest duration taken was also from West Bengal and took three years and three months. The mean duration was one year and two months. (See [Table A4.3](#) for state-wise time taken from lodging of FIR till disposal).
- **The median disposal time was one year and three months in Assam, one year in West Bengal, and one year and four months in Maharashtra.** In Assam, 24 of 44 cases (54.5%) were disposed of within a year, in West Bengal 30 of 62 cases (48.5%), and in Maharashtra 37 of 123 cases (30.1%) were disposed of within a year.

**Figure 4.17:** Nature of victim testimony by time taken from registration to disposal



- Of the 70 cases that were disposed of within a year from registration, it was observed that the victim did not say anything incriminating against the accused in 58 cases (82.9%). Consequently, among the cases disposed of within a year, the conviction rate was much lower at 12.9% and the acquittal rate was much higher and stood at 87.1%. A possible explanation is that in a large proportion of the cases that were disposed of within a year, since the victim did not say anything against the accused, the Special Court may have dispensed with the examination of formal and other witnesses. It was observed that the conviction rate was higher for cases disposed of between 1-2 years at 30% and was 56.3% for cases disposed between 2-3 years, as was the percentage of victims who testified against the accused.

**Figure 4.18:** Conviction Rate by time taken from registration to disposal



## 4.10. Illustrative Cases of Convictions and Acquittals

### Conviction based on cogent testimony, medical evidence, and failure to rebut presumption

In *State of Maharashtra v. Sagar Vishwanath Borkar*,<sup>141</sup> the 9-year-old victim told her father that the two accused persons had taken her away on a scooter and committed rape. They also threatened to kill her if she disclosed the incident to anyone. The father lodged an FIR and the accused were charged under Sections 363, 366A, 376(2)(j), 376(2)(m), 376(DB), 506 read with Section 34, IPC and under Section 6, POCSO Act. Accused No.2 was also charged under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v) of the SC/ST Act. The Special Court considered the evidence of the victim and other witnesses, medical report, DNA report and non-rebuttal of presumption by the accused to hold the accused persons guilty and convicted them under Sections 363, 376(2)(m), 376DB, 506 r/w section 34, IPC and Section 6 of the POCSO Act. It observed:

**“** Where raped victim has given graphic narration of the sexual violence on her, her evidence is cogent and accepted and the medical evidence stands a good piece of evidence in support of the ocular evidence of victim. Where the victim was subjected to sexual assault and was not an accomplice to the crime, but was a victim of another person's lust, it would be improper, unrealistic and undesirable to test her evidence, the suspicion. Medical evidence revealed that, her hymen was completely torn off and there were injuries on internal portion of vagina. There was also no material to show that she was tutored. From the evidence of prosecutrix coupled with the statements of doctors, it is proved beyond reasonable doubt that, a forcible intercourse was repeatedly performed with the victim...

In *State of Maharashtra v Afsar Lattif Sayyed*,<sup>142</sup> the victim's mother lodged an FIR against the accused after her daughter informed her aunt that she was raped and beaten by the primary accused. The victim alleged that Accused no.1 forcibly took her to the terrace of an adjoining house and sexually assaulted her. She further alleged that Accused No.1 and Accused No.2 — the mother of the Accused No.1— threatened her to not disclose the incident to anyone. The doctor testified that the medical examination of the victim revealed that “there was recent forceful penetration in the vagina of the victim.” The Special Court found the victim's 164 statement and medical evidence consistent with her deposition and noted:

**“** In absence of any effective challenge to the testimony of the victim, her testimony is found to be very natural and inspires confidence. The evidence is of such a quality that it is sufficient to raise presumption under Sec.29 of POCSO Act.

Both the accused persons were therefore held guilty and the primary accused was convicted under Sections 376AB, 354B, and 323, IPC and Section 5(m) punishable under Section 6, Section 8 and Section 10 of the POCSO Act.

<sup>141</sup> *State of Maharashtra v Sagar Vishwanath Borkar* [2020] Spl POCSO Case No 27/2019 (Court of Session at Buldana).

<sup>142</sup> *State of Maharashtra v Afsar Lattif Sayyed* [2020] Spl case No 397/2018 (Court of Session at Ahmednagar).

### Conviction based on testimony of eye-witnesses and medical evidence

In *State of Maharashtra v. Kiran @ Shekhar Rajendra Warhade*,<sup>143</sup> the victim's mother alleged that the accused, who was their neighbour, had raped her 3-year-old daughter. Although the victim could not testify due to her tender age, the Special Court convicted the accused based on the testimonies of the two eye-witnesses and observed that "non examination of the victim girl is not fatal to the prosecution." The defence argued that the victim herself had said nothing to the mother, but this was rejected by the Special Court stating that:

**“** Victim girl is only three and half years old. It is not expected from her that she would be in a position to narrate about the incident as she is too small, tender and immature to know what was done to her by the accused. If such type of disclosure could have been there, it would be an unnatural conduct or the evidence. But in the present case, the disclosure by the victim girl is also natural as she is not in the age of understanding about the act of the accused.

The medical practitioner noted reddish abrasion over the vulva and opined that the possibility of sexual assault cannot be ruled out. The Special Court relied upon precedents to state that slight or partial penetration was sufficient to constitute the offence of rape and convicted the accused under Section 376AB of IPC and under Sections 4 and 10, POCSO Act.

### Conviction for a lower charge due to failure to establish penetration

In *State of Maharashtra v. Trimbak Ramkrushna Dahiwal*,<sup>144</sup> the 3-year-old victim revealed to her mother's great grandmother-in-law that the accused, a Baba (holy man), had offered her a chocolate, picked her up, pressed her mouth and took her behind a temple where he bit her lips, kissed her and tried to disrobe her. Charges under Sections 376AB, 354, 354A(2), 354(B), IPC and under Sections 4, 6, and 8, POCSO Act were framed against the accused. In their evidence, the parents of the victim and the victim testified against the accused and stated that he committed penetrative sexual assault by inserting his finger in the vagina of the victim. However, there was no medical examination conducted, since the victim and her parents stated this one month after the complaint was lodged. The Special Court, noted that there was no contradiction in the prosecution evidence and the testimonies were consistent on the point that the accused offered the victim a chocolate, took her to the temple and bit her lips. The prosecution had also contended that the accused inserted his fingers into the victim's vagina, which was not stated by the victim in her 161 statement. With respect to the testimony related to digital penetration, the Special Court observed:

**“** Had the medical examination of the victim was conducted it would helpful to find out whether or not penetrative sexual assault has been committed on the victim girl. The victim girl (PW5) improved her version on the point of the accused inserted finger in her vagina. Thus, it is unsafe to believe [the] single improved version of the victim girl (PW5).

<sup>143</sup> *State of Maharashtra v Kiran @ Shekhar Rajendra Warhade* [2020] Spl POCSO Case No 222/2019 (Special Court in Amravati).

<sup>144</sup> *State of Maharashtra v Trimbak Ramkrushna Dahiwal* [2020] Spl Case Child No 62/2019 (Special Court at Jalna).

The Special Court also noted that the great grandmother-in-law and grandmother-in-law of the informant were not examined by the prosecution. The evidence of the victim, her parents, her friend and others was, however, relied upon to convict the accused under Section 354A(2), IPC and Section 8, POCSO Act. The presumptions under Section 29 and 30 were also applied and the Special Court noted that the defence had failed to rebut it.

In *State of Maharashtra v B*,<sup>145</sup> the victim's grandmother caught the accused performing sexual acts with the 18 month-old victim in his house and lodged a complaint. The accused was charged under Section 376AB, IPC and Section 5(m)/6, POCSO Act. The informant, the victim's mother, and an eyewitness testified against the accused. As per the medical evidence, there were no signs of sexual intercourse or aggravated penetrative sexual assault. The chemical analysis report found that the frock and nicker of the victim had blood of the accused. The Special Court found that although the accused failed to rebut the presumptions under the POCSO Act, the medical evidence did not indicate penetration, and the accused was thus convicted under Section 9(m)/10 of the POCSO Act.

In *State of West Bengal v Rupkumar Maity @ Bhola*,<sup>146</sup> the school van driver of the 5-year-old victim girl was alleged to have fondled the victim and inserted his finger in her vagina. The accused was charged under Section 376AB, IPC and Section 6, POCSO Act. The victim's mother and grandmother were declared hostile by the prosecution. The Special Court found that the element of penetration was not established beyond reasonable doubt as the victim in her statement under Section 164 of the CrPC stated that the accused inserted his hand in her private parts, but in her testimony she stated that he put his hand 'on' her private parts. As the medical report also did not show injuries as a result of insertion, the Special Court held the accused guilty of aggravated sexual assault under Section 9(m) r/w section 7 and punishable under section 10 of the POCSO Act instead of aggravated penetrative sexual assault.

### Conviction based on the sole testimony of the victim

In one case,<sup>147</sup> the accused, a relative of the 16 year-old-victim, took the victim to a forest, gagged her, and committed penetrative sexual assault against her multiple times. On reaching home, the victim narrated the incident to her mother and brother and registered the FIR herself on the day of the incident. The accused was charged under Sections 376(2)(n), IPC and Sections 4 and 6, POCSO Act. The victim testified against the accused and the Special Court did not find any omission or contradiction on material facts in her cross-examination. The medical report indicated no signs of injuries, but the Special Court observed that this did not mean that the victim was not assaulted. The defence contended that there was no independent corroborative evidence and it was unsafe to rely on the sole testimony of the victim. However, the Special Court rejected this argument, and noted:

**“** The evidence of victim is unimpeachable and her sole testimony is sufficient to hold the accused guilty for committing rape on her repeatedly and aggravated penetrative sexual assault. As the testimony of victim [...] appears convincing and trustworthy, then, even in absence of any corroborative evidence, accused can be convicted. I have not found any discrepancy in her evidence and there is not a single ground to falsely implicate the accused.

<sup>145</sup> *State of Maharashtra v B* [2021] Spl Case POCSO No 27/2019 (Court of Sessions at Hingoli).

<sup>146</sup> *State of West Bengal v Rupkumar Maity @ Bhola* [2020] S.T 179/18 (Court of Session at Purba Medinipur).

<sup>147</sup> *State of Maharashtra v \*\*\*\** [2021] Spl Child Case No 37/2020 (Special Court in Yavatmal).

### **Conviction based on Section 376(2)(j), IPC as accused was in a position of trust**

In one case,<sup>148</sup> the victim's mother alleged that her 15-year-old daughter had gone missing after she went to the river bank to wash clothes. The police traced her and found her with the accused person, who was her brother-in-law. The victim refused to go back to her parents and was sent to a Child Care Institution. The accused claimed to have married the victim in a temple. The victim was pregnant and her pregnancy was terminated as per her wishes and the samples were sent for DNA testing. The victim, in her testimony, admitted that the accused took her on his motorcycle and had sexual intercourse with her multiple times. The DNA report established the paternity of the accused. However, the prosecution was unable to establish the minority of the victim. The defence pleaded that the sex was consensual and the accused had married the victim, but the court did not accept that there was a love affair between the victim and accused, reasoning that the accused was married to the victim's sister and they both knew they could not get married to each other. During the cross-examination, the victim admitted that there was no coercion for the sexual intercourse. However, the court held that the victim did not have capacity to consent, as the accused, being her relative, was in a position of trust or authority. The accused was convicted under Sections 366 and 376(2)(f), 376(2)(j), and 376(2)(n) of the IPC.

### **Acquittal on the basis of witnesses turning hostile**

In one case,<sup>149</sup> the 14-year-old victim complained to her teacher about being sexually abused by her step-father. The teacher informed the police and an FIR was lodged. The victim was shifted to a shelter home and it was subsequently discovered that she was pregnant. She further stated that her mother knew of the assault and pregnancy and had taken her to the doctor who gave her abortion pills. The accused was charged under Sections 376, 323, 506, IPC and Section 4, 6, 8, 10 and 12, POCSO Act. In her testimony, the victim denied the contents of the complaint and her medical history. The supervisor at the victim's school, who helped with the reporting, also denied that the witness admitted anything before her. The supervisor was declared hostile by the prosecution. The doctor stated that the victim gave a history of a single sexual intercourse and that "her mother had provided her pregnancy termination pills, whereupon she had pain in abdomen and had passed clots and bleedings". The MER found multiple old healed tears in her vagina and the doctor further deposed that the abortion record was not available. The APP argued that the victim had undergone abortion about two years prior to lodging the FIR and therefore under such circumstances, the IO could not produce any medical record about the said abortion. The Special Court also noted that presumptions under Sections 29 and 30 of the POCSO Act cannot be raised in this case as the victim and her mother did not state anything against the accused and there was no medical and corroborative evidence. The accused was therefore acquitted.

### **Acquittal as testimony of victim was found unreliable**

In *State of West Bengal v Bindu Mondal*,<sup>150</sup> the 11-year-old victim had been allegedly sexually assaulted while she was sleeping at her maternal uncle's house. She testified against the accused stating that while her grandmother had briefly left the room to go to the toilet, the accused person

<sup>148</sup> *State of Maharashtra v \*\*\*\** [2021] Spl Case POCSO No 218/2019 (Special Court in Aurangabad).

<sup>149</sup> *State of Maharashtra v \*\*\*\** [2021] Spl POCSO Case No 185/2020 (Court of Session at Pune).

<sup>150</sup> *State of West Bengal v Bindu Mondal* [2020] Spl Case No 49(7)2019 (Special Court in Nadia).

entered through the window and assaulted her by inserting his finger in her vagina. When she tried to resist, he pinched her, leading to her sustaining an injury on her thigh. She also stated that when she raised her voice, he ran away, leaving his towel in the room. Her mother deposed that the victim had sustained injury to her thigh and was also bleeding in her private parts. The Special Court acquitted the accused because although the victim had named the accused in her 164 statement and police statement, in her medical history, she only stated that “someone” came and assaulted her. The court observed that the towel which the accused had allegedly left behind was not seized by the police. The medical examination did not reveal any injuries on her private parts or any part of her body. Further, the Special Court also noted that there was political rivalry between the victim’s family and the accused on the matter of setting up a tube well. Considering the evidence on record, the court stated that it was doubtful whether any incident took place with the victim and the accused, and consequently acquitted the accused.

In one case,<sup>151</sup> the accused, a relative of the victim, allegedly forced open the door of the victim’s house, grabbed her, and when she resisted, forced her to consume pesticide and raped her. The accused was charged under Sections 452, 307, and 376(3), IPC and Sections 4 and 6, POCSO Act. The victim testified against the accused. But the Special Court found various inconsistencies. For instance, the victim stated that she had smashed a glass bottle to threaten the accused, but the spot and seizure memo and no other evidence could attest to this fact. The Special Court pointed out that the victim or the accused would have sustained some bleeding injuries “in the process if really she was trying to keep the accused away from her.” The victim had claimed that she suffered from a bleeding injury in her vagina after the assault, but the MER found no bleeding injury in her genital area. It further noted that the medical evidence and chemical analysis report did not show that sexual assault had taken place. The prosecution also examined the accused’s son, who testified that, on the day of the incident, he received a call from his father that the victim was lying in an unconscious state and he should come with his van. He did so and took the victim to the hospital. The court noted that his evidence cannot be discarded merely because of his close relationship with the accused. As per the court, his evidence helps establish the innocence of the accused as “in normal course, a culprit would not have remained at the place and would not have helped the family of the victim girl to save the life of the victim girl in such emergency, he would have certainly fled away and would not have contacted his son for prompt help.” The court acquitted the accused concluding:

**“** She told a different story at different times. The medical evidence and CA reports are also not corroborating her testimony. There is also suppression of the material facts by her. The reason for levelling such serious allegations is also not known. On the other hand, the conduct of the accused subsequent to the alleged incident appears to be normal, humane leading to his innocence. The story put by the prosecution through the evidence of PW1 does not absolutely inspire confidence. Therefore, the sole testimony of the victim girl cannot be accepted and believed.

<sup>151</sup> State of Maharashtra v \*\*\* [2021] Spl POCSO Case No 303/2020 (Court of Sessions at Amravati).

## 4.11. Conclusion

The trends in testimony of victims and informants necessitate an in-depth qualitative inquiry to elicit factors that contribute to the change in position in the period between the lodging of the FIR and the testimony in court. Such an inquiry can help uncover the extent to which threats, pressures, inducement, social stigma, economic shocks, conflict about sending a loved one to prison, quantum of punishment, and settlements influence testimonies.

While the criminal justice system offers assistance in the form of victim compensation, Support Persons, and witness protection, the extent to which such support is actually made available to victims and their families in a timely manner also needs to be ascertained, along with the challenges in operationalising sustained support. Another aspect that needs to be studied is the cases of aggravated penetrative sexual assault, that also include charges of kidnapping and abduction to assess the proportion of non-exploitative “romantic” cases involving adolescents above 16 years of age. Evidence on these aspects is needed to ensure that laws, policies, and schemes are effective in addressing sexual violence against children and to avoid net-widening and criminalisation of normative sexual behaviour of adolescents. The factors leading to delay in recording victim’s evidence despite statutorily mandated timelines also needs to be studied.

Considering that children testify against the accused in challenging circumstances, the appreciation of their testimonies by Special Courts requires careful consideration. Incorporation of modules on child development and trauma-informed judicial practice will help judges understand the unique vulnerabilities and capabilities of children at different stages of development, better appreciate children’s testimony, and avoid unrealistic expectations and misconceptions regarding their disclosure and behaviour.<sup>152</sup>

Finally, along with systematic analysis of data on conviction and acquittal rates in relation to the severity of punishment, a qualitative inquiry is needed to examine the potential impact of high minimum mandatory sentences on judicial decision-making in POCSO cases. This can lend valuable insights about the efficacy of introducing the death penalty for sexual offences.

---

<sup>152</sup> Dr. Preeti Jacob and Dr. Kavita Jangam, 'Appreciating the testimonies of children and adolescents' in CCL-NLSIU Report (n 15) 113-124.

## 5 Trends in “Romantic” Cases

From 1949-2012, for a period of 63 years, the age of consent for sexual acts in India was 16 years. Then, with the enactment of the Protection of Children from Sexual Offences (POCSO) Act in 2012, it was raised to 18 years. During the drafting of the POCSO Bill, the Ministry of Women and Child Development (MWCD) and the National Commission for Protection of Child Rights (NCPCR) acknowledged adolescent sexuality and proposed legislative provisions that recognise consent of minors above 16 years. When it was introduced in the Rajya Sabha, the POCSO Bill, 2011<sup>153</sup> included provisos to Clauses 3 and 7 that recognised consensual penetrative and touch-based sexual activity with a child between 16-18 years and specified grounds such as the use of force, violence, threats, intoxicants, drugs, coercion, fraud, and others, in the presence of which consent would be vitiated. However, these clauses were removed in response to the recommendations of the Parliamentary Standing Committee which took the view that “once the age of child has been specified as 18 years, the element of consent should be treated as irrelevant up to this age” and to ensure compliance with the UNCRC and the JJ Act, 2000.<sup>154</sup> Notably, the UNCRC does not stipulate that the age of consent should be 18 years. The Committee on the Rights of the Child has instead recommended that:

**“ States parties should take into account the need to balance protection and evolving capacities, and define an acceptable minimum age when determining the legal age for sexual consent. States should avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity.”<sup>155</sup> [emphasis added]**

In 2013, the Justice Verma Committee, constituted to recommend criminal law reforms on sexual offences after the Delhi gangrape case, clarified that the UNCRC “was aimed *inter alia* to protect children from sexual assault and abuse and not to criminalise consensual sex between two individuals even if they are below eighteen years of age.”<sup>156</sup>

As it stands today, both the POCSO Act and the IPC does not recognise factually consensual non-exploitative sexual acts among similarly aged adolescents. Sex with a child is punishable under Section 375 and Section 4, POCSO Act with a minimum imprisonment of 10 years which may extend to life imprisonment till the remainder of a person’s natural life. Repeated penetrative sex, sex with a minor spouse, or sex that results in a pregnancy constitute aggravated penetrative sexual assault under Section 5, POCSO Act and is punishable with a minimum of 20 years rigorous imprisonment, which may extend to life imprisonment till the remainder of a person’s natural life, or death.

<sup>153</sup> ‘The Protection of Children from Sexual Offences Bill, 2011’, as introduced in the Rajya Sabha (PRS), <[https://prsindia.org/files/bills Acts/bills\\_parliament/2011/Protection\\_of\\_children\\_against\\_sexual\\_offences\\_bill\\_2011.pdf](https://prsindia.org/files/bills Acts/bills_parliament/2011/Protection_of_children_against_sexual_offences_bill_2011.pdf)> accessed 6 July 2023.

<sup>154</sup> Department-related Parliamentary Standing Committee on Human Resource Development, *240th Report on The Protection of Children from Sexual Offences Bill*, 2011, 21 December 2011, para 6.8.

<sup>155</sup> CRC, General comment No. 20 (2016) on implementation of the rights of the child during adolescence, CRC/C/GC/20, 06 December 2016, para 40.

<sup>156</sup> Justice J S Verma and ors, *Report of the Committee on Amendments to Criminal Law*, 2013 (PRS, 2013) 443-444, available at <[https://adrindia.org/sites/default/files/Justice\\_Verma\\_Amendmenttocriminallaw\\_Jan2013.pdf](https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf)> accessed 7 May 2024.

The High Courts of Delhi, Allahabad, Bombay, Madras, Calcutta, Meghalaya, and Karnataka have emphasised that criminalisation of consensual sex was not the objective of the POCSO Act<sup>157</sup> and have also underscored the absence of 'assault' in these cases.<sup>158</sup> Several High Courts have also made observations about the normalcy of these relationships,<sup>159</sup> noting that teenagers are inquisitive about sex and act on their feelings of physical attraction and infatuation.<sup>160</sup> High Courts have quashed proceedings in various cases involving consensual adolescent sex,<sup>161</sup> emphasised the need for legislative amendments in the context of adolescents involved in consensual sexual relationships,<sup>162</sup> and recommended that an approach anchored in science and adolescent psychology be adopted while dealing with such cases.<sup>163</sup>

While *Crime in India* indicates that between 2019-2021, 42.9% of offenders known to victims were "Friends/Online-Friends or Live in Partners on Pretext of Marriage",<sup>164</sup> it does not indicate whether

<sup>157</sup> *Vijaylakshmi v State Rep. The Inspector of Police*, [2021] Crl.O.P.No.232 of 2021 (Madras High Court); *Atul Mishra v State of Uttar Pradesh*, [2022] Criminal Misc. Bail Application No. 53947 of 2021 (Allahabad High Court); *Aarush Jain v State of Karnataka*, [2022] Criminal Petition No. 3710 of 2022 (Karnataka High Court); *Vrushabh Sudhir Shinde v The State Of Maharashtra And Anr.* [2022] Bail Application No. 257 Of 2022 (Bombay High Court); *K. Anantha Perumal v The Inspector of Police*, [2023] Criminal Appeal (MD) No. 59 of 2016 (Madras High Court); *XXXX v State Govt of NCT of Delhi*, [2022] Bail Application 2729/2022 (Delhi High Court).

<sup>158</sup> *Shembhalang Rynghang v State of Meghalaya*, [2022] Crl. Petn. No. 64 of 2021 (High Court of Meghalaya) and *Skhemborlang Suting v State of Meghalaya*, [2022] Crl. Petn. No. 63 of 2021 (High Court of Meghalaya).

<sup>159</sup> *Sabari @ Sabarinathan v Inspector of Police*, [2019] Criminal Appeal No.490 of 2018 [Madras High Court]; *Agavai v The State*, [2022] Criminal Revision Case No. 877 of 2021(Madras High Court).

<sup>160</sup> *Ashik Ramjan Ansari v State of Maharashtra*, [2023] Criminal Appeal No.1184 of 2019 (Bombay High Court).

<sup>161</sup> *John Franklin Shylla v State of Meghalaya*, [2023] Crl.Petn. No. 3 of 2023 (Meghalaya High Court); *Karan v State of Himachal Pradesh*, [2023] Cr. M.M.O. No. 1191 of 2022 (Himachal Pradesh High Court); *Tarun Vaishnav v State of Rajasthan*, [2022] S.B. Criminal Misc (Pet.) No. 6323/2022 (Rajasthan High Court); *Amit Kumar v The State*, [2022] Crl. M.C. 3881/2019, (Delhi High Court); *Aarush Jain v State of Karnataka*, [2022] Criminal Petition No. 3710 of 2022 (Karnataka High Court); *Vijaylakshmi v State Rep. The Inspector of Police*, [2021] Crl.O.P.No.232 of 2021 (Madras High Court); *V Anil Kumar v The State of Andhra Pradesh*, [2022] Criminal Petition No. 3355 of 2022 (Andhra Pradesh High Court); *Mohit v State of UP*, [2021] No. 551 of 2021, (Allahabad High Court); *Unni A. and Ors. v State of Kerala and Ors.*, [2020] Crl. M.C. No. 2459 of 2018 (Kerala High Court); *Md. Jahirul Maulana v State of Assam*, [2016] Criminal Petition No. 234 of 2016 (Guwahati High Court); *Sunilkumar Dilipbhai Patel v State Of Gujarat*, [2020] R/Criminal Misc. Application No. 19567 of 2020 (Gujarat High Court); *Ashok Dhondiba Kale v State of Maharashtra and Ors* [2018] Criminal Application No. 7038 of 2016 (Bombay High Court); *Akash Gupta v State of Uttarakhand and Ors* [2018] Criminal Misc. Application No. 502 of 2018 and Compounding Application No. 511 of 2018 (Uttarakhand High Court); *Parampreet Singh v State of Punjab and Ors* [2022] CRM-5009/2022 in CRM-M-35578/2020 (O&M) (Punjab and Haryana High Court).

<sup>162</sup> *Sabari @ Sabarinatha v The Inspector of Police*, 2019 (3) MLJ (Crl) 110 (Madras High Court); *Vijaylakshmi v State Rep. The Inspector of Police*, [2021] Crl.O.P.No.232 of 2021 (Madras High Court); *Anandan and Ors. v State and Ors. Crl.* [2022] Crl. M.P. Nos. 13296 and 13297 of 2022 (Madras High Court); *Kothandapani v State and Ors.* [2022] Crl. O.P. No. 20729 of 2022 (Madras High Court); *S. Kanthasamy v The State and Ors.* [2022] Crl. O.P. No. 17614 of 2022 (Madras High Court); *Manimaran v The Station House Officer, Kottucherry Police Station and Ors.* [2022] Crl. O.P. No. 18281 of 2022 (Madras High Court); *Rahul Chandel Jatav v State of Madhya Pradesh*, [2023] Misc. Criminal Case No. 24691 of 2023(Madhya Pradesh High Court); *Veekesh Kalawat v State of Madhya Pradesh* [2023] Misc. Criminal Case No. 4521 of 2023 (Madhya Pradesh High Court); *State of Karnataka v Basavaraj*, [2022] CRL.A No. 100515 of 2021 (High Court of Karnataka).

<sup>163</sup> *Atul Mishra v State of UP*, [2022] Criminal Misc. Bail Application No. 53947 of 2021 (Allahabad High Court).

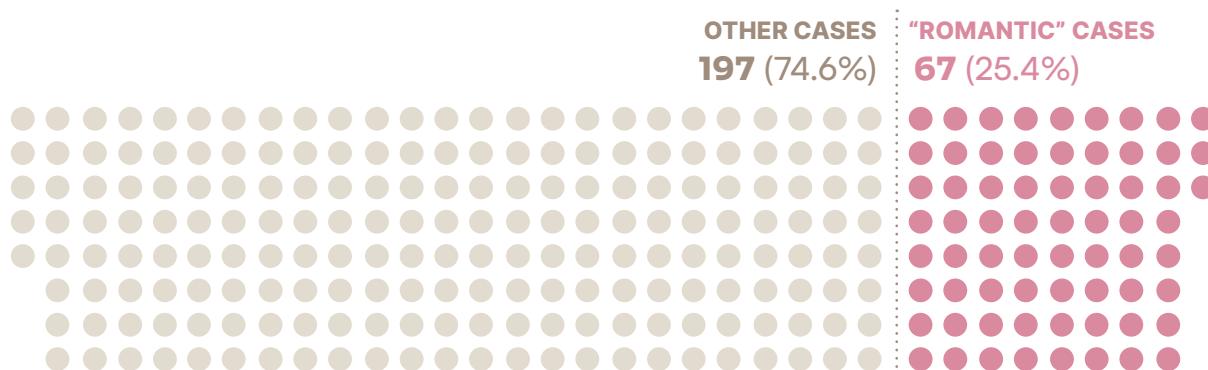
<sup>164</sup> According to *Crime in India* 44.99% in 2021, 46.69% in 2020, and 36.97% of 2019 of accused persons in cases under Section 4 and 6 of the POCSO Act constituted "Friends/Online-Friends or Live in Partners on Pretext of Marriage". See National Crime Records Bureau, *Crime in India*, 2021, Table 4A.10 Offenders Relation to Child Victims of POCSO Act (Section 4 & 6) - 2021, 372; National Crime Records Bureau, *Crime in India*, 2020, Table 4A.10 Offenders Relation to Child Victims of POCSO Act (Section 4 & 6) - 2020, 354; National Crime Records Bureau, *Crime in India*, 2019, Table 4A.10 Offenders Relation to Child Victims of POCSO Act (Section 4 & 6) - 2019, 350.

the relationships were consensual. Judicial data has been the basis for empirical studies<sup>165</sup> to identify the proportion of “romantic” cases within the pool of cases under the POCSO Act being disposed of by Special Courts and the trends in testimony and outcomes.

This section similarly explores the extent of “romantic” cases in the pool of cases of aggravated penetrative sexual assault and rape, and the trends in reporting, testimony, and outcomes.

## 5.1. Proportion of Cases

**Figure 5.1:** Proportion of “romantic cases” (n=264 cases)



**Note:** Cases with no express reference to a “romantic” relationship between the victim and accused were categorized as “other” cases.

- **One in four cases i.e, 67 out of 264 (25.4%) constituted a “romantic” case.** A “romantic” case for the purpose of this study constitutes cases where the victim-girl admitted to the romantic relationship with the accused; or a prosecution witness stated that there was a romantic relationship between the victim-girl and accused; or the court arrived at this conclusion.<sup>166</sup> In 64 of the 67 cases (95.5%), the girl admitted to a romantic relationship with the accused. In two cases, the parents of the girl stated that the victim and accused were in a romantic relationship and in one case the court concluded that the victim-girl and accused had a “romantic” relationship. (See [Table No. A1.5](#) for a state-wise breakup of romantic cases).

These findings align with several other studies based on judgments of Special Courts. An analysis of 1715 romantic cases from Assam, Maharashtra, and West Bengal,<sup>167</sup> registered and disposed

<sup>165</sup> Shruthi Ramakrishnan & Swagata Raha, “Romantic” Cases under the POCSO Act’ (n 38) 6. Centre for Child and the Law, National University of India University, *Study on the working of Special Courts under the POCSO Act, 2012 in Delhi*, (2016) 18, 19; Centre for Child and the Law, National University of India University, ‘*Study on the working of Special Courts under the POCSO Act, 2012 in Andhra Pradesh*’ (2017) 64, Centre for Child and the Law, National University of India University, Bangalore, *Study on the working of Special Courts under the POCSO Act, 2012 in Assam* (2017) 35; Centre for Child and the Law, National University of India University, *Study on the working of Special Courts under the POCSO Act, 2012 in Maharashtra*, (2017) 63; Centre for Child and the Law, National University of India University, *Study on the working of Special Courts under the POCSO Act, 2012 in Karnataka*, (2017) 38; Centre for Child and the Law, National University of India University, (2017) 66; HAQ & FACSE Study (n 15) 61.

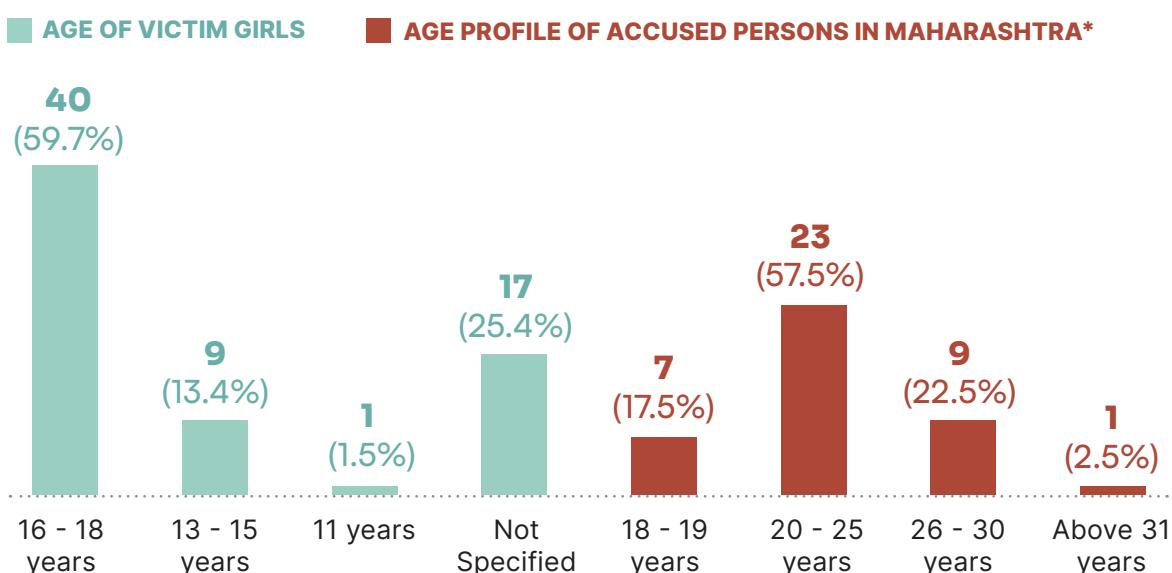
<sup>166</sup> In 15 cases the defence pleaded that the case was consensual, but these were not included in the classification of “romantic” cases.

<sup>167</sup> Shruthi Ramakrishnan & Swagata Raha, “Romantic” Cases under the POCSO Act’ (n 38) 6. In this study “romantic” cases were defined as cases where the victim, her family members or any prosecution witness states that the relationship with the accused was romantic in nature. It also includes cases where the court concluded that the relationship was romantic or consensual.

between 2016 and 2020, revealed that 24.3% of decided cases under the POCSO Act were "romantic" in nature.<sup>168</sup> Similarly, a five-state study based on 2788 judgments of Special Courts undertaken between 2015-2017 found that "romantic" cases where the victim admitted to a romantic relationship with the accused constituted 21.2% cases in Andhra Pradesh, 15.6% in Assam, 21.5% in Delhi, 21.8% in Karnataka (in 3 districts), and 20.5% in Maharashtra.<sup>169</sup> Another study,<sup>170</sup> based on 547 POCSO cases in Delhi and 118 in Mumbai, decided between 2012-2015, revealed that romantic relationships constituted 27% cases in Delhi and 26% cases in Mumbai.<sup>171</sup>

- **"Romantic" cases were *prima facie* non-exploitative.** The facts in a majority of "romantic" cases i.e., 51 cases (76.1%) did not indicate the presence of any exploitative elements. In 16 cases (23.9%), problematic elements such as the allegation of forced intercourse (10 cases), blackmail and physical violence (eight cases), and misrepresentation by the accused as to his marital status (one case) were observed.<sup>172</sup> A similar trend was visible in another study on "romantic" cases which found that judgments in 85.5% of "romantic" cases did not reflect abuse or exploitation of the girl by the accused.<sup>173</sup> These findings necessitate an examination of the use of the criminal law to regulate factually non-exploitative sexual relationships involving adolescents.

**Figure 5.2:** Age profile of victims and accused persons in "romantic" cases (n=67 cases)



\*Age of accused presented is age as on date of registration of the case and not age as on date of incident

<sup>168</sup> *ibid* 6.

<sup>169</sup> Centre for Child and the Law, National University of India University, 'Study on the working of Special Courts under the POCSO Act, 2012 in Delhi', (2016) 18; Centre for Child and the Law, National University of India University, 'Study on the working of Special Courts under the POCSO Act, 2012 in Andhra Pradesh', (2017) 35; Centre for Child and the Law, National University of India University, 'Study on the working of Special Courts under the POCSO Act, 2012 in Assam', (2017) 63; Centre for Child and the Law, National University of India University, 'Study on the working of Special Courts under the POCSO Act, 2012 in Maharashtra', (2017) 38; Centre for Child and the Law, National University of India University, 'Study on the working of Special Courts under the POCSO Act, 2012 in Karnataka', (2017) 66.

<sup>170</sup> HAQ & FACSE Study (n 15).

<sup>171</sup> *ibid* 61, 131.

<sup>172</sup> Note that in some cases multiple problematic factors were observed.

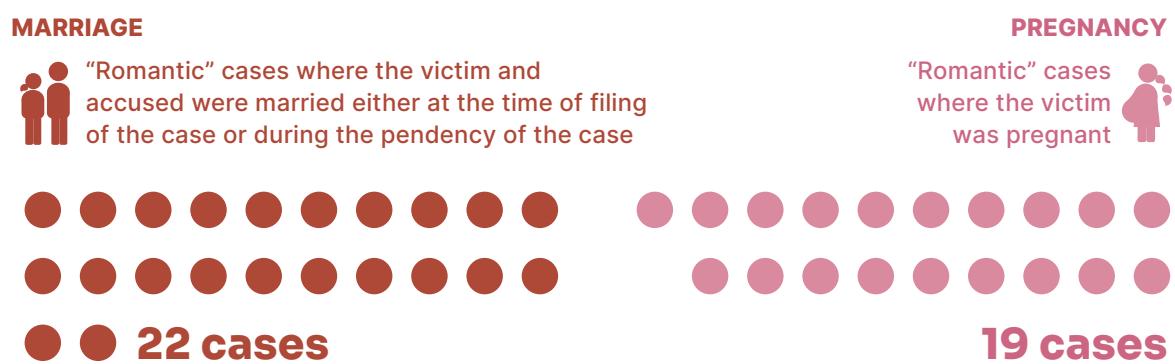
<sup>173</sup> Shruthi Ramakrishnan & Swagata Raha, "Romantic" Cases under the POCSO Act' (n 38) 13.

- **Predominantly, victims in “romantic” cases were older adolescents while accused persons were under 25 years of age:** While 59.7% (40 cases) of girls in “romantic” cases were expressly stated to be between 16-18 years, 75% (30 cases) of accused persons (in Maharashtra) in “romantic” cases were below 25 years of age. Data on age of accused was in respect of age of the accused at the time of registration of the case and not time of incident. Data on age of accused from other states was not available. It is also important to note that the age of 17 victims (25.7%) in “romantic cases” was not mentioned in the judgment.

## 5.2. Context in which “romantic” cases are filed

- **Similar to trends in previous studies, 174 informants in “romantic” cases were predominantly family members such as parents, siblings and relatives of the girl in 50 of the 67 “romantic” cases (74.6%).**
- **In 36 “romantic” cases (53.7%), a case was filed after the victim-girl was found to be missing,** and in seven cases (10.4%) it was reported after the victim-girl visited a hospital. These findings align with the findings of another study on “romantic” cases which found that 64.9% cases were triggered by victims leaving home.<sup>175</sup>
- **Girls were the informants in 14 cases (20.9%).** In two cases, a staff of the Child Care Institution where the victim-girl was residing filed the complaint and in one case a police officer filed the complaint. Factors that prompted victim-girls to file cases included refusal by the accused to marry or a breach of promise to marry after establishing physical relations, forced sexual intercourse, abandonment after birth of a child, violence in the relationship, and community pressure to file a complaint.

**Figure 5.3: Marriage and Pregnancy in “romantic” cases**



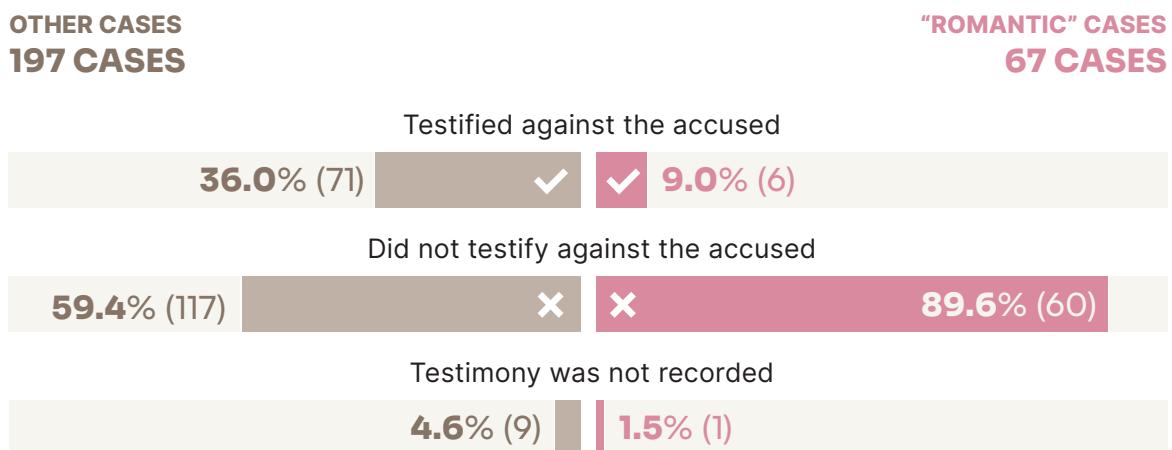
<sup>174</sup> Shruthi Ramakrishnan & Swagata Raha, “Romantic” Cases under the POCSO Act’ (n 38) 6. The study found 80.2% of cases to have been instituted by parents and relatives of the victim girl.

<sup>175</sup> ibid 7.

### 5.3. Nature of testimony and outcomes

- Girls' testimony against the accused were an exception in "romantic cases" and was seen in only six "romantic" cases (9.0%), whereas in the majority of cases, i.e., 60 cases (89.6%) they did not incriminate the accused. It was also seen that the rate of testimony against the accused was significantly lower in "romantic" cases, as compared to other cases, i.e., girls testified against the accused in 36% cases which were not expressly "romantic" in nature. These trends match those in other studies,<sup>176</sup> pointing to the exercise of agency by girls in their emphasis of the relationship being consensual in nature and refusing to incriminate their partners. There also exists the possibility of coercion, violence, and societal pressure to marry within such relationships. However, in the absence of comprehensive sexuality education, adequate barrier-free and adolescent-friendly sexual and reproductive health services, and a supportive family and social environment, reliance on the criminal law to deter relationships and protect girls may be counterproductive.

**Figure 5.4:** Testimony of victim in "romantic" cases and other cases

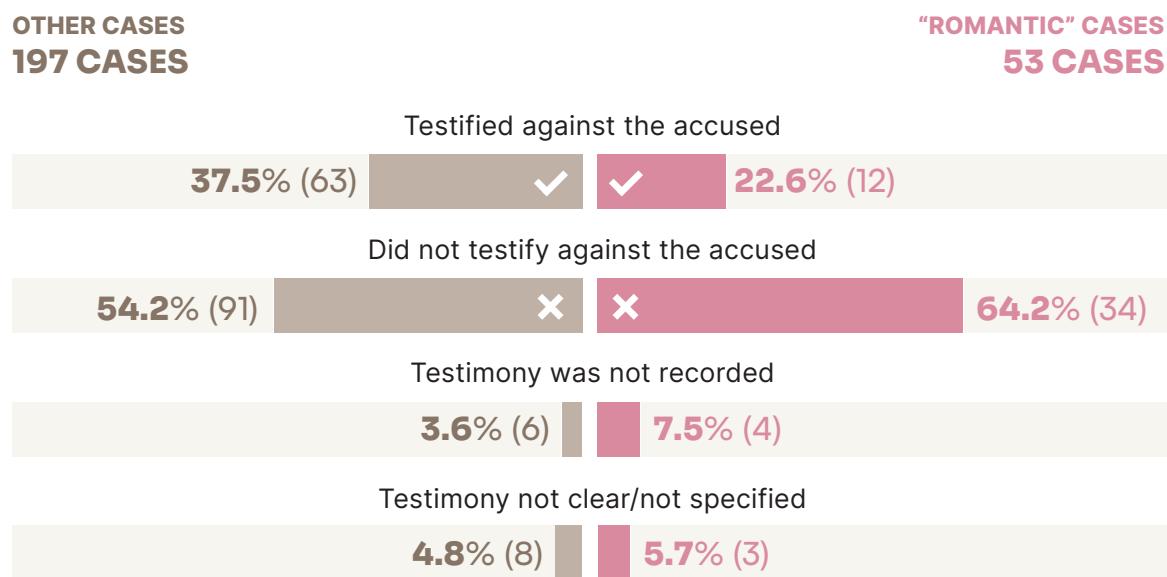


**Note:** Cases with no express reference to a "romantic" relationship between the victim and accused were categorized as "other" cases.

- Similarly, of the 53 informants (other than victims) in "romantic" cases, 34 (64.2%) did not state anything incriminating against the accused during their testimony, and testified against them in only 12 cases (22.6%). In contrast, in other cases where there was no express mention of a "romantic" relationship between the victim and accused, the informants testified against the accused in 63 cases (37.5%) and did not testify against them in 91 cases (54.2%). The trends in informant testimony in "romantic" cases indicate the possibility of acceptance of the "romantic" relationship after the case is lodged and compromises being arrived at.

<sup>176</sup> ibid ; Shraddha Chaudhary, "Love", Consent and the POCSO', in CCL-NLSIU Report (n 15) 133.

**Figure 5.5: Testimony of informants(excluding victim-informants) in "romantic" cases and other cases**



**Note:** Cases with no express reference to a "romantic" relationship between the victim and accused were categorized as "other" cases.

- **Acquittals were the norm in "romantic" cases** i.e. 65 cases (97%) and convictions were an exception in romantic cases and were recorded in only two cases (3%). Both convictions in "romantic" cases were from West Bengal and were based on the conclusion that consent of the minor was irrelevant under the POCSO Act.
- **Acquittals in "romantic" cases took place primarily because the victim did not say anything incriminating against the accused in 89.6% cases.** Similar trends were also seen in other studies.<sup>177</sup> In *State of Assam v Biru Baraik*,<sup>178</sup> the victim's mother lodged the FIR when the victim went missing after visiting her uncle. Charges were framed under Sections 366 and 376(1), IPC and Section 6, POCSO Act against the accused. The victim and the informant were the only witnesses and they failed to state the victim's age and about the rape in their testimonies. Also, in her Section 164 statement, the victim stated that she eloped with the accused willingly as she had a love affair with him. Based on lack of evidence, the accused was acquitted. In one case from Maharashtra,<sup>179</sup> the victim's mother lodged a complaint after the victim-girl, aged 16.5 years, went missing from her home. The informant suspected that the victim had been kidnapped by

<sup>177</sup> Shruthi Ramakrishnan & Swagata Raha, "'Romantic' Cases under the POCSO Act' (n 38) 28 - Acquittal rate in "romantic" cases in this study was 93.8%; HAQ & FACSE Study (n 15) 101 - As per this study, "In Delhi, out of 79 disposed cases of romantic relationship, 74 cases (94%) ended in acquittal." Centre for Child and the Law, National University of India University, 'Report of Study on the working of Special Courts under the POCSO Act, 2012 in Maharashtra' (2017) 76 - 91% romantic cases ended in an acquittal as per this Study. Centre for Child and the Law, National University of India University, 'Report of Study on the working of Special Courts under the POCSO Act, 2012 in Andhra Pradesh' (2017) 64 - 94% of romantic cases ended in an acquittal.

<sup>178</sup> *State of Assam v Biru Baraik* [2021] Spl Case No 14/2020 (Special Court in Udaguri).

<sup>179</sup> *State of Maharashtra v \*\*\*\** [2021] Spl POCSO Case No 35/2020 (Court of the Extra Jt. District and Additional Sessions Judge at Raigad-Alibag).

the accused. The victim testified that she eloped with the accused to get married in a temple. Her parents opposed the relationship and had lodged a complaint in a fit of anger. The victim had given her statement to the police and before the Magistrate under pressure from her parents. The accused was acquitted as neither the victim nor the informant testified against him and both stated that the complaint was lodged in a fit of rage. The failure of the prosecution to establish the minority of the victim also contributed towards acquittals in 28 cases (41.8% of "romantic" cases).

- **Of the six cases in which the victim testified against the accused, only one resulted in a conviction.** In the remaining five cases, the Special Court found the victim's testimony unreliable and acquitted the accused in four cases; and in one case the Special Court held that the accused could not be convicted for impregnating the victim as they were married and the victim's minor status was not established.

## 5.4. Conclusion

Although POCSO Act was enacted to address sexual violence against children, it is seen that at least one-fourth decided cases of aggravated penetrative sexual assault are "romantic" in nature. The blanket criminalisation has left no room for consideration of the possibility of factually consensual and non-exploitative sexual acts with adolescents above 16 years of age. Most "victims" in these cases defy the narrative presented by their families and instead assert their agency by stating the relationship is consensual and do not incriminate their partner. Hurling them into the criminal justice system does little to advance their protection or well-being. While prevention of early pregnancies and child marriages are vital child protection concerns, they require a holistic approach that is premised on empowering adolescents with necessary life skills, knowledge, formal education, comprehensive sexuality education, and advancement opportunities. Interventions need to be directed towards the creation of an enabling family and social environment where adolescents can access health information and services and explore age-appropriate relationships without the fear of retaliation, violence, and stigma. Reliance on the criminal law to delay marriage or prevent pregnancy overlooks the socio-economic drivers of child marriage and the lack of comprehensive sexuality education and adolescent-friendly health services.<sup>180</sup> Equating normative adolescent sexual intercourse with aggravated penetrative sexual assault which technically attracts a stringent sentence, including the death penalty, necessitates reconsideration.

The Law Commission of India examined the age of consent under the POCSO Act and while the Commission acknowledged the presence of consensual cases, it opined that introducing any element of consent would be dangerous as it would permit defendants to claim that the sexual activity was voluntary even where it was not. The Commission recommended the grant of judicial discretion in sentencing after consideration of special factors vis-à-vis the relationship including to ensure the genuineness of consent, the lack of deceit, three years age-gap, and other that may guide Special Courts in imposing a lesser sentence in cases of intimate relationships between a victim above the age of 16 years and the accused.<sup>181</sup> This does not, however, address the inherent deprivation of dignity and liberty that follows criminalisation, and the lack of consideration of the best interests

<sup>180</sup> Shraddha Chaudhary, 'Law Commission of India and the Debate on Age of Consent', (2024) Vol IIX No. 6 EPW 22.

<sup>181</sup> Law Commission of India, *Age of Consent under the Protection of Children from Sexual Offences Act, 2012*, Report No. 283 (2023) 113.

and evolving autonomy of adolescents.<sup>182</sup> Further, the consideration of the genuineness of the consent is proposed to be used by Special Courts to determine the quantum of consent, not guilt or innocence, thus creating a "theoretical incoherence."<sup>183</sup> Finally, "[i]nstead of protecting adolescents from abuse, the law exposes those in factually consensual and non-exploitative relationships to the risk of a criminal prosecution and compromises the child protection mandate."<sup>184</sup>

---

<sup>182</sup> Swagata Raha & Shruthi Ramakrishnan, 'Implication of the POCSO Act in India on Adolescent Sexuality' (n 50) 9 - 11.

<sup>183</sup> Shraddha Chaudhary, 'Law Commission of India and the Debate on Age of Consent' (n 180) 23.

<sup>184</sup> Swagata Raha & Shruthi Ramakrishnan, 'Implication of the POCSO Act in India on Adolescent Sexuality' (n 50) 18.

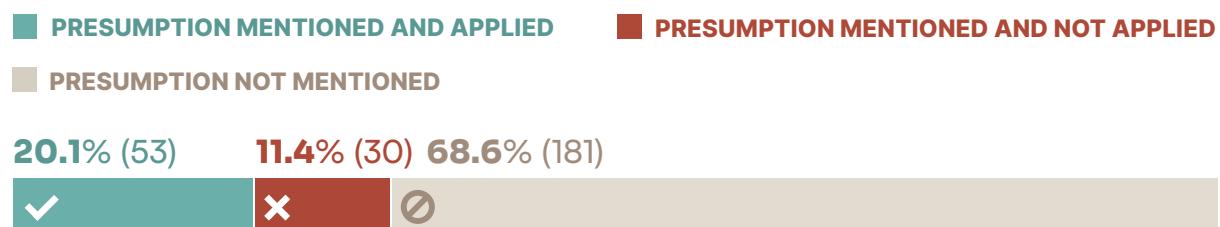
## 6 Application of Presumptions under the POCSO Act

The low conviction rate in sexual offences against children<sup>185</sup> combined with the low possibility of the presence of eye-witnesses and the difficulties that young children usually face in articulating the abuse, led to the introduction of two presumptions under the POCSO Act. Section 29 requires the Special Court to presume that a person prosecuted for committing, abetting, or attempting to commit offences under Section 3, 5, 7, and 9 of the POCSO Act has done so unless the contrary is proved. According to Section 30(1), POCSO Act, the Special Court will presume the existence of a culpable mental state in offences which require the presence of such a state on the part of the accused. The accused has to prove that they had no such mental state. Further, Section 30(2), POCSO Act states that “a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.”

This section examines the context of references to presumptions under the POCSO Act by Special Courts and the extent to which they were applied while arriving at a conclusion in the case.

### 6.1. References to Presumption

Figure 6.1: Application of Presumption under POCSO Act (n=264 cases)



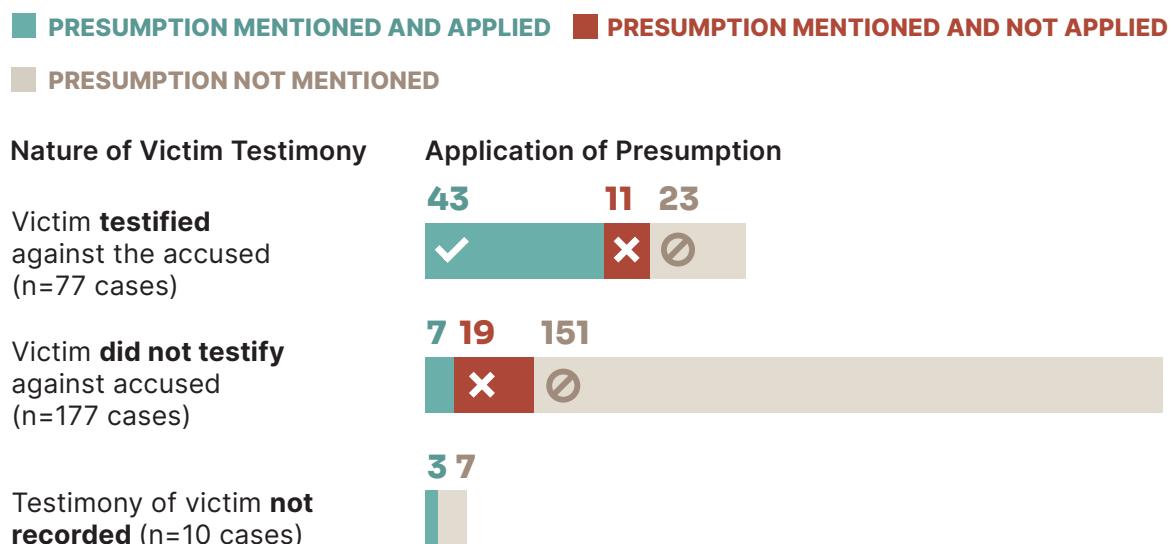
- **In a majority of cases, i.e., 181 cases (68.6%) there was no reference to the presumptions under the POCSO Act.** Presumptions were mentioned in 83 cases (31.5%), but in 30 cases, the Special Court merely stated the provisions, but did not discuss the application of the presumption in the case.
- **In 53 cases, the presumption was applied as the prosecution had been able to establish the foundational facts** such as the commission of the sexual offence by the accused and the minority of the victim. In six cases, the Special Court held that the accused had been able to rebut the presumption. Of these, in five cases, the victim had not incriminated the accused. And in one case,<sup>186</sup> although the victim testified against the accused, there were inconsistencies, and the Special Court observed that the defence had successfully rebutted the presumption during cross-examination of the medical practitioner.

<sup>185</sup> Department-related Parliamentary Standing Committee on Human Resource Development, *Two Hundred and Fortieth Report on the Protection of Children from Sexual Offences Bill, 2011*, Para 1.12.

<sup>186</sup> *State of West Bengal v \*\*\*\*\** [2021] S.T 178/18 (Special Court in Purba Medinipur).

- **It was evident that Special Courts did not consider the presumption-related provisions when the victim did not incriminate the accused.** Out of the 181 cases where there was no mention of presumption, in 151 cases (83.4%), the victim had not testified against the accused. Further, out of the 177 cases where the victim did not testify, presumption was mentioned and applied in only seven cases (4%). In comparison, of the 77 cases where the victim testified against the accused, presumption was mentioned and applied in 43 cases (55.8%). In some cases, the Special Court noted that there was no *prima-facie* evidence to raise the presumption as the prosecution had not been able to establish the foundational facts.

**Figure 6.2:** Victim Testimony vis-à-vis application of Presumption under POCSO Act



- **In 47 of 57 convictions (82.5%), the legal presumptions under Sections 29 and 30, POCSO Act were applied.** In 10 of these cases, the failure of the defence to rebut the presumption was specifically mentioned by the Special Court. In three cases, the victim did not appear before the court and in two cases, the victim did not testify against the accused, yet the court applied the presumption and convicted the accused on the basis of other available evidence.<sup>187</sup>
- **In both the cases in which the accused was sentenced to death — *State of Maharashtra v Baburao Ukandu Sangerao*<sup>188</sup> and *State of Maharashtra v Sagar Vishwanath Borkar*<sup>189</sup> — the Special Courts applied the presumption under Section 29 and 30.** In the *Baburao Ukandu Sangerao* case, the Special Court noted that under Section 30, POCSO Act, the defence has to rebut the presumption of the accused's culpable state of mind beyond reasonable doubt. The defence had not led any evidence and their only defence was that of denial. Similarly, in *Sagar Vishwanath Borkar*, the Special Court held that the accused persons had failed to rebut

<sup>187</sup> *State of Maharashtra v Iqbal Ismail Monye* [2021] Spl Case No 21/2020 (Special Court in Ratnagiri); *State of West Bengal v Manish Gupta* [2021] Spl Case No 31/2020 (Special Court in South 24 Parganas).

<sup>188</sup> *State of Maharashtra v Baburao Ukandu Sangerao* [2021] Spl POCSO Case No 06/2021 (Special Court in Nanded).

<sup>189</sup> *State of Maharashtra v Sagar Vishwanath Borkar* [2020] Spl POCSO Case No 27/2019 (Special Court in Buldhana).

the presumption by means of direct evidence or circumstantial evidence. The court also noted that the prosecution had successfully established the foundational facts of the case. It said:

**“** In this case victim has stated before court unequivocally about both the accused committed the act of rape, so her evidence is strengthened. According to her, both accused one by one put their genitals into her's. Her evidence is found reliable and trustworthy. Thus, by means of said unrebutted presumption also, the prosecution has conclusively proved that, both the accused have committed the offence of aggravated penetrative sexual assault under section 5 of the POCSO Act.

- In two cases from West Bengal, the Special Court also applied the legal presumptions under Section 29 of the POCSO Act with respect to the age-determination of the victim. In *State of West Bengal v Santosh Shaw*,<sup>190</sup> the prosecution produced the Aadhar card of the victim as per which she was 13 years on the date of the first incident. But the radiological test showed the victim to be between 15 to 17 years old. The defence contested the minority of the victim, but the court noted that the defence had not produced any document or evidence in furtherance of their claim. The Special Court concluded that the victim was a minor as the defence had failed to rebut the documentary and oral evidence on the date of birth of the victim as per Section 29, POCSO Act.

## 6.2. Standard of Proof

Special Courts took different positions on the standard of proof to be discharged by the prosecution and the defence in the context of the presumptions. For instance, in *State of Maharashtra v Sagar @ Sandip Mahadeo Nikam*,<sup>191</sup> the Special Court held that the prosecution had to establish foundational facts ‘beyond reasonable doubt’. However, in one case from Assam,<sup>192</sup> the Special Court referred to the Gauhati High Court’s decision in *Bhupen Kalita v State of Assam*,<sup>193</sup> wherein it was held that the prosecution has to prove the foundational facts of the case on the basis of preponderance of probability, and not ‘beyond reasonable doubt’.<sup>194</sup> It further added that if the prosecution is successful in establishing the foundational facts of the case, the defence must rebut it based on the principle of preponderance of probability.<sup>195</sup> However, if the defence has to prove that the accused lacked a culpable mental state, this must be established beyond reasonable doubt, as provided under Section 30(2) of the POCSO Act.<sup>196</sup> Additionally, the *Bhupen Kalita* case held that the defence has to rebut the foundational facts on the standard of preponderance of probability. In another case from Assam<sup>197</sup> where the accused was alleged to have committed aggravated penetrative sexual assault against the victim, the Special Court relied on the victim’s testimony, the accused’s confession, and the medical evidence to conclude that the prosecution was able to establish the foundational facts of the case on the standard of preponderance of probability.

<sup>190</sup> *State of West Bengal v Santosh Shaw* [2021] Spl Case No 20/2021 (Special Court in South 24 Parganas). See also *State of West Bengal v Purna Bahadur Jirel*, [2021] Special Case No 25/2021 (POCSO Court at Sealdah South 24 Parganas)

<sup>191</sup> *State of Maharashtra v Sagar @ Sandip Mahadeo Nikam* [2021] Special POCSO Case No 134/2019 (Special Court in Pune).

<sup>192</sup> *State of Assam v \*\*\*\*\** [2021] Spl Case No 51/2019 (Special Court in Kokrajhar).

<sup>193</sup> *Bhupen Kalita v State of Assam* [2020] Crl (A) J 2020 (3) GLT 403 (Gauhati High Court)

<sup>194</sup> *Bhupen Kalita v State of Assam* [2020] Crl (A) J 2020 (3) GLT 403 (Gauhati High Court) [71].

<sup>195</sup> *ibid.*

<sup>196</sup> *ibid.*

<sup>197</sup> *State of Assam v \*\*\*\*\**, [2021] Spl Case No 51/2019 (Special Court in Dhubri).

The defence tried to rebut the presumption by arguing that the victim sustained her injuries while trying to cross a barbed fence and that the case was filed due to a property dispute. The Special Court concluded that this argument did not hold water, and proceeded to convict the accused under Section 376AB IPC and Section 6 POCSO Act.

In a case from Maharashtra,<sup>198</sup> the Special Court referred to Section 29, POCSO Act and stated that, it “mandates that the accused is required to prove his defence beyond reasonable doubt and not merely by preponderance of probabilities.” In this case, as the accused was unable to rebut the presumption beyond reasonable doubt, he was convicted. A similar conclusion was also reached in another case from Maharashtra.<sup>199</sup> However, in a case from West Bengal,<sup>200</sup> the Special Court held: “[n]eedless to say to prove reverse burden it is not necessary for the accused to prove to the hilt. In that case preponderance of probability will suffice the purpose.” Since the prosecution was unable to prove its case beyond reasonable doubt and was unable to establish the foundational facts of the case, the court concluded that the accused was not required to rebut the presumption under Section 29, and was thus acquitted.

### 6.3. Conclusion

The victim’s testimony appears to be a significant consideration for Special Courts even while referring to the presumptions under the POCSO Act. It serves as the basis for the establishment of the commission of the sexual offence, which is a foundational fact. The judgments point to the prevailing confusion and difference of opinion among various Special Courts about the standard for establishment of foundational facts and rebuttal of the presumption. While most Special Courts took the view that the prosecution has to establish the foundational facts of the case beyond reasonable doubt, few applied the standard of preponderance of probability. Similarly, while some Special Courts held that the defence has to rebut the presumption raised beyond reasonable doubt, others were of the opinion that the defence needs to do so only on the standard of preponderance of probability. These differing standards could lead to arbitrariness, as some accused may be acquitted for successfully rebutting the presumption on the standard of preponderance of probability, while others may be convicted for failing to rebut the presumption beyond reasonable doubt.

---

<sup>198</sup> *State of Maharashtra v \*\*\*\** [2020] Spl POCSO Case No 40/2020 (Special Court in Raigad).

<sup>199</sup> *State of Maharashtra v \*\*\*\** [2020] Spl POCSO Case No 49/2020 (Special Court in Raigad).

<sup>200</sup> *State of West Bengal v \*\*\*\** [2021] Spl Case No 62(08)2019 (Special Court in Krishnanagar).

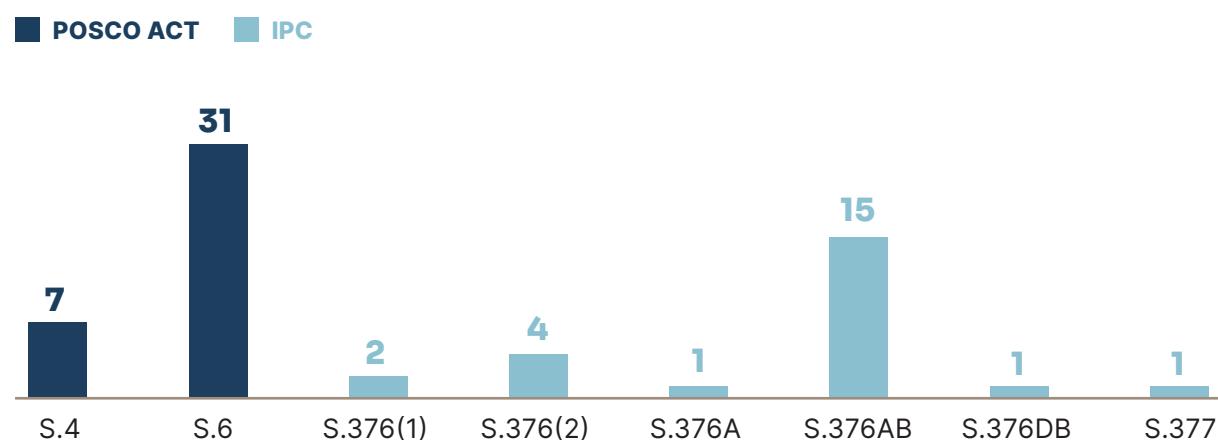
## 7 Sentences for Penetrative Sexual Offences under the IPC and POCSO Act

The Criminal Law (Amendment) Act, 2013 introduced minimum mandatory sentences for sexual offences under the IPC and took away the discretion available to courts to impose sentences below the minimum. The POCSO Act, 2012 also prescribes minimum mandatory sentences and does not allow any discretion to Special Courts. The Criminal Law (Amendment) Act, 2018, introduced the offence of rape of a woman under 12 years of age under Section 376AB, which is punishable with rigorous imprisonment for a minimum term of 20 years, which may extend to imprisonment for life, which means imprisonment for the remainder of that person's natural life, and with fine or with death. The POCSO (Amendment) Act 2019 increased the minimum sentence for aggravated penetrative sexual assault under Section 6 from 10 years to 20 years' rigorous imprisonment, specified that it can extend to life imprisonment which would mean imprisonment till the remainder of natural life, and introduced the death penalty. The minimum sentence of seven years rigorous imprisonment under Section 4(1) for penetrative sexual assault was increased to 10 years, while the maximum sentence remained life imprisonment. Further, Section 4(2) was introduced which prescribed a minimum term of 20 years for penetrative sexual assault of a child below 16 years.

This section examines the nature of sentences as well as trends in sentencing in respect of convictions for penetrative charges under the IPC and POCSO Act, specifically under Sections 4 and 6 of the POCSO Act and Sections 376, 376A, 376AB, 376DB, and 377 of the IPC. Convictions were recorded in 57 cases and convictions under penetrative charges were recorded in 44 cases. Although accused persons were sentenced under non-penetrative sexual offences under the POCSO Act and IPC, as well as other other offences, this section only examines the trends in sentences under penetrative sexual offences. It also provides an insight into the factors considered and justifications provided by the Special Courts while imposing minimum sentences, life imprisonment, and the death penalty.

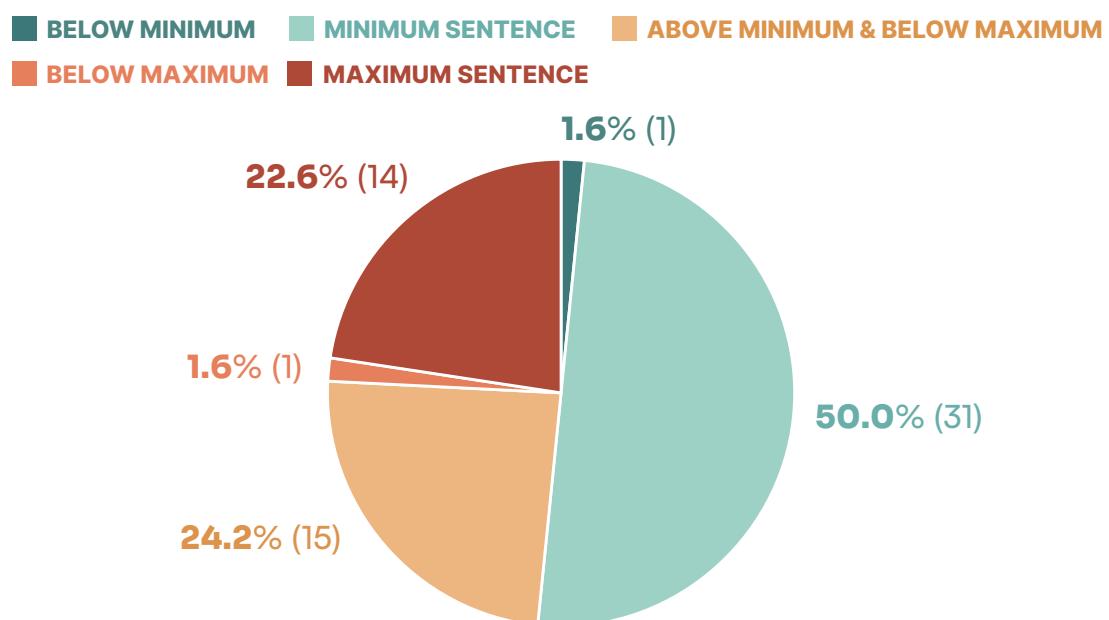
### 7.1. Key findings and trends

**Figure 7.1:** Sentences passed under penetrative sexual offences under the IPC and POCSO Act



- **Number and type of sentences:** In the 44 cases of conviction for penetrative sexual offence, 62 sentences were passed, of which 38 were under the POCSO Act and 24 under the IPC. In 12 cases, the accused was sentenced under charges of a penetrative sexual offence under both the POCSO Act and the IPC. In 23 cases multiple sentences for penetrative offences were passed. In 15 cases the court expressly stated that the sentences were to run concurrently (See [Table A7.1](#) in Annexure for complete breakup of the convictions and sentences under penetrative offences under the POCSO Act and IPC).

**Figure 7.2: Nature of Sentences passed (n=62 sentences)**



**Note:**

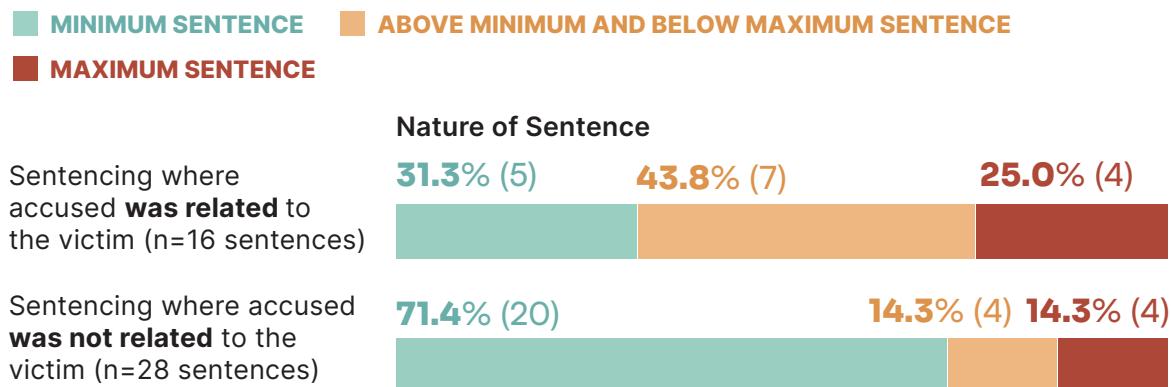
- Where an offence is punishable with imprisonment that can extend to life imprisonment or death, the imposition of life imprisonment is treated as a sentence that is “above minimum and below maximum”
- Maximum sentence includes the death penalty, life imprisonment under Section 6, POCSO Act in cases before the POCSO Amendment Act, 2019 came into force, and life imprisonment under Section 4, POCSO Act

- **As other studies have also found,**<sup>201</sup> **the minimum sentence was the most preferred sentence by Special Courts, and was passed in 31 out of 62 sentences (50%).** Some of the mitigating factors that were considered by courts while imposing the minimum sentence included the poor economic background of the accused, presence of dependents, the age of the accused (very young or very old), lack of criminal antecedents, and the possibility of reform. It was observed that out of the seven cases which entailed accusations of only digital penetration, in six cases, the accused was given a minimum sentence. In one case involving digital penetration, the accused was sentenced to life as the court considered the victim's tender age, the threats given by the accused to the victim's family which compelled them to change their residence, the injuries sustained by the victim, and the fact that the accused was in a position of trust vis-à-vis the victim and her family as aggravating factors.<sup>202</sup> In the two “romantic” cases that resulted in a conviction, the accused was given the minimum sentence. The romantic relationship between the accused and the victim was not explicitly considered as a factor in sentencing in these cases.

<sup>201</sup> Shraddha Chaudhary, 'Charges and Sentencing Patterns under the POCSO Act, 2012' in CCL-NLSIU Report (n 15) 59.

<sup>202</sup> *State of Maharashtra v Mangesh Devidas Thakare* [2021] Sessions Trial No 139 of 2019 (Special Court in Akola).

**Figure 7.3: Sentencing disparity: Related vs Unrelated Accused**



\*In cases where multiple sentences were imposed, the nature of the sentence imposed for the most severe offence has been considered.

\*\*Cases where accused was related to the victim includes cases where the accused was a father, step-father, or relative.

- **Application of Section 42, POCSO Act:** In 22 cases, the Special Courts applied Section 42, POCSO Act on alternative punishment and imposed the punishment that was greater in degree where the accused was convicted both under the POCSO Act, and for a sexual offence under the IPC. In some of these cases, the Special Court imposed the minimum sentence of 20 years imprisonment under Section 376AB, IPC, as Section 6, POCSO Act, prior to the amendment in 2019, provided for a minimum sentence of 10 years imprisonment.
- **Consideration of the relationship between victim and convicted person:** In 16 out of 44 cases, the accused was related to the victim and included the father or step-father. In the remaining 28 cases, the accused was a neighbour, acquaintance, or a boyfriend. The Special Courts imposed higher prison terms when the accused was related to the victim. **The minimum sentence was passed in 31.3% of cases in which the accused was related to the victim, and in 71.47% of cases in which the accused was not related to the victim.** Life imprisonment was imposed in 8 of the 16 cases (50%) in which the accused was related to the victim, and in 6 of the 28 cases (21.4%) in which the accused was unrelated to the victim. In cases where the accused was the father or step-father, the Special Court expressly noted the grave nature of the offence, the “misuse of relationship” with the victim, the “betrayal of trust”, the crime being perpetrated by a person who is required to provide care and protection to the child, and the child being rendered unsafe in their own homes. In one case, where the father was the accused, the court, while sentencing the accused to life imprisonment, stated:

**“**In the case in hand also the perpetrator of the grave and shameless crime is none else but the pervert father who out of the lust for sex ravished the chastity of his own daughter giving a death hell to the most pious and sanctimonious relationship of father with his daughter. Another important facet which cannot be ignored is the horrifying suffering of the family when such a sinful crime is committed by none else but the father. It is in that view of the matter, and it being the rarest of rare case, the accused cannot be dealt with lightly. He must be dealt with stern hands and therefore, as has been held by the Hon’ble Supreme Court in *State of Himachal Pradesh vs. Asha Ram*, maximum punishment needs to be awarded to accused.<sup>203</sup>

<sup>203</sup> *State of Maharashtra v \*\*\*\*[2021] Special Case No 106 of 2019 (Special Court in Wardha) [37] citing State of Himachal Pradesh vs Asha Ram AIR 2006 SC 381 (Supreme Court of India).*

**Figure 7.4: Sentencing trends in respect of Penetrative Sexual Offences under the IPC and POSCO Act**

■ BELOW MINIMUM SENTENCE
■ MINIMUM SENTENCE
■ ABOVE MINIMUM & BELOW MAXIMUM SENTENCE  
■ BELOW MAXIMUM SENTENCE
■ MAXIMUM SENTENCE

Section 4: Penetrative Sexual Assault (**7 cases**)



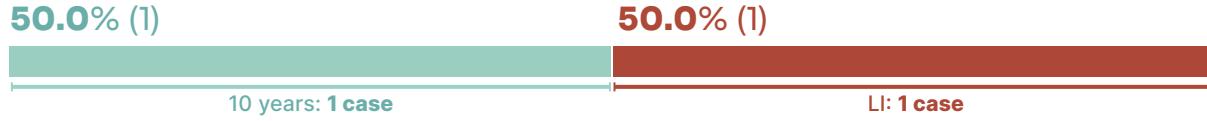
Section 6: Aggravated Penetrative Sexual Assault (**31 cases**)



Section 376AB: Rape of woman under 12 years (**15 cases**)



Section 376(1): Rape (**2 cases**)



Section 376(2): Rape (**4 cases**)



Section 376A: Rape resulting in death or vegetative state of the victim (**1 case**)



Section 376DB: Gang Rape of woman under 12 years (**1 case**)



Section 377: Unnatural Sexual Offence (**1 case**)



\*Denotes that the incident occurred prior to the coming into force of the POCSO (Amendment) Act, 2019  
 LI: Life Imprisonment DP: Death Penalty

- **In nine cases, the age of the accused was explicitly or implicitly considered as a factor in showing leniency towards them.** This was in cases where the accused was either considered young (24 years, 25 years, 38 years) or too old (58 years).
- **Non-compliance with the provisions of the JJ Act, 2015 was observed in a case from Birbhum, West Bengal,**<sup>204</sup> involving a child in conflict with the law, who had been found guilty of raping a 7-year-old victim. He was found to have been 16-17 years old at the time of the incident and was convicted under Section 376AB, IPC and Section 6, POCSO Act. He was sentenced to 20 years of rigorous imprisonment under Section 376AB IPC. The prosecution had pleaded that the accused be sentenced to death. However, the court held that,

**“ ... the savage nature of the crime has shocked my judicial conscience. The rape was committed in brutal manner upon a minor who was less than 8 years old. However, the age of the Convict has shaken my hands and mind and accordingly, the prayer of the Ld Additional PP for Death Penalty is discarded.**

Here, it must be noted that the JJ Act, 2015 mandates that all children in conflict with the law must be produced before the Juvenile Justice Board for an inquiry and that the JJB must conduct a preliminary assessment in cases of children between 16-18 years of age who have allegedly committed a heinous offence. However, the Special Court contravened this legal provision and tried the accused. The JJ Act, 2015, requires an Individual Care Plan for the rehabilitation of the child to be included in the final order, along with follow-up by the Probation Officer, District Child Protection Unit or Social Worker.<sup>205</sup> Further, it requires that the child be sent to a place of safety and for the Children's Court to conduct an evaluation when the child attains 21 years of age and is yet to complete the term of stay. This evaluation is to assess if the child has undergone reformatory changes and can be a contributing member of the society and should be based on progress records of the child and evaluation of relevant experts. On this basis, the Children's Court can decide to release the child based on conditions it deems fit or decide that the child should complete the remainder of the term in jail.<sup>206</sup> However, the judgment of the Special Court did not contain references to any of these provisions or the Individual Care Plan.

- **No consistent trend or pattern was observable in sentencing where the victim suffered critical injuries.** For instance, in one case,<sup>207</sup> the accused, a distant relative of the victim, committed penetrative sexual assault against the victim who was 6-7 years old. As a result of the assault, the victim was hospitalised and it took six days for her bleeding to stop. The accused was charged under Section 376AB, IPC and Section 6, POCSO Act. The victim and the informant testified against the accused and the medical evidence showed that the victim had been subjected to penetrative sexual assault. The Special Court convicted the accused under both the charges and sentenced him to rigorous imprisonment for life and a fine of Rs. 25,000. While sentencing the accused, the court considered the young age of the victim, the severe injuries that she had sustained, and the mental trauma that she may have undergone. On this basis, the court declared that the accused did not deserve any leniency. On the other hand, in *State of West Bengal v Prafulla Mura*,<sup>208</sup> the accused, a co-villager, inserted his finger into the 7-year-

<sup>204</sup> State v \*\*\*\* [2021] Special (POCSO) Case No 11 of 2019 (Special Court in Birbhum).

<sup>205</sup> JJ Act 2015, s 19(2).

<sup>206</sup> JJ Act 2015, s 20.

<sup>207</sup> State of Assam v \*\*\*\*[2021] Special Case No 51 of 2019 (Special Court in Kokrajhar).

<sup>208</sup> State of West Bengal v Prafulla Mura [2021] S.C 155 of 20 (Special Court in Purba Medinipur).

old victim's vagina, due to which she sustained a bleeding injury and had to be hospitalised for three days. The accused was charged under Section 376AB, IPC and Section 6, POCSO Act. The victim testified against the accused and the court concluded that the injuries showed that the victim had been assaulted. The accused was convicted of offences under Section 6 POCSO Act and was sentenced to 20 years of rigorous imprisonment and a fine of Rs. 25,000, which is a minimum sentence. The prosecutor had characterised this case as 'rarest of the rare' and had requested the court to grant the accused death penalty or a life sentence. However, the court noted that there were a few mitigating factors such as the lack of criminal antecedents of the accused and a possibility of reform.

## 7.2. Factors considered in the imposition of Life Imprisonment

Life imprisonment was imposed in 14 cases. Special Courts considered factors like the victim's tender age, the close/blood relation of the accused to the victim, and the long-term mental impact of the assault on the victim. They also mentioned deterrence, need for adequate punishment, and sending out a message to society while sentencing in these cases. When compared to other cases, what stands out in these instances is the court's articulation of its duty to protect children and the society. For instance, this line of reasoning was seen in *State of Maharashtra v Sunil Sakarya Gavit*,<sup>209</sup> where the accused, an acquaintance of the victim's family, committed aggravated penetrative sexual assault against the 7-year-old victim. He was sentenced to imprisonment for the remainder of natural life and a fine of Rs. 5,000 under Section 6, POCSO Act was also imposed, in default of which, he was directed to suffer rigorous imprisonment for one year. The defence had prayed for leniency towards the accused, pointing out that he was the only earning member of the family. On the other hand, the prosecution argued that the victim was merely seven years of age and that the accused had committed aggravated penetrative sexual assault and thus stringent punishment should be imposed. While arriving at the sentence, the Special Court held that,

**“ In such circumstances, it is the duty of the court to protect children from the carnal desires of the potential offenders. In such circumstances, any kind of leniency, while awarding the punishment will prove disastrous for implementation of the objectives of the legislative mandate contained in the Act.”<sup>210</sup> (emphasis added)**

The Special Courts also emphasised their duty to award a sentence which would send a message to society and which would reflect the public's abhorrence of such crimes. Such an articulation signals towards a retributive justification for the imposition of life imprisonment. In one case,<sup>211</sup> the accused was the 10-year-old victim's grandfather and was sentenced to rigorous imprisonment for life and a fine of Rs. 5,000 under Section 6 POCSO Act. While sentencing the accused, the court referred to the case of *Shyam Narain v State (NCT of Delhi)*,<sup>212</sup> in which the Supreme Court noted that:

**“ The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's crime for justice against such criminals. Public abhorrence of the crime needs a reflection through the Court's verdict in the measure of punishment.”<sup>213</sup>**

<sup>209</sup> *The State of Maharashtra v Sunil Sakarya Gavit* [2021] Special Case No 25 of 2021 (Special Court in Nandurbar).

<sup>210</sup> *The State of Maharashtra v Sunil Sakarya Gavit* [2021] Special Case No 25 of 2021 (Special Court in Nandurbar) [45].

<sup>211</sup> *State of Assam v Jiten Ray* [2021] Special Case No 81 of 2019 (Special Court in Dhubri).

<sup>212</sup> *Shyam Narain v State (NCT of Delhi)* [2013] 7 SCC 77 (Supreme Court of India).

<sup>213</sup> *The State of Assam v \*\*\*\** [2021] Special Case No 81 of 2019 (Special Court in Dhubri) [35].

In this case, the Special Court also referred to the apex court's decision in *Jugendra Singh v State of Uttar Pradesh*<sup>214</sup> stating that the offence of rape destroys the basic equilibrium of the social atmosphere and that it creates a dent in the social milieu.<sup>215</sup> The Special Courts also spelt out the objectives of sentencing to be deterrent and correctional in nature and equivalent to the gravity of the offence.

In one case,<sup>216</sup> the accused, the 13-year-old victim's father, committed penetrative sexual assault against her multiple times. The accused was sentenced to rigorous imprisonment for life and a fine of Rs. 500 under Sections 4 and 6 of the POCSO Act was also imposed. The Special Court observed:

**“** A prudent person should keep respect of natural relations like father and daughter, sister and brother, mother and son etc. Therefore, it is not proper to take [a] lenient and reformative view for the accused. It is necessary to give deterrent punishment to the accused so that [the] message will go in the society that if any natural guardian think[s] to exploit his minor sexually he will think twice for it.<sup>217</sup>

**Table 7.1:** Factors considered by Special Courts while imposing life sentence

<b>Nature of the offence</b>	<ul style="list-style-type: none"> <li>- Offence was “heinous, savage, and barbaric in nature”</li> <li>- Offence led to grave injuries to the victim</li> <li>- Rape committed for a very long period of time, on multiple occasions</li> <li>- Accused murdered the victim after raping her</li> </ul>
<b>Harm caused to the victim</b>	<ul style="list-style-type: none"> <li>- Victim was of tender age</li> <li>- Accused threatened the victim's family after the incident, which compelled them to change their residence</li> <li>- Consideration of long-term impact and mental trauma: “The offence will have a lasting impact on the victim”; “Mental trauma caused to the victim cannot be assessed in real terms”, “Sexual assault at a young age becomes embedded in the victim's subconscious, manifesting in negative cognitive developments and disorders in adulthood”</li> <li>- Accused was victim's grandfather, and she was of a tender age, and became pregnant as a result of the assault</li> </ul>
<b>Relation of the accused vis-à-vis victim</b>	<ul style="list-style-type: none"> <li>- Accused was a relative/guardian/parent of the victim</li> <li>- Since accused is the victim's father, a minimum sentence won't curtail the tendency to exploit daughters</li> <li>- Accused was in a position of trust and authority with respect to the victim</li> </ul>
<b>Duty of the court</b>	<ul style="list-style-type: none"> <li>- Offences against children are rising, hence court must protect children</li> <li>- If the court shows leniency to the accused, it would undermine the objectives and implementation of the POCSO Act</li> <li>- Court needs to give a deterrent sentence so that the message will go out to the society</li> <li>- A lenient sentence will send out the wrong message to the society</li> <li>- Imposition of an inadequate sentence would be an injustice to the victim and the society/would be a travesty of justice. Sentence should be commensurate to the gravity of the offence.</li> <li>- Court's verdict should reflect public abhorrence of the crime</li> <li>- Sentencing has a social goal- it is deterrent, correctional, and reformative</li> </ul>
<b>Impact on the society</b>	<ul style="list-style-type: none"> <li>- Commission of a POCSO offence is a crime against the child as well as the society</li> <li>- An offence like rape creates an incurable dent in the social milieu</li> </ul>

<sup>214</sup> *Jugendra Singh v State of Uttar Pradesh* [2012] 6 SCC 297 (Supreme Court of India).

<sup>215</sup> *The State of Assam v \*\*\*\** [2021] Special Case No 81 of 2019 (Special Court in Dhubri) [35].

<sup>216</sup> *The State of Maharashtra v \*\*\*\** [2020] Special Case No 56/2019 (Special Court in Yavatmal).

<sup>217</sup> *The State of Maharashtra v Bandu Maroti Pawar* [2020] Special Case No. 56 of 2019 (Special Court in Yavatmal) [34].

### 7.3. Factors considered in the imposition of Death Penalty

**The death penalty was imposed in two out of the 44 cases in which a conviction under a capital charge was recorded.** The death sentence was imposed under Section 6, POCSO Act, Section 376AB IPC, Section 376-A IPC, and Section 302 IPC in *State of Maharashtra v Baburao Ukandu Sangerao*<sup>218</sup> and upon two accused persons under Section 376DB read with Section 34, IPC in *State of Maharashtra v Sagar Vishwanath Borkar*.<sup>219</sup>

In *Sagar Vishwanath Borkar*,<sup>220</sup> the 10-year-old victim was taken away on a scooter by the two accused persons who lived in the same village as the victim. They committed aggravated penetrative sexual assault against her and threatened to kill her. Due to the assault, the victim's clothes were completely covered in blood. The accused persons were charged under Sections 363, 366A, 376(2) (j), 376(2)(m), 376(DB), 506 read with section 34 of the IPC and Section 6, POCSO Act. One of the accused was also additionally charged under Section 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v) of the SC/ST Act, 1989. During the trial, the victim and her father testified against the accused. The victim's ME revealed severe injuries in her genital area and the DNA reports showed that the blood stains on the victim's clothes matched that of both the accused persons. Both accused were convicted under Sections 363, 376(2)(m), 376DB, and 506 read with Section 34 IPC as well as Section 6 of the POCSO Act. The accused persons were sentenced to death under Section 376DB read with Section 34 IPC. Both the accused were also sentenced to rigorous imprisonment for life under Section 376(2)(m) r/w Section 34 and a fine of Rs. 25,000, to rigorous imprisonment for seven years and a fine of Rs. 10,000 under Section 363 r/w Section 34, and to rigorous imprisonment for two years and a fine of Rs. 2,000 under Section 506 r/w 34. Accused no. 2 was additionally sentenced to rigorous imprisonment for one year and a fine of Rs. 2,000 under Section 3(1)(w)(i) of the SC/ST (Prevention of Atrocities) Act.

While arriving at the sentence, the court noted that some of the aggravating factors were that the victim was only 10 years old, the manner of commission of the rape was extremely brutal and grotesque, it was a pre-planned act, it was aggravated penetrative sexual assault, and that "it ruined the life of the victim". The mitigating circumstances included consideration of the young age of the accused (aged 28 and 22 years), marital status of Accused No. 1, dependency of their families on them, and the lack of criminal antecedents. After weighing the aggravating and mitigating factors, the Special Court opined that there were no circumstances which could be considered for awarding a lesser sentence and this was a crime which was committed against society at large. The court also noted the public anger and the impact the crime had had on the community and quoted the Additional Public Prosecutor saying that:

**“ He has also argued that there was [a] lot of agitation in the society regarding this bizarre incident. It has shaken the conscience of [the] common person which led them to come on the road to show their protest.”<sup>221</sup>**

<sup>218</sup> *The State of Maharashtra v Baburao Ukandu Sangerao* [2021] Special (POCSO) Case No 06/2021 (Special Court in Nanded).

<sup>219</sup> *The State of Maharashtra v Sagar Vishwanath Borkar* [2020] Special (POCSO) Case No 27/2019 (Special Court in Buldhana).

<sup>220</sup> *ibid.*

<sup>221</sup> *State of Maharashtra v Sagar Vishwanath Borkar* [2020] Special (POCSO) Case No 27/2019 (Special Court in Buldhana) [133].

The Special Court concluded that this was a 'rarest of the rare' case<sup>222</sup> and observed that:

**“** This is the case where a girl of [the] tender age of 10 years has been ravished with such a [sic] brutality by both the accused to exhibit extreme pervert behavior. Evidence shows that the injuries to her body are of very serious nature. It could have been life threatening also. It seems that, she could survive only because of divine intervention to get the perpetrators of such [a] heinous crime convicted in the court of law. There cannot be words to describe her plight at the time when she was being subjected to sexual assault by both the accused to satisfy their pervert sexual appetite and the trauma she suffered till date. However, this may not be the end of her suffering and agonies. In future also she may not be able to lead a normal life with the memories of her nightmarish experience. Such incidence permanently damage[s] the mental health of the survivor of [a] small age. She has to survive with this stigma. The death is certain but for the victim of rape it occurs every day in her life. It mauls the soul and body of the victim. Thus, the damage done to the survivor of rape cannot be assessed by any other means except to impose stringent punishment prescribed by law to the accused held guilty. For the reasons mentioned above, I conclude that both the accused are liable for capital punishment which will be the punishment proportionate to the severity of the crime.<sup>223</sup>

Here, one can see the court's problematic articulation of the impact of sexual violence when it observes that victims of rape incapable of leading a "normal life" after such a crime has taken place, and equates their life with the death of their soul and body. Such assumptions perpetuate victimhood and the belief that a genuine victim of sexual violence is one who is unable to move forward in life. This may in turn affect the court's opinion about the reliability of the victim's testimony.

In *Baburao Ukandu Sangerao*,<sup>224</sup> the accused, an acquaintance of the victim's family, committed aggravated penetrative sexual assault against the 5-year-old victim and throttled her, which led to her death. The assault entailed extreme violence, with the medical evidence revealing 47 injuries on the victim's body and at least nine injuries in her genital area. The accused was charged under Sections 302, 363, 376A, 376(2)(j)(m), 376AB, and 377 of the IPC and Sections 4, 6, 8, 10, and 12, POCSO Act. The victim's family members testified against the accused and the accused was convicted and sentenced to death under Section 6 POCSO Act and Sections 376A, 376AB, and 302 of the IPC. In determining the sentence, the Special Court referred to several precedents and noted that:

**“** [t]he death sentence may be warranted where the victims are innocent children and helpless to women (sic). Thus, in case the crime is committed in a most cruel and inhuman manner, which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fiber of the society.<sup>225</sup>

<sup>222</sup> *ibid* [140].

<sup>223</sup> *ibid* [141].

<sup>224</sup> *State of Maharashtra v. Baburao Ukandu Sangerao* [2021] Special (POCSO) Case No 06/2021 (Special Court in Nanded).

<sup>225</sup> *ibid* [69].

The aggravating factors considered were, among others, the brutal and barbaric manner of the sexual assault, the accused being found naked near the spot, the accused confessing to three independent witnesses immediately after capture, and murder committed to destroy proof of the aggravated sexual assault.<sup>226</sup> The mitigating factors included, among others, age of the accused (35 years), the offence being conducted under extreme mental and emotional disturbance, the accused being the sole earning member of the family, and the lack of criminal antecedents.<sup>227</sup> After considering all these factors, the Special Court concluded that due to the cruel and barbaric manner of the offence and the subsequent murder of the victim, the accused had “lost the right of live in the society due to aggravated penetrative vaginal and anal sexual assault committed with the victim.”<sup>228</sup> The Special Court further held that:

**“While considering the sympathy of accused that he is only earning member of his family, his mother is old aged widow, I have also to see what disaster to be fallen on the family of victim when their small beloved child of 5 years is brutally murdered after committing aggravated penetrative sexual assault. Considering the gravity and seriousness of the offence, I do not want to take any lenient view in this case as 5 years aged victim who was helpless and defenceless murdered brutally by committing rape and sodomy.”<sup>229</sup>**

The court also acknowledged the public anger caused by the act of the accused and mentioned that “After this brutal incident the Bar association ... has unanimously passed the resolution that, no member in their bar association will represent the accused due to his heinous and barbaric act.”<sup>230</sup> It also observed that:

**“Imposition of appropriate punishment is the manner in which the Courts respond to the society’s cry for justice against the criminals. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Courts must not only keep in view the rights of the criminal but also the rights of the victim and the society at large while considering imposition of appropriate punishment.”<sup>231</sup>**

Although it is not uncommon for courts to invoke justifications such as “collective conscience” and public opinion to impose the death penalty,<sup>232</sup> offering society’s demand for justice as a justification entirely overlooks the role of community, social structures, and norms in perpetuating gender-based

<sup>226</sup> *ibid* [71].

<sup>227</sup> *ibid* [72].

<sup>228</sup> *ibid* [73].

<sup>229</sup> *ibid* [76].

<sup>230</sup> *ibid* [64].

<sup>231</sup> *The State of Maharashtra v Baburao Ukandu Sangerao* [2021] Special (POCSO) Case No 06/2021 (Special Court in Nanded) [75].

<sup>232</sup> Project 39A National Law University, *Death Penalty Sentencing In India’s Trial Courts 2018-2020*, (2022) 32, 33. *Machhi Singh v State of Punjab*, [1983] 3 SCC 470 (Supreme Court of India), introduced the concept of ‘collective conscience’ in the capital sentencing framework, which included - a. Motive of the crime, b. Manner of the commission of the crime, c. socially abhorrent nature of crime, d. Magnitude of crime and e. Victim’s personality.

violence.<sup>233</sup> Further, the Supreme Court has critiqued the use of this justification by courts, stating that 'public opinion' lacks clarity, that judges are ill-equipped to capture public opinion,<sup>234</sup> and that it runs "counter to the rule of law and constitutionalism".<sup>235</sup>

It is pertinent to note that in both the above cases where the death penalty was imposed, the High Court of Bombay subsequently commuted the sentences when the case was placed for confirmation of death sentence as per Section 366 of the CrPC. In *Sagar Viswanath Borkar and Anr. v. State of Maharashtra*,<sup>236</sup> the High Court found that the accused persons were rightfully convicted under Section 363 r/w Section 34, IPC, Section 376(2) (m) r/w Section 34, IPC, Section 376 DB, IPC, and Section 506 r/w Section 34, IPC. One of the accused persons was convicted under Section 3(2)(v), SC/ST Act, but the court acquitted him under this charge due to absence of evidence which proved he had knowledge that the victim belongs to a SC/ST community. The court also commuted the punishment for death penalty under Section 376 DB to rigorous imprisonment for life, finding that a death sentence is not the only penalty for the offence under Section 376(DB) of IPC, the fact that the accused persons had not been convicted under any heinous offence before, and that there was a lack of evidence to show that the accused persons were a menace to society.

In *State of Maharashtra v. Baburao Ukandu Sangerao*,<sup>237</sup> the Bombay High Court set aside the death penalty awarded to the accused under Section 6 POCSO Act and Sections 376A, 376AB, and 302, IPC and modified the sentences to non-remittable concurrent sentences for a fixed term of 25 years each under Section 302, 376-A, 376AB of IPC and Section 6 POCSO Act. The court here referred to *Bachan Singh v. State of Punjab*<sup>238</sup> to discuss sentencing discretion and noted that in the present case, the act of the accused was unplanned, the accused had no criminal record, and that there was hope for reformation based on his post-conviction behaviour inside the prison. The High Court judgment and order was subsequently upheld by the Supreme Court.<sup>239</sup>

---

<sup>233</sup> Leavides Domingo-Cabarrubias, 'Why capital punishment for rape is a regressive step for women's rights' (Monash University, 8 March 2023) <<https://www.monash.edu/law/research/eleos/blog/eleos-justice-blog-posts/why-capital-punishment-for-rape-is-a-regressive-step-for-womens-rights>> accessed 12 April 2024; Ruhi Khan, 'To hang or not to hang: India's feminists wary of the media spectacle caused by capital punishment for rape' (LSE, 7 February 2020) <<https://blogs.lse.ac.uk/medialse/2020/02/07/to-hang-or-not-to-hang-indias-feminists-wary-of-the-media-spectacle-caused-by-capital-punishment-for-rape/>> accessed 12 April 2024; Preeti Pratishruti Dash, 'Feminism and Its Discontents: Punishing Sexual Violence in India' (2021) Volume 28, Issue 1, Indian Journal of Gender Studies <<https://journals.sagepub.com/doi/10.1177/0971521520974843>> accessed 12 April 2024; Sharanya Basu Roy & Sayantan Ghosh Dastidar, 'Why do men rape? Understanding the determinants of rapes in India' [2018] 39(8) Third World Quarterly 1435-1457.

<sup>234</sup> *Bachan Singh v State of Punjab*, [1980] 2 SCC 684 (Supreme Court of India).

<sup>235</sup> *Santosh Kumar Satishbhushan Bariyar v State of Maharashtra*, [2009] 6 SCC 498 (Supreme Court of India). See also *Channulal Verma v State of Chattisgarh*, [2019] AIR 2019 SC 243 (Supreme Court of India) and *MA Antony @Antappan v State of Kerala*, [2019] AIR 2019 SC 194 (Supreme Court of India).

<sup>236</sup> [2021] Criminal Confirmation Case No. 1 of 2020 (Bombay High Court).

<sup>237</sup> [2023] Criminal Confirmation Case No. 1 of 2021 (Bombay High Court).

<sup>238</sup> (1980) 2 SCC 684.

<sup>239</sup> *Baburao Ukandu Sangerao v State of Maharashtra*, [2024] Special Leave Petition (Criminal) Diary No(s). 53534/2023 (Supreme Court of India).

## 7.4. Conclusion

While most Special Courts used the minimum sentence as the starting-point, they appeared to impose higher sentences in cases in which the convicted person was related to the victim, often citing the violation of the sanctity of such relationships as a justification. This signals recognition of the trauma and breach of trust arising from sexual violation by a person closely related to the victim.

While justifying the imposition of the death penalty, Special Courts highlighted the stark reality of genuine social stigma faced by the victims/survivors. However, in doing so, they also reinforced societal perceptions that diminish the dignity and honour of victims of sexual violence. By equating rape with the death of one's body and soul, courts reflect a patriarchal mindset toward sexual violence, reducing the victim/survivor's identity to the worst harm they have endured. Moreover, in imposing the death penalty, a binary narrative emerges, which portrays society as the righteous defender of sexual violence survivors while labeling the perpetrator as an irredeemable outsider deserving no mercy. In this process, courts overlook the systemic complicity of the family and society in perpetuating patriarchal norms and practices that normalise violence against vulnerable groups.

The analysis also gives rise to concerns about the compatibility of the imposition of minimum mandatory sentences on the rights of children in conflict with the law under the UNCRC and JJ Act, 2015.<sup>240</sup> The Committee on the Rights of the Child has categorically stated that “[m]andatory minimum sentences are incompatible with the child justice principle of proportionality and with the requirement that detention is to be a measure of last resort and for the shortest appropriate period of time.”<sup>241</sup> Further, the lack of adherence of the Children's Court to the mandatory procedures under the JJ Act, 2015 are grave violations that need to be challenged through appeals and addressed more widely through comprehensive capacity building on principles and procedures of juvenile justice.

---

<sup>240</sup> Maharukh Adenwalla and Gayatri Virman, 'Mandatory Minimum Sentence for a Child in Conflict with Law: Contrary to the Spirit of Juvenile Justice', (SCC Blog, 6 June 2023) <<https://www.scconline.com/blog/post/2023/06/06/mandatory-minimum-sentence-for-a-child-in-conflict-with-law-contrary-to-the-spirit-of-juvenile-justice/>> accessed 12 April 2024.

<sup>241</sup> Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, para 78.

## 8 Victim Compensation

The POCSO Act, 2012 and POCSO Rules, 2020 recognises that compensation is an integral component of addressing the harm caused to the victim and can be paid irrespective of whether the accused is convicted, acquitted, or discharged, and even if the accused is not found or identified.<sup>242</sup> The Special Court is empowered to direct the payment of compensation to the child victim “for physical or mental trauma caused” or “for immediate rehabilitation”.<sup>243</sup> There has been considerable confusion in practice as to whether Special Courts should decide the quantum or direct the District Legal Services Authority (DLSA) to determine the amount of compensation.<sup>244</sup> Special Courts are envisaged under the POCSO Act to ensure speedy justice to the victim and if the victim has to approach the DLSA for compensation, it would not only frustrate the objectives of the law, but also cause hardship to the child as she will be subjected to additional scrutiny by another authority.<sup>245</sup> Besides, the DLSAs have to abide by the State Victim Compensation Schemes which have additional conditions and ceilings that can restrict a child victim’s access to compensation.

In *Nipun Saxena v. Union of India*,<sup>246</sup> the Supreme Court passed an order clarifying that the NALSA Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 would serve as a guideline for Special Courts for awarding compensation under the POCSO Act, but the quantum would have to be determined by the Special Courts in accordance with the factors specified in the POCSO Rules and the Special Courts are not constrained by the maximum amounts prescribed in the Victim Compensation Fund.

The POCSO Act and Rules provide for interim compensation to meet the needs for immediate relief and rehabilitation, which can be paid at any stage after the registration of the FIR.<sup>247</sup> Timely compensation can help the child and family cope with the immediate needs and financial pressures that arise after a case is lodged, as well as fend off attempts of coercion from the accused to settle the matter in exchange for money. The Special Courts can pass orders for compensation on their own or based on an application. The Supreme Court has also recognised the right of victims to reparation by casting an obligation on trial courts to apply their mind to every case and decide whether compensation should be paid, even if the victim has not applied for it.<sup>248</sup> However, this has been an area of poor implementation.<sup>249</sup> In *Re: Alarming Rise in the Number of Reported Child Rape Incidents*,<sup>250</sup> the apex court took note of the report of the Registrar of the Supreme Court which stated that interim and final compensation was not provided in 99% cases.

<sup>242</sup> POCSO Rules 2020, r 9(2).

<sup>243</sup> POCSO Act 2012, s 33(8).

<sup>244</sup> Swagata Raha, ‘Compensation under the POCSO Act, 2012’ in CCL-NLSIU Report (n 15) 74-75.

<sup>245</sup> *ibid* 75.

<sup>246</sup> [2018] Writ Petition (C) No. 565 of 2012 (Supreme Court of India, order dated 5 May 2018).

<sup>247</sup> POCSO Act 2012, s33(8); POCSO Rules 2020, r 9(1).

<sup>248</sup> *Ankush Shivaji Gaikwad v State of Maharashtra*, [2013] 6 SCC 770 (Supreme Court of India). *State of Madhya Pradesh v Mehtaab*, (2015) 5 SCC 197.

<sup>249</sup> Swagata Raha, ‘Compensation under the POCSO Act, 2012’ in CCL-NLSIU Report (n 15) 74.

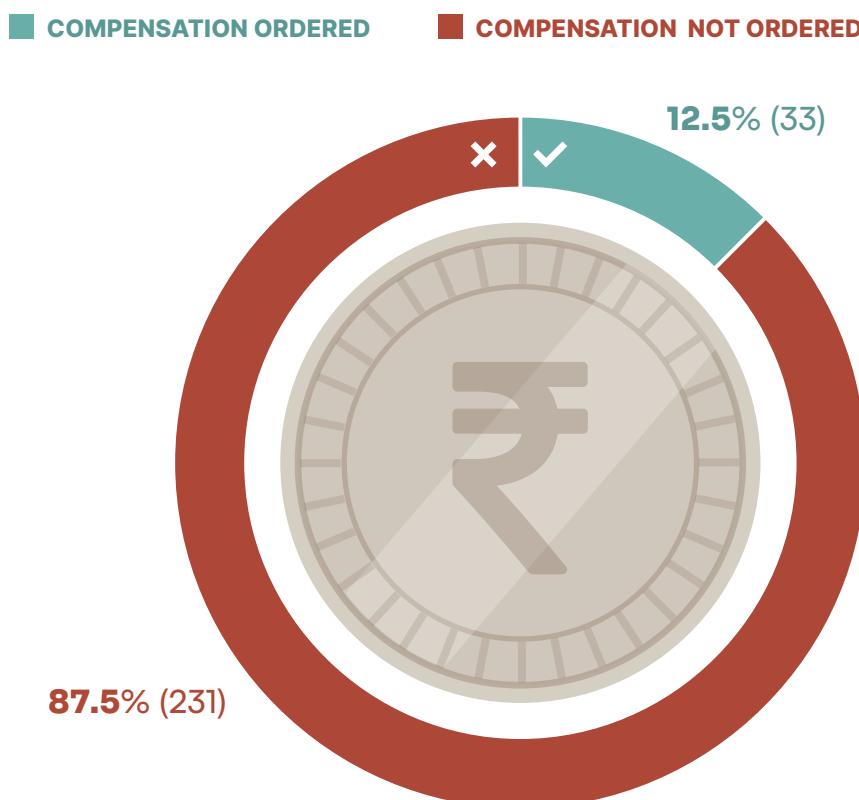
<sup>250</sup> [2019] Suo Moto Writ Petition (Criminal) No.1/2019 (Supreme Court of India, order dated 13 November 2019).

This section examines whether there has been any change in trends in the award of compensation since the heightened focus on justice for child victims of sexual offences after the death penalty was introduced. It is based on an analysis of compensation-related data in 264 cases decided by Special Courts in Assam, Maharashtra, and West Bengal. It also includes insights from CSOs relevant to the implementation of the compensation-related provisions.

## 8.1. Overall trends

- **Similar to the findings of other studies, this study also found that the award of interim and final compensation was an exception.**<sup>251</sup> A direction or recommendation related to compensation was passed only in 33 of 264 cases (12%).<sup>252</sup> Award of **interim compensation** by Special Courts was **rare** and seen in only two cases in West Bengal where Rs 50,000 and Rs 1,00,000, respectively were ordered.<sup>253</sup> These findings suggest that interim and final compensation is not proactively considered by the Special Courts, despite the Supreme Court's emphasis and previous studies highlighting this as a key gap in implementation of the POCSO Act.

**Figure 8.1:** Award of victim compensation by Special Courts (n=264 cases)



<sup>251</sup> Swagata Raha, 'Compensation under the POCSO Act, 2012' in CCL-NLSIU Report (n 15) 74. HAQ & FACSE Study (n 15) 129.

<sup>252</sup> 4 cases in Assam, 15 in Maharashtra and 14 in West Bengal.

<sup>253</sup> *State of West Bengal v Adarsa Dey* [2021] Spl Case No 38 (06) 2020 (Additional Sessions Judge cum Judge Special Court in Krishnanagar, Nadia); *State of West Bengal v Prafulla Mura* [2021] S.C 155/20 (Additional District and Sessions Judge at Purba Medinipur).

The Criminal Law (Amendment) Act, 2018 and the POCSO (Amendment) Act, 2019 also introduced provisions requiring that the fine imposed on the accused be paid to the victim to meet medical expenses and rehabilitation costs.<sup>254</sup> Of the 55 cases in which a fine was imposed on the accused, the Special Court directed that it be paid to the victim in 29 cases (52.7%). The amount imposed ranged from Rs. 1,000 to Rs. 4,20,000 (calculated in total where multiple fines have been imposed under multiple sentences). Special Courts need to proactively ensure adherence to such provisions so as to ensure that the victim's statutory right to reparation is fulfilled.

### CSO Perspectives on Compensation and Special Relief

CSO respondents<sup>255</sup> from Maharashtra, Gujarat, Madhya Pradesh, and Uttar Pradesh highlighted that interim compensation has been rarely awarded in cases they have been involved in, and courts have rejected applications for interim compensation without providing any reasons. Some courts in Assam have ordered interim compensation, but directed that it be put in fixed deposits, which the child cannot access till she turns 18, thus frustrating the objective of providing immediate relief to the child.<sup>256</sup>

CSO respondents<sup>257</sup> from Delhi, Maharashtra, Gujarat, and Kerala shared that in recent years, final compensation has been considered suo-motu by the Special Courts in some cases. The Delhi High Court's decision in *X v NCT of Delhi*<sup>258</sup> in which Special Courts were directed to award interim compensation and also file a yearly report on the number of cases in which interim and final compensation was granted has led to a higher number of cases in which compensation is being considered by Special Courts. One CSO respondent from Delhi<sup>259</sup> shared that interim compensation has been considered suo-moto in some cases.

Under Rule 8, POCSO Rules 2020, the CWC may recommend to the DLSA or DCPU or from the JJ Fund, for immediate payment of special relief for contingencies such as food, clothes, transport and other essential needs. CSO Respondents<sup>260</sup> from Maharashtra, Delhi, Madhya Pradesh, Andhra Pradesh, and Uttar Pradesh shared that special relief is either not granted or granted very rarely. This is because of a lack of awareness about this provision among CWCs. When it is recommended, disbursal is delayed due to the lack of demarcated funds with the DLSA, thus frustrating the very objective of special relief.

<sup>254</sup> POCSO Act 2012, ss 4(3) and 6(2). IPC, provisos to ss 376(3), 376AB and 376DB.

<sup>255</sup> 4C3, 5C1, 7C2 and 11C1.

<sup>256</sup> 3C1.

<sup>257</sup> 2C1, 2C2, 2C3, 4C2, 5C1 and 8C1.

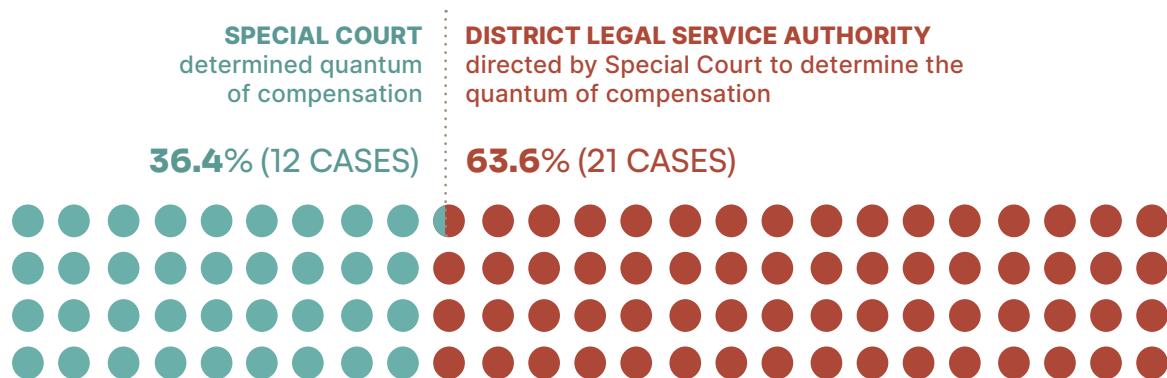
<sup>258</sup> X. v NCT of Delhi [2022] CRL.A.63/2022 (Delhi High Court).

<sup>259</sup> 2C3

<sup>260</sup> 4C1, 2C2, (7C1, 7C2), 10C1, and 11C1.

- **Suo-moto consideration of compensation is an exception:** Rule 9(1), POCSO Rules states that in appropriate cases, the Special Court on its own or based on an application, can order interim compensation to meet the needs of the child for relief or rehabilitation at any stage after the FIR is registered. CSO respondents highlighted that children and families are not informed about the availability of compensation by the police,<sup>261</sup> and Special Courts rarely ordered compensation on their own.<sup>262</sup> Judgment texts in cases where compensation was awarded do not reveal if victim compensation was considered on a suo-moto basis or upon application.
- **Although, Rule 9(2), POCSO Rules envisages that compensation can be ordered even if the accused is acquitted, compensation was awarded only in cases that ended in a conviction,** and, even then, in only 33 of the 57 cases (57.9%). The victim had testified against the accused in 31 of these cases. Compensation was awarded in two cases in the absence of testimony of the victim, but resulted in a conviction. In one of these cases, the victim's testimony was not recorded as she had died, and in the other case the victim did not testify against the accused but admitted to being in a romantic relationship with the accused, having had a physical relationship with him.

**Figure 8.2: Who determined compensation? (n=33 cases)**



- **Special Courts continue to direct the DLSA to determine the quantum of compensation.** Section 33(8), POCSO Act read with Rule 9, POCSO Rules vests the Special Court with the responsibility of deciding the quantum of compensation so that the victim is spared the trouble of having to approach the DLSA for a fresh assessment and delays are avoided. The NALSA Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 clarified that it did not apply to minor victims under the POCSO Act as compensation in their cases are to be determined by the Special Courts under the provisions of the POCSO Act and Rules. Even though the Supreme Court has also clarified that it is the Special Court that should determine the quantum,<sup>263</sup> **most Special Courts failed to exercise this obligation and instead recommended that the DLSA determine compensation in 21 out of 33 cases (64%).**

<sup>261</sup> 2C2, 3C1, 8C1.

<sup>262</sup> 3C1, 4C1, 10C1, and 11C1.

<sup>263</sup> *Nipun Saxena v Union of India*, (2018) Writ Petition (C) No. 565 of 2012 (Supreme Court of India).

A study by the Centre for Child and the Law, NLSIU (2017) on implementation of the POCSO Act by Special Courts in Maharashtra indicates that compensation was ordered in 125 out of 1330 cases (9.39%) and the DLSA had been asked to determine the quantum in 11.2% cases.<sup>264</sup> A similar study in Assam shows that compensation was awarded in 38 out of 172 cases (22.09%) and asked the DLSA to determine compensation in 42.1% cases.<sup>265</sup> A concerning aspect is that the trends in award of compensation and determination of quantum by Special Courts in Assam and Maharashtra has not improved.

- **Although Section 33(8), POCSO Act envisages compensation for physical or mental trauma, in practice, compensation is considered only if the victim has sustained physical injuries. A reference to mental trauma of the victim was seen in only two judgments in which compensation was given, both of which were from West Bengal.**<sup>266</sup> CSO respondents also highlighted that Special Courts question the application for compensation if the victim has not sustained any physical injury or has accessed treatment in a public hospital where treatment is free, disregarding the mental trauma and attendant costs related to travel, loss of daily wages of the family members accompanying the child, cost of medicines, cost of relocation of homes and change of school due to social stigma, etc. HAQ's report based on 126 cases in which it provided support to victim and families, revealed that 20% of child survivors of sexual abuse had to relocate their residence in the aftermath of the incident, of which more than half relocated for safety reasons, and further 26% of victims discontinued their education following the incident.<sup>267</sup> Although Rule 9(3)(iii), POCSO Rules mentions that loss of educational opportunity as a consequence of the offence is a factor to be considered by the Special Court while awarding compensation, this was not considered by the Special Courts in any of the judgments.
- **Rule 9(5), POCSO Rules mandates that compensation ordered by the Special Court should be paid by the State Government within 30 days of the receipt of the order.** However, disbursal is delayed due to the absence of identity proof and bank accounts, processing time by the DLSA, absence of timely assistance to families to create the identity documents and bank accounts, and absence of funds with the DLSA for disbursal.<sup>268</sup> Additional requirements such as affidavits from the family, victim impact assessment reports, verification of report by the Investigating Officer also contribute to the delays. A CSO respondent from Maharashtra<sup>269</sup> shared that delays in disbursal of compensation and the trial affected the morale of the child survivors, particularly those living in acute poverty, and expressed deep frustration about the lack of timely support from the criminal justice system.

<sup>264</sup> Swagata Raha, "Compensation under the POCSO Act, 2012" in CCL-NLSIU Report (n 15) 74. Note that the CCL-NLSIU studies examined all decisions under the POCSO Act, and not only those under aggravated penetrative sexual assault.

<sup>265</sup> *ibid.*

<sup>266</sup> *State of West Bengal v Binoy Biswas* [2019] Sessions Case No.06(09)/2018 (Additional District & Sessions Judge in Nadia). *State of West Bengal v Rupkumar Maity @ Bhola* [2020] S.T 179/2018 (Additional Sessions Judge in Purba Medinipur).

<sup>267</sup> HAQ: Centre for Child Rights & Human Dignity Foundation, *Children's access to justice and restorative care* [2018] 36, 39.

<sup>268</sup> 2C2, 3C1, 5C1, 7C1, 7C2, 10C1.

<sup>269</sup> 4C3

## 8.2. Conclusion

Judicial articulation of obligations to ensure justice to the victim has not translated into the operationalisation of provisions for advancing the rehabilitation of the victim through interim and final compensation orders. Although the POCSO Rules allow victim compensation to be paid anytime after the filing of the FIR, the Special Courts continue to consider compensation only if the victim testifies against the accused, reflecting the position in State Victim Compensation Schemes, which require the victim to support the prosecution to be eligible for compensation. This narrow approach undermines the statutory intention of ensuring immediate relief after a case is reported and fails to recognise the pervasive and long-term impact of sexual violence on the well-being of children. The Special Court seems disconnected from the financial shocks and upheavals resulting from the social stigma that a child and their family experience after the case is reported. Further, they have failed to adapt to the framework under the POCSO Act and Rules and instead direct DLSAs to determine compensation.

Special Courts must, therefore, be strongly encouraged and monitored in case of adhering to the Supreme Court's directive for trial courts to proactively apply their mind when considering compensation in POCSO cases and to determine the appropriate quantum of compensation.

PART B

# PERSPECTIVES OF CHILD SURVIVORS, FAMILIES, AND CSOs ON IMPLEMENTATION OF CHILD-FRIENDLY PROCEDURES AND CHALLENGES FACED

# OVERVIEW

The POCSO Act establishes a comprehensive, substantive, and procedural framework that acknowledges and addresses the distinct vulnerabilities of children. Recognising the unique challenges inherent in sexual offence cases, the POCSO Act underscores the necessity for a sensitive and responsive criminal justice framework tailored to the needs of child victims and survivors. The Legislature consciously rejected the option of adding new offences to the Indian Penal Code and instead, enacted a new law that stipulates procedural mandates for the police, Magistrates, medical practitioners, and Special Courts, as well as care and reliefs for child victims. These provisions seek to guarantee a responsive and child-friendly justice system.

Several studies on the working of the POCSO Act show the poor state of implementation of child-friendly provisions and the acute lack of support systems and services for child survivors and their families.<sup>270</sup> Padma Bhate-Deosthali, Sangeeta Rege, and Sanjida Arora, in their book 'The Aftermath of Rape, Survivors Speak,'<sup>271</sup> also bring forth the voices of rape survivors and their families through 66 in-depth interviews that were conducted with adult survivors and parents of child and adolescent survivors. The respondents' experiences revealed that "survivors continue to be turned away, be blamed, be denied treatment, face hostility at all levels, and be stuck in long legal procedures".<sup>272</sup> Secondary victimisation, police and health systems not fulfilling their roles, and overwhelming court experiences without any guidance and support also emerged as major challenges.<sup>273</sup> Serious violations of rights and safeguards were also found at the level of courts and police stations such as victim blaming and suspicion whether the crime took place.<sup>274</sup>

This section delves into the treatment of child victims of penetrative sexual assault by various authorities and functionaries within the criminal justice system, including the police, medical practitioners, Magistrates, and Special Courts. Through interviews with survivors, families, and representatives from civil society organisations, it aims to assess compliance with child-friendly procedures and determine whether the legislative intention to prioritise the best interest of the child throughout the legal process is being effectively implemented in practice.

<sup>270</sup> CCL-NLSIU Report (n 15) ; Vidhi POCSO Study (n 15) 95; HAQ & FACSE Study (n 15); Partners for Law in Development, 'Towards Victim Friendly Responses and Procedures for Prosecuting Rape: A Study of Pre-Trial and Trial Stages of Rape Prosecutions in January 2014 - March 2015' (2017); Human Rights Watch, *Everyone Blames Me - Barriers to Justice and Support Services for Sexual Assault Survivors in India* (2017) 6.

<sup>271</sup> Padma Bhate-Deosthali, Sangeeta Rege, and Sanjida Arora, *The Aftermath of Rape: Survivors Speak* (Taylor & Francis, 2022).

<sup>272</sup> *ibid* 8.

<sup>273</sup> *ibid* 8.

<sup>274</sup> *ibid* 11,12.

Recognising the very first instance of filing a complaint as a significant hurdle for victims and families, the POCSO Act imposes obligations upon the police to ensure that all information regarding commission of an offence under the Act is recorded as well as other mandates to make the process sensitive and child-friendly. The police also discharge a critical role in being the interface for facilitation of medical care, medical examination, recording of the statement under Section 164 of the CrPC. Further, Section 164A makes it mandatory to ensure the medical examination of rape victims is conducted in a timely manner, and Section 164(5A) requires their statement to be recorded before a Magistrate. The POCSO Act and Rules have introduced measures that make the process appropriate for child victims. The POCSO Rules also spell out the comprehensive requirements of emergency medical care to be given to child victims. Lastly, it is crucial to examine the journey of the victims through the trial process and understand the lived experience of victims and families participating in the criminal justice system. The POCSO Act provides for the designation of Special Courts to hear POCSO trials and also mandates the appointment of Special Public Prosecutors to advance the child-friendly goal of the Act and to provide for a more conducive environment for victims to participate in the criminal justice system.

The experiences recounted by families, victims, and supporting Civil Society Organizations (CSOs) shed light on the effective operationalisation of measures introduced by the POCSO Act for child victims by the police, medical personnel, doctors, Magistrates, Judges, and Special Public Prosecutors. These shared accounts offer a glimpse into their justice journey, uncovering systemic barriers and procedural inadequacies, which are essential to inform the discourse on reforms needed to foster a more victim-centred justice system. As stated above in the limitations, it must be noted that the experience of the CSOs is limited to the cases handled by them in a particular district and is not representative of the implementation of the POCSO Act in their entire state or the country.

# SUMMARY OF FINDINGS

## 1

## POLICE COMPLIANCE WITH CHILD-FRIENDLY PROCEDURES



### ***Families continue to face resistance from the police for the registration of an FIR.***

Compliance with the child-friendly procedures remain inconsistent, as statements are mostly recorded in the police station with no regard for the child's preference. Structural factors such as inadequate number of female police officers make compliance with the statutory provision impossible. Personal biases also appear to affect the response and application of child-friendly provisions based on age and identity of the victim. Although the law does not make any age-based distinction with respect to the application of safeguards, the police appear to be less likely to allow the family to be present when the child is above 14 years of age. Operational and resource constraints such as lack of transport and space within the police station have resulted in the exposure of the child to the accused during the investigation. While efforts are being made to provide the victim and families with information about bail and other services, these are either not explained or not provided in a timely manner, and thus does not enable their effective participation or access to services.

## 2

## COMPLIANCE OF MEDICAL PRACTITIONERS WITH CHILD-FRIENDLY PROCEDURES DURING MEDICAL EXAMINATIONS AND CARE



***The experience of children and families during medical examinations revealed that this setting was intimidating for children,*** and their experience was shaped by their interactions with the medical staff and the presence or absence of supportive family members. A majority of CSO respondents confirmed that in compliance with Section 27(3), POCSO Act, the victim's family members are permitted to be present during the medical examination. In some places, however, Support Persons have to convince doctors to allow the parents to be present inside the examination room.

Several gaps emerged in the manner in which the victim's medical examination is conducted, chief being the insensitive and often humiliating manner in which medical staff behave with them. The medical examination is delayed and tends to take a long time, sometimes multiple days. Lack of sensitivity, combined with the absence of dedicated rooms, compromise privacy during the examination. The

medical examination is often conducted without the informed consent of the victim or without them being informed of their right to refuse the medical examination or the procedures that the examination would entail. In the context of medical termination of pregnancy, although the law requires medical practitioners to counsel the child only on the legal options available to them, child protection functionaries often impose their views on the child. The lack of awareness about the law has also resulted in insistence by Child Welfare Committees on court orders even when the pregnancy is under 24 weeks and consent for termination is given by the guardian.

### 3

## COMPLIANCE WITH CHILD-FRIENDLY PROCEDURES DURING RECORDING OF STATEMENT UNDER SECTION 164, CrPC BY MAGISTRATES



During the process of recording their statement under Section 164, CrPC, *children have to wait long hours in the common areas where they are exposed to accused persons in handcuffs, which has an intimidating effect*. Their privacy and identity is also compromised as the child is immediately assumed to be a victim under POCSO Act by those waiting outside the courtroom. While children's statements under Section 164, CrPC are usually recorded in the Magistrates' chambers, a parent or guardian is allowed only if the child is perceived to be too young by the Magistrate. In romantic cases, wishes of the child are considered and parents are not allowed if the child expresses discomfort in speaking openly in their presence. The lack of availability of special educators and unwillingness of identified special educators to attend court proceedings affect the recording of statements of children with disabilities. Audio-visual recordings of 164 statements are an exception. Significantly, in Tamil Nadu, the High Court POCSO Committee has taken into account the dangers of videography and the lack of robust data management systems and has recommended that videography be considered in only exceptional cases and must be done by the police and not private videographers.

### 4

## COMPLIANCE WITH CHILD-FRIENDLY PROCESSES BY SPECIAL COURTS



*Children continue to be questioned directly by the defence lawyers and Public Prosecutors in several states* as defence lawyers usually raise concerns about fair trial and the difficulty in sharing questions in advance. While Special Courts do usually allow breaks to younger children during the recording of the testimony, the same is rare in case of adolescents. Parents or guardians are generally allowed to be present with the child during their testimony, but parents are not allowed in "love

affair cases" and Support Persons are not always allowed inside the courtroom owing to judges' apprehensions about their intentions. Operationalisation of the prohibition on aggressive questioning and character assassination of the child under Section 33(6) POCSO Act largely depends on the sensitivity of the Presiding Officer.

The lack of suitable infrastructure within court complexes to ensure children's privacy and comfort was underlined by several CSOs. Although efforts are made to prevent the exposure of the child to the accused at the time of recording evidence, in most states, exposures continue to take place outside the courtroom. In most courts, children have to use the common entrances and passages to access the court and there are no separate waiting areas, thus increasing the likelihood of their exposure to the accused. The lack of a translator/special educator is a significant hurdle in the access to justice of children with disabilities and underlines the overall lack of an enabling environment and accountability in ensuring identification, availability, and seeking of timely assistance of special educators.

Although the POCSO Act requires that the child not be asked to make frequent visits to court and the evidence be recorded within 30 days of cognizance, the experience is to the contrary. Survivors had to make multiple visits to the court and the delays in recording evidence compelled child survivors to relive the traumatic experience, recount it repeatedly. This hindered their healing. They were continuously reminded of the harm they had experienced. Family members observed that this disturbed the children and affected their mental health, sleep cycle, education, career, and their resolve to move forward. The multiple visits also imposed a severe strain on the livelihood of some families and also discouraged some families from pursuing the case.

## 5

## EXPERIENCE WITH SPECIAL PUBLIC PROSECUTORS AND LEGAL PRACTITIONERS



### ***Survivors and families had a mixed experience with Special Public Prosecutors.***

Some have felt supported while others have experienced humiliation and disrespect, particularly in cases in which mothers lodged a complaint of sexual abuse of their child by the fathers. CSOs also explained that the experience of the PPs varied based on their individual sensitivities, with most failing to extend any support to survivors by building rapport, objecting to the defence questions, or providing orientation to the child.

Although under Section 40, POCSO Act, the victim is entitled to the assistance of a legal counsel of their choice or a Legal Aid Lawyer, several CSO respondents shared that this is a rare occurrence and families are not provided with information about how to access legal aid lawyers. Resistance from the Public Prosecutor and Special Court with respect to the appointment of lawyers for victims has also contributed to the underutilisation of this provision.

# 1 Police Compliance with Child-friendly Procedures

The police are first responders with whom child victims and families interact when the criminal justice system is set in motion. The POCSO Act details several child-friendly procedures that the police have to adhere to at the stage of reporting and investigation of sexual offences against children. This section examines the adherences of the police to these procedures based on the experiences of the survivors, families, and CSOs.

## 1.1. Registration of FIR

Taking into account the concerns of women and children who approach the police to register cases of sexual offences, Section 19(2), POCSO Act and Section 154(1) of the Code of Criminal Procedure Code, mandate recording of information and registration of FIR, respectively. Section 19(2), POCSO Act stipulates that any information provided regarding the commission of an offence under the POCSO Act shall be entered, ascribed an entry, and read over to the informant. Further, Section 166A(c) of the Indian Penal Code prescribes rigorous imprisonment for a minimum term of six months which can extend to two years and fine for the failure of a public servant to record any information about rape-related offences which are cognizable. Under Section 21(1), POCSO Act, the failure to record the offence attracts punishment up to six months, or a fine, or both.

The stigma surrounding sexual violence makes reporting a difficult decision and for those who overcome these barriers and approach the police, how they are treated can make a crucial difference in their justice journey. Reporting such cases is also challenging, especially if the family is dependent on the perpetrator and requires support at an early stage. Despite the repeated emphasis of the Supreme Court<sup>275</sup> on the mandatory obligation to register an FIR if the information pertains to the commission of a cognizable offence and the provisions prescribing punishment for police failure to record information, victims of sexual offences encounter suspicion, disbelief, and are, at times, pressured to compromise the matter by the police.<sup>276</sup> This invalidates their experience, causes re-victimisation, and leaves them with a sense of helplessness, suffering, and confusion, which impacts their physical and mental well-being.<sup>277</sup>

These challenges were also reiterated by respondents of this study. Two mothers — Radhika\* and Sheela,\* shared that the police refused to lodge an FIR when they first went to the police station. In Sheela's daughter's case, the police were hesitant because the incident had taken place 4-5 years ago. The police did, however, send a counsellor to speak to the child after which the FIR was

<sup>275</sup> *Lalita Kumari v Govt. Of U.P. & Ors.*, (2013) AIR 2014 SC 187 (Supreme Court of India).

<sup>276</sup> Human Rights Watch, *Everyone Blames Me - Barriers to Justice and Support Services for Sexual Assault Survivors in India* (2017) 2; Commonwealth Human Rights Initiative and Association for Advocacy and Legal Initiatives, *Barriers in Accessing Justice: The experiences of 14 rape survivors in Uttar Pradesh, India* (2020).

<sup>277</sup> Commonwealth Human Rights Initiative and Association for Advocacy and Legal Initiatives, *Barriers in Accessing Justice: The experiences of 14 rape survivors in Uttar Pradesh, India* (2020) 2.

lodged. With Radhika's daughter, the FIR was lodged following the intervention of a Support Person. **Anchal\***, whose guardian had allegedly forced her into prostitution, shared that the police were unhelpful and the case was eventually registered with the help of the Children's Home she was placed in. She shared what she told the police :

**“** I said I am not lying. I remember the places where they took me and the people around me could have also told. The police said that she has come from another country and is therefore lying about us. This is why they were not writing the case.

A CSO respondent from Delhi<sup>278</sup> shared that police refuse to register the FIR in cases where the child is missing and has run away from home due to an abusive home environment, and instead ask the family to trace and bring the child to the police station. In other cases, even where the police agree to accompany the family to trace the child, the family is asked to bear the costs of transportation, food, and accommodation for the police, making it financially cumbersome for the family.

Adding to the challenges of reporting an offence, CSO respondents stated that the police often disbelieve the victim's version due to pre-existing biases. CSO respondents from Delhi<sup>279</sup> and Bhopal<sup>280</sup> shared that when the child is above the age of 12 years, the police is often not empathetic towards the survivor. Their perception is that it is the child's fault, especially in cases of elopement. A CSO respondent from Madhya Pradesh<sup>281</sup> shared that police officers often believe that tribal victims file a false complaint merely to get compensation and this influences their behaviour with children from tribal communities. Another CSO respondent from Madhya Pradesh shared that the police are either unaware that boys can also be victims under the POCSO Act or refuse to add relevant provisions under the POCSO Act and instead only refer to Section 377, Indian Penal Code.<sup>282</sup> According to a **CSO respondent from Delhi**,<sup>283</sup> in cases of alleged sexual abuse by the father, some IOs imply that the child is lying:

**“** Sometimes, the IO would say the child is lying because she has a boyfriend or would not believe the child.... because he [the father] has stopped the child from going online or using phone or Instagram that's why my child is filing a false complaint.

A **CSO respondent from Maharashtra**<sup>284</sup> spoke about the resistance from the police at the time of filing of FIR:

**“** They only want to take up cases where they say the child will stick to the statement made and will not go hostile, in case they aren't certain, their response is, 'let's not file an FIR and let us try and have a hearing in the police station itself and dispose of the case in the station itself'.

**Apart from systemic barriers, survivors and their families are often reluctant to report sexual violence due to the patriarchal notion of loss of 'izzat' (personal and family honour) and the social ostracisation and stigma that inevitably follows when the case comes to light. Other**

<sup>278</sup> 2C2.

<sup>279</sup> 2C3.

<sup>280</sup> 7C1.

<sup>281</sup> 7C1.

<sup>282</sup> 7C2.

<sup>283</sup> 2C2.

<sup>284</sup> 4C1.

**practical barriers also exist, such as financial dependency upon the abuser, especially where the abuser is another family member.** A **CSO respondent from Gujarat**<sup>285</sup> underlined the need to challenge and address this societal barrier:

**“** I think that the biggest enemy we have is the ‘izzat’ thing. Recently, also, there’s a case in which a girl died by suicide. I think it’s really important for us to work, especially in the rural context, with the parents and the children on the notion of *izzat* and changing that because the criminal justice system can’t change. That’s the reason why cases are not reported, or when they’re reported, girls are dying by suicide or children are married off to protect honour.

### What worked for children and families during their interaction with the police

The experience of the parents of child survivors with the police was largely mixed. Some shared that they felt supported by the police during the lodging of the FIR and the investigation process, and also appreciated that the police escorted the victim and the family for the medical examination and intervened when the child or family faced threats from the accused.

Survivor respondents who had a positive experience with the police shared that the following made a difference:

- ✓ Being spoken to kindly by the police and patient responses to their questions and concerns
- ✓ Presence of women police officers
- ✓ Being offered food and water while waiting for medical examination and at the court
- ✓ Presence of a Support Person
- ✓ Active intervention by the police when the child or the family was threatened

Two mothers ( from Karnataka<sup>286</sup> and Assam<sup>287</sup>) shared that the police intervened effectively when the accused (neighbour and father, respectively) made threats. The **mother from Karnataka**<sup>288</sup> shared:

**“** The offenders kept giving torture to us and kept asking us to take back the case. The police all got changed in between and I did not know what to do. I asked [Support Persons]. I was so scared to live here and did not know what will happen when. The police helped a lot and came here. They did some ‘galatta’[ruckus] with the accused, scared them, hit them and sent them back.

However, Suresh\* shared that they had wanted the police to intervene when the accused tried to run them over, but the police refused to act unless the family formally registered a complaint against the accused.

<sup>285</sup> 5C1.

<sup>286</sup> 1B1.

<sup>287</sup> 3B2.

<sup>288</sup> 1B1

### What did not work for children during their interaction with the police

Survivor respondents who had a negative experience with the police shared that the following affected their experience:

- ✗ Rude and uncooperative behaviour
- ✗ Refusal to lodge the FIR
- ✗ Hostile environment in the police station
- ✗ Being called to the police station
- ✗ Not being believed
- ✗ Being made to wait at the police station for several hours before being escorted to the medical examination

A **CSO respondent from Maharashtra**<sup>289</sup> shared that the police often blame the caregiver or the child for the offence:

**“** I think the police first start with the “counselling” of the caregivers: telling them that it’s their irresponsibility that has resulted in the incident. Instead of immediately responding to the situation, as first responders they are very very active in blaming the victim or the caregiver.

**Survivors and families’ experience of the police station is of a hostile environment fraught with long waiting periods to register a case.** Seven survivor-respondents stated that their encounter with the police was intimidating due to the presence of many police officers in the police station, the generally hostile environment of the police station, and the rude and uncooperative behaviour of the officials who interacted with them. One police officer suggested to Aarohi’s\* parent that they withdraw the case, while also discouraging her from going ahead with a medical termination of pregnancy (MTP).

CSO Respondents from Delhi,<sup>290</sup> Maharashtra,<sup>291</sup> and Madhya Pradesh<sup>292</sup> also shared that it often takes up to 10-12 hours to lodge a FIR and is completed late in the night. A **CSO respondent from Delhi**<sup>293</sup> spoke about a case in which a child was made to wait for almost 12 hours, after which she said she did not wish to lodge the complaint any more:

**“** In one of my cases, we went to the police station at 10, or around 11 o’clock in the morning to file. In this case, ...the child was made to sit till 10 o’clock at night. And after that the police told us that the child is now saying that she doesn’t want to file the complaint. So we said, ‘obviously you have been keeping the child into custody for almost 12 hours. The child is tired now, she doesn’t want to file any complaint now and then you are telling the child that you have spoken to her father, and the father is

<sup>289</sup> 4C1.

<sup>290</sup> 2C2, 2C3.

<sup>291</sup> 4C2, 4C3.

<sup>292</sup> 7C1, 7C2.

<sup>293</sup> 2C2.

saying he has not done anything and it's because he has stopped the child from going online or using phone or Instagram that's why my child is filing a false complaint'. Then I said, 'whatever it is, right now you have to file the complaint'. Then at 11:30pm they sent the child back with the father. Then we filed a complaint before the CWC, and she was produced before the CWC and kept in a CCI. During that crucial time, the police had behaved with her in such a manner that she ended up saying, 'nothing has happened with me and even if it has, I don't want to file a complaint'.

Section 24(4), POCSO Act, prohibits the detention of the child in the police station at night for any reason. While the majority of the respondents shared that the victim is not detained at the police station, a few respondents (MP, Delhi [2], Maharashtra)<sup>294</sup> shared that if a victim arrives at the station at night, sometimes they are made to stay there till morning. **Children are also made to stay overnight at the police station due to the absence of Children's Homes in every district or the lack of awareness of the police.** CSO respondents from Delhi and Maharashtra<sup>295</sup> shared that there have been cases where older girls who have eloped have been found and brought to the police station in the middle of night, and the police have kept the girls there and taken them to a shelter home or produced them before the CWC the next morning. CSO respondents from Assam and West Bengal spoke about instances in which if a complaint was lodged in the evening or odd hours, the child stayed overnight or for long hours at the police station because there were no Children's Homes in the vicinity and there was a lack of transport.<sup>296</sup>

**In elopement cases, an attempt is made by some officers to bring both parties together to broker a compromise.** A **CSO respondent from Maharashtra**<sup>297</sup> shared:

**“** ...most of the time, we find that the accused and their family are brought face to face before the FIR is filed for them to come to some kind of an understanding. And to also ascertain [...]what the parents, the girl's parents are saying, because in elopement cases and the so-called love affair cases, the girl is not opening up at all. It's always the parents who are taking a very active role in filing the FIR. So, they bring the boy and the boy's family together and this kind of a mini trial goes on at the police station... So sometimes unfortunately the families also feel that this is a legitimate part of the investigation.

Exposure of the victim to the accused is prohibited under the POCSO Act and sexual offences are non-compoundable, and thus suggestions of compromise by the police are squarely in violation of the law. However, attempts at encouraging parties to arrive at a compromise in elopement cases appear to stem in response to the blanket criminalisation of adolescent sexuality and the futile use of the criminal justice machinery by families to control such relationships and enforce patriarchal norms.

<sup>294</sup> 7C1, 2C3, 2C1, 4C3.

<sup>295</sup> 2C1, 4C3

<sup>296</sup> 3C1 and 9C1.

<sup>297</sup> 4C1.

### Need for building capacities to recognise and respond to cyber crimes related to sexual offences

A CSO respondent from Delhi<sup>298</sup> highlighted the need to develop capacities of the police on the mechanics of cyber crimes, and the use of social media, especially Instagram, to make threats, stalk victims, and for extortion. For instance, in one case an IO claimed that a child had threatened herself online due to lack of an understanding of “hacking”:

**“** The child had shared that she is getting threats from Instagram accounts. So the IO kept saying that it has come from the child's account, and that she is threatening herself. Instead of understanding that these accounts were made by her but are now being used by someone else.

## 1.2. Recording Statements of Victims

Recognising that the police station can be an intimidating environment and that a child's comfort needs to be taken into consideration, Section 24(1), of the POCSO Act requires the police to record the statement of the child at the child's residence or the place where the child usually resides or the place of the child's choice. That the system operates based on the convenience of the police and not the comfort of the child is evident from the accounts of CSO respondents from Delhi, Maharashtra, Madhya Pradesh, West Bengal, and Uttar Pradesh.<sup>299</sup> They stated that **the child's statement is usually recorded in the police station, and the child's preference is not taken into consideration**. It is only with the intervention of a CSO or a Support Person that sometimes the statement is recorded at a place of the child's choice. A **CSO respondent from Maharashtra**<sup>300</sup> said:

**“** ...when we speak to the child, when we speak to the parent, we realise that in almost 95-97% of these cases, the child has been to the police station. And those 2-3% cases where the child has not been to the police station, it's been because of some extraneous fact that the child was not in Mumbai so the police have to go somewhere else or the child was admitted in the hospital or the child was in a shelter home so not because of the initiative of the police to say, don't come to the police station but because of some other factors due to which the child couldn't come to the police station.

The inconsistency in practice within states was highlighted by a CSO respondent from Assam,<sup>301</sup> who said that in several places, the statement is recorded at the police station. The practice, according to the respondent, is particularly common where the child approaches the police station to register the case. The respondent further added that all Police Stations do not have child-friendly spaces, though new stations made under the MOITRI Scheme<sup>302</sup> do.

**298** 2C3.

**299** 2C2, 2C3, 3C1, 4C1, 4C3, 7C1, 9C1, 11C1,

**300** 4C3.

**301** 3C1.

**302** Mission for Overall Improvement of Thana for Responsive Image is an initiative of Assam state government to improve police stations across the state and was launched in June 2016.

A **CSO respondent from Delhi**<sup>303</sup> said:

**“**The statement is recorded mostly at the police station. The child is not asked where they want to give the statement [whether house or CWC. ...I have not come across any cases where the statement is recorded at home. The practice is very informal. They ask the child about the incident in an informal place like in front of the CWC or at home. But then they go back and record the statement at the station and ask the family to come to the police station and sign it. They won't ask for a preference unless the child is living in a CCI, then they would go to the CCI.

Another problematic practice highlighted by the CSO respondent was that the family is called at odd-hours or late in the evening to take the child for spot identification to the home of the accused and this is fairly intimidating for the child.

Considering the possibility that children may not feel comfortable in talking about the abuse to a male officer, Section 24(1), POCSO Act states that “as far as practicable,” the statement should be recorded “by a woman police officer not below the rank of a sub-inspector”. However, **recording of statements by women sub-inspectors is difficult on account of shortage of women police officers, and where available, they usually play a secondary role**. As shared by a CSO respondent from Bhopal,<sup>304</sup> the dearth of sufficient women sub-inspectors leads to delays in recording of the statement of the child, as a woman sub-inspector has to travel from a different police station if the one that the child has gone to does not have one. Similarly, a CSO respondent from Delhi<sup>305</sup> shared that statements are not always recorded by a woman officer due to the unavailability of such officers. To address this, it appears that DISHA police stations<sup>306</sup> have been set up in each district in Andhra Pradesh, and if a POCSO case comes to a general police station, it is transferred to a women police station, where majority of the staff are women.

While some CSO respondents shared that the statement of the child was recorded by a woman police officer, others shared that the presence of women police officers is mere tokenism presence and they do not interact with the child or ask any questions.<sup>307</sup> For instance, a **CSO respondent from Maharashtra**<sup>308</sup> said that the woman police officer is sometimes accompanied by two male police officers while recording the statement:

<sup>303</sup> 2C2.

<sup>304</sup> 7C1.

<sup>305</sup> 2C1.

<sup>306</sup> Disha Police Stations are model stations that have been set up under the Andhra Pradesh Criminal Law (Amendment) Act, 2019 which aim to provide speedy trial of specified offences against women and children under the IPC and the POCSO Act. These police stations are headed by a Deputy Superintendent of Police rank official and are to be equipped with facilities for women and children such as waiting halls, counselling rooms, creche, baby care rooms etc. An exclusive control room to handle calls from women in distress would also be set up herein. These will help track the nearest emergency response vehicle and automatically dispatch it to the location of the victim quickly. See Srinivasa Rao Apparasu, 'Andhra gets Disha police station to fight crimes against women and children' (Hindustan Times, 8 February 2020) <<https://www.hindustantimes.com/india-news/andhra-gets-disha-police-station-to-fight-crimes-against-women-and-children/story-Vac3mQOnjVZ3YQk2sSLUsL.html>> accessed 3 April 2023.

<sup>307</sup> 11C1.

<sup>308</sup> 4C3.

**“** You see the signature and it's a lady officer, the name and the signature. But when you ask the child, she will say, 'yes, there was a lady, but there were also two other men there'. And when you speak to women officers, they say, 'our seniors feel that we need help. Our seniors feel that we need assistance. So they sit with us'. But then it defeats the entire purpose.

Although Section 24(2), POCSO Act requires that the **police officer recording the statement of the child should not be in uniform, this is rarely followed**. A **CSO respondent from Madhya Pradesh**<sup>309</sup> shared the explanations provided by officers for their inability to comply with this provision:

**“** They say we are also dealing with other accused, where we have to wear this uniform without which they won't respond. So they say, 'how can we follow this? I mean, on the same day we have to do a different kind of work, right?' So, in 99% of cases, they don't follow this.

Another **CSO respondent from Madhya Pradesh**<sup>310</sup> shared the difficulty that the police officer has in changing her attire:

**“** If a case comes and she's on duty, she can't go back home. If we ask her to carry a civil dress to the office, there is hardly any space for her to change the dress also - police stations are not such that it will provide such spaces.

The futility of technical adherence to this provision was highlighted by CSO respondents from Maharashtra who shared that the child sometimes sees the police officer in police uniform first, or the police officer arrives in a police van and thereafter changes into civil clothes, or that their behaviour or demeanour remains unchanged even when they are in civil clothes.<sup>311</sup> Further, police often go to the neighbourhood of the survivor in uniform and make enquiries about the location of their house, as a result of which the case becomes known to all in the locality.

Recognising that exposure to the accused can have an intimidating impact on the child, Section 24(3), POCSO Act places an obligation on the IO to ensure that the child does not come in contact with the accused while recording their statement. **Care is mostly taken by the police to ensure the child is not exposed to the accused during the recording of the child's statement, but there are some instances of breach.** There have been instances in Delhi<sup>312</sup> when the accused and victim have been taken together to the hospital in the same vehicle for a medico-legal examination. CSO respondents from UP<sup>313</sup> and Maharashtra<sup>314</sup> shared that exposure takes place in the police station as their statements are recorded at the same time, and there is a lack of space within the police station to segregate them.

<sup>309</sup> 7C2.

<sup>310</sup> 7C1.

<sup>311</sup> 4C2 and 4C3.

<sup>312</sup> 2C3.

<sup>313</sup> 11C1.

<sup>314</sup> 4C3.

The **CSO respondent from Maharashtra**<sup>315</sup> explains:

**“** ...what happens is all these processes happen simultaneously. They're recording the statement of the complainant, they're recording the child's statement. There's another police officer who is sent to go and look for the accused and bring him. And in that process, the child and the accused, they do see each other.

Section 26(1), POCSO Act takes into account children's need to be supported during their interactions with the police and mandates that a child's statement be recorded in the presence of the parent or guardian or a person whom the child trusts. CSOs shared that the **police allow the parent/guardian or person whom the child trusts to be present when the child's statement is recorded in most cases, particularly when the children are small**. However, the police have used their discretion in certain cases and not allowed the parents to be present with the child if the abuse is by a family member or the accused is affluent and attempting a monetary compromise with the child's family. Further, parents are not allowed if the case is perceived as being false<sup>316</sup> or if the child is above 14 years of age, as there is a belief that the parents may influence the child.<sup>317</sup>

With a view to minimise the trauma that arises from having to repeat one's statement, Section 26(4), POCSO Act requires the police to ensure the child's statement is recorded by audio-visual electronic means, wherever possible. However, the **recording of a survivor's statement through audio-video means is an exception**. A majority of the CSO respondents said that the statement of the child is not recorded through audio-video means, while a few stated that this practice is followed in some police stations. A CSO respondent from Assam<sup>318</sup> shared that in the absence of uniform guidelines, police are unclear about how to record the statement on their phones, how to save that information, and where to store it, all of which impedes compliance with the provision. CSO respondents from Maharashtra<sup>319</sup> indicated that the police exercise their discretion and usually record it through audio-visual means after the organisation convinces them or suggests that it be done or in cases of children with disabilities.<sup>320</sup> Pointing to the technical gaps in the manner of recording, another CSO respondent from Maharashtra<sup>321</sup> expressed relief that audio-visual recordings were not a norm as children will be spared from having to repeat the statement if the recording stops in between, and the defence cannot take the advantage of non-compliance with the provisions of the IT Act, 2000 and Indian Evidence Act, 1872.

<sup>315</sup> 4C3.

<sup>316</sup> 2C2.

<sup>317</sup> 4C3, 5C1.

<sup>318</sup> 3C1.

<sup>319</sup> 4C1, 4C2 and 4C3.

<sup>320</sup> 4C2, 4C3.

<sup>321</sup> 4C1.

### Examples of Recording of Victim's Statement by the Police

In *State of Maharashtra v Suresh Kisan Surwade*,<sup>322</sup> the 13-year-old child victim with an intellectual disability approached the police directly to report sexual assault by a co-villager. The incident was recorded at the police station in a question-answer format with the help of a trained interpreter/expert who, being a teacher, also had a diploma in Special Education and served in the Rotary Mentally Disabled Students' School.

In *State of Maharashtra v Kishor @ Pintu Nimba Bhoi*<sup>323</sup>, the Assistant P.I. testified that the statement of the child was recorded in the presence of a CWC Member, at the place of the victim's mother's choosing. During her testimony, the victim was only asked to identify the accused through means of a photograph.

## 1.3. Provision of Providing Information to Victims, Informants, Support Persons, and the CWC

Rule 4(14), POCSO Rules requires the police or Special Juvenile Police Unit (SJPU) to inform the child, child's parents or guardian, or other person in whom the child has trust and confidence about their entitlements and services available under the POCSO Act and other applicable laws, in Form A (Entitlement of children who have suffered sexual abuse to receive information and services). However, **information about entitlements to children in Form A is rarely shared by the police with survivors and their families.** The reasons for not sharing Form A listed by the CSO respondents included lack of awareness among the police about Form A and its significance, lack of actual copies of Form A, and in some instances, the assumption that since the family cannot read, handing them Form A is pointless. Where Form A is handed to the families, it is seldom explained to them, and this is usually done by Support Persons, if they are assigned.

Section 439(1A), Cr.PC., mandates the presence of the informant or any person authorised by the informant at the time of hearing of the bail application for offences under Section 376(3), 376AB, 376DA, or 376DB, IPC. The POCSO Rules requires the SJPU or the local police to keep the child and their parent or guardian or other person in whom the child has trust and confidence, and where a Support Person has been assigned then such person, informed about the developments, including the arrest of the accused, applications filed, bail, and other court proceedings.<sup>324</sup> The High Courts of Delhi,<sup>325</sup> Bombay,<sup>326</sup> Allahabad,<sup>327</sup> Patna,<sup>328</sup> and Karnataka<sup>329</sup> have reiterated this requirement. These High Courts have made it obligatory to ensure the presence of the informant or any person

<sup>322</sup> *State of Maharashtra v Suresh Kisan Surwade*, [2021] Spl POCSO Case No 30/2020 (Court of the Special Judge Khamgaon Buldhana).

<sup>323</sup> *State of Maharashtra v Kishor @ Pintu Nimba Bhoi* [2021] Spl POCSO Case No 34/2019 (Court of the Special Judge Jalgaon).

<sup>324</sup> POCSO Rules 2020, rr 4(14), 4(15)(viii).

<sup>325</sup> *Reena Jha v Union of India and Miss G (Minor) Thru. Her Mother v State of NCT Delhi* [2020] CRL.M.C. 1474/2020 & CRLMAs 6330/2020, 6705/2020 ( Delhi High Court).

<sup>326</sup> *Arjun Kishanrao Malge v State of Maharashtra* [2021] 2 Bom CR (Cri) 677 (Bombay High Court).

<sup>327</sup> *Junaid v State of U.P. and Ors* [2021] Criminal Misc Bail Application No 46998/2020 (Allahabad High Court).

<sup>328</sup> *Hanif Ur Rahman v State of Bihar and Ors* [2021] Criminal Writ Jurisdiction Case No 160/2021 ( Patna High Court).

<sup>329</sup> *Bibi Ayesha Khanum v Union of India* [2022] WP No. 2318/2022 (Karnataka High Court).

authorised by them at the time of hearing of bail application for IPC offences set out in sub-section (1A) of Section 439 CrPC. **The practice of giving information regarding bail application of the accused to the survivors, parents/guardians, or informants varies from district to district within the states.** According to a CSO respondent from Tamil Nadu,<sup>330</sup> in some districts, the police had taken the initiative to operationalise Section 439(1A) and developed a system to inform families about the bail hearing in one zone within the state; but in another district, information about bail was given only if the case also entailed an offence under the SC/ST Act.

A **CSO respondent from Maharashtra**<sup>331</sup> said that during the trial, the IO often changes, resulting in a gap in communication between the family and the IO:

**“** The reality is that the case goes on till 2-2.5 years. During this time the contact between the court constable and family gets broken, or the IO gets changed, the IO-family contact gets broken, so at that time, not all information is able to reach the child and the family.

Where intimation about bail application is given, it is usually very late and at times a day before the hearing or even the morning of the hearing, which leaves them with little time to make the journey to the court or arrange for representation.<sup>332</sup> Or, it is given mechanically and families are not told what they can do or whether they make any submissions to the court.<sup>333</sup> Several CSO respondents mentioned that the family of the victim is not officially informed about the outcome of the bail hearing, and the information reaches them through informal channels from neighbours or co-villagers. It also emerged that children are expected to be physically present during the bail hearings and end up missing school. A **CSO respondent from Delhi**<sup>334</sup> shared:

**“** ...we have seen very young children in their school uniforms coming to court for the bail hearings because they are not being informed that their lawyer can be present.

The psychological impact of this practice on child victims as they “were being forced not only to potentially interact with the accused person but also be present in Court when arguments regarding the offence were taken up for hearing,” was considered by the Delhi High Court in *Babu Lal v. State*.<sup>335</sup> Detailed directions were issued with respect to the presence of the victim during bail hearings, including, if the victim makes a written submission that her counsel or parent or guardian or support person will appear on her behalf at the hearing on the bail application, physical or virtual presence of the victim at the bail hearing should not be insisted upon. A respondent from Delhi<sup>336</sup> shared that these directions by the Delhi High Court resolved the challenge to a certain extent.

Although Section 154(2), CrPC and Rule 4(3)(a), POCSO Rules require a free copy of the FIR to be provided to the person making the report, several CSO respondents stated that the **police do not provide a copy of the FIR**, and it is only after intervention by a Support Person or in rare cases if the IO is sensitive, that it is given.

<sup>330</sup> 6C1.

<sup>331</sup> 4C2.

<sup>332</sup> 2C1, 2C3, and 7C2.

<sup>333</sup> 4C2.

<sup>334</sup> 2C3.

<sup>335</sup> [2023] CRLA 198/2020 (Delhi High Court).

<sup>336</sup> 2C3

"They don't know they can demand a charge sheet or they can demand for an FIR. So they merely are doing whatever everyone is telling them. They need to be empowered. Providing legal information is very empowering for the children and for the families. When they go to CWC or JJB or the court or when they come to the JJ system, this kind of information should be given to them." - CSO respondent (Delhi)<sup>337</sup>

Section 19(6), POCSO Act, requires the local police or SJPU to report every incident under POCSO Act to the CWC without unnecessary delay and within 24 hours. According to Rule 4(14) of the POCSO Rules, the SJPU or the local police has to complete the Preliminary Assessment Report in Form B within 24 hours of the registration of the FIR and submit it to the CWC. The information in this form about the type of abuse, economic status of the child, disability, loss of educational opportunity, medical treatment undergone, and so on, can enable the CWC to make a decision about recommending special relief for the child victim under Rule 8. This information is crucial as it helps activate the child protection system and ensure that a child victim is assigned a Support Person, provided shelter, if needed, and interim relief, among other support services. CSO respondents from Delhi, Assam, Maharashtra, and Madhya Pradesh said that **provision of information about POCSO cases by the police to the CWC is inconsistent and submission of Preliminary Assessment Report in Form B is rare**,<sup>338</sup> pointing to the weak linkage between the criminal justice system and the child protection system. Non-compliance of this requirement ultimately results in a gap in facilitation of support services to child victims by the CWC.

The police are also required to produce a child before the CWC if there is 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 CCI and is without parental support, or the child is found to be without any home and parental support.<sup>339</sup> While some CSO respondents (from West Bengal and Maharashtra)<sup>340</sup> shared that the child victim is produced before the CWC only under the three conditions mentioned in Rule 4(4), POCSO Rules, other respondents (from Delhi, Maharashtra and Kerala)<sup>341</sup> said that the CWC insists that all child victims under the POCSO Act are produced before them, raising concerns about harassment that children and families may be subjected to for being compelled to appear before the CWC when it is not required.

Support Persons assigned to a child victim by the CWC are required to keep the child and the family informed about the developments of the case<sup>342</sup> and their role in the judicial process and ensure that safety concerns are conveyed to the relevant authorities.<sup>343</sup> **At times, Support Persons encounter resistance from the police and are not informed about the developments in the case.** Although Support Persons, where available, attempt to bridge the gap and provide necessary information to the families, the police sometimes withhold information from the Support Person making it difficult for them to keep the family abreast with all developments.<sup>344</sup> Or, they discourage families from using the services of Support Person, and ask them to approach the police directly;<sup>345</sup>

<sup>337</sup> 2C2.

<sup>338</sup> 2C3, 3C1, 4C3, 7C1.

<sup>339</sup> POCSO Rules 2020, r 4(4).

<sup>340</sup> 9C1, 4C2.

<sup>341</sup> 2C1, 2C2, 2C3, 4C1and 8C1.

<sup>342</sup> POCSO Rules 2020, r 4(13).

<sup>343</sup> POCSO Rules 2020, r 4(9).

<sup>344</sup> 2C2, 7C2.

<sup>345</sup> 7C2.

or, they question the involvement of Support Persons and assume that Support Persons take up cases because they have a financial motive.<sup>346</sup> A CSO respondent from Andhra Pradesh<sup>347</sup> pointed out that these problems arise due to the lack of higher-level police officials to review and monitor POCSO cases. That involvement and interest of senior level officers in the implementation of the POCSO Act is crucial, was also emphasised by a CSO respondent from Tamil Nadu<sup>348</sup> who shared that their working with the police at some instances was smooth owing to the cooperation and support extended by senior police officers.

## 1.4. Facilitation of Medical Examination/Emergency Medical Care and Collection of Samples for Forensic Examination

**The police assume that “emergency” medical care is required only if the child is in a critical condition** and prioritise registration of the FIR before the provision of medical care in such cases,<sup>349</sup> although Section 27(1), POCSO Act and Rule 6(3), POCSO Rules emphasises that medical examination and care should not be contingent on registration of cases.

With respect to the **collection of forensic samples**, a **mechanical approach** is adopted at times, and there have been some instances where the police have collected the clothes of the victim without confirming whether the victim was wearing these clothes during the assault.<sup>350</sup> An examination of Special Court judgments from Assam, Maharashtra, and West Bengal revealed multiple lapses that affected both the victim and the accused, such as failure to send seized clothes for analysis,<sup>351</sup> failure to make entries in the property register of the police station of the samples and nail clippings before sending them to the office of FSL,<sup>352</sup> and keeping blood and the DNA sample of the victim in the custody of the Investigating Officer for a long time before sending them for forensic examination.<sup>353</sup>

Survivors are kept waiting for long hours in the police station before being taken to the hospital for medical examination. **Sheela\*** says:

**“** At the police station, in the beginning, during the medical examination stage, they made us wait and made us wait the whole day with my kids. It was difficult, as people kept coming in and out and everyone could see us waiting there for the entire day. If somebody needs to come with us for medical, we have to wait till afternoon for the police to come with us. Even if we go early in the morning, they would make us wait until afternoon. Then we have to go to the hospital. Everyone can see us and they are judging us and looking at us – as if our kids have done something wrong and that’s why we are waiting at the police station.

<sup>346</sup> 4C3.

<sup>347</sup> 10C1.

<sup>348</sup> 6C1.

<sup>349</sup> 7C1.

<sup>350</sup> 6C1.

<sup>351</sup> *State of Assam v Bakul Borah*, [2020] Spl POCSO 40/2019 (Special Court Udagiri).

<sup>352</sup> *State of Maharashtra v Sonu @ Ashwin S/o Vitthal Meshram* [2020] Spl POCSO Case 45/2019 (Court of the Special Judge Gondia).

<sup>353</sup> *State of Maharashtra v Dashrath Kashinath More* [2021] Spl Case No 27/2020 (Special Court Majalgaon).

### Example of efficient facilitation of medical care

In *State of Maharashtra v Gorakh Bhima Rathod*,<sup>354</sup> the victim's father lodged an FIR alleging that the 11-year-old victim was sexually assaulted by the accused. The victim complained of blood oozing from her private parts and throat pain, and was taken by her father to the police station. It was noted by the Special Court that the police followed procedure thoroughly to facilitate emergency medical treatment to the victim, transferred her to appropriate facilities and made all efforts to secure necessary permissions. The Special Court stated that the timely consideration and commitment taken by the Police Officers, Judicial Officers, Court staff, and the hospital authorities had helped in saving the life of the victim.

## 1.5. Facilitation of Witness Protection

**The Witness Protection Scheme, 2018 approved by the Supreme Court in *Mahender Chawla v. Union of India*,<sup>355</sup> is yet to be fully operationalised in Assam, Maharashtra, Madhya Pradesh, and Kerala.** Families are also not aware of the Scheme or who to approach for help. CSOs have approached the police when the children and families are threatened by the accused and ad hoc measures have been taken. A **CSO respondent from Maharashtra**<sup>356</sup> shared the stop-gap measures that have been taken in some cases:

**“** So in one particular case, the perpetrator was the 'don' [as they used to call him] of the locality. So he was like the *goonda* of the locality, and he had sexually assaulted two children. And when it got reported, he was absconding and the parents were worried about what was going to happen to them. So, what the police actually did was that they relocated the parents and the children till they found him [the accused]. It took them nearly two weeks to find him. So, both the children were kept in a shelter home and the police kept the parents in a guest house for a couple of days. So, these were like stop gap measures. And the mother was saying, 'why should I stay away from my house for two weeks?' The child said, 'what have I done wrong that I'm staying at a shelter home?' So because of the lack of proper witness protection, there have been cases where these sort of stop gap measures have been taken.

**In Delhi, witness protection applications now have to be moved through a lawyer, making it challenging for some families who do not have access to legal representation.**<sup>357</sup> They now have to apply for a DLSA lawyer or coordinate with a government lawyer to help them access witness protection. Another CSO respondent from Delhi shared that in a case where the child was receiving death threats and harassment from the accused, witness protection was applied for and the court passed a protection order, but it had not been operationalised even after six months.<sup>358</sup>

<sup>354</sup> *State of Maharashtra v Gorakh Bhima Rathod* [2021] Spl POCSO Case No 61/2021 (Addl. Sessions Judge in Solapur).

<sup>355</sup> *Mahender Chawla v Union of India* [2018] Writ Petition (Criminal) No. 156 of 2016 (Supreme Court of India).

<sup>356</sup> 4C3.

<sup>357</sup> 2C2.

<sup>358</sup> 2C3.

## 2 Compliance of Medical Practitioners with Child-friendly Procedures during Medical Examinations and Care

Medical examination forms a crucial step in the investigation of sexual offences. Significantly, the POCSO Act and Rules recognise that medical intervention is not limited to the collection of medical evidence and consider therapeutic needs of victims, and thus provide for emergency medical care for injuries, treatment for exposure to HIV and sexually transmitted diseases, possible pregnancy, and referrals for mental or psychological health needs.<sup>359</sup> Further, several child-friendly procedures are laid down to ensure that the special needs of a child are considered while conducting a medical examination. This section examines the adherences of medical practitioners to these procedures based on the experiences of the survivors, families, and CSOs

### 2.1. Conduct of Medical Examination

The interviews with survivors and their family revealed diverse experiences. For six survivor respondents, Saanvi\* , Savitri\* , Aarohi\* , Preethi\* , Nancy\* , and Neha\* , who underwent a medical examination in Karnataka, Delhi, and Assam, being at the hospital after the assault was also an intimidating experience. They said they felt scared about undergoing medical procedures and were frightened by the sight of medical instruments. Rude or harsh behaviour of the medical staff, the lack of understanding of what exactly was happening to them, and the general environment of the hospital affected them. **Nancy\***, who was sexually assaulted by her cousin when she was 15, shared:

**“** Initially, they made me stand there and people were staring at me. I felt dehumanised. They were behaving as if someone was forcefully making them do their job.

**Aarohi\*** said:

**“** I didn't like the place at all. The medical assistant was very rude and harsh. They did not explain the procedures to me and it hurt. Doctor was okay. He guided the assistant but she was rude.

According to Section 164A (2) of the Criminal Procedure Code, 1973, the medical practitioner is required to conduct the medical examination “without delay”. **Sheela,\*** the mother of a 9-year-old child-survivor shared that they were made to wait for a long time in the hospital and experienced insensitive treatment:

<sup>359</sup> POCSO Rules 2020, r 6(4).

**“** It was very difficult....as everything was very new to all of us. They told the kids directly which tests have to be done. They humiliated us in the beginning. At first, they didn't know why we had come. So they told us to go from one place to another without any sensitivity to the situation. After the police came with us, they started doing the examination and maybe understood why we had come. They kept delaying the process as they didn't know the seriousness of the visit and kept saying, 'Oh, it's late now, we'll do this part tomorrow. It took 2-3 full days. We had no food or water. We had to wait there only and it was very difficult.

On the other hand, Mary\* (Karnataka), Radhika\* (Karnataka), Suresh\* (Gujarat), Parvati\* (Assam), and Bhavana (Assam)\* had a smooth experience during the medical examination and/or at the hospital. They shared that it was the presence of the police or the Support Person that helped ensure that the examination was completed in a timely manner.

### **Experience of Children and Families during Medical Examination: What Worked**

The experience of children and families during medical examinations revealed that this setting was intimidating for children and their experience was shaped by their interactions with the medical staff and the presence or absence of supportive family members.

For six survivor respondents, **the medical examination was smooth owing to the sensitive behaviour of the medical staff and presence of a Support Person or a family member.** Chaya\* from Delhi, who was sexually assaulted by her father multiple times, and was 15 years old at the time of the examination, shared that initially she was nervous, but felt comfortable because of the presence of the Support Person and the demeanour of the medical staff who “treated me like their own child”. Meera\*, from Delhi who was sexually abused allegedly by her neighbour, appreciated the care and attention she received from the hospital staff and shared: “They would give me lunch on time and every five minutes somebody would come to check on me. They took very good care of me”. Neha,\* from Assam, who was 14 years old, and abused by her father, shared that though she was not very comfortable, the medical examiner gave her adequate time to feel settled before conducting the examination. **Laudably, the medical practitioner made an effort to ascertain if she would like her mother to be present with her during the medical examination.** Only after she consented, her mother was allowed inside, and Neha drew a lot of strength from her mother's presence.

A majority of CSO respondents (Uttar Pradesh, West Bengal, Madhya Pradesh [2], Andhra Pradesh, Delhi, Assam and Maharashtra)<sup>360</sup> also confirmed that in compliance with Section 27(3), POCSO Act, the family members of the victim are permitted to be present during the medical examination. However, CSOs from Gujarat, and Maharashtra explained that medical institutions do not always permit family members inside the examination room, and it takes some effort to convince the doctors to allow them inside.<sup>361</sup>

<sup>360</sup> 11C1, 9C1, 7C1, 10C1, 7C2, 2C2, 3C1 and 4C2.

<sup>361</sup> 4C3, 5C1.

Offering insights on the reasons for delays in completion of the medical examination, CSO respondents from Maharashtra and Madhya Pradesh shared that cases of child survivors are not prioritised and duty doctors are busy with other cases, and in some cases the child is asked to come multiple times to meet different specialists.<sup>362</sup> Underlining the structural factors such as the lack of forensic examination labs and female doctors in all districts, a **CSO respondent from West Bengal**<sup>363</sup> shared that prior to 2020:

**“** One medical college was responsible for seven districts. They don't have forensic facilities, so recording evidence becomes a problem. So you do not have adequate facilities and you will have to rely on medical colleges that are not present in all districts. Again, forensic departments do post mortems and other things, so doctors are also not available. Even if there is a female doctor, she may be busy with post mortems and as long as she is not available you can't collect evidence.

The respondent further added that at present some districts have their own medical colleges they can rely upon for medical examination.

## 2.2. Ensuring Privacy During Examination

Rule 6(2), POCSO Rules requires emergency medical care to be provided to the child victim in a manner that protects the privacy of the child. While most CSO respondents said that privacy is maintained (from Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh, Assam, Maharashtra, Delhi and Gujarat)<sup>364</sup>, some including those from the same states offered a different view (from Kerala, MP, Maharashtra, Delhi [2], and Maharashtra [2]),<sup>365</sup> indicating that compliance is inconsistent. Ensuring privacy is rendered nearly impossible because of the lack of suitable infrastructure in the hospitals. None of the CSO respondents mentioned examination rooms designated specifically for POCSO cases. For instance, there is no specially designated room for the exclusive examination of POCSO cases in Guwahati and the child-friendly atmosphere has been reduced to wall art and a playroom for children outside the examination hall in the hospital. While the process here is seamless as the medical examination and emergency medical care take place in the same room, it is next to the morgue, which is frightening and upsetting for children.

In Delhi, there is no specific unit or designated room within government hospitals for child victims of sexual abuse and the victim sits in line at the Emergency Section or OPD and is kept in the general ward with all other patients.<sup>366</sup> But privacy is ensured during the medical examination.<sup>367</sup> The statement of the child is also taken by the police in the general ward, and this results in people in the ward identifying the child as a victim of a sexual offence.

There have also been cases where the girls have refused to give consent for medical examinations due to lack of privacy and poor infrastructure:

<sup>362</sup> 4C3 and 7C2 .

<sup>363</sup> 9C1.

<sup>364</sup> 11C1, 9C1, 7C1, 10C1, 3C1, 4C2, 5C1 and 2C1.

<sup>365</sup> 8C1, 7C2, 4C3, 2C2, 2C3, 4C1.

<sup>366</sup> 2C2.

<sup>367</sup> 2C1.

**“** ...there are times when girls are taken for medical examination in this big ward where, you know, women in labour are kept. And everything is happening in front of all those women ...in most of the cases there's no privacy unless you put your foot down and you insist. And that's why we've also found that many girls when they see the setting, they refuse. They do not give consent for medical examinations.

— CSO respondent (Maharashtra)<sup>368</sup>

A **CSO respondent from Madhya Pradesh**<sup>369</sup> recounted the traumatic experience of a child who was examined in a delivery room:

**“** There were three ladies already in labour, and now on the fourth stretcher this girl was taken for medical examination.... This is too much for a girl of 11-12 years [of age]. But what to do now. We can't demand special doctors and rooms etc.

A case from Mumbai showed a blatant disregard for the privacy of the survivor. She had been brought in for multiple surgeries and was given a tag which not only mentioned the surgeries she needed and her name, but also that she was a victim of sexual assault. When the **CSO respondent from Maharashtra**<sup>370</sup> protested, the Medical Officer justified the tag for the purpose of preservation of samples:

**“** ... this is like six, eight months after the incident, because she had three back to back surgeries. So you are reminding the parent and the child about that. And then of course, you know, we had to speak to the Medical Officer and she said, 'we do this only for identification.' So we said, 'write the name of the surgery, but don't write sexual assault.' She said, 'no, but for her, we have to preserve everything.' I said, 'if you have to preserve everything, maintain a record. You can't have a badge on a child.' [...] So I think privacy is something [...] so underrated, whether it's the police or the hospital, they just don't see it as a priority or something important. Whereas for the parent and the child, that becomes one of the most critical things that no one else should know.

Another instance shared by a **CSO respondent from Delhi**<sup>371</sup> also highlighted the scant respect for privacy of children in hospitals:

**“** I visited this one child during her MTP process and she was in the general ward with a lot of other people, and everybody knew her name somehow. Everybody knew the case details and they were talking about it and commenting on it. So I don't think, in my experience, privacy is maintained. I mean, in documentation, the paper will not have the child's name on it, but in practice it isn't.

Sarika,\* a survivor, also shared the discomfort with the lack of privacy in the waiting area and stated that there were a lot of women waiting to get a pregnancy test there. She was also made to wait there and felt the others look at her which made her feel bad.

<sup>368</sup> 4C1.

<sup>369</sup> 7C1.

<sup>370</sup> 4C3.

<sup>371</sup> 2C3.

## 2.3. Informed Consent of Guardian and Survivors

Consent of the victim or a person competent to consent on their behalf is required for the conduct of medical examinations of victims of rape.<sup>372</sup> According to the MOHFW Guidelines, health care workers must “obtain informed consent of the survivors/victims of sexual violence prior to conducting medical examinations or initiating medico-legal investigations”<sup>373</sup> and one the aims of the guidelines is to “operationalise informed consent and respect autonomy of survivors in making decisions about examination, treatment and police intimation”<sup>374</sup>. The guidelines also mention that, “The consent form must be signed by the person him/herself if s/he is above 12 yrs. of age. Consent must be taken from the guardian/ parent if the survivor is under the age of 12 years.”<sup>375</sup>

**While almost all CSO respondents stated that the consent of the child is taken, they also clarified that this is not meaningful or informed, as children and families are not told about what the medical examination entails, its significance, or about their right to refuse.** A **CSO respondent from Delhi**<sup>376</sup> shared:

**“** Children find it uncomfortable and intrusive, they are not told the details of the entire process and are suddenly told to take off their clothes [...] Thus, children get scared and refuse to get an examination done. It should be the duty of [the] police or the counsellor who is sitting in the police station to inform [them] about [the] medical examination. Why it is there, why it is important, how it is going to help their case. [But] no such information is given to the family.”

According to a **CSO respondent from MP**,<sup>377</sup> the significance of informed consent is not understood by doctors as well:

**“** They never orient that this is their right. In some of the cases, when the girl refuses to go through the medical examination, they actually force them and they behave, like this is something compulsory and every survivor needs to go through these processes.

A **CSO respondent from Maharashtra**<sup>378</sup> spoke about the mechanical manner in which consent is sought from parents:

**“** ...the parent will say it's a very vague sort of consent, they will say “*haan poocha tha*” [Yes, they had asked], it's not informed consent. And older girls tell us that no one asked them. 'I just thought I had to do it, so I did it'. ...So, no, not informed consent, the way we envisage it, nothing even close to that.

<sup>372</sup> CrPC 1973, ss 164A(1)(4) and (7).

<sup>373</sup> MOHFW Guidelines (n 75) 4.

<sup>374</sup> ibid 6.

<sup>375</sup> ibid 25.

<sup>376</sup> 2C2.

<sup>377</sup> 7C2.

<sup>378</sup> 4C3.

### Complications in Medical Examination in “Romantic” Cases

One CSO respondent from Maharashtra<sup>379</sup> explained the pressures faced and cycle of self-blame experienced by girls in “romantic cases” in the context of medical examination. The girl does not consent to medical examination as she does not wish to implicate her partner, but her parents refuse to accept her unless she abides by their directions, which includes undergoing a medical examination. These circumstances are aggravated due to the pressure from the CWC who “almost threaten the child of dire consequences if they do not consent [to a medical examination].”

A CSO respondent from Delhi<sup>380</sup> was of the view that the victim and family need to be explained the difference between external genital examination and internal vaginal examination, because refusal of consent for internal examination is invariably interpreted by doctors to mean refusal for local or external genital examination, which may not necessarily be the case.

Some CSO respondents (from Assam, Maharashtra, West Bengal and Andhra Pradesh)<sup>381</sup> also said that the victim’s refusal to undergo the medical examination is disregarded and she is compelled to do so through “counselling” by the police. For instance, a CSO respondent from West Bengal<sup>382</sup> shared that while victims are informed about their right to refuse, the police officer accompanying them emphasises the significance of the medical examination in strengthening the case. Another CSO respondent from Maharashtra<sup>383</sup> shared that the doctor frightens the family by telling them that there could be repercussions for refusal. This practice was also confirmed by Parvati\*, a parent-respondent who shared that the doctor expressed anger when her daughter refused to give consent for the medical examination and then told her child that if she did not undergo a medical examination, her mother would be blamed for filing a false case.

Two CSO respondents from Delhi<sup>384</sup> also spoke about the practice of some police officers and medical practitioners actively discouraging parents from subjecting children to a medical examination as it would take several days, require their child to be under anaesthesia, and could possibly cause damage to her internal parts which could potentially lead to difficulties in conceiving in the future. Attesting to this, **Meera\***, a survivor-respondent who was 12 at the time of the incident shared:

**“**...doctors scare you – they said machine *daali jayegi* [will be inserted], you could be admitted for a week or 10 days. People in the *thana* [police station] and Ammi told the doctor off for scaring a child. But I was crying and only when Ammi encouraged me, I got the medical examination done.

While the relevance of medical evidence and what entails medical examination require to be communicated, experiences of families and survivors receiving incorrect and fearful information raises concerns with the manner in which “consent” is taken and whether it constitutes “informed consent”.

<sup>379</sup> 4C1.

<sup>380</sup> 2C1.

<sup>381</sup> 3C1, 4C1, 9C1, and 10C1.

<sup>382</sup> 9C1.

<sup>383</sup> 4C1.

<sup>384</sup> 2C2 and 2C3.

## 2.4. Provision of Medical Examination Report to Survivors and Families

Although the MOHFW Guidelines require a free copy of the medical examination report to be given to the survivor/victim,<sup>385</sup> ten CSO respondents<sup>386</sup> (from West Bengal, Uttar Pradesh, Kerala, Madhya Pradesh [2], Andhra Pradesh, Delhi, Maharashtra, Gujarat and Assam) shared that the medical report is not usually shared with the survivors and their families.

CSO respondents from Madhya Pradesh<sup>387</sup> shared that the medical report is directly attached to the chargesheet and one of them<sup>388</sup> explained that while the content is shared, the family is not given a copy. The CSO respondent from West Bengal<sup>389</sup> said that it is given directly to the police. CSO respondents from Maharashtra<sup>390</sup> and Delhi<sup>391</sup> said that families usually have a copy of their medical report, but one respondent from Delhi<sup>392</sup> clarified that the doctors do not share copies of the medical report, it is the IO who shares the report based on their discretion. A CSO respondent from Maharashtra<sup>393</sup> said that a copy is given in Mumbai, but in Pune it is not.

## 2.5. Provision of First Aid and Emergency Medical Treatment

Apart from medical examination, the law also provides for the immediate medical care and treatment of sexual assault victims. Section 357C, Cr.PC requires all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, to immediately, provide first-aid or medical treatment, free of cost, to victims of rape. Rule 6(1) of the POCSO Act mandates the police receiving information on the commission of an offence under the POCSO Act to take the child to the nearest medical facility for emergency medical care. Rule 6(3), POCSO Rules prohibits medical practitioners, hospitals, or medical facilities providing emergency medical care from demanding any legal or magisterial requisitions or other documentation as a prerequisite.

A majority of the CSO respondents (from UP, Kerala, MP, AP, Delhi, Maharashtra [2] and Assam)<sup>394</sup> confirmed that medical treatment is provided free of cost in government hospitals and also shared (UP, WB, Kerala, AP, MP [2], Maharashtra [3], Delhi [2], Gujarat and Assam)<sup>395</sup> that emergency medical care is also provided without any demand for legal or magisterial requisition. While the treatment is free, the medicines and tests have to be paid for by the family. However, a CSO respondent from Maharashtra<sup>396</sup> shared an incident from Mumbai where a young boy was sexually abused and went

<sup>385</sup> MOHFW Guidelines (n 75) 74.

<sup>386</sup> 9C1, 11C1, 8C1, 7C1, 10C1, 7C2, 2C2, 4C2, 5C1 and 3C1.

<sup>387</sup> 7C1 and 7C2.

<sup>388</sup> 7C1.

<sup>389</sup> 9C1.

<sup>390</sup> 4C1.

<sup>391</sup> 2C1, 2C2, and 2C3.

<sup>392</sup> 2C2.

<sup>393</sup> 4C2.

<sup>394</sup> 11C1, 8C1, 7C1, 10C1, 2C2, 4C2, 4C1 and 3C1.

<sup>395</sup> 11C1, 9C1, 8C1, 10C1, 7C1, 7C2, 4C3, 2C2, 4C2, 2C3, 5C1, 3C1 and 4C1.

<sup>396</sup> 4C3.

to the hospital with his grandmother, but was refused treatment and asked to register an FIR and then approach the hospital. In this case, an FIR was subsequently registered against the medical officer for making such a demand.

A **CSO respondent from Delhi**<sup>397</sup> made observations about the limited and casual nature of emergency medical care and also the lack of HIV-testing in many cases although it may have been warranted:

**“** In many cases they have not done HIV test...They decide as per age of child. ... In one case, the child was severely bleeding but she had high fever and she was discharged without follow up. She was only given glucose. They just give medicine for fever and glucose - that's all for emergency medical care.

This is in contradiction to Rule 6(4) of the POCSO Rules which envisages a comprehensive care response to victims and stipulates that the medical practitioner must, in addition to treatment of injuries, also provide treatment for potential exposure to STDs, exposure to HIV, provide emergency contraceptives, and treatment in case drugs or other psychotropic substances were administered. Further, referrals must be made for “psychological health” or de-addiction also needs to be made where necessary.

Additionally, there is also a tendency for medical staff to be insensitive and humiliate the victim during the medical treatment. For instance, a **CSO respondent from MP**<sup>398</sup> drew attention to the insensitivity of the medical staff during a victim's child-birth:

**“** ....doctors' behaviour, language etc. is a problem. They try for normal delivery or other treatment etc. and the girl sometimes does not cooperate. The language used by staff there is very bad. [...]The child is also hurt, obviously. They say things like, 'Oh, now it's hurting, but when you were doing it, you enjoyed [it].

Although private hospitals are also required to provide first aid care and treatment, they refer the matter to a government hospital as they do not wish to be embroiled in a criminal case where they have to attend court proceedings.<sup>399</sup>

## 2.6. Medical Termination of Pregnancy

Rule 6(7), POCSO Rules requires registered medical practitioners to counsel a pregnant child and her parents or guardians or support persons regarding options under the Medical Termination of Pregnancy Act, 1971 and the JJ Act, 2015. A CSO respondent from Delhi<sup>400</sup> said that if the child wishes to terminate the pregnancy, the CWC directs the IO to facilitate the MTP done and the CSO supports the child through the process.

Although the law requires medical practitioners to counsel the child only on the legal options available to them, respondents shared that child protection functionaries often try to convince

<sup>397</sup> 2C1.

<sup>398</sup> 7C1.

<sup>399</sup> 4C2, 10C1.

<sup>400</sup> 2C2.

or pressurise the child towards a certain option. A respondent from MP<sup>401</sup> shared that in “mutual consent” cases, the CWC often takes it upon itself to convince the girl to opt for an MTP, as there is uncertainty about the release of their partner from jail. A **CSO respondent from Maharashtra**<sup>402</sup> also shared that often there is pressure on the victim to make a certain choice regarding MTP:

**“** There is pressure on children by stakeholders where they are the ones who take a decision in the “best interest” of the child about keeping the baby or not keeping the baby... children are influenced a lot. Rather than giving them the information so that they can [...] make an informed choice.

Confirming the tendency of stakeholders to comment on what a pregnant child should do, Aarohi\* who had been forcefully married to her mother’s brother and had been sexually and physically abused thereafter, shared, “during MTP also the lady constable asked me to keep the baby,” while the child had decided she wanted to go through with the MTP.

Apart from unsolicited advice and pressure, concerns also emerged regarding the quality of information given to children. **CSO respondent from Delhi**<sup>403</sup> also shared that in one case, the child was not given any indication of how painful the process would be and was also subjected to ill-treatment by others in the ward:

**“** The only thing they say is, it’s like a heavy period that you get. But in this particular case, because it was even more complicated, they still did not put in the extra effort of giving the child information and realistic understanding [...] Everybody knew about the child’s case in the hospital ward. All the women would talk about the girl in a demeaning manner.

As per the Medical Termination of Pregnancy Act, if the pregnancy is under 20 weeks, the pregnancy may be terminated based on the opinion of a medical practitioner,<sup>404</sup> or if the pregnancy is over 20 weeks and under 24 weeks, it may be terminated based on the opinion of two medical practitioners<sup>405</sup> that “(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or (ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.” It is also clarified that “where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.”<sup>406</sup> In the context of a pregnant minor who has not attained the age of 18 years, the pregnancy can be terminated only with the written consent of her guardian.<sup>407</sup>

However, absence of role clarity has resulted in confusion on the ground even when the guardian and the child consent to the termination of pregnancy. The lack of awareness about the legal procedure has also resulted in insistence on court orders even in cases where consent is given by the guardian. In one case in Tamil Nadu, a child who was 24 weeks pregnant needed an MTP and when the parents took the child to the hospital, they were summoned by the CWC because they

**401** 7C1.

**402** 4C1.

**403** 2C3.

**404** The Medical Termination of Pregnancy Act 1971 (MTP Act 1971), s. 3(2)(a).

**405** MTP Act 1971, s 3(2)(b).

**406** MTP Act 1971, s 3(2), Explanation 2.

**407** MTP Act 1971, s 3(4)(a).

were under the impression that no MTP could be done without their order, resulting in unnecessary delays and trauma to the victim and her family.

Challenges also abound in cases where there is a conflict between the wishes of the child and that of the guardian, cases where there is no parent or guardian to give consent, and cases where the child is institutionalised in a Child Care Institution. In some instances, while the victim does not want the MTP as it is a “romantic case”, her parents insist upon it, which presents a dilemma for stakeholders who are also unsure of the law. CSO respondents from Maharashtra<sup>408</sup> said that the parents sometimes want the girl to keep the child and marry the accused, while the girl does not. Respondents from West Bengal, Maharashtra, and Madhya Pradesh<sup>409</sup> said that families usually want the girl to start over and undergo an MTP, while the girl wishes to retain the pregnancy and wait for the accused to get out of jail. The Madras High Court in *V. Krishnan v. G. Rajan*<sup>410</sup> opined that “[s]ub-section (4)(a) can never be understood as dispensing with the consent of the pregnant woman if she is below 18 years of age.” Thus, although parent/guardian consent is required for medical termination of pregnancy of a minor, the law cannot be interpreted to permit parents/guardians to force a minor to undergo a medical termination against her wishes.

Cases in which a child does not have a parent or guardian who can give consent for medical termination of pregnancy also pose a challenge. The framework of the MTP Act also does not clarify how to proceed in cases where a minor does not have a parent or guardian available to consent, where such parent/guardian is not capable of consenting, or where parents do not respect the wishes of the minor. In this context, the role of the Child Welfare Committee under the Juvenile Justice (Care and Protection of Children) Act, 2015 is relevant. A child with no parent or guardian or where available, are not fit to care for the child, will fall under the ambit of a child in need of care and protection. In the case of a pregnant child whose views differ from that of the parents, the CWC can recognise a person having the actual charge of the child as a guardian and direct them to give consent on behalf of the child if it advances the child’s care, protection, and appropriate rehabilitation.<sup>411</sup> However, a CSO respondent from Assam<sup>412</sup> shared that the CWCs are reluctant to appoint a guardian of the child in such cases, and instead wants the police to approach the court for permission, even though the pregnancy is under 24 weeks. This results in unnecessary delays and complicates the child’s access to a timely abortion. A CSO respondent from Gujarat<sup>413</sup> shared that if an early decision is taken on MTP, it could happen with the consent of two doctors. However, owing to the reluctance of the CWC and their expectation that the court should order MTP, access to abortion gets delayed. The CSO respondent from Uttar Pradesh<sup>414</sup> also said that in cases where the child is in a Children’s Home, MTP becomes difficult because of the legalities involved and the court permissions insisted upon.

A CSO respondent from Maharashtra<sup>415</sup> spoke about the traumatic impact a delayed MTP has on survivors, as the foetus is born alive, and requires intensive medical care. The victim is then left feeling that she should have gone ahead with the delivery instead of an MTP.

<sup>408</sup> 4C1 and 4C2.

<sup>409</sup> 9C1, 4C3 and 7C1.

<sup>410</sup> [1993] (1994-1) 113 Mad.L.W.89 (Madras High Court). See also *Marimuthu v The Inspector Of Police*, [2016] W.P(MD) No.12212 of 2016 (Madras High Court).

<sup>411</sup> JJ Act 2015, s 2(31) read with s 30(vi). See also *Lavanya Anirudh Verma v NCT of Delhi*, [2017] Crl. M.C. 301/2017 (Delhi High Court).

<sup>412</sup> 3C1.

<sup>413</sup> 5C1.

<sup>414</sup> 11C1.

<sup>415</sup> 4C3.

### 3 Compliance with Child-friendly Procedures during recording of statement under Section 164, CrPC by Magistrates

The Criminal Law (Amendment) Act, 2013, which introduced sub-section (5) in Section 164, CrPC, made the recording of statements of victims of rape and other sexual offences mandatory as soon as the offence is brought to the notice of the police.<sup>416</sup> Further, the *Supreme Court in State of Karnataka v. Shivanna @ Tarkari*,<sup>417</sup> clarified that such a statement should be recorded within 24 hours and required the Investigating Officer to provide reasons in writing for delays in taking the victim for recording a statement under Section 164. The POCSO Act does not mandate the recording of a statement under Section 164, CrPC, but it must be noted that this is uniform practice in POCSO cases as the police also include rape-related charged in the FIR. The POCSO Act does, however, stipulate child-friendly procedures that a Magistrate must comply with when recording a statement.

This section examines the adherences of Magistrates to child-friendly procedures based on the experiences of the survivors, families, and CSOs

#### 3.1. Manner of recording statements under Section 164, CrPC

The POCSO Act and the CrPC are silent on where a statement of a witness or child victim should be recorded by a Magistrate. CSOs respondents from West Bengal, Kerala, Andhra Pradesh, Delhi, and Maharashtra stated that the 164 statement is usually recorded in the chambers of the Magistrate,<sup>418</sup> whereas CSO respondents from Tamil Nadu, Madhya Pradesh, and Uttar Pradesh<sup>419</sup> indicated that it is mostly recorded in the courtroom, and at times in the chambers.<sup>420</sup> In Delhi, the vulnerable witness deposition centre is also used at times to record the 164 statement. A CSO respondent from Assam shared that during the pandemic, statements were recorded via video-conferencing, but this practice was discontinued after the restrictions were lifted.

Section 26(1), POCSO Act requires the child's statement to be taken in the presence of a parent or any other person whom the child has trust or confidence in. It emerged that the **practice of allowing a parent or person who the child trusts depends on the age of the victim, and in romantic cases the preference of the child appears to be considered**. Operationalisation of this provision appeared to vary as CSO respondents from Delhi, Maharashtra, and Madhya Pradesh<sup>421</sup> shared that no one is usually allowed inside with the child as it is recorded on-camera. One CSO respondent from Maharashtra<sup>422</sup> stated that in "love-affair" cases involving girls above 16 years of

<sup>416</sup> CrPC 1973, s 164(5A).

<sup>417</sup> (2014) 8 SCC 913 (Supreme Court of India).

<sup>418</sup> 2C3, 4C2, 4C3, 8C1, 9C1, and 10C1.

<sup>419</sup> 6C1, 7C1, 7C2, 11C1.

<sup>420</sup> 6C1.

<sup>421</sup> 2C1, 2C2, 4C2, and 7C1.

<sup>422</sup> 4C2.

age, if the child wished to speak in private with the Magistrate, the Magistrates would send the parents out of the chambers so that that child could speak candidly.

CSO respondents from Madhya Pradesh, West Bengal, Uttar Pradesh, Andhra Pradesh, Gujarat and Delhi<sup>423</sup> stated that along with the child, certain family members like the mother or father or a person of trust were allowed to be present, but CSO respondents from Gujarat and Delhi<sup>424</sup> clarified that parents of the child are allowed to be present only when the child is too young or is uncomfortable and asks for the parent to be present. Respondents from Maharashtra<sup>425</sup> and Madhya Pradesh<sup>426</sup> stated that Support Person are, at times, allowed to be present during the recording of the statement. A CSO respondent from Maharashtra<sup>427</sup> highlighted a good practice of the Support Person being allowed when the accused is a parent of the child.

A **CSO respondent from MP**<sup>428</sup> shared that in one particular case, a Counsellor was allowed inside only after the child experienced discomfort:

**“**In one case where the child was really scared, she almost fainted and felt very uneasy and uncomfortable. Then the judge called us, asked us to feed her something, counsel her properly, and then bring her in again. Then, after two hours, when they took her again, the counsellor said that the girl wasn't ready to go alone and was not ready to leave the counsellor as she was working with her for the past so many days. Then the judge allowed the counsellor to be there. So the girl held the counsellor's hand while giving a statement. But this doesn't happen in all cases; usually the statement is taken alone only.

Based on the CSO responses from different states (Assam, Maharashtra [2], Madhya Pradesh [2], and Uttar Pradesh),<sup>429</sup> the common concerns that emerged with respect to children's experience during the recording of the 164 respondents were that children are made to wait for long hours and do not have access to facilities like water or refreshments during this time. Although efforts are made by some Magistrates to ensure that the child is comfortable in their chambers and no one else is present in the room during the recording of the statement, children are exposed to the harsh environment of courts while waiting. As mentioned before, seeing accused persons, some of whom may be in handcuffs, is an intimidating experience. Privacy and identity of the children are also compromised while they wait in the common area and they experience discomfort when they are started at by others and are immediately identified as being a survivor of sexual violence. CSO representatives also shared that due to their heavy caseload, Magistrates are sometimes not able to give adequate time for the recording of the 164 statements of a child.

<sup>423</sup> 7C2, 9C1, 11C1, 4C3, 10C1, 5C1, 2C1, 2C2.

<sup>424</sup> 5C1, 2C2, 2C1.

<sup>425</sup> 4C1, 4C2.

<sup>426</sup> 7C2.

<sup>427</sup> 4C2.

<sup>428</sup> 7C1.

<sup>429</sup> 3C1, 4C1, 4C3, 7C1, 7C2, and 11C1.

### 3.2. Assistance of translators, interpreters and special educators

Sections 26(2) and 26(3) of the POCSO Act, 2012, state that where necessary, Magistrates can avail the assistance of a translator or an interpreter and in the case of a child having a mental or physical disability, 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. These services providers are a means to ensure that disability and language do not act as barriers to children's access to justice. However, **the unavailability of translators/special educators and lack of budgets for their payment has affected the right of children with disabilities to be heard.** CSO respondents from Tamil Nadu, Maharashtra, West Bengal, Kerala, Uttar Pradesh, Maharashtra, Gujarat, Andhra Pradesh, Assam, and Maharashtra<sup>430</sup> stated that assistance of translators and special educators is taken by the Magistrates when required. CSO respondent from Tamil Nadu however added that such assistance is taken on ad hoc basis without screening the service providers.<sup>431</sup> A CSO respondent from Maharashtra<sup>432</sup> stated that arrangements are made only upon the intervention of a CSO. One CSO respondent from Delhi<sup>433</sup> stated that, unfortunately, arrangements are made for a special educator only if the child appears to have a severe disability and not in cases where the disability is mild and not apparent.

One CSO respondent from Madhya Pradesh added that since payment for said translator/special educator comes from the budget of the police, there is a reluctance to ensure their presence. While it is the responsibility of the DCPU to identify and arrange<sup>434</sup> for the payment of translators and special educators, it appears that this is not the reality on the ground and the burden of arrangement falls upon CSOs and the police. Another challenge flagged by a CSO respondent from Maharashtra<sup>435</sup> is that special educators are reluctant to make multiple visits to the court and hence do not come forward.

### 3.3. Audio-visual recording of statements

Section 26(4), POCSO Act, requires that where possible, the statement of the child be recorded by audio-video electronic means. The intention is that the child is not made to repeat the statement multiple times, which may take place if the Investigation Officers change. Further, in cases of rape of a girl child with temporary or permanent physical or mental disability, the audio-visual statement can be considered in lieu of the examination-in-chief and the child will not have to repeat it during trial and can be cross-examined based on the recorded statement.<sup>436</sup>

**However, audio-visual recording of the statement of the child victim takes place in exceptional cases.** Only one CSO respondent from Delhi<sup>437</sup> shared that all statements are recorded through audio-visual means. Whereas CSO respondents from Tamil Nadu, Maharashtra, Delhi, West

<sup>430</sup> 6C1, 4C1, 9C1, 8C1, 11C1, 4C3, 10C1, 3C1, 4C2

<sup>431</sup> 6C1

<sup>432</sup> 4C1.

<sup>433</sup> 2C1.

<sup>434</sup> POCSO Rules 2020, r 5(1).

<sup>435</sup> 4C3.

<sup>436</sup> CrPC 1973, s 164(5A)(b).

<sup>437</sup> 2C1.

Bengal, Kerala, Uttar Pradesh, Gujarat, Delhi, Assam, and Madhya Pradesh<sup>438</sup> stated that, in their experience, 164 statements were not usually recorded through audio-visual means in the cases they were involved in. One CSO respondent from Tamil Nadu<sup>439</sup> shared that audio-video recording has not been encouraged by the High Court POCSO Committee due to the porous nature of record maintenance in court and the possibility of a videographed statement becoming public and causing greater embarrassment to the child. The practice of engaging professional photographers like wedding photographers was also strongly discouraged and the Committee recommended that statements should be videographed in only exceptional cases if the Magistrates or IO deem it necessary, and should be done by police videographers in compliance with the law. One CSO respondent from Maharashtra<sup>440</sup> specified that statements are recorded only if the child has a disability.

**“** So once before she [survivor] comes to the police station, there would've been at least five people who would've asked her what happened. Then the police record her statement, then the 164 statement gets recorded. Before that, when she goes to the hospital, the doctor will also ask her for a brief summary of what happened to record history. The CWC will ask her what happened. The support person needs to know what happens. In between, there are a number of [other] people – she's admitted to a Children's Home, the social worker in the Children's Home will need to write her case history [and so] she will ask. So the child is just repeating the same thing and all this happens within the first 5-7 days, the same thing again and again within that time period. So I think that is one of the reasons why the 164 statement has also become something that children feel that, again, I have to [repeat].

— A CSO respondent from Maharashtra<sup>441</sup>

<sup>438</sup> 6C1, 4C1, 2C2, 9C1, 8C1, 11C1, 5C1, 2C3, 3C1, 7C1.

<sup>439</sup> 6C1.

<sup>440</sup> 4C3.

<sup>441</sup> 4C3.

## 4 Compliance with Child-friendly Processes by Special Courts

Recognising the intimidating nature of cross-examinations and giving testimony in court, the POCSO Act provides for special child-friendly procedures to be adopted by Special Courts. Several of these procedures are in departure from standard criminal trials and reflect the developmental needs of a child. Through these protective measures, the POCSO Act endeavours to shield children from the harsh atmosphere of criminal courts, protect their dignity, and ensure that children can participate fully in the criminal justice system without undue stress or fear. This section examines the adherences of Special Courts with these procedures based on the experiences of the survivors, families, and CSOs.

### 4.1. Questioning of child victims

Section 33(2) of the POCSO Act prohibits direct questioning of the child by both the SPP as well as the defence counsels. It requires that while recording the examination-in-chief, cross-examination or re-examination of the child, the SPP or defence counsels submit the questions to be put to the child to the Special Court, which shall in turn put those questions to the child. It is based on the recognition that children cannot be treated like adult witnesses and be expected to respond to complex questions framed by lawyers.

**However, children continue to be questioned directly by the defence lawyers and Public Prosecutors in several states.** One CSO respondent from Maharashtra said that while the judge conducts the chief examination, the cross-examination is almost always done by the defence lawyer as they say that questions cannot be submitted in advance or that questions during cross-examination are based on instinct and cannot be planned. The defence also raises concerns about a fair trial, which results in the Special Court permitting the defence to question the child directly. The Special Court intervenes if it is of the view that the question is inappropriate, but according to a **CSO respondent from Maharashtra:**<sup>442</sup>

**“**...the harm is already done. Because once the child hears that question, even if she is not supposed to answer it, the impact on the child is there, nonetheless.

Parvati\* and Bhavana,\* two mothers who had a positive experience in the Special Court, shared that the judges had taken time to explain the questions to them in the local language instead of English, reprimanded the defence for non-appearance, and ensured that the questions were not offensive or posed in an aggressive way.

In Delhi, where there are Vulnerable Witness Courtrooms, CSO respondents shared that the questions are put forth to the child by a “facilitator” or a support person (distinct from the Support Person under the POCSO Rules) appointed only for the purpose of assisting the child during recording of evidence:

**“** ... with a child there is a court facilitator sitting and they have their headphones on and they would be the one who would be communicating with a child. Sometimes what happens is, the defence counsel will ask the judge, who will then tell the court facilitator that this is the question. At the end, it's not being directly put to the child. In most cases I've seen the judge relaying the question for clarity purposes or the PP as well. – A CSO respondent from Delhi<sup>443</sup>

Previous studies on the implementation of the POCSO Act flagged the non-compliance of this provision<sup>444</sup> and it is evident that this continues to be an area of challenge.

Section 33(6) prohibits aggressive questioning and character assassination of the child, but its operationalisation depends entirely on the sensitivity of the judge.<sup>445</sup> A CSO respondent from Delhi<sup>446</sup> shared that in the cases in which she has been present in court with the child, she has observed that the court or the PP have objected to aggressive questions by the defence. She, however, shared an experience of a child who is now an adult, where a Support Person was not present, and the child was asked insensitively by the defence about the colour of the accused's underwear.

**Aarohi\***, who had been forced by her family to marry her mother's brother and had subsequently become pregnant and undergone an MTP, shared her experience of the aggressive cross examination by the defence:

**“** The way he [defence lawyer] described my character and insulted me at every opportunity... He asked aggressive questions. He did not want any support person to be there. He never listened to my story and went on with his questioning. I was angry. I cried in court. The way he questioned me made me cry. I had a very bad experience. I just wanted it to be over. The first judge did not raise objections to such questioning. The second judge was more empathetic and supportive.[...]In court, when the defence lawyer was doing character assassination, I wanted someone to stop it. Finally in the seventh round, it stopped. Children may need an external lawyer to top the defence.

A **CSO respondent from Maharashtra**<sup>447</sup> emphasised the need for judges to be vigilant in light of the complex nature of questions asked to younger children and the tenor of questions posed to adolescent girls, and to strike a balance between the rights of the victim with that of the accused:

**“** ...sometimes it's not only the threatening aggressive questioning, it's also complex questions that you are asking a child, knowing that a child of that age will not be able to understand or comprehend that question. So you're asking a four year old about

<sup>443</sup> 2C3.

<sup>444</sup> Sonia Pereira and Swagata Raha, 'Procedural Compliance of Special Courts with the POCSO Act, 2012,' in CCL-NLSIU Report (n 15) 21; Partners for Law in Development, 'Towards Victim Friendly Responses and Procedures for Prosecuting Rape: A Study of Pre-Trial and Trial Stages of Rape Prosecutions in Delhi, January 2014 - March 2015 (2017)' vii.

<sup>445</sup> 6C1, 4C3, 2C3.

<sup>446</sup> 2C2.

<sup>447</sup> 4C3.

time, time difference, you know. The judges need to object to those sort of questions, because the questioning needs to be in accordance with the age of the child. So, I think it's very important for the judge to be vigilant even to that, but routinely, girls who are 14 and above and I would say, even 12 year olds, are routinely asked, 'Oh, he's your boyfriend, this is your boyfriend! If the father is the accused, they'll say, 'Oh, you had a boyfriend and the father was against your relationship, and so you filed this false case against him.' [...] So I think these sort of questions are always asked, and then the judge will say, 'But this is the crux of his defence. How can I not allow him to ask this question?' So, you know, then it's that constant balancing between a fair trial and being fair to the child and balancing that.

## 4.2. Provision of breaks

Section 33(2), POCSO Act empowers the Special Court to allow frequent breaks to the child if it is considered necessary. This is a provision that allows the court to take into account the need for a child to drink or eat something, use the bathroom, to move about, or have a quiet moment as the proceedings could overwhelm the child. CSO respondents from Tamil Nadu, Maharashtra, Delhi, Uttar Pradesh, Gujarat and Assam<sup>448</sup> shared that **breaks are usually given to younger children by Special Courts during the recording of the testimony.**<sup>449</sup> However, CSO respondents from Maharashtra<sup>450</sup> and Gujarat<sup>451</sup> also shared instances where the children or their parents or guardians have not felt comfortable or confident to request a break, and in that situation, not all prosecutors or judges intuitively asked for or gave a break.

The application of this provision is not uniform as it is perceived that older children may not require a break. A **CSO respondent from Maharashtra**<sup>452</sup> highlighted that breaks are rarely given to adolescents:

**“** ...sometimes, whether the 15-16 year olds want a break or not, we do not know, the parents or people from the organisation are not allowed inside. Even if parents are there, they do not confidently say that the child needs a break. The child also does not say that she needs a break. For this age group, there is no break. But for the younger kids, it is there.

## 4.3. Supportive presence during testimony

Section 33(4), POCSO Act, states that the Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court. This is significant because the law acknowledges the need

**448** CSO Respondents from Tamil Nadu, Maharashtra, Delhi, Uttar Pradesh, Gujarat and Assam (6C1, 4C1, 2C2, 11C1, 4C3, 2C3, 3C1, 4C2).

**449** CSO Respondents from Tamil Nadu, Maharashtra, Delhi, Uttar Pradesh, Gujarat and Assam (6C1, 4C1, 2C2, 11C1, 4C3, 2C3, 3C1, 4C2).

**450** 4C2.

**451** 5C1.

**452** 4C2.

for a child victim to have a supportive presence during the testimony. CSOs shared that **parents or guardians are generally allowed to be present with the child when their testimony is being recorded**,<sup>453</sup> but parents are not allowed in “love affair cases” and Support Persons are not always allowed inside the courtroom. To ensure that parents are allowed to be present with the child, especially when they are witnesses themselves, a CSO respondent from Maharashtra<sup>454</sup> said that an attempt is made to ensure that the parents’ deposition is recorded before the child’s.

A **CSO respondent from Delhi**<sup>455</sup> explained that initially judges were not aware of the role of Support Persons and they had to persuade the court to allow them to be present with the child. But, with time, the judges have understood the need for a Support Person to be present with the child. Where there are apprehensions, the judge makes the Support Person sit within view of the camera and also directs them not to prompt the child. It also emerged that courts considered the comfort of adolescents involved in “love affair” cases and did not allow the parents of victims between 16-18 years of age to be present to ensure that she is able to depose freely.<sup>456</sup>

However, not all courts permit a parent or anyone else to be present with the child victim. **Radhika,\*** whose daughter had been repeatedly sexually assaulted by her cousin brother shared that her child was examined without any parent or Support Persons being present during the cross-examination, which was stressful:

**“** Then another judge came who was also a female judge. She also said we can’t do cross examination of the child alone. She said parents have to be there. But, they still did the cross examination without anyone present and with just the child. I do not know what they asked her, but she came out very scared. This was our worst experience. We told the Support Person about this. Even she was not allowed inside.”

A CSO respondent from Delhi<sup>457</sup> said that while Support Persons from their organisation accompany the child to court, nobody, including a parent, is allowed to sit with the child when the child is depositing. Another respondent from Delhi<sup>458</sup> and from Madhya Pradesh<sup>459</sup> shared that while parents are allowed, the Support Persons are not. A respondent from Maharashtra<sup>460</sup> said that judges have, in some instances, expressed distrust of the intentions of the Support Persons, particularly those who are working with an NGO, and questioned their source of income. Unwarranted comments were also made doubting the Support Person’s ability to work on such a case because they did not have children of their own.

<sup>453</sup> CSO respondents from Tamil Nadu, Maharashtra, Madhya Pradesh, West Bengal, Kerala, Uttar Pradesh, Andhra Pradesh, Gujarat, Delhi, and Assam. 2C2, 3C1, 4C1, 4C2, 7C1, 9C1, 10C1 and 11C1.

<sup>454</sup> 4C3.

<sup>455</sup> 2C3.

<sup>456</sup> 4C2.

<sup>457</sup> 2C2.

<sup>458</sup> 2C1.

<sup>459</sup> 7C2.

<sup>460</sup> 4C3.

## Appointment of Support Persons (SPs)

Under Rule 4(8), POCSO Rules 2020, the CWC 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. Interviews with CSO respondents revealed that the appointment of Support Persons by CWCs varies across States. The responses are clustered as follows:



**CWCs appoint SPs in most cases**  
(Delhi, Kerala)



**CWCs appoints SPs in select cases, "serious cases", or on request**  
(Madhya Pradesh, UP, Maharashtra, AP, Delhi)



**SP are appointed only by CWCs in the capital city or in metropolitan areas, but not in all districts**  
(Assam, Maharashtra, West Bengal)



**Official appointments of SPs by CWC is rare**  
(Tamil Nadu, Gujarat)

The respondent from Gujarat<sup>461</sup> shared that while existing counsellors and staff of Child Care Institutions (CCIs) have been notified as Support Persons under the POCSO Rules, actual provision of support to children and families has been difficult due to their existing responsibilities within the CCIs.

With respect to consent, respondents from Delhi<sup>462</sup> and Maharashtra<sup>463</sup> shared that consent of the family is not taken and another respondent from Maharashtra<sup>464</sup> said that CWCs insist on appointment of Support Persons without assessing whether the family requires one and provide one even when the families refuse.

The Supreme Court in *In Re Alarming Rise in the Number of Reported Child Rape Incidents*<sup>465</sup> noted that as per the Supreme Court Registrar's report prepared in November 2019, a Support Person had been appointed only in 4% of POCSO cases denoting a significant support gap. In 2023, it once again noted the significance of Support Persons and stated that "[i]n crimes against children, it is not only the initiating horror or trauma that is deeply scarring; that is aggravated by the lack of support and handholding in the days that follow".<sup>466</sup> Directions were issued to the NCPCR to frame model guidelines after consulting all State Governments and Union Territories, based on which they could frame rules in respect of Support Persons.

<sup>461</sup> 5C1.

<sup>462</sup> 2C2.

<sup>463</sup> 4C1.

<sup>464</sup> 4C1.

<sup>465</sup> [2020] Suo Moto Writ Petition Crl.No(s). 1/2019 (Supreme Court of India).

<sup>466</sup> *Bachpan Bachao Andolan v Union of India*, [2023] WP (Civil) 427 of 2022, (Supreme Court of India, order dated August 18, 2023).

## 4.4. Prevention of exposure to the accused

Section 36(1), POCSO Act recognises that it can be debilitating for a child victim to come in direct contact with the accused during the testimony. Hence, it requires the Special Court to ensure that video-conferencing, single visibility mirror, or curtains are used to prevent exposure, while also ensuring that the accused can hear the child's testimony. CSOs said that **efforts are made by Special Courts to prevent the exposure of the child to the accused at the time of recording evidence in most states** through the use of curtains, wooden partitions, separate enclosures, or screens in the court, or by placing the child in a separate room in the districts in which a Vulnerable Witness Courtroom is available. **However, exposures continue to take place outside the courtroom.** In Delhi, where vulnerable witness courtrooms have been set up, infrastructure is available for the children to wait for recording of their testimony without having to come into the courtroom. Identification of the accused also takes place via videoconferencing. The parents are, however, not always allowed to be present with the child in the waiting room. In states where such infrastructure is not available in all courtrooms, some judges have come up with innovative solutions such as seating the child in their chamber or in their typist's chamber. However, in most courts, children have to use the common entrances and passages to access the court and there are no separate waiting areas, thus increasing the likelihood of their exposure to the accused. A **CSO respondent from Maharashtra**<sup>467</sup> said that some efforts are made to ensure that the entry timings of the victim and accused are different so as to avoid an encounter:

**“** If the accused is coming from home, he can come anytime if he gets bail. If the accused is coming from the jail, there is a time at which their vehicles are to arrive in the court in the morning; there is no time as such. As per that, the court constable or the government lawyer says that the victim should not be brought during that time. The coordination depends on the circumstances.

Similarly, a CSO respondent from Delhi<sup>468</sup> also shared that Support Persons ensure that children are taken through a separate entrance to avoid exposure to the accused.

### Vulnerable Witness Deposition Centres

In accordance with the directions issued by the Supreme Court of India in *Smruti Tukaram Badade v State of Maharashtra*,<sup>469</sup> various High Courts<sup>470</sup> have formulated the Vulnerable Witnesses Deposition Centres (VWDC) since last year (2023). The Status Report on VWDCs submitted to the Supreme Court in this case noted that in 15 out of 25 High Courts, at least one Permanent VWDC has been established.<sup>471</sup> Maharashtra had the highest number of permanent VWDCs, i.e. 116.<sup>472</sup>

<sup>467</sup> 4C2.

<sup>468</sup> 2C3.

<sup>469</sup> *Smruti Tukaram Badade v State of Maharashtra*, [2022] SCC OnLine SC 78 (Supreme Court of India).

<sup>470</sup> *ibid.*

<sup>471</sup> Status Report Submitted by Vibha Datta Makhija, Senior Advocate on Reports from various High Courts in compliance of order dated 4 October 2019 passed by the Hon'ble Supreme Court for the establishment of Vulnerable Witness Deposition Centers (VWDC) for hearing on 25 October 2021, <[https://main.sci.gov.in/supremecourt/2019/32085/32085\\_2019\\_34\\_1\\_32533\\_Judgement\\_11-Jan-2022.pdf](https://main.sci.gov.in/supremecourt/2019/32085/32085_2019_34_1_32533_Judgement_11-Jan-2022.pdf)> accessed 12 April 2024.

<sup>472</sup> *Smruti Tukaram Badade* (n 469).

The Status Report contained no information on VWDCs in Assam and West Bengal. But developments have since taken place in these states. In September 2022, West Bengal established its first VWDCs in South 24-Parganas and East Midnapore.<sup>473</sup> In Assam, the Gauhati High Court directed the Executive Engineers concerned of the Public Works Department (PWD) and the secretaries of various District Legal Services Authority (DLSA) to carry out a joint survey on court premises and submit individual feasibility reports to the court regarding establishment of VWDCs under the POCSO Act in November 2022.<sup>474</sup> In January 2023, a two-judge bench of the Guwahati High Court further directed that the member-secretary of Assam State Legal Services Authority in each district shall submit an individual report before this Court on how, when and where VWDCs can be established, particularly in the existing infrastructure.<sup>475</sup>

Although some infrastructural changes were made, **CSO respondent from Assam**<sup>476</sup> shared that exposure to the accused takes place owing to the failure to fully appreciate the purpose and spirit of the provision:

**“**...children have to walk through a corridor to enter the child-friendly room. However, this corridor has a wooden bench that is used by the accused and their families to sit while they wait. This compels the victim to come into direct exposure with the accused. Though there is a room where the accused are supposed to be sitting, this facility is seldom used. Recently, we had to actually go and inform the Special Judge to remove the bench from the corridor as one of the victims was traumatised to see the accused right in front of him. Though this issue was immediately addressed at that point in time, we saw the bench back again the next day.

Anchal\*, whose guardian had forced her into sex work, shared that whenever she used to go to court, the accused was in front of her. **Esha\***, who was 17 years old when she was forced into sex work by her neighbour and the neighbour's husband on the pretext of employment, added that seeing the accused in the court was difficult and traumatic for her:

**“**When I had gone to the court, and I saw him [the accused], I felt very nervous and scared. Even that day I had gone to the court, I was very scared to see him, there was a lot of fear inside me when I was there. So I sat down holding Didi's hands. My hands and feet had gone cold.

**473** 'Bengal dists to have witness centres soon', *The Times of India*, (Bengal, 29 September 2022), <<https://timesofindia.indiatimes.com/city/kolkata/bengal-dists-to-have-witness-centres-soon/articleshow/94521414.cms>> accessed 3 April 2023.

**474** 'Deposition rooms for children in POCSO courts: HC seeks feasibility reports by Nov 14', *The Sentinel* (Guwahati, 11 November 2022), <<https://www.sentinelassam.com/topheadlines/deposition-rooms-for-children-in-pocso-courts-hc-seeks-feasibility-reports-by-nov-14-622691>> accessed 3 April 2023.

**475** 'Gauhati High Court directs inspection of POCSO courts' infrastructure', *The Sentinel* (Guwahati, 18 January 2023), <<https://www.sentinelassam.com/topheadlines/gauhati-high-court-directs-inspection-of-pocso-courts-infrastructure-633490>> accessed 3 April 2023.

**476** 3C1.

### Provision of the chargesheet to the victim is an exception

Contrary to Section 25(2), POCSO Act, based on CSO interviews, it emerged that the chargesheet is not shared with the victim or their family. A **CSO respondent from Maharashtra**<sup>477</sup> shared that the chargesheet is not shared as a matter of right to the victim:

**“** That really depends on the police officer, it is never done as a matter of right. So just as the accused gets a copy of the chargesheet as a matter of right, that never happens for the child. If a support person is involved, they will ask for a copy of the chargesheet and it will be given. Sometimes, I have to make an application in the court because they are reluctant to give the chargesheet even to a support person, and then the court will direct them to give a copy to the child's lawyer and then a copy is given.

## 4.5. Assistance of interpreters, translators and special educators

Under Section 38, POCSO Act, the Special Court can take the assistance of a qualified and experienced translator, interpreter, special educator, or expert, or a person familiar with the manner of communication of a child. Some CSO respondents flagged that the lack of a translator/special educator contributes to delays in the recording of the statement or evidence and has resulted in victims with disabilities forgetting the details of the incident and, in one case, led to an acquittal as the child was unable to narrate the incident properly due to the passage of time:

**“** In one of my cases, it's a very old case from 2016, the child was with intellectual disability and she could not speak. So, at that time, the IO could not find a special educator, and the statement of the child was not recorded because they could not find a special educator or a translator or interpreter who could, you know, understand the child's language. So, there was no 164 of the child. Then, when the case reached us and we filed in the court that there should have been a special educator for testimony, the testimony was very late, because the child had a lot of injuries, she had to undergo two operations because of the injuries to her private parts. The child was called for her testimony in 2019, but by that time, she had forgotten everything and the testimony could not be recorded. The accused has been acquitted because there was no evidence against that person. The only evidence was the child's and her testimony was not taken. There was no 164 of the child. – **CSO respondent (Delhi)**<sup>478</sup>

A CSO respondent from Gujarat<sup>479</sup> said that even though the attention of the court was drawn at an early stage that the child has an intellectual disability and assistance of a special educator is needed, the judge said they would decide on this at the time of recording evidence after assessing if the child is capable of understanding the questions being posed, but ultimately did not go through with this.

<sup>477</sup> 4C3.

<sup>478</sup> 2C2.

<sup>479</sup> 5C1.

A CSO respondent from Madhya Pradesh<sup>480</sup> highlighted specific issues that arise in cases of children with disabilities — firstly, the stakeholders are unaware of the role of the DCPU in creating a directory of experts. Secondly, there is no proper list of special educators or interpreters, and thirdly, the children often speak the local language or dialect and are unable to understand English, Hindi, or the court's language. He also noted that there is a lack of accountability, as the responsibility of identifying and ensuring the availability of experts is shifted from one authority to another. Further, “when the victim is unable to express themselves fully, they are at a disadvantage,” and this has resulted in acquittals in cases the CSO had handled.

**A CSO respondent from Maharashtra** <sup>481</sup> similarly shared that the biggest challenge with children with disabilities is the lack on the part of the police, CWC, prosecutors, lawyers, and judges to understand their manner of communication, as well as on overall lack of an enabling environment for them to be able to express themselves:

**“** I think for us also, especially for me as a lawyer, how do I communicate to them in a way to make the system more approachable for them, try to explain to them in a manner that if we do not have mechanisms, we will try to ensure that by the time you reach the court or at the police station, these mechanisms will be in place. So I think that is a big challenge of working with children with disabilities, I don't think our systems are anywhere close to, you know, creating a conducive environment for them. I don't think so. Even many counsellors are not adequately trained to work with children with disabilities.

CSO respondents<sup>482</sup> from Delhi, Gujarat, and Tamil Nadu shared the difficulties they faced in identifying and sourcing different experts and special educators capable of understanding different kinds of sign languages and who were trained in communicating with children having different disabilities. The possibility of a child not knowing sign language also has to be taken into account. A respondent from Delhi<sup>483</sup> said that requests are filed directly before the court to appoint a special educator before the testimony of the child takes place and the Special Court then directs the CWC or the DCPU or any other panel to appoint a special educator.

## 4.6. Speedy trial

The POCSO Act recognises that repeated visits to the court and a long drawn trial can have a disruptive impact on a child survivor. Under Section 33(5), it obligates the Special Court to ensure that the child is not called repeatedly to testify. Further, Section 35(1), POCSO Act requires evidence to be recorded within 30 days of the Special Court taking cognizance and reasons to be recorded for delay, if any. Under Section 35(2), the Special Court is also required to complete the trial within one year from taking cognizance, as far as possible.

The translation of these timelines has been fairly poor. **Survivors and families shared that they had to make multiple visits to the court to record their evidence, which is in violation of Section**

<sup>480</sup> 7C2.

<sup>481</sup> 4C3.

<sup>482</sup> 2C2, 5C1 and 6C1.

<sup>483</sup> 2C2.

**33(5), POCSO Act.** Parent respondents expressed their frustration about having to visit the court several times for the purpose of recording evidence. They also shared that they were often called to the court in the morning, but would be called inside the courtroom only in the afternoon. They had to wait all day and come repeatedly to the court as the lawyer or the other party were not available on the given date or the recording of evidence was not completed. **Parvati\***, whose daughter was 12 years old when she was sexually assaulted by her father, said:

**“** We had to wait for a long time. They call us at 10:30 a.m., but our case starts at 2:00 p.m. My daughter also had to go twice for her evidence. They said that some crucial points were not covered during the first evidence and that's why she had to visit the court again.

Most CSO respondents shared that the completion of recording the evidence of the child went well beyond the 30 days mandate and the children were called repeatedly to the courts<sup>484</sup> in cases they have been involved in. **The delays in recording evidence compelled child survivors to relive the traumatic experience and recount it repeatedly which hindered their healing.** They were continuously reminded of the harm they had experienced, which the family members observed disturbed the children, and affected their mental health, sleep cycle, education, career, and their resolve to move forward. **Radhika\*** shared the adverse mental health impact of multiple examinations on her child:

**“** Incident was 5 years ago and cross-examination of my child took 1.5 years to happen. They called her more than 15-20 times. Again and again they kept asking her questions and had lawyers question her. They kept giving date after date saying the lawyer had not come or that answers have not been recorded. The court forced her to recall everything she had forgotten. She became depressed because of this. She was scared even in her sleep. She was thinking about what the man had done to her, how he had tortured her, and she got into depression.

**Sheela,\*** a parent respondent, described the experience of having to visit courts multiple times as being “hellish”:

**“** For 4-5 years now, 2-3 months at a time, they call us to the court. They are making kids remember all this. That week makes us feel hellish. Only we will understand that. It takes one full week to recover from the session in court.

**These multiple visits also imposed a severe strain on the livelihood of some families.** Physical presence in court results in loss of a day's work for families of survivors who are daily wage labourers or migrant workers, along with an added strain of the travel expenditure to and from the court. Radhika\*, a single mother, had to quit her job because of the multiple court visits and had no other source of income. Sheela\* shared that they struggled to meet the costs of travel to court and had to walk to court sometimes and spend the entire day there without any food.

CSO respondents shared that delays make it challenging for young girls who get married or have moved ahead with their lives to participate in the trial.

<sup>484</sup> 2C1, 2C2, 2C3, 4C1, 4C2, 4C3, 5C1, 7C2, 10C1, and 11C1.

A CSO respondent from Maharashtra<sup>485</sup> shared:

**“** ...we've had cases where young girls are now married. They have their own life... They were so strong and they wanted to go through the entire trial, but there was a long waiting period for the trial to get over and they wanted to restart their life, which they did. After that, we've seen a lot of reluctance to come back and participate in trials.

She spoke about another case:

**“** ...the cross examination is pending since 2016. So that is a really big challenge because the child is now 21 years old, she wants to get married and she doesn't feel comfortable going to the court now. Incident happened when she was 14-15 years old. There are several cases like that. There is a 2018 case where the chief [examination] has not been completed yet, in some cases, cross [examinations] are pending. ...And now the children have grown up, especially all of them are girls, they have grown up, they're above 18, so they don't feel comfortable going to the court and then remembering the incident. So it's a further trauma to the children.

Interviews with survivors and parents also revealed their frustration about the justice system taking a very long time to deliver. Some had been waiting for over five to seven years for the judgment. **Sheela's\*** daughter was 9 years old when she was raped by her cousin. Her case had been pending for 4 years and 1 month and she shared:

**“** It's frustrating when the case drags for 4-5 years. Because children are saying the truth and not lying. They should, if needed, call us 2-3 times a month and give the judgment fast. Otherwise, all these delays will not let the child heal as they are constantly reminded of this event.

**The uncertainty of the outcome was equally frustrating as it prevented the child from moving forward with their education and career, and served as a constant reminder of a terrible incident in their life.** The prolonged trial also exposed families to the agony of continuous questions from the community about the status of the case and made them feel stigmatised. **Suresh's\*** daughter, a child with a disability, was 17 years old when she was abused by a neighbour. Suresh shares his frustration of his daughter's case being pending for 7 years and 1 month:

**“** The longer the case goes on, the more dishonour because there is so much discussion. It has a bad effect on society. People make fun [of us] as well. People raise questions. People who don't even know anything come up and pose questions. Whoever gets to know about the case, the people around, they constantly ask about the status, where the case is now. They say our lawyer is bad, he is not doing anything.

The psychological impact that is caused due to delays in disposal was underlined by seven CSO respondents from Delhi, Madhya Pradesh, West Bengal, Kerala, Uttar Pradesh, and Maharashtra<sup>486</sup> who mentioned that it prevented survivors and families from moving on even if they wanted to.

<sup>485</sup> 4C1.

<sup>486</sup> 2C2, 7C2, 9C1, 8C1, 11C1, 4C3, 2C1.

CSO respondents (Delhi [3], Assam, Maharashtra [3], Gujarat, Madhya Pradesh, Kerala, West Bengal and Andhra Pradesh)<sup>487</sup> shared that families and survivors get frustrated and fatigued with the system when the case drags on for years. A **CSO respondent from Maharashtra**<sup>488</sup> said that the stress of the trial weighs on the minds of the family members constantly, thus leading to “prosecution fatigue”:

**“** The fear that he will get bail, the fear that nothing is going to come out of this case, the fear that maybe the public prosecutor and the defence lawyer are hand in gloves. The whole prosecution fatigue is something we don't talk about. For me, prosecution fatigue is also the waiting period, it's not just having to go to the court, travelling, and coming back with nothing happening on that day, even if the case has not come up for trial, just mentally waiting for the trial to begin and even thinking about the trial all the time.

A **CSO respondent from Delhi**<sup>489</sup> said that when the trial period runs into several years, the families feel discouraged and often do not want to pursue the case anymore:

**“** They feel harassed because they are called repeatedly to court but nothing happens. A lot of times, where the trial period has gone on for two years, three years or four years, now the families are telling me that they don't want to pursue the case anymore, especially if the accused is also out on bail.

Delays also make it challenging for organisations to continuously keep up the hopes of the children and their families. A **CSO respondent from Maharashtra**<sup>490</sup> explained:

**“** We are connected with them for years and keep telling them that it will get done, but even we do not know when it will get done. As per the POCSO Act, it should happen in a year but this does not work out practically. This is a big challenge we have been tackling for years. We hope that this is not faced in the future. There is a time duration, there should be discussion in the court, all things should be done on time so that there is no delay in the court. For this, keeping ours and the family's spirits high is a big challenge.

A **CSO respondent from Kerala**<sup>491</sup> drew attention to the struggles families experience even after the matter is disposed of by the Special Court, because of the time that appeals take:

**“** The trial is anyway over in a maximum span of two years. But the appeal, when it gets suspended indefinitely, that is a real set-back for the family. For them, it's constantly seeing this guy outside, living his life, because his sentence has been suspended, whereas they continue to experience trauma. So even if the [...] trial gets over within two years, the appeal lasts for around 5 years or even more. So they find that difficult.

**487** 2C1, 2C2, 2C3, 3C1, 4C1, 4C2, 4C3, 5C1, 7C2, 8C1, 9C1, 10C1.

**488** 4C1.

**489** 2C2.

**490** 4C2.

**491** 8C1.

## 4.7. Child-friendly infrastructure in courts

Although the POCSO Act is silent on this matter, some CSO respondents drew attention to the lack of suitable infrastructure within court complexes to ensure children's privacy and comfort. According to a CSO respondent from MP<sup>492</sup>:

**“** ...within the court, there should be some separate processes infrastructure-wise. Like, there should be some separate gate or something from where the child should be brought to the court. They should not keep waiting in the central corridor [...] There should be some separate waiting rooms for the children so that they can have their own time. They can feel comfortable to come to court and wait [...] They need to improve that, this should ensure the child's and privacy.

Although formal measures are taken by courts, sometimes the identity of the child is revealed and Support Persons and lawyers openly discuss their case with others in their presence. A CSO respondent from Delhi<sup>493</sup> informs:

**“** Professional decorum is not maintained. So, in my opinion, it should not be the practice. Because if there are two government lawyers, they are talking about each other's case in front of the child and then also asking about the case and the child. So, now, everyone sitting in the Vulnerable Witness courtroom knows about that child.

A similar concern was raised by a CSO respondent from Maharashtra:<sup>494</sup>

**“** I feel privacy is not a priority for any stakeholder. I genuinely feel that also because there's a complete disconnect between the police, the prosecution, and the judge. So the police almost always will bring the child to court and if the officer bringing the child to court on that day does not know that this judge has said that this separate room is where the child will sit, the child will be sitting in the corridor like any other witness with her parents.

However, positive examples also emerged as a CSO respondent from Maharashtra<sup>495</sup> shared an incident wherein a judge demonstrated sensitivity and regard for the child's privacy and admonished an NGO representative for violating the child's privacy:

**“** So, there was this NGO representative who brought the child and the mother with her, and she pointed at the child and said, 'I'm representing the child. This is the child, the case is of this child. And the judge was so sensitive. She immediately stopped her. She said, 'I did not ask you to tell me who the child is and you don't have to announce to the entire court who the victim is. I hope you understand this and you're saying you're an NGO representative. How can you do that? Who asked you to bring the child to court? Why are the child and the mother sitting in the court at all?' So, these are very rare cases we have experienced so far where the judges are clearly sensitive. But usually they are not.

<sup>492</sup> 7C2.

<sup>493</sup> 2C2.

<sup>494</sup> 4C3.

<sup>495</sup> 4C1.

## 5 Experience with Special Public Prosecutors and Legal Practitioners

Section 32(1), POCSO Act requires the State Government to appoint Special Public Prosecutors for conducting cases only under the POCSO Act. Although they are meant to be exclusive, in practice, many states have regular prosecutors who handle a variety of cases and are not dealing only with POCSO matters.<sup>496</sup> SPPs are rarely exclusive, and are appointed for prosecutions under several special legislations such as the Narcotic Drugs and Psychotropic Substances Act, 1985, and The Unlawful Activities (Prevention) Act, 1967.<sup>497</sup> This practice defeats the purpose of the POCSO provisions to ensure that there is a distinct pool of SPPS under the POCSO Act.<sup>498</sup> The Supreme Court in *In Re Alarming Rise in the Number of Reported Child Rape Incidents*<sup>499</sup> noted that the scheme of the POCSO Act envisages that the SPPs be exclusive and not deal with other cases. The Supreme Court further noted that:

**“** There is a salutary reason for appointing Public Prosecutors exclusively for POCSO cases. Public Prosecutors must be trained to deal with child victims and child witnesses. They need to understand the psychology of children. They need to empathize with children. They need to know how to bring out the truth from children who are victims of sexual abuse and have to undergo the trauma again while recounting the traumatic experience.<sup>500</sup>

Observing the above, the Supreme Court has directed all states to take steps to appoint exclusive SPPs for POCSO cases.<sup>501</sup>

Under Section 40 of the POCSO Act, the victim is entitled to the assistance of a legal counsel of their choice or a Legal Aid Lawyer.

While the POCSO Act does not specify procedures to be followed by SPPs and lawyers representing child victims, this section presents the experience survivors and parents have had with them, as well as the views of CSOs who have engaged with SPPs and lawyers in POCSO matters. Since the SPP and lawyer represents the victim’s case, it is important to take into account whether survivors and families feel heard and supported during the process of representation.

**496** Sonia Pereira and Swagata Raha, ‘Structural Compliance of Special Courts with the POCSO Act, 2012’ in CCL-NLSIU Report (n 15) 3-4.

**497** Sonia Pereira and Swagata Raha, ‘Structural Compliance of Special Courts with the POCSO Act, 2012’ in CCL-NLSIU Report (n 15) 3.

**498** *ibid.*

**499** [2020] *Suo Moto Writ Petition (Crl.No(s). 1/2019 (Supreme Court of India).*

**500** *ibid.*

**501** *ibid.*

## 5.1. Experience with Special Public Prosecutors

Some parent respondents felt supported and reassured by the Special Public Prosecutor (SPP) as they gave them information, explained the legal process, and heard them out and allayed their fears. However, others had a humiliating experience with SPPs and felt disrespected. **Radhika\*** shared:

**“** The lawyer changed thrice in the course of the case. The first lawyer was good, he was supportive and he explained a lot. I did not know much, so he guided me and supported me. The other two did not guide me at all. They did not even behave like I was human. They were so rude and very disrespectful. If I stood somewhere, they did not even ask me what I needed. This is the first time I am seeing a court and fighting a case – I do not know anything about it at all. Their treatment of me was hopeless. I did not like them.

Parvati\* and Bhavana,\* two mothers, stated that the SPP doubted them and asked whether they had filed a false complaint or were lying about the case. **Bhavana** shared:

**“** But the day the accused was brought to the court and his statement was recorded, the SPP said something to me which left me very disheartened. She said to me, ‘It seems you have some other person in your life’. She further mentioned that daughters are very close to their mothers and as such at times they have to lie. I replied, ‘Why will I malign my daughter?’

CSO respondents mentioned that the SPPs failed to extend any support to survivors and did not give them any orientation. They did not respond or object when the defence posed questions to the child.

For some of the survivors interviewed, the experience with the public prosecutor was largely positive. They shared that the PP made them feel comfortable, tried to reassure them, and prepared them before the testimony. Other survivors shared a range of difficult experiences. Nancy\*, who was 15 years old at the time of the incident and was 18 at the time of the interview, felt that the SPP was colluding with the defence lawyer of the accused and that the SPP did not hear her out. Esha\* shared that the PP took around Rs 30,000-35,000 from her family and would not listen to the family or clearly communicate with them about the status of the case. This is concerning, as the PP is appointed by the state and is not supposed to charge any money from the victim. Anchal\* felt that the PP was not helpful and did not do anything to avoid her exposure to the accused. Ishita\* wished that the SPP had been gentler and more empathetic towards her.

A majority of CSO respondents shared that the SPP did not give regular updates on the case and did not provide prior orientation on the courtroom and procedure. They said that SPPs are overburdened and underpaid, and are not able to build prior rapport as they meet the children a few minutes before they give their evidence. For instance, a **CSO respondent from Assam**<sup>502</sup> shared:

**“** The first time the child meets the SPP is the day of the examination-in-chief, hardly for 5-10 minutes and the SPP tells the child to go through the files and ask a few questions.

A **CSO respondent from MP**<sup>503</sup> shared that the SPP does not object to questions in cross-examination that are problematic:

**“** I have found that SPPs are submissive people. They don't attack, they don't cross[examine] like the defence. They don't object either. SPP is submissive but defence is aggressive. So the family feels like it is their fault or the child's fault. [The defence asks] Questions like, 'Why did you have to go to the shop to buy something? Why didn't someone else go?' Or they say things like, 'You could have cried, you could have run away' etc.

A respondent from Maharashtra<sup>504</sup> shared that some SPPs are more accessible and friendly than others, which was also echoed by the respondent from West Bengal and Gujarat<sup>505</sup> who mentioned that the child's experience in court depends a lot on the PP concerned, and there are rare PPs who make the effort to explain things to the family or put the child at ease.

## 5.2. Experience with legal counsel or legal aid lawyer

Even before the enactment of the POCSO Act, the Supreme Court has, in several cases, while directing that “complainants of sexual assault cases should be provided with legal representation,”<sup>506</sup> emphasised the significance of legal representation for victims in sexual offence cases. In *Delhi Domestic Working Women's Forum v. Union Of India*,<sup>507</sup> the Supreme Court noted that:

**“** It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

The Supreme Court further directed that legal assistance shall be offered at the police station itself, and that it was the duty of the police to inform the victim of her right to legal assistance.<sup>508</sup> In *Delhi Commission for Women v. Lalit Pandey and Anr.*,<sup>509</sup> the Delhi High Court passed comprehensive guidelines detailing the duties of various functionaries in respect to rape cases. These guidelines included the setting up of “Rape Crisis Cell” (RCC) for providing legal assistance in the case of sexual

<sup>503</sup> 7C1.

<sup>504</sup> 4C2.

<sup>505</sup> 9C1 and 5C1.

<sup>506</sup> *Delhi Domestic Working Women's Forum v Union Of India and ors*, 1995 SCC (1) 14 (Supreme Court of India) [15].

<sup>507</sup> *ibid.*

<sup>508</sup> *ibid.*

<sup>509</sup> [2009] Writ Petition (Crl.) No. 696/2008 (Delhi High Court).

assault. By virtue of these guidelines, the RCC under the Delhi Commission for Women provides a free lawyer to all rape victims including minor victims in Delhi who assist the prosecutor in the trial, oppose the bail application of the accused, facilitate recording of statement under Section 164 of the CrPC. This provision is, however, available only to female victims of penetrative sexual offences under the POCSO Act. However, this practice has not been replicated across the country presently and there are no guidelines for the linkages between the lawyer appointed by the DCW, Support Persons, and private counsel for the child.

While the extent of legal representation for victims, along with barriers faced by male and transgender victims in also being treated as victims of rape presents a concern, confusions also persist on the role played by the victim's lawyers vis-à-vis prosecutors. The POCSO Act is silent on the extent to which the victim's lawyer may intervene in the case.<sup>510</sup> Section 301(2) of the CrPC recognises the role of private lawyers in criminal trials and states that the lawyer shall act under the direction of the prosecutor and may submit written arguments to the Court after evidence is closed. Practices vary widely on the role played by the victim's lawyer. While some courts are receptive to a more active role of these lawyers, other courts do not recognise their role, leading to the lawyers not being able to make any meaningful interventions to further the rights of the child.<sup>511</sup>

It emerged that the appointment of a legal aid lawyer in POCSO cases is rare and families are not provided with information about how to access such lawyers. A CSO respondent from Gujarat<sup>512</sup> pointed out that while systems are in place to ensure the access of the accused to legal aid, in the cases they have dealt with, victims were not proactively provided legal aid, unless an organisation or Support Person was involved. A CSO respondent from West Bengal<sup>513</sup> said that if the family is poor, they are informed of their right to legal aid and they take the assistance of NGOs for the same.

Some CSO respondents from Delhi (2), Maharashtra, and Kerala<sup>514</sup> shared that there is resistance from the Public Prosecutor and Special Court when it comes to the appointment of lawyers for victims. A CSO respondent from Delhi<sup>515</sup> explained that the Special Court needs to be convinced that the family wants to appoint a lawyer because certain aspects of the case are being overlooked by the existing legal counsels such as the SPP, DLSA lawyer, and/or the lawyer provided by the Delhi Commission for Women. Another respondent from Delhi<sup>516</sup> shared that while initially the Special Court was apprehensive about appointing legal aid lawyers, now they are open to it as it is permitted under the POCSO Act.

A respondent from Maharashtra<sup>517</sup> shared that judges are apprehensive about appointing a legal aid lawyer and believe that the PP is sufficient or that the PP may be offended if a lawyer is appointed. A **CSO respondent from Assam**<sup>518</sup> said that intervention by an external lawyer is viewed as an interference and the legal aid lawyer is also not fully utilised:

<sup>510</sup> Maansi Verma, 'Right of child victims to participate in criminal trials', (iProbono, May 2022) <<https://i-probono.com/articles/right-of-child-victims-to-participate-in-criminal-trials/>> accessed 12 April 2024.

<sup>511</sup> ibid.

<sup>512</sup> 5C1.

<sup>513</sup> 9C1.

<sup>514</sup> 8C1, 2C2, 2C3, 4C3.

<sup>515</sup> 2C2.

<sup>516</sup> 2C3.

<sup>517</sup> 4C3.

<sup>518</sup> 3C1

“ External lawyers are often perceived as interference by SPPs and are not allowed to fully participate during the trial process. Unless a lawyer is appointed through a Support Person, who already has a rapport with the SPP, lawyers are hardly provided with a context where he or she can share perspectives on the case, submit written affidavits etc.

## 6 Conclusion

A decade since the POCSO Act was enacted, from lodging of complaints till the final disposal of the case, victims and families encounter suspicion, resistance, shame, insensitivity, and systemic gaps, whilst also processing the trauma and dealing with the aftermath of the assault. Lodging of complaints remains a challenge with survivors and families continue to experience resistance from the police. Pre-existing biases also affect the manner in which the police respond to certain types of cases or victims. Despite comprehensive provisions which mandate that the police record reports and adhere to child-friendly procedures, the experience of the survivors, families, and CSOs largely point to the lack of adherence. While good practices were shared, they are an exception and individual-centric. Overall, the absence of internalisation of a child-rights based approach and the significance of child-friendly procedures is writ large, owing to the inconsistent, mechanical, convenience-based, and subjective manner of implementation of provisions by the police. Non-compliance also arises from structural and operational limitations such as lack of adequate female police officers to record the statement of victims; lack of CCIs in every district to prevent overnight stay in the police station; lack of adequate transport facilities and space within police stations to prevent exposure of the child to the accused during investigation.

The significance of sensitive treatment and adherence to child-friendly procedures is evident from the experiences shared by survivors who felt heard, seen, and supported by the doctors during the medical examination. However, from the experiences of some parents and most CSOs, who have supported several children and families, the general absence of a child-rights based approach in the conduct of medical examination and provision of treatment emerged. Structural deficiencies, such as lack of adequate infrastructure and female doctors, affect privacy and timely examinations and contribute to an intimidating environment. A major area of concern is the mechanical approach towards consent for medical examination, and the high likelihood of survivors and families undergoing procedures without being explained its purpose, significance, and their right to refuse. It is also debatable whether consent is “informed” when families or survivors are provided information in a manner that reflects the bias and preference of the stakeholder and is aimed at compelling the parent or survivor to act accordingly. The risk of the stakeholders’ views taking precedence over the wishes of the survivor in the context of termination of pregnancies raise grave concerns about the implications on their right to reproductive autonomy. A significant area of concern is also the conflict of wishes between the parent and children with regard to termination of pregnancies that lead to on-ground confusions and cause delays in a very time-sensitive procedure. The failure to apply existing remedies and options in laws by stakeholders, demand for orders authorising the MTP where not legally needed, and pressures exerted by stakeholders upon the child and family all contribute as barriers for the child to make informed decisions and access the medical care they need.

Although children’s interface with the Magistrates is brief, their exposure to an intimidating environment while waiting to give the statement warrants intervention. Structural barriers such as lack of a waiting room for children and vulnerable witnesses in every court complex continue. While initiatives have been taken to establish Vulnerable Witness Deposition Complexes in several states, the practicality of their utilisation by Magistrates as compared to Special Courts needs to be examined. Videographed statements were envisaged in the law as a means to minimise re-traumatisation by having to repeat the statement. The Tamil Nadu approach indicates that robust data management protocols for storing and recording videographed statements are imperative, otherwise the risk to children’s privacy and long-term reintegration will be exceedingly high.

The accounts of the survivors, families, and CSOs have also brought to light that the strict application of several child-friendly provisions by Special Courts is inconsistent and varies based on the individual sensitivities even in case of mandatory provisions. The routing of questions through the Special Court remains a challenge and may be attributed to a lack of sensitivity and unwillingness to modify practice followed in other cases, and possible consideration of the impact of this practice on the right of the accused to a defence. Similar to the approaches of the police and Magistrates towards older children, the Special Courts also appear to treat adolescents differently and do not necessarily offer them breaks or allow a parent or guardian to be present. The narratives also underline the myriad ways in which delays in disposal of the matter affect the healing, financial health, privacy, social standing, and educational status of children. While attempts have been made in several states to establish a vulnerable witness courtroom or complexes and other child-friendly infrastructure, children have to navigate through common entrances and spaces before they appear before the Special Court.

The implementation of the child-friendly procedures during trial require the SPP to also assume a proactive role, and the fleshing out of the role of exclusive SPPs in such cases needs to be considered. Experiences of victims and families raise concerns that SPPs handle cases in a routine manner, and do not appear to recognise the special needs of child victims for comfort in their interaction and orientation to the courtroom and procedures. Capacity building programmes for SPPs also need to include a component of implicit biases and trauma informed approaches towards dealing with vulnerable victims and their families.

The POCSO Act recognises that child victims have a right to legal representation, and lawyers can play a crucial role in preparing the child for trial, advancing arguments, and advancing the rehabilitation, protection and support needs of the child. However, provision or recognition of independent legal representation of child victims is far from becoming the norm. Steps need to be taken by the National Legal Services Authority and State Legal Service Authorities to identify and build a cadre of trauma informed lawyers who can represent child victims.

PART C

# PERSPECTIVES ON JUSTICE AND PUNISHMENT



Justice is central to the response to sexual violence and entails several aspects such as, acknowledgment of harm, fair hearing, safety, support, truth-telling, reparation, empowerment, accountability, and restoration of dignity.<sup>519</sup> The clamour from the public and media for the death penalty in cases of child sexual violence and the Legislature's endorsement of it has oversimplified justice by reducing it to mere punishment for the perpetrator. The legal amendments operate on an assumption that all survivors identify with this view of justice. Adoption of a solely penal stance ignores the root causes of sexual violence and the responsibility of social structures and norms in perpetuating violence and discrimination and also "diverts attention from other problems ailing the criminal justice system such as poor investigation, crime prevention and rights of victims of crime."<sup>520</sup>

Studies in different jurisdictions have demonstrated that the concept of justice is complex, subjective, multidimensional, and continuously evolving.<sup>521</sup> Based on in-depth interviews with 60 adult survivors of sexual violence, McGlynn and Westmarland framed justice for survivors as being "kaleidoscopic", acknowledging that it is "a constantly shifting pattern, justice constantly refracted through new experiences or understandings; an ever-evolving lived experience."<sup>522</sup> Different elements of the kaleidoscope include meaningful consequences, recognition or acknowledgment of the harm done, dignity, being heard, prevention, and connectedness by receiving support and empathy and restoring a sense of belonging to society.<sup>523</sup> In another study, adults survivors of child sexual abuse expressed the importance of experiencing justice through having their stories heard in an equal and inclusive forum,<sup>524</sup> acknowledgment of right and wrong, taking of responsibility by the offender, and accountability.<sup>525</sup> The need to rebuild relationships so as to coexist with offenders and bystanders in their shared community also emerged, given that most survivors knew the perpetrator.<sup>526</sup> They emphasised that it was important to them that bystanders validated and understood their experience.<sup>527</sup>

<sup>519</sup> Judah Oudshoorn, Lorraine Stutzman Amstutz and Michelle Jackett, *The Little Book of Restorative Justice for Sexual Abuse* (Good Books 2015) 27-28; Barb Toews, *The Little Book of Restorative Justice for People in Prison: Rebuilding the Web of Relationships* (Good Books 2006).

<sup>520</sup> Law Commission of India, *262nd Report on The Death Penalty* (2015), para 7.1.3

<sup>521</sup> Judith Herman, 'Justice from the victim's perspective' (2005) 11(5) *Violence Against Women*, 571-597; Robyn Lea Holder and Amanda L Robinson, 'Claiming justice: Victims of crime and their perspectives of justice', (2021) 27(2) *International Review of Victimology*, 129-131; Clare McGlynn and Nicole Westmarland, 'Kaleidoscopic justice: Sexual violence and victim-survivors' perceptions of justice' (2018) 28(2) *Social & Legal Studies* 179-201; Shirley Julich 'Views of justice among survivors of historical child sexual abuse' (2006) 10(1) *Theoretical Criminology* 125-138.

<sup>522</sup> Clare McGlynn and Nicole Westmarland, 'Kaleidoscopic justice: Sexual violence and victim-survivors' perceptions of justice' (2018) 28(2) *Social & Legal Studies* 180.

<sup>523</sup> Ibid 179-201.

<sup>524</sup> Shirley Julich 'Views of justice among survivors of historical child sexual abuse' (2006) 10(1) *Theoretical Criminology* 125-138.

<sup>525</sup> Ibid.

<sup>526</sup> Ibid.

<sup>527</sup> Ibid.

There is a dearth of similar studies in the Indian context which explore the perspectives of justice of child sexual abuse survivors. A study by Counsel to Secure Justice and Centre for Criminology and Victimology, NLU Delhi,<sup>528</sup> based on interviews with 11 child sexual abuse survivors, eight parents of child sexual abuse survivors, and four adult survivors found that for most survivors, “justice and fairness required punishment, especially imprisonment, to repay the wrong.” Others wanted the offender to be shamed in public, desired certain answers from the offender to gain emotional closure,<sup>529</sup> and desired opportunities to narrate their stories, and an acknowledgment and sincere apology for the harm caused to them, as well as for offenders to not reoffend.<sup>530</sup> The notion of justice was complicated when the survivors had a close relationship with the perpetrator. While some survivors wanted the abuse to stop and the perpetrator to be held accountable, they also wanted them to remain within the family unit.<sup>531</sup> For family members, justice meant punishment, including imprisonment, prevention of re-offending, and also physical and emotional safety for their children.<sup>532</sup>

Against the backdrop of the introduction of the death penalty for sexual violence against children, it was deemed imperative not only to document the experiences of survivors and their families with the justice system but also to comprehend their personal conceptions of justice. This was undertaken to enrich and broaden the ongoing discourse on justice for victims and survivors of sexual violence. This section unpacks the perspectives on justice and punishment of child survivors of sexual abuse and parents of survivors. It is based on one semi-structured interview with them, conducted by representatives of organisations supporting them through the legal process. Interviews were also conducted with representatives of civil society organisations directly supporting survivors to understand their views on justice and punishment for sexual violence against children. Information about the perpetrator, the abuse, relationship between survivor and perpetrator, charges against the accused, and details about the incident/s of abuse were shared prior to the interview by the organisation or support person.

---

<sup>528</sup> Counsel to Secure Justice and Centre for Criminology and Victimology, *Perspectives of Justice: Restorative Justice and Child Sexual Abuse in India* (2018).

<sup>529</sup> *ibid* 31.

<sup>530</sup> *ibid* 32.

<sup>531</sup> *ibid* 33.

<sup>532</sup> *ibid* 34.

# 1 Profile of Respondents

## 1.1. Profile of Survivors and Parents

- The pool of persons interviewed corresponds to 20 cases of sexual assault. In 14 cases, only the survivor was interviewed. In four cases, only the parent was interviewed. In two cases, a parent and the survivor were interviewed.
- In total, 16 child survivors of penetrative sexual assault based in Ahmedabad, Bangalore, Delhi, and Guwahati were interviewed, all of whom were girls. They were between the ages of 14 to 21 at the time of the interview and were between the ages of 9 to 18 years when the offence was committed. Of the 16 survivors, parents of two survivors (one parent of each survivor) were interviewed.
- Six parents of survivors were interviewed, comprising five mothers and a father. Their children were between the ages of 5 to 17 when the offence was committed. Out of these six respondents, two were a parent each of two child survivors interviewed. The remaining four parents were interviewed independently, without interviewing their child survivor.
- Interviews with the survivors and parents were conducted in one sitting by a CSO representative who had worked with them to ensure that the interviewer had a pre-existing rapport and the survivor could easily communicate their discomfort, if any, during the interview.
- The offences against the survivors and the survivor children of the parents were reported and resulted in a criminal trial. All survivors had testified against the accused during trial.
- Within the pool of children and parents interviewed, 13 (65%) of those interviewed had cases pending and 7 cases (35%) of the cases had been disposed of. The pending cases had been pending for an average of 3 years and 8 months, while the cases that were disposed of had taken three years on average to reach that point. The average time between the incident and the interview was 4 years and 1 month and the persons interviewed were in touch with the support person/organisation conducting the interview during this period.
- The accused was known to the survivor and parents in all 20 cases. In six cases it was the father, in five cases it was the neighbour, in three cases each it was a cousin and an uncle, and in one case each it was a close friend of the victim's father, guardian, and romantic partner who was also her neighbour.

For more details on the profile of each survivor and parent respondent, refer to the Methodology section in Part B

## 1.2. Profile of CSOs

- 15 CSO respondents from 14 organisations directly working on cases of sexual violence against children and providing psycho-socio-legal support to them were interviewed.
- Organisations had been working on the issue and with survivors of sexual violence for 6 to 30 years.
- They were based in the states of Andhra Pradesh, Assam, Delhi, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Tamil Nadu, Uttar Pradesh, and West Bengal.

## 1.3. Methodological Limitations

Considering the sensitive nature of the study, survivors were identified with the assistance of organisations working directly with them so as to avoid and minimise secondary traumatisation and to also ensure that the survivor and parents are able to receive psycho-social support, if the need arises. This sampling method has given rise to the following methodological limitations:

- Since the decision was made to interview survivors who were well supported by an organisation and Support Person, and had completed their testimony, the pool of survivors and parents became limited to those who testified against the accused and remained in contact with the organisation. As the judgment analysis in this and other studies<sup>533</sup> have revealed, the majority of survivors and families did not testify against the accused. The respondent sample is therefore not fully representative of survivors and families who journey through the criminal justice system, as no survivor or parent who recanted their statement in court were interviewed. Hence, their perspectives on justice and punishment are not reflected in this section of the report.
- Studies have shown that a minuscule fraction of cases of child sexual abuse are formally reported, and that an overwhelming majority of children do not disclose abuse or report it to anyone.<sup>534</sup> However, perspectives of those who were sexually abused, but chose not to formally report child sexual abuse could not be gathered due to the methodological design.
- Perspectives on justice are dynamic and change or evolve over a period of time,<sup>535</sup> and thus a single interview may not adequately capture the complex and nuanced perspectives on justice.
- In short, owing to the selection of respondents, the experiences, justice needs, and perspectives on justice of the following are not reflected, even though they may have been subjected to sexual abuse as a child:
  - those who chose not to stay in touch with the support person or organisation supporting them
  - those who did not pursue the criminal case with the passage of time
  - those who did not testify against the accused or turned hostile
  - those who chose not to file an FIR

<sup>533</sup> Centre for Child and the Law, National University of India University, *Study on the working of Special Courts under the POCSO Act, 2012 in Delhi* (2016) 16.

<sup>534</sup> Ministry of Women and Child Development, Government of India, *Study on Child Abuse: India* (2007) 81.

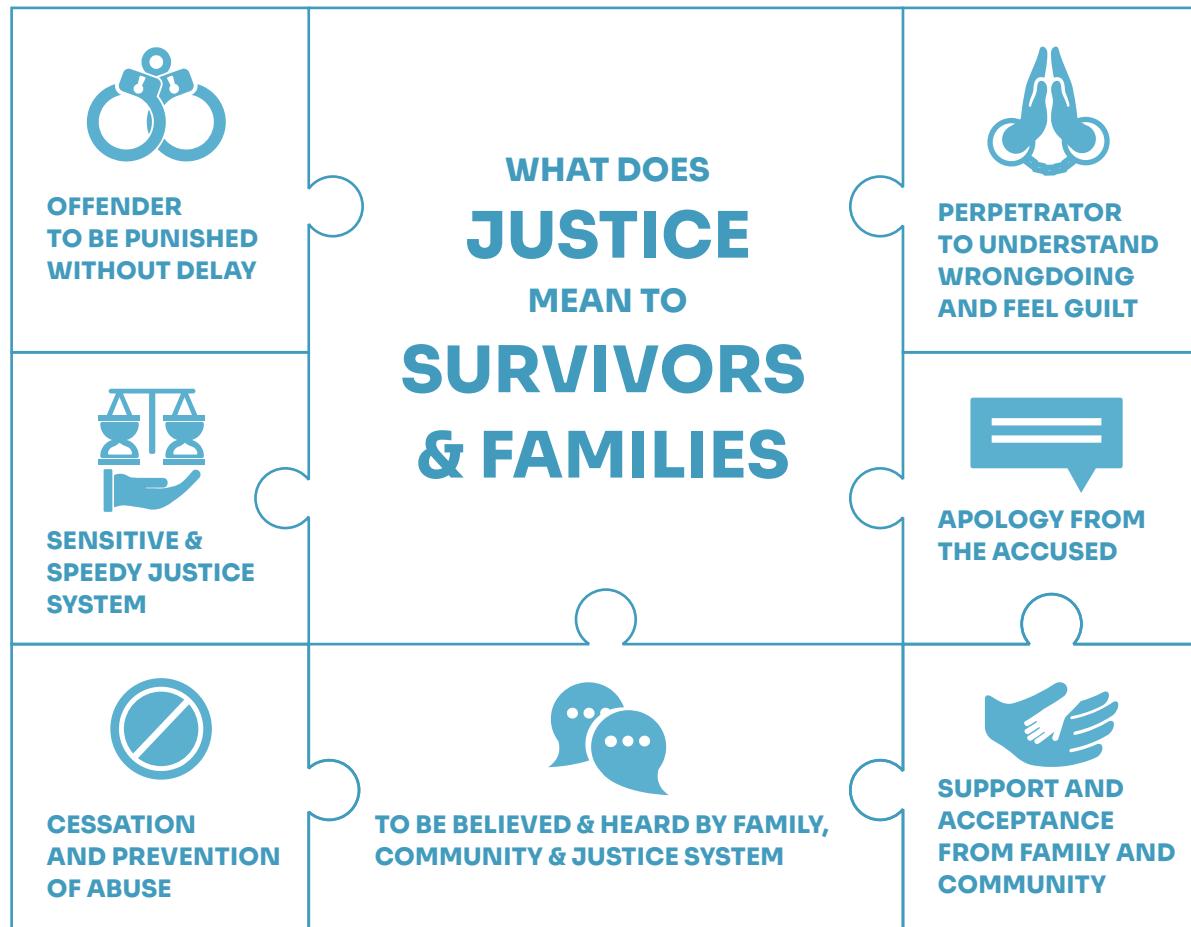
<sup>535</sup> Clare McGlynn, & Nicole Westmarland (n 522) 179-201.

## 2 Ideas of 'Justice' and 'Justice Needs'

Survivors and families were asked about their views on justice and their needs and expectations from the justice system, from the perpetrator, and their communities. Specifically, survivor respondents and families were asked:

- what the term "justice" meant to them when someone commits an offence;
- what was the outcome they would have liked/would like in their case and what would help them get a sense that justice had been done;
- how a sexual offender should be treated;
- views on death penalty and long prison terms for sexual violence against children;
- what were their expectations from the justice system, the accused, their own families, and the society around them.

It was observed that for the survivors and the parents, the idea of justice was focused on the **perpetrator being punished without delay; being believed, heard, and supported by their family, community, and the justice system; the stopping of sexual abuse in their case and for it to not happen to anyone else; and having a supportive, speedy, and sensitive justice system**. The survivors added that they felt they needed the **perpetrator to understand their wrongdoing** and feel guilt and some survivors also wanted an **apology** from the perpetrator. These conceptions and needs are further explored below.



The CSOs were also asked what justice meant to them/their organisation in the context of sexual violence against children, the impact of the increase in mandatory minimum punishments, and the introduction of the death penalty for aggravated penetrative sexual assault of children and rape of girls below 12 years on the children/families who report CSA. Their views on the appropriateness of death penalty for aggravated penetrative sexual assault of children and rape of girls below 12 years of age was also sought.

CSOs viewed justice more broadly and emphasised that the justice system should be more victim-centred and responsive to the needs of individual children. This would entail a supportive, speedy, and sensitive justice system, with complete adherence to child-friendly procedures at every stage, and compensation for survivors. For them, justice also included ensuring physical and emotional safety of children, providing them a space to be heard, and effective access to mental health services. Justice also meant acknowledgment of harm by the perpetrator, as well as reformation of the perpetrator, and an inquiry into the factors that led to the commission of the offence.



The perspective of survivors and families on justice can be categorised as follows:

### a) Justice as punishment

For survivor respondents and parents to feel justice was done, **it was essential that the perpetrator is punished.** Punishment meant detention of the perpetrator, deprivation of their liberty and contact with their family and the society at large. The pronouncement of guilt by the court **would lend legitimacy to survivors' claims of abuse and convey to the community at large that the allegations of sexual abuse were indeed true.** **Chaya\*** was sexually abused by her father on multiple occasions, which was reported when she was 15 years old, and her case took five years to be disposed of. She expressed satisfaction that her father had been convicted and shared:

**“When a person commits a crime, he should be sent to jail, he should receive punishment for the wrong they committed. When he got punished for his wrong deeds, then I felt that I received justice for myself.”**

For survivors and parents, it was imperative that the **punishment be meted out without delay.** **Sonia\*** was 16 when her paternal uncle sexually assaulted her and the case has been pending for nearly three years. She stated:

**“The wrongdoer should be given punishment without any delay. Action should be taken immediately – within 15 to 30 days. My case was delayed for three years. I don't know what is happening with my case...”**

**Meera\*** was 12 years old when she was assaulted by her school friend's father who was also her neighbour. Reflecting on the shame and harsh social consequences that is inevitably inflicted upon female survivors of sexual violence, she voiced that the perpetrator should also experience similar ignominy and even death:

**“Whatever dignity and respect he has earned should be taken away from him – so that he realises his mistake. Because when such a thing happens to a girl, her life is ruined. She has a hard time getting married. We've hid this incident that happened to me from the people in the village. If they find out then I won't be able to get married. This is why we sent my brother to the village to find out if anyone knows about this. We say no to relatives when they want to come here. My cousins who visited found out, but as brothers they understood. But we're always in the fear of people finding out. I want him [offender] to feel the same pain that I felt. I want him to not be alive. When my Ammi cries, I wish death upon him.”**

For **Sarika,\*** who had been sexually assaulted by her father at the age of 13, justice generally entailed punishment that is proportionate to the crime —

**“Punishment depends on the offence.”**

At the same time, there were survivors who felt that punishment would not give them a sense of justice. **Nancy,\*** who had been raped by her cousin when she was 15 years old and was 18 years old at the time of the interview, distinguished justice from punishment. She said:

**“** No matter what punishment he gets, I will never feel that I have got justice, no matter what happens. No matter how much punishment he gets, he will never change. What he's done can't be undone.

There were some survivors who felt long prison sentences for the perpetrator in their case were not warranted, as the perpetrator had already served some time in jail or because with time, their desire for punishment had diminished. **Aarohi\*** had been forcibly married to her uncle at the age of 17,<sup>536</sup> had wanted him to be punished initially, but has since moved forward in life and is now studying in college. Her feelings have changed:

**“** [...] I wanted the guy to be punished. Now I am 20. When it happened, I wanted him to be punished. Maybe I don't care now. Now I don't care much about punishment. My parents were also at fault. Now I am like "whatever". I am done with it. I want him to be punished also. I just don't want him in my life.

For **Divya,\*** who was 14 when she was sexually abused by her father and 18 at the time of the interview, although justice meant punishment, she felt her father had served adequate time in jail and wanted him to be released:

**“** He got the punishment I wanted to give him [being in jail]... Now, I want him to be released... I feel, from 2018 till now, the days he spent in jail are fine. Now he should be taken out of there.

Explaining the low priority accorded by families at times to the actual outcome, a **CSO respondent from Assam**<sup>537</sup> shared that families were often less worried about the conviction, as they had larger and more basic concerns about their daily sustenance:

**“** They're more concerned about how do we sustain, how do we eat, or how do we have shelter. These are more important concerns because a lot of them have to relocate, a lot of them lose their livelihoods because of an incident of abuse. And they also come up with hundreds of things [to worry about], for example they have no ration cards, they have certain land issues, so they go into the regular humdrum of things, rather than just focusing on that, because the process itself is so long and gruelling and tiring. They don't want to be anywhere near the system.

<sup>536</sup> She was 21 years old when she was interviewed.

<sup>537</sup> 3C1.

A **CSO respondent from Delhi**<sup>538</sup> also explained how the idea of punishment as justice transforms when survivors reflect on their own cases, especially when the accused is a father or a relative:

**“** Children do not wish their own fathers or other relatives to spend the rest of their lives in prison, or to be given the death penalty. In one such interaction with a child who was assaulted by her father, while the child claimed that accused persons should be given the death penalty, when asked about her own father, the child said she wants her father to be released from jail and for him to apologise to her. It is observed that for children to fathom the meaning of life imprisonment or the death penalty, in general, could be difficult for a plethora of reasons, but when spoken to directly about the alleged accused in their own cases, the idea of punishment being a form of harm in itself becomes more real for them.

## b) Need for the abuse to stop and be prevented

Survivors shared that it was important that the abuse stop and for the perpetrator to be prevented from sexually abusing others. They also felt that speaking up, reporting the case, and the justice system's intervention would have a deterrent effect on other perpetrators. Parents also shared the need for the abuse to stop, and viewed their case as a means to ensure that other children are not abused by the perpetrator. Several CSO respondents also shared that the children they supported told them they just wanted to get out of an exploitative or abusive situation, but did not wish to engage any further with the justice system after the accused was arrested. It appeared that the intervention of the police and arrest of the perpetrator were seen as an immediate or effective means of preventing further harm.

Ishita,\* who was sexually abused by her father on multiple occasions, added that she would like such crimes to be eradicated owing to their severe and long-term impact on survivors' reintegration in society.

However, not all survivors felt that the criminal justice system can prevent or deter further harm. Commenting on the failure of the system in deterring sexual abuse, **Farida,\*** who had been subjected to prostitution several times by her guardian, shared:

**“** I still get to hear that what happened to me has happened with others and is still happening to a lot of girls. I was really thinking that someone should come to me and interview me about this. I was really thinking about that. So that I can tell them that this has not stopped... whatever happened to me is still happening with a lot of other people.

### c) Need to be heard and believed by stakeholders, family, and community

**Survivors expressed the strong need to be heard and believed** by the functionaries in the justice system, family, and community. **Nancy** said:

**“** Something wrong happened to me, and I want to prove that to everyone, despite what people say. I want my truth to come out, so that this doesn't happen to anyone else.

Those who were believed by the justice system found it empowering and it gave them courage and validation. The victory in court held a lot of significance for Chaya, more so since she encountered suspicion and doubt from her family members after disclosing to them that her father had been abusing her:

**“** So, there was an impact on my family. They doubted my story, my family even questioned me. For example, my brothers did that and asked if it actually happened. I told them that yes, it did happen. They thought I was lying but later on they did believe me.

...I received help, my case went well, it was dealt with nicely, I did not face any problems. The process was so long, I told so many people about this and that, and those people heard my truth and sent the accused to jail. This is a very big feat for me.

Other survivor respondents also shared their hurt and anguish for not being believed by many stakeholders, their own family members, and the larger community. For instance, some stakeholders had implied that **Sarika** had filed a false case against her father to conceal a sexual relationship with some else:

**“** They thought I was in love with someone and I have done this and not because my father did anything wrong.

**Meera**, whose case has been pending for over four years, was not believed by others in her community when she alleged sexual abuse by her friend's father, who was also their neighbour:

**“** Everyone said this is a false case – so I decided that I do not want to go near people who think like this. They should think they also have a daughter like me – and they should realise that I'm like their daughter. I just want them to come and tell me that they made a mistake and what I did was right.

Parent respondents also shared that they were disbelieved at multiple points by different stakeholders. The police, in some instances, refused to file the FIR. There seemed to be a general scepticism and families felt they had to constantly demonstrate that what they were saying was true. They had to contend with derogatory questions and perceptions that the case was filed to

extract money or compensation. **Parvati**, whose daughter was 12 years old when she was sexually assaulted, shared that the PP speculated and asked if she had another relationship because of which she was lying about her husband sexually assaulting her daughter:

**“** ...the PP asked me, 'Is the case true?' To which I replied, 'I am her biological mother. Why would I do something that will leave a spot in her character forever, I don't have the right to do so. And if I had to file a false case like this, I would be a step-mother and not her biological mother. I don't have any vested interest at all. [If] I had any grudge against my husband, I would have implicated him in a case where I am the victim.'

That the need to be heard was largely unmet within the justice system emerged from the responses of several survivors who shared that no efforts were made by the functionaries to ascertain what they wished to convey. Aarohi\* said, "In court, I wanted them to listen to me. They didn't." **Nancy\*** also voiced a similar need:

**“** I wished for a lawyer who would speak to us, try to understand what I was trying to say. You have fears running in your mind. So if they spoke to me, then they would have understood.

Sonia\* observed that no effort was made by the police to connect with her as she and her family waited in the police station: "I didn't like that the police didn't speak to us for a very long time. There was no one else there, it was just us. But even then they didn't speak to us."

The adversarial and unfamiliar nature of the justice system intimidated many children and they felt that they did not have the space to share openly. **Nancy\*** said:

**“** According to me, in such cases, the girl [victim] should be spoken to properly so that she is understood. When a child encounters the system, everything is new for them, they feel very odd."

## d) Need for support from family and community

Since the perpetrator was predominantly from within the family or someone in close proximity to the child's family, the reporting of the incident inevitably led to a breakdown of relationships. The survivor respondents felt that they were often disbelieved by some family members. They expressed their acute need to be supported by their family and to also be able to rebuild relationships that were fractured because of the case. Survivor respondents also articulated the need for an assurance of safety and protection and continuous support from their family members as they journeyed through the criminal justice system.

Having been sexually abused by her father, **Chaya\*** shared her anguish about her mother not believing her and instead blaming her for the abuse:

**“** I mean, she should have understood that what happened to me was wrong. She should have explained to me that it is not okay. But mummy did not say anything like that. She kept telling me, 'It's your fault, you did this, you shouldn't have spoken like that'.

Survivor respondents also articulated their need for the family to support their educational aspirations. CSO respondents explained that a disruption in education is a common fallout of cases in which the father, who is also the primary breadwinner, is the perpetrator. Some survivor respondents also shared that they were stopped from attending school, not allowed to write exams by the school authorities, or had to change schools after the abuse was reported. They expressed the need for their families, as well as schools to ensure that their education was not affected.

**Sarika\*** who was 13 when she was sexually assaulted by her father and was disbelieved by her mother and family members, expressed guilt for filing a case against her father as it ended up impacting other girls in the family. Her experience illustrates the dilemmas and gendered consequences of reporting sexual violence that criminal laws cannot fathom or address:

**“** My family married off all their girls in fear of something like this happening. This made me very sad. I felt like if I had not filed the case they could have completed their education instead of getting married.

**Sonia,\*** who was sexually assaulted by her uncle, also articulated an instance where instead of being supported, her family was turned out of their home for no fault of theirs:

**“** When this happened, we were evicted from our rented house when the landlords found out. They should have supported us. They should realise their mistake. If this happened to them, we would support them.

Neha's mother **Bhavna\***, spoke about the stigma and rumours that followed them after the case was reported against her husband:

**“** ... local people used to taunt my daughter whenever she went out of the house. There were even rumours that my daughter was three months pregnant...Whenever I go out, people usually talk to me about the incident and say that this shouldn't have happened.

CSO respondents shared that child survivors sometimes feel as though they are no longer accepted by their families and are even blamed for the abuse or for bringing shame to the family by reporting the case, especially in incest cases. One CSO respondent from Delhi<sup>539</sup> highlighted that interpersonal relationships are affected in incest cases, and are further complicated due to the

financial strain and pressures from the extended family. The fallout from the reporting is far more severe for the child:

**“** ...a lot of children would come and tell me it is not the abuse that has impacted them. It is the reactions of the people after the abuse that has affected them. Whether these reactions come from their own families, their own parents, their own extended families, school, their principals, their own friends. They have stopped talking to them, their own mothers blaming them for their abuse, their own parents beating them up for abuse by a neighbour. So I think more than abuse, what traumatises the child is the effect, is the reaction of the people in the society.

Underlining the acute need for the children to be believed by their family, a **CSO respondent from Maharashtra**<sup>540</sup> shared that the children they had worked with in incest cases sometimes felt that justice had not been served despite a conviction, because their family disbelieved them or blamed them for the conviction:

**“** The children who are victims of sexual abuse often have to hear that their father went away or got caught because of the victim and that is why the education of other children could also not get completed, their lives have also got disturbed. So, even if there is punishment, justice is absent for the child as they have to hear this.

The impact of the lack of family support highlighted by the CSO respondents was also evident in the responses of the survivors. **Sarika\*** was sexually assaulted by her father but her mother disbelieved her and chose to support her father, after which Sarika was declared a child in need of care and protection and placed in a CCI. She shared:

**“** The biggest challenge was facing my mother. If she had supported me then I could have dealt with anything. But she did not. My family kept asking me to withdraw the case. They told me that God will take care of everything and that God will punish him. There was no family support. They told me that no one here will take care of me.

### e) Need for a supportive, speedy, and sensitive justice system

Survivor respondents and parents expressed their frustrations with the justice system and their need for speedy justice. They wished to move forward and avoid having to make multiple visits to the court, and the secondary victimisation that resulted from repeatedly recounting the abuse before multiple authorities. **Chaya\*** shared:

**“** I didn't like that we were asked to travel again and again, the process went on for so long, and I was repeatedly asked how it happened. Say it to one person, then say it to another. I was upset that they were asking about the case repeatedly.

Both survivors and parents expressed their need for justice to be delivered in a time bound manner. **Radhika\***'s daughter's case took four-and-a-half years to be disposed of. She shared:

**“** Within the legal system, the case was so delayed, questions were asked repeatedly about a sexual offence. They stretched the case so much. They should finish the procedure fast, especially in these kinds of sexual offence cases. It's better if they complete fast. We should bring them [victim] and their thoughts as far from this incident as possible. If it takes five or six years in court, then they won't even forget it. They will just be in that depression. It will affect their education and their life will be impacted. Children will feel guilty as they grow up. It will especially affect girl children. They [the legal system] need to support us by finishing the case fast.

A **CSO respondent from Delhi**<sup>541</sup> made a poignant observation that children often regret having lodged the case after they experience hostile treatment in the criminal justice system:

**“** ...I have not met a child till now who is happy about the fact that they got into the criminal justice system and that they reported the abuse. ... most of whom I have spoken to about it would respond saying 'I wish I had not filed the case, at least this wouldn't have happened.' So the impact of being in the system for the children we've spoken to is worse for them than having been abused in the first place.

CSO respondents also mentioned that the level of impact and trauma varies depending on the level of support survivors receive from the system, and unfortunately, the lack of financial assistance or counselling aggravates their experience of the criminal justice system. It ends up impacting their participation in the legal process, with some children and families not wanting to continue or pursue the case further. CSO respondents shared that the children and families often wanted to withdraw the FIR or the case, especially in cases of incest.

According to a **CSO respondent from UP**,<sup>542</sup> the hostile environment within the justice system also impacted the relationship between the parents and children:

**“** Once the child is a victim, he/she is passing through a very difficult time and the way the stakeholders behave at times and the way the people behave, it leaves a very negative impact on the family and the child. In some cases the family begins to think, why is this child my child? And it becomes very negative.

## f) Need for the perpetrator to comprehend wrongdoing

For survivor respondents, it was important that the perpetrator realise that they had done something wrong and understand the impact of their actions. **Sarika\*** wanted her father to think of what he had done every single day and feel remorse:

**“** They should be made to keep remembering what they have done since I remember it every day. I do not know how to make them remember and feel guilty.

<sup>541</sup> 2C2.

<sup>542</sup> 11C1.

For **Saanvi\***, who was 9 years old when she was taken from her home one evening by her father's co-worker and sexually assaulted, and 18 years at the time of interview, justice was about the perpetrator realising the impact of the harm done and equally about the person harmed reclaiming her rights and self-esteem. She shared:

**“** Justice means if someone has done wrong he should feel guilty about it and he should know what wrong he has done.

I think I should also be strong. I should get my rights. I should think, what I have done is not wrong.

For **Aarohi,\*** justice seemed to be beyond punishment — to include space for the humanity of the perpetrator, to understand their circumstances:

**“** To me I think we should hear both sides. I don't know what justice means. Maybe the person who did it has something going on in their life. we don't know that.

## g) Apology from the perpetrator

Survivor respondents and parents were specifically asked if they wanted an apology from the offender, family, friends or community, and if they had, in fact, received an apology. Six survivor respondents said that they would have liked to receive an apology from the perpetrator and an express acknowledgment of guilt.

The deep need for an express acknowledgment of harm by their fathers was voiced by Chaya\*, Sarika,\* and Divya.\* **Chaya\*** said:

**“** He should have said sorry because what he did was wrong, and he should have said this should never happen with anyone else.

For **Sarika,\*** who was 13 when she had been sexually assaulted by her father, and was disbelieved by her mother and family, his refusal to accept responsibility caused immense hurt and pain. She shared:

**“** Instead he did full drama, which I did not like. He could have said sorry, and [that he] will not do it again. But, for the major offence he has done, the sorry would not have solved it and he should be punished. So I will not expect anything from him. But, he should admit to what he has done.

A **CSO respondent from Delhi**<sup>543</sup> also spoke of the need expressed by children for an acknowledgment of harm by their fathers. She shared:

**“** One child that I spoke to, she did not want her father to be in jail. She said, ‘Papa has been in jail for a few years. As long as he comes out and he acknowledges that he did this to me and he stops lying about it, to me that is more than enough. He should acknowledge that what he did was wrong, and apologise’.

The quality of the apology was also significant for the survivors. **Aarohi\*** wanted an apology from her uncle who she had been forcibly married to, as well as one from her family members. Although she received one from her mother, she did not think it was authentic:

**“** My mother did [apologise], though not whole-heartedly. They think only for themselves. If they all apologise it will make me feel better.

For **Divya,\*** it appeared that a heartfelt and honest apology from her father is what she needed to deal with the harm she had experienced:

**“** If he would have said sorry to me, If he would have said lovingly that he had made a mistake, if he had said sorry, I would have felt that my father had realised his mistakes. However, he says otherwise. So, I get angry... I would not have needed anyone's help if he had said, 'Sorry child, I made a mistake'. then I would not have done anything. I would have left. I would have just said that don't do it next time.

**Nancy\***, who had earlier expressed that no amount of punishment would make her feel that justice had been served, shared that if the perpetrator were to apologise, understand the impact of his actions, and support other survivors, that would aid her healing process:

**“** “Yes, I want him to come say [sorry] and acknowledge his mistake, and say what happened, happened, but next time he will help someone who is going through something like this. I just want to tell him that what he did to me, he shouldn't do to anyone else. And that he supports someone else going through something like this. I'd feel better to know that he helped someone else.

The need for the person who caused harm to take responsibility in-person emerged from Nancy's account:

**“** My family and I were shown in writing that he has apologised and said 'I thought of her as a girlfriend and did this [the crime]. So please forgive me.' but I only read it in an application, it wasn't said to me.

Some survivor respondents did not want any apology from the perpetrator as they did not wish to have any relationship or further interaction with the perpetrator; or they felt that an apology would not have changed anything. Esha,\* who was 17 when she was forced into sex work by her neighbours on the pretext of employment, and 21 years old at the time of the interview, added that she did not want to face the couple who had trapped her into sex work, as seeing them in court itself was an intimidating experience.

When the parents were asked about whether they would like an acknowledgment or apology, they shared that they did not want to speak to the perpetrator, or have anything to do with them. They expressed that the crime was inexcusable and they did not want any apology from the perpetrator. From their accounts, it appeared that they viewed the apology as a pressure on them to forgive the perpetrators. **Parvati\***, whose husband had sexually abused their child shared:

**“ I don't want his apology. He is my enemy now. He has broken the family. I want legal separation from him. If he can commit this crime on his own daughter, there is no logic in forgiving him.**

This was also evident in **Mary's\*** views, whose child had been abducted, sexually assaulted and grievously injured by a neighbour:

**“ I will never forgive him. He has to be punished. Even if he asks for an apology, I will want him inside [jail] and will not forgive. You should get them punished. They should not be forgiven. Justice must be served. Punishment must be given.**

## **h) Mental Health Support**

Parents shared that they had observed their children go through emotional turmoil, depression, nightmares, and suicidal ideation. Mental health support emerged as a strong need, not only for the child, but also the family members who were consumed with fear and guilt. **Sheela\*** spoke about the debilitating experience after her 9-year-old daughter was abused by her nephew:

**“ This was worse than death. For almost six months, we haven't been able to sleep or eat. We laugh a forced laugh. It's a small child who does not know anything. That boy ... we had fed him and done everything for him. I could not stand it. There is no peace, no sleep. It took us more than a year to come out of this.**

Having witnessed the emotional and mental impact of sexual abuse on survivors, which was often aggravated during their interface with the justice system, several CSO respondents shared that an overemphasis on punishment and conviction as a way to heal the trauma caused by sexual violence is misplaced. The impact that may arise from the incident is long term and could be traumatic, and multiply manifold at each stage after the reporting of the offence. Such trauma can only be addressed through the actual provision of accessible and affordable mental health services, aimed at enhancing the agency, resilience, and self-esteem of children. CSO respondents observed that there was a lack of mental health professionals working with survivors of sexual assault and their families, and suggested investment in an in-built mental health care programme within the justice system, offering long term individual, family, and group counselling, and restorative circles. Restorative Circles can be healing spaces for survivors to share feelings, seek support, and create a community of care for survivors.

## 3 Perspectives on Death Penalty and Minimum Mandatory Sentences

This section examines the views of survivor respondents and parents, as well as CSO respondents, on the death penalty for sexual offences against children. Opinions of parents and survivor respondents were sought on:

- the current statutory framework providing long prison sentences and death penalty for sexual offences against children
- death penalty as a punishment for rape of children below 18 years

Considering the sensitive nature of the issue, the questions were framed generally and respondents were not expressly asked to reflect on the death penalty in the light of their own cases. They were, however, asked about the outcome they would have liked in their case and what would help them feel that justice has been done. Further, data collectors exercised caution and discretion while posing the question pertaining to death penalty, particularly in cases of incest or where the matters were still pending, and hence responses of all survivors to these questions were not available. Although the questions were asked in a general context, some survivor respondents and parents respondents referred to their own cases in their responses.

Opinion of the CSO respondents was specifically sought on the appropriateness of the imposition of the death penalty for the offence of aggravated penetrative sexual assault and rape of girls below the age of 12 years. CSOs were also asked about the impact of minimum mandatory punishments and the introduction of the death penalty for aggravated penetrative sexual assault of children and rape of girls below 12 years on reporting of sexual crime.

### 3.1. Views of Survivors on Death Penalty for Rape of Children

When expressing what outcome they would have liked/would like in their own case, Preethi\*, Meera\* and Anchal\* said that they would have liked the death penalty for the perpetrator in their own case. Chaya\*, Neha\*, and Fatima,\* whose cases had been disposed of, said that they were satisfied with the sentence the perpetrator received, which was a life sentence, 25 years rigorous imprisonment, and 20 years rigorous imprisonment, respectively. While Saanvi\* was satisfied with the 10 years rigorous imprisonment imposed on the perpetrator, she added that she would have wanted life imprisonment for the perpetrator. Anchal\* said she was not satisfied with the accused getting acquitted and would have wanted the accused (her guardian who forced her into sex work), to receive punishment and for the case to get media attention so that people are made aware and these incidents are not repeated. Sarika,\* Meera,\* Sonia,\* and Ishita,\* whose cases were still pending, wished for the accused to be convicted and sent to jail, but did not express any thoughts on the type or quantum of punishment. Aarohi\* shared that while she strongly wanted the perpetrator to be punished immediately after the incident, with the passing of over three years, she felt less concerned about the punishment, but was clear she did not want her uncle-husband in her life. Divya\* shared that her father was in prison as she had initially wanted, but since the case had been pending for 3.5 years, she now wanted him to be released. For Nancy,\* no amount of punishment

was enough and she wanted the perpetrator to truly understand her hardship. She felt that he might be empathetic towards her if he were to marry someone who had experienced sexual violence.

However, when asked about their views on the **current statutory framework providing long prison sentences and death penalty for sexual offences against children, and their opinion in general on the imposition of death penalty for child rape**, a range of views emerged. Survivor respondents in favour of the death penalty were of the view that the mindset of perpetrators would not change, perpetrators would re-offend if they were to be released, and that the death penalty would instil fear in offenders. **Sonia\*** stated:

**“They should be given the death penalty. They shouldn't be given the chance to realise their mistake – this they should have realised when they were doing it.”**

**Anchal\***, who was 15 when her guardian forced her into sex work, considered the possibility of reform, but was of the view that since the person who harmed her had not demonstrated remorse or the desire to change, death would be appropriate:

**“I am not thinking poorly of anyone, didi. I want them to improve/reform. But if they do not, then this is proper for them. For example, for XXXXX [name of perpetrator retracted], death penalty is proper because she did not want to reform. She wanted to do wrong. Even now, she is out, she has not improved, she is not going to improve.”**

**Meera\*** was of the view that the perpetrator in her case (her friend's father) should be sentenced to death to prevent him from abusing others, as he had abused other girls as well:

**“...because he has ruined not just mine, but other girls' lives as well. And this is not a habit that goes away. Who knows, maybe he might not commit a crime here, but somewhere else. So I don't want it to happen to anyone else. If they get the death penalty, they will be scared.”**

Echoing the fear that the crime would be repeated and the belief that imprisonment may not lead to any shift in attitudes, **Saanvi\*** stated:

**“If there is no chance of life imprisonment, then [the] death penalty should be given. Not a small jail term, because their thinking will not change. They may come out with more anger and do such things again. So the death penalty is alright. We cannot give guarantee that they will not do it again. Some other children may not recover. I recovered.”**

Although Savitri\*, Divya\* , Preethi\*, and Nancy\* were in favour of the death penalty, they qualified their views or expressed that they were conflicted about it. They stated that offenders of sexual violence should get life imprisonment, but death penalty should only be awarded in 'serious cases' which resulted in death or grievous injury. Savitri\* who was held in captivity for about six months by her neighbour until the police rescued her, felt that life imprisonment should be given in "very bad" cases, as short-term imprisonment has the risk that the offender might try to "disturb" the survivor. With respect to the death penalty, she similarly said, "The death penalty can be given in some cases which are very bad."

Divya, who felt that her father (the perpetrator) should be released as he had served adequate time in jail, qualified her support for the death penalty stating, “If a child dies, he should also be hanged/ killed.” **Aarohi\***, whose case had been pending for more than three years and was of the view that justice also entails understanding the perspective of the perpetrator, felt conflicted and shared:

**“** I feel life imprisonment is also not enough to just realise their mistake. What is it doing to the offender? Does it help him realise?... [On death penalty] - This is the best I feel. I am conflicted also. If it is rape and torture, they should be given death penalty or maybe a chance to reform. I am conflicted about this...depending on the case's seriousness. Maybe innocent people may be framed then death penalty is a problem and give them another chance. If there are very serious cases then give the death penalty.”

Preethi\* was 14 years old when she was sexually abused multiple times by her paternal uncle. Preethi had been living with her paternal uncle and his wife from an early age. Unable to have a biological child of their own, the couple had requested Preethi’s father to permit them to take care of her as their own. As a result of the abuse, Preethi became pregnant, and gave birth to a stillborn child. She was 17 years old at the time of the interview and shared that she did not want to think about the offender, but felt anger and wished for him to die as it would deter people like him from committing crimes. She said, “Justice for me is for him to be hanged.” At the same time, she also shared that sexual offenders should get life imprisonment as it will make them think, “If I go to jail for life, how will I know about the world?” For rape cases, however, she stated that the death penalty must be imposed.

**Nancy\*** proposed different types of punishment based on the nature of the crime and shared that, “someone who sexually harasses should be given punishment of three to four years. But someone who rapes, should be killed in an encounter.” She, however, also added that:

**“** If this happens to a minor, it’s better that they get married to each other instead of the death penalty, once they reach the marriageable age – if they agree to that. Then rape case will be dismissed and they can build a life together. If they don’t want to accept the marriage, or if the offender doesn’t acknowledge his mistake, then punishment is fine. If he realises his mistake, then he should be given a chance.

Esha\* and Sarika\* were against the death penalty, but for different reasons. **Esha\*** said:

**“** I don’t want that they [the couple that trapped her into sex work] should be hanged to death. I don’t want that, I just want that what has happened to me should not happen to someone else tomorrow. The type of people who do this should not do this to anyone again.

According to her, offenders of sexual violence should not be hanged because, “they also have families” and they should instead be given “the kind of punishment that ensures he’s not able to do this ever again.”

**Sarika\*** was of the view that life imprisonment was more onerous than death penalty and should hence be preferred:

**“** There is no use in the death penalty. Everyone has to die one day. They will just die early after ruining my life. Why should they get to die fast? If they live, they have to work hard and survive. But if they die, they get freedom from all that.

Survivors' support for the death penalty was driven by a composite set of considerations that are heterogeneous. Some think of it in terms of retribution — perpetrator causing the death of a victim deserves death, or in terms of justice. Others thought of the death penalty as a deterrent for others or a way to prevent further harm. The justification for the death penalty was premised on the belief that the perpetrator is likely to continue abuse and the only way to stop them is to end their life. Survivors also felt that the perpetrator would not change their attitudes or ways and this informed their ideas regarding the appropriateness of the death penalty. It indicates the need of the survivors to see an actual change in the person who caused harm, and if the remorse is not apparent, then some felt that drastic measures are required. This also appears interlinked with the notion that the death penalty will deter further abuse by creating fear in the minds of other abusers.

Aarohi,\* who wanted the perpetrator to understand the wrongfulness of his actions, reflected on the limited forms of punishment — imprisonment and death penalty — and wondered whether punishment helped in making the perpetrator realise his mistake. Anchal similarly felt that punishment should be imposed if the perpetrator does not make amends or is very unlikely to make amends rather than because of the offence itself.

### 3.2. Views of parent respondents on death penalty for rape of children

Parents were asked their views on the provision of long prison sentences and death penalty for sexual offences against children, and their opinion in general favoured the imposition of death penalty for child rape. Due to the small number of parents interviewed, no conclusion on the impact of passage of time on their desire for the death penalty could be meaningfully drawn.

While specifically reflecting on the outcome they would like in their child's case, Mary,\* Radhika,\* Sheela,\* and Parvati\* shared that they would like the perpetrator to be hanged. Radhika and Sheela's children were abused by a cousin brother, Parvati's daughter was abused by her husband, and Mary's daughter was abused by a neighbour.

Families in favour of the imposition of the death penalty said that committing grave violence against a child was inexcusable and they should thus be given capital punishment. They also characterised the perpetrator as someone who was a beast, an animal, or inhuman because of the acts they had committed against a child and stated that this warranted death. According to **Radhika.\***

**“** He knows this is wrong. Everyone knows this is wrong. You don't need education or to be well-off to know this is wrong. You cannot do this without knowing. That is why the death penalty is correct. There is no option for him. He should get punished immediately. This is why I feel the death penalty is correct.

**Suresh,\*** whose daughter with disability had been sexually assaulted by a neighbour when she was 17 years old, was of the view that death penalty would be appropriate in cases of child rape in which the victim was also killed or grievously injured or died as a result of the abuse:

**“** It would depend on the crime. If he has cut somebody's throat, burnt a girl, then it [death penalty] should be given. If with a girl/daughter, he burns her or kills her, then he should be given the death penalty.

**Sheela,\*** whose 24-year-old nephew had sexually abused her 9-year-old daughter and her niece multiple times, expressed varied and strong views on punishment, and preferred castration instead of the death penalty:

**“** They will die in one day. It is actually an easy way out. He must suffer. They should cut it off. He should cry and die every day. That is what makes him a man, and because he's a man he has done this, so you should cut it off. They [should] shoot him in the middle of the road. People should see him and get scared.

Parvati,\* Bhavna,\* and Sheela\* said that life imprisonment could also be an appropriate punishment.

**Sheela\*** stated:

**“** If you ask me, honestly, I will be happy if he is hanged...If you have done something like this, then you don't deserve to live. I will be okay even if he goes to jail for life, because at least he will continue to be punished as long as he is behind bars, but if he comes out, I will be very dissatisfied.

**Bhavana\*** said that both death penalty or life imprisonment till the remainder of natural life were appropriate punishments, she expressed overall satisfaction with the 25-year-sentence that was imposed on her husband for raping their daughter:

**“** I got my justice. The journey was difficult. But I am happy that other people will be scared to commit a similar crime after the 25-year-sentence my husband got in this case. The judgment I got, I am happy. But I would have been happier if he would have got imprisonment for the remainder of his life.

However, Mary\* and Radhika\* said that the perpetrator should be killed immediately and not be given life imprisonment and felt that if the perpetrator lived, the abuse lived on in their minds.

**Mary\*** shared that she wanted the neighbour who abducted, sexually assaulted, and grievously injured her daughter to be given the death penalty:

**“** I wanted him to die. If he is inside, they need to give him food and all. If he died, I could have just forgotten about him. It would have been nice if he died. It is a waste to feed him inside. Why should we help people like this? I would have been happy if he died.

### 3.3. Insights of CSO respondents on the views of survivors and parents on punishment

In the experience of the CSO respondents, the expectation of the survivor and their families from the justice system depended on the age of the victim, gravity of the offence, and the relationship of the survivor and perpetrator, and the expectations also changed over time. CSO respondents shared that at the start of the case, families usually wanted the death penalty and viewed it as “justice” for the harm caused to their children. However, over time, and after the due process of law and the punishments prescribed are explained, their expectations and understanding of justice changed. Some expressed the need for a conviction as validation that the harm did take place and that the offender was responsible, while others desired that the offender be sentenced to imprisonment for the maximum time prescribed by law.

CSO representatives mentioned that support also entailed offering explanations of how trials work, so that expectations of the families and survivors are reasonable and they are not left disheartened if the court does not impose life-imprisonment or the death penalty. Families often struggle to understand or accept the rights of the accused persons and according to three CSO respondents from Maharashtra, Delhi, and West Bengal,<sup>544</sup> they do not appreciate the accused being released on bail. Even if it is explained that the perpetrator cannot be kept in jail for the entire length of the case, they understandably express anger and hurt when they see the perpetrator out in the community. At times, the need to see the perpetrator face consequences dominates or prevails even though they understand the working of the justice system and the rights of the accused.

CSO respondents also shared that the desire for the death penalty diminished when the perpetrator was in a proximate relationship with the child. If the perpetrator was a stranger or a known person, justice was often equated with the imposition of the death penalty, but that changed in incest cases. If the perpetrator was a father, the family did not want the death penalty, as they were concerned about the loss of livelihood that came with the sole earning member of the family being behind bars. A **CSO respondent from Maharashtra**<sup>545</sup> said:

**“** I've had [cases of] girls who have registered FIR against their fathers, grandfathers, close family members...before her deposition in court, she tells me, 'I want to turn hostile. I'm 15 years old, my father has been in jail for a year and a half. For me, that is justice. This is what I want. I'm happy. One and a half years is enough. I don't want him to be in jail for another 10 years. I have two other siblings'.

Similarly, a **CSO respondent from Delhi**<sup>546</sup> noted that in incest cases:

**“** The families decide to compromise later and withdraw the vakalatnama because they want to give the father, stepfather or step-brother another chance. To sustain such a case, we tell them that there can't be such an agreement in a criminal case.

<sup>544</sup> 4C1, 2C2 and 9C1.

<sup>545</sup> 4C3.

<sup>546</sup> 2C2.

That the views of survivors and their families fluctuates and changes and is influenced by their current circumstances and realities, and their mental health, also comes through in the same respondent's reflection about a case where the child was abused by her uncle who had adopted her:

**“** ...during the testimony, the child told the judge not to punish him for long, because 'if you are going to punish him for long, then who is going to take care of the young siblings'. But now, when I met this child, she wants a very high life imprisonment or a death penalty for the same uncle.”

Another **CSO respondent from Delhi** said,

**“** “Once the children are aware of the severity of punishment, in most cases they enquire about how they can protect their family members who will possibly be punished and if they can retrieve [sic] the case altogether.”<sup>547</sup>

In a case where the accused is the biological father:

**“** The mother is saying, 'It's been so many years that he's been in jail, now we have to marry off our child too. What had to happen, has happened. Now release him.'

### 3.4. Views of CSO respondents on death penalty and minimum mandatory sentences

CSO respondents were specifically asked about their views on whether the death penalty was an appropriate punishment for aggravated penetrative sexual assault and rape of girls below 12 years of age. An overwhelming majority of the CSO respondents i.e., 12 out of 15, said that they did not think the death penalty was an appropriate punishment. Two CSO respondents were in favour of the death penalty and one respondent did not answer this question.

CSO respondents who were not in favour of the death penalty reasoned that it was not a deterrent, targeted marginalised persons, and would discourage reporting of child sexual abuse, and have severe implications for children and families in cases of incest. They also added that speedy justice was more critical than severity of punishment. They viewed the death penalty as less of a deterrent, and more of a distraction from the areas where reform and reflection is needed. A **CSO respondent from Gujarat**<sup>548</sup> underlined the need to address the deep rooted structural and societal causes for sexual violence:

**“** I'm totally against the death penalty because I think it's treating the accused as one bad apple. I don't think this is a question of one bad apple that we can't understand where it came from... I think we have to look where the accused is coming from, what's happened to the accused. And it's about society, social structure, community structures and I believe my idea of justice is about trying to change and transform individuals and systems, that's what I believe in. And I don't think the juvenile justice system I don't think is functioning at all in terms of rehabilitation resources and ideas...

<sup>547</sup> 2C3.

<sup>548</sup> 5C1.

All of these things are not being addressed by society and the death penalty might seem like the answer, but I don't think it is.

CSO respondents shared that the death penalty detracts from the State's responsibility towards survivors as it shifts the focus entirely to the perpetrator. According to a **CSO respondent from MP**:<sup>549</sup>

**“** ...if you decide this, everyone will focus on that part, on what he has done. But what they miss is the whole support survivors require. They feel satisfied that they have done everything, which they should do in that particular case, but by giving the death penalty to the particular perpetrator, [...] the extra support the survivor and her family needed, they never give. And they have that power to say that like they have given the capital punishment what else you need, ...So, this is also kind of the excuse for them to run away, to not support the survivors...

CSO respondents from Delhi and Gujarat expressly mentioned the lack of evidence to suggest that death penalty results in a reduction of crimes, and emphasized on strengthening the response to sexual violence:

**“** ...there's no evidence to suggest that death penalty works as ...people don't commit crimes because they think they're going to get death penalty. The reality is that people commit crimes and the reality in our system is that much more goes on, a very small percentage of crimes will be reported. And, you know, they know that the time it will take to get justice. So investigation, prosecution, and reporting are the issues that we should focus on, because that's where the work is needed.

- CSO respondent from Gujarat<sup>550</sup>

A **CSO respondent from Kerala**<sup>551</sup> who was against the death penalty believed it could have a deterrent effect, but felt that follow-up to ensure the case is on track and securing an actual conviction were more important. She stated:

**“** Death penalty is a superficial balm to soothe people. Its deterrent effect can be said to be its only advantage... What is important is that even those cases that are actually being registered, they have to be followed up properly and they have to be punished.

CSO respondents also examined the death penalty based on its punitive effect on the offender as compared to lengthy prison terms. A CSO respondent from Andhra Pradesh<sup>552</sup> argued that when the perpetrator is put in prison rather than given the death penalty, there is a greater chance of realisation of the wrong they have done. It also sends a stronger message to society, as the person will have to spend a significant part of their lives in confinement, which would also have negative repercussions on the perpetrator's family.

<sup>549</sup> 7C2.

<sup>550</sup> 5C1.

<sup>551</sup> 8C1.

<sup>552</sup> 10C1.

Similarly, a **CSO respondent from Maharashtra**<sup>553</sup> said:

**“** I do not think this is a proper punishment because, for example, I get very angry and commit suicide, there is no point of living, I will not be there in the world to see anything, what software has come, what is happening. But when I have a life, I get to know things, people are cursing me that you did wrong, those views get to us through some medium. The potential offenders will understand that we should not do this, otherwise we will have to die in each moment [*ghut ghut ke marna*] of our lives. The message that is going out is wrong. One day all will be caught and killed. This is wrong. The message should be that you have to die each moment of your life, according to me. I am against the death penalty.

The discriminatory imposition of the death penalty was flagged by a CSO respondent from MP,<sup>554</sup> who observed that the targets of such punishment are usually those from marginalised communities who lack the means and resources to effectively represent themselves in court. On a similar note, a CSO respondent from Assam<sup>555</sup> noted that the death penalty would violate the right to life of the accused. The possibility of erroneous convictions was also pointed out by a CSO respondent from Maharashtra<sup>556</sup> who was of the view that restorative approaches must be considered and opined that the State should not be involved in this process of taking someone's life, especially when the system is not infallible:

The Supreme Court has held that there have been executions that should not have happened. So, when the system is so flawed, you cannot believe that every person who is given the death penalty will be correctly given the death penalty.

A CSO respondent from MP<sup>557</sup> also expressed that the possibility of using restorative processes in appropriate cases will be lost if the death penalty is imposed.

An apprehension was also expressed that the introduction of the death penalty may have increased the likelihood of murder of the child survivors so as to destroy evidence. A **CSO respondent from MP**<sup>558</sup> speculated that it has been causing more deaths of the child survivors in their state and said:

**“** ...after this, in 13-14 cases, girls were not only abused, but also killed because the abuser thinks if evidence is gone due to death, he won't get the death penalty. And this happened a week after the death penalty was announced. The entire family, community, and police were looking for the girl and she was missing. The abuser was also looking along with them. After 24 hours, the girl was found in a garage next to the abuser's house. When this abuser was asked at the [police] station why he did it and why he also searched for her, he said, if he killed her, then he wouldn't get caught. Once this death penalty announcement was made, the cases of rape and murder have increased. They think death will destroy evidence.

<sup>553</sup> 4C2.

<sup>554</sup> 7C2.

<sup>555</sup> 3C1.

<sup>556</sup> 4C3.

<sup>557</sup> 7C1.

<sup>558</sup> 7C1.

Voicing a similar concern, a **CSO respondent from Delhi**<sup>559</sup> stated:

**“** No, I don't support the death penalty for this...I don't know what is more harmful – to not ask for death penalty, so that the child who has been abused is still alive or [to ask for death and have] a child who is not alive anymore.”

CSO respondents also felt that while the public discourse around sexual assault has singularly focused on harsh punishment for the offender including the death penalty, there has been scant regard for survivors' actual needs, including for medical and psychological support, and rehabilitation.

CSO respondents from Uttar Pradesh<sup>560</sup> and West Bengal favoured the death penalty based on the belief on its deterrent value, even though evidence of this is absent. The **respondent from UP** was of the view:<sup>561</sup>

**“** ... the [death] penalty has to be there. Justice means proper punishment and proper penalty must be there. And for it to have proper impact, penalty and punishment has to be high. So others also refrain from doing it. If the accused is released on bail, the case goes on and on, so whether there is a penalty or high punishment, it is hardly going to have any effect or impact.

Similarly, the **CSO respondent from West Bengal** said:<sup>562</sup>

**“** This is a judicial question, but my personal opinion is that there is a need to put fear in people for the consequences of their actions. There should be a deterrent effect. If there are 100 people, it might work on 90 but not 10. There should be fear, there is the fear of police and going to jail and that prevents people from carrying out crimes. If you see one death sentence, it should save thousands of women from getting abused.

With respect to the impact of high minimum mandatory sentences and death penalty on reporting, CSO Respondents observed that there was a visible impact on reporting, particularly in incest cases. A **CSO respondent from Maharashtra**<sup>563</sup> explained that there is a high likelihood of the matter being hushed up due to the fear of imposition of high sentences or the death penalty:

**“** [w]hen you have the death penalty, when you have such mandatory minimum punishments, there is the fear of reporting because [in] sexual abuse, in most of the cases, the perpetrators are known to the survivor. There have been cases where children have told me that even police officers in police stations have said, 'You want to register the FIR, your father will go to jail for twenty five years. You want to register the FIR? He will be hung.' And then a mother or a child who wants to report, takes a step back and says, 'I don't want him to be hanged. I don't want him to be inside for 25 years of his life.' So it does a lot of harm even to reporting.

<sup>559</sup> 2C1.

<sup>560</sup> 11C1.

<sup>561</sup> 11C1.

<sup>562</sup> Ethan Cohen-Cole, Steven Durlauf, Jeffrey Fagan, and Daniel Nagin, *Reevaluating the Deterrent Effect of Capital Punishment: Model and Data Uncertainty*, (Research report submitted to the U.S. Department of Justice, December 2006); Amnesty International, *Does the death penalty deter crime? Getting the facts straight* (2008).

<sup>563</sup> 4C3.

Similar concerns were also expressed by a **CSO respondent from Assam**:

**“**We have this entire poison of the death penalty, which promotes non-reporting. Because who are the offenders? Offenders are mostly uncles and aunts and grandfathers and people known to the child and they don't want to report and then the cycle of abuse just continues.<sup>564</sup>

A CSO respondent from Delhi<sup>565</sup> also drew attention to the implication of harsh sentences on the family in incest cases as “prolonged incarceration of a sole breadwinner may further lead the family into destitution, as well as ostracisation of the child from their own family.”

---

<sup>564</sup> 3C1.

<sup>565</sup> 2C3.

## 4 Conclusion

The survivor and parent respondents of this study represent the minuscule number of cases that are reported to the police, and where sustained support is offered by a CSO for a significant duration of time, and the survivors and families testify against the perpetrator despite numerous pressures. While some did view punishment in the form of imprisonment and death penalty as justice, they also expressed a range of needs that the justice system was not able to fulfil, despite them having received support from CSOs.

Their notion of justice was thus not limited to punishment of the perpetrator, and encompassed a responsive and sensitive justice system in which they are believed by the police and prosecutors, heard respectfully by courts, treated with dignity by defence lawyers, not made to visit courts multiple times, and where judgments are delivered in a time-bound manner. It also emerged that survivors had expectations not only from the justice system and the perpetrators, but also from their own family members, neighbours, and immediate community. For some survivors, justice dispensed by the criminal justice system felt hollow and irrelevant, as they yearned to be believed and accepted by their own family members.

The young survivors' views on justice, punishment, and the death penalty point to the presence of raw emotions, unmet needs, and internal dilemmas. A range of expectations, beyond punishment, vis-à-vis the perpetrators was also discernible as survivors expressed the need for a clear acknowledgment of the harm done, a sincere apology, and a realisation of the impact of their actions on the survivor. For the parents, on the other hand, their articulation of justice appeared to be deeply personal and reflected a desire for the harshest possible punishment for the offender. They rejected the idea of an apology from the offender as they associated the apology with a plea for forgiveness, which was unthinkable as they considered the abuse of their child to be an unpardonable act.

CSO respondents, on the other hand, viewed justice broadly and were also able to reflect on the changing conceptions and expectations of justice as children and families journeyed through the criminal justice system. Having worked for several years with a large number of survivors of sexual violence, they viewed justice beyond the prism of punishment for the offender, and drew attention to the debilitating and humiliating experience of survivors and families in the justice system, which can be as harmful or traumatic as the act of violence itself. Justice for sexual violence, according to them, encompassed compliance with child-friendly procedures at every stage of the legal process, making children feel safe and heard, ensuring availability of affordable mental health services, acknowledging the individual child's needs, as well as reformation of the perpetrator. For majority of CSO respondents, the death penalty was thus not an appropriate response to sexual violence and they expressed concerns about its long-term impact on reporting of sexual violence, particularly in cases of incest, the safety of children, and the positive participation of children and families in the criminal justice system.

On the whole, the views expressed by survivors, families, and CSOs are compelling and reflect that justice for sexual violence has many facets. Its narrow conflation with punishment and stringent sentences for perpetrators is a disservice to survivors whose myriad unmet justice needs are central to their rehabilitation and reintegration. It will be valuable for future studies to examine the evolution of the notion of justice over a period of time and to also understand factors that influence survivors' beliefs about justice.

# RECOMMENDATIONS

Despite the enactment of this crucial legislation aimed at making the criminal justice system more conducive for victim participation, the justice journey for survivors remains fraught with numerous systemic obstacles. The narratives also make it evident that support services and compliance with child-friendly procedures can make a substantial difference in the journey for justice.

To advance the rights of and safeguards for survivors of child sexual abuse laid down under the POCSO Act & Rules, as well as the JJ Act and Model Rules, the following recommendations may be considered by the Central Government, State Governments, Hon'ble High Courts, National and State Judicial Academies, National and State Police Training Academies, NIPCCD, academicians, CSOs, and others working in the area of implementation and monitoring of laws related to children:

## 1 MEASURES TO STRENGTHEN CAPACITY

- Capacity building programmes for judges, Magistrates, CWCs, police, prosecutors, and doctors need to specifically focus on operationalisation of child-friendly provisions, recognising and modifying internal biases that affect the discharge of statutory responsibilities, age and developmentally appropriate communication, rights of and obligations towards children in conflict with the law, and trauma-informed approaches to child survivors of sexual violence.
- Integrated capacity building programmes should be implemented at the district level to promote a shared understanding of legal obligations and responsibilities, as well as convergence and collaboration between Special Courts, SPPs, police/SJPU, DLSA, DCPU, CWC, JJB, medical practitioners, CSOs, Support Persons, Legal Aid Lawyers, and other relevant stakeholders. Thematic integrated training for the police, medical practitioners, prosecutors, and judges on facilitation and conduct of medical examination and the appreciation of medical evidence may be considered. Similar integrated programs may be considered for CWCs, police, DCPU, DLSA, and Support Persons, to enhance role clarification and the quality of care, protection, and support provided to victims/survivors.
- Impact assessment should be woven into the design of capacity programmes by the training academies and should include regular analysis of judgments and orders, chargesheets, prosecution arguments, and medical examination reports to assess the application of learning.
- The Supreme Court Committee may consider commissioning a report on promising practices in the implementation of the POCSO Act by police, doctors, Magistrates, Special Courts, and Support Persons.

**2****STRENGTHENING MONITORING & ACCOUNTABILITY**

- Structural and procedural audits of Special Courts, JJBs, and Magistrates Courts need to be undertaken to assess adherence to basic provisions of the POCSO Act such as the availability of a screen, single visibility mirror, audio-visual facilities, separate entrance, accessible and functional waiting area, and availability of interpreters, translators, special educators, and Support Persons.
- The Home Departments in states should examine the reasons for acquittals in POCSO cases in accordance with the ruling of the Supreme High Court in *State of Gujarat v. Kishanbhai*,<sup>566</sup> and consider commissioning independent evaluations by academic institutions or reputed research organisations.
- Regular reviews of the conduct of police investigations, prosecution, and trials under the POCSO Act should be undertaken by the appropriate authorities, and corrective measures should be taken to address recurring gaps and breach of procedures.
- Performance reviews of the police, Presiding Officers of Special Courts, Magistrates, and Special Public Prosecutors should incorporate compliance with child-friendly procedures under the POCSO Act, *Guidelines for recording evidence of vulnerable witnesses in criminal matters*, if issued by the concerned High Court, as well as the provisions of the JJ Act in respect of children in conflict with the law.

**3****STRENGTHENING SUPPORT FOR VICTIMS**

- State Governments need to take measures to implement the directions of the Supreme Court and operationalise the Witness Protection Scheme<sup>567</sup> and systematise the identification, empanelment, and appointment of Support Persons.<sup>568</sup> The police/SJPU should work in tandem with the CWC, legal representative of the victim, and Support Person to operationalise the Witness Protection Scheme.
- SLSA should make legal aid accessible to survivors and their families, and Special Courts and Special Public Prosecutors should also encourage legal representation of survivors.
- Legal Aid Lawyers should be imparted specialised orientation and training on trauma-informed approaches for representing child victims.
- Special Courts need to proactively exercise their suo-motu powers and consider the award of interim and final compensation, particularly in incest cases, to mitigate the disruption that inevitably arise when a case is reported.

**566** [2014] (5) SCC 108 (Supreme Court of India).

**567** The Witness Protection Scheme 2018 as approved by the Supreme Court in *Mahender Chawla v Union of India* [2018] Writ Petition (Criminal) No. 156 of 2016 (Supreme Court of India).

**568** *Bachpan Bachao Andolan v Union of India*, [2023] WP (Civil) 427 of 2022 (Supreme Court of India).

- The availability of a Support Persons needs to be made known to the child and supportive parent/ family member by the police, SJPU, and CWC and a Support Person should be assigned, with their consent. CWCs need to proactively consider making a recommendation for special relief under Rule 8, POCSO Rules.
- DLSAs and SLSAs need to be provided with an ample budget to ensure smooth disbursal of interim and final compensation directed by the Special Courts, as well as special relief recommended by the CWCs.
- DCPUs need to prepare a database through advertisement, and collaboration with the Indian Sign Language Research and Training Centre, Universities and colleges offering courses for identification of special educators and translators.

## 4 STRENGTHENING EVIDENCE

- Annual surveys may be undertaken by the Ministry of Law & Justice with victims and their guardians to assess the extent to which they received support, information about their case, as well as their satisfaction with the manner in which their case had been dealt with by the criminal justice system.
- Qualitative inquiries must be initiated into the background and circumstances, risk and protective factors, experience with the justice system, and the nature of support extended to the child and family from inception of the case till evidence stage. This can help identify factors that affect testimony and reform needed.
- Research is needed on the experience of children with disabilities in the criminal justice system that can guide the reforms needed to ensure their access to justice.
- Qualitative studies are needed to understand the nature of romantic cases under the POCSO Act, and the impact of the criminal justice system on the lives of the persons involved.
- Trials of children in conflict with the law before the Special Court/Children's Court and the compatibility of the imposition of minimum mandatory sentences on the rights of children in conflict with the law under the UNCRC and JJ Act, 2015 needs to be examined.

## 5 REVISITING AND STRENGTHENING THE NORMATIVE FRAMEWORK

- Guidelines issued by MOHFW on medical examination need to be widely disseminated and training modules and curriculum for medical practitioners need to be updated to reflect recent legal and other developments, particularly to ensure that the examination and reports are compliant with survivors' rights.
- Guidelines on conduct of MTP in cases of underage minors are needed to prevent delays

in access to abortion services and avoid confusion regarding the requirement of a court order when the pregnancy is below 24 weeks. These may be issued by the Ministry of Health and Family Welfare and the State Health Department in collaboration with the nodal Ministry/Department dealing with children.

- The High Court Committees examining the implementation of the POCSO Act may consider issuing a comprehensive guideline on compensation in POCSO cases to outline the roles of different stakeholders and advance smooth access of victims to interim and final compensation. The guidelines should also emphasise the stage at which compensation can be given and clarify that consideration of interim compensation should not be delayed till the victim testifies. Further, the role of the Special Court in determining compensation should be spelt out, as well as the role of the DLSA and CWC in opening of bank accounts.
- Implications and practicality of the Law Commission's recommendations for judicial discretion in cases of intimate relationship between victims above 16 years of age and the accused needs to be further examined.

# ANNEXURE

## Part-A: Key findings based on Analysis of Judgments

**Table A1.1: Profile of victims**

Profile of victims (n=264)				
Category	Assam (n=49)	Maharashtra (n=153)	West Bengal (n=62)	Total (n=264)
Male victims	0 (0.0%)	7 (4.5%)	2 (3.1%)	<b>9 (3.3%)</b>
Female victims	49 (100%)	149 (95.5%)	63 (96.9%)	<b>261 (96.7%)</b>
Disability	1 (2.0%)	2 (1.3%)	0 (0.0%)	<b>3 (1.1%)</b>
Pregnancy	7 (14.3)	23 (15.0%)	6 (9.7%)	<b>36 (13.6%)</b>
Married at the time of FIR	3 (6.1%)	9 (5.9%)	2 (3.2%)	<b>14 (5.3%)</b>
Married post the filing of the FIR	3 (6.1%)	16 (10.5%)	0 (0.0%)	<b>19 (7.2%)</b>
Victim was dead	0 (0.0%)	3 (2.0%)	1 (1.6%)	<b>4 (1.5%)</b>

**Table A1.2: Age of victim as per FIR and as per document**

Breakup of state-wise data on age of victims					
	Assam (n=49)	Maharashtra (n=156)	West Bengal (n=65)	Total (n=270)	Total % of data available (n=209)
0 - 6 years	3	21	5	<b>29</b>	
	(6.1%)	(13.5%)	(7.7%)	<b>(10.7%)</b>	<b>13.9%</b>
7 - 11 years	10	20	15	<b>45</b>	
	(20.4%)	(12.8%)	(23.1%)	<b>(16.7%)</b>	<b>21.5%</b>
12 - 15 years	9	38	12	<b>59</b>	
	(18.4%)	(24.4%)	(18.5%)	<b>(21.9%)</b>	<b>28.2%</b>
16 - 18 years	11	54	11	<b>76</b>	
	(22.4%)	(34.6%)	(16.9%)	<b>(28.1%)</b>	<b>36.4%</b>
Not available	16	23	22	<b>61</b>	
	(32.7%)	(14.7%)	(33.8%)	<b>(22.6%)</b>	
<b>Total</b>	<b>49</b>	<b>156</b>	<b>65</b>	<b>270</b>	<b>209</b>

**Note** - Cases where **only** age as per FIR is available, that age is considered.  
 - Cases where **only** age as per age document is available, that age is considered.  
 - Cases where age as per FIR **and** age as per document was available  
   - Cases where it was the same age in both places that age is considered,  
   - Cases where the age as per FIR and age as per document both were different from each other they were put in the age category they fit in e.g. if age in FIR is 10 and age in document is 11 that case would fall under 7-11 years category. When the case had ages that were not classifiable into the existing age categories, eg, 11 years in age document and 12 years in FIR, they were put in the “Not Available” category. Note although the age specified was different in age documents and the FIR, the age mentioned in all the cases was below 18. Cases where no age was mentioned in the FIR or in the age document  
   - This would fall in the “Not Available” category

**Table A1.3: Gender profile & total number of accused persons**

Gender Profile & Total Number of Accused (n=281)				
	Assam (n=53)	Maharashtra (n=157)	West Bengal (n=71)	Total (n=281)
Male	53 (100.0%)	156 (99.4%)	71 (100.0%)	<b>280 (99.6%)</b>
Female	0 (0.0%)	1 (0.6%)	0 (0.0%)	<b>1 (0.4%)</b>
Other	0 (0.0%)	0 (0.0%)	0 (0.0%)	<b>0 (0.0%)</b>
<b>Total Number of Accused persons</b>	<b>53</b>	<b>157</b>	<b>71</b>	<b>281</b>

**Table A1.4: Relationship between the victim and the accused persons**

Relationship with Accused (n=264)				
Profile of Accused	Assam (n=49)	Maharashtra (n=153)	West Bengal (n=62)	Total (n=264)
Boyfriend	14 (28.6)	35 (22.9%)	11 (17.7%)	<b>60 (22.7%)</b>
Husband	3 (6.1%)	9 (5.9%)	2 (3.2%)	<b>14 (5.3%)</b>
Father/Step-father/mother's partner/adoptive father	4 (8.2%)	20 (13.1%)	6 (9.7%)	<b>30 (11.4%)</b>
Relative	8 (16.3)	28 (18.3%)	4 (6.5%)	<b>40 (15.2%)</b>
Neighbour	0 (0.0%)	20 (13.1%)	6 (9.7%)	<b>26 (9.8%)</b>
Other known persons	13 (26.5%)	34 (22.2%)	23 (37.1%)	<b>70 (26.5%)</b>
Stranger	1 (2.0%)	4 (2.6%)	3 (4.8%)	<b>8 (3.0%)</b>
Not specified	6 (12.2%)	3 (2.0%)	7 (11.3%)	<b>16 (6.1%)</b>
<b>Total</b>	<b>49 (100.0%)</b>	<b>153 (100.0%)</b>	<b>62 (100.0%)</b>	<b>264 (100.0%)</b>

**Table A1.5: Age profile of the accused persons**

Age of Accused in Maharashtra (n=155)							
	17 and below	18 - 21 years	22 - 25 years	26 - 30 years	31 - 35 years	36 and above	Total
Number of accused persons	1 (0.6%)	27 (17.4%)	38 (24.5%)	38 (24.5%)	18 (11.6%)	33 (21.3%)	<b>155</b>

**Table A1.6: Profile of informants**

Profile of Informants - State wise (n=264)				
	Assam (n=49)	Maharashtra (n=153)	West Bengal (n=62)	Total (n=264)
Parent	38 (77.6%)	105 (68.6%)	45 (72.6%)	<b>188 (71.2%)</b>
Victim	3 (6.1%)	31 (20.3%)	9 (14.5%)	<b>43 (16.3%)</b>
Siblings	4 (8.2%)	3 (2.0%)	0 (0.0%)	<b>7 (2.7%)</b>
Relatives	2 (4.1%)	5 (3.3%)	4 (6.5%)	<b>11 (4.2%)</b>
Others	2 (4.1%)	8 (5.2%)	4 (6.5%)	<b>14 (5.3%)</b>
Not Specified	0 (0.0%)	1 (0.7%)	0 (0)	<b>1 (0.4%)</b>
<b>Total</b>	<b>49</b>	<b>153</b>	<b>62</b>	<b>264</b>

**Table A1.7: Profile of informant vis-à-vis profile of accused**

Profile of Informant vis-à-vis Profile of Accused						
Profile of Accused	Profile of Informant					
	Victim	Parents & Siblings	Relatives	Others	Not Specified	Total
Boyfriend	14	42	1	3	0	<b>60</b>
Father/Step-father/mother's partner/adoptive father	11	16	2	1	0	<b>30</b>
Husband	1	11	0	2	0	<b>14</b>
Neighbour	1	24	1	0	0	<b>26</b>
Not specified	1	14	0	1	0	<b>16</b>
Other Known Person	6	58	3	3	0	<b>70</b>
Relative	8	24	4	3	1	<b>40</b>
Stranger	1	6	0	1	0	<b>8</b>
<b>Total</b>	<b>43</b>	<b>195</b>	<b>11</b>	<b>14</b>	<b>1</b>	<b>264</b>

**Table A2.1: State-wise availability of age-related documents in all cases**

Number of Cases where a birth certificate or school record was produced (n=264)				
	Assam (n=49)	Maharashtra (n=153)	West Bengal (n=62)	Total (n=264)
Number of cases in which birth certificate produced	7	77	31	<b>115</b>
Number of cases in which school records produced	1	50	4	<b>55</b>
Total number of cases in which document was produced	8	114	34	<b>156</b>
Percentage to total number of cases in the State	<b>16.3%</b>	<b>74.5%</b>	<b>54.8%</b>	<b>59.1%</b>

\*In several cases, both school and birth certificates were produced and hence the total does not reflect not the sum of the two previous rows

**Table A2.2: State-wise Outcomes on Age Determination**

Age determination according to State (n=264)				
	Assam (n=49)	Maharashtra (n=153)	West Bengal (n=62)	Total (n=264)
Minority Established	12 (24.5%)	84 (54.9%)	28 (45.2%)	<b>124 (47%)</b>
Minority Not Established	11 (22.4%)	31 (20.3%)	5 (8.1%)	<b>47 (17.8%)</b>
Age not determined	26 (53.1%)	38 (24.8%)	29 (46.8%)	<b>93 (35.2%)</b>

**Table A2.3: Break-up of outcomes on age determination by age of victim as stated in the FIR or as per document**

Break-up of outcomes on age determination by age of victim as stated in the FIR or as per document (n=270)							
	Minority Established	Percentage within that age group whose minority is established	Minor- ity Not estab- lished	Percent- age within that age group whose minority is not estab- lished	Age Not deter- mined	Percent- age with- in that age group whose age is not deter- mined	Total (n=270)
0 - 6 years	25	86.2%	1	3.4%	3	10.3%	<b>29</b>
7 - 11 years	33	73.3%	1	2.2%	11	24.4%	<b>45</b>
12 - 15 years	35	59.3%	9	15.3%	15	25.4%	<b>59</b>
16 - 18 years	25	32.9%	31	40.8%	20	26.3%	<b>76</b>
Not available	9	14.8%	6	9.8%	46	75.4%	<b>61</b>
Total							<b>270</b>

Note: - Cases where **only** age as per FIR is available, that age is considered.  
 - Cases where **only** age as per age document is available, that age is considered.  
 - Cases where age as per FIR **and** age as per document was available  
   - Cases where it was the same age in both places that age is considered,  
   - Cases where the age as per FIR and age as per document both were different from each other they were put in the age category they fit in e.g. if age in FIR is 10 and age in document is 11 that case would fall under the 7-11 years category. When the case had ages that were not classifiable into the existing age categories, eg, 11 years in age document and 12 years in FIR, they were put in the "Not Available" category. Note although the age specified was different in age documents and the FIR, the age mentioned in all the cases was below 18. Cases where no age was mentioned in the FIR or in the age document  
   - This would fall in the "Not Available" category

**Table A4.1: State-wise breakup of the convictions under sexual offences under POCSO & IPC**

Conviction under sexual offence POCSO and/or sexual offence under IPC (n=264)				
	Assam (n=49)	Maharashtra (n=153)	West Bengal (n=62)	Total (n=264)
<b>Total</b>	<b>6 (12.2%)</b>	<b>38 (24.8%)</b>	<b>13 (21.0%)</b>	<b>57 (21.6%)</b>

**Table A4.2: State-wise time taken from registration of case till disposal**

Duration from Registration to disposal	Assam (n=5)	Maharashtra (n=150)	West Bengal (n=12)	Total (n=167)
Within a year	3 (60%)	63 (42%)	4 (33.3%)	<b>70 (41.9%)</b>
1 - 2 years	2 (40%)	74 (49.3%)	4 (33.3%)	<b>80 (47.9%)</b>
2 - 3 years	0 (0.0%)	13 (8.7%)	3 (25%)	<b>16 (9.6%)</b>
3 - 4 years	0 (0.0%)	0 (0.0%)	1 (8.3%)	<b>1 (0.6%)</b>
<b>Total</b>	<b>5</b>	<b>150</b>	<b>12</b>	<b>167</b>

**Table A4.3: State-wise duration taken from lodging of FIR to disposal**

Duration from FIR to disposal	Assam (n=44)	Maharashtra (n=123)	West Bengal (n=62)	Total (n=229)
Within a year	24 (54.5%)	37 (30.1%)	30 (48.4%)	<b>91 (39.7%)</b>
1 - 2 years	18 (40.9%)	65 (52.8%)	20 (32.3%)	<b>103 (45%)</b>
2 - 3 years	2 (4.5%)	20 (16.3%)	11 (17.7%)	<b>33 (14.4%)</b>
3 - 4 years	0 (0.0%)	1 (0.8%)	1 (1.6%)	<b>2 (0.9%)</b>

**Table A5.1: State-wise breakup of romantic cases**

	Assam (n=49)	Maharashtra (n=153)	West Bengal (n=62)	Total (n=264)
Number of “romantic cases”	15 (34.6%)	40 (26.1%)	12 (19.3%)	<b>67 (25.4%)</b>

**Table A7.1: Breakup of the convictions and sentences under penetrative offences under the POCSO Act and IPC**

Provision	Number of convictions	Number of sentences
Section 4, POCSO Act	18	7
Section 6, POCSO Act	39	31
Section 376(1) IPC	3	2
Section 376(2) IPC	17	4
Section 376(3) IPC	2	0
Section 376A, IPC	1	1
Section 376AB, IPC	19	15
Section 376DB, IPC	1	1
Section 377, IPC	2	1
*Some cases contained convictions and sentences under multiple provisions.		

